

**AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA
AND THE KINGDOM OF BELGIUM, DONE AT CANBERRA
ON 20 NOVEMBER 2002**

Documents tabled on 14 May 2003

National Interest Analysis

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NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Agreement on Social Security between Australia and the Kingdom of Belgium, done at Canberra on 20 November 2002

Date of Tabling of Proposed Treaty Action

1. 14 May 2003

Nature and Timing of Proposed Treaty Action

2. The Agreement was signed on 20 November 2002.
3. In accordance with Article 32, the Agreement shall enter into force on the first day of the second month following an exchange of notes between Australia and Belgium notifying that all formalities necessary to give effect to the Agreement have been finalised. It is proposed that this exchange of notes will take place in May 2005 with the Agreement entering into force on 1 July 2005.

Overview and National Interest Summary

4. The Agreement will bring economic and political benefits to Australia. It will assist in maximising the foreign income of Australian residents and there will be a flow-on effect of these funds into the Australian economy. The Agreement will also reinforce Australia's political, business and strategic interests. The Agreement will further strengthen bilateral relations between Australia and Belgium and provide choices in retirement for individuals who have migrated (or who will migrate) between Australia and Belgium during their working lives.
5. The Agreement provides for enhanced access to certain Australian and Belgian social security benefits and guaranteed portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country. This is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the Agreement, residents of Australia and Belgium will be able to move between Australia and Belgium with the knowledge that their right to benefits is recognised in both countries.

Reasons for Australia to Take the Proposed Treaty Action

6. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from these agreements are age pensioners.

7. The Agreement with Belgium incorporates the general principles of other agreements that Australia has on social security (see Annexure E). A key element of this Agreement, and the other social security agreements, is the sharing of responsibility between the parties in providing adequate social security coverage for former residents of their countries.

8. The Australian Government currently pays pensions under the *Social Security Act 1991* (the Act) to around 1,250 Belgian-born pensioners, the vast majority of whom are resident in Australia. Under portability provisions in the Act, as at March 2003 Australia paid pensions to approximately 30 people (not necessarily Belgian-born) residing in Belgium.

9. Belgian legislation generally does not require a person to have a certain number of years of insurance to qualify for age and survivors' pensions, although a minimum of one month's contributions is required. However, Belgian nationality is a requirement for payment of pensions abroad (ie into Australia). The Agreement will help overcome these restrictions.

10. The Department of Family and Community Services estimates that, through the Agreement, approximately 700 people residing in Australia and Belgium will benefit by being able to claim payments to which they currently do not have access.

11. For Australia, the Agreement will cover age pensions and disability support pensions for people who are severely disabled. For Belgium, the Agreement will cover old-age pensions, invalidity pensions and survivors' pensions.

12. The Agreement provides that both countries will share the financial responsibility for providing these benefits. This means that individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working lives. Residents of Australia and Belgium will be able to move between Australia and Belgium knowing that their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.

13. Double coverage provisions have also been included to ensure that Australian and Belgian employers do not have to make two superannuation contributions for an employee seconded to work in the other country. Under current arrangements the employer would be required to make contributions under both Australian and Belgian legislation. The new provisions will ensure the employer, and the employee where compulsory employee contributions are required, have to contribute only to the relevant superannuation scheme in their home country.

