

Introduction

There are a large number of temporary and permanent visas that allow people to travel to and live in Australia temporarily or permanently.

Some of these visas allow people to work while others have conditions that forbid work or limit the number of hours that a person can work or the employer they can work for.

It is therefore very important for sex workers to check whether the visa they hold allows them to work and any associated conditions.

Working in breach of a visa condition can have serious consequences and may lead to a person having their visa cancelled, being detained and/or removed from Australia.

Sex industry laws in Australia are different in each State and Territory. The laws for different types of sex work also vary between states. Refer to the Laws section of this booklet or the Scarlet Alliance website for further information.

Australian citizens

Australian citizens have no restriction on their right to work.

Permanent residents

Australian permanent residents (including refugee visa holders) have no restriction on their right to work.

What if I am in Australia but don't know what visa I have?

You can go to "Visa Entitlement Verification Online" (also known as VEVO), a Department of Immigration and Citizenship website, and use your passport details to check information about your visa, including whether you are allowed to work in Australia and whether there are any restrictions on that work. This is confidential, though you may give your consent to a prospective employer to check whether you may work and what restrictions may apply. (This is because employers who employ a person who is either unlawfully in Australia or who is working in breach of a visa condition may face criminal prosecution.¹) If you are unsure how to check information about yourself on VEVO you can ask a sex worker organisation to help you.

<http://www.immi.gov.au/e visa/vevo.htm>

The following are some of the temporary visas that may allow you to do sex work in Australia:

- Work and Holiday Visa (subclass 462)
- Working Holiday Visa (subclass 417)
- Student ELICOS Temporary Visa (subclass 570)
- Partner Temporary Visa (subclass 820)

The following visas are some of those that do not allow you to legally do sex work in Australia

- ◆ Electronic Travel Authority Visitor (Subclass 976)
- ◆ Electronic Travel Authority Business – Long Stay (Subclass 956)
- ◆ Tourist (Subclass 676)
- ◆ Sponsored Family Visitor (Subclass 679)

¹ *The Migration Act provides for criminal prosecution of people who knowingly or recklessly employ a person who is either unlawfully in Australia or who is working in breach of a visa condition. People who refer other people for work in such circumstances can also be prosecuted under the Migration Act.*

Visas that allow you to do sex work in Australia:

Working Holiday Maker Program

Purpose of the program

The Working Holiday Maker program is comprised of the Working Holiday (Subclass 417) visa and the Work and Holiday (Subclass 462) visa. The program provides young people aged 18 to 30 with the opportunity to experience Australian culture by enjoying an extended holiday of up to 12 months, over the course of which they can offset their costs of travel by engaging in short term work. All applicants must hold a passport from one of the countries listed below.

Work and Holiday (Subclass 462) Visa Eligible Passport Countries	Working Holiday (Subclass 417) Visa Eligible Passport Countries
Thailand,	Hong Kong,
Indonesia,	Taiwan,
Malaysia,	Belgium,
USA,	Republic of Korea,
Chile,	Japan,
Turkey.	Canada,
	Republic of Cyprus,
	Denmark,
	Estonia,
	France,
	Germany,
	Republic of Ireland,
	Italy,
	Malta,
	Netherlands,
	Norway,
	Sweden,
	United Kingdom,
	Finland.

Work and Holiday (Subclass 462) Visa

<http://www.immi.gov.au/visitors/working-holiday/462/>

Note: Most countries under this visa program have a limit on the number of Work and Holiday visas issued per year.

What does the visa let me do?

If you are granted a Work and Holiday visa you can

- enter Australia at any time within 12 months of the visa grant date
- stay in Australia for up to 12 months from the date of first entry
- leave and re- enter Australia any number of times in the 12 months from the date of first entry
- undertake short term employment in Australia over the 12 months of your stay, but work for no longer than six months with any one employer
- study for up to four months.

Eligibility

You may be eligible for this visa if you:

- are aged 18 to 30 years old (inclusive) at the time of applying
- hold a passport from one of the countries listed above
- meet educational requirements
- have functional English
- have a letter of support from your government
- are not accompanied by dependent children at any time during your stay in Australia
- have not previously entered Australia on a Working Holiday (Subclass 417) or Work and Holiday (Subclass 462) Visa
- meet character, health and evidence of sufficient funds requirements.

Education Requirements

For most arrangement countries, you must hold tertiary qualifications or have satisfactorily completed or have been approved to undertake a third year of undergraduate university study.

