



Senator the Hon Simon Birmingham

Minister for Trade, Tourism and Investment
Deputy Leader of the Government in the Senate
Senator for South Australia

The Hon Madeleine King MP
Shadow Minister for Trade
Member for Brand
Parliament House
Canberra ACT 2600

Dear Ms King

I write to respond to your letter of 17 October 2019 and our ongoing discussions on domestic action required to give effect to Australia's trade agreements with Indonesia, Hong Kong and Peru.

As you are aware, the Joint Standing Committee on Treaties (JSCOT) recommended binding treaty action to give effect to these agreements be taken as soon as possible. Australian workers, businesses, farmers and investors will benefit from these free trade agreements. Over 99 per cent of tariffs on Australian goods exported to Indonesia and Peru will be eliminated, or enter under improved arrangements. The agreement with Hong Kong locks in duty free access on all Australian goods to Hong Kong. Numerous Australian industry associations and businesses have been calling for the ratification of these agreements.

The Government is prepared to make the below commitments to secure Labor's support for the passage of the legislation required to implement the agreements as signed and without the need for renegotiation or amendment. I look forward to your confirmation that these commitments will secure Labor's support.

The Morrison Government provides the following commitments:

- To accept the JSCOT recommendation that the Australian Government pursue the termination of the *Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Promotion and Protection of Investments (Bilateral Investment Treaty)*, and seek to terminate the 'survival clause' in that agreement. I have instructed officials to take the necessary steps to progress this. The treaty required to terminate the *Bilateral Investment Treaty* will need to be referred to JSCOT for its consideration, but will not require legislation;
- To review other older-style bilateral investment treaties, and older investment provisions in existing agreements, where possible, to seek to replace them with more modern safeguards, as we have done recently in the updated Australia-Uruguay Bilateral Investment Treaty which JSCOT is currently considering;

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- To include an assessment of the operation of the Investor State Dispute Settlement (ISDS) mechanism in the general review of IA-CEPA that is mandated five years after entry-into-force;
- Not to use the provisions of article 12.9 or any other provisions of the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) to propose, create or extend any additional labour market testing waivers for Indonesian contractual service suppliers. Further, should there be a review under article 12.9 that recommends any other changes, we would require such recommendations to be considered by JSCOT prior to giving effect to them;
- To ensure Working Holiday Makers are not exploited by implementing the Government's response to the 22 recommendations of the Migrant Workers Taskforce, including bringing forward legislation to introduce criminal penalties for the worst forms of worker exploitation for the first time;
- To continue to require Working Holiday Makers to be qualified, where required, for any work they undertake in Australia;
- To enhance awareness for temporary visa holders of workplace rights and entitlements, including through the inclusion of information in visa grant notices, and additional follow up in Australia via multiple communication sources;
- To apply and ensure effective operation and promotion of protocols between the Fair Work Ombudsman and the Department of Home Affairs that assist migrant workers to come forward to report concerns about workplace exploitation or underpayment without the fear that doing so may lead to adverse visa consequences;
- Confirmation that the agreements do not create an obligation to privatise any Australian public services, nor restrict any future decision to acquire public assets;
- Confirmation of the continuing operation of the licensing and registration safeguards, and their enforcement, that were negotiated ahead of the passage of the China-Australia Free Trade Agreement enabling legislation;
- To continue to monitor the situation in Hong Kong during the ratification process to ensure Australia's strong support for the 'One Country, Two Systems' principle is maintained; and
- To support a JSCOT inquiry into Australia's treaty making process that would include considering the use of economic modelling and transparency and consultation processes.

I reiterate that there will be no new labour market testing waivers under these agreements. Nothing in the agreements changes Australia's workplace laws, nor do the agreements allow for the exploitation of working holiday makers. All workers in Australia, be they Australian nationals or foreign workers, are treated equally under Australian workplace laws. Nothing in the agreements allows for foreign workers to work without the licensing or registrations required under Australian laws.

I thank you and your colleagues for your constructive engagement and I look forward to seeing the benefits that these trade agreements will bring for Australian workers, businesses, farmers and investors.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon Birmingham', with a long, sweeping horizontal stroke extending to the right.

Simon Birmingham

21 OCT 2019