

NATIONAL INTEREST ANALYSIS: CATEGORY A TREATY

SUMMARY PAGE

**Agreement between Australia and the Kingdom of Belgium on the Gainful
Employment of Certain Dependants of Diplomatic and Consular Personnel,
done at Sydney on 19 November 2002
[2002] ATNIF 30**

Date of Tabling the Proposed Treaty Action

1. **12 August 2003.**

Nature and Timing of Proposed Treaty Action

2. It is proposed to bring into force the Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel (the Agreement), pursuant to Article 7 of the agreement. The Agreement was signed on 19 November 2002.
3. As soon as practicable after 12 August 2003 and the subsequent Parliamentary disallowance period, an exchange of notes between the parties shall occur indicating that their respective constitutional and legal requirements for entry into force of the Agreement have been complied with.
4. The Agreement shall enter force one month after the date of exchange of the last notification of the completion of all necessary constitutional and legal procedures.

Overview and National Interest Summary

5. The purpose of the proposed Agreement is to enable the spouse and certain other family members of Australian diplomatic and consular officials serving in Belgium, and of Belgian diplomatic and consular officials serving in Australia, to engage in paid employment for the duration of the officer's assignment in the other State.
6. The Agreement is in the National Interest because it will assist in enabling the highest quality of official representation in Belgium by Australia and in Australia by Belgium.

Reasons for Australia to take the Proposed Treaty Action

7. Under the Agreement the spouse and certain other family members of Australian diplomatic and consular officials serving in Belgium, and of Belgian diplomatic and consular officials serving in Australia, may engage in gainful employment for the duration of the officer's assignment in the receiving State.

8. In order to encourage other States 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. These reciprocal arrangements benefit Australia by encouraging high quality foreign representation in - and by - Australia. The lack of opportunity for spouses and family members of 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 to limit such disincentives 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 Kingdom of Belgium has in this case indicated its local laws require that a treaty be concluded.

10. To date, Australia has five Agreements and twenty-one Arrangements concerning the employment of spouses and family members of diplomatic and consular officials and negotiations are underway for similar agreements or arrangements with another thirteen countries.

Obligations

11. Article 1 of the Agreement obliges Australia to allow spouses and other members of the family forming part of the official household of diplomatic or consular officials accredited to a diplomatic mission or consular post of the Kingdom of Belgium or an international organisation in Australia to engage in gainful occupation during the officials' assignment in Australia. The category of other members of the family forming part of the household of the official is to be defined, where appropriate, in an exchange of letters.

12. Article 2 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 spouse or other 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. Spouses and other family members are not restricted in the nature or type of employment that can be undertaken. However, spouses and other family members are not exempt from any legal or other requirements relating to personal characteristics or professional or other qualifications that the individual concerned must demonstrate in engaging in a gainful occupation in Australia (Article 2).

14. The obligations contained in the Agreement are reciprocal, with the Kingdom of Belgium providing the same benefits to dependants of Australian officials.

15. In accordance with Article 3 of the Agreement, Australia is obliged to waive any immunity from civil and administrative jurisdiction, including from execution of judgement, that may be enjoyed by Australian spouses and other family members under the Vienna Conventions on diplomatic and consular relations, or any other international instrument, in relation to any matter arising out of the gainful occupation and falling within the civil or administrative law of Belgium.

16. Article 4 of the Agreement provides that where Australian spouses or other 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 Kingdom of Belgium for a subsequent waiver of immunity with respect to the execution of any sentence.

Implementation

17. 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

18. There would be no direct costs to the Australian Government associated with implementation of the Agreement. The Agreement will apply to the spouses and certain other dependants of a small number of officials in each country.

Consultation

19. State and Territory Governments have been advised of this proposed action through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Action. There has been no request from State or Territory Governments for further information.

20. The Association of Foreign Affairs and Trade Employees (AFTE), Australian Manufacturing Workers' Union (AMWU), Community and Public Sector Union (CPSU), and the Media, Entertainment and Arts Alliance (MEAA) have been consulted on the Agreement (Annex A refers).

Regulation Impact Statement

21. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement for Agreements of this type are not required.

Future Treaty Action

22. The Agreement does not provide for general amendments. Article 1 of the Agreement provides that other categories of members of the family forming part of the official household of diplomatic agents, consular officials and members of the personnel of the mission, consular post or international organisation shall be defined, where appropriate, in a later exchange of letters between the Parties. The exchange of letters is not intended to be binding at international law and would not be subject to Australia's domestic treaty process.

Withdrawal or Denunciation

23. In accordance with Article 6, either Party may terminate the Agreement at any time by giving six (6) months' notice in writing to the other Party. Termination by Australia would be subject to Australia's domestic treaty process.

Contact Details

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