



NEW ZEALAND
RED CROSS
RIPEKA WHERO AOTEAROA

Migration
Programmes
Ngā kaupapa hunga whakarere

Humanitarian Migration Report

Current and emerging issues in Aotearoa New Zealand



NOVEMBER 2022

Our Mission and Fundamental Principles

The mission of New Zealand Red Cross is to improve the lives of vulnerable people by mobilising the power of humanity and enhancing community resilience.

These seven principles, on the facing page, represent our core values, connecting us with the Red Cross Red Crescent Movement and the 192 National Societies throughout the world.

COVER: Two new New Zealanders from the Ahmadiyya community at a New Zealand Red Cross orientation event.

Humanity – Te Ngākau Atawhai

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacities, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace among all peoples.

I ahu ngātahi mai te Rīpeka Whero o te Ao me te Kāhui Ānau Kura i te wawata ki te āwhina – mā te kore whakapainga kanohi – i a rātou e takoto tūākiri ana ki te kauhanga riri, ā, ko tana whāinga mā tōna āheinga ā-motu, o te ao hoki, ko te ārai me te whakamauru i te mamae o te tangata, ahakoa kei hea. Ko tana pūtake, ko te tiaki i te oranga me te hauora, me te āta whakarite i te whakaaro nui ki te tangata. Ka whakanuia te ngākau kotahi o te māramatanga, te whakahoanga, te mahi ngātahi, me te pūmau tonutanga o te rangimārie ki ngā tāngata katoa.

Impartiality – Te Tōkeketanga

The Movement makes no discrimination based on nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, guided solely by their needs, and to prioritise the most urgent cases of distress.

Kāhore he whakapainga kanohi mō te noho whenua, te iwi, ngā whakapono hāhi, ngā tūranga, ngā whakaaro tōrangapū rānei o te tangata. Ko tana whāinga, he whakamāmā i te mamae o tēnā me tēnā, ko ō rātou matea anake ka ārahi i ngā mahi, ā, ka aro nui i te tuatahi ki a rātou e tino pēhi rawatia e ngā āwangawanga.

Neutrality – Te Whakaraupapa

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Kia pūmau tonu ai te whakamanawatanga o te katoa, ka noho taharua te Rīpeka Whero o te Ao me te Kāhui Ānau Kura i roto i ngā kekeritanga, ā, kāhore hoki e whai wāhi atu ki ngā taupatupatu e hāngai ana ki ngā take o te tōrangapū, o ngā iwi, o ngā whakapono, o ngā whakaaro kaupapa rānei.

Independence – Te Tū Motuhake

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they can act in accordance with the principles of the Movement at all times.

Ka tū motuhake te Rīpeka Whero o te Ao me te Kāhui Ānau Kura. Ahakoa te whai wāhi o ngā kāhui ā-motu hei rōpū e whai wāhi ana ki ngā ratonga ā-tangata o ō rātou kāwanatanga, ahakoa ka whai pānga anō hoki ngā ture o ō rātou whenua ki a rātou, me ū tonu rātou ki tō rātou tū motuhake, kia āhei ai rātou ki te whakatutuki mahi mā ngā Mātāpono o te Rīpeka Whero o te Ao me te Kāhui Ānau Kura i ngā wā katoa.

Voluntary Service – He Ratonga Tūao

It is a voluntary relief movement not prompted in any manner by desire for gain.

He ratonga hāpai tūao te Rīpeka Whero o te Ao me te Kāhui Ānau Kura, ā, e kore rawa ngā mahi e kōkirihiā hei painga ake mā tātou tonu.

Unity – Te Kotahitanga

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Kia kotahi anake te Rīpeka Whero, te Kāhui Ānau Kura rānei e mahi ana ki te whenua kotahi. Me noho wātea tēnei rōpū ki te katoa. Me kawē haere taua ratonga i āna mahi ngākau atawhai, puta noa i taua takiwā.

Universality – O te Ao

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

Ko te Rīpeka Whero o te Ao me te Kāhui Ānau Kura tētahi ratonga o te ao katoa, ā, he rite tonu te tūnga o ngā kāhui ratonga katoa, ka whakatutuki ngātahi hoki rātou i ngā kawenga me ngā mahi, hei tautoko tētahi i tētahi.



Rose (Bishnu) Pradhan featured in the Essential Kiwi Legends campaign put together by New Zealand Red Cross to celebrate the work of former refugees in the community.

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A Welcome from the Secretary General

Working with and for vulnerable migrants, particularly those who have fled conflict or disaster, is one of the long-standing traditions of the International Red Cross and Red Crescent Movement. Individually and together, the National Societies strive to provide assistance and protection, uphold rights and dignity, empower people in their search for opportunities and sustainable solutions, as well as promote social inclusion and interaction between migrants and host communities.

New Zealand Red Cross approaches migration in line with the broader Movement's principled humanitarian response which includes upholding and defending legal frameworks that can protect vulnerable people in humanitarian emergencies. As a neutral humanitarian organisation, it is not our role to encourage, discourage, or prevent migration. However, at a global level, the Movement is 'increasingly concerned for the safety and well-being of vulnerable migrants, refugees, and other persons in need of international protection.' The Movement notes:

'All migrants—including those in an irregular situation—have human rights, including the rights to life, liberty and security of person. They must be protected from torture and ill treatment, arbitrary detention, refoulement, and threats to their lives, and they must have access to justice and essential services.'

The *International Federation of the Red Cross and Red Crescent Global Strategy on Migration 2018–2022* focuses on reducing vulnerability and enhancing resilience. This is not just about meeting humanitarian needs and mitigating risk, but supporting migrants' resilience by offering assistance, protection and advocacy.

The Migration Programme is one of New Zealand Red Cross' three core areas, alongside Emergency Management and International. Our focus is outlined in Strategy 2030, which we continue to work towards and which notes:

'We will address the humanitarian needs of vulnerable migrants by supporting them to achieve their aspirations and become part of diverse, inclusive and resilient Aotearoa New Zealand communities.'

Refugee settlement has been the main migration focus for New Zealand Red Cross since it integrated Refugee Services Aotearoa (in 2012) and Refugee Trauma Recovery (in 2017). However, strategic approaches have largely been driven by government contracts for settlement, limiting New Zealand Red Cross' independent response. Our work over this decade has professionalised refugee settlement and we continue to be proud of the excellent achievements across our programmes. However, the principle of *impartiality* raises some challenges as we strive to be guided by those who are most in need of humanitarian protection.

The purpose of the *Humanitarian Migration Report*, first written in 2021 and now on its second iteration, is to gain an understanding of the current and emerging needs of migrants in the New Zealand community and to inform the organisation's future strategic directions. In the past year we also released *A warm welcome: The role of councils in refugee settlement in New Zealand*, which details the many opportunities for councils to improve former refugees' experiences on a local level. That work is all the more important as we have set up two new settlement locations – Masterton and Levin – since the previous *Humanitarian Migration Report* was released.

This report is a resource – internal and external – for those wanting to understand the relevant issues facing people new to New Zealand. The year 2022 stands out in the histories of this country's immigration policies. For the first time in many decades, there were significant high-level discussions about the impact of migration on Aotearoa New Zealand, within the Productivity Commission's reviews¹ and in the government's own immigration reset.² In addition, under the 2021 Residence Visa scheme, the largest number of migrants, in any calendar year to date, were

granted residence. This was a fitting response to the collective challenges of COVID-19.

In the middle of these changes, the *Humanitarian Migration Report* is a snapshot in time, grounded in the New Zealand Red Cross commitment to humanitarian migration pathways. Ultimately, this work informs our practice in settling former refugees and welcoming new migrants into our communities. We are proud to be able to support engaged research and look forward to working with the entire sector in the coming year.

Ngā mihi nui,

Sarah Stuart-Black



**Secretary General
New Zealand Red Cross**

1 For an overview, see the slides presented by P. Stevens and G. Nana (2022). Immigration: Looking back, looking forwards. Productivity Commission. <https://www.motu.nz/assets/Documents/Immigration-Looking-back-looking-forwards.-NZPC-Motu-Public-Policy-Seminar.pdf>

2 The Immigration Reset was first noted by the incoming Labour government in 2017, with details first being made public in 2021, but the key policies that make up the reopening only emerged in 2022 including the reopening of the border, a Green List of highly skilled in-demand jobs that would lead to immediate residency and the Accredited Employer Work Visa system.



A Foreword from Migration Advisory Board member Madiha Ali

Nothing about us, without us: the essence of this statement is what guides my advocacy, especially in the refugee space. I strongly believe that in order to achieve equitable outcomes for different groups of people, it is crucial to amplify the voices of those with lived experiences. Decisions regarding what is best for a particular group of people are often made by those with no lived experience. Although, these decisions may be made with the best possible intention, it is important to realize that not placing people with lived experience at the core of decision making is harmful. The fact that people with lived experiences are experts is not acknowledged enough, yet it should be. It is critical to have the voices of people with lived experiences heard at the decision-making tables because they are the ones who will be impacted most by those decisions.

The Migration Advisory Group (MAG) is one such platform where New Zealand Red Cross seeks advice from a very diverse group of former refugees regarding the services provided by New Zealand Red Cross. There are currently nine members of MAG, including myself. We play a vital role in bringing in a different lens through which to look at the issues that the NZRC often seeks to address. Since, all members of MAG are active within their own communities, regions and the sector, they are very aware of the challenges that exist for the former refugees and asylum seekers. The Group is advisory and therefore, our role is limited to advising and although it is a great step towards amplification of voices, I believe there is space to take it a step further so that it is not merely advising but rather influencing the decision-making.

The first ever New Zealand Refugee Advisory Panel (NZRAP) was established this year and I was fortunate enough to be selected as a panel member alongside eight other incredible leaders.³ NZRAP is intended to help support government decision-makers and policy developers on matters impacting on refugees in New Zealand. The panel's purpose is to ensure that former refugees are meaningfully engaged, to inform and influence strategic direction and policies on refugee issues.

World Refugee Day at Parliament is another platform where the sector can elevate refugee voices. I was privileged to address this year's event and it felt liberating to speak my truth. However, for me, it was more than just sharing my story. It was about calling for action. It was about bringing attention to the stories of millions of people who are forcibly displaced worldwide. I believe that stories are powerful and hold the power to bring about change. If anything, there should be more opportunities and platforms where people can tell their own stories.

Change is possible when voices are heard and I believe we can bring about change when we recognize the importance of this statement:

Nothing about us, without us,

Madiha Ali

**New Zealand Red Cross Migration
Advisory Group⁴**

³ NZRAP was established by Refugees Seeking Equal Access at the Table (R-SEAT), an interim advisory group, and the Centre for Asia Pacific Refugee Studies (CAPRS), in partnership with Immigration New Zealand.

⁴ The Migration Advisory Group (MAG) is a nine-person refugee background panel who assist New Zealand Red Cross with their expertise through lived experience of the refugee settlement process and current issues facing resettlement regions.

Executive Summary

The *Humanitarian Migration Report* presents a broad overview of migration in New Zealand in 2022 through a humanitarian lens. The New Zealand Red Cross Migration Programme has created in-depth analyses across three parts:

- three forced migration categories
- four general migration categories
- four emerging issues.

The aim of this report is to inform the organisation as it considers how our Migration Programme's activities align with the Fundamental Principles of the Red Cross Red Crescent Movement and how these fit with the implementation of Strategy 2030. The principle of humanity reflects the Movement's aim to prevent and alleviate human suffering, wherever it may be found. As such, the categories and issues considered in this report tend to focus on areas where the migration status of an individual may lead to unmet basic humanitarian needs, discrimination, exploitation, lack of connection to community, or other situations where access to basic and guaranteed standards falls short.

Across all categories of migration, New Zealand Red Cross is most experienced at refugee settlement (see section one). Red Cross has a long history of supporting refugees in New Zealand, stretching back to the arrival of the Polish children in 1944. Since 2012, Red Cross has been the primary provider of settlement support to refugees who have settled in New Zealand. In reading this report, it is useful to understand refugee settlement core competency, and how some migration categories and issues are particularly closely linked to this work, for example, the Refugee Family Support Category (section one) and Asylum Seekers and Convention Refugees (section two).

Each section in the *Humanitarian Migration Report* works through a common formula. First, the current International and New Zealand contexts are summarised before the category is linked to a legal basis or context. The next part situates the organisations working in each issue in relation to both the Red Cross Movement and other groups working in this area. Finally, a needs and gaps section highlights sector-wide areas that

could be improved with increased resourcing or operational focus.

This year we have added spotlight sections that sit in between some main sections. Spotlights illuminate key migration categories or issues that were of importance in the previous year. The spotlight sections allow for a shorter overview than a full section and will be revisited for every subsequent iteration of the report. Some spotlight sections, for example one focussing on Te Ao Māori approaches to migration, don't comfortably fit as visa categories or emerging issues, but need to be highlighted, nonetheless.

Overall, needs and gaps identified point to significant areas of humanitarian concern across a wide range of migration areas and across themes such as social isolation, a lack of resourcing for assistance, and the compounded challenges also faced by the general population around housing, education, language (including translation) and healthcare. Some areas, such as trafficking and modern slavery, have seen concerted research and advocacy from other organisations in recent years. Other areas, such as Australian returnees, are deeply concerning to New Zealand Red Cross, but are not a natural fit with the skills that exist within the organisation.

Some issues closely align to the skills and humanitarian focus of Red Cross but remain in flux at the time of publication. The 2022 Casey Review of asylum seekers in detention was received positively by the Government, but the suggestions for change from that review have not been fully implemented. Many categories also came to New Zealand Red Cross attention for the first time through the organisation's work with the Visitor Care Manaaki Manuhiri support for foreign nationals during COVID-19. For example, there was significant engagement with Recognised Seasonal Employers (RSE) scheme workers and while we have not assisted them in the previous year, there have been significant changes to the scheme that we continue to follow. Other areas are more amorphous but closely align to the Movement's international goals around the safety of environmental and climate refugees and migrants in emergencies and disasters. These areas offer some of the strongest opportunities to utilise all pillars of New Zealand Red Cross.

Acknowledgements

This report was first commissioned by New Zealand Red Cross' National Board in 2018 and was undertaken by Dr Murdoch Stephens, from the New Zealand Red Cross' National Migration team. After co-ordinating and writing much of the first report, released in May 2021, this report has seen substantial updates for 2022, including the addition of spotlight sections.

We acknowledge the invaluable contributions to the initial 2021 report from Emily Menkes, Sue Elliott, Emma Groombridge, Miriam Bugden, Nicola Sutton, Professor Richard Bedford, Dr Charlotte Bedford, Tim Maurice, Marieke Jasperse, Eliana Rubashkyn, Ezekiel Simperingham and Associate Professor Vivienne Anderson. Thanks to Emma Sidnam, Gemma Norgate, Jonty Godfrey, Abby Jones, Jay Adams and a wide range of New Zealand Red Cross employees and advisors, covering every area of operations, for their contributions to this 2022 refresh.

Suggested reference: New Zealand Red Cross (2022) *Humanitarian Migration Report: current and emerging issues in Aotearoa New Zealand*. 21 November. <https://www.redcross.org.nz/migration>

Glossary

APMN - Asia Pacific Migration Network

ASST - Asylum Seeker Support Trust

ATCR - Annual Tripartite Consultations on Resettlement

ATR - Approval To Recruit

BORA - Bill of Rights Act

CALD - Culturally and Linguistically Diverse

CDEM - Civil Defence Emergency Management

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CERD - Convention on Elimination of Racial Discrimination

CLING - Community Languages Information Network Group

CMIA - Christchurch Migrant Inter-Agency

CORS - Community Organisation Refugee Sponsorship

CAPRS - Centre for Asia Pacific Refugee Studies (the University of Auckland)

CTU - Council of Trade Unions

DIA - Department of Internal Affairs

DPMC - Department of the Prime Minister and Cabinet

ESOL - English for Speakers of Other Languages

HRC - Human Rights Commission

ICCPR - International Covenant on Civil and Political Rights

ICRC - International Committee of the Red Cross

IFRC - International Federation of the Red Cross and Red Crescent Societies

ILO - International Labour Organization

INZ - Immigration New Zealand

IOM - International Organization for Migration

IPT - Immigration and Protection Tribunal

LIM - Land Information Memorandum

MBIE - Ministry of Business, Innovation and Employment

MCDEM - Ministry of Civil Defence and Emergency Management

MEC - Ministry for Ethnic Communities

MFAT - Ministry of Foreign Affairs and Trade

MP - Member of Parliament

MSD - Ministry of Social Development

MWA - Migrant Workers Association of Aotearoa

NCCRA - National Climate Change Risk Assessment

NEMA - National Emergency Management Agency

NGO - Non-governmental organisation

NPM - National Preventive Mechanism

OECD - Organisation for Economic Co-operation and Development

OHCHR - Office of the High Commissioner of Human Rights

PARS - Prisoners Aid and Rehabilitation Society

PICUM - Platform for International Cooperation on Undocumented Migrants

PRA - Prostitution Reform Act (2003)

RASNZ - Refugees as Survivors New Zealand

RCOA - Refugee Council of Australia

RFL - Restoring Family Links

RFRT - Refugee Family Reunification Trust

RFSC - Refugee Family Support Category

RQFR - Refugee Quota Family Reunification

ROMI - Returning Offenders (Management and Information)

RRC - Resident and Reporting Conditions

RSE - Recognised Seasonal Employer

RTR - Refugee Trauma Recovery

SSVI - Strengths-based Social Vulnerability Index

SWP - Seasonal Worker Programme

TĀMA - Te Āhuru Mōwai o Aotearoa

UNDHR - Universal Declaration of Human Rights

UNESCO - United Nations Educational, Scientific and Cultural Organization

UNHCR - United Nations High Commissioner for Refugees, or the United Nations Refugee Agency

WREMO - Wellington Regional Emergency Management Office

FORCED MIGRATION CATEGORIES

Nedal Ebrahim featured in the Essential Kiwi Legends campaign put together by New Zealand Red Cross to celebrate the work of former refugees in the community.



1. REFUGEE RESETTLEMENT QUOTA PROGRAMME

ANNUAL QUOTA

1,500



SETTLEMENT REGIONS

13

MAIN NATIONALITIES RESETTLED 2021/22:
PAKISTAN, MYANMAR,
COLOMBIA,
AFGHANISTAN
AND SYRIA



Refugee resettlement in a third country is a life-saving action and one of three durable solutions for refugees.⁵ More than 40,000 refugees have been settled in New Zealand since World War Two, although the present refugee resettlement programme, known as the refugee quota, was formalised in 1987.⁶ The New Zealand government's settlement programme offers generous protection by granting permanent residency on arrival. New Zealand Red Cross is the most experienced settlement provider and oversees eight regions. In 2022, there were five other providers overseeing five other regions.

While the settlement process fulfils the humanitarian goal of saving lives, there are also challenges in settling refugees in a new country and culture. Due to the relatively small number of refugee arrivals in New Zealand, specialised and accessible support services are often limited. In the 12 months, evidence shows services becoming stretched as new locations are rolled out, while cost pressures mount but funding for settlement support shrinks or is strained.⁷ Key issues in achieving successful settlement outcomes are a lack of support for young people, access to services especially housing, and experiences of discrimination.



“Let us keep aroha at the centre of our decision making. Let's be a nation that cares, a nation that extends a helping hand, a nation that is compassionate and a nation that acknowledges everyone's right to safety.”

Madiha Ali, World Refugee Day at Parliament, 20 June 2022.



Yousef Mazaraeh, a New Zealand Red Cross Settlement Lead, in front of Red Cross House.

⁵ The other solutions are integration of refugees in the country where they first seek protection and returning to the refugee's home country when it has become safe.

⁶ The language around refugee settlement and refugee resettlement is not settled. New Zealand Red Cross tends to use the term “settlement” for the processes once a refugee has arrived in New Zealand. However, in this document, we use “resettlement” when referring to the specific language of other organisations, policies and the international sphere, for example, the New Zealand Refugee Resettlement Strategy.

⁷ Budget 2022 saw \$13.8 million added to refugee settlement over a four-year period, though it does not yet appear that this will go to Immigration New Zealand rather than service providers. See discussion of this in Education and Workforce Committee (2022) 2022/23 Estimates for Vote Labour Market (Immigration appropriations). Hansard. 5 July. https://www.parliament.nz/resource/en-NZ/53SCEW_EVI_123901_EW9217/9a692064bb79f9a564b0215a36485e421e72ea56

1.1 The global context

Globally, the number of people recognised as refugees by the United Nations High Commissioner for Refugees (UNHCR) was 27.1 million at the end of 2021 (including 21.3 million under the mandate of UNHCR and 5.8 million Palestinians under the mandate of the United Nations Relief and Works Agency). As of September 2022, there were an additional 4.1 million registered Ukrainians who had not yet been included in UNHCR's updated statistics.⁸ Of this population, the number of people requiring settlement in 2021 is projected to be 1.47 million, twice as many as in 2017.⁹ Over the next ten years, through a combination of resettlement (one million) and complementary pathways (two million), the UNHCR aims to settle three million refugees.¹⁰

Major source countries of refugees¹¹

Syrian Arab Republic	6.8M
Venezuela	4.6M
Ukraine	4.1M
Afghanistan	2.7M
South Sudan	2.4M
Myanmar	1.2M

Major hosting countries of refugees¹²

Türkiye	3.8M
Colombia	1.8M
Uganda	1.5M
Pakistan	1.5M
Germany	1.3M

The 1951 Refugee Convention and its 1967 Protocol set out the basis of persecution that qualifies a person for refugee status. While the Convention and Protocol specify the grounds for the acceptance of a refugee claim, there is no legal mechanism that binds states to implement refugee quotas. Global quota programmes are set by governments and these intakes can change significantly depending on political influences.

When a person has their refugee claim granted by the UNHCR, they may be put forward for resettlement in a third country if they face severe health and/or safety issues and there is no prospect of being able to return to their home country. Australia, Canada and the USA have run resettlement programmes for roughly the same length of time as New Zealand, although their programmes – even on a per capita basis – resettle many more refugees than the New Zealand programme.

The recent supplementary intakes of Afghan and Ukrainian refugees, as well as the range of protection pathways for family, private sponsorship and asylum seekers, make the comparing of intake levels challenging. With those divergences in mind, the following are the most recent year's COVID-19 affected intake levels and the projections for 2022 refugee quotas, by key states:

- 8 United Nations High Commissioner for Refugees (2022). Ukraine Emergency. 13 September. <https://www.unhcr.org/en-au/ukraine-emergency.html> In total, there are an estimated 7.5 million Ukrainians currently present in European countries though, as with UNHCR's other statistics, not all of these are officially considered to be refugees. For more on this see the spotlight section on the 2022 Special Ukraine Visa.
- 9 United Nations High Commissioner for Refugees (2022). Figures at a glance UNHCR. 16 June. <https://www.unhcr.org/en-au/figures-at-a-glance.html>
- 10 Fratzke, S. et al. (2021). Refugee Resettlement and Complementary Pathways: Opportunities for Growth. Geneva and Brussels: UNHCR and MPI Europe. https://reliefweb.int/sites/reliefweb.int/files/resources/mpie-unhcr_global-mapping-refugee-pathways-final.pdf; United Nations High Commissioner for Refugees (2019). *The Three Year Strategy (2019–2022) on resettlement and complementary pathways*. June. <https://www.unhcr.org/5d15db254.pdf>
- 11 United Nations High Commissioner for Refugees (2022). Global Trends. UNHCR. June. <https://www.unhcr.org/globaltrends>

12 Ibid.

Country	Planned 2022 Intake	2021 Intake ¹³	Notes
United States	125,000 (ceiling)	11,554	These numbers might fall short as tens of thousands of Afghan arrivals may supersede settlement.
Canada	36,000 (projection)	5,825	12,500 are government assisted, the remaining are complementary pathways.
Australia	17,875 (ceiling)	350	Includes extended settlement support for Afghans for coming years.
Germany	5,500	5,363	This is the 2020/21 figure and includes some complementary pathways, but does not include their significantly larger asylum and Ukraine responses.
Sweden	5,000	5,036	In 2021, a shortfall of places was made up for by exceeding the intake at 6,401 places. The figure does not include their significantly larger asylum and Ukraine responses.
Aotearoa New Zealand	1,500 (+/-10%)	519	See sections two and three for alternative streams, including 600 refugee family support category places.

While New Zealand has a relatively large refugee intake through the quota, many other countries accept substantially more refugees through a combination of community sponsorship (some of which is government assisted) and through processing and accepting asylum claims. Resettlement programmes also vary significantly from nation to nation.¹⁴ For example, both Australia and Canada provide support to refugee arrivals for up to five years post arrival.¹⁵ In contrast, sponsoring agencies in the USA ensure basic needs are met for the first 30 days of resettlement and then longer-term settlement needs are also supported with government funding.¹⁶

The health needs of resettling refugees are a key humanitarian concern. A wide range of approaches are drawn from differences in broader approaches to healthcare, insurance

and migration status. In Australia, physical and mental health needs are considered as part of the case-management plan within the Humanitarian Settlement Program.¹⁷ In the USA, resettlement agencies refer refugees for an initial comprehensive health assessment free of charge. Refugees are then eligible to apply for healthcare support through Medicaid or Refugee Medical Assistance, which including mental healthcare, for up to eight months.¹⁸ In Canada, refugees' physical and mental health needs are first covered by the Interim Federal Health Program until the refugee becomes eligible for provincial or territorial healthcare coverage (typically within 90 days). In both cases, this coverage includes psychology and psychotherapy services. Additionally, physical and mental health promotion activities are available through orientation programmes and healthy living community interventions.¹⁹ COVID-19 also saw dramatic decreases in refugee resettlement everywhere. In 2020, the total number resettled

13 Calendar year intake via UNHCR (2022). UNHCR Resettlement Data Finder. <https://rsq.unhcr.org/en/#0aiF>

14 For a comprehensive evaluation of global resettlement programmes, see Shaw and Funk's analysis of social service provision in refugee resettlement, which goes into more detail on exactly what these different systems offer. Shaw, S. & Funk, M. (2019). A Systematic Review of Social Service Programs Serving Refugees. *Research on Social Work Practice*. 29(8), 847–862.

15 United Nations High Commissioner for Refugees (2018). Resettlement Handbook: Australia. <https://www.unhcr.org/3c5e542d4.html>; United Nations High Commissioner for Refugees (2018). Resettlement Handbook: Canada. <https://www.unhcr.org/3c5e55594.html>

16 United Nations High Commissioner for Refugees (2018). Resettlement Handbook: United States of America. <https://www.unhcr.org/3c5e5a764.html>

17 United Nations High Commissioner for Refugees (2018). Resettlement Handbook: Australia. <https://www.unhcr.org/3c5e542d4.html>

18 United Nations High Commissioner for Refugees (2018). Resettlement Handbook: United States of America. <https://www.unhcr.org/3c5e5a764.html>

19 United Nations High Commissioner for Refugees (2018). Resettlement Handbook: Canada. <https://www.unhcr.org/3c5e55594.html>

was only 22,800 people. This number was 63,726 in 2019 and 126,291 in 2016.²⁰

1.2 New Zealand context

History

New Zealand has a long history of resettling refugees, with one early, large-scale acceptance of refugees occurring in 1944 when 733 Polish children and 105 carers arrived. Community settlement programme was first delivered by churches through the Inter Church Commission on Immigration and Refugee Resettlement. Over time, this work was centralised, professionalised and secularised, with the organisation becoming Refugee and Migrant Service in 1990.

After several more name changes, the organisation, known then as Refugee Services Aotearoa, was closed and the resettlement programme merged into New Zealand Red Cross in December 2012. In recent years, new service providers have been contracted, first in Ashburton and Timaru, and more recently with Māori and community providers in Auckland, Hamilton and Christchurch. As of 1 July 2022, New Zealand Red Cross is one of six service providers and it leads settlement in eight of 13 locations.

Locations	Settlement provider
Auckland	Kāhui Tū Kaha (Ngāti Whātua)
Hamilton	HMS Trust
Palmerston North, Masterton, Levin, Wellington, Blenheim, Nelson, Dunedin, Invercargill	New Zealand Red Cross
Christchurch	Purapura Whetu Trust
Ashburton	Safer Mid-Canterbury
Timaru	Presbyterian Support South Canterbury

New Zealand’s refugee quota composition policy has reflected broader discriminatory aspects of the country’s migration policy. In the 1940s to 1980s, the quota composition largely followed New Zealand’s immigration policy, and refugees were selected from primarily European countries, such as Czechs, Hungarians and Slovaks. In the 1990s, the quota programme diversified significantly with arrivals from African and Middle Eastern countries. Opportunities for settlement of people from Latin America were established in 2008. The contemporary quota composition was reviewed in 2022 and still prioritises cases from the Asia-Pacific region, though it has increased the intake from both Afghanistan and the Middle East.²¹

The refugee quota programme includes humanitarian categories and designations for women at risk (at least 75 places, to grow to 150 when the quota reaches 1,500),²² general protection, urgent resettlement (up to 35 cases per annum) and medical cases (retained at up to 75 places although, in practice, there have been significantly fewer in recent years). This selection fulfils a large part of the New Zealand government’s humanitarian intake, as opposed to the skilled migrant programmes.

While the humanitarian categories and the long-term consistency of New Zealand’s refugee quota programme can be viewed as generous, unfortunately, the size of the quota and its composition cannot. Over the past decade, a public campaign to double New Zealand’s refugee quota, the global media coverage of the Syrian crisis, and increased global political solidarity with refugee situations all influenced public opinions and political commitments, resulting in a change of policy. In 2015, the National Party-led government accepted 750 Syrians over three years, with 500 of this number on top of the

20 Taylor, Glyn, G. Gilbert, S. Hidalgo, M. Korthals Altes, B. Lewis, C. Robinson, E. Sandri, V. Stoianova and J. Ward (2022), COVID-19 Global Evaluation Coalition, “Joint Evaluation of the Protection of the Rights of Refugees during the COVID-19 Pandemic”, UNHCR, Geneva, www.covid19-evaluation-coalition.org

21 Asia Pacific is the UNHCR regional grouping but it can be a little misleading to New Zealand readers as there have been no Pacific island refugees resettled through this programme in New Zealand. Myanmar, Afghanistan and Bhutan have been the main countries of origin for Asia Pacific refugees settled in New Zealand in the past two decades. Ministry for Business, Innovation and Employment (2022). Three-year Refugee Quota Programme (2022/23 to 2024/25). Cabinet Paper. 18 May. <https://www.mbie.govt.nz/dmsdocument/23331-three-year-refugee-quota-programme-2022-23-to-2024-25-proactiverelase-pdf>

22 Immigration New Zealand (2019). Three year Refugee Quota Programme 2019/20 to 2021/22. Cabinet Paper. 6 November. <https://www.mbie.govt.nz/assets/three-year-refugee-quota-programme-2019-20-to-2021-21.pdf>

quota. It also committed to raising the quota to 1,000 in two years' time.

A change of government in 2017 saw the new coalition announce an increase in the refugee quota to 1,500 from 1 July 2020, though this was delayed by two years due to COVID-19. While numbers for the refugee quota were down in the 2021/22 year, if the Afghan Nationals and evacuees (see spotlight) were included in the number, New Zealand settled around 2,000 people in the 2021/22 year.

New Locations for refugee settlement

Location	Year started resettling
Dunedin	2016
Invercargill	2018
Christchurch	2019 (had stopped in 2011 after earthquakes)
Timaru	2020
Blenheim	2020
Ashburton	2021
Masterton	2022
Levin	2022

In the last decade, refugees have arrived from 25 countries and across 50 different ethnic groups. In addition to the quota programme, New Zealand also has a small number of asylum seekers each year (see section two, below). New Zealand's complementary pathways also include the Refugee Family Support Category (see section three) and a pilot community sponsorship programme (see the spotlight on Complementary Pathways).

The most recent three year overview of the quota composition was decided in early 2022. Key changes for the period include increasing the emergency places from 35 to 100 people per annum, putting aside 200 large scale emergency places for Syrians and including the 150 places

for refugee who have been subject to Australia's offshore processing legislation.²³

The settlement process

Refugees are chosen for settlement in New Zealand through a process that includes a Cabinet decision influenced by UNHCR recommendations and requiring that each person to be settled has been referred by UNHCR.²⁴ Every three years, Cabinet signs off on the quota composition which guides Immigration New Zealand (INZ) case selection. People who are resettled in New Zealand through the quota receive government-funded settlement support for up to 24 months.²⁵

In 2013, the New Zealand Refugee Resettlement Strategy (NZRRS) was established. The NZRRS is implemented by an across government senior officials group representing different ministries and agencies including Health, Education, Social Development, Kāinga Ora and Immigration.²⁶ The resettlement strategy has five goals as indicators of success: self-sufficiency, education, housing, participation, and health and well-being. MBIE is progressing a range of programmes under this strategy aimed at improving settlement outcomes, including employment and language assistance projects. A refresh of the strategy is currently being undertaken and is due to be completed by the start of 2023, aiming to widen the scope to include all refugees and refugee categories.²⁷

The New Zealand quota programme provides relatively generous protection. On arrival, people

23 Ministry of Business, Innovation and Employment (2022). Briefing: 2022/23 -2024/25 Refugee Quota Programme and 2022/23 Refugee Quota composition. 22 June. <https://www.mbie.govt.nz/dmsdocument/23703-joint-briefing-2022-23-2024-25-refugee-quota-programme-and-2022-23-refugee-quota-composition-pdf>

24 See the most recent Cabinet Paper for insights into this process: Immigration New Zealand (2019). Three year Refugee Quota Programme 2019/20 to 2021/22. Cabinet Paper. 6 November. <https://www.mbie.govt.nz/assets/three-year-refugee-quota-programme-2019-20-to-2021-21.pdf>

25 Immigration New Zealand (n.d.). *New Zealand Refugee Quota Programme*. <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/supporting-refugees-and-asylum-seekers/refugee-and-protection-unit/new-zealand-refugee-quota-programme>

26 Immigration New Zealand (n.d.). *New Zealand Refugee Resettlement Strategy*. <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/refugee-resettlement-strategy>

27 The Refugee Alliance (2022). Our work. <https://www.refugeealliance.org.nz/our-work>; Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J. (2022). "Safe Start. Fair Future: Refugee Equality". Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. <https://cdn.auckland.ac.nz/assets/education/hattie/docs/Safe%20Start,%20Fair%20Future%20Report.pdf>

receive permanent residency and are eligible to access the same support as other permanent residents and citizens, including financial benefits, housing, healthcare and settlement assistance. All quota refugees currently spend their first five weeks in New Zealand at Te Āhuru Mōwai o Aotearoa (TĀMA, formerly known as the Māngere Refugee Resettlement Centre) in Auckland. At TĀMA, they participate in a reception programme aimed at preparing them to live and work in the community. The programme includes health assessment, initial treatment and health promotion, settlement planning and orientation to New Zealand, English language lessons and preparing working age adults for employment and children for school.²⁸

After leaving TĀMA and on arrival in settlement locations, former refugees continue to receive government-funded settlement support. The New Zealand Red Cross Pathways to Settlement programme uses a strengths-based approach to assist former refugees in New Zealand as they begin their settlement journey. A key part of the programme involves connecting families to their new community and supporting them to access mainstream services so they can become independent.

The first year in the community of a resettled former refugee consists of the starting up phase (one to three months), settling (three to six months) and the building independence and connections period (six to 12 months). As part of an expanded COVID-19 response, settlement has been expanded to a two-year programme and while this extended period has been included in 2022 contracts, no additional funding has been allocated to resource this work. Yzelman and Bond conclude their overview of the sector with the comment, “there is a need in Aotearoa New Zealand to increase capacity and resourcing for the settlement process.”²⁹

In addition to settlement support services contracted by MBIE, the Ministry for Social Development invests in improving employment outcomes for former refugees. This work has been

in the spotlight in the last year as part of work by the new Ministry for Ethnic Communities on job opportunities for the first five years that a refugee is in the country.³⁰ At present, New Zealand Red Cross’ Pathways to Employment programme works in every settlement location, regardless of which settlement support provider is contracted to that location. Pathways to Employment works through a two-pronged approach: helping former refugees to become work ready while also seeking out employers who will welcome former refugee employees.

One aspect of the New Zealand Refugee Resettlement Strategy prioritises access to mental health services within New Zealand,³¹ although there are only two specialist support providers across the country (Refugees as Survivors in Auckland and New Zealand Red Cross’ Refugee Trauma Recovery in Wellington).³² Christchurch Resettlement Services also provide a range of counselling and health services for migrants and former refugees.³³ A major mental health barrier for former refugees is familial separation. One study found that family reunification was the most important factor in former refugees’ own perceptions of successful settlement; furthermore, there was an increased prevalence of mental health and settlement difficulties among refugee-background families in New Zealand where reunification applications were underrepresented.³⁴

Outside of Auckland and Wellington, there is a lack of independent mental health services for people with a refugee background. In the MidCentral DHB area, including the settlement areas of Palmerston North and Levin, counselling referrals are made to THINK Hauora. New Zealand

28 Immigration New Zealand (2019). Immigration Factsheets: New settlement locations. <https://mstn.govt.nz/wp-content/uploads/2019/06/New-settlement-locations-FAQ-May-19.pdf>

29 Yzelman, R. & Bond, S. (2020). Gaining a sense of citizenship and belonging in Aotearoa New Zealand: the work of refugee support providers. *sites* 17(1) 66–90.

30 Ministry for Ethnic Communities (2021). Former Refugees, Recent Migrants and Ethnic Communities Employment Action Plan. <https://www.ethniccommunities.govt.nz/assets/News/Former-Refugees-Recent-Migrants-and-Ethnic-Communities-Employment-Action-Plan.pdf>

31 For a broader consideration of health see Martin Reeve (2020). “Change in health profile of refugees resettling in New Zealand, 1980–2014”. *New Zealand Medical Journal*. 18 December 2020, 133 (1527). <https://journal.nzma.org.nz/journal-articles/change-in-health-profile-of-refugees-resettling-in-new-zealand-1980-2014>

32 Ministry of Business, Innovation & Employment (2017). New Zealand Refugee Resettlement Strategy. https://www.immigration.govt.nz/documents/refugees/nz-refugee-resettlement-strategy-overview_april-2017-docx.pdf

33 Christchurch Resettlement Services (2022). Services. <https://crs.org.nz/services>

34 Choumanivong C., Poole, G. & Cooper, A. (2014). Refugee family reunification and mental health in resettlement. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 9:2, 89–100. <https://www.tandfonline.com/doi/full/10.1080/1177083X.2014.944917>

Red Cross is working with this organisation and ACROSS, another social service provider, to improve access to appropriate counselling services for people with a refugee background. There is also similar work being established in the Wairarapa region via Refugee Trauma Recovery. In Dunedin and Invercargill, referrals are made through WellSouth³⁵ In Nelson, the Stressbusters group addresses³⁶ In the Wellington region, the Piki programme offers: therapy, peer support coaches, and other free mental health advice and services for people aged 18–25.³⁷

As with the rest of the country, there are also challenges around housing for former refugees. In a bid to ensure the expanded quota did not have a negative effect on housing, Budget 2019 funding was allocated to Kāinga Ora to deliver additional public housing for new and existing settlement locations.³⁸ Immigration New Zealand has noted that finding housing is “very challenging at present” in response to criticism of poor-quality housing.³⁹

Legal background

New Zealand is a signatory of the 1951 Refugee Convention. Very little of the refugee settlement programme is based on law, but, instead, comes about as policies agreed on by Cabinet every three years. The New Zealand Refugee Resettlement Strategy is a whole-of-government approach to delivering improved refugee settlement outcomes.

Refugee settlement policies are also supported by international human rights conventions (such as the Universal Declaration of Human Rights (UNDHR) and The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care), as well as the New Zealand Bill of Rights Act and Human Rights Act 1993, which ensure equality and prohibit

discrimination.⁴⁰ The UNDHR protects the rights of individuals to receive social security (Article 22).⁴¹ The Mental Health Principles state that every person shall have the right to receive mental healthcare as part of the social care system (Principle 1).⁴² These provide good frameworks to ensure that refugees have adequate social security and welfare when they are settled in their new homes.

As such, there may also be a rights-based argument for access to care in refugee settlement that addresses shortcomings in mental health and other long-term structural inequalities faced by former refugees in New Zealand. Under the New Zealand Public Health and Disability Act 2000, section 32 B10, a person is eligible to receive publicly funded health services if they are recognised as a refugee under the Immigration Act 2009.

While these basic protections are in place, academics argue that the degree of legal protection for both quota refugees and convention refugees is insufficient to meet the economic, social and cultural rights of those granted protection.⁴³ Using examples from health, housing, education, employment and social security, they draw out three concerns: access to economic, social and cultural rights.

Organisations

Red Cross Red Crescent Movement

The humanitarian consequences of migration and displacement are central to the work of parts of the International Red Cross and Red Crescent Movement. The Movement often provides cross border support as people flee conflict, with particular attention paid to access to health and other services in refugee camps, offering protection regardless of nationality and undertaking advocacy for third country resettlement. It is not uncommon for people fleeing conflict and who are then resettled in

35 WellSouth Primary Health Network (n.d.). Brief Intervention Services. <https://wellsouth.nz/community/about-us/clinical-service/brief-intervention-services>

36 Nelson Marlborough Health (2020). Stressbusters: Supporting Colombian former refugees in Nelson. <https://www.nmdhb.govt.nz/quicklinks/news-and-publications/our-people-our-stories/stressbusters>

37 Piki (n.d.). Support. <https://piki.org.nz/support>

38 See, for example, Kāinga Ora (2021). IREQ20/21030838 update on refugee housing. <https://www.hud.govt.nz/assets/Uploads/Documents/10.-IREQ2021030838-Update-on-refugee-housing-REDACTED.pdf>

39 Davison, I. (2022). ‘Concerns over new refugee resettlement providers post Red Cross’. New Zealand Herald. 3 October. <https://www.nzherald.co.nz/nz/concerns-over-new-refugee-resettlement-providers-post-red-cross/1MJNBNBYM5S2CAA455VGSOIL5M/>

40 Bloom, A. (2010). *Rights-based approaches to mental health services with refugees: An annotated bibliography*. September.

41 United Nations (1948) General Assembly Resolution. Universal Declaration of Human Rights. December. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

42 Ibid.

43 Mahony, C., Marlowe, J., Baird, N. & Humpage, L. (2017). Aspirational yet precarious: Compliance of New Zealand refugee settlement policy with international human rights obligations. *International journal of migration and border studies*, 3(1), 5–23.

a third country to have been assisted by the International Red Cross and Red Crescent Movement at each stage of their journey.

Regionally, the Asia Pacific Migration Network (APMN), through the Movement Leadership model, have created a shared approach to migration that allows the ICRC to achieve Global Compact on Migration goals. While settlement strategies were not the focus of either the APMN or the leadership model, settlement is one of the ways that many of these challenges can be resolved.

Several Red Cross Red Crescent National Societies are involved in refugee settlement, particularly across Europe, North America and Australasia. The British Red Cross offers direct settlement support, through 58 service centres, though this is described as emergency support rather than a universal programme, and tends to be focused on asylum seekers and convention refugees.⁴⁴ The Australian Red Cross runs refugee settlement programmes in some selected states and is funded by the Australian government in this regard.⁴⁵ American Red Cross do not directly provide settlement support as is provided in New Zealand, but they do provide support without discrimination and are involved via Restoring Family Links programmes.⁴⁶ A number of Red Cross National Societies across Europe – including Iceland, Sweden, Denmark, Germany, Finland, Switzerland and Norway – also run settlement support programmes. New Zealand Red Cross engages with some of these societies through the UNHCR-led Annual Tripartite Consultations on Resettlement (ATCR).

Key work by New Zealand Red Cross settlement includes Pathways to Settlement, Pathways to Employment, and Refugee Trauma Recovery. There has also been more work from New Zealand Red Cross in recent years to strengthen refugee background voices in the national dialogue, from highlighting these stories as part of the Kiwi Legends campaigns to employing staff from refugee backgrounds in a range of roles and

developing these voices through the Migration Advisory Group.⁴⁷ Changes to the funding of Pathways to Settlement during 2022 contract negotiations led to a loss of frontline staff in three settlement locations.

Newer service providers

The past five years have seen a diversification of service provision by Immigration New Zealand to a position where there are five providers covering one location each, in addition to New Zealand Red Cross which covers eight. Beginning with Presbyterian Support in Timaru and Safer Mid Canterbury in 2019, the main new providers were announced in May 2022 with Kāhui Tū Kaha (Ngāti Whātua) in Auckland, HMS Trust in Hamilton and Purapura Whetu Trust in Christchurch.

Established communities with refugee backgrounds

The most common source of guidance and support for former refugees after they exit New Zealand Red Cross support comes from their own community. Many community members provide support to newly arrived groups voluntarily. There are five refugee forums which are led by refugee-background communities and are based in Auckland (Aotearoa Resettled Community Coalition), Hamilton (Waikato Refugee Forum), Palmerston North (Manawatū Refugee Voice), Wellington (Changemakers Resettlement Forum) and Christchurch (Canterbury Refugee Resettlement and Resource Centre). MBIE previously provided a small amount of funding to facilitate regional refugee consultation and engagement through the “Strengthening Refugee Voices” initiative,⁴⁸ but more recently, this work has been contracted to R-SEAT, an international organisation that aims to ensure more refugees are at the decision-making table.

NGOs and community groups

A recent Social Network Analysis project by Professor Jay Marlowe (Centre for Asia Pacific Refugee Studies at the University of Auckland) sought to map the wide range of organisations

44 British Red Cross (2021). Get help as a refugee. <https://www.redcross.org.uk/get-help/get-help-as-a-refugee>

45 Australian Red Cross (2021). Migrant & refugee settlement services. <https://www.redcross.org.au/about/how-we-help/migration-support/humanitarian-settlement-program>

46 American Red Cross (2020). How Does the American Red Cross Help Asylum Seekers and Migrants? <https://www.redcross.org/about-us/news-and-events/news/how-does-the-american-red-cross-help-migrants.html>

47 See, for example, Regmi, G. (2020). Former Refugee Voice: Reflection on the refugee and settlement process. *sites*. 17 (1), 8–14.

48 Cunliffe, D. (2007). Making a difference. Speech at National Refugee Resettlement Forum Hamilton Kingsgate Hotel. <https://www.beehive.govt.nz/speech/making-difference-refugees>

that provide services to refugees and former refugees in the 13 settlement locations. That project contacted over 100 organisations, including national organisations. Community and religious groups also support refugees through volunteering and other direct assistance.