Tertiary qualifications include a:

- Doctoral degree
- Masters degree
- Graduate diploma
- Graduate certificate
- Bachelor degree
- Associate degree
- Advanced diploma
- Diploma
- Certificate IV or
- Certificate III level qualifications

✚ Working Holiday (Subclass 417) Visa

<http://www.immi.gov.au/visitors/working-holiday/417/index.htm>

If you are granted this visa you can:

- enter Australia within 12 months of it being granted
- stay in Australia for up to 12 months from the date of first entry
- leave and re-enter Australia any number of times while the visa is valid
- undertake short term employment in Australia over the 12 months of your stay, but work for no longer than six months with any one employer
- study for up to 4 months.

You must:

- be outside Australia when you apply and, when your visa is granted
- not have entered Australia on a Working Holiday visa before
- be aged between 18 and 30 years (inclusive) at the time of applying
- be applying no more than 12 months before you intend to travel to Australia
- not be accompanied by dependent children at any time during your stay in Australia
- meet character, health and evidence of sufficient funds requirements.

If your partner wants to accompany you to Australia, they may do so, but will need to apply for their own visa. If you would like a dependent child to join you in Australia you must apply for a different visa. You must not be accompanied by dependent children at any stage during your visit to Australia on a Working Holiday visa

First Working Holiday visa applications may be lodged online or as a paper application from anywhere outside Australia. If you have dependent children who will not accompany you to Australia during your Working Holiday you must apply using a paper application form.

Second Working Holiday Visa

<http://www.immi.gov.au/visitors/working-holiday/417/eligibility-second.htm>

To be eligible for a second Working Holiday visa, you must meet a number of requirements. You may apply either while you still hold a first Working Holiday visa or at a later date.

If you hold a second Working Holiday visa, you may return to work for a further 6 months for an employer with whom you worked on your first Working Holiday visa.

You must:

- have completed three months (88 days) of **specified work in regional Australia** while on your first Working Holiday visa (there is no requirement to do further specified work on your second visa)
- be aged between 18 and 30 years (inclusive) at the time of applying
- be applying no more than 12 months before you intend to travel to Australia, if applying from outside Australia
- not be accompanied by dependent children at any time during your stay in Australia.

You must also:

- be outside Australia when the visa is granted, if applying from outside Australia
- be in Australia when the visa is granted, if applying from inside Australia
- hold a passport for a country or region participating with Australia in the Working Holiday program.

Temporary Business (Long Stay) - Standard Business Sponsorship (Subclass 457)

<http://www.immi.gov.au/skilled/skilled-workers/sbs/>

This is the most commonly used program for employers to sponsor overseas workers to work in Australia on a temporary basis. This program enables employers to access suitably skilled workers from overseas for positions where they are unable to find local skilled workers. These visa holders are generally highly skilled, have relatively high income levels and contribute to economic growth.

There are three steps involved in applying for a Subclass 457 visa: sponsorship, nomination and visa application. The first step is for an employer who is prepared to employ the overseas worker in a skilled occupation to make an application to be an approved business sponsor.

The second requirement is for the employer to nominate the skilled position in which the worker would work. Once the sponsorship and nomination applications have been approved, the overseas worker can lodge a visa application. The overseas worker will need to demonstrate that they have the skills and experience required for the position.

Employers can be either:

- Australian businesses
- overseas businesses

A sex worker can't be sponsored for a Subclass 457 visa but a massage therapist can - see job description below.

Massage Therapist Job Description

Performs therapeutic massage and administers body treatments for relaxation, health, fitness and remedial purposes (Source: Australian Standard Classification of Occupations (ASCO) code 349411)

This occupation requires you to have completed formal qualifications achieved through study, training or work experience. You need to have attained an Australian Qualifications Framework (AQF) diploma or higher qualification. In some instances relevant experience is required in addition to the formal qualification. For further information on the Australian Qualifications Framework see the AQF website <http://www.aqf.edu.au/>

You may also be subject to English language requirements. See <http://www.immi.gov.au/skilled/skilled-workers/changes-eng-req.htm>

Who is this visa for?

This visa is for overseas workers who are nominated by an employer to fill nominated skilled positions in Australia

What does this visa let me do?

With this visa you can:

- work in Australia for up to four years
- bring any eligible secondary applicants, i.e. partner or dependent family member, with you to Australia – secondary applicants can work and study
- after entering Australia, travel in and out of Australia as often as you like.

✚ Skilled – Graduate (Temporary) visa – (Subclass 485)

<http://www.immi.gov.au/skilled/general-skilled-migration/485/>

This is an 18 month temporary visa for overseas students who have obtained an Australian qualification in **Australia** as a result of at least two (2) years study. It allows applicants who are unable to pass the points test to remain in Australia for 18 months to gain the skills and experience needed to apply for a permanent or provisional General Skilled Migration visa. No points test applies.

