

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Kingdom of Belgium on “Working Holiday” Arrangements (Canberra, 20 November 2002) [2002] ATNIF 32

Date of Tabling of Proposed Treaty Action

1. 12 August 2003.

Nature and Timing of Proposed Treaty Action

2. The Agreement between the Government of Australia and the Government of the Kingdom of Belgium on “Working Holiday” Arrangements (the Agreement) was signed on 20 November 2002.
3. Following consideration of JSCOT’s recommendation and the expiration of the tabling period the Agreement will be brought into force as soon as practicable after Belgium has completed its legal requirements. It is proposed that the Agreement will be brought into force by an exchange of notes between the Governments of Australia and Belgium.
4. This exchange of notes will bring the Agreement into force on the first day of the third month following the date of that exchange.

Overview and National Interest Summary

5. The Agreement will allow eligible Australian and Belgian nationals to remain in the territory of the other country for the purpose of holidaying and – if they wish – to work, subject to certain conditions. This is expected to increase travel between the two countries for the purposes of holidaying.
6. Under the Agreement, Australian and Belgian nationals aged between 18 and 30 years may stay in the territory of the other country for the purpose of holidaying for a period of up to twelve months. During that period they are able to seek work to augment their financial resources if that work remains incidental to their holiday. In Australia, Belgian nationals may work for up to three months with one employer. Working holiday makers must abide by the laws of both Australia and Belgium and Belgians holidaying in Australia must meet health and public interest requirements.
7. Australia’s program of bilateral arrangements regarding working holiday makers (the WHM Program) enhances the cultural and social development of young people, promotes mutual understanding between Australia and other nations and is an important part of the tourist industry. It is not possible to estimate reliably the increase in the number of working holiday makers who will travel between Australia and Belgium due to the

Agreement. Nonetheless, the Agreement is expected to be a substantial addition to the WHM Program.

Reasons for Australia to Take the Proposed Treaty Action

8. Bilateral instruments to implement Working Holiday Maker arrangements are usually in the form of informal arrangements or memoranda of understanding (MOU) which are instruments of less than treaty status. However, the Government of the Kingdom of Belgium advised that, under its Constitution, it would not be able to implement such an arrangement with anything less than a treaty.

9. Australia has Working Holiday Maker Arrangements with fourteen countries. These are the United Kingdom, Canada, the Republic of Ireland, the Netherlands, Japan, the Republic of Korea, Malta, Germany, Sweden, Denmark, Norway, the Hong Kong Special Administrative Region of the People's Republic of China, Finland and the Republic of Cyprus. Australia is currently negotiating similar arrangements with another twelve countries.

10. Working holiday makers have a positive effect on the Australian economy. It is estimated that they spend around \$1.3 billion annually. A recent study by the Melbourne Institute of Applied Economic and Social Research of the University of Melbourne showed that about 8,000 effective full year jobs are created by the annual intake of 80,000 working holiday makers. It is hoped that after a few years of operation the number of Belgian Working Holiday Makers coming to Australia under the Agreement will be approaching 1,000 a year.

Obligations

11. Article 1 of the Agreement obliges Australia to allow young Belgians to remain in Australia for the purpose of holidaying while leaving open the possibility of working in order to augment the financial resources at their disposal. It defines the age and other evidentiary requirements in order to grant a Working Holiday visa.

12. Article 2 of the Agreement provides that both Parties will grant authorisations to each other's nationals to enter their territory – if those nationals meet the requirements set out in Article 1. It also provides that Belgian working holiday makers may stay in Australia for a maximum period of 12 months and will be able to work for no more than three months with each employer. It also provides that Australian working holiday makers in Belgium shall be exempt from the obligation to obtain a work permit.

13. Article 3 of the Agreement provides that nationals from each of the two countries will comply with the respective laws and regulations of the host country. It also provides that these nationals will be treated in the same manner as nationals from the host country in terms of the application of the laws and regulations of the host country and not engage in employment contrary to the purpose of the Agreement.

14. Article 4 provides that nationals of each country may not stay for more than 12 months in the host country.

15. Article 5 provides that nationals from Australia and Belgium may at any time be refused entry or expelled by the host country if they are considered to be “undesirable”.

16. Article 6 provides that two years after the Agreement enters into force either of the Parties may ask the other Party, via diplomatic channels, to review the application of this Agreement.

Implementation

17. No new legislation is required to give effect to the Agreement in Australia. Working holiday makers from “agreement countries” are required under Australia’s Migration Regulations to apply for a Working Holiday visa (subclass 417). Agreement countries are those countries which have agreed to participate in the reciprocal arrangements for working holiday makers. Only passport holders from foreign countries with which Australia has reciprocal working holiday arrangements are eligible to apply for a Working Holiday visa. Under the Migration Regulations agreement countries are specified by inclusion in the Commonwealth of Australia Gazette.

18. In order to include Belgium, an amended Gazette Notice will be released specifying that holders of Belgian passport are eligible to apply for a Working Holiday visa in Australia. The Gazette Notice will also advise the commencement date for lodgement of visa applications.

19. Auxiliary arrangements for implementing the Agreement are set out in letters between Mr Philip Ruddock and Ms Annemie Neyts-Uyttebroeck (Belgian Federal Minister and Deputy for Foreign Affairs) of 20 November 2002. (These letters appear at Annex 5.)

Costs

20. There would be no direct costs to the Australian Government associated with implementation of the Agreement. The Agreement will apply to eligible Australians who wish to go to Belgium for a working holiday or for young Belgians who wish to come to Australia for a working holiday.

Consultation

21. State and Territory Governments have been consulted. In this case the consultations did not result in changes to the negotiation of the text. Details of the consultation are at Annex 1.

Regulation Impact Statement

22. The Office of Regulation Review, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

23. Article 7 provides that either party may temporarily suspend the application of the Agreement in whole or in part. Articles 6 and 7 provide that any review or suspension of the Agreement shall be notified to the other party via diplomatic channels.

24. Any proposed future amendments of the Agreement would have to go through the normal Australian procedures for a treaty action, including scrutiny by the Joint Standing Committee on Treaties.

25. Letters have been exchanged between Australia's Minister for Immigration and Multicultural and Indigenous Affairs and Belgium's Deputy Minister for Foreign Affairs. These letters are auxiliary to the Agreement and are not a treaty. They set out certain understanding as to how the Agreement will operate including employment, study and training limitations. They also provide details of the administrative process relating to implementation of the Agreement.

Withdrawal or Denunciation

25. Under Article 8 of the Agreement, either party may terminate the Agreement by giving three months advance notice in writing to the other party via diplomatic channels. Termination by Australia would follow the Australian domestic treaty process including consideration by JSCOT, and that JSCOT would be informed if Belgium terminated the Agreement.

Contact details

Tourism & Working Holiday Makers Section

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