1.3 What are the needs and gaps?

A recent government inquiry into mental health and addiction states that people with refugee backgrounds living in New Zealand experience **unmet mental health needs** and disproportionately poorer mental health than the general population.⁴⁹ While acknowledging that there are ways to improve mental health outcomes during settlement support, it is also important to note the individuality, resilience and resourcefulness of people with refugee backgrounds.⁵⁰ A study at TĀMĀ found that only 14 per cent of former refugees reported significant psychological symptoms⁵¹ and 45 per cent accessed mental health services in New Zealand.⁵²

A background report for the inquiry panel highlights unique challenges for former refugees including previous trauma, limited access to **mental health services**, isolation from family and community, language barriers, poor access to qualified interpreters, poverty, unawareness about the health and welfare system and their entitlements, lack of trust in service providers and authorities, and cultural beliefs about mental health.⁵³ The use of mental health services by young people from a refugee background also

focused on issues of discrimination, lifestyle changes, homesickness, complex family situations, and difficulty accessing culturally safe services.⁵⁴ Challenges in accessing mental health services were put down to a lack of interpreting, translation and cultural competence available at mainstream services; limited use of those in secondary healthcare; and stigma within resettled communities.

During the main COVID-19 period, settlement support was extended to beyond 12 months and, although this extension is welcome, it **has not been adequately funded** and falls well short of what is required. When combined with the cuts to service provision contracts, settlement support staff are being asked to do more for less. In an environment with low unemployment, the retention of staff for all support providers is likely to be a major issue in the coming year. When combined with new service providers that are not experienced in settlement, multiple problems have emerged.⁵⁵

The March 15 Attacks were a horrific reminder of the tragic impacts of **racism** in the community. Public perceptions, stereotypes and lack of information limit the opportunity for people to integrate into the community. Racism and structural discrimination affect employment, health, education and social integration. There is also a lack of support for Lesbian, Gay, Bisexual, Transgender, Intersex and Queer refugees, with no sector funding and only an ad hoc approach to accepting these refugees,⁵⁶ despite the UNHCR, in 2021, encouraging states to ensure resettlement and other complementary pathways.⁵⁷ See

49 New Zealand Government (2018). *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*. November. <https://www.mentalhealth.inquiry.govt.nz/assets/Summary-reports/He-Ara-Oranga.pdf>

50 Cunningham R., Kvalsvig, A., Peterson, D., Kuehl, S., Gibb, S., McKenzie, S., Thornley, L. & Every-Palmer, S. (2018). Stocktake report for the mental health and addiction inquiry: A background report for the Inquiry panel. <https://mentalhealth.inquiry.govt.nz/assets/Summary-reports/Otago-stocktake.pdf>

51 McLeod, A. & Reeves, M. (2005). The health status of quota refugees screened by New Zealand's Auckland Public Health Service between 1995 and 2000. *The New Zealand Medical Journal*, 118(1224), 36–52.

52 Immigration New Zealand (2018). *New Zealand Refugee Resettlement Strategy: Success Indicators and Measures Outcomes Update for 2017/18*. <https://www.immigration.govt.nz/documents/refugees/nzrrs-dashboard.pdf>

53 Cunningham R., Kvalsvig, A., Peterson, D., Kuehl, S., Gibb, S., McKenzie, S., Thornley, L. & Every-Palmer, S. (2018). *Stocktake report for the mental health and addiction inquiry: A background report for the Inquiry panel*. <https://mentalhealth.inquiry.govt.nz/assets/Summary-reports/Otago-stocktake.pdf>

54 Ibid.

55 Whyte, A. (2022). Refugees turning up to bare homes 'simply shouldn't happen' - PM. 1News. 1 September. <https://www.1news.co.nz/2022/09/01/refugees-turning-up-to-bare-homes-simply-shouldnt-happen-pm/>; Davison, I. (2022). Concerns over new refugee resettlement providers post Red Cross. *New Zealand Herald*. 3 October. <https://www.nzherald.co.nz/nz/concerns-over-new-refugee-resettlement-providers-post-red-cross/IMJNNBYMV5S2CAA455VGSOIL5M/>; O'Callaghan, J. (2022). Refugees feel 'abandoned' and isolated after handover to new Christchurch resettlement providers. *Stuff*. 8 September. <https://www.stuff.co.nz/pou-tiaki/129804924/refugees-feel-abandoned-and-isolated-after-handover-to-new-christchurch-resettlement-providers>

56 Stephens, M. (2022). A Rainbow Refugee Quota for Aotearoa. Centre for Asia Pacific Refugee Studies. July. <https://cdn.auckland.ac.nz/assets/education/about/research/CAPRS/CAPRS%20Rainbow%20Refugee%20Quota.pdf>

57 United Nations High Commissioner for Refugees (2021). 2021 Global Roundtable on protection and solutions for LGBTIQ+ people in forced displacement. 16 August. <https://www.unhcr.org/611e48144>

section 11 for more discussion on public perceptions of refugees and migrants.

There is a shortage of **housing** in many places, and housing that refugees secure is often substandard due to the pressure to take whatever is available.⁵⁸ While recent months have seen rental supply increase in Auckland and Wellington, it is too soon to say whether this trend will continue once borders fully reopen.⁵⁹ Shortcomings in housing quality have resulted in health, safety and neighbourhood issues. Complaints of cold and damp housing are common, with links reported between poor housing and ill-health. In recent years, there has been a complete shift in the types of houses that former refugees go into, from 90 per cent public housing a decade ago, to 90 per cent private housing at present. Private rentals are expensive (because of bond costs and weekly rent), and those without a tenancy history, as well as single people, struggle to find housing if their circumstances change. Buying a house can also prove problematic without knowledge of New Zealand systems such as requesting a LIM report.

While the New Zealand Red Cross Pathways to **Employment** programme works well in getting new refugees into their first employment, there is a need for more prolonged assistance to ensure that the skills brought to New Zealand by former refugees are recognised. Recognition of these skills would see former refugees integrating better and feeling that they were fully realising their potential.⁶⁰ Recent MBIE reports have highlighted this need and there may well be opportunities for other ministries, such as the Ministry for Ethnic Communities,⁶¹ to provide services with a more long-term focus on good employment integration.⁶²

58 Blommerde, Chloe (2022). Family of eight who fled war now stuck over a year in two-bedroom motel suite. *Stuff*. 31 March. <https://www.stuff.co.nz/life-style/homed/housing-affordability/128185645/family-of-eight-who-fled-war-now-stuck-over-a-year-in-twobedroom-motel-suite>

59 Can, G. (2022). Desirable tenants become scarcer as 'accidental landlords' add to rental glut. *Stuff*. 12 July. <https://www.stuff.co.nz/business/129234603/desirable-tenants-become-scarcer-as-accidental-landlords-add-to-rental-glut>

60 Miller, Corazon (2021). New collective helping former refugees achieve their business dreams. *One News*. 17 April. <https://www.1news.co.nz/2021/04/17/new-collective-helping-former-refugees-achieve-their-business-dreams>

61 Ministry for Ethnic Communities (2022). Former Refugees, Recent Migrants and Ethnic Communities Employment Action Plan. Roundtable discussion. 25 March. <https://vimeo.com/688219017>

62 Ministry for Business, Innovation and Employment (2021). Three Years On: English and employment outcomes of former refugees. February. <https://www.mbie.govt.nz/assets/refugee-outcomes-three-years-on-report.pdf>

Spotlight

In response to the Taliban's return to power in August 2021, the New Zealand Government undertook a range of evacuations and resettlement missions. The initial impetus for this work was to evacuate New Zealand citizens and residents, as well as those who held a valid visa for entry, along with close family members. Immediate evacuation efforts led to 370 people travelling to the United Arab Emirates before the Hamid Karzai International Airport was closed to travel from 30 August.⁶³

These evacuations occurred against a backdrop of commitments by many countries for one-off refugee intakes from Afghanistan, including the United States (50,000 people), the United Kingdom (20,000), Canada (20,000) and Australia (3,000).⁶⁴ Civil society, including many of the 6,000 Afghan New Zealanders, advocated for a special intake, with many seeking 1,500 places.⁶⁵ However, with the needs of New Zealanders to access COVID-19 Managed Isolation and Quarantine spaces, an outbreak of the new Delta variant, and a new lockdown happening at the same time, no announcement about New Zealand intake numbers was ever made.⁶⁶

Even before the final evacuation, carried out in the last two weeks of August 2021, it was

Afghan national resettlement

clear that hundreds more people had links to New Zealand and might be eligible to arrive if they could get out of Afghanistan.⁶⁷ A second phase followed the initial evacuations, but due to the need for secrecy of information around getting people out of the country,⁶⁸ little was communicated about Operation Whakahokinga Mai. Over the following ten months, until 31 July 2022, almost 1,400 more people were able to leave Afghanistan. Former NZ Defence Force staff assisted 536 people. Another 200 Afghans were offered visas as human rights defenders, LGBTIQ+ advocates, woman judges and politicians, though little news was released on this intake at the time.⁶⁹ The Afghan Nationals were assisted by a cross-agency team of 100 people, and had extra support outside of government from civil society.⁷⁰ Afghan Nationals arrived on emergency or temporary visas but were then invited to apply through a special residency category which will put them on a pathway towards permanent residency and, eventually, citizenship.⁷¹

There were some significant challenges with the scale of the settlement of Afghan Nationals and some ongoing needs. These challenges and needs should be read alongside the fact that more than

63 Stewart, E. (2022). Many Afghan refugees to arrive with only the clothes on their back. Radio New Zealand. 31 August. <https://www.rnz.co.nz/news/national/450400/many-afghan-refugees-to-arrive-with-only-the-clothes-on-their-back>

64 Craymer, L. (2021). Can New Zealand do more for the world's refugees? *Stuff*. 27 August. <https://www.stuff.co.nz/national/politics/126191232/can-new-zealand-do-more-for-the-worlds-refugees>

65 Nazari, A. (2021). The case for refugees: What New Zealand can do to help Afghanistan. *Stuff*. 28 August. <https://www.stuff.co.nz/national/politics/opinion/126190800/the-case-for-refugees-what-new-zealand-can-do-to-help-afghanistan>; Gillespie, A. (2021). The Conversation: As the Taliban's grip on Afghanistan tightens, New Zealand must commit to taking more refugees. *New Zealand Herald*. 20 August. <https://www.nzherald.co.nz/nz/the-conversation-as-the-talibans-grip-on-afghanistan-tightens-new-zealand-must-commit-to-taking-more-refugees/EBPZ4WHGRKQGY2X3XNK5PGGNOM>

66 Craymer, L. (2021) Can New Zealand do more for the world's refugees? *Stuff*. 27 August. <https://www.stuff.co.nz/national/politics/126191232/can-new-zealand-do-more-for-the-worlds-refugees>

67 Raghukumar, K. (2021). 'This is a humanitarian crisis. New Zealand has the capacity to accommodate more' - Afghans in Aotearoa. *Radio New Zealand*. <https://www.rnz.co.nz/national/programmes/voices/audio/2018810925/this-is-a-humanitarian-crisis-new-zealand-has-the-capacity-to-accommodate-more-afghans-in-aotearoa>

68 Palmer, R. (2021). Afghanistan evacuations: Cabinet working on 'second phase'. Radio New Zealand. 31 August. <https://www.rnz.co.nz/news/national/450438/afghanistan-evacuations-cabinet-working-on-second-phase>

69 Stephenson, J. (2022). Former Afghan vice president 'given safe haven' in New Zealand. *Stuff*. 6 January. <https://www.stuff.co.nz/national/300490811/former-afghan-vice-president-given-safe-haven-in-new-zealand>; While there was specific comment on female judges and former politicians, there was only official communication about this intake via social media. See Twyford, P. (2021). Twitter. 1 December. <https://twitter.com/philtwyford/status/1465733676981895169>

70 Mahuta, N. (2022). Afghanistan humanitarian mission sees more than 1500 people come to Aotearoa New Zealand. New Zealand Government. 14 April. <https://www.beehive.govt.nz/release/afghanistan-humanitarian-mission-sees-more-1500-people-come-aotearoa-new-zealand>

71 Immigration New Zealand (2021). Residence pathway for Afghan evacuees. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/afghan-national-resettlement/residence-pathway-for-afghan-evacuees>



New Zealand Red Cross volunteers and staff worked to provide emergency packs for families who were evacuated from Afghanistan in August and September 2021.

1,400 visas were issued that have a pathway to residency, on top of the 750 people taken through the refugee resettlement quota in the same year. This residency pathway is very similar to those open to other refugees, however, the Afghan Nationals are not classed as refugees. While being officially a refugee can carry some negative connotations, it also gives access to forms of long-term settlement support, equity opportunities and pathways such as the Refugee Family Support Category. Another challenge was that without the formal refugee settlement process, most of the Afghan arrivals wished to stay in Auckland. Settlement support had been contracted by MBIE to a mix of community navigators (settlement support drawn from the Afghan community) and New Zealand Red Cross around the country.

Finally, it is worth noting that Afghans also found their way to New Zealand during this time because of the reopening of the Refugee Family Support Category, off the back of a legal challenge by Waikato Community Law. This successful challenge led to an intake of 95 Afghan Nationals from November 2021 to June 2022.⁷² As of July

2022, 45 Afghans have the desire and legal entitlement to enter New Zealand, though further movements will be dealt with on a case-by-case basis.⁷³ The settlement of Afghans from 1 July also returned to the more formal mechanism of the refugee resettlement quota, with 750 people planned to arrive in the coming three years.⁷⁴

*Number of Afghan-born
New Zealanders: 6,000*

*Number of Afghans
evacuated/issued
visas: 1,635/1,391*

*Conditions of visa:
creates eligibility for
Resident Visa.*

72 Immigration New Zealand (2022). Refugee and Protection: Statistics Pack. 30 June. <https://www.immigration.govt.nz/documents/statistics/statistics-refugee-and-protection.pdf>

73 NZ Q+A (2022). Did New Zealand get all our people out of Afghanistan? Television New Zealand. 18 July. <https://www.youtube.com/watch?v=u1swDGdZtsE>

74 Walters, L. (2022). New Zealand Government does more to help Afghan refugees. *Stuff*. 12 July. <https://www.stuff.co.nz/national/politics/129218986/new-zealand-government-does-more-to-help-afghan-refugees>

2. ASYLUM SEEKERS AND CONVENTION REFUGEES

**AVERAGE CLAIMS
PER YEAR:**

384



**AVERAGE ACCEPTED
PLACES PER YEAR:**

184



**MAIN NATIONALITIES
ACCEPTED OVER PAST
TWO YEARS: CHINA,
AFGHANISTAN, IRAN,
SRI LANKA**



An asylum seeker is a person who has left their home to seek protection in another country, but who has not yet been processed in accordance with United Nations refugee law. While the term “asylum seeker” is common in New Zealand, the term “refugee status claimant” is more technically correct and is preferred by some international organisations.⁷⁵ Each year, around one million people seek asylum around the world.⁷⁶ New Zealand’s geographic isolation means that very few asylum seeker claims are made each year.⁷⁷ The Refugee Convention makes no distinction between rights of refugees based on where their claims were made, processed or accepted.

Asylum seekers receive limited government support and convention refugees are not eligible for some entitlements until they are granted permanent residence, a process that can take years and is not expedited by the refugee’s humanitarian status. The only NGO supporting this group – Auckland-based Asylum Seeker Support Trust (ASST) – is often overwhelmed with emergency accommodation requests. This lack of support makes asylum seekers vulnerable to exploitation and abuse, most of which flows from the twin issues of lack of direct support and restricted opportunities to engage in work that allows them to support themselves.

“

“Fairness requires providing equal access to support – regardless of how a refugee comes to Aotearoa New Zealand – and ensuring asylum seekers are supported appropriately during the refugee status determination process.”

Jay Marlowe and Bernard Sama.⁷⁸

In 2021 New Zealand Red Cross began a new Pathways to Protection programme that works alongside Convention Refugees in Auckland.



⁷⁵ See, for example, Immigration New Zealand (2022). Information for Asylum Seekers. <https://www.immigration.govt.nz/audiences/supporting-refugees-and-asylum-seekers/asylum-seekers>; Canadian Council of Refugees (2022). Refugee claimants: comment on use of terms. <https://ccrweb.ca/en/refugee-claimants-comment-use-terms>

⁷⁶ United Nations High Commissioner for Refugees (2020). Asylum Seekers. <https://www.unhcr.org/asylum-seekers.html>

⁷⁷ Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J. (2022). ‘Safe Start. Fair Future: Refugee Equality’. Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. <https://www.auckland.ac.nz/content/dam/uaa/education/hattie/docs/Safe%20Start,%20Fair%20Future%20Report.pdf>

⁷⁸ Jay Marlowe and Bernard Sama (2022). ‘Introduction’ in ‘Safe Start. Fair Future: Refugee Equality’. Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. <https://www.auckland.ac.nz/content/dam/uaa/education/hattie/docs/Safe%20Start,%20Fair%20Future%20Report.pdf>

2.1 The global context

Asylum seekers, including those in detention, are some of the most vulnerable migrants in the world, as they do not have the same rights as residents and citizens of the countries they are in. For example, without accessible work rights, asylum seekers must choose between working illegally or not having a place to live or food for themselves and their families. It is not uncommon for this group to be discriminated against and for there to be politically fuelled sentiment that they are “queue jumpers” or “illegal” (for more on this see section 11 on public perceptions on migrants and refugees).

At the end of 2021, there were 100 million forcibly displaced people in the world. In the first six months of 2022, there have also been more than 8 million internally displaced Ukrainians.⁷⁹ The UNHCR estimates that 35 million of those forcibly displaced are under 18. Developing countries continue to host a disproportionately large number of displaced people, amounting to 85 per cent of the global total, with 73 per cent of all refugees hosted in countries neighbouring their country of origin.⁸⁰ While COVID-19 reduced all migration movements, the EU Agency for Asylum noted that asylum claims in the region returned to pre-COVID-19 levels in 2021 after a significant fall in the previous year. This increase was largely due to an increase in Afghan and Syrian claims.⁸¹

Most of the highly publicised movements of refugees across international borders involve asylum seekers, even when they are referred to in other terms. For example, most of those people on boats crossing from Indonesia to Australia up until 2013 were fleeing war and persecution, as were Syrians and others entering Europe in 2015, ongoing boat arrivals on the coasts of Southern Italy and other Greek islands, and the migrant caravans going from Central America towards the USA in 2019. This broad media attention colours the discourse around refugee protection around

the world, even when refugees are moving as part of a managed resettlement, sponsorship or reunification process.

Numerous human rights conventions support the right of people to seek asylum:⁸²

- The 1948 Declaration of Human Rights grants, in Article 14, the right to seek and enjoy asylum from persecution.⁸³
- The 1951 United Nations Convention on Refugees provides the definition of a refugee (stated above) that still applies in New Zealand law today.⁸⁴
- The 1966 Covenant on Civil and Political Rights outlines a number of rights that will likely be breached if those seeking refugee status were forced to return to their home countries. Article 6 states that all individuals have the right to life; Article 7 states that no one shall be subject to torture or cruel treatment; Article 8 states that no one shall be held in slavery; Article 9 states that everyone has the right to security and liberty.⁸⁵
- The 1967 Protocol Relating to the Status of Refugees removed the Refugee Convention’s temporal and geographical restrictions, so that refugees could come from any event or time. The original Convention only applied to people who were affected by events occurring in Europe before 1951, as a response to World War Two.⁸⁶
- The 1984 Convention Against Torture prevents states from expelling people where there are substantial grounds for believing that they would be in danger of being tortured. This allows for protection of individuals who would face persecution because of their identity if

79 United Nations High Commissioner for Refugees (2022). Operational Data Portal. <https://data2.unhcr.org/en/situations/ukraine/location?secret=unhcrrestricted>

80 United Nations High Commissioner for Refugees (2022). Statistical database. <https://www.unhcr.org/refugee-statistics>

81 EU Agency for Asylum (2022). Annual overview 2021 - Asylum applications returned to pre-pandemic levels in 2021. European Migration Law. 22 February. <https://www.europeanmigrationlaw.eu/en/articles/news/eu-agency-for-asylum-annual-overview-2021-asylum-applications-returned-to-pre-pandemic-levels-in-2021.html>

82 Immigration New Zealand (n.d.). Information for Asylum Seekers. <https://www.immigration.govt.nz/audiences/supporting-refugees-and-asylum-seekers/asylum-seekers>

83 United Nations (2018). Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 14. 23 November. <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-14>

84 United Nations High Commissioner for Refugees (nd) Convention and Protocol Relating to the Status of Refugees. <https://www.unhcr.org/3b66c2aa10>

85 United Nations (1966). General Assembly Resolution. International Covenant on Civil and Political Rights. December. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

86 Ibid.

they were returned to their home country, which allows for the protection of refugees.⁸⁷

Of all migrants, people seeking asylum are some of the most at risk of being detained. Under Guideline 4.2 of the United Nations Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers, immigration detention is only meant as a last resort and where it is necessary, reasonable, and proportionate to a legitimate government objective.⁸⁸ The reasonableness and necessity of detention is to be determined in each individual case and assessed in light of the purpose of the detention.⁸⁹

In recent years, much regional discussion has centred on the detention of asylum seekers by the Australian government in Nauru and Manus Island, Papua New Guinea. The majority of those in offshore detention have either been moved to Australia, resettled in a third country or pressured into returning to their countries of origin, while the offer to resettle 150 people per year to New Zealand, was accepted in the lead up to the 2022 Australian General Election.⁹⁰ Despite this reduction in numbers, there remains a strong connection in the public discourse across Australia and other asylum-seeker-receiving countries that offshore detention is a necessary, if regrettable, policy. Since 2013, the Australian government has turned boats back rather than processing claims, though finding up to date and accurate material on these turn backs can be challenging.⁹¹

On top of the challenges with detention in Australia, there have been moves to limit the ability of those who have arrived in Australia without a valid visa to claim permanent protection through the asylum process. The adoption of two visa options for those asylum seekers – Temporary Protection Visas (TPV) and

Safe Haven Enterprise Visas (SHEV) – have led to asylum seekers remaining in Australia without any permanent protection.⁹² Instead of asylum claims leading to permanent residency if accepted, the TPV requires rolling over applications every three years. While the SHEV appears to offer the option of a permanent residency, applicants must meet requirements similar to regular migrants, but are restricted in accessing those options.⁹³ The policy has drawn widespread criticism, including from Human Rights Watch.⁹⁴ As the Refugee Council of Australia notes, even those who arrive on valid visas and then claim asylum still struggle to access support services such as are available for resettled refugees.⁹⁵

In 2022, the United Kingdom announced that no asylum seekers arriving by boat would be settled in that country. These asylum seekers would be transferred to Rwanda to have their claims processed and determined. If a case was approved the accepted asylum seeker would remain in Rwanda rather than be returned to the United Kingdom⁹⁶ The policy follows earlier moves to reject visas of people from countries that would not accept deportation of failed asylum claims.⁹⁷ Multiple NGOs and civil society actors have denounced the scheme as a breach of human rights and the United Kingdom's agreement to the 1951 Convention on Refugees.⁹⁸

87 United Nations (1984). General Assembly Resolution. 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'. December. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

88 United Nations High Commissioner for Refugees (2012). *Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*.

89 Ibid.

90 McCulloch D. (2019). Dutton still not ditching NZ refugee deal. *Newcastle Star*. 29 October. <https://www.newcastlestar.com.au/story/6990892/dutton-still-not-ditching-nz-refugee-deal/?cs=7307>

91 For a historical source see, Australian Parliament (2018). Boat 'turnbacks' in Australia: a quick guide to the statistics since 2001. 20 July. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/Quick_Guides/BoatTurnbacksSince2001

92 Kaldor Centre (2020). Factsheet: Temporary Protections Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) Andrew & Renata Kaldor Centre for International Refugee Law. November. https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet_TPVsSHEV_Apr2019.pdf

93 Meixner, S. (2021). A Life in Limbo. ABC. 7 March. <https://www.abc.net.au/news/2021-03-07/temporary-protection-visa-asylum-seekers-stuck-for-life/12935502>

94 Human Rights Watch (2003). Human Rights Watch Commentary On Australia's Temporary Protection Visas For Refugees. *Human Rights Watch*. <https://www.hrw.org/legacy/backgrounder/refugees/australia051303.htm>

95 Refugee Council of Australia (2021). Australia's asylum policies. 1 March. <https://www.refugeecouncil.org.au/asylum-policies/2>

96 UK Home Office (2022). 'Factsheet: Migration and Economic Development Partnership' 14 April. <https://homeofficemedia.blog.gov.uk/2022/04/14/factsheet-migration-and-economic-development-partnership/>

97 Jamie Grierson (2021). 'UK to block visas for countries refusing to take back asylum seekers' *The Guardian*. 6 July. <https://www.theguardian.com/politics/2021/jul/06/uk-to-block-visas-from-countries-refusing-to-take-back-undocumented-migrants>

98 Al Jazeera (2022). UK to seek asylum ban on refugees crossing the English Channel. *Al Jazeera*. 4 October. <https://www.aljazeera.com/news/2022/10/4/uk-still-backs-rwanda-deportations-despite-legal-challenge>

2.2 New Zealand context

The total number of asylum claims in New Zealand is very low by international standards. This is partly because New Zealand's isolation from the rest of the world allows Immigration officials to determine who does and does not enter the country. The majority of asylum claims come from people who have already been living in New Zealand for some time, while a substantial minority of others claim asylum on arrival at the airport. Claimants first have their cases heard by the Refugee Status Unit; appeals are heard by the Immigration and Protection Tribunal.

The approval rate for refugee claimants at the Refugee Status Branch to New Zealand ranged between 36.7 per cent and 22.4 per cent in the past ten years but was significantly lower in the preceding decades, with just 6.5 per cent approved in 1993/94.⁹⁹ The 2018/19 year showed the highest number of asylum claims since 2003/04, with applications from 60 different countries. As with the rest of the world, COVID-19 border closures saw numbers of claimants and approvals reduce.¹⁰⁰ At their peak, New Zealand received just over 2,000 refugee status claims in 1998/99, covering more than 500 accepted people.

In 2019, Victoria Casey QC completed a review of the processes for making an asylum seeker claim for MBIE.¹⁰¹ The review noted that while the formal structures to guarantee the rights and processual fairness of asylum claims were sound, in practice, procedures were not always followed. The main theme of the report was the relationship breakdown between practitioners (lawyers representing asylum claimants) and

refugee protection officers working at the Refugee Status Unit within MBIE.

In response to a report on the detention of asylum seekers by Asylum Seeker Support Trust and Amnesty International, Victoria Casey QC was commissioned to produce a second review on the restriction of movement of asylum claimants. The 2022 Casey report concluded "that while very short term detention of some arrivals who claim refugee status at the border may be justified (though the current practice of how this is done must change), the practice of long-term detention of refugee claimants in Ara Poutama Aotearoa|Department of Corrections' facilities is wrong, at every level."¹⁰² Furthermore, the report suggested collaboration with civil society to ensure those detained for 48 hours or less had support via access to pastoral support and the creation of an oversight board that would monitor anyone who was detained.¹⁰³

Concerns have grown that asylum seekers and convention refugees do not have access to basic settlement support, either due to policy settings or the small size of the cohort.¹⁰⁴ The *Safe Start, Fair Future* report, produced by CAPRS and Asylum Seeker Support Trust (ASST), listed seven recommendations for the protection of asylum seekers while their claims are made and for fairer treatment of those who are recognised as refugees through the asylum process.¹⁰⁵ One challenge was significant flow-on effects in terms of access to services for people granted refugee status as an asylum seeker: delays in gaining permanent residency. The report noted that the delay tends to see convention refugees treated as migrants rather than people who have

99 Immigration New Zealand (2022). Refugee and Protection Unit Statistics Pack. <https://www.immigration.govt.nz/documents/statistics/statistics-refugee-and-protection.pdf>; RefNZ Statistics (2010). Table 3: The number of refugee status applications determined, and the number of applications and people approved and declined by the Refugee Status Branch during the financial years from 1992/93 to 2008/09. <https://www.refugee.org.nz/stats.htm>

100 As of February 2021. See Immigration New Zealand (2020). Refugee and Protection Unit Statistics Pack. <https://www.immigration.govt.nz/documents/statistics/statistics-refugee-and-protection.pdf>

101 Casey, V. (2019). Review of processes and proceedings for making refugee and protection status determinations under Part 5 of the Immigration Act 2009. Ministry for Business, Innovation and Employment. October. <https://www.mbie.govt.nz/dmsdocument/10382-review-of-processes-and-proceedings-for-making-refugee-and-protection-status-determinations-under-part-5-of-the-immigration-act-2009>

102 Casey, V. (2022). Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment: Restriction of Movement of Asylum Claimants. Ministry for Business, Innovation and Employment. 23 March. <https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants>

103 Ghahraman, G. (2022). 'New Zealand has long imprisoned people seeking asylum. It's time we said 'This is not us' and really meant it'. The Guardian. 5 May. <https://www.theguardian.com/world/commentisfree/2022/may/06/new-zealand-has-long-imprisoned-people-seeking-asylum-its-time-we-said-this-is-not-us-and-really-meant-it>

104 Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J. (2022). 'Safe Start. Fair Future: Refugee Equality'. Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. <https://www.auckland.ac.nz/content/dam/uaa/education/hattie/docs/Safe%20Start,%20Fair%20Future%20Report.pdf>

105 Brett Kelly, S. (2022). Why are asylum seekers treated differently to other refugees? *Radio New Zealand*. 30 June. <https://www.rnz.co.nz/programmes/the-detail/story/2018847644/why-are-asylum-seekers-treated-differently-to-other-refugees>

been granted the protection of the state. Other aims of the report were to ensure funding for organisations that support asylum seekers while they make their claims, introduce convention refugees into the New Zealand Refugee Resettlement Strategy (for more on this, see section one on Refugee Settlement), and provide equal access to settlement support for convention refugees.¹⁰⁶ The report noted substantial gaps between what asylum seekers were entitled to under the law and the actual services that they could access without specialist assistance from government agencies or advocacy from groups like ASST.

In the last five years, 8 per cent of people granted convention refugee status have done so based on sexual orientation, gender expression or identity, and sex characteristics.¹⁰⁷ These issues can be particularly acute for transgender convention refugees who are unable to change their names and/or genders on their official documents.¹⁰⁸ The changes to the Births, Deaths, Marriages, and Relationships Registration Act in 2021 were conspicuous in excluding asylum seekers, which some Members of Parliament addressed and committed to fixing.¹⁰⁹

Other ongoing issues include the work by the New Zealand Government to prevent or intercept boat arrivals. The 2019 Budget included \$25 million as part of a Maritime Mass Arrival Prevention policy, aiming to boost capacity within the government to counter asylum seeker boat arrivals. While the government framed the spending as a humanitarian act, advocates pointed out that the title of the bill indicated the primary aim was to prevent boat arrivals and did little to help asylum

seekers.¹¹⁰ Documents released in the wake of the Budget also showed that The Treasury had advised against the extra spending and suggested that there was no evidence of increased attempts by people to reach New Zealand by boat.¹¹¹ The full details of the policy implementation have not yet been made public, so this is one area where more research and advocacy attention may need to be focused.

Legal background for asylum seekers and convention refugees in New Zealand

Part 5 of the Immigration Act 2009 provides the statutory basis for the system by which New Zealand determines to whom it owes obligations.¹¹²

As noted above, the Refugee Status Unit handles initial refugee and protection claims, which can be made in person (to an Immigration Officer, Police Officer or Customs Officer) or in writing (to Immigration New Zealand). All claims must be later confirmed in writing by completing a lengthy claim form. Claimants are usually entitled to Legal Aid which, in practice, requires the support of a lawyer or registered immigration consultant. While timeframes around decisions are not formalised, the Refugee Status Unit had aimed to have a case completed within 120 days,¹¹³ though this was extended to six months in 2021.¹¹⁴ Budget 2020 secured an extra \$5 million of funding towards ensuring these cases were processed in a timely fashion.¹¹⁵ If the Refugee Status Unit approves a claim, the asylum seeker

106 Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J. (2022). 'Safe Start. Fair Future: Refugee Equality'. Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. <https://www.auckland.ac.nz/content/dam/uaa/education/hattie/docs/Safe%20Start,%20Fair%20Future%20Report.pdf>

107 Radio New Zealand (2017). LGBT asylum seekers granted refugee status in NZ. *Radio New Zealand*. 17 June. <https://www.rnz.co.nz/news/national/333279/lgbt-asylum-seekers-granted-refugee-status-in-nz>

108 IDAHOBIT Day Coalition (2018). Situation of Rainbow persons in Aotearoa/New Zealand. Submission to UPR. https://www.hrc.co.nz/files/6915/4448/0436/SOGIESC_UPR_Pre-Session_Draft_3_fin.pdf; Byrne, J. (2018). Select committee letter on BDMRR bill. https://www.parliament.nz/resource/en-NZ/52SCGA_EVI_74854_859/aOcc6588cf22394539224f1375769501b9005322

109 Kerekere, E. (2021). Births, Deaths, Marriages, and Relationships Registration Bill – Third Reading. 9 December. <https://vimeo.com/654776651?ref=fb-share>

110 Perinpanayagam, U. (2019). Government's 'saving lives at sea' rhetoric rings hollow. *The Spinoff*. 16 June. <https://thespinoff.co.nz/politics/16-06-2019/governments-saving-lives-at-sea-rhetoric-rings-hollow>

111 Devlin, C. (2019). Treasury advised Government against funding to prevent boats of asylum seekers. *Stuff*. 14 August. <https://www.stuff.co.nz/national/politics/115008615/treasury-advised-government-against-funding-to-prevent-boats-of-asylum-seekers>

112 Immigration New Zealand (2018). Immigration Fact Sheets Refugees and Asylum Seekers. <https://www.beehive.govt.nz/sites/default/files/2018-09/Refugees%20and%20asylum%20seekers%20factsheet.pdf>

113 Casey, V. (2019). Review of processes and proceedings for making refugee and protection status determinations under Part 5 of the Immigration Act 2009. Ministry of Business, Innovation and Employment. October. <https://www.mbie.govt.nz/dmsdocument/10382-review-of-processes-and-proceedings-for-making-refugee-and-protection-status-determinations-under-part-5-of-the-immigration-act-2009>

114 Immigration New Zealand (2022). Information for asylum seekers. <https://www.immigration.govt.nz/audiences/supporting-refugees-and-asylum-seekers/asylum-seekers>

115 Devlin, C. (2020). Budget 2020 funds security increase at Refugee Resettlement Centre and opens door for community sponsorship. *Stuff*. 15 May. <https://www.stuff.co.nz/national/politics/121531742/budget-2020-funds-security-increase-at-refugee-resettlement-centre-and-opens-door-for-community-sponsorship>

is recognised as a refugee or protected person. Unsuccessful claimants can appeal to the independent Immigration and Protection Tribunal (IPT).¹¹⁶ Approximately 19 per cent of IPT appeals are refugee or protected persons cases and about a third of these are upheld.¹¹⁷

In 2012, the Government introduced an Immigration Amendment Bill (enacted in 2013), to address “mass arrival groups”. The amendments included introducing group warrants that allowed mass arrival groups to be detained for extended periods of time.¹¹⁸ The Bill drew widespread criticism from human rights groups who said the policy did not sit within New Zealand’s international obligations or its domestic law. Several provisions in the amendment were criticised, including the possibility of indefinite detention, the “mass arrival warrant” and no inclusion of an “explicit presumption against detention”.¹¹⁹ A provision was eventually included that said the bill would only apply to groups of 30 or more people where – previously – the minimum was ten or more.¹²⁰ Legal experts argued the original premise for the bill was largely unfounded and did not consider the existing safeguards against people smuggling, including specific offences under the Crimes Act 1961. People-smugglers would also likely meet the criteria for offences under the Immigration Act, such as through the provision of false or misleading information.¹²¹

Convention refugees are eligible to apply for permanent residence for themselves and their spouse and dependent children. The cost of applying is waived for convention refugees but they need to pay for any medical costs associated

with the application.¹²² After five years living in New Zealand as permanent residents, convention refugees can apply for New Zealand Citizenship. They are also eligible to apply for a Work Visa (again, application costs are waived) and can be eligible for Work and Income support if they are unable to find work. Establishment grants that are often available for other refugees are rarely available to convention refugees as, by the time they are accepted, they tend to have been in the country longer than 12 months.

The Refugee Status Unit of Immigration New Zealand is also responsible for cancellation or cessation of refugee status if it was obtained by fraud, if the person no longer needs to be protected because of changes in their or their country’s circumstances, or if they have committed serious crimes and pose a risk to the community. These decisions can also be appealed to the Immigration and Protection Tribunal.¹²³ One recent large-scale case of fraud was uncovered, though this covered 158 people and only two of the linked claimants had their cases accepted. Advocates noted that this was a sign that the system worked as it should.¹²⁴ At present there is a review of efficacy of deportation laws being conducted by Immigration New Zealand in response to the New Lynn attack in 2021.¹²⁵

Organisations

Red Cross and Red Crescent Movement

Asylum seekers are of interest to the International Red Cross and Red Crescent Movement due to their legal status and lack of protection compared to citizens, which makes them most in need of humanitarian protection. These concerns are particularly heightened for those asylum seekers who are detained in prisons. As the ICRC notes, drawing from the fundamental principle of impartiality regarding nationality,

116 Ministry of Business, Education and Employment (2017). *Confirmation of Claim to Refugee and Protection Status in New Zealand*. <https://www.immigration.govt.nz/documents/forms-and-guides/inz1071.pdf>

117 Spiller, P. (2019). Immigration and Protection Tribunal Annual Report 2018/2019. <https://www.justice.govt.nz/assets/Documents/Publications/Immigration-Protection-Tribunal-Annual-Report-2018-2019-for-website.pdf>; Bonnett, G. (2021). A third of rejected asylum cases overturned by appeals tribunal. *Radio New Zealand*. 24 January. <https://www.rnz.co.nz/news/national/435083/a-third-of-rejected-asylum-cases-overturned-by-appeals-tribunal>

118 Parliamentary Debates (Hansard) (2012). Immigration Amendment Bill — First Reading. 3 May. https://www.parliament.nz/en/pb/hansard-debates/rhr/document/50HansD_20120503_00000012/immigration-amendment-bill-first-reading

119 Global Detention Project (2016). *New Zealand Immigration Detention Profile*.

120 Shuttleworth, K. (2013). Dunne backs ‘asylum seeker’ bill. *Otago Daily Times*. 12 April. <https://www.odt.co.nz/news/politics/dunne-backs-asylum-seeker-bill>

121 Ibid.

122 Immigration New Zealand (n.d.). Information for Convention Refugees. <https://www.immigration.govt.nz/documents/refugees/inz-information-for-convention-refugees.pdf>

123 Immigration New Zealand (2018). Immigration Fact Sheets Refugees and Asylum Seekers. <https://www.beehive.govt.nz/sites/default/files/2018-09/Refugees%20and%20asylum%20seekers%20factsheet.pdf>

124 Bonnett, G. (2022). Asylum fraud probe into 158 claims, interpreter charged. *Radio New Zealand*. 22 June. <https://www.rnz.co.nz/news/national/469583/asylum-fraud-probe-into-158-claims-interpreter-charged>

125 Bonnett, G. (2022). ‘Law change to allow deportation of potential terrorists, refugees on the cards.’ *Radio New Zealand*. 17 April. <https://www.rnz.co.nz/news/national/465424/law-change-to-allow-deportation-of-potential-terrorists-refugees-on-the-cards>

“our focus is on helping the most vulnerable migrants, regardless of their legal status.”¹²⁶

Relatedly, National Societies all over the world deal with internal displacement on large scales and there are relevant humanitarian actions in these operations.

The 2022 Casey Report specifically mentioned that New Zealand Red Cross should be able to offer detention visits to asylum seekers.¹²⁷ New Zealand Red Cross takes guidance from the ICRC policy on migrants in detention including the ten guidelines for dealing with general conditions of detention as well as procedural safeguards and the “special circumstances and needs of particular asylum seekers”.¹²⁸ Concerns about the number of people being detained had already led to conversations with ICRC Suva on the potential for detention monitoring visits in Mt Eden prison. ICRC recommended completing a scoping project and then working with them to identify if, and when, a detention visit should occur.

In Auckland, New Zealand Red Cross has created two roles to work with asylum seekers and convention refugees in a Pathways to Protection programme. One of these roles is the Convention Navigator role that was previously based within Immigration New Zealand and which offers guidance on accessing services. In 2017, the Migration Team began work with ASST to train volunteers to support asylum seekers, though this programme was paused due to COVID-19 and has not fully restarted. Volunteers involved in this programme would support families/individuals with essential settlement needs, as well as connect them to the community to enhance integration, with placements usually lasting three to six months. Practical assistance would include paying for school uniforms, providing hygiene kits, and settlement orientation. Across the country, Pathways to Employment also provides support to people seeking asylum or convention refugees who have the legal right to work in New Zealand. In Wellington, Refugee Trauma Recovery,

as part of New Zealand Red Cross, also works with asylum seekers.

Government

Immigration New Zealand is the lead domestic agency with respect to asylum seekers and refugees. It is responsible for administering New Zealand’s refugee quota, determining asylum claims made onshore, and certain settlement initiatives.¹²⁹ It is also responsible for immigration compliance, including detention. Immigration New Zealand produces a brochure – the most up-to-date version can be found online¹³⁰ – providing high-level information about services available to asylum seekers living in Auckland, Wellington and Christchurch. This pamphlet is available in six of the most common languages of asylum seekers, though it may be challenging for people to actually find these pamphlets.

As with asylum seekers, Immigration New Zealand provides some high-level information for convention refugees on their website. Between 2018 and 2021, MBIE employed a staff member as a convention refugee navigator. In 2021, this role was outsourced to New Zealand Red Cross. The navigator is now responsible for contacting convention refugees in the initial weeks after their claim has been accepted. Unlike quota refugees, there is no other government funding or support for asylum seekers than this one person.

Advocacy groups and NGOs

The Asylum Seeker Support Trust (ASST), previously the Auckland Refugee Council, is the main organisation working with asylum seekers and convention refugees. ASST provides accommodation in a 16-bed hostel in Auckland and temporary accommodation across three units to enable families to establish a rental history. Clients are referred to ASST through lawyers and community networks. ASST employs two full-time social workers and a part-time accommodation coordinator who is responsible for the hostel’s day-to-day running. In effect, ASST functions as

¹²⁶ International Committee of the Red Cross (2015). *Activities for Migrants*. <https://www.icrc.org/en/publication/4246-activities-migrants>

¹²⁷ Casey, V. (2022). Report to Deputy Chief Executive (Immigration) of the Ministry of Business, Innovation and Employment: Restriction of Movement of Asylum Claimants. Ministry for Business, Innovation and Employment. 23 March. <https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants>

¹²⁸ Ibid.

¹²⁹ For the government’s guide to how the process should work, see Immigration New Zealand (2021). *Claiming Refugee and Protection Status in New Zealand*. Ministry for Business, Innovation and Employment. March. <https://www.immigration.govt.nz/documents/forms-and-guides/claiming-refugee-and-protection-status-in-new-zealand-march-2021>

¹³⁰ Immigration New Zealand (n.d.). *Services for Asylum Seekers*. Auckland. <https://www.immigration.govt.nz/documents/refugees/servicesforasylumseekersaucklandenglish.pdf>

a crisis response for those cases that are in most need, rather than as a service provider that can support every asylum seeker.¹³¹ In the past two years, ASST has collaborated in effective advocacy with Amnesty International to oppose the detention of asylum seekers,¹³² and with CAPRS at the University of Auckland to propose a raft of improved policies for both asylum seekers and convention refugees.¹³³

ASST is the largest and most active organisation that deals with asylum seekers and convention refugees. It is not funded by the government but survives through grants, revenue from the hostel, and donations. In the last year, they made numerous media appearances covering the detention of asylum seekers in prison and shortfalls in funding.¹³⁴

Outside of Auckland, there are no specific support services, though groups like Changemakers Resettlement Forum in Wellington and Christchurch Resettlement Services often get called on to help asylum seekers find a place to live on first arrival. At other times, asylum seekers are connected to people from their own ethnic communities already in New Zealand, which places a large burden on these groups to assist. ASST provides some advice to these agencies, and to some clients, by phone. Overall, the services provided by the sector are not well established, as these organisations are already stretched and do not receive funding for their work with asylum seekers.

The Auckland Refugee Family Trust provides support for some family reunification cases when Convention Refugees cannot afford to do so themselves. Recent changes to the support for

these cases may reduce what is required by this and other family reunification trusts (see more in section three). The Asylum Seeker Equality Project at Victoria University of Wellington's law school is advocating for equal settlement support for all refugees in New Zealand with a focus on the lack of support for convention refugees.¹³⁵

Amnesty International has also been involved in asylum seeker advocacy in recent years. Since 2020, the issue of asylum seekers in detention has been repeatedly raised by Amnesty International Aotearoa New Zealand, first around a report issued in January on the state of prisons,¹³⁶ then in April around COVID-19 issues for the incarcerated,¹³⁷ and then around World Refugee Day.¹³⁸ A final report titled *Please Take Me to a Safe Place* led to the 2022 Casey Report, the acceptance of all ten recommendations of the report by both the New Zealand government and Immigration New Zealand and the end of widespread use of detention facilities for housing asylum claimants.

Advocacy groups active on issues of asylum seekers in detention include the Global Detention Project, the Human Rights Commission, the Asia Pacific Refugee Rights Network (APPRN) and the International Detention Coalition. There are other migrant advocacy groups, typically focused on general settlement issues, who often comment on issues of detention (for example, Migrant Action Trust). Asylum Seeker Equality Project, based in the Community Justice Project at Victoria University of Wellington's School of Law, continues to campaign on equal access to settlement support for convention refugees.