📖 Student Visa

<http://www.immi.gov.au/students/>

Your nationality and course(s) of study determine your Assessment Level. The Student visa subclass under which you will be assessed is determined by the highest Assessment Level in your course of study (except for ELICOS), even if you are studying a package of courses.

To work out the most appropriate visa for your studies see <http://www.immi.gov.au/students/students/chooser/>

Student Subclass Options

These are the Student subclass options that are available:

Subclass 570 Independent ELICOS Sector visa
<http://www.immi.gov.au/students/students/570-1/>

Subclass 571 Schools Sector visa
<http://www.immi.gov.au/students/students/571-2/>

Subclass 572 Vocational Education and Training Sector visa
<http://www.immi.gov.au/students/students/572-4/>

Subclass 573 Higher Education Sector visa
<http://www.immi.gov.au/students/students/573-4/>

Subclass 574 Postgraduate Research Sector visa
<http://www.immi.gov.au/students/students/574-2/>

Subclass 575 Non-Award Sector visa
<http://www.immi.gov.au/students/students/575-2/>

Subclass 576 AusAID or Defence Sector visa
<http://www.immi.gov.au/students/students/576-2/>

Students (ELICOS Sector: Temporary visa subclass 570)

This visa is for international students who want to study English Language Intensive Courses for Overseas Students (ELICOS) in Australia.

What does the visa let me do?

With this visa :

- you can study in Australia
- an eligible dependent family member (your spouse or de facto partner, or your dependent child under 18) can accompany you to Australia only if you are from an Assessment Level 3 or 4 country, and if your course is 12 months or longer in duration
- when you have commenced your course of study in Australia, you can work up to 20 hours per week while your course is in session and unlimited hours during scheduled course breaks.
- your family members can work up to 20 hours per week provided you have commenced your course of study in Australia.
- your dependants can study in Australia for up to three months

Note: if your dependants want to study for more than three months they must apply for their own student visa. The application can be made in Australia.

Permission to work

If you were granted a student visa on or after 26 April 2008, you will already have permission to work automatically included with your visa. For more information about the conditions of the Student Visa go to <http://www.immi.gov.au/students/visa-conditions-students.htm>

Mandatory Conditions on Student Visas

8105

1. You **cannot** work more than 20 hours per week* when your course is in session (other than work which has been registered as a part of the course).

Note: No work limits apply during recognised periods of vacation offered by your education provider.

2. You **cannot** undertake work until you have commenced your course in Australia.

*A week begins on a Monday and ends on the following Sunday.

8202

1. You must remain enrolled in a registered course (unless you are an AusAID/Defence student or secondary exchange student, in which case you must maintain full-time enrolment in your course of study or training).

Note: a registered course is one that is on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). For details visit: <http://cricos.deewr.gov.au/>

2. You **must** maintain satisfactory attendance in your course and meet course progress requirements for each study period as required by your education provider.

8501

1. You must maintain adequate arrangements for health insurance during your stay in Australia.

Note: Under policy, this means that you must maintain Overseas Student Health Cover (OSHC).

8516

1. You must continue to satisfy the requirements for grant of your student visa. This means, for example, that your main course of study must continue to be a course in the education sector that matches your student visa, and that you must continue to have sufficient financial capacity to support your study and stay in Australia.

8517

1. You must maintain adequate schooling arrangements for your school-age dependants who joined you in Australia on a dependent family member visa for more than 3 months.

8533

1. You must notify your education provider of your residential address in Australia within 7 days of arriving in Australia. You must notify your education provider of any change in your residential address within 7 days of the change.

2. You must notify your education provider of a change of education provider within 7 days of receiving the electronic Confirmation of Enrolment certificate or evidence of enrolment.

8534

(This condition applies to Subclass 570, 572, 573, 574, 575 and Assessment Level 3 and 4 applicants where the course duration is 10 months or less; it may be imposed on other Student visas on a discretionary basis)

1. You are **not** entitled to be granted a further substantive visa, other than:

a) a protection visa ; or

b) a Student visa with Permission to Work

Note: if you apply for and are granted Permission to Work, this will change only the work conditions on your Student visa, all other conditions will remain the same including 8534

c) a further Student Guardian (Subclass 580) visa

Note: The effect of this visa condition is that, except in extremely limited circumstances, it will not be possible for you to remain in Australia beyond the date authorised by your visa.

Partner or Dependent Family Member of a Student Visa Holder

The partner or dependent family member of a student visa holder can work up to 20 hours a week - this applies across all the student visa subclasses.

