

**National Interest Analysis [2019] ATNIA [6]**

**with attachment on consultation**

**Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff**

(Canberra, 27 November 2017)

**[2019] ATNIF [6]**

# NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

## SUMMARY PAGE

### **Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of the Italian Republic regarding the undertaking of work by cohabiting family members of diplomatic, consular and technical and administrative staff* ('the proposed Agreement'), signed in Canberra on 27 November 2017.
2. It is intended to bring the proposed Agreement into force as soon as practicable, subject to consideration and subsequent recommendation by the Joint Standing Committee on Treaties (JSCOT). For the proposed Agreement to enter into force, the Parties must notify each other in writing of the completion of their respective domestic procedures (Article 7). The proposed Agreement shall enter into force on the first day of the second month following the date of the last such notification.

#### **Overview and national interest summary**

3. The purpose of the proposed Agreement is to facilitate expedited authorisation for the family members of Australian diplomatic, consular, technical and administrative personnel ('diplomatic and consular personnel') stationed in Italy, and for family members of Italian diplomatic and consular personnel stationed in Australia, to engage in paid work for the duration of the official's posting in the receiving country.
4. The proposed Agreement is in the national interest as it will assist in enabling the highest quality of official representation by Australia in Italy and by Italy in Australia.

## **Reasons for Australia to take the proposed treaty action**

5. The lack of opportunity for spouses and family members of Australian diplomatic and consular personnel to engage in gainful employment overseas can be a significant disincentive for staff to serve in particular countries. It is in Australia's interest to address these barriers to ensure the Government continues to have high quality official representation overseas. The Australian Government also has a strong commitment, as an employer, to support its employees to balance their work and family responsibilities.
6. In order to encourage other countries to provide employment opportunities to family members of Australian diplomatic and consular personnel serving overseas, the Australian Government offers reciprocal opportunities to family members of foreign officials.
7. The proposed Agreement is one of a series of bilateral employment arrangements that Australia has concluded with countries in which the Australian Government has a diplomatic or consular presence. Bilateral employment arrangements are usually concluded at less-than-treaty level, by way of a memorandum of understanding; however, the domestic laws of some countries require a treaty-level agreement, and this is the case for Italy.
8. To date, Australia has concluded eight treaty-level agreements (including the proposed Agreement) and forty-six less-than-treaty level arrangements concerning the employment of spouses and family members of diplomatic and consular officials; and negotiations are currently underway for similar agreements or arrangements with seven other countries.
9. The proposed Agreement broadly follows the form of the Australian model text for arrangements concerning the employment of family members of diplomatic and consular personnel.

## **Obligations**

10. Article 1 of the proposed Agreement provides, on a reciprocal basis, that cohabiting family members who form part of the official household of diplomatic and consular personnel of the sending State, will be authorised by the receiving State, to carry out self-employed or salaried work, in compliance with the provisions of the proposed Agreement.
11. Article 6 provides that the aforementioned authorisation would commence from the time of arrival of the member of the diplomatic mission or consular post in the receiving State, until their time of departure, or until such time as the person ceases to be a family member forming part of the household of a member of the diplomatic mission or consular post.
12. The expression 'family members' is defined by Article 1(2) to include spouses, unmarried dependent children aged 16 to 25, and other members of the family pursuant to Article 37 of the *Vienna Convention on Diplomatic Relations* of 18 April 1961, and Article 46 of the *Vienna Convention on Consular Relations* of 24 April 1963, recognised by the receiving State.

13. Articles 2 and 3 set out the process for requesting the requisite authorisation. In Italy, the Embassy of Australia will send its request to the Diplomatic Protocol Office of the Italian Republic, informing it of the name of the relevant family member that wishes to engage in work, and a description of the nature of the proposed work. In Australia, the Embassy of Italy will submit its request to the Protocol Branch of the Department of Foreign Affairs and Trade.
14. Article 4 provides that family members who have been authorised to undertake gainful employment would be subject to the applicable taxation, social security and employment law in force in the receiving State for all matters connected with their work.
15. Article 6(3) provides that each Party may refuse authorisation in cases where the family member has worked illegally in the receiving State or has violated the laws and regulations on tax and social security. Authorisation may also be refused in those cases where, for reasons of security, only citizens of the receiving State may be employed.
16. Article 5(1) provides that the sending State will waive immunities from the civil or administrative jurisdiction of the receiving State, which would otherwise be enjoyed by family members of the diplomatic and consular personnel authorised to work under the proposed Agreement, in respect of all matters arising out of the aforementioned work.
17. Article 5(2) of the proposed Agreement provides that the sending State will waive immunities from criminal jurisdiction, which would otherwise be enjoyed by cohabiting family members, in respect of any act or omission arising out of the aforementioned work, except in special instances when the sending State considers that such a waiver could be contrary to its interests.

### **Implementation**

18. Australia's obligations under the proposed Agreement can be implemented without new legislation or amendment to existing Australian law or regulations.

### **Costs**

19. No cost implications are anticipated for Australia.

### **Regulation Impact Statement**

20. The Office of Best Practice Regulation was consulted and confirmed that a Regulation Impact Statement is not required.

### **Future treaty action**

21. In accordance with Article 7(4), the Parties may agree in writing to amend the proposed Agreement at any time. Any such amendments would be subject to Australia's domestic treaty-making requirements.

## **Termination**

22. In accordance with Article 7(6), the proposed Agreement may be terminated by either Party, at any time, by giving written notice through diplomatic channels of its intention to terminate the proposed Agreement. The termination would take effect three months from the date of receipt of the aforementioned notification.

### **Contact details:**

Privileges and Immunities Section

Protocol Branch

Department of Foreign Affairs and Trade

## **ATTACHMENT ON CONSULTATION**

### **Agreement between the Government of Australia and the Government of the Italian Republic Regarding the Undertaking of Work by Cohabiting Family Members of Diplomatic, Consular and Technical and Administrative Staff**

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## **CONSULTATION**

23. States and Territories were informed of negotiations through the bi-annual meeting of the Commonwealth-State-Territory Standing Committee on Treaties. No comments were received from the States or Territories. No action will be required from States or Territories to implement the proposed Agreement.