On the back of increases in the number of LGBTIQ+ asylum seekers, as well as growing

131 Bernard Sama (2021). Time to review asylum-seeker support. Newsroom. 20 September. <https://www.newsroom.co.nz/ideasroom/time-to-review-asylum-seeker-support>

132 Amnesty International Aotearoa New Zealand (2021). 'Please take me to a safe place: the imprisonment of asylum seekers in Aotearoa New Zealand'. <https://www.amnesty.org.nz/sites/default/files/AIANZ%20-%20Please%20take%20me%20to%20a%20safe%20place%20-%20Full%20Report.pdf>

133 Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malih, Z., & Marlowe, J. (2022). 'Safe Start. Fair Future: Refugee Equality'. Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, February. <https://cdn.auckland.ac.nz/assets/education/hattie/docs/Safe%20Start,%20Fair%20Future%20Report.pdf>

134 Kilgallon, S. (2020). No crime, no charge the asylum seekers welcomed to NZ with jailtime. *Stuff*. 27 December. [https://www.stuff.co.nz/national/123786697/no-crime-no-charge--the-asylum-seekers-welcomed-to-nz-with-jailtime;Whyte,A.\(2022\).''I do worry'' - concerns raised about welfare of asylum seekers: 1 News. 30 September. https://www.1news.co.nz/2022/09/30/i-do-worry-concerns-surround-welfare-of-asylum-seekers/](https://www.stuff.co.nz/national/123786697/no-crime-no-charge--the-asylum-seekers-welcomed-to-nz-with-jailtime;Whyte,A.(2022).''I do worry'' - concerns raised about welfare of asylum seekers: 1 News. 30 September. https://www.1news.co.nz/2022/09/30/i-do-worry-concerns-surround-welfare-of-asylum-seekers/)

135 Craig, P. (2019). People asking for asylum in NZ get a raw deal. *Stuff*. 3 October. <https://www.stuff.co.nz/national/politics/opinion/116226783/people-asking-for-asylum-in-nz-get-a-raw-deal> ActionStation (2016). *Equal support for Convention Refugees*. <https://our.actionstation.org.nz/petitions/equal-support-for-convention-refugees-1>.

136 Satherley, D. (2020). New Zealand's prison policies under fire in new Amnesty report. *Newshub*. 30 January. <https://www.newshub.co.nz/home/new-zealand/2020/01/new-zealand-s-prison-policies-under-fire-in-new-amnesty-report.html>

137 Amnesty New Zealand (2020). Amnesty International releases human rights briefing to COVID-19 committee. 15 April. <https://www.amnesty.org.nz/amnesty-international-releases-human-rights-briefing-covid-19-committee>

138 Radio New Zealand (2020). Amnesty International calls for end to jailing asylum seekers. *Radio New Zealand*. 15 June. <https://www.rnz.co.nz/national/programmes/first-up/audio/2018750656/amnesty-international-calls-for-end-to-jailing-asylum-seekers>

attention on them,¹³⁹ Rainbow Path New Zealand was founded. Launched in January 2019, the group proactively provides and supports a network for LGBTIQ+ asylum seekers and refugees.¹⁴⁰

RASNZ provides counselling, body therapy and psychological support for asylum seekers via their work at Te Āhuru Mōwai o Aotearoa. RASNZ has also found itself in the position of offering ad hoc, emergency settlement support including assistance with housing for asylum seekers.

2.3 What are the needs and gaps?

For both asylum seekers and convention refugees, the biggest unmet need is resourcing to provide support to meet basic needs and to advocate where required.¹⁴¹ There is a significant gap in that there is only one specialty organisation in the country, and this is underfunded.

Unmet needs: asylum seekers

- Many of the unmet needs are underpinned by **chronic poverty** among asylum seekers (including those supported by ASST). This means that basic humanitarian needs such as food and shelter are going unmet.
- As all claims must be in English, there are **significant costs** in obtaining acceptable translations, for which there is no financial aid. Moreover, any interpreting support required by lawyers to fill out and lodge the claim must be paid out from the legal aid funds, which are already limited.
- **Accommodation in Auckland** is expensive and difficult to secure for single men and those without a New Zealand rental history. Lawyers and others in the sector report people living in cars, at homeless shelters (of which there are a decreasing number) or sleeping rough.
- **Work and Income** is a constantly challenging process as staff do not understand the entitlements of asylum seekers and often ask incorrect questions about the basis of asylum claims. It is difficult for clients to access benefits without the help of a social worker or skilled volunteer.
- Those with six-month work visas struggle to gain **formal employment** and are often forced into the grey economy.
- Access to **education** (either ESOL or tertiary) as an asylum seeker is limited.
- ASST especially, but also other NGOs working with asylum seekers, have **no budget for interpreters**.
- There is a **lack of services** for asylum seekers outside of Auckland.
- There is a pervasive approach in government policy that asylum seekers must be **deterred** from coming to New Zealand. This also leads to negative attitudes even once asylum seekers are accepted as convention refugees, undermining their well-being and settlement.
- While there is little data on **public perceptions** of asylum seekers in New Zealand (and very little on refugees, in general) there is a pervasive public discourse, mirroring that of Australia, that asylum seeking is a less legitimate way of obtaining protection than through the quota.
- There is a need for follow up and oversight on the **alternatives to detention** recommended in the 2022 Casey Report. While the 2021 version of this report had a section dedicated to the detention of asylum seekers, the extensiveness of the Casey Report and the agreement to make those changes by the government means that these issues should be resolved.

139 Murphy, S. (2017). 'Number of Queer and Gender Diverse Refugees in New Zealand Rises'. *Gay Express*. 29 June. <https://gayexpress.co.nz/2017/06/number-queer-gender-diverse-refugees-new-zealand-rises>

140 Though there is not a strong online presence for Rainbow Haven, both Changemakers Resettlement Forum and Tranzform Wellington have posted on social media about collaborations with the group.

141 Yzelman, R. & Bond, S. (2020). Gaining a sense of citizenship and belonging in Aotearoa New Zealand: the work of refugee support providers. *sites* 17(1), 66–90.

Unmet needs: convention refugees

- Currently, Convention refugees are **waiting up to two years for permanent residence** to be granted. Until they have permanent residence, Convention refugees with families are not entitled to Family Tax Credits, nor the Work and Income Accommodation Supplement. For some families, this can make a difference of \$500 per week.
- Applying for **permanent residence is time consuming** and means that people with accepted humanitarian immigration status are delayed in having affordable and acceptable access to mainstream services, including the reestablishment grant.
- There are no facilities for **transgender convention refugees to change their names and gender** on official documents until granted permanent residency.
- As with asylum seekers, **dealing with Work and Income** is stressful and often requires the intervention of a social worker to secure entitlements. Similar challenges to accessing government services also exist across most agencies and there is a lack of understanding of the types of entitlements and services people can legally access.
- Convention refugees are **not entitled to the same support as Quota Refugees** and are not included in the New Zealand Refugee Resettlement Strategy.
- If a convention refugee arrives in New Zealand as part of a “mass arrival group” **without a valid visa, their eligibility for a resident visa will be restricted**. Such individuals must hold a temporary visa successively for three years before their refugee status will be reviewed.

New Zealand Red Cross Pathways to Employment support is available to Convention Refugees in addition to those who arrive through the quota.



Spotlight

Transferred refugees from Australia's offshore detention facilities

In 2013, previous Prime Ministers of New Zealand and Australia agreed that, if asked, New Zealand would accept 150 refugees per year who were detained in Australia's offshore detention facilities in Nauru and Manus Island, Papua New Guinea.¹⁴² The deal was initially opposed by much of New Zealand civil society as it allowed Australia to outsource responsibility for these people.¹⁴³ However, the longer that the refugees were detained, the more readily New Zealand civil society welcomed bringing them here. Nonetheless, a change in the Australian government meant this deal did not come into force until nine years later, in the months before the 2022 Australian Federal Election.¹⁴⁴ While the offer remained on the table and was subject to significant and ongoing media and advocacy attention, only one person left offshore detention for New Zealand during this time – award-winning writer Behrouz Boochani – and this was not part of an official transfer of detainees.¹⁴⁵

The 2022 deal included the UNHCR, who would guarantee, for New Zealand's purposes, that those deemed refugees were fleeing persecution. While processing cases began in the first half of 2022, the movement of 150 people per year began

in July 2022¹⁴⁶ but is facing challenges around the lack of trust in the system.¹⁴⁷ Around 100 people remain in both Nauru and Port Moresby, Papua New Guinea's capital. Almost a thousand other eligible people have progressively moved to Australia through the protracted legal wins around medical evacuations. These people are now all living in the community, but only on bridging visas that will not allow them to ever settle permanently in Australia.¹⁴⁸

One significant difference between the 2022 deal and that first agreed on in 2013 is the exclusion of those refugees who were originally placed on Manus Island, but who have since been moved to Port Moresby. The rationale for this exclusion is that, as of 31 December 2021, Australia no longer claims to be responsible for those refugees previously held on Manus Island. UNHCR, however, continues to process those in Port Moresby and will refer those who are eligible to resettlement countries, including New Zealand, as part of regular refugee resettlement quotas.¹⁴⁹ Advocates have criticised the slowness of this process and have asked whether anything has really changed, especially for those people in Port Moresby.¹⁵⁰

142 Watkins, T. (2013). NZ-Aust asylum seekers deal. *Stuff*. 9 February. <https://www.stuff.co.nz/national/8282972/NZ-Aust-asylum-seekers-deal>

143 For an overview of initial reaction see De Souza, R. (2013). Finding more humane solutions: New Zealand's refugee deal with Australia. 16 February. <https://ruthdesouza.com/2013/02/16/finding-more-humane-solutions-new-zealands-deal-with-australia/>

144 Butler, J, Hirst, D. and O Neas (2022). Australia agrees 450 refugees can be resettled in New Zealand, nine years after deal first offered. *The Guardian*. 24 March. <https://www.theguardian.com/australia-news/2022/mar/24/australia-agrees-450-refugees-can-be-resettled-in-new-zealand-nine-years-after-deal-first-offered>

145 Stephenson, S. (2022). 'I feel a real connection to New Zealand' Behrouz Boochani on life and work in Aotearoa *Stuff*. 15 January. <https://www.stuff.co.nz/entertainment/arts/300494792/i-feel-a-real-connection-to-new-zealand-behrouz-boochani-on-life-and-work-in-aotearoa>

146 United Nations High Commissioner for Refugees (2022). Steps involved in the New Zealand Resettlement Pathways for Transferred Persons. <https://help.unhcr.org/australia/resettlement-to-new-zealand-for-persons-subject-australias-offshore-transfer-policy/steps-involved-in-the-new-zealand-resettlement-pathways-for-transferred-persons/>

147 McLure, T. (2022) Australia-New Zealand refugee deal: UN blames mental health toll after just 36 people take up offer. *The Guardian*. 30 September. <https://www.theguardian.com/world/2022/sep/30/australia-new-zealand-refugee-deal-un-criticises-canberra-after-just-36-people-take-up-offer>


148 Butler, J, Hirst, D. and O Neas (2022). Australia agrees 450 refugees can be resettled in New Zealand, nine years after deal first offered. *The Guardian*. 24 March. <https://www.theguardian.com/australia-news/2022/mar/24/australia-agrees-450-refugees-can-be-resettled-in-new-zealand-nine-years-after-deal-first-offered>

149 United Nations High Commissioner for Refugees (2022). Expression of Interest Online Form for transferred persons located in Papua New Guinea. <https://help.unhcr.org/australia/resettlement-to-new-zealand-for-persons-subject-australias-offshore-transfer-policy/expression-of-interest-online-form-for-transferred-persons-located-in-papua-new-guinea>

150 Boochani, B. (2022). We pretend there has been change under Labor but hundreds of refugees are still in detention. *The Guardian*. 27 July. <https://www.theguardian.com/commentisfree/2022/jul/27/we-pretend-there-has-been-change-under-labor-but-hundreds-of-refugees-are-still-in-detention>

3. REFUGEE FAMILY REUNIFICATION

ANNUAL REFUGEE FAMILY SUPPORT CATEGORY INTAKE:
600



COVID-19 SHORTFALL 2020–2022:
615 PEOPLE



MAIN INTAKE COUNTRIES SINCE 2015: AFGHANISTAN, ETHIOPIA, SOMALIA, SRI LANKA AND IRAN



While there are a range of options for the families of refugees to be reunited in Aotearoa New Zealand, this section will primarily focus on the Refugee Family Support Category (RFSC). As of 1 July 2022, 600 family members of refugees can enter New Zealand each year through this category, otherwise known as the Refugee Family Support Resident Visa. These places are in addition to the 1,500 places available through the annual refugee quota. In the 2020 budget, the government announced that \$22 million over three years – the first support ever given to RFSC migrants – would defray the costs of applying for the category and moving to New Zealand and would provide basic settlement support in the regions where these family members arrive.

The objective of the RFSC is to facilitate the successful settlement of refugees who are resident in New Zealand by providing them with an opportunity to sponsor family members, who – with the exception of places within the annual refugee resettlement quota – do not usually qualify for residence under any other category of government policy. The RFSC category is split into two: Tier One is for people with no immediate family (excluding dependent children) in the country; Tier Two, which is rarely opened, is oversubscribed and only leads to applications being accepted when there are none in Tier One.



“Kiwis of refugee background, such as myself and my community, understand the pressures that the government faces. That is why they have stepped up to fill the gap. I hope that the government realises that there is a potent force they can tap into, to assist in the resettlement and reunification of refugee families.”

Abbas Nazari.



The Alvarez family, originally from Colombia, recently resettled in New Zealand. The expanded family support visa helps fulfil international commitments to the principle of family unity.

3.1 The global context

While refugees are commonly treated as individuals for immigration purposes in New Zealand, family unity is a fundamental principle of international law.¹⁵¹ The Universal Declaration of Human Rights, Article 12 states: “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour or reputation.”¹⁵² Everyone has the right to the protection of the law against such interference or attacks.” Similarly, the International Covenant on Civil and Political Rights (Article 23(1)) states that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.¹⁵³ For refugees, this unification is a legal principle and an essential framework of protection. According to the United Nations High Commissioner of Refugees (UNHCR), although the right to seek and enjoy asylum in another country is an individual human right, the individual refugee should not be seen in isolation from his or her family.¹⁵⁴

The importance of looking at a family as a whole unit has been outlined in commentary on Article 23 of the International Covenant on Civil and Political Rights (ICCPR). Additionally, providing “the widest possible protection and assistance” to these family units was outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁵⁵ Resettlement countries often apply a narrow family definition, comprising only the immediate family such as father, mother and minor children. This results in limited family reunification, leaving other family members in their country of origin, often in insecure conditions. This limit serves to split families, rather than reunite them.¹⁵⁶

Similarly, there are international laws around the rights of people to know about what has happened to their families and to reconnect with them where possible. The first Additional Protocol to the Geneva Convention established the rights of families to be informed of the whereabouts and fates of their relatives.¹⁵⁷ Additionally, Article 26 of the 1949 Geneva Convention affirms the importance of organisations to enable those people displaced by conflict to contact and reconnect with their families.¹⁵⁸ This is supported by Article 4(3)(b) of the Additional Protocol II which provides that family reunification should be facilitated as much as possible.¹⁵⁹

The United States, for example, has a range of family reunification systems, including the I-730 for spouses and children under the age of 21. Refugees can also lodge a claim for priority “P-3” resettlement through the annual quota for certain people from select countries, though this is currently suspended and is subject to claims about fraud.¹⁶⁰ When the system reopens, it may require DNA testing.¹⁶¹ In Canada, there are two main options: first, the one-year window programme, where a person identified within one year of a refugee entering the country, and who is a spouse or a child under 19 years old, is eligible for entry; second, due to the naming aspect of the community sponsorship scheme, a family member, friend, or any relation, can be sponsored if they are in a refugee or refugee-like situation.¹⁶²

In 2021, British Red Cross released *Torn Apart*, an overview of the challenges facing family reunification in the United Kingdom. Among the primary concerns were the challenges of accessing a Visa Application Centre to safely apply for a visa to join families.¹⁶³

Australia also offers the chance for families to be reunited through the offshore humanitarian part of their settlement programme, however,

151 Jastram, K. & Newland, K. (2003). Family unity and refugee protection. In *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Feller, E., Türk, V., & Nicholson, F. (eds).

152 See Starr, S. & Brilmayer, L. (2003). Family Separation as a Violation of International Law. *Berkeley Journal of International Law*. 21.

153 Ibid.

154 United Nations High Commissioner for Refugees (1999). *Protecting Refugees: a field guide for NGOs*. <https://www.refworld.org/docid/3c03682d4.html>

155 Ibid.

156 Nicholson, F. (2018). The ‘Essential Right’ to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification. UNHCR Legal and Protection Policy Research Series.

157 Ibid.

158 Ibid.

159 Ibid.

160 United Nations High Commissioner for Refugees (2020). US Family Reunification. <https://www.unhcr.org/en-us/us-family-reunification.html>

161 Worth, K. (2015). For Some Refugees, Safe Haven Now Depends on a DNA Test. *Frontline: PBS*. 19 October. <https://www.pbs.org/wgbh/frontline/article/for-some-refugees-safe-haven-now-depends-on-a-dna-test>

162 Canadian Council for Refugees (n.d.). Family reunification. <https://ccrweb.ca/en/psr-toolkit/other-useful-info-family-reunification>

163 British Red Cross (2020). *Torn Apart*. <https://www.redcross.org.uk/-/media/documents/about-us/report-how-reuniting-families-can-provide-solutions-to-the-refugee-crisis.pdf>

there are significant problems. The cost of the visa for this programme is high, wait times are long, family is narrowly defined and no-one who arrives by boat can reunite with their families through this measure.¹⁶⁴ In conjunction with the International Organisation on Migration (IOM), families reuniting under the Special Humanitarian Programme Visa are eligible for support with the costs of airfares.¹⁶⁵

3.2 New Zealand context

Reuniting with family members is widely recognised as an important contributor to the well-being of refugees who have already made their home in New Zealand. An MBIE study from 2004 stated, “For many, reunification is of primary importance, and the task of sponsoring family was seen to be both difficult and costly”.¹⁶⁶ The importance of an effective and fair family reunification system cannot be overstated for achieving settlement outcomes for both quota refugees as well as those actually welcomed through this Refugee Family Support Resident Visa.¹⁶⁷

The doubling of places in the RFSC and the associated funding budget in 2020, which came into effect on 1 July, 2022, is likely to fundamentally alter New Zealand’s refugee family reunification programme.¹⁶⁸ While COVID-19 stopped people arriving with these residence

visas, a recent court case,¹⁶⁹ and the relaxing of Managed Isolation and Quarantine requirements, have meant that from December 2021, people have, once more, begun to arrive. From July 2022, basic costs associated with arriving in New Zealand, including airfares, visa application fees and associated medical tests, are being paid for by the New Zealand Government and an induction will be provided by the refugee settlement providers in major centres, and on an as-needed basis in regions with fewer reunifications.¹⁷⁰

While the establishment of settlement support is a big win for the sector, there remain significant pressures associated with applications and sponsorship, particularly around housing. Once an invitation to apply has been issued, a residence application must be lodged within 12 months. Lodging the application and getting it approved can be a fraught process, particularly as applicants need to provide an acceptable housing plan. Numerous advocates have noted that the accommodation plan is the biggest hurdle and is where the processing of our applications stall. The plan incurs significant costs prior to family arriving, some of which are defrayed by sector organisations and faith-based groups. In recent years, for example, Refugee Family Reunification Trust has put forward \$100,000 to underwrite 24 refugee families’ rent and bond.

It is also important to not confuse the RFSC with other tools that family can use to reunite. The most similar category to RFSC is the Refugee Quota Family Reunification (RQFR) residence category which is a subcategory of up to 300 protection places within the annual refugee quota

164 Refugee Council of Australia (2019). Family Reunion Issues for Refugees. <https://www.refugeecouncil.org.au/wp-content/uploads/2019/05/Family-Reunion-Issues-for-Refugees-2019.docx>

165 International Organisation for Migration (2020). Services for Global Special Humanitarian Visa (Subclass 202) holders. <https://australia.iom.int/no-interest-loan-scheme-shp-travel-australia>

166 Dunstan, S., Dibley, R. & Shorland, P. (2004). Refugee voices: A journey towards resettlement. In *Social Policy, Research and Evaluation Conference*. Wellington: New Zealand Immigration Service.

167 Immigration New Zealand (2021). Information about: Refugee Family Support Resident Visa. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/refugee-family-support-resident-visa>

168 New Zealand Government (2022). Applications Now Open For New Work Visa Holders From Offshore. *Scoop*. 4 July. <https://www.scoop.co.nz/stories/PA2207/S00018/applications-now-open-for-new-work-visa-holders-from-offshore.htm>

169 *Afghan Nationals V The Minister For Immigration* (2021). Nzhc 3154. 22 November 2021. <https://communitylaw.org.nz/wp-content/uploads/2021/11/Afghan-Nationals-v-Minister-for-Immigration.pdf> Also, see Phil Pennington (2021). Immigration ‘inconsistent’ in visas for Afghans resettling in New Zealand - law group. *Radio New Zealand*. 7 November. <https://www.rnz.co.nz/news/national/455140/immigration-inconsistent-in-visas-for-afghans-resettling-in-new-zealand-law-group>; Community Law (2021). High Court Win For Community Law Afghan Nationals Clients. Website. 26 November. <https://communitylaw.org.nz/high-court-win-for-community-law-afghan-nationals-clients>

170 Ministry for Business, Innovation and Employment (2021). Report back on the policy proposals to implement the “Improving the System for Refugee Family Reunification” initiative and to drawdown the tagged contingency. <https://www.mbie.govt.nz/dmsdocument/18717-report-back-on-the-policy-proposals-to-implement-the-improving-the-system-for-refugee-family-reunification-initiative-and-to-drawdown-the-tagged-contingency-proactive-release-pdf>; Whyte, A. (2022). NZ to fulfil refugee quota, won’t make up 2.5K Covid shortfall. *1 News*. 3 August. <https://www.1news.co.nz/2022/08/03/nz-to-fulfil-refugee-quota-wont-make-up-25k-covid-shortfall>

(see section one).¹⁷¹ While the RFSC is open to all refugees and protected persons, the RQFR is only for those who came through the annual refugee resettlement quota. Access to these places is dependent on several factors, including family members notifying Immigration New Zealand of this family member upon arriving in Aotearoa New Zealand, and Immigration New Zealand's adjudication that the person is a suitable sponsor and that their family member will settle well. The RQFR places do not count against the 600 places in the RFSC. As with Tier One of the quota, the RQFR applies only to immediate family members, such as a partner or child. It does not apply to extended family such as aunts, uncles, siblings, cousins, grandparents or other relatives.¹⁷² Other humanitarian tools for the reunification of families include regular family sponsorship routes for skilled migrants, including the parent visa, and one-off categories such as those for Ukrainians in 2022¹⁷³ or for family of victims of the March 15 Attacks.¹⁷⁴

Legal background for refugee family reunification in New Zealand

Consistent with principles of international law, Immigration New Zealand introduced the RFSC in 2007, to improve how extended family members of refugees in New Zealand can access Permanent Residence.¹⁷⁵ This policy reflects the difficulty faced by family members of refugees to meet the eligibility requirements of normal immigration policy.¹⁷⁶ The establishment of the RFSC in 2007 replaced the Refugee Family Quota ballot where, every year, 300 people would be selected

from a "lottery" process.¹⁷⁷ This ballot, in turn, had replaced the much broader Humanitarian Category, leading the Human Rights Commission to note, in 2010, that the previous decade had seen reduced avenues for reunification and increased requirements on families as sponsors.¹⁷⁸

RFSC sponsors must register as either a Tier One or Tier Two sponsor before their family members can be invited to apply for a New Zealand resident visa. In Tier One, former refugees may sponsor "immediate family", defined as their "partner, parent, child, grandparent or sibling" provided that these individuals were declared during the refugee's initial offshore interview with Immigration New Zealand, though in practice, there are ways for people to be added afterwards.¹⁷⁹

Tier Two of the RFSC has a much wider scope for who is eligible – parent, adult sibling, adult child, or a grandparent as a legal guardian and that person's partner and dependent children – and does not require the sponsor to have no immediate family in New Zealand. Given the number of registrants for Tier One, Tier Two rarely opens and, when it does, is usually closed again after a few days. In the most recent case, it was open for only three days. Registrations are selected from the Tier One queue in the order they are entered into the system. If there are remaining places after all Tier One registrations have been selected, registrations from the Tier Two queue are selected.¹⁸⁰ If there were no new Tier One applications, it would still take more than ten years (at 600 people per year) for the current number of registered Tier Two people to all arrive in New Zealand.¹⁸¹

The application process is challenging, and almost all people require support – primarily from immigration lawyers or through Community Law, though some local Members of Parliament also do a significant amount of work – to fill out

171 Iain Lees-Galloway (2019). Three year Refugee Quota Programme (2019/20 to 2021/22). Office of the Minister of Immigration. 6 November. <https://www.mbie.govt.nz/assets/three-year-refugee-quota-programme-2019-20-to-2021-21.pdf>

172 Immigration New Zealand (2018). Operation Manual: S4.20 Refugee Quota Family Reunification Category. <https://www.immigration.govt.nz/opsmanual/#46521.htm>

173 Fafoi, K. (2022). Government offers shelter for around 4000 family members of Ukrainians in NZ. Beehive. 15 March. <https://www.beehive.govt.nz/release/government-offers-shelter-around-4000-family-members-ukrainians-nz>

174 Lees-Galloway, I. (2019). Establishment of a special permanent resident visa category for New Zealand-based families affected by the Christchurch terrorist. Office of the Immigration Minister/MBIE. <https://www.mbie.govt.nz/dmsdocument/5739-establishment-of-a-special-permanent-resident-visa-category-for-new-zealand-based-families-affected-by-the-christchurch-terror-attack>

175 Gruner, A. (2007). *New Zealand's refugee sector: Perspectives and developments, 1987–2010*. Department of Labour.

176 United Nations High Commissioner for Refugees (2018). Resettlement Handbook: Country Chapter: New Zealand.

177 Wellington Community Law (2011). A guide to refugee family reunification in New Zealand: assisting refugee families through the immigration process. <https://www.yumpu.com/en/document/read/40806157/a-guide-to-refugee-family-reunification-in-new-community-law>

178 Human Rights Commission (2010). Rights of Refugees. *Human Rights in New Zealand*. 337–349. https://www.hrc.co.nz/files/3914/2388/0522/HRNZ_10_rights_of_refugees.pdf

179 Immigration New Zealand (2016). *Operational Manual*. Wellington, S4.20. <https://www.immigration.govt.nz/opsmanual/#35439.htm>

180 Ibid.

181 Immigration New Zealand (2022). Refugee and Protection Statistics Pack. May. <https://www.immigration.govt.nz/documents/statistics/statistics-refugee-and-protection.pdf>

the applications. Each of these options have shortcomings including the cost of immigration lawyers and waitlists for Community Law. Established refugee communities are more likely to have experience and knowledge to help new arrivals with the process; smaller communities or isolated individuals find this process difficult. Community Law notes that there is significant advocacy needed over numerous years for an application to proceed through this system. Finally, there is obtaining original identity documents, birth and marriage certificates and police checks and then having them translated and couriered to New Zealand. This can be particularly challenging for those living in refugee camps or other displaced locations who have had to flee their homelands without documents.

Organisations

Red Cross and Red Crescent Movement

All Red Cross National Societies prioritise reconnecting asylum seekers and refugees to their family, as well as facilitating family reunification through practical assistance. The Red Cross Red Crescent Working Group on Family Reunification was established by the Red Cross European Union Office in 2018 as a tool to unify good practice on working with states to reunite families.¹⁸² The Working Group was one of the key submissions of the Red Cross European Union office to the Global Compact on Refugees. This work seeks to put the right to family at the centre of international discussions and best practice on integrating refugees into all societies.

In providing support to former refugees to settle well, the single greatest area of concern is the well-being of their families who are overseas or who may be missing. In 2003, the International Committee of the Red Cross (ICRC) put new emphasis on the importance of missing family members, especially on knowing what has happened to those who

are missing and facilitating reconnections.¹⁸³ These recommendations drew heavily from the obligations under international law, including the Geneva Convention. These recommendations state that it is the role of the ICRC and the Central Agency to “facilitate and organize family reunifications”.¹⁸⁴ To be reunited with living family members, and bury and mourn those who are dead, according to the ICRC, are essential elements of human dignity.

A report from Red Cross European Union describes the wide range of European Red Cross National Societies’ work across multiple streams that contribute to refugee family reunification. This support straddles advocacy and assistance, and can be as simple as providing information and referrals. At the more complex end of the spectrum, many National Societies offer litigation assistance, integration support and cross-border liaising with a range of external organisations.¹⁸⁵ A baseline, key mechanism for reuniting families is the Restoring Family Links programme utilising all three components of the Movement.¹⁸⁶ For example, the British Red Cross helps both in identifying where missing family members are and then in collecting the necessary documentation for reunification. Similarly, the French Red Cross takes a holistic approach that includes everything the British do, but goes as far as organising embassy appointments in countries where family members are located.¹⁸⁷

Since 2016, New Zealand Red Cross’ Wellington team has provided a basic support programme to RFSC arrivals, paid from general funds (\$30,000). This work has involved collaboration with Refugee Family Reunification Trust, Community Law (Wellington and Hutt Valley), and Catholic Social Services. At a basic level, New Zealand Red Cross staff are well placed to offer support across

182 United Nations High Commissioner for Refugees (2019). RCRC Working Group on Family Reunification (FRWG). *Global Compact on Refugees*. <https://globalcompactrefugees.org/article/rcrc-working-group-family-reunification-frwg>

183 International Committee of the Red Cross (2003). *The Missing and their families: summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non Governmental Experts (19–21 February 2003)*. International Committee of the Red Cross Report. 21 February. https://www.icrc.org/en/doc/assets/files/other/themissing_conf_03.2003_en_90.pdf

184 Ibid.

185 European National Red Cross and Red Crescent Societies (2021). *PERCO handbook on Safe Avenues to access protection across Europe*. Platform for Red Cross and Red Crescent European Cooperation on Refugees, Asylum Seekers and Migrants. Forthcoming. See: <https://www.ifrc.org/perco>

186 International Committee of the Red Cross (2020). *Restoring Family Links Families Belong Together*. <https://www.icrc.org/en/publication/4435-restoring-family-links-families-belong-together>

187 Red Cross European Union (n.d.). *Bringing families together*. <https://redcross.eu/projects/bringing-families-together>

all settlement locations due to the similarities of this programme with that undertaken by quota refugees. New Zealand Red Cross support includes training and placing volunteers with newly arrived families and providing basic casework assessments and referrals.

The success of the Wellington programme is due to establishing processes and relationships with each agency and the ability to use New Zealand Red Cross volunteers to provide practical assistance. Internal evaluations of this programme pointed to significant improvements in outcomes, not only for RFSC arrivals but for the sponsors who welcomed them. External evaluations comparing pilot sponsors with non-pilot sponsors noted that, without this support, sponsors often abandon their own work or study to offer full-time assistance to new family members. For many of these cases, an expedited three-month process alongside sponsor support (compared to the normal six-month quota refugee Pathways to Settlement programme) felt adequate.

While families of refugees settle all over New Zealand, New Zealand Red Cross only provides coordinated, specialised assistance in Wellington. In all other settlement locations, New Zealand Red Cross staff refer families to local NGOs, but, even when those referrals are made, there are significant challenges due to a lack of specialised knowledge and support, such as interpreting services.

NGOs

RFSC is supported by different non-government agencies, which vary according to location. For example, in Wellington, the Refugee Family Reunification Trust (RFRT) works closely with other refugee agencies including New Zealand Red Cross (which includes mental health support through Refugee Trauma Recovery), English Language Partners, Community Law, and Changemakers Resettlement Forum. The RFRT helps pay for the costs of application fees, medical reports, airfares and other related expenses. In Christchurch, the Canterbury Refugee Resettlement and Resource Centre has provided practical settlement support for reunited families who were some of the few forced migration entrants into that city between 2011 and 2019.

RFRT is one of the most engaged groups in facilitating family reunification. Established in 2001, it has raised \$2.6 million to help pay for airfares, medical tests and other associated costs.¹⁸⁸ They have reunited 300 families and assisted in over 860 applications for help.¹⁸⁹ The RFRT has also played a significant guiding role in setting up other family reunification trusts, has assisted people outside of the Wellington region when no local provider could, and was instrumental in advocating for New Zealand Red Cross to establish settlement support in Wellington.

Other resettlement trusts operate in Auckland (Auckland Refugee Family Trust – established in 2010 and which has reunited 60 families as of 2020),¹⁹⁰ Waikato (Waikato Refugee Whanau Reunification Trust – established in 2012), and Manawatū (Manawatu Reuniting Refugees Family Trust – established in 2016). However, no other trusts operate at the scale of the Wellington-based RFRT. All these charities are totally volunteer run, which means that all donations go directly towards family reunification. In Christchurch, ReUnite Trust Canterbury was established in 2009, but was deregistered in 2017.

Community Law centres in Waikato, Christchurch, Otago, Nelson and Wellington provide free legal advice and services to RFSC sponsors and applicants. Community Law Wellington and Hutt Valley manage an ongoing caseload of around 50 applications and have a significant waitlist of eligible applicants. Community Law centres report that funding this work is an ongoing challenge, with some having to make the difficult decision to cease providing assistance due to a lack of sustainable funding. The funding coming into force in 2022 does not address these challenges.

In 2016, the Human Rights Commission reported on the question of refugee resettlement, including family reunification. It found that “[t]he reality of wider family interdependence needs to be acknowledged” and recommended “a generous,

188 Refugee Family Reunification Trust (2021). 2021/22 Newsletter. https://refugeefamilyreunificationtrust.org.nz/wp-content/uploads/2022/03/2021-RFRT_colour-web.pdf

189 ibid

190 Auckland Refugee Family Trust (2020). Who we have helped. <https://arft.org.nz/new-page;personal-communication>.

culturally sensitive and flexible definition of family should be applied”.¹⁹¹

3.3 What are the needs and gaps?

People arriving through the RSFC category are from refugee or refugee-like situations and require **support to resettle**. While a limited form of this support is due to begin in 2022, there remain questions around how well housing and applications will function without further attention, as well as who is included in the category, and how various parts of government understand and value the importance of family reunification.

Housing poses two significant challenges for people sponsoring their family members: the cost of providing housing for the required two years when family members arrive, as well as co-ordinating rental properties to satisfy the onerous and sometimes opaque requirements of the housing plans.

There is no support for former refugees in putting together their **applications** for family reunification and, even when the annual quota was 300 places, sector organisations such as Community Law reported an inability to provide consistent, accessible support across all locations. While there is more pro-bono legal work being conducted by large law firms in this area,

The RFSC appears to be a **low strategic priority** for the government. Reunification is not mentioned in the *New Zealand Refugee Resettlement Strategy (NZRRS) – Priorities to 2020* or in other resettlement documentation.¹⁹² Significantly, this indicates RFSC entrants have little or no planning for their well-being in the country, even though they are a humanitarian category and, mostly, recognised refugees or in refugee-like situations. The NZRRS is set to be refreshed in 2022–2023 and there is hope that,

along with convention refugees, those who arrive under the RFSC will be included.

The **backlog of places for Tier Two** is currently over 4000 places, all of whom made their first registration over five years ago. Given that these places are currently only processed when Tier One is empty, the length of time between registration, invitation to apply and actually bringing in family is likely to approach decades rather than years. A recent Immigration New Zealand seminar indicated this problem needed addressing, but proposed solutions have not yet been made public

615 places were lost due to COVID-19 border closures and have not been rolled over into the coming financial years. While it was noted in the November 2021 court ruling that Immigration New Zealand should not have stopped processing RFSC visas, the only outcome from the court ruling was the reopening of processing.¹⁹³ Places lost through other humanitarian migration categories, such as the Sāmoan Quota and Pacific Access Category were rolled over.

The **rights and entitlements of RFSC arrivals are not well understood** by many agencies, and RFSC arrivals frequently lack paperwork beyond one primary travel document. While the gains from the 2020 budget will help with pre-arrival costs, there is a need to advocate for family reunification to be better understood, supported and valued. Since RFSC arrivals do not transit through Te Āhuru Mōwai o Aotearoa, basic settlement necessities (such as opening bank accounts, obtaining IRD numbers, applying for MSD benefits, and liaising with Public Health authorities) can be hit and miss.

The **narrow definition of “family”** currently used by Immigration New Zealand effectively precludes some refugees from accessing this category. The reality of wider family interdependence needs to be acknowledged, especially given the relationships that can be forged during years of displacement.

Delays in processing mean that some **dependent children age out of eligibility** from when the application was made through to when the

191 Human Rights Commission (2016). *New Zealand Refugee Resettlement: Fulfilling its obligations as a good international citizen*. New Zealand Refugee Resettlement. https://www.hrc.co.nz/files/7414/5669/3524/2016_Quota_Review_-_HRC_.pdf

192 Immigration New Zealand (2018). *New Zealand Refugee Resettlement Strategy Priorities to 2020*. April. <https://www.immigration.govt.nz/documents/refugees/settlement-strategy-priorities-2020.pdf>

193 Community Law (2021). *High Court Win for Community Law Afghan Nationals Clients*. 26 November. <https://communitylaw.org.nz/high-court-win-for-community-law-afghan-nationals-clients/>

application is processed. Similarly, if those applying get married before their applications are processed they may no longer have the same eligibility to sponsor. These problems could be fixed by simply changing age eligibility so that it is determined by the date of application not processing.

Spotlight

2022 Special Ukraine Visa

In February 2022, Russia invaded Ukraine which led to a large-scale movement of Ukrainians into neighbouring countries. In March 2022, the New Zealand Government announced the creation of the 2022 Special Ukraine Visa which would allow New Zealand citizens and residents to sponsor up to 4,000 Ukrainian-born family members to come to New Zealand for up to two years.¹⁹⁴ While the sponsored people can work during this time, and children under 18 can study, the onus remains on the sponsors to provide the material support that will be required for the length of the visa.¹⁹⁵ Applications for the visa remain open until 14 March 2023 and anyone issued a visa has nine months to enter the country. It is not yet clear if there will be any clear pathway, other than claiming asylum, for those who arrive in this category to have their visas extended or gain a pathway to residency. The Immigration Minister has noted that if there is a deterioration in the conflict or if there are specific requests from UNHCR then he may revisit the policy.¹⁹⁶

Globally, there are at present 3.6 million Ukrainians registered for temporary protection programmes, while 5.8 million refugees have been registered across Europe, with the vast majority of these in neighbouring countries of Poland and the Russian Federation, and Germany.

¹⁹⁴ A July 2022 letter by MBIE noted that the visa is “uncapped”. At the time of going to press, this has not been clarified.

¹⁹⁵ Immigration New Zealand (2022). New temporary visa for family of Ukrainians in New Zealand. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/support-family/new-temporary-visa-for-family-of-ukrainians-in-new-zealand>

¹⁹⁶ Ham, K. (2022). Is Putin’s ‘illegal, immoral’ escalation enough to revisit Ukraine visa policy? *Stuff*. 22 September. <https://www.stuff.co.nz/national/300653232/is-putins-illegal-immoral-escalation-enough-to-revisit-ukraine-visa-policy>

The pace of refugees fleeing Ukraine in the immediate aftermath of the Russian invasion was much faster than other large-scale (two million-plus) displacements, including those from Venezuela (2017–18) and Afghanistan (1980–81).¹⁹⁷ After Ukrainian forces retook control of Kyiv, the number of Ukrainians returning to the country grew.¹⁹⁸ While many of those displaced to the Russian Federation are ethnically and linguistically Russian,¹⁹⁹ others have been evacuated against their will from now occupied territories.²⁰⁰ New Zealand Red Cross has sent two delegates to help respond to the conflict, including a security expert who worked with the wider IFRC.²⁰¹

As of September 2022, the New Zealand Government had granted 1008 visas and 342 people had arrived in the country.²⁰² While the government noted that this was the largest special humanitarian visa ever created in this country, Ukrainian advocates have also suggested it is unlikely to be filled unless the government departs from the current visa settings.²⁰³ Mahi for Ukraine, World Vision and a range of legal volunteers continue to advocate for improvements to the visa system, though Immigration New Zealand notes that these visas are prioritised for processing, and a review on the efficacy of

the system was due in June 2022.²⁰⁴ The creation of the special visa also led to questions about why the same opportunities were not afforded to other people fleeing war and conflict.²⁰⁵

Earlier this year Natalie Gyles, a New Zealand Red Cross delegate, assisted with the humanitarian response arising from the conflict in Ukraine.



Number of Ukrainian-born New Zealanders: **1,600**

Number of visas available: **4,000**

Conditions of visa: **two-year work visa, sponsored by a family member.**

197 Chodosh, S., Levitt, Z. and G Wezerek (2022). Ukraine's Refugee Crisis Is Unprecedented. The Response Must Be, Too. *New York Times*. 15 March. <https://www.nytimes.com/interactive/2022/03/15/opinion/ukraine-refugee-crisis.html>

198 United Nations High Commissioner for Refugees (2022). *Ukraine Data Portal*. 7 July. https://data.unhcr.org/en/situations/ukraine#_ga=2.154751992.1955337170.1658094616-1249440941.1649814961

199 Vorobyov, N. (2022). Ukrainians in Russia align with Moscow but lament refugee camps. *Al Jazeera*. 17 June. <https://www.aljazeera.com/news/2022/6/17/ukrainians-in-russia-blame-european-governments-for-ongoing-war>

200 Tsui, K. (2022). At least 900,000 Ukrainians 'forcibly deported' to Russia, U.S. says. *Washington Post*. 13 July. <https://www.washingtonpost.com/world/2022/07/13/ukraine-russia-forced-deportation-antony-blinken>

201 Moir, J. (2022). The lesser known dangers of providing aid to Ukraine. *Newsroom*. 12 September. <https://www.newsroom.co.nz/pro/the-lesser-known-dangers-of-providing-aid-to-ukraine>

202 Ham, K. (2022). Fear of 'setting a precedent' stops Government expanding Ukraine visa policy. *Stuff*. 21 September. <https://www.stuff.co.nz/national/300691462/fear-of-setting-a-precedent-stops-government-expanding-ukraine-visa-policy>

203 Ham, K. (2022). Ukrainian Kiwis slam cost, red tape as just 227 refugees arrive in NZ. *Stuff*. <https://www.stuff.co.nz/national/129192771/ukrainian-kiwis-slam-cost-red-tape-as-just-227-refugees-arrive-in-nz>

204 Ibid; Tan, L. (2022). Russia-Ukraine war: Refugees find NZ Government immigration visa process difficult, support limited. *New Zealand Herald*. 13 June. <https://www.nzherald.co.nz/russia-ukraine-war-refugees-find-nz-government-immigration-visa-process-difficult-support-limited/WFWFCHLNUF2NRGBX6YRMIUK65I>

205 Marlowe, J. (2022). Why has New Zealand welcomed Ukrainians fleeing war and not others trying to do the same? *The Conversation*. 21 March. <https://theconversation.com/why-has-new-zealand-welcomed-ukrainians-fleeing-war-and-not-others-trying-to-do-the-same-179467>

GENERAL MIGRATION CATEGORIES

Sabira Nouri featured in the Essential Kiwi Legends campaign put together by New Zealand Red Cross to celebrate the work of former refugees in the community.



Waikato District Health Board
REGISTERED NURSE

4. 501 DEPORTEES FROM AUSTRALIA

501 DEPORTEES TO AOTEAROA IN 2021:

190



SUCCESSFUL CHALLENGES TO DEPORTATIONS IN 2021:

61



In recent years, the Australian government has increased the number of mandatory visa cancellations that, in turn, lead to the deportation of those who previously held a visa. These powers have seen more than 2,544 people deported to New Zealand since the introduction of hard-line enforcement of the existing visa cancellation policies began in 2015.²⁰⁶ While the number of deportations has dropped since COVID-19 appeared in March 2020, removals do continue and were a major political and media focus for the 2021 Australian Federal Election.²⁰⁷

With the change of government in Australia at that election, new conversations began between the Australian Labor government and their New Zealand equivalent.²⁰⁸ In July 2022, there were signs of a new era where there would be fewer deportations of people with little connection to Aotearoa.

“

“We will have some common sense apply here where you have a circumstance where someone has lived their entire life, effectively, in Australia with no connection whatsoever to New Zealand.”

*Anthony Albanese,
Australian Prime Minister, July 2022.*

New Zealand Red Cross works with our partners across the Australia and the Pacific to ensure our team is aware of all emerging humanitarian issues.



²⁰⁶ One News (2022). Treatment of 501 deportees 'deeply unfair' - human rights lawyer. *One News*. 18 February. <https://www.1news.co.nz/2022/02/17/treatment-of-501-deportees-deeply-unfair-human-rights-lawyer/>

²⁰⁷ Biddle, D. (2020). 'A hell worse than prison': Deportee describes Australian detention centre. *Stuff*. <https://www.stuff.co.nz/national/119785003/a-hell-worse-than-prison-deportee-describes-australian-detention-centre>; Australian Government, (2020). Visa cancellation statistics. Department of Home Affairs. <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/visa-cancellation>

²⁰⁸ Daniel Hurst (2022). Albanese vows to reconsider Australia's deportations rules in olive branch to New Zealand. *The Guardian*. 10 June. <https://www.theguardian.com/australia-news/2022/jun/10/albanese-vows-to-reconsider-australias-deportations-rules-in-olive-branch-to-new-zealand>

4.1 The global context

As early as 2011, the United Nations Human Rights Committee condemned Australia's practice of deporting long-term residents, as a breach of international law.²⁰⁹ The committee found that these deportations, in this case of a man from Australia to Sweden, were a breach of International Covenant on Civil and Political Rights. Other countries who have adopted this approach, including the USA, have also drawn considerable criticism.²¹⁰

Under Australia's Migration Act (1958), a visa can be revoked (and consequently the person can be deported) under section 116 and section 501. Under section 501, cancellation occurs because the person does not meet the prescribed good character test; under section 116, cancellation can occur because the person poses a risk to the health, safety or good order of the Australian community, or to an individual within the Australian community. The more stringent enforcement of these aspects of Australia's migration legislation have led to an increase in the number of visa cancellations on character grounds and are mainly due to a new mandatory visa cancellation power, which is now applied to all foreign nationals in Australia.²¹¹

New Zealanders living in Australia, who fall within these provisions, can be deported with little notice (sometimes a matter of days) in a process that immigration lawyers are describing as "heart-breaking".²¹² One lawyer familiar with these cases stated, "I'd rather deal with a murder case than a visa cancellation, because deportation is a life sentence with no parole."²¹³ There are also concerns about the restrictive nature of the section 116 removals: those removed through this

only have seven days to appeal and they must pay AUS\$1,700. Appealing the section 501 cancellation is free and there are 28 days to file an appeal. Lawyers are also concerned that while the section 501 removal has a prescribed set of rules as to what constitutes good character, these are not in place for section 116 removals.²¹⁴

In January 2021, almost all the Christmas Island detention centres – where deportees are sent when awaiting appeals – were burnt down. Deportees had complained that they were kept in cells for 22 hours a day, received no medical or mental healthcare, and that the New Zealand government would not tolerate this treatment of their citizens from countries like China and Japan.²¹⁵

4.2 New Zealand context

In 2020, there were over 650,000 New Zealanders living in Australia, and 62,000 Australians living in New Zealand.²¹⁶ Between the 2013/14 and 2016/17 years – when the Migration Act was amended – the number of visa cancellations on character grounds increased by over 1,400 per cent. These cancellations were often for relatively minor convictions, such as dishonesty.²¹⁷ In the most recent year, the number of deported people to New Zealand has dramatically reduced, from 477 down to 190.²¹⁸

At least four New Zealanders have died while in detention, and at least two other deaths have

209 Human Rights Law Centre (2011). UN finds Australia violated international law in landmark case. 7 September. <https://www.hrlc.org.au/news/un-finds-australia-violated-international-law-in-landmark-case-on-rights-of-non-citizens-and-protection-of-families>

210 Mann, J. (2008). *Deported: A History of Forced Departures from Australia* by Glenn Nicholls. *Reviews in Australian Studies*, 3(5); Mount, M. (2018). Turn That Plane Around: The Pending Decision on the Deportation of Asylum Seekers. *Georgetown Immigration Law Journal*, 33, 149.

