

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE ON
EMPLOYMENT OF DEPENDANTS OF AGENTS OF OFFICIAL
MISSIONS OF ONE OF THE TWO STATES IN THE OTHER
STATE, DONE AT ADELAIDE ON 2 NOVEMBER 2001**

Documents tabled on 12 March 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Agreement between the Government of Australia and the Government of the Republic of France on Employment of Dependants of Agents of Official Missions of one of the two States in the other State, done at Adelaide on 2 November 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed to bring into force the Agreement between the Government of Australia and the Government of the Republic of France on Employment for Dependants of Agents of Official Missions of one of the two States in the Other State (the Agreement).

Date of proposed binding treaty action

2. As soon as practicable after 12 March 2002 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.

3. The Agreement was signed on 2 November 2001.

4. The Agreement shall enter force after the first day of the second month following the date at which the parties are in receipt of notification that their respective constitutional and legal requirements for entry into force of the Agreement have been complied with.

Date of tabling of the proposed treaty action

5. 12 March 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

6. The purpose of the proposed treaty action is to enable dependents of Australian and French officials whilst serving in the others State to undertake paid employment. This is intended to enable the highest quality of representation overseas for both States.

Reasons for Australia to take the proposed treaty action

7. Under the Agreement dependants of Australian diplomatic and consular personnel stationed in France, and of French diplomatic and consular personnel stationed in Australia, can engage in paid work for the duration of the diplomat or consular official's service in the receiving country.

8. In order to encourage other countries to provide employment opportunities to Australian dependants, the Australian Government typically offers reciprocal opportunities to dependants of foreign officials. These reciprocal arrangements benefit Australia by encouraging high quality foreign representation in Australia. The lack of the opportunity for spouses and dependants of diplomatic, consular and similar officials to engage in remunerated employment is a significant disincentive for officers to apply for postings to particular countries. It is in Australia's interest to limit such disincentives to enable the Government to have the best possible representation overseas. There is also the interest of the Australian Government as an employer to assist its employees to balance 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 Government of France has in this case indicated its strong preference for a treaty to be concluded.

10. To date, Australia has four Agreements and nineteen Arrangements concerning the employment of dependants of diplomatic and consular personnel and negotiations are underway for similar agreements or arrangements with another thirteen countries.

Obligations

11. Article 1 of the Agreement obliges Australia to allow dependants of Agents assigned to an Overseas Mission of the Republic of France in Australia to engage in remunerated employment activities whilst in Australia.

12. Article 2 of the Agreement defines a dependant as: a spouse; unmarried physically or mentally handicapped dependant children; unmarried dependant children issued a residence permit by way of derogation by the Ministry of Foreign Affairs.

13. Article 11 of the Agreement provides that a dependant authorised to undertake paid employment by virtue of the Agreement shall be exempted from any obligation under the laws and regulations of the receiving State with respect to the registration of foreigners and residence permits.

14. Dependants are not restricted in the nature or type of employment that can be undertaken. However, where special qualifications are required before a person can engage in a profession or activity, the dependant must fulfil the requirements governing such professions or activities in Australia (Article 4).

15. The obligations contained in the Agreement are reciprocal, with France providing the same benefits to dependants of Australian officials.

16. In accordance with Article 5 Australian dependants who have been authorized to undertake paid employment are obliged to waive the immunity normally enjoyed under the Vienna Convention on Diplomatic Relations 1961 to be subject to civil prosecution and the execution of civil judgements in respect of matters arising out of their employment in France.

17. Article 6 of the Agreement provides that where Australian dependants enjoy immunity from criminal jurisdiction, immunity in respect of any act or omission arising from the employment shall be waived by Australia except in special instances when Australia would consider such a waiver contrary to its interests.

18. Article 9 of the Agreement provides that where Australian dependants enjoy immunity from the customs privileges provided for in Articles 36 and 37 of the Vienna Convention on Diplomatic Relations, and Article 50 of the Vienna Convention on Consular Relations, these shall cease when the dependants are authorised to undertake paid employment.

Implementation

19. No new legislation is required to give effect to the Agreement in Australia.

Costs

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

Consultation

21. 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.

22. The Foreign Affairs and Trade staff association and the relevant unions for Australian Government employees posted overseas (Community and Public Sector Union, Media, Entertainment and Arts Alliance and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union) have been notified of the Agreement.

Regulation Impact Statement

23. No Regulation Impact Statement is required for the proposed treaty action.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

24. Article 15 of the Agreement provides that either State, by an exchange of letters, be able to designate the territory or territories to which its consent to be bound by the current Agreement shall apply.

Withdrawal or denunciation

25. In accordance with Article 16, either Party may denounce the Agreement by giving six months notice in writing to the other Party.

Contact details

26. Administrative and Domestic Law Section
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