Obligations

14. The Agreement places reciprocal obligations on both Australia and Belgium. Article 1 of the Agreement defines terms used in the Agreement.
15. Article 2 sets out for both countries the scope of social security benefits covered by the Agreement as described in paragraph 11 of this National Interest Analysis.
16. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement will apply to any person who is or has been an Australian resident, or is or has been subject to the legislation of Australia or Belgium and, where applicable, to any partner, dependant or survivor of such a person.
17. Article 4 is a statement of principle, common to all bilateral social security agreements. It requires that all persons to whom the Agreement applies must be treated equally in relation to the application of laws regarding social security benefits.
18. Article 5 deals with the portability of benefits and provides for the payment of benefits by Australia and Belgium into the other country.
19. The provisions of Part II (Articles 7 to 11) deal with the situation of employees who are sent from one country to the other to work. These Articles are generally aimed at avoiding double coverage of employees or liability of employers in, for example, the case of superannuation. Articles 8 and 9 specify that in certain circumstances only one country's legislation relating to coverage will apply. The general rule is that only the legislation of the country in which the employee is working will apply. The main exception to this rule is where the employee has been seconded to work temporarily in that country (a five-year limit applies to non-Government employees). In such situations, only the legislation of the employee's home country will apply. Article 8 specifies that if an employee is working on a ship or aircraft in international traffic then only the legislation of the country where the employee is resident will apply.
20. Article 15 concerns a person in Belgium who would be entitled to an Australian age pension - but for the fact that he or she is not an Australian resident and not in Australia. Article 15 allows such a person to lodge a claim - provided that the person once resided in Australia.
21. Article 16 establishes the circumstances in which insurance periods in Belgium can be used to satisfy the minimum residence requirements for an Australian age pension. Under this Article, claimants are able to add these 'deemed' Belgian insurance periods to actual periods of residence in Australia in order to qualify for an age pension. This means that people who do not meet the minimum period of Australian residence to qualify for payment can add insurance periods in Belgium to their actual periods of Australian residence in order to qualify for payment. However, the rate of Australian age pension will still be based on their actual periods of working life residence in Australia. Articles 12 and 13 impose a similar obligation on Belgium to treat relevant periods of Australian residence as insurance periods in Belgium, for Belgian age and survivors' pensions. However, the rate of Belgian pensions will still be based on Belgian legislation.

22. Article 17 sets out the method of calculating the rate of Australian benefits (age pension). When calculating a person's entitlement Australia is obliged to modify the method of calculation under Australian social security law, both inside and outside Australia. Where an Australian benefit is payable to a person outside Australia that benefit is determined according to Australian law. However, only a portion of any Belgian benefit paid to that person is regarded as income when calculating the Australian benefit. This is consistent with concessions given in other agreements and with the principle of shared responsibility. Where an Australian benefit is payable to a person who is in Australia the rate of that benefit is determined by calculating that person's income according to Australian law, but disregarding any Belgian benefit received by that person (or their partner). However, the amount of the Belgian benefit received is then deducted from the maximum rate of Australian benefit payable to people in Australia. It should be noted that people in Australia will be paid the outside Australia rate if that rate would be higher than the inside Australia rate.

23. Article 18 provides that claimants for Belgian invalidity pension and Australian disability support pension may use relevant periods in the other country to meet minimum qualifying requirements (as described in paragraph 21 of this National Interest Analysis), but only if they were subject to the legislation of that (first) country when they became qualified.

24. Article 20 provides that Australia and Belgium must make the necessary administrative arrangements for the implementation of the Agreement and designate liaison agencies. They must also define the procedures for providing mutual administrative assistance and the sharing of medical examination expenses.

25. Article 21 requires Australian and Belgian authorities to assist each other, subject to relevant domestic laws, regulations and policies, in the implementation of the Agreement, including the exchange of information to assist in processing claims. They must also notify each other of measures taken for the application of the Agreement and of changes in domestic laws which may affect the application of the Agreement. The domestic laws on privacy in each country continue to apply to personal data.

26. Article 22 sets out certain requirements with respect to the authentication of documents and the waiver of fees and charges for processing documents.

27. Article 23 provides that a claim, notice or appeal may be lodged in the territory of the other Party, and that the date of lodgement with one Party will be accepted as the date of lodgement with the other Party. It also obliges both countries to deem claims for benefits as claims for corresponding benefits from the other country if the person has indicated an affiliation with the social security system in that other country.

28. Article 24 obliges Australian and Belgian authorities to resolve any disagreement with regard to the interpretation or application of the Agreement.

29. Article 26 provides that payments under the Agreement cannot be made for any period prior to its entry into force. It also specifies that neither country will deduct administrative costs for the transfer of benefits when it pays its benefits into the other country.

30. Article 27 provides a mechanism by which one Agreement country may recover overpayments of a benefit resulting from the subsequent grant (with arrears) of a benefit from the other country. Such a provision is particularly necessary for Australia's income tested social security system and is a common provision in Australia's bilateral agreements on social security.

31. Article 28 provides that any period or event relevant to a person's eligibility for benefit under the Agreement is to be considered.

Implementation

32. A new Schedule containing the full text of the Agreement will be added to the *Social Security (International Agreements) Act 1999*. This Act gives effect to Australia's international social security agreements. These agreements are attached as schedules to the Act. The regulation making powers contained in Sections 18 and 25 of this Act will be used to implement the Agreement. Article 20 specifies that the Agreement will be implemented in accordance with a separate Administrative Arrangement.

