

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 13 FEBRUARY 2012

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(AE12/0238) Program 3.1: Border Management

Senator Xenophon asked:

If an international flight crew member was found to be working as a domestic flight crew member, what effect would that have on their Special Purpose Visa? Would it make them “unlawful non-citizens”? Who decides whether these matters should be formally investigated? Who decides whether these matters constitute prima facie breaches of the *Migration Act 1958*?

Answer:

It will be a question of whether such an international airline crew member, who holds a Special Purpose Visa (SPV) by virtue of that status, is found working outside their duties as an airline crew member.

Under subregulation 2.40(4) of the Regulations, if an *airline positioning crew member* or an *airline crew member*, as defined in subregulation 1.03 of the Regulations, performs work in Australia that is not of a kind that he or she normally performs during the course of his or her duties as one of those persons, then they will cease to hold a prescribed status. The SPV held by that person will then cease to be in effect at the end of the day on which they cease to hold a prescribed status (s 33(5)(a)(i) of the Act refers).

The relevant effect of subregulation 2.40(4) is that an *airline positioning crew member* or an *airline crew member* is ‘permitted’ to perform work in Australia if the work is of a kind that he or she normally performs as an *airline positioning crew member* or an *airline crew member*.

The kind of work normally performed by a person in the course of his or her duties as an *airline positioning crew member* or an *airline crew member* is a matter that must be determined on the facts of each particular case.

DIAC investigates allegations of non-compliance with visa conditions (such as allegations of non-citizens working without authority or non-citizens who have overstayed their visa). The department’s Information Collection Unit (ICU) is responsible for the recording and dissemination of allegations received by the department, including calls received by the Immigration Dob in Line.

If an allegation is assessed as meeting the threshold for referral to the department’s National Investigations teams, it is formally considered for investigation. The relevant directors then make a determination to accept or reject the referral for investigation. If a referral is accepted for investigation and evidence is obtained in relation to criminal offences, then a brief of evidence is submitted to the Commonwealth

Director of Public Prosecutions (CDPP). The CDPP determines whether a matter should proceed to prosecution.

The airline crew SPV provisions were not designed for foreign airline crew to perform identifiably separate tasks from their international airline crew work in Australia. Specifically, SPV provisions do not allow for foreign airline crew to operate on domestic sectors in Australia which have no reasonable connection to an international service. Any work performed in relation to a domestic leg of an international flight should be incidental to and in no way separate from the international sector.

Ahead of considering any regulatory changes, the department would work cooperatively with any airline it suspects of using the SPV arrangements beyond their intended purpose to ensure they understand the department's expectations and could seek to implement monitoring arrangements. DIAC has clarified this expectation with the Qantas Group and will also be communicating with industry more broadly.