Dissenting Report – The Hon K Thomson MP, The Hon M Parke MP, Senator S Lines & Senator G Sterle

1.1 The China-Australia free trade agreement (ChAFTA) is an unbalanced agreement as a result of the Coalition government's eagerness to complete the negotiations to an artificial deadline.

1.2 China is already our largest trading partner. Australian agriculture exports to China have trebled in the past six years, from $3 billion in 2007/8 to $9 billion in 2013/14. They will continue to grow in future.

1.3 China had $22.7 billion - $12 billion of it in Australian real estate – in investment proposals approved by the Foreign Investment Review Board in the 2014 financial year, more than from any other country. Chinese investors bought more real estate in Sydney and Melbourne combined – almost $3.5 U.S. billion – than in each of London, Paris, or New York. The claim in the majority report that Australia risks becoming less attractive to Chinese investment is fanciful, and out of touch with the reality of 2015 Australia.

1.4 Labor has made it clear that in government we would not have agreed to key items in ChAFTA, including Investor-State Dispute Settlement provisions, and a general exemption from labour market testing.

1.5 The Productivity Commission heavily criticised Australia's pursuit of FTAs in a 2010 report that recommended future agreements first undergo independent cost-benefit analysis and verification of the predictions produced by the Department of Foreign Affairs and Trade. The PC found that overall national benefits from FTAs were hard to find, and unilateral or multi-lateral agreements produced clearer improvements for Australia.

1.6 More recently the Productivity Commission has pointed to a lack of transparency and a lack of rigorous assessment of provisions in recently signed agreements.

1.7 Trade Minister Robb has said Australian jobs would grow by 9,000 per year to be 178,000 higher in 2035. This is incorrect.

1.8 Peter Martin – The Economics Editor at *The Age* – has crunched the numbers in the Government's commissioned study by the Centre for International Economics (CIE) on the combined impacts of the Korea, Japan and China FTAs. There is no separate study of the China FTA. That figure of 178,000 jobs does not appear anywhere in the CIE study. The three agreements will only create 5434 net jobs in 2035.

1.9 The Government made a huge gaffe by adding up all the job figures for each individual year without realising that each year's figure is a net figure counting both gains and losses up to that year. Peter Martin says that by 2035 Australia's workforce will exceed 15 million, meaning that an extra 5434 jobs will impact the unemployment rate by less than one-half of one-tenth of 1 per cent. He says modelling also shows that the agreement will boost imports by 2.5% while only boosting exports by 0.5%.

1.10 Ugly allegations of "racism" and "xenophobia" have been directed by the Government and other China Free Trade Agreement supporters to try to shut down debate. The allegations rest totally on the claim that the China FTA is no different from other Trade Treaties Australia has entered into. But the words and the meaning of the China deal are different from those of previous treaties.

1.11 The definition of "contractual service suppliers" in the Chile deal refers to persons with "high-level technical or professional qualifications, skills and experience". The definition for the China, Korea and Japan deals was watered down to persons with "trade, technical or professional skills and experience", with the words "high-level" and "qualifications" being omitted.

1.12 The Department of Foreign Affairs and Trade provided unequivocal advice to the Treaties Committee in 2008 that the Chile deal was limited to professional skilled business people, and people with high-level qualifications who are already employed by an enterprise of the other country. The Department said the Chile FTA would not widen the capacity for people to apply for 457 visas, and was "not about nationals seeking access to the employment market; it is about service professionals coming temporarily to Australia to deliver their particular service and then leaving".

1.13 But with the China FTA there are over 650 trades and other occupations in the 457 program (including over 200 about which the Department has said that there is labour market testing now) which can never again be subject to labour market testing if this China deal comes into force. A list of these 215 occupations is at Appendix A.

1.14 The Department also said the Chile deal did not limit Australia's scope to change or abolish 457 visas. This is not true of the China deal.

1.15 The ASEAN and Malaysian FTAs, which Labor signed in government, provided labour market testing exemptions in the 457 visa program for very limited categories of foreign nationals. The China deal gives labour market testing exemptions to all Chinese nationals in the 457 program.

1.16 Furthermore, the initial period of entry for temporary contractual service suppliers in the Japan and Korea FTAs is one year. It is four years for the China FTA, four times as long.

1.17 The China Deal also differs from other trade deals in that it has a Memorandum of Understanding which provides young Chinese with 5000 work and holiday visas each year, with the right to work in Australia for 6 months of the year. There is no reciprocal arrangement for young Australians to work and holiday in China.

1.18 The Government majority report quotes the Department arguing that the existing standards and obligations are sufficient to protect Australian workers (paragraph 4.15 p.30). But the China-Australia Free Trade Agreement weakens the rules about employing migrant workers from China. At present for some 457 occupations employers have to test the labour market – that is to say, advertise positions or vacancies in Australia and show no qualified locals are available – before they can bring in temporary migrant workers, or employ those already here.