211 Department of Corrections (2019). *Returning Offenders: Frequently Asked Questions*. https://www.corrections.govt.nz/__data/assets/pdf_file/0003/28407/Returning_offenders_fact_sheet_January_2019.pdf

212 Biddle, D. (2020). *Kiwis caught out by law forcing deportation within days, Australian lawyer says*. *Stuff*. <https://www.stuff.co.nz/national/politics/119855692/kiwis-caught-out-by-law-forcing-deportation-within-days-australian-lawyer-says>

213 Ibid.

214 Biddle, D. (2020). *Kiwis caught out by law forcing deportation within days, Australian lawyer says*. *Stuff*. <https://www.stuff.co.nz/national/politics/119855692/kiwis-caught-out-by-law-forcing-deportation-within-days-australian-lawyer-says>

215 Andelane, A. & Prendergast, E. (2021). *Another riot breaks out at Australia's Christmas Island detention centre overnight advocate*. *Newshub*. 10 January. <https://www.newshub.co.nz/home/world/2021/01/another-riot-breaks-out-at-australia-s-christmas-island-detention-centre-overnight-advocate.html>

216 Clarke, M. (2020). *Jacinda Ardern to plead with Scott Morrison to stop deporting New Zealanders*. *ABC News*. <https://www.abc.net.au/news/2020-02-28/jacinda-ardern-to-plead-with-scott-morrison-for-change-of-heart/12008262>

217 New Zealand Police Association (2018). *Crime and Banishment*. <https://www.policeassn.org.nz/news/crime-and-banishment>

218 Australian Government (2022). *Visa cancellation statistics*. Department of Home Affairs. <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/visa-cancellation>

been linked to deportation,²¹⁹ while there is also significant self-harm among many of the broader cohort of detainees.²²⁰ New Zealand Prime Minister Jacinda Ardern said the deportation laws were having a “corrosive effect” on the country’s relationship with Australia.²²¹ In response, some media commentators noted that while these deportations are causing trouble in the relationship, New Zealand is equally guilty since 1,040 Pacific Island nationals were deported in the previous five years.²²²

As of February 2022, there were 1,534 people in detention centres in Australia, including 300 New Zealanders.²²³ Of those, 279 were men and 21 were women. Australian Human Rights Commissioner Edward Santow said New Zealand currently makes up the second-largest demographic within Australian immigration centres.²²⁴ On average, deportees are held for 496 days in immigration centres; this compares with the average in Canada of just over 12 days.²²⁵ Twenty per cent of people in immigration

centres have been held for over 730 days.²²⁶ New Zealanders of Māori and Pacific descent account for more than 60 per cent of total cases.²²⁷

Feedback from refugee background communities indicates that there is a small but significant cohort of people from their communities who have been deported as part of this system. As a part of smaller communities in New Zealand, the stigma associated with deportation for former refugees can be greater than for the general population. Community members noted a crisis point for returnees around poor mental health, which sometimes led to suicide.

Deportees have also featured in discussions about whether Australia’s policy had led to a substantial reported increase in gang numbers and sizes.²²⁸ While the link to an increase in gang numbers was questioned,²²⁹ the number of deportees involved in gangs was also shown to be low.²³⁰ However, New Zealand Police remain concerned as recent statistics have noted – unrelated to gang activity – that almost half of those deported to New Zealand have reoffended.²³¹

While the New Zealand Labour Party was in opposition, MP Kelvin Davis was outspoken in supporting deportees, including visiting Christmas Island.²³² In 2020, Prime Minister Jacinda Ardern argued that people who were only nominally New Zealanders – who had Australian family and accents and had lived there for ten

219 Hasham, N. (2016). New Zealand detainee dies inside Villawood detention centre after apparent altercation. *Sydney Morning Herald*. April 5. <https://www.smh.com.au/politics/federal/new-zealand-detainee-dies-inside-villawood-detention-centre-after-apparent-altercation-20160405-gnyii7.html>; McGowan, M. (2020). New Zealand man dies while detained in Melbourne immigration detention centre. *The Guardian*. 10 August. <https://www.theguardian.com/australia-news/2020/aug/10/new-zealand-man-dies-while-detained-in-melbourne-immigration-detention-centre>; Pickering, S. & Weber L. (2020). Australian Border Deaths Database. Border Crossing Observatory at Monash University. <https://www.monash.edu/arts/border-crossing-observatory/research-agenda/australian-border-deaths-database>; One News (2021). Man killed in Papatoetoe police stand-off was deported from Australia in 2017. *TVNZ*. 26 February. <https://www.tvnz.co.nz/one-news/new-zealand/man-killed-in-papatoetoe-police-stand-off-deported-australia-2017>; One News (2022). NZ woman reportedly dies in Australian detention centre. *One News*. 23 May. <https://www.1news.co.nz/2022/05/23/nz-woman-reportedly-dies-in-australian-detention-centre>

220 Theunissen, M. (2019). Man dies at detention centre where New Zealanders are on hunger protest. *Radio New Zealand*. 26 January. <https://www.rnz.co.nz/news/world/380970/man-dies-at-detention-centre-where-new-zealanders-are-on-hunger-protest>

221 Ainge Roy, E. (2019). ‘I was petrified’: the New Zealanders deported from Australia despite decades working there. *Stuff*. <https://www.theguardian.com/australia-news/2019/sep/08/i-was-petrified-the-new-zealanders-deported-from-australia-despite-decades-working-there>

222 Du Plessis-Allan, H. (2021). Heather du Plessis-Allan: Standing up to Australia what’s Jacinda Ardern’s game here? *New Zealand Herald*. 20 February. <https://www.nzherald.co.nz/nz/politics/heather-du-plessis-allan-standing-up-to-australia-whats-jacinda-arderns-game-here/YPGP2Z4NI6BOBSXJHMCIZARWWW>

223 Refugee Council of Australia (2022). Statistics on people in detention in Australia: Where do they come from? 24 May. <https://www.refugeecouncil.org.au/detention-australia-statistics/9>

224 One News (2020). Humans Rights Commissioner concerned as Australia looks to expand New Zealand deportation policy even further. *TVNZ*. <https://www.tvnz.co.nz/one-news/new-zealand/humans-rights-commissioner-concerned-australia-looks-expand-new-zealand-deportation-policy-even-further>

225 Ibid.

226 Powell, R. (2019). Questions of fairness: New Zealander experiences of s501 and the case of Shane Martin. *Overland*, 6 June 2019.

227 O’Regan, S. (2018). Why New Zealand Is Furious About Australia’s Deportation Policy. *New York Times*. 3 July. <https://www.nytimes.com/2018/07/03/world/asia/new-zealand-australia-deportations.html>; Mat Henderson (2022). Once were one colony: 501 deportations and the history of Māori in Australia. *The Spinoff*. 7 June. <https://thespinoff.co.nz/atea/07-06-2022/once-were-one-colony-501-deportations-and-the-history-of-maori-in-australia>

228 Craig Kapitand and Duggy Henry (2021). Auckland shootings: Australian 501 policy blamed for rise in gang violence. *NZ Herald*. 27 December. <https://www.nzherald.co.nz/nz/crime/auckland-shootings-australian-501-policy-blamed-for-rise-in-gang-violence/EQ26GY2ZJDUPGPUHVL4HL2YM4>

229 Gilbert, J. (2021). Gangs: Shonky stats lead to shonky responses. *Newsroom*. 16 February. <https://www.newsroom.co.nz/gangs-shonky-stats-and-shonky-responses>

230 Lynch, J. (2021). Australian deportees make up minuscule amount of New Zealand’s gang explosion. *NewsHub*. 21 February. <https://www.newshub.co.nz/home/politics/2021/02/australian-deportees-make-up-minuscule-amount-of-new-zealand-s-gang-explosion.html>

231 Trevett, C. and A. Pearse (2022). Police reports reveal fear of 501 deportee overload and risk to public safety. *NZ Herald*. 24 April. <https://www.nzherald.co.nz/nz/police-reports-reveal-fear-of-501-deportee-overload-and-risk-to-public-safety/MBFXGFDIBRB47CKIUVNVAE2B7I>

232 Radio New Zealand (2015). Kelvin Davis arrives at Christmas Island. 17 October. <https://www.rnz.co.nz/news/political/287269/kelvin-davis-arrives-at-christmas-island>

years²³³ – should not be deported and that a reciprocal policy might be put in place.²³⁴ The recent change of government in Australia may see only the most extreme cases deported. In contrast, the previous²³⁵ Prime Minister of New Zealand, Jacinda Ardern and the new Prime Minister of Australia, Anthony Albanese, met in June 2022 to discuss the 501 policy. While there was to be no halt in deportations, there is likely to be more leeway on who is deported, based on their degree of connection to Australia or lack of connection to New Zealand.²³⁶

Legal background for Australian returnees in New Zealand

The Returning Offenders (Management and Information) Act (ROMI) was passed under urgency by the New Zealand government in 2015. It was passed in response to an Australian law change that made non-Australian citizens liable to have their visas cancelled if they were sentenced to 12 months' imprisonment or more. During 2015, the number of offenders returning to New Zealand rose from five per month to 25 per month. In the first 18 months of the Act's operation, 625 offenders returned to New Zealand. Most (98 per cent) came from Australia (while 12 came from the USA, two from Thailand and one from the United Kingdom).

The Act places two main burdens on deportees: there are requirements to submit certain information and data; and deportees are subject to supervision on arriving in New Zealand. The ROMI Act affects returning offenders, that is, people who have been convicted overseas of an offence that would be an imprisonable offence in New Zealand. As their conviction has made them liable for deportation or removal, they have

been deported to New Zealand. The Act enables the New Zealand Police to obtain information from returning offenders, including their name, address, date of birth, photograph and fingerprints. In certain cases, the police may also obtain a DNA sample from a returning offender.²³⁷

The ROMI Act established a supervision regime for returning prisoners. Returning prisoners are included in the definition of returning offenders: people who were sentenced to more than one year in prison or to a number of sentences that total more than one year, and who return to New Zealand within six months after their release. This regime mirrors the situation for people released from New Zealand prisons and includes the imposition of standard and special conditions under the Sentencing Act 2002 and the Parole Act 2002.

Under section 32, some offenders who have returned more than six months after being released from custody may also be subject to supervision conditions. A court must be satisfied that conditions are necessary to facilitate the person's rehabilitation and reintegration or to reduce the risk of reoffending. In September 2019, a government review of the ROMI Act reported that it was generally working as intended. Only one minor recommendation was made to improve the operation of the Act.

Organisations

Red Cross and Red Crescent Movement

Australian returnees are of interest to both the International Red Cross and Red Crescent Movement and the New Zealand and Australian National Societies as they experience humanitarian challenges as part of a migration journey. These challenges include the forced repatriation of non-citizens from Australia to New Zealand, as well as the integration and legal challenges that arise for returnees in New Zealand.

New Zealand Red Cross has received a small number of requests from Australian Red Cross to provide support to New Zealand returnees that

233 Keyzer, P. & Martin, D. (2019). No, Peter Dutton. Most deported Kiwis aren't paedophiles and you're hurting our relationship with NZ. *The Conversation*. 24 July. <https://theconversation.com/no-peter-dutton-most-deported-kiwis-arent-paedophiles-and-youre-hurting-our-relationship-with-nz-120655>

234 One News (2020b). 'Deport Kiwis but keep Australians' Jacinda Ardern's fierce message about Australia's deportation policy. *TVNZ*. <https://www.tvnz.co.nz/one-news/new-zealand/deport-kiwis-but-keep-australians-jacinda-arderns-fierce-message-australia-s-deportation-policy>

235 Audrey Young, (2020). The Australian election – and what it means for NZ. *NZ Herald*. 10 April. <https://www.nzherald.co.nz/nz/the-australian-election-what-it-means-for-nz/YWL172AS6KCJZQLIIMY2FBMD2M>

236 Daniel Hurst (2022). Albanese vows to reconsider Australia's deportations rules in olive branch to New Zealand. *The Guardian*. 10 June. <https://www.theguardian.com/australia-news/2022/jun/10/albanese-vows-to-reconsider-australias-deportations-rules-in-olive-branch-to-new-zealand>

237 Powell, R. (2020). Submission to the Working Group on Private Military and Security Companies in Immigration Enforcement. *Border Crossing Observatory*. 11 July. <https://www.ohchr.org/Documents/Issues/Mercenaries/WG/ImmigrationAndBorder/powell-submission.pdf>

Australian Red Cross has been supporting. Where possible, New Zealand Red Cross' Migration team has provided referral information for Australian returnees. While this group of deported New Zealanders has often been featured in the media, there is little publicly known about them in Aotearoa, including the groups providing support to them beyond basic government services.²³⁸

The Movement's role in monitoring detention could cross over with this issue. Further exploration would be required if there were areas of detention monitoring that could be engaged with, such as the treatment of deported nationals and/or advocacy around these issues.

NGOs, advocates and prisoners

Te Pā (formerly, the Prisoners Aid and Rehabilitation Society, PARS) supports deportees with criminal histories and domestic prisoners, including those deported from Australia to New Zealand.²³⁹ Te Pā has worked over three years to transform into a kaupapa Māori provider of services to ex-prisoners, including deportees. Between 2017 and 2018, Te Pā assisted 221 deportees, which was nearly double that of the previous year. Te Pā Chief Executive Tui Ah Loo said many of the deportees have no family or support networks and need help with basic tasks, and that there is a greater risk of reoffending.²⁴⁰ As Te Pā is funded in part by the Department of Corrections, there remains a lack of independent advocacy on this issue.

A range of groups have been seeking more extensive examination of any breaches of human rights of the deportees. The Human Rights Commissions in Australia and New Zealand are active in this space. The Australian Commissioner, Edward Santow, voiced concern about the "very strict" current rules being extended further.²⁴¹ The New Zealand Human Rights Commission, working

with Community Law, petitioned parliament to take the breach of human rights to the United Nations.²⁴² Community Law have recently argued that 501s should receive settlement support that is similar to that provided to quota refugees.²⁴³ Mathew Tukaki of the National Māori Authority, has called for an immediate inquiry into the treatment of the people in detention centres.²⁴⁴

Monash University research initiative Border Crossing Observatory, led by Rebecca Powell, made submissions against this Bill and is currently conducting a research project entitled "Balancing risk and human rights in the deportation of convicted non-citizens from Australia to New Zealand." Part of this work considers the role of private prisoner providers and other businesses that work with deportees.²⁴⁵ Powell notes the role of a range of private security companies and airlines in facilitating the detention and removal of New Zealanders in Australia. Serco employees' prolonged physical abuse of detainees in offshore detention of asylum seekers on Nauru and Manus Islands has been of particular note in recent inquiries.²⁴⁶

Deportees (such as Adrian Maere) and their advocates are conducting hui to discuss the deportation rules with both New Zealand's and Australia's Human Rights Commissions and immigration lawyers.²⁴⁷ Iwi n Aus, affiliated to Morunga Migration, has been advocating for deportees.²⁴⁸ Most of the assistance needs tend to be in appealing deportation and imprisonment while these appeals take place, rather than direct

238 See, for example, Work and Income pages directed to 501 deportees: Work and Income (2022). Deported to New Zealand. <https://www.workandincome.govt.nz/eligibility/lost-job/deported-to-new-zealand.html>

239 Prisca Bouchet and Nick Mayot (2021). Section 501. Māori Television. <https://www.maoritv.com/docos/section-501>

240 Varnham O'Regan, S. (2018). Why New Zealand Is Furious About Australia's Deportation Policy. *The New York Times*. <https://www.nytimes.com/2018/07/03/world/asia/new-zealand-australia-deportations.html>

241 One News (2020). Humans Rights Commissioner concerned as Australia looks to expand New Zealand deportation policy even further. *TVNZ*. <https://www.tvnz.co.nz/one-news/new-zealand/humans-rights-commissioner-concerned-australia-looks-expand-new-zealand-deportation-policy-even-further>

242 Human Rights Commission (2020). Parliament Petitioned to Take Australian Human Rights Abuses to UN. 27 February. <https://www.hrc.co.nz/news/parliament-petitioned-take-australian-human-rights-abuses-un>

243 Zane Small (2022). Impact of Australia's 'cruel' deportations and number of 501 crimes in New Zealand revealed. *Newshub*. 5 March. <https://www.newshub.co.nz/home/politics/2022/03/impact-of-australia-s-cruel-deportations-and-number-of-501-crimes-in-new-zealand-revealed.html>

244 Kelvin McDonald (2022). 501 deportees: Tukaki calls for Australian Human Rights inquiry. *Te Ao Māori News*. 31 March. <https://www.teaomaori.news/501-deportees-tukaki-calls-australianhumanrights-inquiry>

245 Powell, R. (2020). Submission to the Working Group on Private Military and Security Companies in Immigration Enforcement. *Border Crossing Observatory*. 11 July. <https://www.ohchr.org/Documents/Issues/Mercenaries/WG/ImmigrationAndBorder/powell-submission.pdf>

246 Ibid.

247 Biddle, D. (2020). 'A hell worse than prison': Deportee describes Australian detention centre. *Stuff*. <https://www.stuff.co.nz/national/119785003/a-hell-worse-than-prison-deportee-describes-australian-detention-centre>

248 Doran, M. (2020). New Zealand criminals to be deported after months in coronavirus lockdown. *ABC News*. <https://www.abc.net.au/news/2020-07-14/new-zealand-criminals-to-be-deported-after-months-in-coronavirus/12451688>

calls for assistance with settling into lives in New Zealand post-deportation. Most recently, Filipa Payne, from Iwi n Aus, and the affiliated Route 501 Facebook page, has told the media she will launch a class action lawsuit against the Australian government over their treatment of 501s.²⁴⁹

4.3 What are the needs and gaps?

For this topic, there is a significant **knowledge gap** in current, available information. Very little is known about the deportees currently being held in immigration centres after appealing the cancellation of their visas. While overrepresentation of Māori and Pasifika people has been acknowledged – accounting for 60 per cent of all deportees – further research is needed into particular cases to narrow this gap, such as that of the unpublished study by Keyzer and Martin.²⁵⁰

There are **few recognised social support networks** available to Australian deportees in New Zealand, a need that is further exacerbated by a lack of funds. Elizabeth Stanley, a professor in criminology at Victoria University, said rehabilitation and reintegration is exceptionally difficult for deportees and can be much harder than for the domestic prison population. New Zealand Police say more than 40 per cent of deportees reoffend and that “they lack every support that we know helps people move away from a life of crime.”²⁵¹

While PARS is involved, further research would be required to identify if **independent or additional support** should be provided. There are challenges for NGOs involved in this space especially if they are interpreted as being connected to the government. That view may be likely as

returnees report feeling they have been subject to extra punishment by being imprisoned, then placed in immigration detention,²⁵² and then required to undertake the parole-equivalent of six months supervision in New Zealand. Other cases have involved restrictions once deportees return to New Zealand including on issues such as entering licensed alcohol premises, which extend punishment beyond the original sentence in Australia.²⁵³

249 Block, G. (2021). 501s fight back: ‘Let’s hold the Australian Government accountable’. *Stuff*. 23 April. <https://www.stuff.co.nz/national/crime/300284356/501s-fight-back-lets-hold-the-australian-government-accountable>

250 For some preliminary research see: Keyzer, P. & Martin, D. (2019). No, Peter Dutton. Most deported Kiwis aren’t paedophiles and you’re hurting our relationship with NZ. *The Conversation*. 24 July. <https://theconversation.com/no-peter-dutton-most-deported-kiwis-arent-paedophiles-and-youre-hurting-our-relationship-with-nz-120655>

251 Ainge Roy, E. (2019). ‘I was petrified’: the New Zealanders deported from Australia despite decades working there. *Stuff*. <https://www.theguardian.com/australia-news/2019/sep/08/i-was-petrified-the-new-zealanders-deported-from-australia-despite-decades-working-there>

252 Keyzer, P. & Martin, D. (2019). No, Peter Dutton. Most deported Kiwis aren’t paedophiles and you’re hurting our relationship with NZ. *The Conversation*. 24 July. <https://theconversation.com/no-peter-dutton-most-deported-kiwis-arent-paedophiles-and-youre-hurting-our-relationship-with-nz-120655>

253 Leighton Keith (2022). 501 deportee wins right to drink in licensed premises with family and friends. *NZ Herald*. 25 January. <https://www.nzherald.co.nz/nz/501-deportee-wins-right-to-drink-in-licensed-premises-with-family-and-friends/EGEPFPYXLYRYKBOKADJS6QSRJE/>; Claudia McHardy (2021). NZ rightly decries Australia’s deportation policy. But let’s face up to our cruelty, too. *The Spinoff*. 3 June. <https://thespinoff.co.nz/politics/03-06-2021/nz-is-rightly-outraged-at-australias-deportation-policy-but-we-must-face-our-own-shame>

5. RECOGNISED SEASONAL EMPLOYER (RSE) SCHEME

VISAS AVAILABLE PER ANNUM:

19,000



MAIN NATIONALITIES OF WORKERS:

SĀMOA, TONGA, VANUATU



HORTICULTURE EXPORTS' NET VALUE:

\$6.65 BILLION



Over the past decade, the labour supply of Pacific island workers from the RSE scheme has become a core asset to the rapid growth of the New Zealand horticulture and viticulture industry. The RSE Scheme is a circular migration scheme developed by the New Zealand government based on the idea of a “triple win” for the destination state, origin state, and migrants. This mutually beneficial migration path, but which excludes any pathway to residency, has framed much of the debate about the success of the scheme. In recent years, however, a combination of increased costs for participants, a lack of acknowledgement of the skills of workers, increased demand for similar workers in Australia and detrimental effects for Pacific communities has led to questioning the shared benefits for all participants.

COVID-19 created substantial challenges for this scheme and brought the importance of these workers to the fore. At the same time, longstanding challenges around the lack of involvement or oversight of an organisation outside of business and government has raised concerns about options for RSE workers to speak out and get support outside the existing employer relationships. The 2022/23 season has had the number of workers increased from a cap of 16,000 to 19,000,²⁵⁴ after numerous media stories in about labour shortages.²⁵⁵ Just slightly prior to this announcement, there will also be a replication of the RSE scheme to create similar circular migration programmes by 2024 for the meat and seafood processing sector.²⁵⁶ Although there have been significant changes announced to other temporary worker visa programmes, neither the Immigration Reset or the Productivity Commission’s report into the long-term goals of migration for Aotearoa have made any significant recommendations or changes to the RSE scheme.

“

“Given my experience here, I have a very heavy heart as I feel like we have not been treated fairly or like human beings.”

“Matthew”, an RSE worker, interviewed by Stuff in August 2022.

The second half of 2020 saw the establishment of the Visitor Care Manaaki Manuhiri programme that supported foreign nationals trapped in New Zealand, including this RSE worker from Sāmoa who was based in the Bay of Plenty.



254 McConnell, G. (2022). Government allows a further 3000 seasonal workers to come to NZ. *Stuff*. 27 September. <https://www.stuff.co.nz/national/politics/130001546/government-allows-a-further-3000-seasonal-workers-to-come-to-nz>

255 See, for example, Bedford, C. (2022). New Zealand’s summer harvest woes. *DevPolicy blog*. 21 February. <https://devpolicy.org/new-zealands-summer-harvest-woes-20220221/>; McMullan, H. (2022) Covid, weather and labour shortage hits Hawke’s Bay apple growers. *One News*. 4 April. <https://www.1news.co.nz/2022/04/04/covid-weather-and-labour-shortage-hits-hawkes-bay-apple-growers/>; Radio New Zealand (2021). Central Otago orchards concerned they won’t have enough staff this season. 10 November. <https://www.rnz.co.nz/news/business/455354/central-otago-orchards-concerned-they-won-t-have-enough-staff-this-season>

256 Rovo, C. (2022). New Pacific programmes for migrant workers. *Stuff*. 23 August. <https://www.stuff.co.nz/pou-tiaki/129647270/new-pacific-programmes-for-migrant-workers>

5.1 The global context

The major aim of circular migration schemes, like the RSE scheme, is to fulfil labour requirements while adding to the international development programmes around the world. Circular migration can be defined as “repeated migration experiences involving more than one emigration and return.”²⁵⁷ When made into policy, these programmes have often been hailed as a triple win due to claims that three key actors (the destination state, origin state and migrants) all benefit.²⁵⁸ For example, the destination state gains a temporary labour supply, the origin state increases their economic and social capital without losing a migrant’s skills permanently, and the migrant earns an income – the majority of which is sent back to the country of origin as remittances – while continuing to have a home base.²⁵⁹ Recent analysis has sought to expand the concept of the triple win to also include the community and ancillary services, and to incorporate both wins and losses.²⁶⁰

Internationally there are concerns that, while such schemes reduce the social and political costs of migration, they are essentially reproducing temporary migration programmes that take advantage of low-skilled migrants. Similar to previous guestworker schemes around the world, the basic goal appears to be to “bring in labour but not people ... a way of recruiting labour to meet employer demands, while restricting worker rights and entitlements.”²⁶¹ As Collins and Bayliss note, nationalism is inherent in the way that temporary migration programmes, like the RSE scheme, operate.²⁶² The RSE scheme is particularly challenging as there are also the complicated dynamics of trying to avoid depopulation of Pacific islands as has been

experienced in those Pacific countries that have a free-association relationship with New Zealand.²⁶³

Australia’s rapidly growing Seasonal Worker Programme (SWP) for horticulture, agriculture, aquaculture, cotton, cane, accommodation and tourism labour from the Pacific is the most similar international scheme to that in New Zealand. The SWP scheme has only recently matched the prominence of RSE through a removal of the cap on employee numbers and rapid expansion.²⁶⁴ The scheme has also had growing pains, especially during COVID-19, with over 1,000 people leaving their contracts while in Australia – and half of those attempting to claim asylum.²⁶⁵ With a change in government and competition for influence in the Pacific, Australia has signalled their intent to have a broader Pacific focus to their migration policies with their Pacific Engagement Visa giving a path to residency for 3,000 people from the region,²⁶⁶ though the relative number of Pacific people in Australia remains comparatively small.²⁶⁷

Other schemes similar to New Zealand’s include Canada’s Seasonal Agricultural Workers Program which involved 46,500 migrants in 2019;²⁶⁸ Spain’s Integrated Management Programme for Seasonal Immigration for strawberry and citrus cultivation; and the United States’ H-2A Temporary Agricultural Workers.²⁶⁹ Issues have emerged in each scheme, most commonly founded on the lack of workers’ rights.²⁷⁰ The United Nations has

257 Castles, S. & Ozkul, D. (2014). Circular Migration: Triple win, or a new label for temporary migration? In *Global and Asian perspectives on international migration*. 27–49. Springer, Cham.

258 Ibid.

259 Bedford, C. (2013). Picking winners? New Zealand’s recognised seasonal employer (RSE) policy and its impacts on employers, Pacific workers and their island-based communities. PhD dissertation.

260 Underhill-Sem, Y., Marsters, E., Bedford, R., Naidu, W. & Friesen, W. (2018). Are There Only Winners? Labour Mobility for Sustainable Development in the Pacific. *New Zealand Institute of Pacific Research*.

261 Castles, S., & Ozkul, D. (2014). Circular Migration: Triple win, or a new label for temporary migration? In *Global and Asian perspectives on international migration*. Springer, Cham.

262 Collins, F. & Bayliss, T. (2020). The good migrant: Everyday nationalism and temporary migration management on New Zealand dairy farms. *Political Geography*, 80, 1–11.

263 For a case study on the Cook Islands see: Marsters, E. (2016). New Zealand, the Cook Islands, and Free Association. *Pacific Geographies*. 46. July/August. 21–5.

264 Lawton, H (2019). ‘Australia’s seasonal worker program now bigger than NZ’s’. *DevPolicy*. 25 July. <https://devpolicy.org/australias-seasonal-worker-program-now-bigger-than-nzs-20190725>

265 Howes, S. (2022) Absconding for asylum: Pacific temporary workers in Australia. *DevPolicy blog*. 4 February. <https://devpolicy.org/absconding-for-asylum-20220204>

266 Though this visa is not tied to the seasonal worker scheme. See Sharman, E. (2022). New government confirms its new Pacific migration policies. *DevPolicy blog*. 10 June. <https://devpolicy.org/new-government-confirms-its-new-pacific-migration-policies-20220610>

267 Köllner, P. (2022). Australia and New Zealand in the Pacific: the difference is migration policy. *DevPolicy blog*. 21 June. <https://devpolicy.org/australia-and-nz-in-the-pacific-difference-is-migration-policy-20220621/>

268 Sevunts, L. (2020). Ottawa wants to improve living conditions for temporary foreign workers. *Radio Canada International*. 29 October. <https://www.rcinet.ca/en/2020/10/29/ottawa-wants-to-improve-living-conditions-for-temporary-foreign-workers>

269 DevPolicy hosted a recent overview of four of these seasonal worker programmes, including the RSE scheme from New Zealand. DevPolicy (2022). Seasonal labour mobility programs in four countries: what can we learn? (Session 1). 21 April. <https://www.youtube.com/watch?v=AXith9r3EVE>

270 Castles, S. & Ozkul, D (2014). Circular Migration: Triple win, or a new label for temporary migration? In *Global and Asian perspectives on international migration*. Springer, Cham.

hailed the RSE as a model of best practice for low-skilled managed circular migration,²⁷¹ and there has also been praise from the World Bank and International Labour Organisation.²⁷² Researchers have also noted the potential of the RSE to lead to success around the Sustainable Development Goals of gender equality and labour rights in a safe work environment.²⁷³ However, a 2021 study by the International Labour Organisation has also noted the disparity in incomes across the schemes in Australasia, concluding that a lack of transparency on pay and piecemeal rates has made it difficult to ensure fairness across groups, regions and employers.²⁷⁴

Just prior to the COVID-19 disruption of the scheme, MBIE commissioned the *RSE Impact Study* which suggested that significant changes need to be implemented for ongoing benefits to also flow to Pacific nations.²⁷⁵ The study noted that policy makers pay more attention to worker well-being and financial returns and ensure more equal distribution of RSE benefits across and within Pacific countries, across gender and across the employer/employee relationship. The study also notes the potential risk to Pacific communities, especially in cases where workers participate in both New Zealand's RSE scheme and one of Australia's temporary migration programmes for the rest of the year.

5.2 New Zealand context

The initial goal of the RSE scheme was to support the horticulture and viticulture industries through the creation of a sustainable labour supply. As noted in the *RSE Impact Study*, the primary focus of the scheme was on New Zealand employers, industry and government, along with Pacific governments.²⁷⁶ This goal was to be achieved through improving the productivity of businesses, creating a steady circular flow of migrants that did not lead to permanent residency, and contributing to New Zealand's regional interests such as Pacific development, integration and stability.

The measured impact of the scheme on these goals, according to the most recent RSE Employer survey, included more productive workers, a more stable seasonal workforce, an opportunity to expand business, the ability to employ more New Zealanders, and reduced training, recruitment and pastoral care. The scheme is also increasing the per capita income, expenditure, savings and subjective well-being of workers with a recent remittances study showing each RSE worker's income flows through to support, on average, nine people.²⁷⁷ However, one study has also noted that the reliance on low-waged work has slowed down the adoption of innovative technologies in the sector and led to a dependency on RSE workers. This reliance is considered to have a wage-suppressing influence for other workers in the same job, and for the region in general.²⁷⁸ A 2021 report from the New Zealand Institute of Economic Research backed those claims, but also noted the difficulty in concluding on the labour market in these sectors that also include working holidaymakers and international students.²⁷⁹

271 Bedford, C. (2013). Picking winners? New Zealand's recognised seasonal employer (RSE) policy and its impacts on employers, Pacific workers and their island-based communities. PhD dissertation.

272 Nicholson, T. (2017). RSE a decade of success. *New Zealand Winegrower*. 11 September. <https://ruralnewsgroup.co.nz/winegrower/wg-general-news/rse-a-decade-of-success>

273 Underhill-Sem, Y., Marsters, E., Bedford, R., Naidu, W. & Friesen, W. (2018). Are There Only Winners? Labour Mobility for Sustainable Development in the Pacific. *New Zealand Institute of Pacific Research*.

274 International Labour Organization (2021). Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards: A summary report. 17 December. https://www.ilo.org/suva/publications/WCMS_832224/lang-en/index.htm

275 Nunns, H., Bedford, C. & Bedford, R. (2020). RSE Impact Report: Synthesis report. *Immigration New Zealand*, 22 May. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-synthesis-report.pdf>

276 Nunns, H., Bedford, C. & Bedford, R. (2020). RSE Impact Report: Synthesis report. *Immigration New Zealand*, 22 May. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-synthesis-report.pdf>

277 Ministry of Business, Innovation and Employment (2019a). RSE Employers Survey 2019. June. <https://www.immigration.govt.nz/documents/statistics/rse-2019-survey-report.pdf>

278 Yuan, S., Cain, T. & Spoonley, P. (2014). Temporary Migrants as Vulnerable Workers: A literature review. *Ministry of Business, Innovation and Employment report*. <https://www.massey.ac.nz/massey/fms/Research/ntom/Yuan%20Cain%20and%20Spoonley%202014.pdf?23A2F083283EE192CA49A530EA4B72F8>

279 Wilson, P. & Fry, J. (2021). Picking cherries: Evidence on the effects of temporary and seasonal migrants on the New Zealand economy. NZIER report to the New Zealand Productivity Commission. <https://www.nzier.org.nz/publications/picking-cherries-evidence-on-the-effects-of-temporary-and-seasonal-migrants-on-the-new-zealand-economy>

The Labour Inspectorate and Immigration New Zealand (both within MBIE) are the main governmental authorities presiding over the scheme in New Zealand, though their counterparts in the Pacific also set law, negotiate employment relations, lobby for greater access and prepare workers for departure. MBIE is responsible for ensuring employers are fulfilling their obligations to workers and are involved in any disputes. As discussed earlier, MFAT sees the RSE scheme as contributing towards development goals in the Pacific, as most recently established in the Pacific Reset policy of 2018.²⁸⁰ One key role within government is a mediator-like relationship manager position within MBIE. Their role is to help solve any problems between workers and employers and this function appears to be well regarded by employers.²⁸¹ MBIE's counterparts in the Pacific – for example, the Ministry of Commerce and Industry and Labour in Sāmoa – oversee the scheme from the sending country end of the process.

After the 2017 election of a Labour-led coalition government, more emphasis was placed on employers proactively working with the Ministry of Social Development (MSD) to ensure opportunities for employment were extended to New Zealand citizens and residents. Additional requirements were made that the expansion of the scheme did not adversely impact local housing stock. There are now examples of large employers providing purpose-built forms of accommodation for RSE workers.²⁸² Nevertheless, accommodation issues and potential exploitation of workers continue to dominate the public discourse on the RSE scheme.²⁸³ Some of these challenges have been particularly acute

due to more workers staying in New Zealand during winter.²⁸⁴

Successive governments have agreed to continue the growth of the scheme, but the most recent has supplemented the original goals with five further objectives:

- in the context of strong economic conditions, support industry growth by alleviating labour shortage
- acknowledge that industry has made some progress on challenges, while incentivising the industry to keep working (such as to build more purpose-built accommodation and to do more to employ New Zealanders)
- respond to calls for more certainty and transparency in the cap process
- manage the risks of exacerbating local housing pressures
- increase opportunities for Pacific workers and nations to benefit.²⁸⁵

While there are no tangible proposals care and transportation as possible future areas for RSE expansion.²⁸⁶

Further, the aim of reducing labour shortages in key industries is not only being met, but the stability of RSE labour supply has become a bedrock of the expansion of horticulture and viticulture industries.²⁸⁷ While these expansions are primarily based on private economic opportunities, the *RSE Impact Study* also notes that expanding this area of production allows the New Zealand economy to diversify away from agriculture as a high greenhouse gas producing use of land.²⁸⁸

280 Harvey, J. (2018). The Pacific Reset: The First Year. <https://www.mfat.govt.nz/assets/OIA/R-R-The-Pacific-reset-The-First-Year.PDF>

281 Curtin, R. (2019). Go-betweeners needed to troubleshoot Pacific labour mobility schemes. *DevPolicy*, 6 February. <https://devpolicy.org/go-betweeners-needed-troubleshoot-pacific-labour-mobility-schemes-20190206/>; Curtin, R. (2021). Solving problems quickly to safeguard the welfare of seasonal workers. *DevPolicy*, 29 January. <https://devpolicy.org/solving-problems-quickly-to-safeguard-the-welfare-of-seasonal-workers-20210129-1>

282 Eder, J. (2020). Opportunity knocks as seasonal workers vacate Blenheim properties. *Stuff*, 21 August. <https://www.stuff.co.nz/life-style/homed/real-estate/122411010/opportunity-knocks-as-seasonal-workers-vacate-blenheim-properties>

283 Johnston, K. (2022). Migrant workers living at school camp forced to endure 'unacceptable' conditions: Labour Inspectorate. *Stuff*, 27 September. <https://www.stuff.co.nz/business/129976215/migrant-workers-living-at-school-camp-forced-to-endure-unacceptable-conditions-labour-inspectorate>; Bedford, C. and R. Bedford. (2022) The RSE scheme: raising standards to change the narrative. *DevPolicy*, 12 August. <https://devpolicy.org/the-rse-scheme-raising-standards-to-change-the-narrative-20220913/>

284 Bedford, C. (2022). Winter measures: supporting RSE employers and workers. *DevPolicy*, 12 August. <https://devpolicy.org/winter-measures-supporting-rse-employers-and-workers-20220812/>

285 Ministry of Business, Innovation and Employment (2018). Final Cabinet Paper: Proposed immigration work programme to improve Pacific Migration policies. 15 May. <https://www.mbie.govt.nz/assets/897e7e39bc/final-cabinet-paper-proposed-immigration-work-programme-to-improve-pacific-migration-policies.pdf>

286 Samoa Global News (2019). RSE Scheme Builds a Sustainable Future Together. *Samoa Global News*, 25 July. <https://samoaglobalnews.com/rse-scheme-builds-a-sustainable-future-together>

287 Bedford, C. (2013). Picking winners? New Zealand's recognised seasonal employer (RSE) policy and its impacts on employers, Pacific workers and their island-based communities. PhD dissertation.

288 Nunn, H., C Bedford and R Bedford (2019). RSE Impact Report: New Zealand stream report. *Immigration New Zealand*, 10 July. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-new-zealand-stream-report.pdf>

The Ministry for Pacific Peoples made several recommendations for improving the RSE scheme as part of the Productivity Commission's call for submissions.²⁸⁹ The RSE scheme appeared to be well received by the Productivity Commission's report, and the success of the programme was highlighted and has led to more research.²⁹⁰ There were, however, no major recommendations in the report specifically linked to RSE workers.

During COVID-19, RSE workers were classified as essential employees, allowing them to continue to work while maintaining social distancing.²⁹¹ At the time of the nationwide lockdown on 20 March 2020, 10,989 RSE workers were in the country. By October that year, more news stories were coming through on potential shortages, including a focus on New Zealanders being unwilling and less able to do the work. For example, one prominent story noted that one employer "would have to employ three times as many Kiwis to match the productivity of his 40 Ni-Vanuatu workers".²⁹² Numerous news stories have focused on labour shortages as a result of border closures, and some of these have cited the exceptional capacity of RSE workers to pick fruit quickly, as well as to earn above what many of the other casual labourers are able to.²⁹³

While many RSE workers wanted to return home, for some, that was not possible due to border closures or lack of flights. Immigration New Zealand adjusted policies to allow RSE workers to change employers, and some were moved around New Zealand to work in other locations when work had finished in their original locations. There has been a large amount of media and social media attention on the issue, including:

- stories of shortages of workers²⁹⁴
- responses that the government intends to continue to focus on using New Zealand based labour²⁹⁵
- challenges to the wages paid, and the aim for the living wage in the sector²⁹⁶
- questions around the underlying relationship between Pacific labourers and New Zealand's exploitation of their work²⁹⁷
- Tonga's choice not to prioritise participating in the scheme for the 2021 season.²⁹⁸

By mid-2022, COVID-19 had entered all of the origin countries for the RSE scheme and two-way travel resumed in July 2022. In August 2022, new stories emerged about exploitation within the RSE scheme, with attention being paid to workers' rights by the Equal Employment Office Commissioner Saunoamaali'i Karanina Sumeo, who travelled to Blenheim to speak with workers. Despite these concerns, the cap on the scheme was increased in September from by 3,000 places to 19,000.²⁹⁹ It is also worth noting that while the previous cap was 16,000 people, the peak number of arrivals in a RSE season was 12,581 in 2018/19.³⁰⁰

289 Ministry for Pacific Peoples (2021). Submission on the Productivity Commission's Inquiry into Immigration Settings. 27 October. <https://www.productivity.govt.nz/assets/Submission-Documents/immigration-settings/Sub-076-Ministry-for-Pacific-Peoples.pdf>

290 New Zealand Productivity Commission. (2022). Immigration – Fit for the future. Final report. NZPC. April. www.productivity.govt.nz/inquiries/immigration-settings See also the comments from Richard Bedford in Motu (2022). How can Aotearoa New Zealand best approach immigration policy to boost productivity and wellbeing? 16 June. <https://www.motu.nz/about-us/public-policy-seminars/events/immigration>

291 Bedford, C. (2020). RSE COVID-19 responses, supporting seasonal workers in New Zealand. *DevPolicy*. 9 July. <https://devpolicy.org/rse-covid-19-responses-supporting-seasonal-workers-in-new-zealand-20200709-2>

292 Jamieson, D. & McKenzie-Mclean, J. (2020). Thousands of jobs go begging because unemployed Kiwis won't take them. *Stuff*. 17 October. <https://www.stuff.co.nz/business/industries/123055187/thousands-of-jobs-go-begging-because-unemployed-kiwis-wont-take-them>

293 Gunn, A. (2022). Chasing the dream of \$60 per hour. *The Spinoff*. 7 July. <https://thespinoff.co.nz/business/07-07-2022/chasing-the-dream-of-60-per-hour>

294 See, for example, Fuller, P. (2021). Lack of seasonal workers puts squeeze on Wairarapa grape harvest. *Stuff*. 23 February. <https://www.stuff.co.nz/dominion-post/news/124318862/lack-of-seasonal-workers-puts-squeeze-on-wairarapa-grape-harvest>

295 Patterson, J. (2021). Migration will not return to pre-Covid levels when NZ border reopens, Immigration Minister warns. *Radio New Zealand*. 26 February. <https://www.rnz.co.nz/news/political/437205/migration-will-not-return-to-pre-covid-levels-when-nz-border-reopens-immigration-minister-warns>

296 Stuff (2021) Prime Minister keen to welcome back Pasifika for seasonal work. *Stuff*. 5 August. <https://www.stuff.co.nz/national/maori-tv/300375078/prime-minister-keen-to-welcome-back-pasifika-for-seasonal-work>; Hall, C. (2021). Want to earn at least \$22 an hour? Kiwifruit packhouses up rates. *Bay of Plenty Times*. 28 February. <https://www.nzherald.co.nz/bay-of-plenty-times/news/want-to-earn-at-least-22-an-hour-kiwifruit-packhouses-up-rates/VZ74VGSCE23ZXC6M5ROMF2XCJM>

297 Tuiburelevu, L. & Wagner-Hilliau, H. (2020). Pick your own damn fruit. *e-Tangata*. 1 November. <https://e-tangata.co.nz/comment-and-analysis/pick-your-own-damn-fruit>; Curtis, S. (2022) RSE workers take employer to court over wage deductions and other agreement concerns. *Hawke's Bay Today*. 1 July. <https://www.nzherald.co.nz/hawkes-bay-today/news/rse-workers-take-employer-to-court-over-wage-deductions-and-other-agreement-concerns/75WWODTY67ZVFZEE67XH2VVF7Y>

298 Hopgood, S. (2021). Tonga passes on latest RSE intake in NZ. *Radio New Zealand*. 2 February. <https://www.rnz.co.nz/international/pacific-news/435676/tonga-passes-on-latest-rse-intake-in-nz>

299 Immigration New Zealand (2022). Recognised Seasonal Employer Scheme cap increased to 19,000. 29 September. <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/recognised-seasonal-employer-scheme-cap-increased-to-19-000>

300 Immigration New Zealand (2022). Statistics for Recognised Seasonal Employer (RSE) Arrivals. <https://www.immigration.govt.nz/documents/statistics/statistics-rse-arrivals.pdf>

It is also worth considering the aims of the RSE scheme to ensure that workers do return to the Pacific, rather than staying on in New Zealand. One recent report stated that alongside the requirements on the workers themselves, MBIE has worked with Pacific communities to advise on consequences of people leaving their jobs in order to stay in New Zealand beyond the length of their visas. Dr Charlotte writes that “MBIE officials maintained that if diaspora groups had regular engagement with RSE workers, they might, by default, take on some of the responsibilities (and financial burden) associated with worker welfare, when the obligations to provide wellbeing support rest solely with the RSE employer.”³⁰¹ This intention means that the isolation of Pacific RSE workers from their communities is a feature of the scheme, rather than an unintended consequence. Any moves to better connect RSE workers to communities needs to contend with the scheme’s underlying aim for people not to form attachments outside of their work relationships.

Legal background for RSE

RSE workers can only be recruited by approved RSE employers who have been accredited by Immigration New Zealand (INZ). The scheme is not the product of legislation, but departmental policy. This means the Minister of Immigration can often adjust the scheme without passing legislation. One recent adjustment requiring legislative changes was a COVID-19 related directive in July 2020, based on section 61A(2)(b) of the Immigration Act 2009, to extend the visas of RSE workers beyond their deadlines.³⁰² It is likely that similar adjustments will continue to be made if RSE workers are unable to return home or if agreement is reached for them to stay for back-to-back seasons.

