

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(217) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

Under what circumstances can volunteer work constitute a breach of a Bridging Visa E?

Answer:

A Bridging Visa E (BVE) may have a number of conditions attached to its grant. These conditions may be attached because they are required by law or because they have been found necessary at the discretion of the officer who granted the visa, depending upon the circumstances of the grant. When exercising a discretion to attach condition 8101 (the "no work" condition) to the visa, officers will consider whether or not an applicant has a "compelling need to work", as defined in regulation 1.08 of the *Migration Regulations 1994* (the Regulations). Once condition 8101 is imposed on a BVE, the holder of that visa must not engage in any "work".

"Work" is defined in regulation 1.03 of the Regulations, which states "work means an activity that, in Australia, normally attracts remuneration".

Generally speaking, so long as the activity does not normally attract remuneration in Australia, a BVE holder, who has the 8101 condition attached, may engage in that activity. However, whether a particular individual is paid or not is irrelevant to whether they are working. A person who is unpaid will be taken to be working where that activity is one that normally attracts remuneration in Australia. For example, somebody who engaged in unpaid voluntary work as a receptionist for a manufacturer would be taken to be working. If a person in the same situation decided to do unpaid voluntary work as a receptionist at a Salvation Army office this may be characterised as voluntary work that does not normally attract remuneration and not "work" that would come under the definition at regulation 1.03.

While there are some activities that can be characterised as voluntary work, it will largely depend upon the facts of the case. In many cases the characterisation of an activity as one that normally attracts remuneration is straightforward. Work that is usually done by volunteers will not be "work". Work that is not usually done by volunteers will be considered "work", regardless of whether or not that work is paid.

It is recommended that clients without work rights, who wish to engage in volunteer work, approach the nearest DIMA office to ensure that this work will not be in breach of any conditions attached to their BVE.