1.19 The China FTA puts an end permanently to labour market testing in the 457 visa program for all Chinese nationals in all skilled occupations. This includes engineers, nurses, electricians, motor mechanics and another 200 trades and occupations where testing currently applies, plus the 400 or so other mainly graduate-level occupations where there is no testing now simply by government policy.

1.20 The Memorandum of Understanding establishes Investment Facilitation Arrangements (IFA). These will allow companies with a minimum 15% Chinese investment registered in Australia undertaking infrastructure development projects of more than $150 million in specified sectors (a very low threshold, which would cover most projects) to negotiate bringing in semi-skilled temporary workers on 457 visas plus 'concessional' skilled workers. The Liberal Government says it will be the same as the Enterprise Migration Agreements proposed by Labor at the time of the Roy Hill Mining proposal. But trade unions objected vehemently to Enterprise Migration Agreements and none of them ever happened - not at Roy Hill and not anywhere else. The Government says direct employers on these infrastructure projects must test the local labour market first. But the government's labour market testing requirement

allows employers to stop advertising jobs locally up to a year and a half before employing Chinese semi-skilled workers!

1.21 The Government has expressly stated that in order to implement our obligations under ChAFTA, a Migration Act Determination is required in relation to labour market testing in the 457 visa program. Clearly if nothing was changing there would be no determination.

1.22 The definition of 'contractual service suppliers' of China, in combination with other ChAFTA provisions, means that all standard business sponsors nominating Chinese citizens for non-concessional 457 visas will no longer have to test the labour market.

1.23 IFA workers can have lower English skills than under the standard 457 visa, which will hamper their ability to understand their rights or to complain about their violation. Lower English skills also have concerning implications for workplace safety and potentially for public safety.

1.24 The definition of 'contractual service suppliers of China' is identical to that of 'contractual service suppliers of Korea' in the Korea Free Trade Agreement. It is noteworthy that the Immigration Department has advised registered migration agents that "The effect of the obligations under the KAFTA is that labour market testing will NOT be applied to Korean nationals/permanent residents or to employees of businesses in Korea transferring to an Australian branch of that business being nominated under the 457 programme".

1.25 The China FTA also removes Australia's right to apply labour market testing in the 400 visa program, for Chinese 'installers and services' of machinery and equipment.

1.26 At present there is no legislated requirement for labour market testing in the Visa 400 category. But by policy 400 visas are only granted to foreign workers to do 'highly specialised work – that is, it involves skills, knowledge or experience….which cannot reasonably be found in the Australian labour market.'

1.27 The China FTA will remove the Australian government's ability to apply this current test or indeed any form of labour market testing to Chinese 'installers and services' in the 400 visa program.

1.28 The claim made in the majority report that Investment Facilitation Arrangements "will not allow Australian employment laws or wages and conditions to be undermined" (Paragraph 2.36), is not accurate.

1.29 The Department's IFA guidelines say "all overseas employees under the project agreement must be employed under terms and conditions of employment no less favourable than the employer's Australian workforce working in the same position at the same location". But if there are no

such Australian workers, the default position is likely to be the award minimum.

1.30 As Dr Joanna Howe, Senior Lecturer, University of Adelaide Law School, says,

> "There is no requirement in the memorandum that a Chinese worker employed via an IFA receives the same wages and conditions for their occupation as a local worker. The only stipulation in the memorandum is that the award rate be paid. Similarly, in the Project Agreements information booklet, which is the policy document governing IFAs, there is no market salary rates requirement. This means the ChAFTA could be used to create an IFA which undercuts local wages and conditions because although local workers may expect to be paid a higher rate for a certain occupation as provided for in the relevant enterprise agreement, a Chinese worker may be willing to work for the far lesser rate provided for in the award.
>
> This effectively means that so long as the award rate is an acceptable concession on the Temporary Skilled Migration Income Threshold which has been negotiated in advance with the Department, then a Chinese worker employed via an IFA is simultaneously being employed in accordance with Australian law *and at the same time* undercutting local wages and conditions that are provided for in enterprise agreements. The risk of this occurring is high given that it provides Chinese employers with a relatively easy way to cut labour costs on infrastructure development projects."

1.31 The majority report quotes the Migration Council in support of the claim that nothing in ChAFTA will lead to migrant workers being prioritised over Australian workers. This claim is directly contradicted by the FTA text, Chapter 10, article 10.4.3:

> "Neither party shall require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry."

1.32 The removal of labour market testing was also confirmed by the evidence of a senior officer from the Department of Immigration and Border Protection to the Joint Standing Committee on Treaties on September 7, 2015.

