

# China Free Trade Agreement: more temporary workers and corporate rights to sue governments



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## Increase in temporary workers with no requirement to advertise for Australian workers

The government claims that the China FTA will only allow temporary overseas workers where employers “cannot find an appropriately skilled Australian”, a process known as local labour market testing. 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”.***

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 tradespersons, category three\* engineers and nurses currently subject to labour market testing conditions and requirements?”***

***David Wilden, DIBP: “If they were to come in 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.”***

\* Category Three also includes tradespersons like electricians, mechanics, carpenters, etc .

**Lower Wages and Conditions for projects over \$150 million negotiated with Department of Immigration and Border Protection**

Investment Facilitation Arrangements (IFAs) in the Memorandum of Understanding (MOU) for project investments worth more than \$150 million are designed to attract investment by allowing greater numbers of overseas skilled



temporary workers. **There is nothing like this MOU associated with any other trade agreement.**

The government claims that increased access to overseas workers will only be available to employers “when suitable local workers cannot be found”.

But the text of the Memorandum says:

***“There will be no requirement for labour market testing to enter into an IFA.”***

The text says that “the Department of immigration and Border Protection will negotiate with the employer

- (a) the occupations covered by the IFA project agreement;
- (b) English language proficiency requirements;
- (c) qualifications and experience requirements; and
- (d) calculation of the terms and conditions of the Temporary Skilled Migration Income Threshold (TSMIT).”  
[Currently \$53,900].

The text also says: “A labour agreement will be entered into in a timely manner and will set out the number, occupations and terms and conditions under which temporary

skilled workers can be nominated, consistent with the terms of the IFA, and the sponsorship obligations associated with the labour agreement, including any requirements for labour market testing”.

***This means that labour market testing at this point is optional, not a requirement.***

**These quotes show there is no obligation to test if local skilled workers are available, and no limits on numbers of temporary skilled workers for projects over \$150 million, who could be paid at minimum rates lower than rates paid to skilled local workers on similar projects.**

## Foreign investor rights to sue governments could undermine health and environment laws

Investor-State Dispute Settlement (ISDS) provisions in the China FTA allow foreign investors to sue the Australian government in an international tribunal if they can argue that a change law or policy has “harmed” their investment.

The US Philip Morris tobacco company is currently using an obscure Hong Kong investment agreement to sue the Australian government for billions of dollars over our plain packaging legislation.

Many experts including Australia’s High Court Chief Justice French and the Productivity Commission have noted that ISDS is not independent or impartial and lacks the basic standards of national legal systems.

ISDS has no independent judiciary. Arbitrators are chosen from a pool of investment law experts who can continue to practice as investment law advocates. ISDS has no system of precedents or appeals, so the decisions of arbitrators are final and can be inconsistent.

In Australia, and most national legal systems, judges are independent and there is a system of precedents which judges must consider and appeal mechanisms to ensure consistency of decisions.

The government ignores these basic flaws and claims that “safeguards” in the China FTA will prevent cases against health or environment legislation.

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. The US pharmaceutical

company Eli Lilly is suing the Canadian government over a court decision which refused a patent for a medicine which was not more medically effective than existing medicines. The French Veolia company is suing the Egyptian government over a contract dispute in which they are claiming compensation for a rise in the minimum wage.

## Case study: the Shenhua mine on the NSW Liverpool Plains

How would ISDS work in Australia? The Chinese-owned Shenhua coal mine on the NSW Liverpool Plains has been approved by the Federal Government. But local farmers, the NSW Farmers Association and Agriculture Minister Barnaby Joyce remain opposed, arguing that it will harm the groundwater system, and that Canberra’s approval did not consider all the scientific evidence about the groundwater impacts.

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

ISDS gives increased legal rights to global corporations which already have enormous market power, and should not be included in any trade agreements.

## Tell the Government and Opposition parties to say NO to the China FTA!

- Send a message to the Trade Minister
- Talk to your local member of Parliament
- Discuss the China FTA with friends, relatives and workmates, or hold a local meeting

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