

Agreement with Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel

Introduction

- 4.1 The purpose of the *Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel* is to enable the spouse and certain other family members of Australian and Belgian diplomatic and consular officials to undertake paid employment for the duration of the officer's assignment in the other country. The arrangement will apply to dependants of employees at the Australian Embassy in Brussels, the Belgian Embassy in Canberra and the Belgian Consulate- General in Sydney.¹

Background

- 4.2 The NIA states that the lack of opportunity for spouses and family members of Australian diplomatic and consular officials to engage in paid work is a disincentive for officers to serve in particular countries.² The Department of Foreign Affairs and Trade (DFAT)

1 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, pp. 1-2.

2 National Interest Analysis (NIA), para. 8.

suggests that such disincentives should be limited where possible to enable the Australian Government to have the best possible representation overseas, and to assist its employees to balance their work and family responsibilities.³ The Committee was advised that:

Dual-income families are now an accepted part of Australian life and many spouses have established careers. Moreover, the financial commitments facing families today often make it unattractive for a spouse to cease working in order to accompany his or her partner on an overseas posting.⁴

- 4.3 The Committee understands that the existence of an employment agreement can have a significant impact, and was interested to hear that:

It can make quite a difference to the willingness of people to go overseas if they know that their spouse can work in a particular place. Sometimes people will look for assignments in countries where they know a bilateral agreement exists.⁵

- 4.4 The Committee understands that, in order to encourage other states to provide employment opportunities for dependants of Australian officials overseas, Australia offers reciprocal opportunities for overseas officials based here. Australia currently has five Agreements and 21 Arrangements relating to bilateral employment.⁶ The Committee was advised that negotiations have begun for similar agreements or arrangements with another 13 countries.⁷

Treaty or agreement?

- 4.5 The NIA states that it is usual for bilateral employment instruments to be in the form of arrangements or memoranda of understanding, both of which are instruments of less than treaty status. Mr Smith advised that this is generally preferred, but that a 'number of countries, however, including Belgium, require that the arrangement be of treaty status'.⁸ The Committee understands that this is due to legal

3 NIA, para. 8.

4 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

5 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 5.

6 NIA, para. 10.

7 NIA, para. 10.

8 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

requirements in Belgium; that ‘they need ratification by their parliament of agreements that cover this sort of subject’.⁹

4.6 The Committee was advised that Australia does not require such arrangements to be of treaty status because existing migration regulations already allow for dependants of diplomatic and consular officials in Australia to undertake paid work.¹⁰

4.7 The Committee was advised that the Agreement with Belgium:
reflected an unusually high level of mutual understanding on key issues and the Belgians moved with great speed to ensure that it was ready for signature during their Crown Prince’s visit to Australia last November.¹¹

Elements of the Treaty

4.8 The Committee understands that this Agreement was developed according to the standard text used for similar agreements and that ‘the Agreement follows closely that text’.¹² Mr Smith mentioned two points of interest in the concluding remarks of his opening statement to the Committee: the coverage of domestic staff (discussed below at paragraph 4.12) and the ability of the Minister for Foreign Affairs to waive immunity if a dependant was in breach of local laws (discussed at paragraph 4.10).

Professional qualifications

4.9 The NIA states that while spouses and other family members are not restricted in the type of employment they may seek to undertake, they are not exempt from any legal or other requirements relating to professional or other qualifications that the individual candidate must demonstrate:¹³

9 NIA, para. 9, and Mr Alan Fewster, *Transcript of Evidence*, Monday 18 August 2003, p. 3.

10 Mr Sridhar Ayyalaraju, *Transcript of Evidence*, Monday 18 August 2003, p. 3.

11 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

12 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

13 NIA, para. 13.

It would be very unlikely that a dependant would get work in a host country if they did not have the appropriate qualifications according to that country's laws.¹⁴

Impact on diplomatic immunity

- 4.10 The Committee was advised that a Belgian proposal which would, in effect, have removed the prerogative of the Australian Minister for Foreign Affairs to waive immunity should a dependant working under the Agreement 'find themselves in trouble under local laws' was not agreed to.¹⁵

Coverage

- 4.11 The NIA states that the Agreement will apply to the spouses and certain other dependants of a small number of officials in each country.¹⁶ It is estimated that five or six Belgian Embassy staff in Australia may be affected by the Agreement and approximately 12 Australians in Belgium.¹⁷ The Australian Embassy in Belgium also has responsibility for Luxembourg, as well as:

Australia's relationship with the European Union, NATO, the Council of Europe, the European Environment Agency and the World Customs Organization.¹⁸

- 4.12 The Committee understands that the Agreement does not extend to service or domestic staff.¹⁹

Costs and implementation

- 4.13 The Committee was advised that no direct costs are envisaged for the Australian Government and no new legislation is required. The NIA states that 'the visas of spouses and other family members of foreign

14 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 5.

15 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

16 NIA, para. 18.

17 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 5, and Ms Margaret Adamson, *Transcript of Evidence*, 18 August 2003, p. 4.

18 Ms Margaret Adamson, *Transcript of Evidence*, 18 August 2003, p. 4.

19 Mr Paul Smith, *Transcript of Evidence*, 18 August 2003, p. 2.

officials in Australia allow them to work subject to the permission of the Department of Foreign Affairs and Trade'.²⁰

Consultation

- 4.14 According to the NIA and evidence received at a public hearing on 18 August 2003, States and Territories were advised of the treaty action through the Commonwealth-State Standing Committee on Treaties. The Committee understands that, to date, no requests for further information have been received.
- 4.15 The Committee is satisfied that adequate consultation has been conducted and that no adverse reaction has been received.

Recommendation

Recommendation 3

The Committee supports the *Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel* and recommends that binding treaty action be taken.

²⁰ NIA, para. 17.