

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE PORTUGUESE REPUBLIC, DONE AT LISBON ON 6 FEBRUARY
2009 ([2009] ATNIF 6)**

Documents tabled on 13 May 2009

**National Interest Analysis [2009] ATNIA 9
With attachment on Consultation**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement on Employment of the Spouses and Dependants of Diplomatic and Consular Personnel between Australia and the Portuguese Republic, done in Lisbon on 6 February 2009 [2009] ATNIF 6]

Nature and timing of proposed treaty action

1. The Agreement between Australia and the Portuguese Republic on Employment of the Spouses and Dependants of Diplomatic and Consular Personnel was signed in Lisbon on 6 February 2009.
2. It is proposed to bring the Agreement into force as soon as practicable after tabling in Parliament and a subsequent recommendation by the Joint Standing Committee on Treaties that binding treaty action be taken. This would be undertaken by means of an exchange of diplomatic notes between the parties after completion of their respective constitutional and legal requirements for entry into force.
3. Article 11 provides that the “Agreement shall enter into force thirty days after the reception of the last of the diplomatic notes confirming that the internal legal procedures necessary for its entry into force have been fulfilled.”

Overview and national interest summary

4. The purpose of the proposed Agreement is to enable the spouses and dependants of Australian diplomatic and consular personnel stationed in Portugal, and of Portuguese diplomatic and consular personnel stationed in Australia, to engage in paid work for the duration of the official’s posting in the receiving country.
5. The Agreement is in the national interest because it will assist in enabling the highest quality of official representation by Australia in Portugal and by Portugal in Australia.

Reasons for Australia to take the proposed treaty action

6. Under the Agreement the spouses and dependants of Australian diplomatic and consular officials serving in Portugal, and of Portuguese diplomatic and consular officials serving in Australia, may engage in gainful employment for the duration of the official's assignment in the receiving country.
7. In order to encourage other countries to provide employment opportunities to spouses and family members of Australian officials serving overseas, the Australian Government offers reciprocal opportunities to dependants of foreign officials.
8. The lack of opportunity for spouses and family members of Australian diplomatic and consular officials to engage in gainful employment is a significant disincentive for officers to serve in particular countries. It is in Australia's interest, therefore, to limit such disincentive to enable the Government to have the best possible representation overseas. The Australian Government also has an interest as an employer in assisting its employees to balance their work and family responsibilities.
9. Bilateral employment instruments are usually in the form of Arrangements or Memoranda of Understanding (MOUs), both of which are instruments of less than treaty status. However, the Portuguese Republic has in this case indicated a domestic legal imperative for a treaty to be concluded. The Agreement closely follows the form of the Australian model text for MOUs concerning the employment of dependants of diplomatic and consular personnel.
10. To date, Australia has six Agreements and thirty-one 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 another three countries.

Obligations

11. Article 2 of the Agreement provides, on the basis of reciprocity, that members of the family forming part of the official household of a member of the diplomatic or consular post of the sending State be authorized to engage in gainful employment in the receiving State in accordance with the provisions of the law of the receiving State and subject to the provisions of the Agreement.
12. Article 4 of the Agreement provides that the procedures followed in authorising requests to engage in gainful occupation shall be applied in a way that will permit the member of the family to engage in gainful occupation as soon as possible. Any requirements relating to work permits and any similar formalities are to be favourably applied.
13. In accordance with Article 5 of the Agreement, Australia is obliged to waive any immunity from civil or administrative jurisdiction, including from execution of judgement that may be enjoyed by Australian family members under the Diplomatic Convention, in relation to any matter arising out of the gainful occupation and falling within the civil or administrative law of Portugal.

14. Article 6 of the Agreement provides that where Australian family members enjoy immunity from criminal jurisdiction, such immunity in respect of any act or omission arising out of the gainful occupation shall be waived by Australia except in special instances when Australia would consider such a waiver contrary to its own interests. The Agreement further provides that Australia shall give serious consideration to a request from the Portuguese Republic for a subsequent waiver of immunity with respect to the execution of any sentence.

Implementation

15. No new legislation is required to give effect to the Agreement in Australia. The visas of spouses and other family members of foreign officials in Australia allow them to work subject to the permission of the Department of Foreign Affairs and Trade.

Costs

16. There would be no direct costs to the Australian Government associated with the implementation of the Agreement.

Regulation Impact Statement

17. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

18. Article 10 provides that the Agreement can be amended subject to proposals made by either Party. Such amendments shall enter into force under the terms of Article 11.

Withdrawal or denunciation

19. In accordance with Article 9, the Agreement may be terminated by either Party, at any time, by giving written notice through diplomatic channels of its intention to terminate the Agreement. The termination of the Agreement shall enter into force three months after the receiving date of the aforementioned notification.

Contact Details

Administrative and Domestic Law Group
International Organisations and Legal Division
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ATTACHMENT ON CONSULTATION

Agreement on Employment of the Spouses and Dependants of Diplomatic and Consular Personnel between Australia and the Portuguese Republic, done in Lisbon on 6 February 2009 ([2009] ATNIF 6)

Consultation

20. The Minister for Foreign Affairs wrote to the Prime Minister informing him of the Agreement. The Minister for Foreign Affairs also wrote to the Minister for Employment and Workplace Relations, Minister for Immigration and Citizenship and the Attorney-General, seeking their approval of the text of the *Agreement on Employment of Spouses and Dependants of Diplomatic and Consular Personnel between Australia and the Portuguese Republic*. All Ministers approved the text.

21. The Agreement does not require State or Territory action for its domestic implementation.