> Kelvin Thomson MP: "Are Chinese tradesperson, category 3 engineers and nurses currently subject to labour market testing conditions and requirements?

> David Wilden, DIBP: "If they were to come currently and they are not exempt, they would be required to be subject to labour market testing, the sponsors would be."
>
> Thomson: "And if the China FTA comes into force, will they be subject to those labour market testing conditions then?"
>
> Wilden: "No, they would be exempt."

1.33 The majority report (paragraph 4.10) says that 457 visa holders get the equivalent terms and conditions of an Australian worker. But Dr Joanna Howe has pointed out the great gulf between the theory and the reality.

> "Firstly, Chinese workers will be unlikely to complain about being paid below the Australian minimum wage or the relevant market salary rate because whatever they are earning here is still likely to be far more than what they would receive back in China. Many Chinese workers employed using the ChAFTA's provisions will be 'remittance workers' motivated by a desire to temporarily remain in Australia and to send a large amount of their wages back to China where its purchasing power is worth far more. This provides an even stronger disincentive for Chinese workers to bring to light the fact of their exploitation. Without inside informants, it is highly unlikely that Australian authorities will uncover it.
>
> This is because Chinese workers will operate with a 'dual frame of reference' that computes the wages and conditions that can be earned in Australia compared with China. Unlike Australia, China has no national minimum wage as each province sets its own rate. In Beijing the hourly minimum wage is 18.70 yuan ($3.96 AUD) compared with $17.29 AUD in Australia. Given that China has nowhere near the labour market protections or a strong (and enforced) minimum wage, this may induce Chinese workers to accept conditions illegal under Australian law in the knowledge that these conditions are far superior to those that would be experienced in China, a willingness that might be openly exploited by some employers."

1.34 At pages 39 and 40 the majority report outlines the concerns about recent evidence about the exploitation of temporary migrant workers, but then is silent about how these might be addressed.

1.35 Labour market testing means a business has to prove there is a genuine shortage of skills and there are no local workers who can do a job before temporary visas are granted for migrant workers. The policy intent is to protect and privilege the employment opportunities of local workers.

1.36 Without labour market testing there is no proper mechanism to ascertain that temporary migrant workers are needed. Firstly, this damages public confidence in the temporary migration system which is necessary for its continued functioning. Public confidence in immigration policy is a fundamental precondition for permissive visa regulations.

1.37 The absence of labour market testing allows employers to use overseas workers to exploit their vulnerability. Research shows that employer requests to access temporary migrant labour cannot be taken at face value and may produce a permanent demand (also called a 'structural dependence') upon temporary migrant labour.

1.38 Independent confirmation of skills shortages is 'the first fundamental step' in the development of temporary migration schemes and cannot be outsourced to employers as they will always have a "demand" for foreign workers if it results in a lowering of their costs. The simplistic notion that employers will only go to the trouble and expense of making a 457 visa application when they want to meet a skill shortage skims over a range of motives an employer may have for using the 457 visa.

1.39 The Majority Report (paragraph 4.20) quotes the Department of Immigration and Border Protection as identifying the cost to the employer of using the 457 visa program as a deterrent to misuse. But Dr Joanna Howe says a study of employers' motivations for accessing 457 visa workers found that these were varied and were not always contingent upon whether a particular occupation was in shortage. This study found that a significant minority of employers sought to acquire 457 visa-holders with certain behavioural traits due primarily to their dependence on their sponsoring employers, reflecting an 'embedded preference' for temporary migrant workers as a way of gaining a competitive advantage.

1.40 It is claimed that under the ChAFTA Chinese workers would have the same workplace rights and entitlements as Australian workers. For example, with regard to IFAs, the memorandum specifically states that all employers will 'be required to comply with applicable Australian laws, including minimum wage, workplace law, work safety law and relevant Australian licensing, regulation and certification standards.' Nonetheless, there is a substantial literature examining the phenomenon of temporary labour migration that clearly establishes the particular vulnerability of temporary migrant workers which renders these workers extremely vulnerable to exploitation despite a legal right to equality of remuneration, conditions, treatment and rights as local workers.

1.41 A recent joint investigation by Fairfax Media and Monash University revealed hundreds of thousands of temporary foreign workers at any one time were being illegally exploited and underpaid in a widespread black

economy for jobs. Fairfax Media said it had been flooded with emails of examples of illegal pay and conditions from across the country.

1.42 The investigation found that hundreds of thousands of workers in food courts, cafes, factories, building sites, farms, hairdressers and retail shops were being systematically paid less than their legal entitlement. Associated Research by Monash University journalism students revealed 80% of foreign language job advertisements were offering waged below legal rates.

