

Volunteers and visas

Legal information for New South Wales community organisations

This fact sheet covers:

- an overview of various work restrictions for temporary visa holders
- visa work restrictions and volunteering, and
- steps your organisation can take to make sure it acts lawfully.

1. Overview of visa work restrictions

Work restrictions may apply to temporary visas, such as temporary protection, bridging and tourist visas. These restrictions are indicated by particular visa conditions (4 digit numbers beginning with 8). The most common work conditions are:

Visa condition	Description of work restriction
8101	"No work" – found on a variety of visas
8104	"Maximum 40 hours work a fortnight whilst in Australia (except for 573/574 visa holders and where the primary visa holder is studying a Masters or Doctorate degree). People with this condition can only start work once the primary visa holder has started their course" – found on dependent student visas
8105	"Maximum 40 hours work a fortnight whilst the holder's course of study or training is in session, once they have started their course. Subject to course requirements, work may be unlimited when the course is not in session or when they have finished the course for which they were enrolled in" – found on primary student visas
8107	"Only work for sponsored employer (or associated entity) in approved occupation, must start work within 90 days of arrival or visa grant and cannot cease work for more than 90 days" – found on the primary 457 visa
8115	"No work. Visa holder must only undertake business visitor activities" – found on visitor visas
8539 / 8549	"Must only live, study and work in designated regional areas"
8547	"Must not be employed with one employer for more than 6 months" – found on working holiday (Subclass 417) and work and holiday (Subclass 462) visas

NOTE ON TEMPORARY PROTECTION VISAS

At the time of writing this fact sheet, there were no work restrictions applicable to those holding Temporary Protection Visas (TPVs). The work rights of holders of TPVs have changed regularly over the past few years. We recommend that your organisation check the work rights of workers with TPVs from time to time using the Visa Entitlement Verification Online (VEVO) system.



2. Can a person with work restrictions volunteer?

Understandably, there can be confusion around whether volunteering is considered working in relation to the above visa restrictions. Both the terms 'work' and 'volunteer' are defined in the *Migration Regulations 1994* (Cth).

A person with work restrictions (including 'no work' condition 8101) wishing to undertake voluntary work may do so, if:

- the person does not receive remuneration for performing the duties of the position, other than the following:
 - reimbursement for reasonable expenses incurred by the person in performing the duties, or
 - prize money, and
- the duties would not otherwise be carried out by an Australian citizen or an Australian permanent resident in return for wages.

A person wishing to undertake voluntary work may do so on a Tourist stream visa (for persons who wish to visit or stay in Australia for up to 12 months for non-work purposes other than business or medical treatment), but only if the voluntary work:

- would not otherwise be undertaken in return for wages by an Australian resident (that is, it is a designated volunteer role)
- is not undertaken in a commercial organisation
- is genuinely voluntary (for example, no financial payment is received. Board and lodging is acceptable)
- is short term (generally 3 months), and
- is of benefit to the community.

A person wishing to undertake voluntary work may do so on a student or student dependent visa that is not counted towards their 40 hours of work a fortnight if:

- their main purpose is to study in Australia and any voluntary work remains incidental to this
- the work involved would not otherwise be undertaken by an Australian resident in return for wages, and
- the work is genuinely voluntary for a not-for-profit organisation and that no remuneration, in cash or kind, is received in return for the activity.

NOTE

We note that the Department of Immigration and Border Protection (**Department**) has openly encouraged those living in the community either under community detention arrangements or on a bridging visa to engage in volunteering, as a way to become involved in their local community, build relationships and obtain new skills.



TIP

We recommend that organisations run a VEVO check of a person's work rights before taking them on as a volunteer if they are not an Australian citizen or permanent resident with unrestricted work rights. VEVO is found at www.border.gov.au/Busi/Visa/Visa. We also recommend the organisation seek independent immigration legal advice where required.

More information is provided in Section 3 below.



CAUTION

Laws and policy in relation to visas change frequently and organisations need to ensure they are keeping up to date with these changes.



3. What are your organisation's obligations in relation to visa holders?

When dealing with people who are not permanent residents, it is important to check that visa conditions are not breached due to their involvement with your organisation.