To be granted the status of a RSE, employers must be able to prove they are in a sound financial position, have robust human resource and workplace practices, and are committed to

employing New Zealanders.³⁰³ Once a business is registered as an RSE they need to submit an Approval To Recruit (ATR) application so they may begin hiring from overseas.³⁰⁴ The ATR sets minimum requirements for employers around duties to employees, such as guaranteed hours of work and pay rates, as well as to MBIE in the case of a breach of the agreement.

Employees must be recruited from a list of eligible Pacific countries unless granted special permission to hire from elsewhere. Those eligible states include Fiji, Kiribati, Nauru, Papua New Guinea, Sāmoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Workers are granted visas for a maximum of seven months in any 11-month period.³⁰⁵ Special permission can be granted to hire from elsewhere based on pre-existing relationships with employees from other countries and these are decided on a case-by-case basis. In recent years, this has seen a steady return stream of people from Thailand, Indonesia, Malaysia, Taiwan, India and the Philippines, though these numbers have not grown with the raised cap.

RSE workers make a visa application to Immigration New Zealand for a Recognised Seasonal Employer Limited Visa which must be supported by their intended employer. This application includes providing the written employment agreement which states the type of work and working conditions.³⁰⁶ Once employees are hired, their workplace is then required to provide a certain level of assistance which is known as pastoral care. This care includes transport to and from New Zealand, accommodation with suitable facilities, translation when necessary, access to medical insurance and personal banking, as well as

301 Bedford, C. (2022) Why absconding hasn't been a problem in New Zealand's RSE. *DevPolicy blog*. 18 March. <https://devpolicy.org/why-absconding-hasnt-been-a-problem-in-new-zealands-rse-20220318>

302 For the full text of the agreement, and the subsequent agreement to be signed by employers see: <https://www.immigration.govt.nz/documents/special-directions/special-direction-2013-grant-of-limited-visa-to-stranded-rse-workers.pdf>

303 For the current application guide for employers wanting to join the RSE scheme see here: <https://www.immigration.govt.nz/documents/forms-and-guides/inz1145.pdf>

304 For the current application form and requirements for the ATR part of the RSE scheme see here: <https://www.immigration.govt.nz/documents/forms-and-guides/inz1141.pdf>

305 Due to their distance from New Zealand and the cost of this transport, workers from Kiribati and Tuvalu can work for nine of 11 months. See the RSE overview from Immigration New Zealand: <https://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme>

306 For more information on the process for RSE Employer selection processes see <https://www.immigration.govt.nz/employ-migrants/hire-a-candidate/employer-criteria/recognised-seasonal-employer/apply-rse-status>

recreation and religious opportunities.³⁰⁷ Much of this assistance comes directly out of the employee's pay, and in combination with taxes of 10.5 per cent,³⁰⁸ has led to between 30 and 40 per cent of gross income remaining with employers and the New Zealand government.³⁰⁹

The most recent Special Direction to enable RSE workers to stay in New Zealand through to 31 October was passed in July 2022. At this point, 2,300 workers had been in New Zealand since 2019, passing their third winter in the country. None of these workers were eligible for the 2021 Residence Visa that was available to many who stayed through the COVID-19 pandemic years.³¹⁰

Organisations

In their recent systematic review of the RSE scheme, Nunns, Bedford and Bedford describe the importance of understanding the complex system that makes up the RSE scheme. They note the cultural, economic and situational differences between different Pacific island employees and the range of locations and work they may be employed in around New Zealand. The vast number of connections and contexts that inform the scheme led them to describe the RSE as a complex adaptive system. That observation meant that they were reluctant to describe any causal connections between policy and outcomes, preferring to indicate relationships between organisations, governments and other actors.

Red Cross Red Crescent Movement

A focus on migrant workers from the Pacific closely aligns with *ICRC Strategy 2030*, with the drivers influencing Red Cross service – climate change, migration and growing inequalities – all intersecting in the RSE sphere. Specifically, the International Federation of the Red Cross

and Red Crescent (IFRC) notes the importance of seasonal labour opportunities where other climate-related migrant schemes do not exist, citing New Zealand's labour migration agreements with Kiribati and Tuvalu.³¹¹ These aims have been bolstered by the involvement of New Zealand Red Cross in Visitor Care Manaaki Manuhiri support with RSE workers across the country and bolster the IFRC's aim to support the aspirations of migrants while also contributing to social inclusion.³¹²

During the delivery of Visitor Care Manaaki Manuhiri support in 2020, 267 applications were received from RSE employers representing 5,466 people. A specialised team was set up to work with RSE employers and employees. Food, healthcare and clothing assistance valued at over NZ\$3.89 million was delivered. One challenge in distributing this assistance was the requirement to go through employers. Visitor Care Manaaki Manuhiri teams also undertook site visits to ensure RSE workers had access to New Zealand Red Cross and to identify if they had any other needs or if assistance was required. New Zealand Red Cross' engagement with the RSE scheme through Visitor Care Manaaki Manuhiri built awareness of the potential risks of the scheme when problems arise and workers have limited access or awareness of independent advice and guidance separate to the employer relationship. In 2021, there were also discussions with the three main National Red Cross Societies in the Pacific regarding concerns about protection of RSE workers, the need to be aware of impact risks, as well as the opportunities the scheme provides for Pacific communities.

Industry and employers

Horticulture and viticulture industry exports were worth NZ\$6.65 billion to the New Zealand economy in 2020.³¹³ Industry expansion of the sector has been driven by growth in fresh

307 For more information of RSE employers rights and the obligations of employers, see Immigration New Zealand: <https://www.immigration.govt.nz/opsmanual/#34412.htm>

308 Inland Revenue Department (2010). Non-resident seasonal workers' tax rate. *RIS Pack Supplementary Order Paper No. 187 Taxation (GST and Remedial Matters) Bill*, 29 October. <https://taxpolicy.ird.govt.nz/publications/2010-ris-sop-187-gstrm-bill/non-resident-seasonal-workers-tax-rate>

309 Bedford, C., Bedford, R. & Nunns, H. (2020). RSE Impact Report: Pacific stream report. *Immigration New Zealand*, 12 May. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-pacific-stream-report.pdf>

310 Bedford, C. (2022). Winter measures: supporting RSE employers and workers. *DevPolicy*. 12 August. <https://devpolicy.org/winter-measures-supporting-rse-employers-and-workers-20220812>

311 International Federation of the Red Cross and Red Crescent (2018). Disasters and Displacement in a Changing Climate: The Role of Asia Pacific National Societies. <https://reliefweb.int/report/world/disasters-and-displacement-changing-climate-role-asia-pacific-national-societies>

312 International Federation of the Red Cross and Red Crescent (2018). Addressing the humanitarian consequences of labour migration and trafficking: The role of Asia Pacific National Societies. 19 June. <https://reliefweb.int/report/world/addressing-humanitarian-consequences-labour-migration-and-trafficking-role-asia-pacific>

313 New Zealand Horticulture (2021). Fresh Facts 2020. <https://www.freshfacts.co.nz/files/freshfacts-2020.pdf>

fruit production, a consolidation in ownership with many small holdings being bought out and foreign investment leading to significant expansion in planting.³¹⁴ These industry groups are represented by bodies such as the New Zealand Kiwifruit Growers, Summerfruit New Zealand and New Zealand Apples and Pears. Industry expansion has had important flow-on effects for the other businesses that service the industry, such as irrigation, construction, transport and agricultural services. Annual surveys by MBIE give an insight into the views of employers on the RSE scheme.³¹⁵

Employers regularly praise the scheme for helping boost productivity and meeting labour shortages. Employers can also group together to share costs and responsibility for the hiring period across crops and regions. The first way to group together is through a joint Approval to Recruit (ATR) which allows employers to submit a joint application to Immigration New Zealand. As with the RSE applications, there are requirements for employers to meet around accommodation, pastoral care and transport. The second way to group together is through a grower cooperative or member cooperative like Seasonal Solutions or Pick Hawke's Bay. These cooperatives are an umbrella for employers that take on responsibility for workers and then contract them out to employer-members in their region. The main benefit of these shared approaches is that cooperatives allow smaller employers to access workers for the periods they need, while splitting hiring and flight costs among hiring organisations.

Pacific island countries

As noted earlier, most RSE workers come from eight Pacific countries, with Vanuatu, Sāmoa and Tonga having the strongest representation. Each of these countries has a degree of control over how recruiting of RSE workers takes place. Most recently, Vanuatu and Sāmoa have attempted to reformulate how they select people for the programme, with both countries sharing concerns over the way the selection process

can be politicised.³¹⁶ The Vanuatu government has banned licensed recruiters and moved the process in-house to try to bring recruitment fees in-house and to improve outcomes for citizens on more remote islands.³¹⁷

NGOs, unions and community groups

Outside this basic ecosystem of organisations, numerous governmental and non-governmental groups can, and do, interact with RSE employees and employers, such as the Inland Revenue Department, Citizens Advice Bureau and churches. In addition, some unions have attempted to organise workers or become involved in cases of mistreatment. However, it is thought that some workers may be fearful of the repercussions of joining a union from either their employers or home governments, thus there is not a huge amount of involvement. Employment advisors have also noted how Pacific workers have missed out on the 2021 Residence Visa and have advocated for some longstanding RSE workers to be considered for residency.³¹⁸

Union groups with an interest in the RSE Scheme include the New Zealand Council of Trade Unions and the Central Amalgamated Workers Union. Smaller groups, but with a wider migrant-focused mandate, like the Migrant Workers Association, First Union/Unemig's network of migrant workers and the Migrant Workers Network, are also engaged more broadly in working against the exploitation of migrant workers. More work is underway by First Union's Pasefika FONTO to engage with RSE workers, alongside all workers from Pacific islands. Amalgamated Workers Union also emphasised the need to ban employers

314 Ibid.

315 Ministry of Business, Innovation and Employment (2019). 2019 RSE Survey. <https://www.immigration.govt.nz/documents/statistics/rse-2019-survey-report.pdf>

316 Lewis, L. (2022). Samoa PM looks to 'raise the quality' of RSE programme. Radio New Zealand. 17 June. <https://www.rnz.co.nz/international/pacific-news/469270/samoa-pm-looks-to-raise-the-quality-of-rse-programme>; Wade, J. (2020). Abolishing recruitment agents in Vanuatu: really? *DevPolicy*. 30 October. <https://devpolicy.org/abolishing-recruitment-agents-in-vanuatu-really-20201030-2>; Curtain, R. (2020) Reforms to improve Vanuatu's seasonal labour recruitment system. *DevPolicy*. 20 November. <https://devpolicy.org/reforms-to-improve-vanuatus-seasonal-labour-recruitment-system-20201120-2>

317 Curtain, R., & Howes, S. (2020). Throwing it all away? Vanuatu's abolition of licensed SWP and RSE agents. *DevPolicy*. 27 October. <https://devpolicy.org/throwing-it-all-away-vanuatus-abolition-of-licensed-swp-and-rse-agents-20201028>; McGarry, D. (2020). How many more workers can Vanuatu get on the next plane? *DevPolicy*. 29 October. <https://devpolicy.org/how-many-more-workers-can-vanuatu-get-on-the-next-plane-20201028-1>

318 Bonnett, G. (2022). Residence visas being offered to up to 5000 Pasifika after Covid-19 hiatus. *Radio New Zealand*. 16 June. <https://www.rnz.co.nz/news/national/469205/residence-visas-being-offered-to-up-to-5000-pasifika-after-covid-19-hiatus>

who exploited migrant labour, including placing workers in substandard accommodation.³¹⁹

Finally, some NGOs also work with RSE workers to improve development outcomes in the Pacific, notably Te Puke-based, Fruit of the Pacific, who have worked with ni-Vanuatu workers on projects as diverse as oral health education and fundraising around Cyclone Pam.

5.3 What are the needs and gaps?

Drawing from the documents, studies and reports, especially the in-depth *RSE Impact Study*, significant unmet needs have been identified. Of note from a humanitarian and Red Cross Movement perspective, is the lack of any large or well established NGOs operating in this space. While church connections offer some of the social and emotional support for workers, ultimately RSE workers seem defined by their employment relationship and this often determines the kinds of support they receive.

Pastoral care and support

New Zealand Red Cross engagement with RSE employers and employees during the COVID-19 affected 2020 season showed that there were acute problems with pastoral support for RSE workers when faced with **unforeseen challenges**. *Tihei Mauri Ora!*, a collaboration between Ngāti Kahungunu and the Hawke's Bay DHB, was set up to provide local mental health support during this period. There is, however, a need for this kind of culturally competent support to be extended to non-COVID-19 times and to larger population areas. This support is particularly effective when Pacific health workers can respond to the specific needs of people from the same linguistic and cultural communities.

There was also concern from Visitor Care Manaaki Manuhiri staff that COVID-19 disruptions would increase **pastoral care** needs for New Zealand workers (including making greater provisions for

their movements and accommodation, especially across ATR applicants with multiple employers) and that this might lead to a lack of resources to assist with RSE workers who remain in the country. Other staff from New Zealand Red Cross noted that some RSE communities had strong leaders who were able to ensure that issues were addressed; the challenge was in areas where this leadership was absent and problems would tend to linger and become exacerbated, rather than solved.

Independent non-governmental oversight and advocacy

One recurring concern is whether the government is **failing to protect workers** under the scheme. While there are relationship managers employed by MBIE, the challenges highlighted in the past year, including in the *RSE Impact Study*, indicate the potential for involvement of non-governmental oversight. While in opposition, Iain Lees-Galloway stated he believed the failures derived from “a lack of oversight by the labour inspectorate.” When the coalition government took power, Labour promised to double the amount of labour inspectors and introduced the Employment Relations Amendment Bill to “support good employment practices among RSE contractors” which includes the ability to unionise.³²⁰

There is also a sense from the *RSE Impact Study* that the design of the scheme as an employer-led programme has led to **deferral to employers** and industry bodies from MBIE and central government. In making their recommendations for changes to the system, the authors of the study repeatedly noted where recommendations to MBIE and the Ministry of Foreign Affairs and Trade (MFAT) would not be popular with “certain stakeholder groups” – these groups were inevitably New Zealand employers and industry bodies.³²¹ There has also been discussion, linked to the *RSE Impact Study*, that industry leaders may wish to create a gold-silver-bronze ranking system for RSEs and that this system would be influential

319 Chittock, N. (2022). RSE expansion: Union says employers should be shut out of scheme if they break rules. *Radio New Zealand*. 28 September. <https://www.rnz.co.nz/news/national/475605/rse-expansion-union-says-employers-should-be-shut-out-of-scheme-if-they-break-rules>

320 Sachdeva, S. (2017). RSE scheme set to expand despite oversight concerns. *Newsroom*. <https://www.newsroom.co.nz/2017/07/05/37520/rse-scheme-set-to-expand-despite-oversight-concerns>

321 Nunns, H., Bedford, C. & Bedford, R. (2020). RSE Impact Report: Synthesis report. *Immigration New Zealand*, 22 May. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-synthesis-report.pdf>

over increased allocations of workers under expanding employee numbers. The study notes that those rankings would be determined on a wide range of factors including pay, deductions, training and planting projections.³²², or funding of, an independent “watch-tank”, a watchdog combined with a think tank, was recently suggested as a solution to the RSE problems by a University of Waikato academic.³²³

Stronger engagement with local communities

While some workers return over many years, there is still a sense within many communities that they are hosting **transient workers** who have little place there. With the constantly expanding cap on numbers of participants, it is important to rethink the opportunities to engage larger numbers of people and establish enduring connections. As the *RSE Impact Study* notes, local communities rarely distinguish between RSE workers and other temporary members of their communities on other visas.

Of all the groups that RSE workers connect to, churches and marae have been the most important. These connections have led to **peer-to-peer support** in natural disaster response, for example fundraising for specific communities in Vanuatu after it was devastated by a cyclone.³²⁴ The damage to houses of RSE workers during the Tongan tsunami in 2022 showed how workers’ vulnerability is acutely present in the New Zealand communities, and indicates ways that more direct community aid could link to these disasters.³²⁵ On top of these charitable efforts, the dispersal of RSE workers across a range of Pacific nations means that the bottom-up benefit of remittances can immediately help in a way that

other funding rarely can.³²⁶ As Bailey and Ng Shiu note in their study of seasonal work as a response to natural disasters, workers are often encouraged to stay in their countries of employment and to send money home, rather than to return themselves.³²⁷

One other case offers interesting insights for possible future work in the **expanding iwi business** sphere: Morrison studied the interface between Tongan RSE workers and the only Māori RSE, Kono in Motueka. This interface appears promising due to similarities between Māori and Pacific worldviews, such as framing migration movements in terms of *kāinga* in two ways: the work as the production and provision of food, and the labour as the provision of food in the workers’ countries of origin.³²⁸ The possibilities of other non-Pākehā bases for pastoral care and connection was also suggested by New Zealand Red Cross Visitor Care Manaaki Manuhiri case workers in the Hawke’s Bay, who suggest the *fonofale* model of health would also incorporate more modes of well-being. These opportunities must also be seen alongside the desire from the government to keep some space between resident Pacific communities and RSE workers.³²⁹

Accommodation

As with the rest of New Zealand, the **rising cost and below-average quality of housing** is causing significant problems for the RSE scheme. Established rules around the need for better accommodation and for that accommodation not to contribute to the housing shortages in other parts of New Zealand has led to changes around the quality and type of accommodation offered.³³⁰ While some purpose-built housing

322 Ibid.

323 Fonseka, D. (2020). The ‘but’ in ‘least corrupt’. *Newsroom*. 7 September. <https://www.newsroom.co.nz/nz-must-guard-transparent-reputation>

324 Nunns, H., Bedford, C. & Bedford, R. (2020). RSE Impact Report: Synthesis report. *Immigration New Zealand*, 22 May. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-synthesis-report.pdf>

325 Hyde, S. (2022). Tonga tsunami: A dozen houses belonging to RSE workers in Hawke’s Bay destroyed, fears for families. *New Zealand Herald*. 19 January. <https://www.nzherald.co.nz/nz/tonga-tsunami-a-dozen-houses-belonging-to-rse-workers-in-hawkes-bay-destroyed-fears-for-families/5QQUNYVONRQJJIWCWWNA7S FQ64/>

326 Challenges remain in maximising the remittances that flow back to families. See, McDonald, J. (2021) ‘I could help more’: could two new transfer companies change the game for Pacific expats? *The Guardian*. 3 July. <https://www.theguardian.com/world/2021/jul/04/i-could-help-more-could-two-new-transfer-companies-change-the-game-for-pacific-ex-pats>

327 Bailey, R. & Ng Shiu, R. (2016). ‘New Responses to Natural Disasters through Seasonal Labour Mobility Programs’, *State, Society and Government in Melanesia: In Brief*, 12. <http://bellschool.anu.edu.au/sites/default/files/publications/attachments/2016-05/ib-2016-12-baileyngshiu.pdf>

328 Morrison, S. (2018). Ako ki he nofo ‘a Kāinga: A Case Study of Pastoral Care Between Wakatū/Kono and Recognised Seasonal Employment Workers. *A Handbook of Indigenous Education*.

329 See Bedford, C. (2022). Why absconding hasn’t been a problem in New Zealand’s RSE. *DevPolicy blog*. 18 March. <https://devpolicy.org/why-absconding-hasnt-been-a-problem-in-new-zealands-rse-20220318>

330 Bailey, R. (2018). Suitable accommodation for seasonal worker programs. *DevPolicy*. 13 December. <https://devpolicy.org/suitable-accommodation-for-seasonal-worker-programs>

is being constructed, there are still challenges involved in the cost and quality of dorm room-style accommodation. Given the acute nature of the housing crisis and the increases in numbers of RSE workers, even with attention from the government and large RSEs, accommodation is likely to remain an issue. RSE workers may receive more of the blame than is due for the housing shortages according to Bedford, Bedford and Nunns, who note that the visibility of RSE workers compared to New Zealanders and backpackers doing the same work may be the source of assumptions about the use of housing. They note the following percentages of RSE workers fulfilling seasonal labour requirements: Bay of Plenty (17 per cent) and Central Otago (15 per cent) – meaning that a large majority of workers in the sector are from outside the scheme.³³¹ The cost of housing is one of the ways that workers are paying more than might be deemed reasonable and, if Sector Agreements regulating the industry go ahead,³³² the government is likely to insist on benefits to RSE groups that can show an investment in housing for employees that is of a high quality at a reasonable price.

331 Bedford, C., Bedford, R. & Nunns, N. (2020). RSE Impact Report: Pacific stream report. *Immigration New Zealand*, 12 May. <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-pacific-stream-report.pdf>

332 Sector Agreements are industry wide agreements that provide an agreement between government and industry to ensure New Zealand citizens are given the best possible chance to be employed in the specific sector. Some more details can be found here: <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/changes-to-temporary-work-visas/employing-migrant-workers-under-sector-agreement>

Spotlight

Pacific Access Category and the Sāmoan Quota

As part of the international/humanitarian intake, 1,750 Pacific people are granted residency in New Zealand every year. Of these, 1,100 places a year are available to Sāmoan citizens, 250 each to Tongan and Fiji citizens and 75 for people from Kiribati and Tuvaluan citizens. Applicants must be aged between 18 and 45, but they can then sponsor dependent children. Unlike forced migration intakes like the refugee quota, applicants must have a basic level of English and a job offer (though the Pacific Quota Employer programme can assist with this).³³³

The ballot is usually vastly oversubscribed. For example, in the 2019 ballot, Sāmoans had one chance in 39 of being offered a place. In addition, being selected means that the applicant then has nine months to find a job and the process can be very difficult as people attempt to arrange their future across two countries.³³⁴ Recent work, commissioned by the Ministry of Business, Innovation and Employment (MBIE), has focused on the disjunct between expectations and the reality of everyday life in New Zealand, with a review of these processes being recently completed and published.³³⁵

While both ballots were suspended due to COVID-19, the lack of places within the 2021 Residency Visa for those from the Pacific led the Minister of Immigration to backdate these places so that the next ballot round will include

5,250 places.³³⁶ The newly elected Labor government in Australia announced it will create similar residency pathways: 3,000 places for the Pacific Engagement Visa. This has made some New Zealand commentators note the need for more attention on securing Pacific talent in New Zealand.³³⁷



The Red Cross Red Crescent Movement has relief supplies pre-positioned in the Pacific so they are prepared ahead of disasters.

333 Immigration New Zealand (2022). Samoan Quota Resident Visa. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/samoan-quota-scheme-resident-visa>; Immigration New Zealand (2022) Pacific Access Category Resident Visa. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/visa-factsheet/pacific-access-category-resident-visa>

334 Tolley, P. (2019). The Pacific Ballot - Ticket to a new life. Radio New Zealand. 23 June. <https://www.rnz.co.nz/national/programmes/insight/audio/2018700392/the-pacific-ballot-ticket-to-a-new-life>

335 Kantar (2019). Evaluation of the Samoan Quota and Pacific Access Category pre-settlement information pilot Phase 1 Report: Findings to inform development of resources. July. Report commissioned by the Ministry of Business, Innovation and Employment. <https://www.mbie.govt.nz/dmsdocument/11520-evaluation-of-the-samoan-quota-and-pacific-access-category-pre-settlement-information-pilot-phase-1-report>

336 Bonnett, G. (2022). Residence visas being offered to up to 5000 Pasifika after Covid-19 hiatus. *Radio New Zealand*. 16 June. <https://www.rnz.co.nz/news/national/469205/residence-visas-being-offered-to-up-to-5000-pasifika-after-covid-19-hiatus>

337 ibid; Kollner, P. (2022). Australia and New Zealand in the Pacific: the difference is migration policy. *DevPolicy*. 21 June. <https://devpolicy.org/australia-and-nz-in-the-pacific-difference-is-migration-policy-20220621>

6. TEMPORARY MIGRANT WORKERS



This section considers humanitarian issues for migrants to New Zealand who do not have permanent residency, particularly issues for workers on temporary visas. Those temporary visas may or may not have a path to residency – and permanent residency – but it is the specific vulnerabilities around the precarity of visa status that are of interest, along with the humanitarian needs that arise from these situations.

The past year has seen signals for what may be the most significant changes to temporary immigration in over a decade. These potential changes derive from the announced policy changes, indications of the direction of migration settings since the start of the COVID-19 pandemic, and reports from government commissions. This section also significantly overlaps with others already considered in this report. For example, section five on Recognised Seasonal Employer scheme workers while human trafficking and modern slavery are addressed in section nine.

“

“We’re encouraging people to stay for a lengthier period of time to renew their residencies or indeed to take out citizenship ... encourage residents to feel part of the country and actually commit to the country for the long term.”

*Dr Ganesh Nana,
Productivity Commission on their
review of Immigration Settings.³³⁸*

New Zealand Red Cross, working with the Department of Internal Affairs, led the Visitor Care Manaaki Manuhiri programme in 2020 to ensure Temporary Migrant Workers had access to basic needs during the COVID-19 pandemic.



338 Radio New Zealand (2022). Productivity Commission urges government to act strategically on immigration. Radio New Zealand. 31 May. <https://www.rnz.co.nz/news/national/468189/productivity-commission-urges-government-to-act-strategically-on-immigration>

6.1 The global context

There are an estimated 169 million migrant workers in the world, comprising roughly two-thirds of all international migrants.³³⁹ Oceania has highest proportion of international migrants, though in absolute numbers Asia and Europe both have around 30 per cent of the global population of migrants.³⁴⁰ While permanent migration flows remain relatively stable across OECD countries, temporary labour migration flows substantially increased in the decade from 2010 to 2019.³⁴¹ Though the COVID-19 response produced substantial drops in the movement of people and of new permanent residency for migrants, employment of foreign-born workers increased in the vast majority of countries of residency.³⁴²

A reliance on low-wage migrant workers is an almost universal theme in the present age. The International Organisation for Migration refers to these movements as a stepladder of opportunity where the predominant movement is from developing countries to countries with large economies. It is worth noting that it is the large size of the economies, which includes places like the Russian Federation and United Arab Emirates, rather than their overall wealth that IOM cites.³⁴³

Alongside these movements of low-wage workers is the constancy of exploitation which commonly takes the forms of wage theft, excessive recruitment fees, and unlawful contracting practices. Concurrently, issues of excessive working hours, unsafe working conditions, and unsuitable accommodation are also recognised.³⁴⁴ Unions and International NGOs

continue to highlight these challenges, though global labour standards are rarely enforced. The most recent, large-scale global focus has been on the treatment of migrant labourers, including when building football stadiums and related infrastructure in Qatar ahead of the 2022 Football World Cup.³⁴⁵

Further complexities and vulnerabilities for temporary visa holders came to light during the COVID-19 pandemic response, including safety, financial and legal concerns as people were stranded, lost jobs, and limited or no access to social services.³⁴⁶ Many migrants work in essential services, contributing meaningfully to host country pandemic responses, but they have also faced higher risks of infection and increased discrimination during this time.³⁴⁷ Of particular concern in a pandemic is the fact that many people on temporary work visas do not have automatic rights to healthcare.³⁴⁸

6.2 New Zealand context

Temporary migrants work across all industries in Aotearoa, but there are concentrations of workers across several main industries: agriculture, horticulture, hospitality, telecommunication, and construction. Traditionally many of these workers have come from Pacific islands, but increasingly employers recruit workers from India, China and the Philippines.³⁴⁹ Work visas are primarily granted under Employer-Assisted schemes, but a significant number are also granted as Family visas, Student or Post-study visas (see section six) and Working Holiday visas. A small number are also granted under the Recognised

339 McAuliffe, M. and A. Triandafyllidou (eds.), 2021. World Migration Report 2022. International Organization for Migration (IOM), Geneva. <https://publications.iom.int/books/world-migration-report-2022>

340 Ibid.

341 Organisation for Economic Co-operation and Development (2020). Executive Summary. In *International Migration Outlook*. <https://www.oecd-ilibrary.org/sites/ec98f531-en/index.html?itemId=/content/publication/ec98f531-en>

342 OECD (2021). International Migration Outlook 2021. 28 October. <https://www.oecd.org/migration/international-migration-outlook-1999124x.htm>

343 McAuliffe, M. and A. Triandafyllidou (eds.), 2021. World Migration Report 2022. International Organization for Migration (IOM), Geneva. <https://publications.iom.int/books/world-migration-report-2022>

344 Stringer, C. & Michailova S. (2019). *Understanding the exploitation of Temporary Migrant Workers: A Comparison of Australia, Canada, New Zealand and the United Kingdom*, p. 66. <https://www.mbie.govt.nz/dmsdocument/7110-understanding-the-exploitation-of-temporary-migrant-workers-a-comparison-of-australia-canada-new-zealand-and-the-united-kingdom>

345 The Guardian (2022). The Guardian view on Qatar's migrant workers: football owes them. The Guardian. 19 June. <https://www.theguardian.com/commentisfree/2022/jun/19/the-guardian-view-on-qatars-migrant-workers-football-owes-them>

346 Australian Red Cross (2020). *Covid-19 Impacts Us All*. <https://www.redcross.org.au/globalassets/cms/publications-research--reports/australian-red-cross-covid-19-tempvisa-report-web.pdf>

347 United Nations News (2020). Uncertain future for migrant workers, in a post-pandemic world. <https://news.un.org/en/story/2020/09/1072562>

348 Collins, F. (2020). Caring for 300,000 temporary migrants in New Zealand is a crucial missing link in our coronavirus response. <https://www.waikato.ac.nz/news-opinion/media/2020/caring-for-300000-temporary-migrants-in-new-zealand-is-a-crucial-missing-link-in-our-coronavirus-response>

349 Stringer, C. & Michailova, S. (2019). *Understanding the exploitation of Temporary Migrant Workers: A Comparison of Australia, Canada, New Zealand and the United Kingdom*. <https://www.mbie.govt.nz/dmsdocument/7110-understanding-the-exploitation-of-temporary-migrant-workers-a-comparison-of-australia-canada-new-zealand-and-the-united-kingdom>

Seasonal Employer (RSE) scheme and for other specific circumstances, such as on humanitarian protection grounds.³⁵⁰

Prior to COVID-19 border restrictions, a new height of 221,226 people were in New Zealand on temporary work visas with an additional 81,948 people on student visas, leading to the OECD describing numbers as having “soared”.³⁵¹ In response to both the pandemic and ballooning numbers waiting for residency, the government created the 2021 Resident Visa which, through two tranches, is likely to see more than 200,000 temporary migrant workers granted permanent residency.

An Immigration Reset was first released in May 2021, with options put to Cabinet in 2021,³⁵² and again, in more detail, in May 2022. The Reset appears likely to have three main effects:

1. Students who are not enrolled in a tertiary degree will no longer be able to work to support themselves as they study.
2. The types of migrants arriving in New Zealand will change, with greater emphasis on industries and sectors featuring in a green list, which will also offer more transparency around pathways to residency.
3. There will be more oversight of which employers are able to hire temporary migrant workers, through employer accreditation. This requires employees being sponsored to receive at least the median wage for most work, though there are carve outs for some industries, such as construction and tourism, where people can pay slightly less.³⁵³

It is unclear at present how many of the Productivity Commission’s recommendations will be taken up by the new Minister of Immigration, Michael Wood.

There are multiple categories of temporary work visas in New Zealand, though few provide pathways to residency.³⁵⁴ Even after the Immigration Reset, workers will have a pathway to residence if they meet two requirements: they must earn over 200 per cent of the median wage (calculated yearly) and they must work in a highly paid job in New Zealand for two years. There are far fewer pathways to residence for workers who do not fit any of the skills lists, or who do not earn over a certain income bracket, which has prompted critiques of an emerging two-tier immigration system.

A 2019 study commissioned by MBIE on temporary migrant worker exploitation in New Zealand found that exploitation occurs most frequently for those on student visas and employer-assisted visas. It also suggests that temporary migrant exploitation is endemic and a serious issue in New Zealand. The nature of temporary migrant work, especially regarding the hope for residency in the future, means that workers will often be complicit in their own exploitation. This exploitation has an oversized effect on migrant workers and their families, with overwork common, an inability to settle in communities, and strains on family ties.³⁵⁵ A survey by Unemig noted 65 per cent of workers whose visas relied on their employer reported some form of exploitation.³⁵⁶

Key instances of employer exploitation include underpaying employees, not complying with employment contracts, denying leave, and leveraging immigration assistance as compensation for substandard work arrangements. Vulnerability to exploitation is exacerbated when employers have the power

350 Ministry of Business, Innovation & Employment (2019). *A New Approach to Employer-Assisted Work Visas and Regional Workforce Planning: Paper One Employer Gateway System and Related Changes*, p. 8. <https://www.mbie.govt.nz/dmsdocument/7007-a-new-approach-to-employer-assisted-work-visas-and-regional-workforce-planning-paper-one-employer-gateway-system-and-related-changes-proactiverelase-pdf>

351 Carey, D. (2019). Improving well-being in New Zealand through migration. Organization for Economic Co-operation and Development (OECD) Economics Department Working Papers No 1566. [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2019\)35&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2019)35&docLanguage=En)

352 Faafoi, K. (2021). Long-term Direction for the Immigration Portfolio: A Rebalance. 9 July. <https://www.mbie.govt.nz/dmsdocument/18255-long-term-direction-for-the-immigration-portfolio-a-rebalance-proactiverelase-pdf>

353 Rawhiti-Collins, A. (2022). The Immigration Reset. The Spinoff. 21 May. <https://thespinoff.co.nz/the-bulletin/12-05-2022/the-immigration-reset> Nash, S & K. Faafoi (2021). Immigration Reset: Setting the scene. Beehive. 22 May. <https://www.beehive.govt.nz/speech/immigration-reset-setting-scene> Immigration New Zealand (2022). Accreditation for the AEWV. <https://www.immigration.govt.nz/employ-migrants/new-employer-accreditation-and-work-visa>

354 Immigration New Zealand (n.d.). Temporary work visas. <https://www.newzealandnow.govt.nz/move-to-nz/new-zealand-visa/work-visa/temporary-work-visa>

355 Collins, F. & Stringer, C. (2019). Temporary Migrant Worker exploitation in New Zealand. Report for Ministry of Business, Innovation and Employment. <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>

356 Bathgate, B. (2021) A plywood box in a liquor store backroom, home for one of New Zealand’s estimated 3000 modern day slaves. Stuff. 21 November. <https://www.stuff.co.nz/national/126844667/a-plywood-box-in-a-liquor-store-backroom-home-for-one-of-new-zealands-estimated-3000-modern-day-slaves>

to threaten visa cancellations either overtly, or through more deceptive claims about the business, and about the visa not being able to exist if legal conditions were met.³⁵⁷ In short, employees can often become partners to their own exploitation in service of the greater goal of a residency visa. The impacts of this exploitation on people are profound and can include mental and physical exhaustion through overwork, and exclusion from basic rights of the state when workers feel they also need to be invisible to service providers. In short, exploitation leads to people living in a society as second-class citizens without the rights to freedom and resources that others take for granted.

MBIE recently completed a policy and operational review of temporary migrant worker exploitation with the aim of preventing exploitation, protecting temporary migrant workers and enforcing immigration and employment law through penalties and deterrence. The government has invested \$50 million to implement these changes over the upcoming years.³⁵⁸ As part of these changes, a new 0800 phone line and online system for reporting exploitation and a new visa to enable migrants to leave exploitative employment without compromising their immigration status was put in place in mid-2021.³⁵⁹ In the last financial year, 119 Migrant Exploitation Protection Visas were granted, while there were 173 extra reports on alleged migrant exploitation.³⁶⁰ The review also involved significant international and local research highlighting the key role the government plays in addressing this issue within New Zealand, as well as the necessary collaboration of employers, industry organisations, unions, migrants, education providers and

other community organisations for effective intervention.³⁶¹

After interviewing nine union representatives and 18 community participants, Collins and Stringer report that exploitation is perceived within these groups as more pervasive than the media or government acknowledge. They identified international students and post-study work visa holders as those most often exploited; however, the most vulnerable migrant populations were Filipino, Indian and Chinese workers.³⁶²

The government also currently enforces a stand-down period in which employers that breach employment standards cannot support migrant work visas. This stand-down may come by way of an infringement notice issued by a Labour Inspector, a penalty ordered by the Employment Relations Authority, or a sanction ordered by the Employment Court.³⁶³ However, these regulatory agencies have recently been reported as under-resourced and insufficiently proactive.³⁶⁴

Legal background for temporary migrant workers

The International Labour Organization (ILO), a United Nations agency, provides conventions and protocols that countries are encouraged to ratify for the protection of workers. New Zealand currently has 33 of these conventions in force, many of which are focused on protections for migrant workers, including:

- C155 on occupational safety and health
- C097 on migration for employment
- C059 on the minimum working age
- C047 on the 40-hour week
- C017 on worker's compensation for accidents

357 Collins, F. & Stringer, C. (2019). *Temporary Migrant Worker Exploitation in New Zealand*. <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>

358 The Ministry of Business, Innovation & Employment (n.d.). Temporary migrant worker exploitation review. <https://www.mbie.govt.nz/immigration-and-tourism/immigration/temporary-migrant-worker-exploitation-review/>

359 Employment New Zealand (2022). Reporting migrant exploitation. <https://reportmigrantexploitation.employment.govt.nz>; Ministry of Business, Innovation & Employment (n.d.). The temporary migrant worker exploitation review: a summary of changes. <https://www.mbie.govt.nz/assets/temporary-migrant-worker-exploitation-review-summary-of-changes.pdf>

360 Radio New Zealand (2022). Government introduces Worker Protection (Migrant and Other Employees) Bill. *Radio New Zealand*. 29 September. <https://www.rnz.co.nz/news/political/475759/government-introduces-worker-protection-migrant-and-other-employees-bill>

361 Collins, F. & Stringer, C. (2019). *Temporary Migrant Worker Exploitation in New Zealand*. <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>

362 *ibid*

363 Employment New Zealand (n.d.). Employers who have breached minimum employment standards. <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/employers-who-have-breached-minimum-employment-standards>

364 Collins, F. & Stringer, C. (2019). *Temporary Migrant Worker Exploitation in New Zealand*. <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>

- C098 on the right to organise and collective bargaining.³⁶⁵

However, New Zealand is not yet party to the International Convention on Protection of the Rights of All Migrant Workers 1990.³⁶⁶

Numerous other statutes and conventions have been discussed in previous sections, but especially relevant are those in section nine on modern slavery.

Employee minimum rights in New Zealand do not change based on visa status. All workers have the right to a written employment contract, minimum wage (if at least 16 years old), holiday pay, protection from unlawful discrimination, and to work in a safe environment with proper training, supervision and equipment.³⁶⁷ The Health and Safety at Work Act 2015 regulates minimum workplace health and safety obligations for all businesses, employers and employees. These standards include the right to refuse hazardous work, protection against discrimination based on work health and safety involvement, and the right to a safe workplace.³⁶⁸

The fundamental rules around temporary worker visas are defined in the Immigration Act 2009, including temporary entry visa instructions (section 22), conditions on temporary entry class visas (sections 52-53) and provisions applying to temporary entry class visas (sections 76-79).³⁶⁹ These provisions include extensions of temporary visas by special direction 78A (1) which was recently enacted to extend temporary work visas during the COVID-19 pandemic.³⁷⁰

The Immigration Amendment Act (No 2) 2015 brought amendments to address the exploitation of migrant workers. Previously, it was only an

offence to exploit unlawful workers in New Zealand, but this offence was extended to the exploitation of temporary workers to ensure they were provided minimum wage payment and to prevent other employer abuses of control. Punishments for these employer offences include up to seven years of jail and fines of up to \$100,000, as well as deportation if the offence took place within ten years of the employer gaining residence.³⁷¹

Organisations

Red Cross Red Crescent Movement

The International Red Cross and Red Crescent Movement provides support based on need with a focus on upholding the dignity of people aligned to the principles of humanity and impartiality.³⁷² Drawing from these principles, the International Red Cross and Red Crescent Movement does not discriminate based on visa status, a principle often used in relation to temporary migrants who may not have a valid visa, or specific groups such as asylum seekers. Regionally, the welfare of temporary migrants is of increasing interest to National Societies. For example, Australian Red Cross has recently published a report on the safety and well-being of people on temporary work visas during COVID-19 as part of its broad focus on vulnerable migrants.

The primary means that New Zealand Red Cross engages with migrant workers is through the Pathways to Employment programme. Pathways to Employment helps former refugees plan their employment, education, training and career goals and, ultimately, find work. While the engagement with temporary migrant workers is very limited, there is a tendency to work alongside some of the sectors with the greatest risk of exploitation. In the limited occasions where concerns have been raised, Pathways to Employment have referred issues to the labour inspectorate and MBIE.

New Zealand Red Cross raised concerns about migration exploitation during the COVID-19 response in a letter to the Minister of Immigration.

365 International Labour Organization (n.d.). *Ratifications for New Zealand*. https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102775

366 New Zealand Foreign Affairs & Trade (n.d.). *Human rights*. <https://www.mfat.govt.nz/en/peace-rights-and-security/human-rights/#actionplan>

367 Employment New Zealand (2019). *Know your employment rights*. <https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/09ab9b05c6/employment-rights-new-zealand.pdf>

368 Employment New Zealand (n.d.). *Health and safety at work*. <https://www.employment.govt.nz/workplace-policies/health-and-safety-at-work>

369 For the full document see: *Immigration Act 2009*. http://www.legislation.govt.nz/act/public/2009/0051/latest/whole.html?search=sw_096be8ed81a01543_61_25_se&p=1#DLM1440614

370 For this and other short-term changes made to temporary work visas in New Zealand on 7 July 2020, see: <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/the-government-has-made-short-term-changes-to-nz-temporary-work-visas>

371 New Zealand's National Plan of Action (2015). *Pass the Immigration Amendment Bill (No.2) to address gaps in the compliance regime and introduce measures to address the exploitation of migrant workers*. <https://npa.hrc.co.nz/actions/21>

372 New Zealand Red Cross (2020). *New Zealand Red Cross scaling up to assist foreign nationals affected by COVID-19*. 1 July. <https://www.redcross.org.nz/stories/new-zealand/visitor-care-manaaki-manuhiri-release>

As a crisis intervention, New Zealand Red Cross delivered Visitor Care Manaaki Manuhiri with Te Tari Taiwhenua/Department of Internal Affairs from 1 July to 30 November 2020 to provide support for temporary visa holders unable to return to their home countries because of the COVID-19 pandemic.³⁷³ This programme helped more than 12,000 temporary migrants access essential goods and services including accommodation, utilities, food, medication and warm clothing.³⁷⁴ Since the end of the Visitor Care Manaaki Manuhiri programme there have also been concerns that temporary migrant workers are not getting access to the benefits to which they were entitled.³⁷⁵

Industry and Employers

The largest single category of temporary workers are employer-assisted visa holders, amounting to roughly 34 per cent of temporary workers or 65,000 people, as of March 2019.³⁷⁶ Industry responses to the anticipated temporary work visa changes, announced in 2019, were generally positive.³⁷⁷ Federated Farmers and Horticulture New Zealand praised the streamlining of the visa process and further changes that they believe provide additional advantages to rural communities.³⁷⁸

Collins and Stringer found in their review of temporary migrant worker exploitation that a number of industries, companies and employers

have taken steps to reduce exploitation. These measures include technological advancements (linking ID cards to timesheets and fingerprint sign-in systems) and procedural changes (standardised employment agreements, random audits, training programmes, translated educational materials on employment rights and stricter regulations). Other industry measures noted for mitigating exploitation were using intermediary companies that interview people after placements to ensure positive future experiences, and obtaining product certifications such as GlobalGAP that indicate certain standards of welfare.³⁷⁹

Unions and community organisations

Workers can also seek help from community organisations such as the Union Network of Migrants (Unemig, part of FIRST Union) or the Migrant Workers Association of Aotearoa (MWA).³⁸⁰ Unemig is a migrant-led network for the protection of migrant worker rights and welfare in New Zealand. It offers employment advice, representation for migrants experiencing illegal or discriminatory work conditions, immigration advice, employment relations seminars, and referrals to other relevant agencies and community organisations. It also campaigns on issues affecting migrant workers.³⁸¹ For instance, it was involved in the recent, successful push to extend emergency benefits to migrant workers through the Social Securities Act after the Visitor Care Manaaki Manuhiri programme came to an end in November 2020.³⁸²

The MWA began as the Indian Workers Association, but now advocates for the rights of all migrant workers. They proactively educate people about migrant rights and responsibilities through public meetings, seminars, and weekly radio shows, while also protesting and campaigning in support of migrant worker

373 New Zealand Red Cross (2020). Visitor Care Manaaki Manuhiri. <https://www.redcross.org.nz/stories/new-zealand/visitor-care-manaaki-manuhiri>

374 Bonnett, G. (2020). Govt, Red Cross spend \$15m helping immigrants stranded in NZ. 11 November. Radio New Zealand. <https://www.rnz.co.nz/news/national/430331/govt-red-cross-spend-15m-helping-immigrants-stranded-in-nz>

375 Bonnett, G. (2021). Migrant says unjustified benefit refusals and delays keeping numbers down. *Radio New Zealand*. 22 March. <https://www.rnz.co.nz/news/national/438876/migrant-says-unjustified-benefit-refusals-and-delays-keeping-numbers-down>

376 The Ministry of Business, Innovation & Employment (2019). *A new approach to employer-assisted work visas and regional workforce planning: Paper One Employer Gateway system and related changes*, p.6. <https://www.mbie.govt.nz/assets/a-new-approach-to-employer-assisted-work-visas-and-regional-workforce-planning-paper-one-employer-gateway-system-and-related-changes.pdf>

377 Business Central Wellington (2019). Temporary work visa improvements a welcome start. *Scoop Business*. 17 September. <https://www.scoop.co.nz/stories/PO1909/S00232/temporary-work-visa-improvements-a-welcome-start.htm>

378 Federated Farmers (2019). Streamlined temporary work visa process is a real positive. *Scoop Business*. 17 September. <https://www.scoop.co.nz/stories/BU1909/S00429/streamlined-temporary-work-visa-process-is-a-real-positive.htm>; Horticulture NZ (2019). Horticulture NZ welcomes temporary work visa changes. *Scoop Business*. 17 September. <https://www.scoop.co.nz/stories/BU1909/S00430/horticulture-nz-welcomes-temporary-work-visa-changes.htm>

379 Collins, F. & Stringer, C. (2019). *Temporary Migrant Worker Exploitation in New Zealand*, 59-61. <https://www.mbie.govt.nz/dmsdocument/7109-temporary-migrant-worker-exploitation-in-new-zealand>

380 Community Law (n.d.). Migrant workers. <https://communitylaw.org.nz/community-law-manual/chapter-20-starting-and-leaving-a-job/migrants-and-other-vulnerable-workers>

381 First Union (n.d.). Union network of migrants. <https://www.firstunion.org.nz/our-union/union-networks/unemig>

382 Harris, C. (2020). Migrant workers to receive emergency benefits. 20 November. *Stuff*. <https://www.stuff.co.nz/business/123455880/migrant-workers-to-receive-emergency-benefits>

equality.³⁸³ Recently, Anu Kaloti from MWA has appeared in the news campaigning on behalf of temporary migrant workers, who have valid visas, but are stuck overseas because of COVID-19 restrictions.³⁸⁴ Immigration New Zealand's website directs workers to the Council of Trade Unions (CTU) so that workers know their right to join a union and can find a union that encompasses their occupation.³⁸⁵

6.3 What are the needs and gaps?

Numerous policy proposals have been put forward and substantial research has been undertaken in the past two years to set up regulations and policy to address the **exploitation of migrant workers** with a policy and operational review and roll out of changes, however, exploitation remains a concern in New Zealand.³⁸⁶ MWA pointed out that the government's choice to provide the option of an open work visa for exploited workers does nothing to protect workers from getting exploited in the first place.³⁸⁷ New research from MBIE points to many techniques and programmes aimed at addressing this exploitation but these are, so far, untested. A further unaddressed issue is the burden of proof migrants currently face in accessing legal help, a problem likely to also make obtaining the open work visa difficult for many.³⁸⁸ It is difficult to know how enduring any changes from this work will be,³⁸⁹ but interest from academics and unions about wage and exploitation issues

provides strong representation in advocacy and the media.³⁹⁰

Another concern is the **dangerous nature of many occupations** that rely on migrant workers. In New Zealand, the primary sector has the highest recorded incidents of injuries and fatalities, with the highest rates reported within the occupational groups of agriculture and fishery.³⁹¹ Furthermore, higher work-related mortality rates have been recorded for those with non-native English skills.³⁹² More should be done to ensure workplace safety across these sectors, particularly as it relates to educating workers in a language they understand.