1.43 Examples of exploitation include:

- Taiwanese workers on a 417 working holiday visa being paid $4 an hour to work in a meatworks;
- Mandarin-language websites openly advertising jobs at $10-$13 an hour, significantly below Australia's legal minimum wage; and
- Working holiday visa workers paid $15 per hour to pick fruit – no tax, no super, no holidays, no sick pay. The minimum legal rate for such work is over $21.

1.44 One feature of these abuses is the use by employers of labour hire middlemen. This enables workers to be called contractors rather than employees, and the labour hire firms melt into the night on the rare occasions whistle-blowers or regulatory agencies expose them, enabling the employer to avoid responsibility for the exploitation. But Employment Minister Cash initially rejected federal action to crack down on the labour hire companies driving foreign worker scams. She said regulation should come from the labour hire industry. This is a guaranteed recipe for inaction, and a clear sign that the Government has no real desire to stamp out the exploitation of foreign workers by unscrupulous employers.

1.45 The majority report says (paragraph 6.7, p.60) that "No immigration system can entirely prevent deliberate unlawful activity. However Australia's system for ensuring compliance….can manage and contain these breaches". Given the extent of the abuse of temporary workers going on in Australia right now, we regard this view as hopelessly naïve and out of touch with reality.

1.46 Working holiday makers have often experienced severe exploitation in the Australian labour market. How else to describe the kinds of exploitative treatment of those in fruit-picking jobs exposed by the ABC Four Corners program?

1.47 The potential for exploitation of Chinese workers on a Work and Holiday visa is compounded by their use of a visa for a non-work purpose. There is no way of knowing just how many, or where, Chinese Work and Holiday visa holders engage in employment. The fact of their employment may

only become visible when circumstances of exploitation occasionally come to light. In its 1997 report, the Joint Standing Committee on Migration noted evidence that 'employers often pay less than award wages to Working Holiday Makers, putting pressure on locals to accept the same conditions to secure the relevant job'.

1.48 As a matter of general principle, it is eminently reasonable that China should be part of Australia's Work and Holiday program. But the expansion of the Work and Holiday program by 5000 would be occurring at a time when a number of concerns have been raised about current exploitation of working holiday makers in the Australian labour market and impacts on local workers. Viewed from this perspective, it is highly concerning that the memorandum facilitates the annual entry of a significant number of Chinese young people on the Work and Holiday visa without regard for the consequences for their wellbeing or for the Australian labour market. If, as it is likely to be, this visa is largely used for a work purpose, these young people will be extremely vulnerable to exploitation in the workplace and can also be used to increase competition for low skilled, entry level jobs which are essential for providing young Australians with a foothold in the labour market.

1.49 The majority report notes the risks of exploitation spelt out in the submission by the Australian Fair Trade and Investment Network (AFTINET) (paragraph 4.59), without any indication about how this might be addressed. The majority report also notes the lack of reciprocity – young Australians aren't and won't be allowed to work and holiday in China – but again makes no comment.

1.50 There is a danger that Australia's labour mobility commitments in CHAFTA will be used as the new baseline demand by all countries with which Australia is negotiating FTAs and all will expect Australia to offer additonal concessions. This includes India, where Trade Minister Robb is once again negotiating under a self-imposed deadline of end-2015. India is the largest country in the 457 visa program with 24 per cent of all visa grants.

Mandatory Skills Testing

1.51 A side letter does away with mandatory skills testing by the Australian Government in a range of trades before Chinese-trained workers come to Australia. These include high risk trades like electrical work, which is inherently dangerous. We have stringent electrical training and safety standards in Australia, and eroding these standards could lead to accidents, injuries and deaths.

1.52 The Government says the Immigration Department can still order a skills test 'if needed', and the States will step in and do assessments for licensed trades. However, there is no clear mechanism to ensure that this will happen.

1.53 Mandatory skills assessment for 457 visa applicants from high-risk countries including China was introduced in 2009 by the former Labor Government to help restore some integrity to the 457 program. Before that it was commonplace for employers to nominate Chinese and other workers for skilled 457 visas in trade occupations but work them as semi-skilled or unskilled workers. For example some Chinese workers granted 457 visas as professional engineers were found to be working as labourers on Australian construction sites! There was also concern about trade training standards and qualifications and document fraud in some countries. Authorities like the World Bank say those concerns are still valid.

Investor State Dispute Settlement

1.54 The agreement contains Investor State Dispute Settlement (ISDS) provisions, which are problematic because they allow foreign companies to sue governments in private international tribunals for laws, policies and court decisions impacting upon their profits; for instance health, environmental and labour regulations, food labelling or quality and safety standards. That's why the former Labor government was not prepared to sign an agreement with Korea.