33. An amendment has been made to the *Superannuation Guarantee (Administration) Regulations* dealing with bilateral social security agreements, to eliminate double superannuation coverage. The Regulations were gazetted on 17 August 2001. The Regulations provide that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer (provided an appropriate international agreement is in place).

34. No action is required by the States or Territories, and no change to existing roles of the Commonwealth, States and Territories in social security matters will arise as a consequence of implementing this Agreement.

Costs

35. The Agreement with Belgium is expected to result in a decrease in administered outlays of A\$0.714m over the forward estimate period to 30 June 2007. Family and Community Services and Centrelink Departmental costs of A\$0.979m over the same period represent the cost of implementing the Agreement; this includes the development of new computer systems, administrative processes, forms and staff training.

Consultation

36. Annexure A fully documents the consultation process.

Regulation Impact Statement

37. A Regulation Impact Statement is attached.

Future Treaty Action

38. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 25 obliges the Parties to review the Agreement when requested to do so by either Party.

39. In the absence of a formal amendment procedure in the Agreement, Article 39 of the Vienna Convention on the Law of Treaties applies. This provides that a treaty may be amended by agreement between the parties.

40. Any proposed amendment would have to go through the normal Australian procedures for a treaty action, including scrutiny by the Joint Standing Committee on Treaties.

Withdrawal or Denunciation

41. Article 30 provides that the Agreement shall remain in force until the expiration of 12 months from the date either country notifies the other country in writing of its intention to terminate the Agreement. If Australia should terminate the Agreement, this would be subject to the domestic treaty process.

42. In the event of termination, Article 31(1) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact details

International Branch
Department of Family and Community Services

Agreement on Social Security between Australia and the Kingdom of Belgium, done at Canberra on 20 November 2002

Consultations

State and Territory Governments were advised of the proposed Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information sent out by mail on 4 March 2003. Replies were received from the South Australian Government, the Queensland Government and the ACT Government.

The South Australian Government had no particular views to offer.

The Queensland Government supports the principle of sharing responsibility for social security between countries and advised that the Agreement would not significantly impact on it. It suggested that to avoid potential confusion for citizens and agencies future social security agreements and health agreements be negotiated together as part of a whole of government approach. The Department of Family and Community Services acknowledges this view and, where there is mutual interest in such a 'package' by another country, it and the Department of Health and Ageing would work to progress both agreements if they were seen to be of sufficient priority to the Australian Government.

The ACT Government expressed concern over the impact social security agreements have on State and Territory Budgets. The Department of Family and Community Services is of the view that the impact of increased access to Australia's social security entitlements is negligible.

Letters were sent to two Belgian community groups in Australia in March 2003 seeking their views on the new Agreement. An explanation of the Agreement was attached. No replies were received. A list of Belgian community groups whose views were sought is below.

Letters were also sent to major welfare organisations in Australia in March 2003 seeking their views on the new Agreement. No replies were received. A list of these organisations is below.

The views of the Southern Cross Group (representing expatriate Australians) were also sought via email in March 2003. No reply has been received to date.

Belgian Community Groups Consulted:

Belgian Society, NSW

Belgian Club of Victoria

Major Welfare Organisations and Community Groups Consulted:

Welfare Organisations

Australian Council of Social Services	COTA National Seniors Policy Secretariat
Federation of Ethnic Communities' Councils	ACT Multicultural Community Council
Ethnic Communities' Council of NSW	Multicultural Council of NT
Ethnic Communities' Council of QLD	Multicultural Council of Tasmania
Ethnic Communities' Council of Victoria	Ethnic Communities' Council of Western Australia
ACROD (National Office)	Welfare Rights Centre
Association of Independent Retirees	National Seniors Association
Combined Pensioners and Superannuants Association	Physical Disabilities Council of Australia Ltd
Council of Intellectual Disabilities Agencies	National Ethnic Disability Alliance

Community Groups

Southern Cross Group
Brussels, BELGIUM
www.southern-cross-group.org

State and Territory Government Contacts:

Director
Government Branch
Department of Premier and Cabinet
Melbourne VIC 3001

Branch Manager
Intergovernmental and Regulatory Reform
Branch
Cabinet Office
Sydney NSW