People whose ability to work and live in New Zealand based on their partnership status also face vulnerabilities around **domestic abuse**. If they contact the police or leave their partner, their right to remain in the country changes. Though there is a residency visa for victims of domestic abuse, the criteria for this visa is very strict, leaving many migrant women particularly vulnerable.³⁹³ This lack is especially complicated when women have children with their abuser and do not have the right to take these children with them once their visa ends.³⁹⁴ In 2018, the United Nations Committee on the Elimination of Discrimination Against Women expressed concern about these issues and recommended that New Zealand revise its immigration laws to include a permanent residency pathway for mothers of children with New Zealand nationality, increase shelters, provide free legal and psychological services for migrant women, and provide information about legal rights in a language migrants can understand.³⁹⁵

383 Migrant Workers Association (n.d.). Who we are. <https://www.migrantworkers.org.nz/about-us>

384 O'Callaghan, J. (2022) 'They never talk about us', Migrant workers locked out of NZ call for visas to be reinstated. *Stuff*. 4 April. <https://www.stuff.co.nz/national/128256777/they-never-talk-about-us-migrant-workers-locked-out-of-nz-call-for-visas-to-be-reinstated>

385 Immigration New Zealand (n.d.). Support in the workplace. <https://www.newzealandnow.govt.nz/work-in-nz/support-in-the-workplace>

386 The Ministry of Business, Innovation & Employment (n.d.). The temporary migrant worker exploitation review: a summary of changes. <https://www.mbie.govt.nz/assets/temporary-migrant-worker-exploitation-review-summary-of-changes.pdf>

387 Fonseca, D. (2020). Migrant exploitation moved 'too little, too late'. *Newsroom*. 10 September. <https://www.newsroom.co.nz/migrant-exploitation-journey-continues>

388 Ibid.

389 Radio New Zealand (2021). Immigration/Policy: 2021 in review. 21 December. <https://www.rnz.co.nz/national/programmes/voices/audio/2018824653/2021-wrapped>

390 See, for example, this late 2021 report, Kilgallon, S. (2021). Exploited liquor store workers have found an ally and a voice. *Stuff* 21 December. <https://www.stuff.co.nz/about-stuff/because-journalism/123360804/exploited-liquor-store-workers-have-found-an-ally-and-a-voice>

391 Yuan, S., Cain, T. & Spoonley, P. (2014). Temporary migrants as vulnerable workers: a literature review. Report prepared for the Ministry of Business, Innovation and Employment. https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE52095177

392 Ibid.

393 Duff, M. (2020). The impossible choice for migrant women who are abused by their partners. 13 November. *Stuff*. <https://www.stuff.co.nz/national/300156998/the-impossible-choice-for-migrant-women-who-are-abused-by-their-partners>

394 Ibid.

395 Committee on the Elimination of Discrimination against Women (2018). Concluding observations on the eighth periodic report of New Zealand. https://women.govt.nz/sites/public_files/CEDAW_C_NZL_CO_8_31061_E%20%283%29.pdf

Migrant rights groups have also been conducting campaigns against the **Acceptable Standard of Health** standards within the Immigration Act that reduces the likelihood of migrants gaining New Zealand residency if it is assessed that they will require significant healthcare in the future. The issue has repeatedly made news headlines in the last few years, but 2022 saw a dedicated campaign of Migrants against the Acceptable Standard of Health.³⁹⁶ The issue has become something of a bellwether for Whaikaha|Ministry of Disabled People and how all disabled New Zealanders are valued.³⁹⁷

At the end of July 2022, New Zealand's border fully reopened. The expectation of returning numbers of temporary migrant workers to the country may bring with it an **intensification of challenges** in a short period of time that could overwhelm reporting and monitoring faculties.

396 Bonnett, G. (2022). Human rights and dollar costs: Immigration reviews health rules. Radio New Zealand. 19 May. <https://www.rnz.co.nz/news/national/467430/human-rights-and-dollar-costs-immigration-reviews-health-rules> see the petition of Carvalho, J. and C. Vasquez (2022). Written Submission. Parliament. https://www.parliament.nz/resource/en-NZ/53SCPET_EVI_122742_PET2906/e225485c9e665279677ce232c03c8145880a675f

397 See, for example, Q+A (2022) Minister Sepuloni: Why new disability ministry is needed | Q+A 2022. TVNZ. 3 July. https://www.youtube.com/watch?v=92qc0L_MLZU

7. PEOPLE WITHOUT VALID VISAS

NUMBER OF PEOPLE IN NEW ZEALAND WITHOUT A VALID VISA: 14,000



MAIN NATIONALITIES: TONGA, SAMOA, CHINA, INDIA AND THE UNITED KINGDOM



MOST RECENT AMNESTY: 1 OCTOBER 2000 (COVERING 8,000 PEOPLE)



In 2021 and 2022, there has been renewed advocacy for an amnesty for people who are in New Zealand, but without a valid visa. This advocacy has focused on the legacy of the Dawn Raids³⁹⁸ and the need for a unified health response to COVID-19 that does not leave any people feeling fearful of getting vaccinated.³⁹⁹

Exact facts and figures for people living in a country without a valid visa are often difficult to come by. Estimates tend to be stronger in New Zealand due to the lack of land borders. While the estimates remain approximate, the number of people estimated to be in country without a valid visa is 70 per cent lower than at the turn of the century.⁴⁰⁰ Although the terms are incorrect, these people are often referred to as “illegal immigrants” or “overstayers”. More recently, and in line with the framing of the USA of “dreamers” some have described these people as “hope seekers”.⁴⁰¹ While some international literature focuses on “irregular migration”, this section focuses on the individuals rather than the process, while also noting that, in the case of Aotearoa, almost all of the people covered will have arrived through regular migration pathways.⁴⁰²

“

“Irregularity does not mean that migrant workers have no rights or that their rights should not be respected.”

*International Labour Organization, 2021.*⁴⁰³

A Red Cross certified travel document



398 Tokalau, T. (2021). Dawn raids on overstayers still happening, despite Government apology to Pasifika. *Stuff*. 16 June. <https://www.stuff.co.nz/national/125444976/dawn-raids-on-overstayers-still-happening-despite-government-apology-to-pasifika>; TVNZ (2021) Q+A panel discuss upcoming Dawn Raids apology | Q+A 2021. 27 June. <https://www.youtube.com/watch?v=pe37uuUeDHw>

399 Fonseka, D. (2020). Calls for an overstayer amnesty for the good of all. *Newsroom*. 10 September. <https://www.newsroom.co.nz/be-kind-dont-deport>

400 Fonseka, D. (2020). Calls for an overstayer amnesty for the good of all. *Newsroom*. 10 September. <https://www.newsroom.co.nz/be-kind-dont-deport>

401 Dr Nguyen, H.T., & Kenkel, D.J. (2021). Taleni Seki Atagina - Te Akasakiga o Kaaiga Tuvalu Seki Nofo Tumau Iluga i Aotearoa Niusila. Hidden Gems - Lived Experiences of Tuvaluan Hope Seekers and Their Families in Aotearoa New Zealand. Auckland, Unitec. <https://www.unitec.ac.nz/sites/default/files/public/documents/Tuvalu%20project%20report%20-FINAL-13.12.2021.pdf>

402 International Organisation on Migration (2021). World Migration Report 2022. December. <https://publications.iom.int/books/world-migration-report-2022>

403 International Labour Organization (2021). Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration: A compendium. December. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_832915.pdf

7.1 The global context

One of the core measures of what limits and delimits a nation state is the ability to regulate the people who reside within its borders. In practice, however, there are numerous possible challenges to this absolute sovereignty, many of which are based on normative adherence to international laws such as the 1951 Refugee Convention and the related 1967 Protocol that, if acceded to, grants foreign nationals the rights to claim protection. These frameworks create obligations on states to accept those who claim refuge based on fear of persecution. However, there are also the practical challenges of maintaining the sovereignty of borders and this leads to a population of people – interchangeably referred to as irregular, undocumented or unauthorised migrants – living in nations without valid visas. It is also worth noting that there are a range of ways that people can find themselves in a situation without a valid visa – they might have entered without a valid visa, or they may have had residency that has lapsed.

While there are somewhat reliable data estimates on irregular migration for many countries in North America, Australasia and Europe – as well as for nations with a strong UNHCR presence – there is a lack of solid evidence on irregular movements in Latin America, Asia and Africa.⁴⁰⁴ Alongside difficulties coming to a global figure on the number of people in these situations, IOM have noted that irregular movements of migrants have been affected by COVID-19.⁴⁰⁵

The Platform for International Cooperation on Undocumented Migrants (PICUM) is a network of organisations working towards guaranteeing minimum human rights, regardless of migration status. The need for these rights was highlighted as a guiding principle in the non-legally binding objectives of the United Nations Global Compact for Migration in 2018.⁴⁰⁶ One of the key medium-term goals of PICUM was the establishment of the Firewall Principle that creates “a clear separation

between immigration enforcement and access to services (including healthcare, shelter and education), protection and justice.”⁴⁰⁷ In the past year, PICUM alongside Lighthouse Reports, has focussed on the ways that undocumented migrants can get access to COVID-19 vaccinations.⁴⁰⁸

With no overland border to another country, Australia is in the most similar situation to New Zealand in terms of people living in the country without a visa. While there remain challenges in accurately knowing the number of people who remain without a visa, the Australian statistics are more comprehensive than many other countries, including data on how many years people tend to remain in the country.⁴⁰⁹ Described by the government as “unlawful non-citizens”, a recent estimate put those without a visa at 100,000 people.⁴¹⁰ Much of the attention on people in Australia without a visa has been on working and exploitation though, with labour shortages, attention has swung towards the possibility of offering an amnesty.⁴¹¹

In the United States of America there has been particular attention on anticipating and restricting overland migrants from Mexico and Central America. The numbers of people without a valid visa decreased from 12.2 million in 2005 to 10.5 million in 2017.⁴¹² Though this attention has been more focused on border security, there have also been policies focused on reducing the number of people who are in the USA without valid visas who do *not* enter through the southern

404 Migration Data Portal (2020). Irregular Migration. 22 June. <https://migrationdataportal.org/themes/irregular-migration>

405 International Organisation on Migration (2021). World Migration Report 2022. December. <https://publications.iom.int/books/world-migration-report-2022>

406 United Nations (2018). *Global Compact for Safe, Orderly and Regular Migration*. https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

407 Platform for International Cooperation on Undocumented Migrants (2016). Strategic Plan 2016-2020. https://picum.org/wp-content/uploads/2019/10/StrategicPlan_2016-2020_EN.pdf

408 PICUM (2021) *Vaccinating Europe's Undocumented: A Policy Scorecard*. 11 December. <https://picum.org/vaccinating-europe-undocumented-a-policy-scorecard>

409 See Coyne, J. (2019). Australia's other border security problem: visa overstayers. *ASPI Strategist*. 6 March. <https://www.aspi.org.au/australias-other-border-security-problem-visa-overstayers>

410 Jess Davis (2021). Calls for amnesty for undocumented workers, as new report recommends 'one-off' visas in agriculture. *ABC*. 5 March. <https://www.abc.net.au/news/2021-03-05/covid-19-vaccine-calls-for-amnesty-for-undocumented-workers/13218382> Others cite a pre-COVID-19 number that was closer to 60,000 people.

411 Jill Margo (2021). Is there a case for a pandemic migration amnesty?. *Australian Financial Review*. 3 July. <https://www.afr.com/policy/health-and-education/is-there-a-case-for-a-pandemic-migration-amnesty-20210630-p585qq>

412 Kamarck, E. & Stenglein, C. (2019). How many undocumented immigrants are in the United States and who are they? *Brookings Institute*. 28 November. <https://www.brookings.edu/policy2020/votervital/how-many-undocumented-immigrants-are-in-the-united-states-and-who-are-they>

border with Mexico.⁴¹³ Of particular note is the reduction in people without a valid visa in the United States of America by 12 per cent since 2010 due to return migration flows.⁴¹⁴ It is worth considering these decreases in the numbers of people without a valid visa when discussions of “migrant caravans” and problems at the border make popular media headlines.⁴¹⁵ The rhetorical focus on keeping migrants out of the USA is considered in section 12 on the public perception of migrants.

A combination of Schengen visa free movements in the EU and a lack of research by the Home Office has meant that there is no official tally of the number of people without a valid visa in the United Kingdom.⁴¹⁶ This lack of official information has also led to a situation where very different estimates of the number of people without a visa are made, including by some seeking to overestimate for political gain.⁴¹⁷

7.2 New Zealand context

In 2004, the number of people overstaying their visa’s duration peaked at 21,000,⁴¹⁸ while the most recent numbers are 13,895.⁴¹⁹ On a per capita basis, this is roughly proportional to the lower-level estimates of people overstaying visas in Australia. The top five countries in order of the number of people who do not have a valid visa are:

1. Tonga
2. Sāmoa

3. China
4. India
5. United Kingdom.⁴²⁰

New Zealand hosts very few stateless people, with just two cases in a recent overview.⁴²¹ There are many ways people end up in New Zealand without a valid visa, and while this means they are outside of legal migration channels, the cases observed never had criminal intent. For example, some people may have misunderstood or been actively misled about the path to obtaining a work visa. That process leads to debts, but the migrant has expectations that legal employment will allow them to pay off these debts. Once they realise that they are unable to pay them off, many stay in New Zealand. One such migrant is Sia, who was profiled in a recent *New Zealand Herald* story.⁴²² Such migrants hope they will be able to become legal, or at worst, pay off the outstanding debts before returning home. However, the debts tend to lead to increased vulnerability to exploitation which affects not just them, but any dependants and offshore family. In 2021, an anomaly of this system was highlighted publicly when the widow of a Chinese worker,⁴²³ was paid out by ACC which offers universal coverage regardless of employment or visa status.⁴²⁴

While people remaining in the country after their visas have expired are still sporadically invoked for political, anti-migrant gains, such as the discussion around Behrouz Boochani⁴²⁵ and

413 Sacchetti, M. & Uhrmacher, K. (2019). Nations targeted by U.S. for high rates of visa overstays account for small number of violators. *Washington Post*. 25 April. https://www.washingtonpost.com/immigration/nations-the-white-house-is-targeting-for-visa-overstay-rates-account-for-small-number-of-violators-omit-brazil-venezuela-china/2019/04/24/956ef970-65d7-11e9-82ba-fcfeff232e8f_story.html

414 Warren, R. (2021). ‘In 2019, the US undocumented population continued a decade-long decline and the foreign-born population neared zero growth.’ *Journal on Migration and Human Security*, 9(1). <https://doi.org/10.1177/2331502421993746>

415 For example, Oscar Lopez and Alejandro Cegarra (2022). A Caravan of Migrants Set Off Toward U.S. During Americas Summit. *New York Times*. 11 June. <https://www.nytimes.com/2022/06/11/world/americas/mexico-migrant-caravan-photos.html>

416 BBC (2020). Illegal immigration: No recent figure for UK, report finds. BBC. 17 June. <https://www.bbc.com/news/uk-53075318>

417 Reuters (2020). Fact check: It is not known how many illegal immigrants are in the UK. Reuters. 1 October. <https://www.reuters.com/article/uk-factcheck-immigrants-idUSKBN26L2F4>

418 Ibid.

419 Fonseca, D. (2020). Calls for an overstayer amnesty for the good of all. *Newsroom*. 10 September. <https://www.newsroom.co.nz/be-kind-dont-deport>

420 Ibid; Hunt, T. (2017). Overstayers estimated at almost 11,000, of whom 2100 were deported last year. *Stuff*. 30 October. <https://www.stuff.co.nz/national/98349601/overstayers-estimated-at-almost-11000-of-whom-2100-were-deported-last-year>

421 Lewis, O. (2018). ‘Legally they don’t exist’: New Zealand’s stateless population of two. *Stuff*. 14 April. <https://www.stuff.co.nz/national/102973303/legally-they-dont-exist-new-zealands-stateless-population-of-two>

422 Tan, L. (2020). New Zealand overstayer on what it’s like living a secret life’ *New Zealand Herald*. 10 October. <https://www.nzherald.co.nz/nz/new-zealand-overstayer-on-what-its-like-living-a-secret-life/Y6I4JFGV36AQVWFJRDDYZ3YQO4>

423 Fisher, D. & Tan, Q. (2021). Illegally working overstayer dies on the job ACC payment made to widow in China. *New Zealand Herald*. 18 January. <https://www.nzherald.co.nz/nz/illegally-working-overstayer-dies-on-the-job-acc-payment-made-to-widow-in-china/OWADEJMGCUYM36WLF6YNKUA2SE>

424 Rennie, D. (2021). ACC Payout For Illegal Overstayer. *Scoop*. 21 January. <https://www.scoop.co.nz/stories/PO2101/S00065/acc-payout-for-illegal-overstayer.htm>

425 Williams, P. (2019). Peter Williams: Behrouz Boochani is an overstayer and he should leave New Zealand immediately. *Newshub*. 20 December. <https://www.newshub.co.nz/home/new-zealand/2019/12/peter-williams-behrouz-boochani-is-an-overstayer-and-he-should-leave-new-zealand-immediately.html>

the occasional parliamentary question,⁴²⁶ New Zealand does have a recent history of intense politicisation of this group of people.

In the 1970s, with an increase in Pacific migrants staying here after their visas had expired, and an increase in domestic unemployment, the Kirk government launched its highly publicised series of Dawn Raids of houses in Auckland to find “overstayers” and deport them. The terms Dawn Raid and overstay are complex signifiers, both reclaimed by Pacific communities (see Dawn Raid Records for example) but also retaining the marks of institutionalised racism.⁴²⁷ The 2021 apology for the Dawn Raids has led to more extensive discussions about how those who are presently without a valid visa may have their status normalised.⁴²⁸

While there is significant attention on how exploited workers can be persuaded to contact labour inspectors or the Ministry of Business, Innovation and Employment (MBIE), there has been less attention on the challenges for individuals who are reliant on partners to maintain their visa status. In essence, advocates argue, people are being kept in abusive relationships by Immigration New Zealand tying their visa status to their partner.⁴²⁹ A recent review by MBIE on the effectiveness of a Domestic Violence (Humanitarian) Visa noted gaps for migrants.⁴³⁰

In early 2021, one case of exploitation of Tongans without valid visas were discovered when a church was investigated for a scam that was supposed to lead to citizenship.⁴³¹ Media noted that the scam could target over 100 people because individuals were concerned about coming forward with their concerns in case they would be deported.⁴³² Subsequent reporting noted there were approximately 2,500 Tongans without a valid visa. An informal economy and mutual aid allowed these individuals to survive during the COVID-19 period when they were not eligible for any government support, including that to which other foreign nationals were entitled.⁴³³ Another report in 2021, described how the children of approximately 500 Tuvaluan people who lacked valid visas were also treated as irregular since 2006.⁴³⁴

COVID-19 has led to numerous challenges for people in New Zealand without a visa, sparking at least two anonymous people to talk to the media.⁴³⁵ These approaches culminated in a call from the Race Relations Commissioner and community advocates for an amnesty for people who have overstayed their visas, along

426 Pugh, M. (2016). Oral Question to Immigration Minister Michael Woodhouse. *Hansard New Zealand Parliament*. 16 April. https://www.parliament.nz/en/pb/hansard-debates/rhr/document/51HansS_20160412_00000638/pugh-maureen-oral-questions-questions-to-ministers

427 see, for example, Grainger, A. (2006). From immigrant to overstay: Samoan identity, rugby, and cultural politics of race and nation in Aotearoa/New Zealand. *Journal of Sport and Social Issues*, 30(1), 45–61; Bartley, A. & Spoonley, P. (2004). Constructing a Workable Multiculturalism in a Bicultural Society. In *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, edited by M. Belgrave, 136–148. Auckland: Oxford University Press; Simon-Kumar, R. (2015). Neoliberalism and the new race politics of migration policy: Changing profiles of the desirable migrant in New Zealand. *Journal of Ethnic and Migration Studies*, 41(7), 1172–1191; Sadler, R. (2020). Pacific Island overstay urges Prime Minister Jacinda Ardern to grant residency to others living illegally in New Zealand. *The Project*. 29 June. <https://www.newshub.co.nz/home/new-zealand/2020/06/pacific-island-overstay-urges-prime-minister-jacinda-ardern-to-grant-residency-to-others-living-illegally-in-new-zealand.html>

428 Q+A (2021). Q+A panel discuss upcoming Dawn Raids apology | Q+A 2021. 27 June. <https://www.youtube.com/watch?v=pe37uuUeDHW>

429 Duff, M. (2020). The impossible choice for migrant women who are abused by their partners. *Stuff*. November 13. <https://www.stuff.co.nz/national/300156998/the-impossible-choice-for-migrant-women-who-are-abused-by-their-partners>

430 Ministry of Business, Innovation and Employment (2019). Recent Migrant Victims of Family Violence Project 2019: Final Report. <https://www.mbie.govt.nz/dmsdocument/12138-recent-migrant-victims-of-family-violence-project-2019-final-report>

431 Dreaver, B. (2021). Elaborate passport scam involving small Tongan church in South Auckland under investigation. *1 News*. 15 January. <https://www.tvnz.co.nz/one-news/new-zealand/elaborate-passport-scam-involving-small-tongan-church-in-south-auckland-under-investigation>

432 Dateline Pacific (2021). Akld church overstayers afraid to come forward to immigration. *Radio New Zealand*. 26 January. <https://www.rnz.co.nz/international/programmes/datelinepacific/audio/2018780892/akld-church-overstayers-afraid-to-come-forward-to-immigration>

433 Steve Kilgallon (2021). Illegal: How the Covid lockdown revived the role of a “Tongan Robin Hood” last at work for overstayers in the 1980s. *Stuff*. 16 May. <https://www.stuff.co.nz/national/125100423/illegal-how-the-covid-lockdown-revived-the-role-of-a-tongan-robin-hood-last-at-work-for-overstayers-in-the-1980s>

434 Hoa Thi Nguyen and David Kenkel (2021) Taleni Seki Atagina - Te Akasakiga o Kaaiga Tuvalu Seki Nofo Tumau Iluga i Aotearoa Niusila. Hidden Gems - Lived Experiences of Tuvaluan Hope Seekers and Their Families in Aotearoa New Zealand. <https://www.unitec.ac.nz/sites/default/files/public/documents/Tuvalu%20project%20report%20FINAL-13.12.2021.pdf>; see, also Barbara Dreaver (2021). Research shows devastating effects overstayers face. *1News*. 19 December. <https://www.1news.co.nz/2021/12/19/research-shows-devastating-effects-overstayers-face>

435 Tan, L. (2020). New Zealand overstay on what it's like living a secret life. *New Zealand Herald*. 10 October. <https://www.nzherald.co.nz/nz/new-zealand-overstay-on-what-its-like-living-a-secret-life/Y6I4JFGV36AQVWFJRDDYZ3YOQ4/>; Sadler, R. (2020). Pacific Island overstay urges Prime Minister Jacinda Ardern to grant residency to others living illegally in New Zealand. *The Project*. 29 June. <https://www.newshub.co.nz/home/new-zealand/2020/06/pacific-island-overstay-urges-prime-minister-jacinda-ardern-to-grant-residency-to-others-living-illegally-in-new-zealand.html>

with a path to permanent residency.⁴³⁶ These discussions were particularly acute in August 2020 when immigration advocates and advisors noted that people without a valid visa who attended the Mount Roskill Evangelical church would not trust the Ministry of Health and would have no incentive to come forward unless there was a complete amnesty for people who had overstayed their visas.⁴³⁷

Legal background for people without a valid visa

Not having a valid visa causes multiple and significant challenges for a person attempting to participate in everyday life in any manner that involves working with the government. These challenges result in an inability to meet basic needs and have a significant humanitarian impact on individuals and family well-being such as a lack of shelter, safe education opportunities and food supply.

In countries with many people without a valid visa, informal systems tend to arise that allow participation in precarious employment and housing. Some states and cities will attempt to get around these challenges of exclusion by making their services not contingent on national or federal identification, fixed addresses or other registration.

In New Zealand, there are fewer informal systems for people without a valid visa to participate in everyday life than in many of the other countries considered above. Without a valid visa, employment must take place “under the table” or off the business records and be paid in cash. This situation means that the legal issues of not having a valid visa can cascade into other legal issues around employment, exploitation and abuse. In June 2018, the New Zealand Police and Immigration New Zealand began an information sharing scheme that was designed to give police access to a person’s immigration status in real

time which is likely to increase the number of deportations.⁴³⁸

The Citizenship Amendment Act (2005) changed the law on the citizenship status of a child born in Aotearoa to be determined by the residence status of the parents, not by place of birth. This change of law means that becoming a citizen requires at least one parent to have citizenship or permanent residence in a country. People who are without a visa can make a case for a Special Visa under section 61 of the Immigration Act 2009, described by Community Law as a last resort for people who have a good reason for remaining in the country. For these cases, Immigration has absolute discretion over whether to accept the reasoning or not,⁴³⁹ though a lack of transparency has led to recent criticisms around why decisions are made.⁴⁴⁰

It is also possible to make an appeal on humanitarian grounds against the requirement to leave New Zealand to the Immigration and Protection Tribunal (IPT).⁴⁴¹ While Immigration New Zealand notes that it wants to stop the exploitation of workers without a valid visa, any protection offered for contacting them about exploitation is highly provisional. And while their advice comes in numerous languages, it makes no guarantees about being able to remain in the country up to or beyond when a prosecution takes place against an employer.⁴⁴² COVID-19 has led to some changes in this space with a COVID-19 Short Term Visitor Visa allowing stays of two months to bridge visas for people unable to go home.⁴⁴³

436 Fonseca, D. (2020). Calls for an overstayer amnesty for the good of all. *Newsroom*. 10 September. [https://www.parliament.nz/en/pb/petitions/document/PET_99196/petition-of-makahokovalu-pailate-for-pacific-leadership?fbclid=IwAR2xR61yB1tqSnoeK3prrrTR4kQ1pgJoav-vUihrfq76recOVrbycwYcKAs](https://www.newsroom.co.nz/be-kind-dont-deport; Pailate, M. (2020). Petition of Makahokovalu Pailate for Pacific Leadership Forum: Provide pathways for overstayers to gain permanent residency in NZ on compassion. New Zealand Parliament. <a href=)

437 Fonseca, D. (2020). Calls for an overstayer amnesty for the good of all. *Newsroom*. 10 September. <https://www.newsroom.co.nz/be-kind-dont-deport>

438 One News (2018). Most read story: Over 10,000 overstayers in NZ, Immigration not actively looking for most. *TVNZ*. 26 March. <https://www.tvnz.co.nz/one-news/new-zealand/most-read-story-over-10-000-overstayers-in-nz-immigration-not-actively-looking>

439 Community Law (n.d.). Applying for a visa as a special case (“section 61” visas). <https://communitylaw.org.nz/community-law-manual/chapter-29-immigration/if-youre-here-illegally-understanding-your-options/applying-for-a-visa-as-a-special-case-section-61-visas/>

440 One News (2021). Lawyers call for more transparency on overstayers’ visas. 20 December. <https://www.1news.co.nz/2021/12/20/lawyers-call-for-more-transparency-on-overstayers-visas/>

441 Community Law (n.d.). Appealing on special humanitarian grounds. <https://communitylaw.org.nz/community-law-manual/chapter-29-immigration/if-youre-here-illegally-understanding-your-options/appealing-on-special-humanitarian-grounds>

442 Immigration New Zealand (2020). Migrant exploitation. <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/migrant-exploitation>

443 See Immigration New Zealand (2020). Information about Covid-19 Short Term Visitor Visa. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/visa-factsheet/covid19-short-term-visitor-visa>

Organisations

Red Cross and Red Crescent Movement

Across the International Red Cross and Red Crescent Movement, protection is provided to those in the greatest humanitarian need: visa status is not relevant to that humanitarian work. This approach ensures that vulnerable people receive assistance regardless of legal status. The principle of Independence is also applied in these situations to ensure that government requirements do not limit the Red Cross Red Crescent humanitarian response. As such, people without a valid visa must be seen as a key concern for the International Red Cross and Red Crescent Movement.

The 30th International Conference of the Red Cross and Red Crescent centred humanitarian concerns generated by international migration, declaring that humanitarian assistance should be provided by National Societies irrespective of the legal status.⁴⁴⁴ The irrelevance of migration status for assistance was underlined in the IFRC COVID-19 response where both health and dignity of migrants was foregrounded.⁴⁴⁵ Australian Red Cross also advocated for the rights of this group to access healthcare and have their status resolved.⁴⁴⁶

As noted in section six on temporary migrant workers, New Zealand Red Cross Visitor Care Manaaki Manuhiri work came into contact with, and had anecdotal feedback on, foreign nationals who did not have a valid visa. The challenges of COVID-19 changes to visas meant that many clients faced uncertain visa statuses and quickly changing rules and processes. New Zealand Red Cross had argued for a firewall between the Visitor Care work and Immigration New Zealand to reduce concern for foreign nationals that receiving assistance would in any way affect their migration status, or lack thereof. Anytime that

New Zealand Red Cross partners with government to deliver services, these types of exclusions may risk conflicting with the fundamental principles around universality.

Immigration and Legal advisors

As a non-profit organisation, Community Law helps all people in New Zealand with legal advice, regardless of their visa status. As they do not have a profit motive, and are jointly staffed by lawyers and community volunteers, they have fewer conflicts about accepting clients. In contrast, immigration lawyers and advisors are often in a difficult position between a client whose only interest is in finding some way to stay in the country, the fees from this work, and the cases that some describe as drawing from irrational hope.⁴⁴⁷ Immigration advisors and lawyers can sometimes be blamed for not finding a way for people without a valid visa to stay in the country, even when there appears to be no clear path for that to happen.⁴⁴⁸

NGOs, advocacy groups and individuals

Many advocates for the rights of people without a visa come from the communities most represented. For example, in 2020 Kennedy Maeakafa Fakana'ana'a-ki-Fualu and Makahokovalu Pailate, representing the Pacific Leadership Forum launched the petition to the Prime Minister for an amnesty for people who had overstayed visas.⁴⁴⁹ They also worked to provide food to families affected by the COVID-19 lockdown, noting the increased risk of exploitation.

Both Shama Ethnic Women's Trust and the nationwide Shakti network offer migrant women specific assistance with domestic violence, and the subsequent visa problems that can result from decoupling from a partnership visa. Women's Refuge has also been active in lobbying for a change to the way victims of

444 International Federation of the Red Cross and Red Crescent (2009). Policy on Migration. https://www.ifrc.org/sites/default/files/Migration-Policy_EN.pdf

445 International Federation of the Red Cross and Red Crescent (2020). Least Protected, Most Affected: Migrants and refugees facing extraordinary risks during the COVID-19 pandemic. <https://www.ifrc.org/document/least-protected-most-affected-migrants-and-refugees-facing-extraordinary-risks-during>

446 Australian Red Cross (2020). *COVID-19 impacts us all: Ensuring the safety and well-being of people on temporary visas during COVID-19*. August. <https://www.redcross.org.au/globalassets/cms/publications-research--reports/australian-red-cross-covid-19-tempvisa-report-web.pdf>

447 See, for example, Lakshman, K. (2018). Overstayers In New Zealand. Idesi Legal. <https://www.immigrationlawyersauckland.co.nz/overstayers-in-new-zealand/> and comments from Tuariki Delemare in Fonseca, D. (2020). Calls for an overstayer amnesty for the good of all. *Newsroom*. 10 September. <https://www.newsroom.co.nz/be-kind-dont-deport>

448 Ibid.

449 Moala, R. (2020). Pacific Leadership Forum petitions MPs on behalf of overstayers in New Zealand' Pacific Media Network. 25 June. <https://pmn.co.nz/articles/pacific-leadership-forum-petitions-mps-on-behalf-of-overstayers-in-new-zealand-1>

domestic violence are treated by Immigration New Zealand.⁴⁵⁰

While noting the limits on their ability to help with immigration matters, the Human Rights Commission has been active in making sure that people are treated fairly by Immigration New Zealand, including their staff, and have regularly advocated for the rights of migrants, even if these are not presently legal rights that people without a visa have in New Zealand law. Efeso Collins, Auckland Councillor,⁴⁵¹ in 2020 backed calls for an amnesty for people on expired visas due to COVID-19, to ensure widespread testing.⁴⁵²

7.3 What are the needs and gaps?

People without valid visas are **vulnerable to exploitation** in the labour market. These challenges are significant humanitarian issues for both those without valid visas as well as their dependents. In the case of domestic violence, there are challenges for the safety of women who are not the primary visa applicant or who are partnered to New Zealand citizens or residents and have their status determined by these people. In the recent review by MBIE, reviewers were told, “visas were commonly used as a tool of control, with abusers threatening women with deportation and separation from their children if they left.”⁴⁵³

At a practical level, there is a **need for a clear and widely understood minimum set of rights** for people without a valid visa. While the Global Compact for Migration sought to establish States’ agreement that all migrants be treated with respect for human rights and fundamental freedoms, that agreement became a flashpoint for anti-migrant activists and was

not implemented across all states. Another approach might be to follow international recommendations by PICUM to create the same kind of firewall around some services and sharing of information between these departments and Immigration New Zealand and the New Zealand Police. This firewall, if consistent, should improve levels of trust held by people without a visa that they can participate to a certain level in New Zealand society. The best example of this was the challenge around COVID-19 health tests where this group were reluctant to seek help around testing, due to fear of being deported.

While there has been recent attention on the need to focus on the **victims of domestic violence** and ensure that migration settings help them to break from abusive relationships, there does not appear to be traction on making changes to these policies. There is a need for a well-informed advocacy campaign to insist that protecting people from domestic abuse is not hindered by visa settings. In 2018, the former Minister of Immigration said that a change to this law was not a priority for his government.⁴⁵⁴

New Zealand has not had an **amnesty** for people without a valid visa in more than 20 years, though these were regular in preceding decades, starting with Norman Kirk’s government in 1974.⁴⁵⁵ The most recent amnesty was in 2000 and initiated by Labour, with 8,000 of 20,000 people eligible for a two-year work visa that could then be turned into permanent residency.⁴⁵⁶ The Migrant Workers Association and Human Rights Commission say there is public support for this to be repeated. There could be a strong case for the benefits of another amnesty in the wake of COVID-19 and the Dawn Raids apology. These calls have been constant for the last 18 months and have begun to make their way into commentary by political parties.⁴⁵⁷

450 Duff, M. (2020). The impossible choice for migrant women who are abused by their partners. Stuff November 13. <https://www.stuff.co.nz/national/300156998/the-impossible-choice-for-migrant-women-who-are-abused-by-their-partners>

451 Collins left Auckland Council in 2022.

452 Radio New Zealand (2020). Auckland councillor Efeso Collins calls for amnesty for people with expired visas. *Radio New Zealand*. 20 August. <https://www.rnz.co.nz/news/covid-19/424564/auckland-councillor-efeso-collins-calls-for-amnesty-for-people-with-expired-visas>

453 Duff, M. (2020). Immigration NZ ‘facilitating abuse’ of migrant women who can’t leave abusive partners without being deported. *Stuff*. 7 November. <https://www.stuff.co.nz/national/300152207/immigration-nz-facilitating-abuse-of-migrant-women-who-cant-leave-abusive-partners-without-being-deported?rm=a>

454 Duff, M. (2020). The impossible choice for migrant women who are abused by their partners. Stuff November 13. <https://www.stuff.co.nz/national/300156998/the-impossible-choice-for-migrant-women-who-are-abused-by-their-partners>

455 Sadler, R. (2020). Pacific Island overstayer urges Prime Minister Jacinda Ardern to grant residency to others living illegally in New Zealand. *The Project*. 29 June. <https://www.newshub.co.nz/home/new-zealand/2020/06/pacific-island-overstayer-urges-prime-minister-jacinda-ardern-to-grant-residency-to-others-living-illegally-in-new-zealand.html>

456 NZPA (2000). Overstayers amnesty to cost \$12.4m. *New Zealand Herald*. 10 November. <https://www.nzherald.co.nz/nz/overstayers-amnesty-to-cost-124m/3WXGE3D2DKFICUX73Y33NGFIJA/>

457 Tuiono, T. and R. Menendez-March (2022). Pasifika communities must be part of immigration rebalance. Green Party of Aotearoa New Zealand. 14 May. https://www.greens.org.nz/pasifika_communities_must_be_part_of_immigration_rebalance

Spotlight

Complementary Pathways and Community Sponsorship

There has been a strong focus on new alternatives to formal UNHCR refugee resettlement quotas since 2015, due to global migration volatility and increased politicisation of refugee movements. One key framing of these new opportunities from UNHCR has been around seeking Complementary Pathways to protection. A key early statement on the use of complementary pathways was the 2016 New York Declaration for Refugees and Migrants and, subsequently, the 2018 Global Compact for Refugees and the UNCHR's Three-Year Strategy (2019–2021) on Resettlement and Complementary Pathways.

Complementary pathways are supposed to be in addition to resettlement intakes. They consist of a broad range of opportunities for protection including through family reunification, employment, education, and humanitarian and private sponsorship.⁴⁵⁸ These pathways recognise that the existing durable solutions do not meet the needs of refugees, while also highlighting that other migration pathways are not closed off to refugees simply because they are forced to migrate. For example, Talent Beyond Boundaries runs a global skilled migration programme featuring almost 40,000 refugees with highly marketable skills.⁴⁵⁹

In Aotearoa, the Refugee Family Support Category is the most established complementary pathway (see section three) and represents longstanding commitments to the unity of family. In addition, since 2016, there have been two pilots of the Community Organisation Refugee Sponsorship programme. The second pilot, lasting three years and currently underway, will welcome 150 refugees through to 2024,



Ute Kreplin and Norton both are refugee support volunteers in Levin. Complementary Pathways allow for increased humanitarian responses to refugee crises, in addition to the annual quota.

sponsored by community groups.⁴⁶⁰ The primary refugee applicant must have work or tertiary-education experience, must meet English language requirements and must have already been mandated by UNHCR.⁴⁶¹ To facilitate the programme, HOST International was contracted as an umbrella organisation.⁴⁶²

458 United Nations High Commissioner for Refugees (2022). Complementary pathways for admission to third countries. <https://www.unhcr.org/en-au/complementary-pathways.html>

459 Talent Beyond Boundaries (2022). The Talent Catalog. <https://www.talentbeyondboundaries.org/the-talent-catalog>

460 Hill, R. (2022). Refugee sponsorship scheme sees Kiwis volunteer to help settle migrants. *Radio New Zealand*. 28 February. <https://www.rnz.co.nz/news/national/462405/refugee-sponsorship-scheme-sees-kiwis-volunteer-to-help-settle-migrants>

461 Immigration New Zealand (2022). Community Refugee Sponsorship. INZ. <https://www.immigration.govt.nz/assist-migrants-and-students/assist-refugees/refugee-sponsorship>

462 Community Refugee Sponsorship (2022) Meet the Team. <https://www.refugeesponsorship.org.nz/meet-the-team>

EMERGING ISSUES

Masood Chakari featured in the Essential Kiwi Legends campaign put together by New Zealand Red Cross to celebrate the work of former refugees in the community.



8. MOBILITY, DISASTERS AND DISPLACEMENT IN A CHANGING CLIMATE

PEOPLE DISPLACED BY WEATHER AND CLIMATE HAZARDS IN 2020:
30 MILLION



REGION WITH THE MOST ENVIRONMENTAL AND CLIMATE HAZARD DISPLACEMENTS:
ASIA-PACIFIC



The mass displacement of people due to increased abnormal weather events is likely to be a defining theme of the 21st century.⁴⁶³ The humanitarian impact of climate change will be extreme as people will not only be displaced but will often have no ability to return to their homes; some people may be unable to remain living in their country.⁴⁶⁴ Climate change will undermine necessities essential to the enjoyment of the basic rights of life: destroying places of shelter, upending food supply locally, regionally and internationally, and denying the rights of citizenry including access to health, education and welfare.

The expected humanitarian impacts of these disasters have led to climate migration becoming a Red Cross and Red Crescent Movement priority. This is based on the broad humanitarian devastation that accompanies the loss of homes, lands, livelihoods and, potentially, citizenship. As such, a proactive human mobility response to climate change and disasters has a central place in both the New Zealand Red Cross' Strategy 2030, as well as a central place in the planning of National Societies throughout the Pacific.⁴⁶⁵

“

“Many communities worldwide are affected by concurrent and consecutive disasters and displacement, leaving them with little time to recover before the next catastrophe strikes.”

*International Federation of the Red Cross.*⁴⁶⁶

In August 2022, New Zealand Red Cross launched the Pakistan Monsoon Floods Appeal to assist Pakistan Red Crescent Society to help some of the more than 30 million people directly affected by the disaster.



⁴⁶³ This section focuses on human mobility as a result of environmental and climate related phenomena. This position does not imply that climate change is a direct cause of disasters, but that it multiplies already existing phenomena.

⁴⁶⁴ International Federation of the Red Cross and Red Crescent (2018). Disasters and Displacement in a Changing Climate: The Role of Asia Pacific National Societies. https://www.ifrc.org/sites/default/files/2021-10/IFRC-Displacement-Climate-Report-2021_1.pdf

⁴⁶⁵ For the latest Movement level overview, see Bruce Burson (2021). Displacement in a Changing Climate. IFRC. https://www.ifrc.org/sites/default/files/2021-10/IFRC-Displacement-Climate-Report-2021_1.pdf

⁴⁶⁶ Ibid.

8.1 The global context

Human mobility as a result of climate change and disasters is a fairly new area of study and the language in this section tends to be less settled than in the others. Because of this, it is worth making a quick note on language. “Climate refugee” is not a legally or academically recognised term, though it is often used and may, despite its shortcomings, come into common usage due to the ease of understanding the term as a shorthand for displacement of people. The UNHCR notes, “the term ‘climate refugee’ is not endorsed by the UNHCR, and it is more accurate to refer to ‘persons displaced in the context of disasters and climate change’”.⁴⁶⁷ For this report, we have used the term “mobility” as an umbrella category, under which a range of movements exist, including displacements that are short term or permanent, and other types of regular and forced migration. For now, we will merely note that there needs to be more thought put into how to address the terminology of human mobility and climate displacement in different types of documents, such as public-facing communication compared to strategy and research. Given these ongoing discussions, we have attempted to find a middle ground between the passivity of neutral language and the more active terms required for framings that encourage humanitarian action. There is insufficient space within this section to review all the reports and academic papers on climate change and migration, but multiple studies offer comprehensive and recent meta-analysis of the nexus of these issues in English and is a useful starting point.⁴⁶⁸ The rest of this section will offer an introduction to the complexities of the topic and gesture to a few key global and regional movements.

Climate-related human mobility is an inordinately complex issue and is difficult to define. Population movement in response to climate change does, and will look different across the globe. As climate change impacts vary

depending on the geographic context, so too will the movement of people:⁴⁶⁹ some will move voluntarily, others will be forcibly displaced, and others will fall on a spectrum between the two (for example, pre-emptively moving). Still others may well be part of organised community-wide relocation efforts.⁴⁷⁰ Accordingly, depending on the situation, people who move for climate-related reasons will look different from each other: they could resemble migrants seeking better opportunities elsewhere, or refugees and internally displaced persons who have fled situations beyond their control.⁴⁷¹ One useful attempt to catch most of these categories of migration is “slow-onset” migration, as highlighted in a recent chapter from the *World Migration Report 2022*.⁴⁷² Similarly, both IFRC and a special issue of *Forced Migration Review* have in-depth reports attempting to make the leap from policy commitments to action.⁴⁷³

Most individuals displaced for climate-related reasons are displaced within their own countries. However, the number of people moving across borders can be expected to increase, according to the United Nations, including in situations where complex interactions play out caused by climate change, environmental degradation and natural disasters.⁴⁷⁴ While it is uncertain what level of global warming will occur in the long run it and, consequently, it is unclear the extent of any related movement of persons,⁴⁷⁵

467 United Nations High Commissioner for Refugees (2020). Climate change and disaster displacement. <https://www.unhcr.org/climate-change-and-disasters.html>

468 See Šedová, B., L. Čizmaziová and A. Cook (2021). A meta-analysis of climate migration literature. Discussion paper No. 29. Center for Economic Policy Analysis, Potsdam; alternatively see de Sherbinin A, Grace K, McDermid S, van der Geest K, Puma MJ and Bell A (2022). Migration Theory in Climate Mobility Research. *Frontier Climate*. 4:882343. <https://www.frontiersin.org/articles/10.3389/fclim.2022.882343/full>

469 Nishimura, L. (2015). ‘Climate Change Migrants’: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies. *International Journal of Refugee Law*.