1.55 The Philip Morris tobacco company is using an ISDS clause in an obscure Hong Kong-Australia investment agreement to sue the Australian government in relation to our plain-packaging reforms, despite the laws having passed the parliament with bipartisan support and having been upheld in our own High Court. Even if Australia ultimately wins the case, it will have to pay its own legal costs of millions of dollars – that so far have amounted to $50m.

1.56 Australians might be surprised to know that these cases are not heard by a respected independent international tribunal of judges but by panels of lawyers who can be advocates for multinationals one month and panel members adjudicating cases the next. Unlike national legal systems, there is no system of precedents and there are no appeals.

1.57 Juan Fernandez-Armesto, an arbitrator from Spain made this observation:

> When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all. Three private individuals are entrusted with the power to review, without any restrictions or

> appeal procedure, all actions of the government, all decisions of the courts and all laws and regulations emanating from parliament.

1.58 The Chief Justice of the High Court, Robert French, gave a speech last year in which he raised concerns about ISDS and its implications for Australia's judicial system. He referred to the case of Eli Lilly, the US pharmaceutical giant that sued Canada under ISDS after the Canadian Supreme Court ruled two of its medicine patents invalid. The Chief Justice quoted Professor Brook Baker of North Eastern University law school's assessment of that case:

> 'After losing two cases before the appellate courts of a western democracy should a disgruntled foreign multinational pharmaceutical company be free to take that country to private arbitration claiming that its expectation of monopoly profits had been thwarted by the court's decision? Should governments continue to negotiate treaty agreements where expansive intellectual property-related investor rights and investor-state dispute settlement are enshrined into hard law?'

1.59 The United Nations Independent Expert Alfred de Zayas recently raised serious concerns about the inclusion of Investor-State Dispute Settlement (ISDS) clauses in free trade and investment agreements, saying:

> "In the light of widespread abuse over the past decades, the Investor-State Dispute Settlement mechanism, which accompanies most free trade and investment agreements must be abolished because it encroaches on the regulatory space of states and suffers from fundamental flaws including lack of independence, transparency, accountability and predictability."

1.60 Nobel laureate for economics Prof Joseph Stiglitz has said this is a "new private judicial system", only available to foreign corporations. It is notable that ISDS may not be used by governments, civil society or domestic companies.

1.61 Some more recent trade agreements have attempted to improve ISDS processes. For instance KAFTA requires ISDS hearings and documents to be made public. However, ChAFTA says only that parties "may" not "shall" make ISDS documents and hearings public.

1.62 Moreover, important matters such as the definition of *indirect expropriation* and *the minimum standard of treatment of foreign investors* – are not complete and have been delegated to a committee to review in 3 years' time. This creates ambiguity about the criteria for ISDS cases.

1.63 We note that this foreshadowed future review may present an opportunity for revision and removal of the ISDS mechanism under the agreement in accordance with the ALP platform.

1.64 The government claims that "safeguards" in the China FTA will prevent cases against health or environment legislation, and that cases can only be taken on the grounds of failure to apply non-discriminatory treatment.

1.65 But as AFTINET points out that recent ISDS "safeguards" for health, environment and other public welfare measures have not prevented cases. The US-Peru FTA has "safeguards" but this has not prevented the Renco lead smelting company from suing the Peruvian government over a court decision which ordered it to clean up its lead pollution.

1.66 The kind of case that could arise from the ChAFTA is provided by the Shenhua coal mine on the NSW Liverpool Plains. This has been approved by the Federal Government, but strongly opposed by local farmers and by the Agriculture Minister Barnaby Joyce on the grounds that the federal government environment assessment did not properly examine the evidence on the possible impacts on groundwater.

1.67 The NSW government has the final responsibility for approving a mining lease. If community opposition results in a lease being refused after the ChAFTA comes into force, Shenhua could sue the government under ISDS provisions of the ChAFTA. Differences in Federal and State government environmental processes could assist the company to argue that a state mining lease refusal was discriminatory treatment rather than a legitimate environmental objection.

Lack of Environment and Labour Chapters

1.68 Unlike KAFTA, ChAFTA does not contain chapters on labour and environment, which means neither government has made any commitments not to reduce labour rights or environmental standards, nor to implement ILO rights or international environmental agreements.

1.69 AFTINET's submission notes that "China is listed as one of the world's 10 worst countries for labour rights…Violations occur not only in locally-owned enterprises but in those under contract to global corporations like Apple and Walmart. Recent strikes and protests by Chinese workers have been met with police repression."

1.70 AFTINET notes that ChAFTA in effect "rewards violations of labour and rights by granting preferential market access to Australia for its products."