Under the *Migration Act 1958* (Cth) (**Migration Act**), penalties apply to organisations that engage an 'illegal worker' (a non-citizen who is working without a valid visa or working/volunteering in breach of a visa condition), unless it can show that reasonable steps at reasonable times were taken to make sure the person was in fact legal. Under the law, it does not matter if the organisation did not know the person's work rights. Organisations may be penalised for simply having such a person on their premises. Therefore, it is important that organisations verify a person's immigration status and work rights before and during employment.

A person is a legal worker if they are:

- an Australian citizen
- an Australian permanent resident
- a New Zealand citizen, or
- a foreign national with a visa with permission to work in Australia.

In order to confirm the above, an organisation must sight an Australian or New Zealand passport or conduct a VEVO check. For a full list of documents an organisation must sight and keep copies of, go to the Department's [Employing legal workers guide](#).

If you believe or know that a potential employee, volunteer or contractor is in Australia on a visa, then you should check that they have permission to work. These checks are important to avoid inadvertent breaches of visa conditions.

The easiest and quickest way to ensure an organisation is taking reasonable steps to ensure it is engaging legal workers, is to use the Department's [VEVO system](#). Using this system, your organisation can either:

- register as a VEVO organisation and, with the individual's consent, conduct the search yourself, or

- ask the individual to send their current visa details directly from the VEVO Enquiry Form.

The VEVO search will reveal the visa status and work entitlements for the visa holder. It will also only state if the person does not have permission to work or has work restrictions. If the visa has no work restrictions then the individual is free to work and volunteer while they hold a valid visa.

However, VEVO checks are only current at the time conducted. Therefore, it is important that regular ongoing checks are conducted, relevant dates tracked (eg. work and expiry dates) and records kept on file confirming the organisation has verified the person's immigration status and work rights.

NOTE

It is important that your organisation checks the VEVO results were recently generated and continues to complete VEVO checks during the person's employment. This is because visa status and work rights may change. It is not enough to view results of a VEVO search conducted by a third party (unless, completed by a Migration Agent) or a printed copy held by the individual as these could be out of date.



TIPS

- Add VEVO checks to your employee and volunteer recruitment process, and include a copy of the VEVO results in the person's file.
- Ensure VEVO checks are completed as a part of the recruitment process for new staff and volunteers, and ensure checks are ongoing throughout the person's employment, should they hold a temporary visa.



EXAMPLE

An organisation is recruiting volunteers to assist in its after school homework program for disadvantaged youth in Wollongong. A University student on exchange from Italy applies for one of the volunteer positions. She is a wonderful fit for the program, especially as she would be able to assist the students with their Italian homework.

The organisation is unsure whether the student can volunteer on her Student Visa and doesn't want to put her status in jeopardy. It also wants to ensure the organisation is complying with its own obligations. It takes the following steps before engaging the student:

- 1. registers with VEVO online**
- 2. obtains consent from the student to conduct a VEVO search**
 - the search reveals the student visa with condition 8105 (she cannot work more than 40hrs a fortnight while her course is in session).
 - the student is concerned as she already has paid work of 30 hours a fortnight and this volunteering role may push her over the threshold in breach of her visa condition.
- 3. the organisation assures the student the position is a genuine voluntary position (it would not be performed by an Australian in return for wages in her absence), and thus it will not be counted towards her 40 hours.**

The organisation may have some paid interpreter work available during school holidays while the afterschool program is not running. It would like to offer this to the student. It ensures the role is limited to 10 hours a fortnight while she is attending university classes, so as not to breach her visa condition.



Resources

Related Not-for-profit Law Resources

- ✔ Volunteers www.nfplaw.org.au/volunteers

For more information about screening and the induction of volunteers, go to our Not-for-profit Law fact sheet on Volunteer screening and induction.

Legislation and Regulations

- ✔ [Migration Act 1958 \(Cth\)](#)
- ✔ [Migration Regulations 1994 \(Cth\)](#)

Other Resources

- ✔ Department of Immigration and Border Protection www.border.gov.au

The Department of Immigration and Border Protection website features an [Employer Hub](#) with information on employing legal workers. There's also information on [Visa Entitlement Verification Online](#).

- ✔ Fair Work Ombudsman www.fairwork.gov.au

The Fair Work Ombudsman website features information on [Unpaid work](#).

A NFP Law Information Hub resource. Access more resources at www.nfplaw.org.au

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