470 Ibid.

471 McAdam, J. (2011). Swimming against the tide: why a climate change displacement treaty is not the answer. *International Journal of Refugee Law*, 23(1), 2–27.

472 Chazalnoel, M and A. Randall (2021). Migration and the slow-onset impacts of climate change: Taking stock and taking action. In McAuliffe, M. and A. Triandafyllidou (eds.) *World Migration Report 2022*. International Organization for Migration (IOM), Geneva. <https://publications.iom.int/books/world-migration-report-2022>

473 Bruce Burson (2021) Displacement in a Changing Climate. IFRC. https://www.ifrc.org/sites/default/files/2021-10/IFRC-Displacement-Climate-Report-2021_1.pdf; *Forced Migration Review* (2022). Special Issue: Climate crisis and displacement: from commitment to action. FMR: 69. March. <https://www.fmreview.org/climate-crisis>

474 United Nations General Assembly (2018). Report of the United Nations High Commissioner for Refugees-Part II: Global Compact on Refugees. Also, see Weerasinghe, S. (2018) In Harm’s Way: International protection in the context of nexus dynamics between conflict or violence and disaster or climate change. *UNHCR*. December. <https://www.unhcr.org/protection/globalconsult/5c1ba88d4/39-harms-way-international-protection-context-nexus-dynamics-conflict-violence.html>

475 Nishimura, L. (2015). ‘Climate Change Migrants’: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies. *International Journal of Refugee Law*.

climate and weather events are already leading to extensive internal displacement of peoples. Attempts to quantify the estimated number of people are fraught and numerous caveats are needed.⁴⁷⁶ Nevertheless, the imagery and rhetorical pull of vast climate displacement and/or relocation efforts sustain a power well beyond the analytic understanding of how current displacement functions. The Intergovernmental Panel on Climate Change Fifth Assessment Report identified that displacement risks associated with climate change are “regionally differentiated” and “unevenly distributed”.⁴⁷⁷ Large-scale migration will mainly occur in the Global South and developing regions, with the Pacific at the forefront of challenges in Asia-Pacific.

In 2021, the United Nations Secretary-General’s speech to the United Nations General Assembly on Human Rights and Migration predicted that by 2050, up to 250 million people may be displaced by the effects of climate change.⁴⁷⁸ The impacts on humanity of any permanent displacement will be profound and prolonged. Many will lose their lives trying to find safety, millions will also become alienated from their cultures, traditional lands, ability to support families and any hope for a stable future. Since that report, the scientific evidence on the effects of climate change (including sea-level rise and how climate change is a “threat amplifier”) has increased.⁴⁷⁹

The attention paid to climate change and migration began with the possibility that the United States might offer a world leading

definition of “climate refugee”⁴⁸⁰ that could lead to substantial changes to the asylum system or the creation of more refugee pathways for people impacted by climate change.⁴⁸¹ As with many of the other more direct approaches to dealing with climate refugees, the eventual White House report was unequivocal about climate change leading to increased migration but more circumspect about how those migration flows ought to be dealt with. In particular, there was a recognition that climate change works as an intensifier of migrant flows.

At present, the Asia-Pacific region has the highest level of climate-related displacement in the world based on cyclical weather events that cause internal displacement. While much of this is based on events in East Asia, on a per capita basis, the smaller Pacific island states have some of the highest rates of displacement in the world. In the future, these Pacific nations are likely to see permanent displacement due to sea level rises.⁴⁸² A key task within the slow onset of climate migration is preventing the worst outcomes for people, including statelessness and nationality loss.⁴⁸³

While some temporary migration and limited humanitarian programmes already exist between many Pacific island states and larger countries, like New Zealand’s Sāmoan Quota and Pacific Access Category, these are not sufficient to manage the movement of people, nor do they account for the kinds of cultural loss that could be suffered through permanent relocation. More recently, Australian researchers have begun putting forward policy documents that include an

476 Biermann, F. & Boas, I. (2010). Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees *Global Environmental Politics* 10(1), 67.

477 Field, C. B. (ed.) (2014). *Climate change 2014 – Impacts, adaptation and vulnerability: Regional aspects*. Cambridge University Press.

478 United Nations Secretary General (2012). Secretary-General’s remarks to the General Assembly on his Five-Year Action Agenda: “The Future We Want” 12 January. <https://www.un.org/sg/en/content/sg/statement/2012-01-25/secretary-generals-remarks-general-assembly-his-five-year-action>; for commentary on this see Crépeau, F. & Atak, I. (2016). Global migration governance: Avoiding commitments on Human Rights, yet tracing a course for cooperation. *Netherlands Quarterly of Human Rights*, 34(2), 113–146. Other make much higher estimates, such as the 2020 claim from the Institute of Economics and Peace that there will be 1.2bn people displaced by climate change and natural disasters. See, IEP (2020). Over one billion people at threat of being displaced by 2050 due to environmental change, conflict and civil unrest. 9 September. <https://www.economicsandpeace.org/wp-content/uploads/2020/09/Ecological-Threat-Register-Press-Release-27.08-FINAL.pdf>

479 Allen, M., Babiker, M., Chen, Y., de Coninck, H., Connors, S., van Diemen, R. & Ferrat, M. (2018). Global warming of 1.5 C, summary for policy makers. *Intergovernmental Panel on Climate Change*, 6, 32.

480 White House (2021). Report on the Impact of Climate Change on Migration. October <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf> This is a significant escalation of attention compared to the mention of climate migration and national security in the last years of the Obama administration. See, White House (2016) Presidential Memorandum – Climate Change and National Security. 21 September. <https://obamawhitehouse.archives.gov/the-press-office/2016/09/21/presidential-memorandum-climate-change-and-national-security>

481 Watson, J. (2021). Joe Biden considers protections for climate change refugees after New Zealand case. *New Zealand Herald*. 14 April. <https://www.nzherald.co.nz/nz/joe-biden-considers-protections-for-climate-change-refugees-after-new-zealand-case/ARGJO3R7ECPGYNBVCBQCFCFJHE/>

482 International Federation of the Red Cross and Red Crescent (2018). Disasters and Displacement in a Changing Climate: The Role of Asia Pacific National Societies. <https://www.ifrc.org/document/disasters-and-displacement-changing-climate-asia-pacific>

483 Foster, M., Hard, N., Lambert, H. and J. McAdam (2022). The Future of Nationality in the Pacific Preventing Statelessness and Nationality Loss in the context of Climate Change. Kaldor Centre. May. https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/The_Future_of_Nationality_in_the_Pacific_May_2022.pdf

Australasian response and advocating for a Pacific Access visa, drawing from existing categories in New Zealand.⁴⁸⁴ Recent studies indicate that there still remains no useful mechanism for alleviating the losses and damages from climate change to Pacific nations.⁴⁸⁵

8.2 New Zealand context

While this section is based on the New Zealand response, it is also concerned with challenges for climate change and disaster displacement in the Pacific.⁴⁸⁶ As explained above, there is currently no legal basis to recognise climate-related mobility. However, New Zealand, as a developed nation in the Pacific, has an interest and role to play with Pacific island nations⁴⁸⁷ that are low-lying states that are particularly vulnerable to sea level rise and extreme sea-level events such as storm surges.⁴⁸⁸ Affected nations are also at risk of salt-water contamination of freshwater sources and salination of arable soil. These vulnerabilities mean many people in the Pacific may be displaced by climate change.

The current government has looked at climate-related migration in the Pacific as part of its refreshed approach to the Pacific islands, known as the “Pacific Reset”. On 2 May 2018, a paper went to the Environment, Energy and Climate Committee of Cabinet, entitled *Pacific climate change-related displacement and migration: a New Zealand action plan*. The Paper “built a case for early, calibrated and transparent New Zealand action on Pacific climate-related displacement and migration”. The Paper recognised Pacific island countries’ expressed desire to have their people remain in their own countries but noted “there is more that New Zealand can do to assist

Pacific island countries to adapt to the impacts of climate change and prepare for internal or cross-border climate migration”. As to the long-term actions, it stated that acting for Pacific climate migration “would involve a long-term, concerted policy effort across New Zealand agencies. Initial actions would sit within the foreign policy and development portfolio, but questions would inevitably arise around New Zealand’s domestic immigration settings”. The Paper recommended “further consideration of immigration options, including any humanitarian visa category, for instance, be addressed in this longer-term approach”.⁴⁸⁹

New Zealand does not have a visa category specific to those affected by climate change. In 2017, there were discussions about New Zealand introducing “an experimental humanitarian visa” category for people from Pacific islands displaced by the effects of climate change, but New Zealand is not currently pursuing this option. On 15 May 2019, a Ministry of Business Innovation and Employment Briefing Paper went to Cabinet seeking endorsement on a proposed immigration work programme to improve Pacific migration policies. With respect to climate-related displacement, the Paper noted it is a “possible ... phase of work (likely post-2024), as indicated in the Minister of Foreign Affairs and Trade’s paper: *Pacific climate change-related displacement and migration: a New Zealand action plan* to investigate the need for, and design of, changes to visa setting for people displaced by climate change”.⁴⁹⁰ Plans for a visa for “climate refugee” were dropped, according to the Climate Change Minister, because consultation with Pacific island leaders concluded that they did not want them.

Instead, these Pacific island leaders called on the New Zealand government to institute a stepwise approach:

- reduce emissions
- support adaptation efforts
- provide legal migration pathways

484 McAdam, J. & Pryke, J. (2020). Climate Change, Disasters and Mobility: A Roadmap for Australian Action. *Kaldor Centre for International Refugee Law. Policy Brief 10*. https://uploads.guim.co.uk/2020/10/21/Policy_brief_10_Climate_Change.pdf

485 Nand, M. & Bardsley, D. K. (2020). Climate change loss and damage policy implications for Pacific Island Countries. *Local Environment*, 25(9), 725–740.

486 See, for instance, Morton, J. (2021). Climate change conference 2021: Is NZ doing enough to save the Pacific? *New Zealand Herald*. 25 October. <https://www.nzherald.co.nz/nz/climate-change-conference-2021-is-nz-doing-enough-to-save-the-pacific/7VNGQ6AFVFRMU6ROSERLIQEXU4/>

487 Farquhar, H. (2015). Migration with dignity: towards a New Zealand response to climate change displacement in the Pacific. *Victoria University of Wellington Law Review*, 46.

488 Field, C. B. (ed.) (2014). *Climate change 2014 – Impacts, adaptation and vulnerability: Regional aspects*. Cambridge University Press.

489 Ministry of Foreign Affairs and Trade (2018). *Pacific climate change-related displacement and migration: A New Zealand Action Plan*. <https://apo.org.au/sites/default/files/resource-files/2018-05/apo-nid213946.pdf>

490 Ministry of Business, Innovation and Employment (2018). Final Cabinet Paper proposed immigration work programme to improve Pacific Migration. <https://www.mbie.govt.nz/assets/897e7e39bc/final-cabinet-paper-proposed-immigration-work-programme-to-improve-pacific-migration-policies.pdf>

- grant refugee status if all else fails.⁴⁹¹

It is unclear whether more migration work is in the pipeline to expand other climate migration paths for the Pacific. For much of 2020–22, work on this appears to have been delayed as borders were closed and visa processing systems reallocated, due to COVID-19.⁴⁹²

In September 2019, the Ministry for the Environment released *A Framework for the National Climate Change Risk Assessment [NCCRA] for Aotearoa New Zealand*. This NCCRA Framework acknowledges New Zealand will be affected by international influences arising from climate change, including climate-related migration and states that the “NCCRA and National Adaptation Plan will, over time, need to adapt to these influences”.⁴⁹³ Academic studies have found that New Zealanders were more supportive of climate refugee policies than of addressing these issues through increased financial aid.⁴⁹⁴ The authors of the study concluded that those opposed to climate refugees correlated to (a) people with a general anti-egalitarian world view and (b) those who expressed economic concerns over cultural or social norms and values.

At the same time as these consultations and frameworks have positioned climate refugee movements as a long-term issue, domestic attention on climate change has continue to grow. For example, the 2022 Emissions Reduction Plan and associated budget allocations of \$2.9 billion were some of the first large-scale moves towards achieving New Zealand’s Zero Carbon Act.⁴⁹⁵

The concept of the climate refugee continues to have a strong rhetorical pull,⁴⁹⁶ however, outside of some continuing discussion on large-scale potential movements of people, there is no evidence the New Zealand government is carrying out any concrete policy planning on climate and migration.

Legal background for environmental and climate migrants

Currently, international human rights law – including the Refugee Convention, complementary protection and the Statelessness Convention – do not cover most climate-related displacements. Despite this looming crisis, international law provides insufficient protection to those who will be forced to migrate, and it is not clear what such protection should look like. One option for meeting this gap is to revise definitions or the Refugee Convention to include climate-related displacement.⁴⁹⁷ The main advantage of such an amendment is that the framework already exists, both in terms of the jurisprudence (the human rights framework) and the legal infrastructure (including international and national decision-making bodies, legislation and other legal instruments). However, there are several reasons not to amend the definition. Extending the definition of “refugee” internationally is not recommended by the UNHCR because the organisation is already under significant pressure dealing with the tens of millions of refugees that clearly fall within its scope.⁴⁹⁸ Also, while the Convention is widely ratified, it is not being implemented as effectively or fairly as it could be. The international community has recently agreed that states should take collective responsibility, however, this agreement is not legally binding. In such circumstances, amending the definition of refugee could be problematic.

With the recognition in the Global Compact on Migration that climate change is a driver

491 Dempster, H. & Ober, K. (2020). New Zealand’s ‘Climate Refugee’ Visas: Lessons for the Rest of the World. *Center for Global Development*. <https://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world>

492 In June 2022 it was announced that unallocated visa places affected by COVID-19 have been rolled over and 6000 visas will be allocated in the coming year to people from Pacific islands. While these are not related to climate change or environmental disaster, they do show an enduring commitment to ensure Pacific peoples access to migration channels. See Bonnett, G. (2022). Residence visas being offered to up to 5000 Pasifika after Covid-19 hiatus. Radio New Zealand. 16 June. <https://www.rnz.co.nz/news/national/469205/residence-visas-being-offered-to-up-to-5000-pasifika-after-covid-19-hiatus>

493 Ministry for the Environment (2019). *A Framework for the National Climate Change Risk Assessment for Aotearoa New Zealand*. <https://environment.govt.nz/publications/arotakenga-huringa-ahuarangi-a-framework-for-the-national-climate-change-risk-assessment-for-aotearoa-new-zealand/>

494 Stanley, S. & Williamson, J. (2021). Attitudes towards climate change aid and climate refugees in New Zealand: an exploration of policy support and ideological barriers. *Environmental Politics*. Pre-publication. <https://www.tandfonline.com/doi/full/10.1080/09644016.2021.1892982?scroll=top&needAccess=true>

495 See New Zealand Government (2022). Landmark climate plan secures path to net zero. 16 May. <https://www.beehive.govt.nz/release/landmark-climate-plan-secures-path-net-zero>

496 Yates, O.E.T., Manuela, S., Neef, A. et al. Attitudes towards climate migrants in Aotearoa New Zealand: the roles of climate change beliefs and immigration attitudes. *Reg Environ Change* 22, 88 (2022). <https://doi.org/10.1007/s10113-022-01942-y>

497 Philip, T. (2018). Climate change displacement and migration: An analysis of the current international legal regime’s deficiency, proposed solutions and a way forward for Australia. *Melbourne Journal of International Law*, 19, 639.

498 Fiennes, L. (2019). New Zealand’s Climate Refugee Visa, a Framework for Positive Change. Honours dissertation. University of Otago.

of migration, there are likely to be increased moves in the coming years to adjust refugee and protected person status to account for forced migration driven by climate change. New Zealand recognises its protection obligations under the Immigration Act 2009, which states an individual can be granted refugee or protected person status, assuming they can establish they meet the requisite tests.⁴⁹⁹

The most relevant legal precedent remains the case *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment*.⁵⁰⁰ Mr Teitiota applied for refugee status based on changes to the environment in Kiribati caused by sea-level rise and storms associated with climate change. In 2015, Mr Teitiota and his family were sent back to Kiribati by the New Zealand Government after his refugee and protection claims were unsuccessful.

While the Immigration and Protection Tribunal (IPT) acknowledged natural disasters and environmental degradation can involve significant human rights issues, there was no acceptance in this case that the environmental conditions were such that Mr Teitiota's life would be in jeopardy or he would live without dignity, if he returned. Nor was there any evidence that the harm that would be caused to him was related to one of the Convention grounds (race, religion, nationality, membership of a particular social group or political opinion). The Tribunal decision was upheld by the High Court, Court of Appeal and Supreme Court. This decision marked the first time New Zealand's higher courts considered the issue of "climate refugees".

After being deported from New Zealand, Mr Teitiota took his case to the United Nations Human Rights Committee. The majority response found that while Mr Teitiota did not sufficiently demonstrate the imminent nature of the threat posed by effects of climate change, it acknowledged the impact of climate change needed to be considered before deporting an asylum seeker. The committee found that, in the future, the effects of climate change may trigger the *non-refoulement* obligations of sending

states.⁵⁰¹ This ruling put countries on notice that the situation was under review and that nations should adopt appropriate policies around maintaining the right to life with dignity, or courts may need to step in.⁵⁰²

In addition to refugee status, New Zealand has protected person status, which is a form of complementary protection. Complementary protection refers to a situation where an individual is not protected by the Refugee Convention, but nonetheless requires protection under another international human rights instrument. In New Zealand, the Immigration Act provides a person will be granted protected person status if they are at risk of arbitrary deprivation of life, or cruel, inhuman, or degrading treatment, or at risk of torture, if deported from New Zealand. However, the level of harm required to establish a protected person claim is essentially the same as that in a refugee claim.⁵⁰³

It is also possible for a person to appeal their liability against deportation on humanitarian grounds to the IPT. In such appeals, liability will be cancelled if the appellant can establish they have "exceptional circumstances of a humanitarian nature" such that it would be "unjust or unduly harsh to deport the appellant", and that it is not contrary to the public interest to allow the appellant to remain in New Zealand.⁵⁰⁴ The IPT has accepted that exposure to the impacts of natural disasters, including climate change, can be considered as part of the context of a decision, but not determinative. However, while climate change is a factor that may be considered, at this stage, it appears the impacts of climate change alone will not be sufficient.⁵⁰⁵

499 Immigration New Zealand (2009). Immigration Act.

500 *Teitiota v Chief Executive of the Ministry of Business Innovation and Employment* (2013). New Zealand High Court.

501 Lyons, K. (2020). Climate refugees can't be returned home, says landmark UN human rights ruling. *The Guardian*. 20 January. <https://www.theguardian.com/world/2020/jan/20/climate-refugees-cant-be-returned-home-says-landmark-un-human-rights-ruling>

502 United Nations Human Rights Committee (2020). Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016. January. <https://www.refworld.org/cases,HRC,5e26f7134.html>

503 See *AC (Syria)*. (2011). NZIPT 800035, New Zealand: Immigration and Protection Tribunal, 27 May. https://www.refworld.org/cases,NZ_IPT,4e0485582.html

504 Immigration New Zealand (2009). Immigration Act. s207.

505 *AD (Tuvalu)*, (2014). NZIPT 501370-371, New Zealand: Immigration and Protection Tribunal, 4 June. https://www.refworld.org/cases,NZ_IPT,585152d14.html

Organisations

As highlighted above, climate-related migration is extremely complex and occurring on a vast scale. There are many agencies working in the area, internationally, regionally and domestically. Given that, this is a summary of the key agencies and groups involved.

Red Cross Red Crescent Movement

In 2007, the International Federation of the Red Cross and Red Crescent (IFRC) – and 190 National Societies – agreed to develop a humanitarian response to climate change. Proactive pledges resulting from this conference were also agreed to by eight governments, including New Zealand. In 2015, the IFRC was describing climate change as the ultimate threat multiplier in the 21st century – showing that climate change is not just a risk for extreme weather events but will make many other already occurring disasters much worse.⁵⁰⁶ In response, the IFRC has established the dedicated Red Cross Climate Centre⁵⁰⁷ and the recent Climate: Red Summit.⁵⁰⁸ In 2021, two important documents were released by IFRC, including one on emerging displacements due to environmental hazards, featuring 11 case studies from a wide range of National Societies,⁵⁰⁹ and another specifically relevant to planned relocation in the Asia Pacific region.⁵¹⁰

At the international level, the IFRC Climate, Migration and Resilience Unit within the Disasters, Climate and Crises (Prevention, Response and Recovery) Department in Geneva, Switzerland, working via regional IFRC offices, provide technical support and guidance to the National Societies dealing with migration and displacement. New tools and structures are being put in place to show the links between migration, health, climate and displacement, including a new training resource on climate and migration

and a newly launched Migration Lab hosted by Australian Red Cross. Another strength of this work is in the Red Cross International Disaster Law team who are focused on prevention of, and preparation for responses to, disaster. Migration, inequality and climate change are also recognised to be central drivers influencing the provision of Movement services in increasing complex disasters and protracted crises, and will be key focuses within the International Red Cross and Red Crescent Movement Strategy 2030. The Movement's Green Response Working Group – chaired by the Swedish Red Cross – has also been working to make sure that the internal policies of participating National Societies are sustainable. The 2020 *Red goes Green* report is the latest overview of how the organisation implements sustainability policies.⁵¹¹

The Asia Pacific Migration Network (APMN) plays a key regional role for Red Cross and Red Crescent National Societies in responding to the migration challenges in the region, as well as anticipating future migration issues related to climate change and environmental degradation.⁵¹² These types of regional networks will be essential to responding to the movement of people as well as developing the communication and advocacy skills to highlight the risk and help these countries engage in preventive behaviours and policy changes. The regional implementation of global Movement strategies is also highlighted in the Asia Pacific Migration and Displacement Framework for Action.⁵¹³ This framework is a high-level approach, but in combination with the 2018 IFRC Climate Change Disasters and Displacement Report,⁵¹⁴ cited in the international context above, shows the already established links between

506 International Federation of the Red Cross and Red Crescent (2015). Climate change and the Red Cross and Red Crescent. November. <https://www.climatecentre.org/wp-content/uploads/Climate-change-and-the-Red-Cross-and-Red-Crescent.pdf>

507 See the website, hosted by the Netherland Red Cross and the International Federation of the Red Cross and Red Crescent <https://www.climatecentre.org>

508 Solferino Academy (2022) Virtual Climate: Red Summit. IFRC. <https://solferinoacademy.com/climate-red-virtual-summit/>

509 Burson, B. (2021). Displacement in a Changing Climate. IFRC. https://www.ifrc.org/sites/default/files/2021-10/IFRC-Displacement-Climate-Report-2021_1.pdf

510 Burson, B. (2021). Planned Relocation in the Context of Disasters and Climate Change: A guide for Asia Pacific National Societies. IFRC. <https://disasterlaw.ifrc.org/media/3797>

511 Hartilus, J. (2020). Red Goes Green Barriers and enablers for effectively greening practices and strengthening environmental sustainability across the International Red Cross and Red Crescent Movement. December. https://www.rodakorset.se/globalassets/rodakorset.se/dokument/om-oss/fakta-och-standpunkter/rapporter/red-goes-green_report_2020.pdf

512 Asia Pacific Migration Network (2019). General Meeting Report, 25 July 2019, Bangkok, Thailand. <https://www.rccr-resilience-southeastasia.org/wp-content/uploads/2019/10/APMN-AGM-2019-Full-Length-Report.pdf>

513 International Federation of the Red Cross and Red Crescent Asia Pacific (2018). Migration and Displacement: Framework For Action Reducing Vulnerability, Enhancing Resilience | 2017–2022. <http://www.rccr-resilience-southeastasia.org/wp-content/uploads/2018/06/2018-IFRC-AP-Migration-Displacement-Framework-LR.pdf>

514 International Federation of the Red Cross and Red Crescent (2018). Disasters and Displacement in a Changing Climate: The Role of Asia Pacific National Societies. <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/12/2018-IFRC-Climate-Change-Disasters-Displacement-Report-LR.pdf>

international approaches, regional networks and the activities of National Societies.

From a New Zealand perspective, the International Red Cross and Red Crescent Movement has been noted in a recent report for the Ministry of Foreign Affairs and Trade on Climate Change and Disaster Risk Reduction for the role of the IFRC and National Societies in highlighting how different communities experience disasters and disaster preparation in different ways.⁵¹⁵ New Zealand Red Cross signed off on a statement of intent noting that climate change was the single greatest threat to the livelihood, security and well-being of people in the Pacific. The statement noted that more work must go into supporting vulnerable communities affected by climate change as well as building community resilience.⁵¹⁶ The core aims of New Zealand Red Cross approach to Strategy 2030 are strongly linked to climate change and migration in the following ways:

- reducing vulnerability and enhancing resilience of temporary migrants
- offering a practical way to strengthen community connection to people affected by climate change
- diversifying Red Cross membership in New Zealand
- creating stronger connections to the Pacific.

New Zealand Red Cross has a unique chance to directly link migration, inequality and climate change in its advocacy work which spans strategic priorities of migration, emergency management, and international programmes. For example, New Zealand Red Cross agreed to work with the Flood Resilience Alliance Aotearoa project, including reviewing policy work to review gaps in legislation and community resilience work that can prevent cyclical displacement.⁵¹⁷ Another example is New Zealand Red Cross' *Statement of Intent to Respond to Climate Change* and the establishment of the

Red Cross Green Team to progress climate change action across the organisation.

INGOs and global bodies

Internationally, multiple United Nations agencies are involved in examining these issues, such as the United Nations High Commissioner for Refugees and the International Organisation for Migration (IOM). The latter is particularly active in the Pacific on climate and disaster-related mobility. For example, IOM assisted Vanuatu to draft its 2018 National Policy on Climate Change and Disaster Induced Displacement. The United Nations Human Rights Committee has also recently ruled, as noted in the Teitiota case, that governments must consider the human rights violations that can be caused by the climate crisis when considering deportation and non-refoulement of individuals.

In 2012, the Nansen Initiative was set up to focus on people displaced due to natural hazards, including climate change. The initiative was a bottom-up, state-led consultative process that conducted extensive regional intergovernmental consultations and civil society meetings, the first of which was held in Rarotonga in 2013. The focus was on building consensus among states on the principles that would underlie a soft-law protection agenda going forward.⁵¹⁸

During a Global Consultation in October 2015, 109 government delegations endorsed the Nansen Initiative's "Protection Agenda". The Agenda offers governments a "toolbox" to better prevent and prepare for displacement before a disaster strikes and to better respond to situations when people are forcibly displaced, either within their own country or across an international border. It recommends, among other things, that states ensure there are appropriate laws and policies in place to address the needs of internally and cross-border displaced persons.⁵¹⁹ Its successor, the Platform on Disaster Displacement, has been assisting states to implement the Protection Agenda which has led to the development of regional guidance, endorsed by states in Latin and

515 Hay, J.E, Manley, M., Lal, P., Bennett, C., Chong, J., Campbell, J. & Thorp, W. (2018). Climate Change and Disaster Risk Reduction: Research Synthesis Report. Submitted to the New Zealand Ministry of Foreign Affairs and Trade. <https://www.mfat.govt.nz/assets/Aid-Prog-docs/Research/Climate-Change-and-Disaster-Risk-Reduction-Research-Synthesis-Report.pdf>

516 New Zealand Red Cross (2019). Statement of Intent: Responding to Climate Change. https://www.redcross.org.nz/documents/574/Statement_of_Intent_Climate_Change_FINAL.pdf

517 Flood Resilience project (2020). New Zealand. <https://floodresilience.net/countries#newzealand>

518 Philip, T. (2018). Climate change displacement and migration: An analysis of the current international legal regime's deficiency, proposed solutions and a way forward for Australia. *Melbourne Journal of International Law*. 19.

519 Ibid.

South America. It is currently examining the scope for similar development in the Pacific.

The Framework Convention on Climate Change's (UNFCCC) 21st session of the Conference of the Parties (COP 21) adopted the Paris Agreement. The preamble acknowledges that "...climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...] (and that of) migrants [...]"⁵²⁰ The Parties mandated the Warsaw International Mechanism for Loss and Damage to establish the Taskforce on Displacement to "develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change".⁵²¹

The 2018 Global Compact for Safe, Orderly and Regular Migration (GCM) is the first inter-governmentally negotiated agreement, prepared under the auspices of the United Nations. It addresses all dimensions of international migration by means of 23 objectives, followed by a range of actions. Objective 2 refers to "Minimiz[ing] the adverse drivers and structural factors that compel people to leave their country of origin" and explicitly references climate change and disasters as a migration driver.

NGOs

While there are many groups in New Zealand working on climate change and migration separately, it is rare for any one group to combine the two areas. At the same time, there is a flourishing in reports, theses and studies that seek to anticipate the impacts of climate change on the Pacific, with a special focus on displacement. In 2018, Oxfam held a series of public meetings around the country – *Readying the Waka: New Zealand's Response to Climate Change-Induced Displacement in the Pacific*. The meetings focused on climate displacement and featured a range of speakers including Evelyn Marsters, Teanau Tuiono (now a Green Party MP) and Nathan Ross. Ross has also recently graduated with a PhD focused on self-determination and climate change

induced migration.⁵²² Previously, climate-focused groups such as 350 Aotearoa have included issues of displacement to highlight the need for more climate action with a faux-refugee camp set up outside one ANZ bank branch in 2015.⁵²³

8.3 What are the needs and gaps?

There is currently a lack of **explicit and local climate disaster and migration scenarios** and response examples to help the New Zealand public understand the local effects of climate change. Researching and disseminating information about these scenarios, including those linked to internal displacement in New Zealand, would help climate and environmental migration to be seen as local issues affecting the rights of New Zealanders to access shelter, safe food and water, and the sustained provision of essential services.

Public discussion on "climate refugees" often focuses on a **catastrophic scenario**, overshadowing the realpolitik of dealing with existing movements of people. The extreme "climate refugee" scenarios rarely focus on internal displacement humanitarian issues. While New Zealand Red Cross could be well placed to do that work through, for example, the Climate Centre, it is worth discussing how this could be collaborative with other climate-related NGOs.

With the demise of the Climate Change visa it has been suggested that **enhancing pathways under existing migration schemes** may be the best way forward.⁵²⁴ One option is through a "cluster" or "hub" approach that looks at existing migration links between states (such as the links between New Zealand and certain Pacific states) and argues that responses to climate migration could be at a bilateral or regional level

520 Decision 1. CP/21 FCCC/CP/2015/10/Add.1 (2016). At: <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf#page=2>. Accessed 7 March 2021.

521 Ibid. para 49.

522 Ross, N. (2020). *Low-Lying States, Climate Change-Induced Relocation, and the Collective Right to Self-Determination*. PhD dissertation. <https://nathanrossconz.files.wordpress.com/2020/02/nathan-jon-ross-phd-thesis-final.pdf>

523 350 Aotearoa (2015). Future Climate Refugee Camp. 25 September. <https://www.scoop.co.nz/stories/PO1509/S00338/future-climate-refugee-camp.htm>

524 Philip, T. (2018). Climate change displacement and migration: An analysis of the current international legal regime's deficiency, proposed solutions and a way forward for Australia. *Melbourne Journal of International Law*. 19.

rather than global level.⁵²⁵ If any advocacy or research was to be done in this area, it would need to be in concert with other proactive climate change prevention work. Enhancing existing migration schemes may also assist in avoiding the negative impacts of migration that can stem from emergency mass movements.⁵²⁶ For example, negative impacts can arise if the receiving communities are unprepared to absorb large numbers of migrants, while more positive impacts occur when migration is voluntary and a planned strategy.⁵²⁷

One key gap is that those displaced by climate change in New Zealand are **not yet fully recognised as needing protection**. While there have been advances, such as the focus on climate change in the Global Compact on Migration, the protection frameworks have not yet been fully established across legal mechanisms. This lack is exacerbated by the complexity of the problem, the rapidly evolving situations, and the fact that migration remains a contentious public issue for many. Options for meeting this gap include working towards revising definitions or the Refugee Convention to include climate-related displacement,⁵²⁸ or using tools developed by the Nansen Initiative.⁵²⁹

525 Burson, B. & Bedford, R. (2013). Clusters and Hubs: toward a regional architecture for voluntary adaptive migration in the Pacific. https://www.pacificclimatechange.net/sites/default/files/documents/DP_Clusters_and_Hubs_Toward_a_Regional_Architecture_for_Voluntary_Adaptive_Migration_in_the_Pacific.pdf

526 Martin, S. (2010). Climate change, migration, and governance. *Global Governance*, 397–414.

527 Ibid.

528 Philip, T. (2018). Climate change displacement and migration: An analysis of the current international legal regime's deficiency, proposed solutions and a way forward for Australia. *Melbourne Journal of International Law*, 19, 639.

529 McAdam, J. (2011). Swimming against the tide: why a climate change displacement treaty is not the answer. *International Journal of Refugee Law*, 23(1), 2–27.

9. MODERN FORMS OF SLAVERY: FORCED LABOUR, PEOPLE TRAFFICKING AND SLAVERY

TOP FIVE INDUSTRIES AT RISK OF MODERN SLAVERY:
**FISH, DIGITAL TECHNOLOGY
 MANUFACTURING, COCOA,
 GARMENTS, SUGARCANE**



ESTIMATED PEOPLE IN MODERN SLAVERY:

**40.3 MILLION
 (71% FEMALE;
 29% MALE)**



KNOWN VICTIMS OF HUMAN TRAFFICKING IN NEW ZEALAND SINCE 2009:

51



Modern slavery, contrasted with more colloquial understandings of slavery, is defined as possessing or controlling another person for your own benefit or to make a profit.⁵³⁰ This extreme exploitation is opposed to the imagery of slavery in colloquial use. It is also difficult to get accurate figures on, due to its hidden place in global supply chains.⁵³¹ The most cited data comes from the Walk Free Foundation who estimated 40.3 million people are subject to some form of modern slavery. Included in these statistics are 25 million people who have been trafficked, of whom 80 per cent were trafficked for labour, with the remaining ones, who are overwhelmingly women, being victims of sex trafficking.⁵³²

The extent of modern slavery in New Zealand has come under renewed interest in the past two years, particularly how this form of exploitation makes its way into New Zealand through supply chains. The interest began after a study into the exploitation of Temporary Migrant Workers in 2019 led to government enquiries and civil society advocacy, centring around a Modern Slavery Act. Prior to this, media stories, NGO reports and legal cases had demonstrated cases of people being trafficked in New Zealand, though the government downplayed the extent of these occurrences.⁵³³



“While modern slavery and worker exploitation may appear limited in New Zealand, we know the hidden nature of these crimes means vulnerable people are less likely, or able, to seek help or report their experience.”

Hon. Michael Wood, Minister of Immigration.

The Red Cross Red Crescent movement aims to protect vulnerable people at every point in a migration journey.



530 Stringer, C. (2017). Christina Stringer: Why NZ needs a Modern Slavery Act. *New Zealand Herald*. 3 July.

<https://www.nzherald.co.nz/nz/christina-stringer-why-nz-needs-a-modern-slavery-act/6FJJRZNVUSI2RMGNOOBQLZEBQC>

531 United States of America Department of State (2019). *Trafficking in Persons Report June 2019*. <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

532 United States of America Department of State (2020). *2020 Trafficking in Persons Report*. <https://www.state.gov/reports/2020-trafficking-in-persons-report>

533 See, for example, Keogh, B. (2019). 'Human trafficking in NZ: Government accused of having 'its head in the sand. *Stuff*. 26 June.

9.1 The global context

As much international trafficking discourse is gendered, the public may believe that trafficking for sexual exploitation is the only type of human trafficking, or that trafficking affects only women. However, trafficking is a broad term that includes forced marriage and labour exploitation, both of which disproportionately affect men.⁵³⁴ Africa has the highest prevalence of modern slavery, followed by Asia and the Pacific.⁵³⁵ Following COVID-19, these estimated figures are expected to increase, though no widescale new estimates have been released in the last year.⁵³⁶

The human trafficking industry continues to thrive despite international and regional state responses and conventions. Since the 1990s, the agreements and legislation have become more comprehensive in response to rising numbers.⁵³⁷ In 2003, the United Nations published the most significant response, known colloquially as the Palermo Protocols. These principles comprise the United Nations Convention against Transnational Organized Crime and two accompanying protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the Protocol against the Smuggling of Migrants by Land, Sea and Air (most of which became effective in 2003/4). These principles encourage states to provide strong protections for all people who are the victims of trafficking, including labour exploitation

The Palermo Protocols have been the foundation for subsequent bilateral agreements, regional treaties and other state responses. In 2004, the Australian government launched a whole-

of-government response, followed by the first National Action Plan to Combat Human Trafficking and Slavery 2015–2019. In 2016, the Australian government established the Migrant Workers Task Force to protect vulnerable workers. This work led to the establishment of the Modern Slavery Act 2018 in Australia, and the introduction of the Modern Slavery Bill 2018 in the United Kingdom.⁵³⁸

Regionally, the Bali Process (formed in 2002) is the major platform in place to coordinate states' responses to the irregular movement of people across borders. In New Zealand, concerns about irregular migration have resulted in a range of responses including participation in regional migration initiatives and changes to legislation.⁵³⁹ The Bali Process focuses on information sharing, building capacity among its 49 members, developing policy guides and achieving regional consensus on policy. The Process aims to contribute "to the eradication of trafficking in persons, forced labour, modern slavery and the worst forms of child labour."⁵⁴⁰

The United Nations, via the Office of the High Commissioner of Human Rights (OHCHR), has agreed on guiding principles regarding Business and Human Rights.⁵⁴¹ This work has helped to centre business in discussions about their human rights responsibilities, in addition to those of states and individuals. Instead of putting the obligation on businesses directly, it empowers states to ensure that businesses within their territory actively protect human rights. The principles encourage states to do this by implementing effective domestic laws.

534 United Nations (2020). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. General Assembly resolution 55/25. 15 November. <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

535 Walk Free Foundation (2018). *The Global Slavery Index 2018*. <https://www.globalslaveryindex.org/resources/downloads>; International Labour Organisation (2016). Global Estimates of Modern Slavery. https://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms_575479.pdf

536 Szablewska, N. (2020). Human Trafficking and Modern Slavery in a Time of COVID-19. In Georgeou, N., & Hawksley, C. (eds) *State Responses to COVID-19: A Global Snapshot at 1 June 2020*. <https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A56288/datastream/PDF/download/citation.pdf>

537 McNeven, A. (2014). Forced Migration in Australia, New Zealand, and the Pacific. In *The Oxford handbook of refugee and forced migration studies*.

538 Stringer, C. & Michailova, S. (2019). Addressing the Exploitation of Temporary Migrant Workers: Developments in Australia, Canada, and the United Kingdom.

539 MBIE note that modern slavery includes, "forced labour, debt bondage, forced marriage, other slavery and slavery-like practices, and people trafficking." See Ministry of Business, Innovation and Employment (2020). *Combatting Modern Forms of Slavery: Plan of Action Against Forced Labour, People Trafficking And Slavery*. December. <https://www.mbie.govt.nz/dmsdocument/13568-combatting-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery> p.5

540 Bali Process (2018). Declaration Of The Seventh Ministerial Conference Of The Bali Process On People Smuggling, Trafficking In Persons And Related Transnational Crime (Bali Process). [https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%207%20Ministerial%20Declaration-Final\(2\)\(2\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%207%20Ministerial%20Declaration-Final(2)(2).pdf)

541 Office of the High Commissioner of Human Rights (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. 16 June. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

International finance is another key sector in opposing the exploitation of migrants and modern slavery. Numerous nations and finance groups have worked alongside the Finance Against Slavery and Trafficking team to create the Liechtenstein Initiative, incorporating five goals.⁵⁴² Citigroup has also been a leader in the financial sector in working with a raft of International Labour Organisation and United Nations frameworks on finance and human rights, both within their organisation and with their clients.⁵⁴³

National Referral Mechanisms in many regions make it mandatory to report modern slavery and human trafficking incidents to government. The United Kingdom, for example, has been collecting this data since 2014. In their most recent quarter, they noted there were 3,777 potential victims of modern slavery. This accounted for a 13 per cent increase compared to the final quarter of 2021 and a 29 per cent increase from the first quarter of 2021.⁵⁴⁴

9.2 New Zealand context

Since 2009, there have been 51 recorded victims of trafficking within New Zealand, though the government acknowledges that there are likely to be more people who have not been identified.⁵⁴⁵ Because there is often a degree of consent involved, especially in cases where visas and residency are likely to be earned, victims may not know that they will be protected rather than punished if they seek assistance.⁵⁴⁶ Furthermore, victims may struggle to access support because

of language barriers, isolation, coercion, fear of authorities, cultural barriers and unawareness of how or where to find help.⁵⁴⁷

Concerns about irregular migration have resulted in a range of responses beyond legislation, including participation in regional migration initiatives and changes to legislation. New Zealand plays an active role in the “Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime” regional dialogue, but many of the actions have focused on deterring asylum seekers from arriving via people smuggling.⁵⁴⁸ Alongside Malaysia, New Zealand is the co-chair of the Working Group on the Disruption of People Smuggling and Trafficking in Persons’ Networks. This country has also been an active member in the Joint Period of Action exercises, the most recent in 2018.⁵⁴⁹ These responses have been largely reactive and, as with many other states, have focused primarily on deterrence rather than protection of victims.⁵⁵⁰

The New Zealand Plan of Action to Prevent People Trafficking was developed in 2009 as an all-of-government approach that would allow New Zealand to meet the Palermo Principles’ obligations. The initiative was led by the Department of Labour (which merged with three other Departments and Ministries to become MBIE in March 2012) through the Inter-agency Working Group on People Trafficking (Immigration New Zealand). While the Plan of Action identifies goals for prevention, protection and prosecution of people trafficking from its inception, there were criticisms that the plan only functioned across international borders. A new 2020–25 *Plan to Combat Modern Forms of Slavery* was released in March 2021 to acknowledge that people trafficking could also occur without international borders being crossed and devise a

542 United Nations University (2019). *A Blueprint for Mobilizing Finance Against Slavery and Trafficking*. September. <https://www.fastinitiative.org/the-blueprint/download-report>

543 Citigroup (2018). Statement on Human Rights. November. https://www.citigroup.com/citi/citizen/data/citi_statement_on_human_rights.pdf?ieNocache=62

544 Home Office (2022). Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2022 – January to March. 12 May. <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2022-january-to-march>

545 Ministry of Business, Innovation & Employment (2020). *Combating Modern Forms of Slavery: Draft Plan of Action against Forced Labour, People Trafficking and Slavery 2020–25*. <https://www.mbie.govt.nz/dmsdocument/11888-draft-plan-of-action-against-forced-labour-people-trafficking-and-slavery>; see also Walk Free Foundation (2020). Murky Waters A Qualitative Assessment Of Modern Slavery In The Pacific Region. <https://cdn.minderoo.org/content/uploads/2020/03/04091414/Walk-Free-Foundation-Pacific-Report-03-2020.pdf>

546 Immigration New Zealand (n.d.). People trafficking. <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/people-trafficking>

547 Department of Labour (2009). *Plan of Action to Prevent People Trafficking*. <https://www.immigration.govt.nz/documents/about-us/plan-of-action-to-prevent-people-trafficking.pdf>

548 Curley, M. & Vandyk, K. (2017). The securitisation of migrant smuggling in Australia and its consequences for the Bali Process. *Australian Journal of International Affairs*, 71(1), 42–62.

549 Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (2018). *Co-chairs Statement, Senior Officials’ Meeting*.

550 Stringer, C. (2016). Worker exploitation in New Zealand: a troubling landscape. Prepared for the Human Trafficking Research Coalition; Carville, O. (2016). Exposed: The dark underbelly of human trafficking in New Zealand. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/exposed-the-dark-underbelly-of-human-trafficking-in-new-zealand/4WLQWPXOCMIOTQF4K44HB64>

process through to 2025 to combat these forms of exploitation.⁵⁵¹

Since early 2021, numerous other actions have been advanced by government and civil society towards addressing modern slavery in supply chains. In March 2021, civil society presented the government with a public petition of more than 30,000 signatures. It took the form of an open letter from 100 businesses to the Minister of Workplace Relations, asking that inquiries begin into the creation of a Modern Slavery Act. This was followed by a two-day conference at Parliament. The intent was to ban modern slavery through a Modern Slavery Act, with particular focus on supply side issues, both in New Zealand and overseas. Included in this conference were unions, NGOs, MBIE, industry representatives – such as Chorus, the NZ Super Fund, and DB Breweries and academics. The introduction of the Migrant Exploitation Protection Visa in July 2021 (discussed in section six on Temporary Migrant Workers) provides some opportunity for temporary migrant workers who have been exploited to receive a new visa for up to six months.