Concern Over Protection of Food Labelling from ISDS

1.71 Given the recent imported frozen berries scandal, it is also extremely concerning that while KAFTA excludes ISDS from application to the Technical Barriers to Trade chapter, which includes such matters as food labelling, ChAFTA does not. We note the response of DFAT officials during the hearing that ISDS only applies to the investment chapter of ChAFTA and not to other chapters, however, we have not been able to verify that this is clearly provided in the text of ChAFTA.

Australian Manufacturing

1.72 The Government's hype about the ChAFTA fails to acknowledge that the benefits promised at the time deals are signed are often unrealised due to behind the border barriers and other unforeseen problems. The majority report acknowledges that only 19% of Australian exporters make use of Australia's existing FTAs (page 61, paragraph 6.10).

1.73 And there are losers in Australian manufacturing too, who have to date received little attention. The majority report notes that the tariff reductions on paper products are inequitable, to the detriment of Australia's paper industry, (paragraph 5.27 page 50), as are the arrangements for fibre packaging (paragraph 5.28). Companies like Armstrong World Industries (vinyl flooring) and Alucoil (aluminium building products) expressed to JSCOT their concern about the impact of ChAFTA on their businesses.

1.74 The ChAFTA fails to create a level playing field for Australian domestic industry facing competition from Chinese imports. There is no chapter on labour standards. There is no chapter on environment standards. There is no mechanism to ensure that imported products are of an appropriate standard. Alucoil Australia advises that the much publicised Docklands Fire in Melbourne was in a high rise apartment building cladded with non-compliant panels imported from China.

Conclusion

1.75 We express opposition to the inclusion of Investor State Dispute Settlement provisions in the ChAFTA given that such provisions have been subject to criticism by economic and legal experts.

1.76 We note that the China-Australia Free Trade Agreement and an associated Memorandum of Understanding on an Investment Facilitation Arrangement erode safeguards for Australian jobs including labour market testing obligations under the Migration Act 1958.

1.77 We note that side letters on skills assessment processes which form part of the China-Australia Free Trade Agreement include provisions which have raised concerns amongst trade unions, employer associations and the community over their impact on workplace skills and safety standards; and

1.78 We call on the Government to accept amendments to the Migration Act 1958 which will complement the China-Australia Free Trade Agreement by introducing safeguards to support local jobs, wages, conditions and skills and to deter exploitation of overseas workers.

1.79 The amendments Labor proposes amend the *Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015* by adding a new schedule which amends the Migration Act 1958.

1.80 Amendments to the Migration Act would:

1. Require employers nominating 457 visa workers under work agreements, including ChAFTA IFAs, to meet *labour market testing* requirements (legislated labour market testing requirements currently apply only to employers under the general 457 visa stream).
2. Require the Minister, before entering a work agreement with an employer, to be satisfied that base pay rates for 457 workers will be greater than the *Temporary Skilled Migration Income Threshold*.
3. Require the Minister, before entering a work agreement, to have regard to:
   - ⇒ whether the agreement will support or create Australian jobs (*Australian jobs test*);
   - ⇒ a *labour market need statement* provided by the employer demonstrating why they need to utilise temporary skilled migration (writing into the Migration Act requirements currently set out in Departmental guidelines for project-based work agreements);
   - ⇒ a *training plan* adopted by the employer showing how they will improve the skills of local workers (writing into the Migration Act requirements currently set out in Departmental guidelines for the former Labor Government's Enterprise Migration Agreements and Meat Industry Labour Agreements);
   - ⇒ whether the 457 workers will be able to *transfer skills* to Australian workers;
   - ⇒ an *overseas worker support plan* showing how the employer will provide 457 visa workers with support and assistance during their stay in Australia, including information about workplace entitlements and community services (writing into the Migration Act

requirements currently set out in Departmental guidelines for Project Agreements).

4. Provide the Minister with power to impose *additional safeguards* on work agreements to ensure that they have a positive impact on Australian jobs (such as minimum numbers of Australian workers to be employed or a ceiling on the number of overseas workers).
5. Require the Minister to publish a register of work agreements entered into and to report annually to Parliament on the operation and impact of work agreements.
6. Increase the *Temporary Skilled Migration Income Threshold* (TSMIT) from $53,900 to $57,000 (restoring two years of indexation increases not provided by the Coalition Government) and index it to wages growth.
7. Extend the TSMIT from the general (standard business sponsor) 457 visa stream to 457 visas granted under work agreements, including ChAFTA Investment Facilitation Arrangement (IFA) work agreements.
   - ⇒ The amendments would give the Minister the power to exempt an individual work agreement or class of work agreements from the operation of this provision, in order to retain flexibility in areas with special circumstances (such as Designated Area Migration Agreements or Meat Industry Labour Agreements).
8. Strengthen enforcement of *skills assessment and occupational licencing* requirements by creating new visa criteria and conditions for 457 visa workers in occupations where it is mandatory to hold a licence, registration or membership (such as electrical or plumbing occupations where workers must hold State and Territory occupational licences).
   - ⇒ A new visa criterion will require visa applicants in these occupations either to hold the relevant licence when they apply for a visa or to demonstrate that they meet the requirements for obtaining a licence. This criterion will need to be met for the Minister to grant a 457 visa.
   - ⇒ New visa conditions will require 457 visa holders in licenced occupations:
     - ⇒ not to perform the occupation before obtaining a licence;
     - ⇒ to obtain the licence within 60 days of arriving in Australia;
     - ⇒ to provide the Department with documentation showing they hold the licence, and showing any conditions or requirements imposed on their licence, before they perform the occupation;
     - ⇒ to comply with any conditions on the licence;
     - ⇒ not to engage in any work which is inconsistent with the licence or conditions imposed on the licence;