Director
Policy Systems Division
Department of Premier and Cabinet
Brisbane QLD

Director
Policy Division
Department of Premier and Cabinet
Hobart TAS 7001

Assistant Director General
Federal Affairs
Perth WA 6000

Executive Director
Cabinet Office
Department of Premier and Cabinet
Adelaide SA 5001

Director
Policy and Co-ordination Division
Department of Chief Minister
Darwin NT 0801

Cabinet Office
Chief Minister's Department
Canberra ACT 2601

Belgium - Political Brief

Belgium is a union of mainly two culturally distinct peoples: the Dutch-speaking Flemish and the French-speaking people of Wallonia and Brussels. Belgium is a constitutional monarchy with King Albert II (who acceded in 1993) as head of state. It became a federal state in 1995. There are three linguistic communities (Flemish, Francophone and German speaking) and community councils are divided along these lines with responsibility for education and other "cultural issues". The three regions (Flanders, Wallonia and Brussels) have jurisdiction over transport, public works, economic and industrial policy amongst others. The Belgian Government's institutional reform program devolved, in June 2001, agriculture and foreign trade responsibilities to the regional governments, as well as greater fiscal autonomy and a restructuring of finances for the linguistic communities. The Federal Government retains responsibility, however, for issues such as foreign affairs, defence, justice, social security and important parts of health and internal affairs. In addition to the regions and linguistic communities, there are 10 provinces and 589 municipalities.

The current Belgian government is a Liberal-led six party coalition Government elected in 1999, led by Prime Minister Guy Verhofstadt (VLD - Flemish Liberal and Democratic Party). The Government will go to the polls on 18 May 2003, marking a little less than four years in office.

Australia enjoys positive and constructive relations with Belgium and the bilateral commercial relationship is growing. The Australian community in Belgium is estimated at 500 and an estimated 5,100 persons in Australia were born in Belgium.

There has been a significant increase in the number of high-level bilateral visits in the past year, including a visit by Prime Minister John Howard in July 2002. Crown Prince Philippe of Belgium and Princess Mathilde presided over a 70-strong trade and investment delegation to Australia between 18-23 November 2003. These high level visits spurred bilateral cooperation on a number of fronts, substantially enhancing our formal frameworks to promote people to people links. The Social Security Agreement and two other bilateral agreements were signed during the Crown Prince's visit.

Bilateral trade between Australia and the Belgium-Luxembourg Economic Union (BLEU) totalled A\$1.94 billion in 2002, ranking BLEU as our 23rd largest trading partner. Exports were valued at A\$0.95 billion and imports at A\$0.97 billion. BLEU was Australia's 10th largest investor with total inward investment valued at A\$9.8 billion in June 2001. Australia's investment in BLEU totalled A\$1.2 billion in June 2001.

Impact of Agreement on Bilateral Relations

Once ratified, the Social Security Agreement between Australia and Belgium will strengthen social and economic links through mutual access to each other's social security payments and superannuation benefits.

BELGIUM

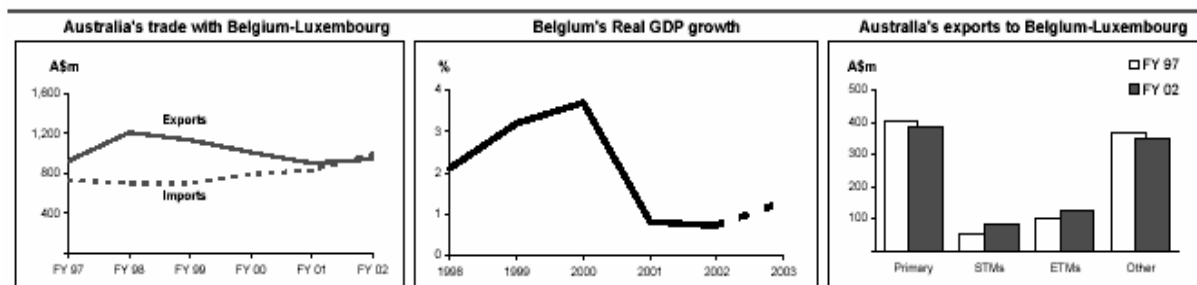
Fact Sheet

General information:

Capital:	Brussels	Head of State:	
Surface area:	31 thousand sq km	H.M. King Albert II	
Official languages:	Dutch, French, German	Head of Government:	
Population:	10.3 million (2002)	Prime Minister Mr Guy Verhofstadt	
Exchange rate:	A\$1 = 0.5532 Euros (Dec 2002)		