Condition 8104 states that the holder 'must not engage in work for more than 20 hours a week'.

A 'week' is defined as commencing on Monday and ending on Sunday.

Dependants of 574 primary visa holders who have commenced a Masters or Doctorate Degree are exempt from this requirement. It applies to those family unit members who have been granted permission to work or a student visa granted on or after 26 April 2008.

Permission to work (PTW) and Condition 8104

From 26 April 2008 all dependants who are granted a student visa are subject to condition 8104. Condition 8104 restricts dependants from undertaking work (voluntary work may be permitted in certain circumstances) until the primary student has commenced their course of study in Australia. It also restricts them to no more than 20 hours of work per week at all times. The exception is for dependants of students who have commenced a masters or doctorate course. Dependents of these students may work unlimited hours under condition 8104. Dependants granted a student visa before 26 April 2008 will still have to apply for Permission to Work (PTW) to gain condition 8104.

Note: that the 20 hours a week relates to each week during which the course is in session. The 20 hours a week cannot be "averaged out" over the duration of the course.

Partner/Spouse Visas

<http://www.immi.gov.au/migrants/family/family-visas-partner.htm>

Partner Category Visa Options - If you are in Australia

- married partners
- de facto partners (including those in a same-sex relationship)

If your partner is living in Australia you may be eligible for a partner visa. This is for people of all genders and sexualities – and includes same-sex couples. Partners of Australian citizens, Australian permanent residents or eligible New Zealand citizens may apply to enter and/or remain permanently in Australia.

Partner Temporary Visa (subclass 820) and Permanent Visa (subclass 801)

<http://www.immi.gov.au/migrants/partners/partner/820-801/index.htm>

Partner Temporary Visa (Subclass 309) and Permanent Visa (Subclass 100)

<http://www.immi.gov.au/migrants/partners/partner/309-100/index.htm>

Prospective Marriage Visa (Subclass 300)

<http://www.immi.gov.au/migrants/partners/prospective/300/index.htm>

For all applicants for these visas, whether or not employed in the sex industry, the criteria include that: the applicant and their sponsor have a mutual commitment to a shared life to the exclusion of all others; the relationship between them is genuine and continuing; they live together or do not live separately and apart on a permanent basis.

People holding partner visas who are found working in brothels or massage parlours may experience difficulties with their partner visa application if:

- a) their partner is not aware that they are working in the sex industry; or
- b) they are working in another city in which their partner does not live.

Partner Temporary Visa (Subclass 820) and Permanent Visa (Subclass 801)

Both visas are for people to stay in Australia with their partner, who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen. If two years after you apply the spousal relationship is ongoing, a permanent visa may be granted.

<http://www.immi.gov.au/migrants/partners/partner/820-801/index.htm>

<http://www.immi.gov.au/migrants/family/partner-inside.htm>

Expired Visas

Under the *Migration Act 1958* (the Act), if your visa expires while you are still in Australia, you become an 'unlawful non-citizen' if you don't have another visa. The Act provides that if you have no entitlement to remain in Australia, you may be detained and removed from Australia as soon as practical.

Department of Immigration and Citizenship officers known as Compliance Officers locate people who have become 'unlawful non-citizens' or who are commonly known as 'overstayers'. If there is no legal entitlement for them to remain, they are expected to depart Australia.

If you become aware that you are an 'unlawful non-citizen' you should take immediate steps to legalise your status (you may wish to seek legal advice), or you should make immediate arrangements to depart and contact the compliance section of your nearest office of the Department of Immigration and Citizenship with evidence of your departure booking.

If you are eligible, a departmental officer will grant you a bridging visa to give you lawful status for a short time. The bridging visa provides an opportunity to organise your personal affairs before departure or to lodge an application for a new visa, if this is an option for you.

In this situation, getting legal and immigration advice about your visa options is very important because there may be another visa you can apply for.

Further information:

[Managing the Border: Immigration Compliance](#) (Chapter 5 - Dealing with Over stayers)

<http://www.immi.gov.au/media/publications/compliance/managing-the-border/pdf/mtb-chapter5.pdf>

<http://www.immi.gov.au/managing-australias-borders/compliance/staying-legally/expired.htm>

 **Bridging Visas**

<http://www.immi.gov.au/allforms/pdf/1024i.pdf>

Bridging visas are granted by the Department of Immigration and Citizenship (DIAC) to people in Australia in a number of situations including when they have applied for another visa but a decision cannot be made before their existing visa expires.

A bridging visa will usually contain the same work restriction that applied to the previous visa held.