- ⇒ to notify the Department of any changes to their licence or the conditions imposed on the licence.
- ⇒ These new visa conditions will improve the Department's ability to enforce occupational licencing requirements and ensure 457 visa workers do not operate as unlicensed workers in trades such as electrical work;
- ⇒ Breaching these visa conditions would provide the Department with grounds to cancel the workers' visa and to impose sanctions on the nominating employer.

We recommend that the China Australia Free Trade Agreement not be ratified until these legislative safeguards are put in place.

The Hon Kelvin Thomson MP
Deputy Chair

The Hon Melissa Parke MP

Senator Sue Lines

Senator Glenn Sterle

Dissenting Report: Attachment

Occupations Not Exempt From LMT

The following list is provided as a guide to the occupations which require labour market testing (any occupations which do not appear in the list below but are eligible for the subclass 457 programme and are described by ANZSCO as being skill level 3 or 4 require labour market testing):

Occupation	ANZSCO Code
Engineering Manager	133211
Nursing Clinical Director	134212
Ship's Engineer	231212
Chemical Engineer	233111
Materials Engineer	233112
Civil Engineer	233211
Geotechnical Engineer	233212
Structural Engineer	233214
Transport Engineer	233215
Electrical Engineer	233311
Electronics Engineer	233411
Industrial Engineer	233511
Mechanical Engineer	233512
Production or Plant Engineer	233513
Mining Engineer (Excluding Petroleum)	233611
Petroleum Engineer	233612
Aeronautical Engineer	233911
Agricultural Engineer	233912
Biomedical Engineer	233913
Engineering Technologist	233914
Environmental Engineer	233915
Naval Architect	233916
Engineering Professionals nec	233999
Midwife	254111
Nurse Manager	254311
Nurse Practitioner	254411
Registered Nurse (Aged Care)	254412
Registered Nurse (Child and Family Health)	254413

Occupation	ANZSCO Code
Registered Nurse (Community Health)	254414
Registered Nurse (Critical Care and Emergency)	254415
Registered Nurse (Developmental Disability)	254416
Registered Nurse (Disability and Rehabilitation)	254417
Registered Nurse (Medical)	254418
Registered Nurse (Medical Practice)	254421
Registered Nurse (Mental Health)	254422
Registered Nurse (Perioperative)	254423
Registered Nurse (Surgical)	254424
Registered Nurse (Paediatrics)	254425
Registered Nurses nec	254499
Telecommunications Engineer	263311
Telecommunications Network Engineer	263312
SKILL LEVEL 3 (includes also some Skill level 4)	
Pathology Collector (Aus)/Phlebotomist (NZ)	311216
Electronic Engineering Draftsperson	312411
Mechanical Engineering Draftsperson	312511
Building and Engineering Technicians nec	312999
Automotive Electrician	321111
Motor Mechanic (General)	321211
Diesel Motor Mechanic	321212
Motorcycle Mechanic	321213
Small Engine Mechanic	321214
Blacksmith	322111
Electroplater	322112
Farrier	322113
Metal Casting Trades Worker	322114
Metal Polisher	322115
Sheetmetal Trades Worker	322211
Metal Fabricator	322311
Pressure Welder	322312
Welder (First Class)	322313
Aircraft Maintenance Engineer (Avionics)	323111
Aircraft Maintenance Engineer (Mechanical)	323112
Aircraft Maintenance Engineer (Structures)	323113
Fitter (General)	323211