Recent economic indicators (c):

	1997	1998	1999	2000	2001(a)	2002(b)
GDP (US\$bn):	252.4	251.5	228.8	227.8	244.8	292.2
GDP per capita (US\$):	24,769	24,625	22,341	22,215	23,840	28,419
Real GDP growth (% change YOY):	2.1	3.2	3.7	0.8	0.7	1.3
Current account balance (US\$m):	12,660	12,170	8,790	8,610	10,500	11,710
Current account balance (% GDP):	5.0	4.8	3.8	3.8	4.3	4.0
Goods & services exports (% GDP):	75.2	75.7	85.6	85.6	83.0	79.6
Inflation (% change YOY):	1.0	1.1	2.5	2.5	1.6	1.0
Unemployment rate (%):	9.3	8.6	6.9	6.7	7.3	7.3



Australia's trade relationship with Belgium-Luxembourg (d):

Major Australian exports*, 2002 (A\$m):		Major Australian imports, 2002 (A\$m):	
Other ores	144	Medicaments (incl. veterinary)	87
Coal	118	Passenger motor vehicles	72
Copper	42	Motor vehicles for transporting goods	64
Wool	28	Medicinal & pharmaceutical products	47
Pearls and gems	26	Pearls and gems	38

*Includes A\$337m of confidential items, 35.6% of total exports.

Australian merchandise trade with Belgium-Luxembourg, 2002:		Total share:	Rank:	Growth (yoy):
Exports to Belgium-Luxembourg (A\$m):	947	0.8%	24th	4.6%
Imports from Belgium-Luxembourg (A\$m):	996	0.8%	24th	19.3%
Total trade (exports + imports) (A\$m):	1,943	0.8%	23rd	11.6%
Merchandise trade deficit with Belgium-Luxembourg (A\$m):	49			

Australia's trade in services with Belgium-Luxembourg, 2002 (e):		Total share:
Exports of services to Belgium-Luxembourg (A\$m):	112	0.4%
Imports of services from Belgium-Luxembourg (A\$m):	30	0.1%
Services trade surplus with Belgium-Luxembourg (A\$m):	82	

Belgium's global trade relationships:

Belgium's principal export destinations, 2001:			Belgium's principal import sources, 2001:		
1	France	17.5%	1	Netherlands	16.7%
2	Germany	16.7%	2	Germany	16.4%
3	Netherlands	11.7%	3	France	12.8%
4	United Kingdom	9.6%	4	United Kingdom	7.8%
5	Italy	6.0%	5	United States	7.5%
37	Australia	0.3%	44	Australia	0.2%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a): All recent data subject to revision; (b): EIU forecast; (c) All data refers to Belgium only; (d) Data refers to the Belgium-Luxembourg economic union; (e): Preliminary.

n.a. Data not available.

Fact sheets are updated biannually; next update: May 2003

Annexure D

List of other treaties with Belgium

- Convention [between the United Kingdom and Belgium] respecting Legal Proceedings in Civil and Commercial Matters. Extended to Australia with effect from 10 October 1928.
- Convention supplementary to the Convention respecting Legal Proceedings in Civil and Commercial Matters Exchange of 21 June 1922.
- Exchange of Notes constituting an Agreement on the Release of Belgian Assets held under Australian Statutes.
- Agreement respecting the War Cemeteries, Graves and Memorials of the British Commonwealth in Belgian Territory.
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Belgium regarding Visas and Visa Fees.
- Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, with Respect to Taxes on Income.
- Treaty on Extradition between Australia and the Kingdom of Belgium.
- Protocol amending the Agreement between Australia and The Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, with Respect to Taxes on Income, signed at Canberra on 13 October 1977.
- Agreement between the Government of Australia and the Government of the Kingdom of Belgium on the gainful employment of certain dependants of diplomatic and consular personnel.
- Agreement between the Government of Australia and the Government of the Kingdom of Belgium on "working holiday" arrangements.

Annexure E

List of treaties on social security with other countries:

- Austria
- Canada
- Cyprus
- Denmark
- Germany
- Ireland
- Italy
- Malta
- Netherlands
- New Zealand
- Portugal
- Spain
- United States of America
- Chile (a)
- Slovenia (a)

(a) Not yet in force.