If the bridging visa has a “no work” condition on it, it may be possible to have this condition removed if a “compelling need to work” can be shown.

There are five classes of bridging visas - they are used to make 'non-citizens' lawful who otherwise would be unlawful in the following situations:

- during the processing of an application, made in Australia, for a substantive visa (any visa which is not a bridging visa or criminal justice visa), including merits review of a decision to refuse such an application
- while arrangements are made to leave Australia
- at other times when the 'non-citizen' does not have a visa (for example, when seeking judicial review) and it is not necessary for the person to be kept in immigration detention.

For further information and application forms visit; <http://www.immi.gov.au/allforms/bridging.htm>

These Visas do not allow you to legally do sex work in Australia:

Subclass 976	Electronic Travel Authority Visitor
Subclass 956	Electronic Travel Authority Business – Long Stay
Subclass 676	Tourist
Subclass 679	Sponsored Family Visitor
Subclass 580	Student Guardian visa

✗ Tourist Class Visa (Subclass 676)

<http://www.immi.gov.au/visitors/tourist/676/>

This visa allows you to visit Australia for a holiday, to visit family and friends or to study for less than three months.

What does this visa let me do?

A tourist visa will allow you a single or multiple entry to Australia for a stay for three, six or twelve months. The time period and number of entries granted will depend on the purpose of the visit and your personal circumstances. These may include health, financial circumstances and character requirements.

If you are in Australia and want to extend your stay for tourism, you must apply for a new visa at least two weeks before your current visa expires. If a decision has not been made on your application and your original visa has expired, you can remain lawfully in Australia until the application is finalised.

✘ ETA (electronically stored authority for travel to Australia) Visitor (Subclass 976)

<http://www.immi.gov.au/visitors/tourist/976/>

Who is this ETA (visitor) for?

An ETA (visitor) subclass 976 is designed for people who are outside Australia and want to visit Australia for holidays, tourism, recreation or informal study.

What does this ETA let me do?

You can stay for up to three months on each visit within the validity of the visa. ETAs are valid for 12 months from the date of grant, or for the life of the passport if the passport expires less than 12 months from the date the ETA was granted.

ETA (visitor) conditions

- you must comply with your ETA conditions while in Australia. A breach of these conditions may result in your ETA being cancelled and you may have to leave Australia.
- you must not work whilst in Australia.
- Some nationalities, eg Thai, Philippine, Vietnamese, are not eligible for this visa.

✘ Student Guardian visa (Subclass 580)

http://www.immi.gov.au/students/student_guardians/580/

The Subclass 580 visa is usually issued to the parent of an overseas student under the age of 18 years to allow the parent to care for that student while the student is in Australia.

This visa contains a condition that prevents the visa holder working.

Special Conditions on your Visa

(this information is drawn from Department of Immigration and Citizenship)

Condition 8503

http://www.immi.gov.au/media/fact-sheets/52bWaiving_Condition8503.htm

Condition 8503 means you cannot stay longer than the date of your visa expiry.

An 8503 condition can be added at the Department of Immigration and Citizenship's discretion to temporary visas, including visitor visas, holiday visas or student visas. It is automatically included on all of the following visas:

- Sponsored Family Visitor visa (subclass 679)
- Tourist visa (subclass 676) granted under the Approved Destination Status scheme operating out of the People's Republic of China
- Sponsored Business Visitor visa (Subclass 459) if the application was made before 1 July 2006
- Professional Development visa (subclass 470)
- Work and Holiday visa (subclass 462) if you have previously held two subclass 462 visas.

Usually condition 8503 is included in your visa when you travel for one of the following reasons:

- a particular family event, e.g. a wedding, christening, funeral or family reunion;
- urgent legal matters; and
- settling affairs after a prior lengthy stay in Australia

Usually 8503 condition means that you cannot apply for another visa while you are in Australia. However, you can apply for a protection visa or bridging visa. You must leave Australia before you make another visa application.

The 8503 condition visa will apply to your visa until:

- You obtain another substantive visa (i.e. a visa other than a bridging visa); or
- You successfully have condition 8503 removed from your visa.

Many tourist visas have condition 8503 attached as do all sponsored family visitor visas.

How do I know if my visa has an 8503 condition?

If condition 8503 applies, the number “8503” will be printed on your visa label. Even if your visa has expired, the condition will still apply until you leave Australia.



This document was produced using information from relevant legislation from the state and territories in Australia; “Handy Hints” produced by the Australian Injecting and Illicit Drug Users League (AIVL), August 1990 And <http://www.scarletalliance.org.au/laws/>

We would also like to acknowledge the assistance of state and territory sex worker organisations in the production of this document.

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