Occupation	ANZSCO Code
Fitter and Turner	323212
Fitter-Welder	323213
Metal Machinist (First Class)	323214
Textile, Clothing and Footwear Mechanic	323215
Metal Fitters and Machinists nec	323299
Engraver	323311
Gunsmith	323312
Locksmith	323313
Precision Instrument Maker and Repairer	323314
Saw Maker and Repairer	323315
Watch and Clock Maker and Repairer	323316
Engineering Patternmaker	323411
Toolmaker	323412
Panelbeater	324111
Vehicle Body Builder	324211
Vehicle Trimmer	324212
Vehicle Painter	324311
Bricklayer	331111
Stonemason	331112
Carpenter and Joiner	331211
Carpenter	331212
Joiner	331213
Floor Finisher	332111
Painting trades workers	332211
Glazier	333111
Fibrous Plasterer	333211
Solid Plasterer	333212
Roof Tiler	333311
Wall and Floor Tiler	333411
Plumber (General)	334111
Airconditioning and Mechanical Services Plumber	334112
Drainer	334113
Gasfitter	334114
Roof plumber	334115
Electrician (General)	341111
Electrician (Special Class)	341112

Occupation	ANZSCO Code
Lift Mechanic	341113
Airconditioning and Refrigeration Mechanic	342111
Electrical Linesworker	342211
Technical Cable Jointer	342212
Business Machine Mechanic	342311
Communications Operator	342312
Electronic Equipment Trades Worker	342313
Electronic Instrument Trades Worker (General)	342314
Electronic Instrument Trades Worker (Special Class)	342315
Cabler (Data and Telecommunications)	342411
Telecommunications Cable Jointer	342412
Telecommunications Linesworker	342413
Telecommunications Technician	342414
Baker	351111
Pastrycook	351112
Butcher or Smallgoods Maker (Excluding the activity of slaughtering animals, or primarily boning, slicing or packaging meat in a non-retail setting.)	351211
Cook	351411
Dog Handler or Trainer	361111
Horse Trainer	361112
Zookeeper	361114
Kennel Hand	361115
Animal Attendants and Trainers nec	361199
Shearer	361211
Veterinary Nurse	361311
Florist	362111
Gardener (General)	362211
Arborist	362212
Landscape Gardener	362213
Greenkeeper	362311
Nurseryperson	362411
Hairdresser	391111
Print Finisher	392111
Screen Printer	392112
Graphic Pre-press Trades Worker	392211

Occupation	ANZSCO Code
Printing Machinist	392311
Small Offset Printer	392312
Canvas Goods Fabricator	393111
Leather Goods Maker	393112
Sail Maker	393113
Shoemaker	393114
Apparel Cutter	393211
Clothing Patternmaker	393212
Dressmaker or Tailor	393213
Clothing Trades Workers nec	393299
Upholsterer	393311
Cabinetmaker	394111
Furniture Finisher	394211
Picture Framer	394212
Wood Machinist	394213
Wood Turner	394214
Wood Machinists and Other Wood Trades Workers nec	394299
Boat Builder and Repairer	399111
Shipwright	399112
Chemical Plant Operator	399211
Gas or Petroleum Operator	399212
Power Generation Plant Operator	399213
Jeweller	399411
Broadcast Transmitter Operator	399511
Camera Operator (Film, Television or Video)	399512
Light Technician	399513
Make Up Artist	399514
Musical Instrument Maker or Repairer	399515
Sound Technician	399516
Television Equipment Operator	399517
Performing Arts Technicians nec	399599
Signwriter	399611
Diver	399911
Optical Dispenser	399913
Optical Mechanic	399914
Plastics Technician	399916

Occupation	ANZSCO Code
Wool Classer	399917
Fire Protection Equipment Technician	399918
Technicians and Trades Workers nec	399999
Diversional Therapist	411311
Enrolled Nurse	411411
Mothercraft Nurse	411412
Defence Force Member – Other Ranks	441111
Emergency Service Worker	441211
Fire Fighter	441212
Prison Officer	442111
Driving Instructor	451211
Funeral Workers nec	451399
Flight Attendant	451711
Travel Attendants nec	451799
First Aid Trainer	451815
Diving Instructor (Open Water)	452311
Gymnastics Coach or Instructor	452312
Horse Riding Coach or Instructor	452313
Snowsport Instructor	452314
Swimming Coach or Instructor	452315
Tennis Coach	452316
Other Sports Coach or Instructor	452317
Dog or Horse Racing Official	452318
Sports Umpire	452322
Other Sports Official	452323
Footballer	452411
Golfer	452412
Jockey	452413
Court Bailiff or Sheriff (Aus)/Court Collections Officer (NZ)	599212
Sportspersons nec	452499
Insurance Investigator	599611
Insurance Loss Adjuster	599612
Insurance Risk Surveyor	599613
Clinical Coder	599915
Auctioneer	611111
Stock and Station Agent	611112

Occupation	ANZSCO Code
Insurance Agent	611211
Business Broker	612111
Property Manager	612112
Real Estate Agent	612114
Real Estate Representative	612115
Retail Buyer	639211
Wool Buyer	639212
Driller	712211