In early 2022, ahead of community consultation on the proposed legislation, a collective of four domestic and international experts released the comprehensive report, *An Opportunity For Impact Recommendations for regulating modern slavery in supply chains in Aotearoa New Zealand*.⁵⁵² Ten key recommendations in the report include the scope of the legislation, processes in central government covering compulsory reporting, an independent commissioner and an advisory group, as well as penalties, remedies, and even the scope for bans. At the end of 2021, the Centre for Research on Modern Slavery at the University of Auckland Business School, led by Christina Stringer, released their own overview of what the Modern Slavery legislation ought to look like,

prior to the terms of the government's review.⁵⁵³ The Human Rights Commission also released a comprehensive overview of their perspective on the Modern Slavery Act, with discussion on shortcomings of the Migrant Exploitation Visa as it affects RSE workers.⁵⁵⁴

Consultation on the proposed modern slavery legislation remained open at time of writing and there remains strong interest in how the legislation is progressing.⁵⁵⁵ There were positive signs of a widespread desire to make submissions, with the report being translated into Chinese, Hindi, Māori, Sāmoan, Tagalog and Tongan. The proposal cites shared interest by business, government and NGOs⁵⁵⁶ and leans as much on the risks to New Zealand's reputation and brand as it does on the impact that modern slavery has on victims. The proposal would focus on modern slavery in international and domestic settings and supply chains, while also considering worker exploitation in Aotearoa.⁵⁵⁷ The reputational aspects are serious given the downgrade of New Zealand from Tier One to Tier Two for our response to modern slavery, as shown by the United States Trafficking in Person report in mid-2021.⁵⁵⁸

Human trafficking now involves an all-of-government response with numerous government agencies involved in this issue, including MBIE and the New Zealand Police. In their 2020–25 document *Combatting Modern Forms of Slavery*, MBIE lists ten government agencies that are tasked with reducing trafficking

551 Ministry of Business, Innovation and Employment (2020). *Combatting Modern Forms of Slavery: Plan Of Action Against Forced Labour, People Trafficking And Slavery*. December. <https://www.mbie.govt.nz/dmsdocument/13568-combatting-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery>

552 Szablewska, N., Kingi, R. Armstrong, R. and Q. Lake (2022). *An Opportunity For Impact: Recommendations for regulating modern slavery in supply chains in Aotearoa New Zealand*. May. <https://modernslaveryrecommendations.nz/>

553 Stringer, C., Burmester, B., Michailova, S. and T. Harré (2021). *Toward a Modern Slavery Act in New Zealand - Legislative landscape and steps forward*. White Paper. September. <https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/CREMS/CRMS%20Toward%20a%20Modern%20Slavery%20Act%20v1.1%20WEB.pdf>

554 Human Rights Commission (2022). *Submission on the Inquiry into Migrant Exploitation*. 3 February. https://www.parliament.nz/resource/en-NZ/53SCEW_EVI_116341_EW4994/0d395bc869d1d39c72b1d4b6001bed5d484df232

555 Johnston, K. (2022). *We thought slavery was consigned to the past but it is worse than ever*. *Stuff*. 13 September. <https://www.stuff.co.nz/national/crime/129858290/we-thought-slavery-was-consigned-to-the-past-but-it-is-worse-than-ever>

556 Wood, M. (2022). *Business, Government and NGOs join to end Modern Slavery and Worker Exploitation*. Parliament. 8 April. <https://www.beehive.govt.nz/release/business-government-and-ngos-join-end-modern-slavery-and-worker-exploitation>

557 Ministry of Business, Innovation and Employment (2022). *A Legislative Response To Modern Slavery And Worker Exploitation: Towards Freedom, Fairness And Dignity In Operations And Supply Chains*. April. <https://www.mbie.govt.nz/dmsdocument/19737-summary-discussion-document-a-legislative-response-to-modern-slavery-and-worker-exploitation>

558 Kingi, R. (2021). *Time to act - New Zealand downgraded to 'Tier 2' in US TIP Report*. World Vision. 7 July. <https://www.worldvision.org.nz/stories/advocacy/new-zealand-downgraded-in-us-tip-report>

including, for example, Oranga Tamariki, Manatū Hauora|Ministry of Health and Manatū Wāhine|Ministry for Women. The Employer Investigation Unit, MBIE's Migrant Exploitation Prevention Strategy, was responsible for the first trafficking conviction, with over 5,000 hours of investigation.⁵⁵⁹ A former Immigration New Zealand Trafficking in Persons programme manager said cases of trafficking have been prosecuted under different legislation in an effort to secure a conviction, noting: "We don't want to get caught up in laying people trafficking charges when the end goal is to put the perpetrator behind bars."⁵⁶⁰

High-profile cases that broadly fit under the modern slavery umbrella include the exploitation of Filipino workers during the Canterbury rebuild; numerous liquor store workers,⁵⁶¹ and Chorus broadband subcontractors.⁵⁶² While these public exposures have led to legislative changes, the reactive approach has undermined New Zealand's commitment to preventing these crimes.⁵⁶³ One key change in onshore attitudes to modern slavery is that businesses maintain a risk if their subcontractors are exploiting workers, even if businesses do not know about it.⁵⁶⁴ Trafficking of people into labour exploitation in New Zealand has been identified in multiple industries including construction, dairy, fishing, hospitality, international students and prostitution.⁵⁶⁵

Legal background for combating human trafficking and modern slavery

In New Zealand, no one statute deals specifically with modern slavery and anti-trafficking. To comply with obligations under the Palermo Protocols, in addition to the national plan of action, New Zealand made changes to the Crimes Act, Prostitution Reform Act (PRA), and Immigration Act in 2002. As there is no specific Anti-Trafficking Statute, different Acts are required to be read together, which has resulted in a lack of clarity for ruling judges.⁵⁶⁶ The maximum penalty for human trafficking is 20 years' imprisonment and a \$500,000 fine, which is equivalent to a murder conviction.⁵⁶⁷

Similar obligations to allow New Zealand companies to export are being developed around the world and, even though these are not New Zealand law, will have businesses improving their standards to comply. For example, currently, the EU has committed to implementing a Mandatory Due Diligence reporting law, derived from the Guiding Principles of the OHCHR,⁵⁶⁸ which will place requirements on New Zealand companies doing business in the European Union.⁵⁶⁹ Though it has been in draft stage for seven years, there is still progress on the United Nations' binding treaty on business and human rights, which may include trans-national corporations and other businesses who operate.⁵⁷⁰

Domestically, New Zealand criminalises human trafficking through a combination of statutes. Section 98 of the Crimes Act (1961) section 98AA specifically criminalises dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour. Sections 98B, D, E and F specifically criminalise trafficking in people. Section 98C of the Act

559 Ministry of Business, Innovation and Employment (2017). *Briefing for the Incoming Minister of Immigration*; Carville, O. (2016). Guilty: First human trafficking convictions in New Zealand. *New Zealand Herald*. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11710423

560 Carville, O. (2016). Exposed: The dark underbelly of human trafficking in New Zealand. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/exposed-the-dark-underbelly-of-human-trafficking-in-new-zealand/4WLQWPXOCMIOTQQF4K44HB64>

561 Bathgate, B. (2021). A plywood box in a liquor store backroom, home for one of New Zealand's estimated 3000 modern day slaves. *Stuff*. 6 November. <https://www.stuff.co.nz/national/126844667/a-plywood-box-in-a-liquor-store-backroom-home-for-one-of-new-zealands-estimated-3000-modern-day-slaves>; Kilgallon, S. (2021). Thirsty Liquor Tokoroa loses licence after 'systemic' non-compliance with labour laws. *Stuff*. 10 February. <https://www.stuff.co.nz/business/124197155/thirsty-liquor-tokoroa-loses-licence-after-systemic-non-compliance-with-labour-laws>

562 Foxcroft, D. (2019). Chorus blacklists sub-contracting companies after scathing report into migrant exploitation. *Stuff*. 8 October. <https://www.stuff.co.nz/business/116371860/chorus-blacklists-subcontracting-companies-after-scathing-report-into-migrant-exploitation>

563 Stringer, C. (2016). Worker exploitation in New Zealand: a troubling landscape. Prepared for the Human Trafficking Research Coalition.

564 See the case of Chorus, for example, as described in Martin Jenkins (2019). Independent review of Chorus' Next Generation Network Connection Contracting Model. April. <https://www.martinjenkins.co.nz/assets/Uploads/Client/Final.Independent.Review.of.Chorus.Contracting.Model-April.2019.pdf>

565 Ibid.

566 Thorburn, N. (2017). Practitioner knowledge and responsiveness to victims of sex trafficking in Aotearoa/New Zealand. *Women's Studies Journal*, 31(2).

567 New Zealand Government (2021). Crimes Act (1961). No. 43. <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM328722.html>

568 Business and Human Rights Resource Centre (2020). Towards EU Mandatory Due Diligence Legislation: Perspectives from Business, Public Sector, Academia and Civil Society 11 November. <https://www.business-humanrights.org/en/from-us/briefings/towards-eu-mandatory-due-diligence-legislation>

569 Evans, A. (2020). Kiwi firms urged to address any human rights abuses in supply chains. *National Business Review*. <https://www.nbr.co.nz/story/push-new-zealand-companies-take-greater-responsibility-human-rights-abuses-their-supply>

570 Business and Human Rights Resource Centre. (2020). 6th session of the IGWG. <https://www.business-humanrights.org/en/big-issues/binding-treaty>

prohibits smuggling of migrants. New Zealand made an amendment to the Crimes Act to remove the transnational element and extend the definition of trafficking to include domestic cases of trafficking.⁵⁷¹ The Minimum Wage Act 1983 stipulates the framework for the minimum standards of pay.

New Zealand was the first country to decriminalise prostitution, with the Prostitution Reform Act 2003 (PRA). To prevent sex trafficking, section 19 of the PRA prohibits anyone with a temporary visa from performing sexual services. While this exemption had the intention of being a safeguard for migrant workers, it has resulted in protection concerns for migrants who are engaging in sex work, either coerced or by choice. Critics point out that people are less likely to access help or protection if they are engaging in illegal activities, and it essentially drives the practice underground.⁵⁷²

People traffickers and smugglers may also be liable under other legislation. For example, under section 351 of the Immigration Act 2009 it is an offence to exploit unlawful employees and temporary workers. Under civil law, there can be breaches of minimum employment standards enforceable by the Labour Inspectorate. Legislation preventing domestic and family violence, as well as sexual and gender-based violence, can be applied to gendered trafficking.

In 2015, the Ministry of Justice released a Victims Code to provide guidance for agencies on how victims of crime can expect to be treated by government organisations and agencies.⁵⁷³ One salient point from the Code is that sexual assault victims are given standardised protections that are not established for trafficking victims when testifying.⁵⁷⁴ There are, however, protections given for victims of trafficking under special work

visa and permanent residency categories.⁵⁷⁵ The limitations of existing legislation in preventing and prosecuting, indicates that victims' rights are also not adequately protected under legislation.⁵⁷⁶

New Zealand is a signatory to several international obligations to end forced marriage, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The ICCPR aims to prevent breaches of individuals' civil and political rights, including right to life and freedom from forced marriage.⁵⁷⁷ Article 16 of CEDAW affirms a woman's right to be free from persuasion and coercion when entering into marriage, noting the uniquely vulnerable position that women can be placed in during engagement.⁵⁷⁸ In 2018, in response to these international laws, the New Zealand government passed legislation to prevent forced marriage, however, little statistical information exists on forced marriage.⁵⁷⁹ In December 2019, New Zealand ratified the Protocol to the Forced Labour Convention which reaffirmed the country's commitment to combat the interlinked problems of human trafficking, slavery and forced labour.⁵⁸⁰ This Convention requires states to take active measures to suppress forced labour, and it provides strong protections to workers forced to engage in unpaid, or slave labour in New Zealand.⁵⁸¹

571 Parliamentary Counsel Office (2015). *Crimes Amendment Act Section 98D replaced (Trafficking in people by means of coercion or deception)*, Public Act 2015, No 95, Date of assent 6 November 2015.

572 Armstrong, L. (2017). Decriminalisation and the rights of migrant sex workers in Aotearoa/New Zealand: Making a case for change. *Women's Studies Journal*, 31(2), 69–76.

573 Ministry of Justice (2015). *Victims Code*. <https://chiefvictimsadvisor.justice.govt.nz/rights-and-system/code-of-rights/>

574 Harré, T. (2012). Confronting the challenge of human trafficking for forced labour in the Pacific: Some thoughts from New Zealand. *New Zealand Yearbook of International Law, The*, 10, 173.

575 Community Law New Zealand (2018). *Victims of Human Trafficking*. <http://communitylaw.org.nz/community-law-manual/chapter-28-immigration/family-violence-and-vulnerable-migrants/victims-of-human-trafficking>

576 Lambert, S. (2014). *Modern day slavery and human trafficking, Are the recent charges in Nelson just the tip of the iceberg?* New Zealand Law Society.

577 United Nations (1966). General Assembly resolution. International Covenant on Civil and Political Rights. December. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

578 United Nations (1979). Convention on the Elimination of All Forms of Discrimination against Women. December. <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

579 Bennett, L. (2018). Changes to Family Violence (Amendment). Act in effect from Monday. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/changes-to-family-violence-amendment-act-in-effect-from-monday/BB5PDZNUNT6VRLVJAI2SYQDDWA/>; Radhakrishnan, P. (2012). *Unholy Matrimony: Forced Marriage in New Zealand*.

580 Ministry of Business, Innovation and Employment (2020). *Combatting Modern Forms Of Slavery: Draft Plan Of Action Against Forced Labour, People Trafficking And Slavery*. September. <https://www.mbie.govt.nz/dmsdocument/11888-draft-plan-of-action-against-forced-labour-people-trafficking-and-slavery>

581 International Labour Organisation (nd), *The Protocol to the Forced Labour Convention*, https://www.ilo.org/wcmsp5/groups/public/-/ed_norm/---declaration/documents/publication/wcms_321414.pdf

Organisations

Red Cross Red Crescent Movement

The International Red Cross and Red Crescent Movement (IFRC) is active in supporting vulnerable people in the human trafficking and modern slavery sphere. National Societies' work includes prevention and awareness-raising activities around the following:

- safe migration
- restoring family links
- facilitating regional dialogues and networks
- delivering support programmes and assisting people who have experienced trafficking and forced marriage.

The Movement broadly undertakes advocacy on these issues as part of a commitment to humanitarian diplomacy.

Since then, Australian Red Cross has dedicated significant effort to developing resources for both forced marriage⁵⁸² and modern slavery.⁵⁸³ British Red Cross also runs the Trafficking Response hub, connecting National Societies across the world to a range of resources in a range of languages. British Red Cross and Australian Red Cross jointly manage a page on the ICRC Communities of Practice website about protection in relation to human trafficking, and the IFRC has published a relevant fact sheet and guidance note on the impact of COVID-19.⁵⁸⁴ In Europe, this IFRC work focus on raising awareness, assistance and protection and humanitarian diplomacy.⁵⁸⁵

Australian Red Cross acknowledges that the Australian response to human trafficking and slavery is underpinned by strong political commitment, but research shows there is an urgent need to do more, especially with low rates

of investigation, prosecution and conviction.⁵⁸⁶ Out of 841 referrals to Australian Federal Police for human trafficking and slavery from 2004 to 30 June 2017, there were only 20 successful prosecutions.⁵⁸⁷ In 2020 alone, the Australian government referred 212 suspected cases of trafficking for investigation.⁵⁸⁸ According to an in-depth study of trafficking in the region, Australian Red Cross gave assistance to 426 people in the previous decade, with the majority being women and girls (355). The reasons for exploitation were comparable to international causes: "38% [of women] were referred for sexual exploitation, 30% for forced marriage and 25% for labour exploitation. From the 71 men supported to date, 88% were referred for labour exploitation."⁵⁸⁹ Australian Red Cross works alongside government agencies, often over multiple years, and aims to offer flexible, responsive and specialised services to each case.⁵⁹⁰

Local and international NGOs

The Human Trafficking Research Coalition (HTRC) regularly releases research on the boundary of exploitation and modern slavery, particularly via Christina Stringer, University of Auckland.⁵⁹¹ of HTRC include World Vision, the Préscha Initiative, Child Alert (ECPAT NZ),⁵⁹² Tearfund and HAGAR,⁵⁹³ and their most recent work focused on child trafficking.⁵⁹⁴ These organisations currently inform groups on how they might feed into the public consultation on the Modern Slavery Act. While supportive of the new legislation, the HTRC criticised the recent government work for

⁵⁸⁶ Ibid.

⁵⁸⁷ Interdepartmental Committee on Trafficking and Slavery (2020). *Trafficking in Persons: the Australian Government response July 2016-June 2017*. Australian government. <https://www.homeaffairs.gov.au/criminal-justice/files/interdepartmental-committee-human-trafficking-and-slavery-07-2016-06-2017.pdf>

⁵⁸⁸ US State Department (2022). 2021 Trafficking in Persons Report: Australia. <https://www.state.gov/reports/2021-trafficking-in-persons-report/australia>

⁵⁸⁹ Australian Red Cross (2019). Support for Trafficked People Program Data Snapshot: 2009 to 2019. <https://www.redcross.org.au/globalassets/cms/migration-support/support-for-trafficked-people/support-for-trafficked-people-data-snapshot-2009-2019.pdf>

⁵⁹⁰ Ibid.

⁵⁹¹ Though much of this work overlaps with that on exploitation more generally as per the more recently commissioned review by the Ministry of Business, Innovation and Employment.

⁵⁹² ECPAT had included the words "Child Prostitution" in its name, but due to a move away from that terminology, they now just go by the acronym without a corresponding explication.

⁵⁹³ Human Trafficking Research Coalition (2021). About Us. *Worker Exploitation.com*. <https://www.workere exploitation.com/contact>

⁵⁹⁴ HTRC (2022). Open Letter: Strengthening New Zealand's Child Trafficking Definition To Better Protect Tamariki. 18 March. https://www.htrc.nz/_files/ugd/2f5_e98d138a9d9b4f0291f3a8871d2876f2.pdf

⁵⁸² Australian Red Cross (2018). *Forced Marriages: Community Voices, Stories and Strategies. Consultation with community*. <https://www.redcross.org.au/get-help/help-for-migrants-in-transition/forced-marriage>

⁵⁸³ Australian Red Cross (2020). *Addressing Modern Slavery: A Guide for Australian Businesses*. <https://www.redcross.org.au/globalassets/cms-migration/documents/migration-services/addressing-modern-slavery-report-final.pdf>

⁵⁸⁴ International Federation of the Red Cross and Red Crescent (2020). COVID-19 Impact on Trafficking in Persons Factsheet. <https://media.ifrc.org/ifrc/document/covid-19-impact-trafficking-persons-factsheet>

⁵⁸⁵ International Federation of the Red Cross (2017). *Action To Assist And Protect Trafficked Persons: Guidance for European Red Cross National Societies on Assistance and Protection to Victims of Human Trafficking*. <https://oldmedia.ifrc.org/ifrc/document/action-assist-protect-trafficked-persons/guidance-note-trafficking/>

being too focused on labour exploitation and not enough on women and children.

The Human Rights Commission, led by their Equal Employment Opportunities Commissioner, has undertaken community consultation on modern slavery as part of their recommendations for the Modern Slavery Act.⁵⁹⁵ Their work is one of few to point towards the need for Te Tiriti o Waitangi to be upheld and cited in any forthcoming legislation. As noted earlier, they have also paid attention to the exploitation of RSE workers in Aotearoa.

World Vision, Trade Aid and Tearfund have been some of the most significant NGOs consistently advocating for the Modern Slavery Act. The Business and Human Rights consultancy, run by Rebekah Armstrong, advises New Zealand organisations who have to report on the Australian Modern Slavery Act⁵⁹⁶ and/or other international supply chains in the Asia-Pacific region.⁵⁹⁷ As a relatively small sector, many of the same experts have worked across these organisations and, more recently, with parts of government set up to advance this legislation and put protection mechanisms into practice.

Community Law provides guidance on their website for human trafficking and forced marriage survivors. Additionally, the Salvation Army has helped initiate several “Prevent People Trafficking” conferences. Women’s Refuge has also spoken about a lack of focus on the exploitation of women in the government’s recent strategies on modern slavery.⁵⁹⁸ There is limited information about organisations that provide support or information for survivors of forced marriage in New Zealand, despite several media

organisations publishing stories about potential legislative pitfalls.⁵⁹⁹

Business

With the expansion of interest and legislation on business and human rights, several organisations have emerged that can offer services to New Zealand organisations. For example, Tuhana consulting has employed the former Chief Commissioner of the Human Rights Commission, David Rutherford, to work in this space. Due to the potential, albeit staggered, implications on all business, a range of legal experts have begun commenting on the proposed reform with an eye on how it may affect their clients.⁶⁰⁰

From an independent investigations position, AIM CRI offers businesses help in identifying and eradicating labour exploitation in New Zealand, with employees who were formerly in New Zealand Police. They use similar methodologies to investigate labour practices, with a particular focus on opaque subcontractors who regularly use new company names, addresses and stand-in directors to avoid regulations. An example of AIM CRI’s work is their 2020 collaboration with Zespri to try to stop exploitation of migrants through unfair subcontracting contracts, which it estimated as being in the hundreds.⁶⁰¹

595 Human Rights Commission (2022). Modern Slavery. <https://www.hrc.co.nz/our-work/business-and-work/modern-slavery>

596 Business and Human Rights Consultant (2022). Who We Are. *BHR*. <https://www.bhr.co.nz/page/who-we-are>

597 World Vision (2021). Advocacy. *World Vision* <https://www.worldvision.org.nz/causes/advocacy>

598 Johnston, K. (2021). Women are the primary victims of human trafficking. New Zealand’s plan to stop slavery forgot them. *Stuff*. 19 January. <https://www.stuff.co.nz/national/crime/123976551/women-are-the-primary-victims-of-human-trafficking-new-zealands-plan-to-stop-slavery-forgot-them>

599 Chan-Green, M. (2016). New Zealand forced marriage victims young as 10. *Newshub*. <https://www.newshub.co.nz/home/new-zealand/2016/12/new-zealand-forced-marriage-victims-young-as-10.html>; Chan-Green, M. (2018). Parliament passes Bill to protect teens from forced marriage. *Newshub*. <https://www.newshub.co.nz/home/politics/2018/08/parliament-passes-bill-to-protect-teens-from-forced-marriage.html>; Carville, O. (2016). Exposed: The dark underbelly of human trafficking in New Zealand. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/exposed-the-dark-underbelly-of-human-trafficking-in-new-zealand/4WLQWPXOCMIOTQQF4K44HB64>

600 See, for example, Chapman Tripp (2022). Pressure builds for modern slavery legislation. 28 February. <https://chapmantripp.com/trends-insights/pressure-builds-for-modern-slavery-legislation>

601 Shepherd, N. (2020). Zespri helped bring migrant exploitation case, further charges possible. *AIM CRI*. 8 October. <https://www.aimcri.co.nz/post/manage-your-blog-from-your-live-site>

9.3 What are the needs and gaps?

It is clear that human trafficking and modern forms of slavery, or extreme exploitation, exist in New Zealand at a concerning level. While there is crossover with the exploitation of temporary migrant workers, there is enough evidence that these matters should be taken seriously. Some key needs and gaps include:

Despite recent attention, there is **no consistent group focused on extreme forms of exploitation** and trafficking. There is a lack of resources and a proliferation of small NGOs working in this space, but inconsistent interest from larger groups.

There are concerns regarding **insufficient or infrequent training**, resource constraints and staffing/funding issues for NGOs and government agencies that deal with trafficking. Australian Red Cross research indicated that service providers' and frontline officials' responses show unclear understanding of referral pathways and intervention criteria across agencies and jurisdictions. Recognising indicators of trafficking and slavery at the community level also remains difficult, with low awareness of the issue or what to do about it.

It is important to recognise that **migrants are particularly vulnerable to human rights breaches**. These risks are further pronounced if migrants arrive through irregular channels.⁶⁰² The very nature of being a non-national means a migrant worker may not speak the language, understand the legal system, and may have limited communication with family, which can further isolate them. There do not appear to be organisations providing support to trafficked peoples in any coordinated manner. With New Zealand Red Cross' experience in translation and culturally focused support, there are opportunities to assist some of the most exploited people.

602 United Nations (2015). The Economic Social and Cultural Rights of Migrants in an Irregular Situation. https://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf

10. MIGRANTS IN EMERGENCIES AND DISASTERS



This section examines how migrants fare before, during, and after a disaster, drawing on academic and public policy research as well as domestic experience from New Zealand Red Cross which has worked with newer or less-connected migrants who have different needs to more established populations. New Zealand has had a wide range of difficult disasters and emergencies recently, where foreign nationals and/or migrants have needed assistance. New Zealand Red Cross worked with migrants who had very different needs from more established populations. In addition to the Migration Programmes, this work draws on, and intersects with, disaster risk management, youth, and international strategic objectives from the New Zealand Red Cross.

Though this section focuses on all migrants in emergencies and disasters, there is an established, albeit changing, convention for describing issues involving migrants’ vulnerability. The frame fits well with the International Red Cross and Red Crescent Movement’s focus on humanitarian aid and assistance to those in need, however, it also excludes the focus on migrants’ strengths in preparing for, and avoiding, disasters and emergencies. As section eight addressed climate change and environmental degradation, these issues are not fully addressed in this section.



“I think migrants need a more systematic organization that provide avenues/linkages to all kinds of available support for migrants (not necessarily material or monetary) that is accessible in one website.”

*Belong Aotearoa survey of migrants during COVID-19, respondent.*⁶⁰³

New Zealand Red Cross responding to the Nelson and West Coast floods by setting up emergency accommodation in August 2022.



603 Belong Aotearoa (2020). Migrant Experiences in the time of COVID: Survey Report 2020. https://www.belong.org.nz/s/Migrant-Experiences-in-the-time-of-COVID_Belong-Aotearoa-Survey-Report-2020.pdf

10.1 The global context

There are numerous, and increasing, examples of global emergencies and disasters to draw from, and a correspondingly large quantity of migrants (100 million displaced people;⁶⁰⁴ 281 million migrants).⁶⁰⁵ Therefore, this overview is limited to a range of studies on risk preparedness and vulnerability in situations that are similar to those likely to be found by migrants in Aotearoa New Zealand.

There is no widely accepted, shared definition of vulnerable migrants in the international human rights discourse. Instead, the International Organization for Migration notes that organisations and institutions tend to list some vulnerable situations – children at risk, asylum seekers, or people who are ill, for example – without offering a definitive overview of what constitutes vulnerability.⁶⁰⁶ UNHCR makes the important distinction between vulnerability as a result of the situation leading to migration (situational vulnerability) and an inherent vulnerability (individual vulnerability).⁶⁰⁷ In arguing for an all-of-government/society approach to risk reduction, Lorenzo Guadagno offers a useful list of factors that can increase vulnerability in migrant populations:

- limited language proficiency
- limited knowledge of local environmental conditions, including natural hazards, legal framework and institutions, and markets
- limited social networks
- lack of trust in authorities
- restrictions on mobility

- and discrimination, hostility, and xenophobia.⁶⁰⁸

The trend towards a strength-based approach to Culturally and Linguistically Diverse (CALD) communities can be seen in a number of recent academic works seeking to better analyse vulnerability and resilience within CALD communities. Of note is Ogie and Pradhan's metric developed via their Strengths-based Social Vulnerability Index. The metric attempts to include the benefits of multilingual speakers, drawing on empirical and quantitative work from a case study set in Wollongong, Australia.⁶⁰⁹ They conclude this more analytical approach will help communities to:

- focus on strengths
- deploy resources to specific CALD communities
- empower CALD communities to manage risk in their own ways.

COVID-19 has seen a decrease in the movement of people across borders. Globally, total migrant numbers were down 2.6 per cent in the immediate aftermath of the pandemic, however, it has also led to immediate health issues as well as stigmatisation and exclusion.⁶¹⁰ These health and social challenges have led to political challenges and opportunities as many immigration settings are revisited in destination countries,⁶¹¹ remittance flows are affected⁶¹² and now, as borders have opened up, the competition for attracting new migrants has grown.⁶¹³ This

604 United Nations High Commissioner for Refugees (2022). More than 100 million people are forcibly displaced. <https://www.unhcr.org/refugee-statistics/insights/explainers/100-million-forcibly-displaced.html>

605 United Nations (2020). International Migrant Stock 2020. https://www.un.org/development/desa/pd/sites/www.un.org/development.desa.pdf/files/undesapd_2020_international_migration_highlights.pdf

606 International Organization for Migration (2017). Protection Of The Human Rights And Fundamental Freedoms Of Migrants And The Specific Needs Of Migrants In Vulnerable Situations. https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Protection-of-Human-Rights-and-Vulnerable-Migrants.pdf

607 United Nations High Commissioner for Refugees (2017). Migrants in vulnerable situations: UNHCR's perspective. <https://www.refworld.org/pdfid/596787174.pdf>

608 Guadagno, L. (2015). Reducing Migrants' Vulnerability to Natural Disasters through Disaster Risk Reduction Measures. *MICIC issue brief*. https://www.researchgate.net/publication/290121319-Reducing_Migrants'_Vulnerability_to_Natural_Disasters_through_Disaster_Risk_Reduction_Measures/link/5694e7ed08aeab58a9a4a68c/download

609 Ogie, R. & Pradhan, B. (2020). Social vulnerability to natural hazards in Wollongong: comparing strength-based and traditional methods. *Australian Journal of Emergency Management*, 35(1), 61–68; Ogie R. & Pradhan, B. (2019). Natural Hazards and Social Vulnerability of Place: The Strength-Based Approach Applied to Wollongong, Australia. *International Journal of Disaster Risk Science*. 10, 404–420.

610 International Organization on Migration (2020). Migration Factsheet No. 6 The impact of COVID19 on migrants. https://www.iom.int/sites/g/files/tmzbd486/files/our_work/ICP/MPR/migration_factsheet_6_covid-19_and_migrants.pdf

611 Newton, M. (2022). Including migrants in post-COVID-19 recovery. International Labour Organization. 15 February. https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_837311/lang-en/index.htm

612 International Organization on Migration (2022). World Migration Report 2022 <https://worldmigrationreport.iom.int/wmr-2022-interactive>

613 One example of this was a comment by Prof Richard Bedford highlighting Australia's growing connection to the Pacific and increased migration from that region. See the RSE scheme section for more on these changes.

competition for migrants is particularly noticeable as migrant workforces play crucial roles in many of the labour sectors that were most prominent during the pandemic, such as healthcare.⁶¹⁴ For example, in the United Kingdom, 33 per cent of doctors and 22 per cent of nurses were foreign born.⁶¹⁵

10.2 New Zealand context

Since 2010, several large-scale disasters in New Zealand, have resulted in significant loss of life: earthquakes in Canterbury (2010–11 with numerous significant aftershocks) and Kaikōura (2016 earthquake and tsunami), water contamination in Hawke’s Bay (2016), the eruption on Whakaari White Island (2019), the March 15 Attacks on two mosques in Christchurch (2019), and several large scale floods and wild fires in Christchurch’s Port Hills (2017) and the Nelson Tasman region (most recently in 2022). Furthermore, while COVID-19 differs from the disasters already mentioned due to no physical destruction to homes or infrastructure as would be seen in floods or earthquakes or to the environment such as a wild fires for example, it has presented numerous challenges for migrants. In this section, we will look at some of the tools and plans that are already in place in New Zealand to assist vulnerable migrants in the aftermath of disasters and emergencies.

The New Zealand government’s National Emergency Management Agency (NEMA) was established on 1 December 2019, replacing the Ministry of Civil Defence and Emergency Management (MCDEM) and providing leadership on nationwide responses to disasters and emergencies. Though NEMA replaces MCDEM, the term Civil Defence Emergency Management (CDEM) remains in place as a descriptor of the broader sector.

The 2019 National Disaster Resilience Strategy is the first new CDEM strategy in a decade to formulate nationwide, forward-thinking and

holistic response to disasters. The strategy, and resilience itself, is built around Risk Reduction, Readiness, Response, and Recovery.⁶¹⁶ The holistic approach has been favoured for at least 15 years, focusing on social and environmental well-being, alongside concerns for the economic and the built environment.⁶¹⁷ The strategy also expands on delivery of information for CALD communities. CALD communities can be defined as people whose first language is not English, or for whom te reo Māori is their primary language, or who have been raised in a culture that is different from the one in which they predominantly live.⁶¹⁸ Most obviously, the strategy has been produced in both simplified English forms, as well as Simplified Chinese, Gagana Sāmoa, Korean and Hindi (plus audio and large print, te reo Māori and New Zealand Sign Language).

The most recent CDEM overview on CALD communities was published in June 2013, drawing lessons from the Canterbury earthquakes. The overview is notable for the wide range of departments (15) required to collaborate on good outcomes for CALD communities, focusing on both CDEM personnel and broader communities.⁶¹⁹ This has led resources being allocated for CALD-relevant projects within CDEM, such as funding for Foreign Language Emergency Messaging for Radio, produced by Plains FM and Christchurch City Council, to be offered for all foreign-language radio stations across New Zealand.⁶²⁰

The widespread devastation of Canterbury in the 2010 and 2011 earthquakes has led to significant government and academic interest in how vulnerable migrants experienced response and recovery. In the immediate aftermath of the February 2011 earthquakes, a cross-sector group, Community Languages Information Network

614 Migration Data Portal (2022). Migration data relevant for the COVID-19 pandemic. 1 April. <https://www.migrationdataportal.org/themes/migration-data-relevant-covid-19-pandemic>

615 OECD (2019). Recent Trends in International Migration of Doctors, Nurses and Medical Students. 25 July. https://www.oecd-ilibrary.org/social-issues-migration-health/recent-trends-in-international-migration-of-doctors-nurses-and-medical-students_5571ef48-en

616 Civil Defence and Emergency Management (2019). *National Disaster Resilience Strategy: Rautaki ā-Motu Manawaroa Aitua*. April. Ministry of Civil Defence.

617 See, for example, Norman S. (2006). New Zealand’s holistic framework for disaster recovery. *The Australian Journal of Emergency Management*, 21 (4). 16–20.

618 see Civil Defence (n.d.). Information Accessibility. <https://www.civildefence.govt.nz/assets/Uploads/publications/dgl-14-13-information-accessibility.pdf>

619 Civil Defence (2013). *Including culturally and linguistically diverse (CALD) communities*. April. <https://www.civildefence.govt.nz/assets/Uploads/publications/is-12-13-including-cald-communities.pdf>

620 Civil Defence (2018). Strengthening CALD Communities Foreign Language Emergency Messaging for Radio. Application for funding. <https://www.civildefence.govt.nz/assets/Uploads/CDEM-Resilience-Fund/2018-19/2018-04.pdf>

Group (CLING), was formed to unite agencies and media to connect to CALD communities.⁶²¹ These collaborations laid the groundwork for Christchurch City Council, in collaboration with Partnership Health Canterbury, to develop an extensive best practice guideline for CALD communities.⁶²² The key message from the report was that the best recoveries would occur in communities that were already connected before a disaster. Forthcoming work from NEMA on preparedness in Māori and Pasifika communities looks set to provide a good example of readiness and an improved ability to cope. The Christchurch Migrant Inter-Agency (CMIA) group also produced an extensive report on how migrant communities responded to the earthquakes with a set of significant recommendations.⁶²³

Since the Canterbury earthquakes, several other entities have been practising readiness for likely future disasters. In 2015, Wellington Regional Emergency Management Office (WREMO) partnered with New Zealand Red Cross to produce information in 15 languages.⁶²⁴ This collaboration also brought in European Union translation specialists to help provide an overview for how citizen-led translation might be rapidly produced in a disaster response scenario.⁶²⁵ The impact of the Canterbury earthquakes led to the best practice on CALD while also influencing the willingness of WREMO to work with New Zealand Red Cross on earthquake preparedness for linguistically diverse communities. CDEM has also produced earthquake and tsunami pamphlets

in 22 languages to aid in readiness.⁶²⁶ Several other departments have translated some of their most important preparedness advice. The Earthquake Commission, for example, has “Quake Safe Your Home” documents in five other languages,⁶²⁷ while NEMA’s Get Ready website has seven additional-language overviews of preparing a grab bag with emergency survival items.⁶²⁸

The scale of devastation in the Canterbury region has led to significant academic research into both migrants’ responses to the disaster, and theorising on what this can teach people about preparedness. A key lesson from Zhuravsky and Harada’s study on culturally safe nursing in times of disaster was the role played by Māori and the potential for further work in Māori disaster resilience.⁶²⁹ This point was more broadly discussed by Marlowe and Lou’s evaluation of how refugee communities fared after the major Canterbury earthquakes in 2010 and 2011.⁶³⁰ They pointed out that Māori Wardens were particularly useful in identifying when cultural needs were not being met, which was especially important given a reported lack of cultural training for recovery centre staff. Marlowe has also shown the way refugee communities conceptualise belonging and how this identification informs both responses and recovery to disasters.⁶³¹

The specific challenges for communicating with Auckland’s large Pacific population form the basis for Marlowe’s expansion of the risk reduction theory to four sub-pillars of engagement: Reach, Relevance, Receptiveness and Relationships.⁶³² *The International Journal of Disaster Risk Reduction* has had regular overviews drawing from New Zealand experience, including work on short-term

621 Immigration New Zealand (2016). Lessons from the Christchurch quake. *Settlement Actionz* 6. July. <https://www.immigration.govt.nz/about-us/media-centre/newsletters/settlement-actionz/actionz6/lessons-christchurch-earthquake>

622 Wylie, S. (2012). *Best Practice Guidelines Engaging with Culturally and Linguistically Diverse (CALD) Communities in Times of Disaster*. Christchurch City Council. July. <https://www.ccc.govt.nz/assets/Documents/Services/Civil-Defence/BestPracticeGuidelinesofDiverseCommunitiesDisasterMarch2012.pdf>

623 CMIA (2012). Lessons learned following the earthquakes of 22 February 2011. <https://docs.google.com/file/d/0BxbzKqZEYFLallyVXFNamZnM00/preview>

624 Wellington Regional Emergency Management Office (n.d.). *Earthquake Planning Guide* (language versions). <https://getprepared.nz/households/earthquake-planning-guide-language-versions/>; Shackleton, J. (2018). Preparedness in diverse communities: Citizen translation for community engagement. *Work in Progress Insight Paper Understanding Risk, Risk Reduction, Consequences and Forecasting Track Proceedings of ISCRAM Asia Pacific*. K. Stock & D. Bunker, eds. http://idl.iscram.org/files/jamieshackleton/2018/1652_JamieShackleton2018.pdf

625 See also Federici, F.M. & Cadwell, P. (2018). Training citizen translators: design and delivery of bespoke training on the fundamentals of translation for New Zealand Red Cross. *Translation Spaces*, 7 (1), 20–43.

626 Civil Defence (n.d.). Translated Resources. <https://www.civildefence.govt.nz/cdem-sector/public-education/public-education-resources/tsunami-public-education-resources/#translated>

627 Earthquake Commission (2022). Quake Safe Your Home. <https://www.eqc.govt.nz/be-prepared/resources>

628 Civil Defence (n.d.) Translated information about emergency survival items and your grab bag. <https://getready.govt.nz/prepared/household/supplies/#e1279>

629 Zhuravsky, L. & Harada, N. (2019). Providing culturally safe nursing care in disaster: Japanese and New Zealand perspectives. *Journal of the National Institute of Public Health*, 68(4), 334–342.

630 Marlowe, J. & Lou, L. (2013). Canterbury Earthquakes and Resettled Refugee Communities. *Aotearoa Social Work Review*, 25(2), 58–68.

631 Marlowe, J. (2015). Belonging and Disaster Recovery: Refugee-Background Communities and the Canterbury Earthquakes. *British Journal of Social Work*, 45 (supplement 1), 188–204.

632 Marlowe, J., Neef, A., Tevaga, C. & Tevaga, C. (2018). A New Guiding Framework for Engaging Diverse Populations in Disaster Risk Reduction: Reach, Relevance, Receptiveness, and Relationships. *International Journal of Disaster Risk Science*, 9, 507–518.

migrants and international students,⁶³³ language translation (comparing New Zealand to Ireland, the United Kingdom, the United States and Japan) as well as over-reliant on volunteers.⁶³⁴

CDEM has also recognised significant shortcomings in preparedness among Asian-identifying communities, people who have been in New Zealand for less than ten years and people for whom English is not their first language. In their annual Colmar Brunton survey of New Zealanders, these three groups regularly showed either a lack of actions to prepare for disasters or a lack of knowledge about what to do in a disaster or emergency. While the data did not go much deeper into the specific CALD groups that this represents, it does show some national-level attention on differences among the population.⁶³⁵

Though the COVID-19 pandemic is ongoing, the success of New Zealand in minimising community transmission is also likely to lead to studies in how a super-diverse community was included in the all-of-government response. As with the work on citizen translators with WREMO, New Zealand Red Cross Visitor Care Manaaki Manuhiri work is already leading to discussions of best practice responses to migrant well-being. Visitor Care Manaaki Manuhiri together with New Zealand-based RSE researchers are comparing this response to Australia's. One 2020 study by Belong Aotearoa noted the challenges in focusing on diversity without this leading to CALD communities being seen as receiving special treatment.⁶³⁶ From the end of July 2022, the borders fully opened to migrants and visitors, which has reduced some of the challenges around the movement of people.⁶³⁷

Finally, the concepts of vulnerability and migrant are not solely derived from being vulnerable in

New Zealand. Many migrants in New Zealand, who are in search of the economic resources to improve lives at home, are made vulnerable by being away from their families. When a disaster or emergency occurs at home, migrants in New Zealand become vulnerable to health and mental health pressures – as well as pressures from wider family. Researchers have spent considerable effort in highlighting the role that remittances from New Zealand can play in assisting family members struck by disasters offshore.⁶³⁸

Legal background for migrants in disasters and emergencies

The emergency management legislation in New Zealand is the Civil Defence Emergency Management Act 2002. In 2016 the Civil Defence Emergency Management Act 2002 was amended to strengthen the legislative framework for recovery to help communities get back on their feet more quickly after an emergency. The Act is a framework designed across the 4Rs – risk reduction, readiness, response and recovery from emergencies at local, regional and national levels. There is other legislation relevant to disaster and emergencies in New Zealand, including legislation around land use planning, buildings, biosecurity, and hazardous substances.⁶³⁹

While many of the disasters that have affected New Zealand are one-off events that do not necessarily impact migrants' visa status, exceptions and changes were made to visa and social welfare eligibility in the aftermath of the March 15 Attacks, and COVID-19. After the March 15 Attacks, the Christchurch Response Visa allowed for people who were present at the mosque and the immediate family of those injured or killed in the attacks to gain permanent residency in New Zealand, with 438 people having been accepted (and 22 rejected).⁶⁴⁰ Though COVID-19 did not lead to a new permanent

633 Thorup-Binger, C. & Charania, N. (2019). Vulnerability and capacities of international students in the face of disasters in Auckland, New Zealand: A qualitative descriptive study. *International Journal of Disaster Risk Reduction*, 39.

634 O'Brien, S., Federici, F., Cadwell, P., Marlowe, J. & Gerber, B. (2018). Language translation during disaster: a comparative analysis of five national approaches. *International Journal of Disaster Risk Reduction*, 31 (2018), 627–636

635 Civil Defence and Emergency Management (2019). Civil Defence Preparedness Survey 2019. <https://www.civildefence.govt.nz/assets/Uploads/public-education/2019-Civil-Defence-Disaster-Preparedness-report.pdf>

636 Belong Aotearoa (2020). COVID-19 Impact on Migrant Communities in New Zealand Survey. <https://www.belong.org.nz/migrant-experiences-in-the-time-of-covid>

637 New Zealand Government (2022). When New Zealand's borders open. 21 June. <https://covid19.govt.nz/international-travel/travel-to-new-zealand/when-new-zealand-borders-open>

638 Pairama, J. & Le De, L. (2018). Remittances for Disaster Risk Management: Perspectives from Pacific Island Migrants Living in New Zealand. *International Journal of Disaster Risk Science*, 9, 331–343.

639 Civil Defence and Emergency Management (n.d.). *Legislation*. <https://www.civildefence.govt.nz/cdem-sector/legislation>

640 Immigration New Zealand (2022). Residence decisions by financial year. 3 August. <https://www.immigration.govt.nz/documents/statistics/statistics-residents-decisions-financial-year> Also see Lewis, O. (2019). Wider family groups excluded from Christchurch terror response visa. *Stuff*. 7 August. for a wider discussion of those excluded from the visa. <https://www.stuff.co.nz/national/christchurch-shooting/114804849/wider-family-groups-excluded-from-christchurch-terror-response-visa> for a wider discussion of those excluded from the visa.

residency category, there were a raft of extensions to already existing visas, and the notable creation of a two-month COVID-19 Short-Term Visitor Visa that could cover anyone still in New Zealand whose visa had expired and was unable to return home.⁶⁴¹

In addition to visa changes, COVID-19 also saw the creation of a large set of legislative frameworks and ministry policies (which do not require passing through Cabinet). In the Ministry of Health alone, legislation relevant to vulnerable migrants stretched across the COVID-19 Public Health Response Act 2020 to border notices, and managed isolation and quarantine orders. One area of contention among migrant communities was the reluctance of the government to invoke section 64 of the Social Securities Act 2018 to allow an emergency benefit to be granted to those not normally eligible.⁶⁴² This reluctance was eventually overcome by the collaboration between the Department of Internal Affairs (DIA) Foreign National support programme and the New Zealand Red Cross Visitor Care Manaaki Manuhiri fund.⁶⁴³

Organisations

Red Cross Red Crescent Movement

The International Red Cross and Red Crescent Movement focuses on the most vulnerable, which often includes those who are isolated in the aftermath of disasters, either because they do not speak the dominant language or because they are unaware of cultural norms regarding receiving assistance. The *IFRC 2020 World Disaster Report* highlights these challenges faced by migrants and those already displaced and points to the lack of – and need for – involvement of CALD communities in disaster risk reduction efforts.⁶⁴⁴ While most of the disasters and emergencies discussed in

this section affect all people, some emergencies are more specific to migrant and refugee communities, such as the drowning of migrants in the Mediterranean⁶⁴⁵ and fires in refugee camps in Moria, Greece.⁶⁴⁶

New Zealand Red Cross plays a role in disaster welfare support in New Zealand alongside local and central government and a range of not for profit and community organisations. The Emergency Management team leads New Zealand Red Cross contributions to CDEM welfare services sub-functions, as described in the National Civil Defence Emergency Management Plan Order, 2015. The Emergency Management and International (EM&I) team includes 400 volunteers working in 19 Disaster Welfare and Support Teams located across the country. The focus of these teams is on supporting vulnerable people during and immediately following a disaster.

COVID-19 lockdowns, the subsequent loss of work, and inability to return home highlighted that migrant communities are both vulnerable and hard to reach to provide assistance. New Zealand Red Cross drew expertise from its connection across its operational areas– Migration, Emergency Management, and International Programmes. It worked alongside the Department of Internal Affairs, establishing the Visitor Care Manaaki Manuhiri programme to ensure basic needs of migrants were met. Visitor Care Manaaki Manuhiri delivered \$20 million of assistance to over 12,000 people. This work ensured that foreign nationals, who had lost their ability to support themselves and who were unable to go home, were supported with in-kind payments for food and other needs. Though the Visitor Care Manaaki Manuhiri programme's formal evaluations are yet to be completed, anecdotal evidence and New Zealand Red Cross research indicate uptake of the service was linked to applicants recognising and trusting New Zealand Red Cross, whereas, otherwise, applicants may be wary how their request for

641 Immigration New Zealand (2020). Information about Covid-19 Short-term Visitor Visa. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/visa-factsheet/covid19-short-term-visitor-visa>

642 Hayle, M. (2020). 'Give us some hope': Stranded visa holders beg for more government help. *The Spinoff*. 30 July. <https://thespinoff.co.nz/society/30-07-2020/give-us-some-hope-stranded-visa-holders-beg-for-more-government-help>

643 Bonnett, G. (2020). Govt, Red Cross spend \$15m helping immigrants stranded in NZ. *Radio New Zealand* 11 November. <https://www.rnz.co.nz/news/covid-19/430331/govt-red-cross-spend-15m-helping-immigrants-stranded-in-nz>

644 International Federation of the Red Cross and Red Crescent (2020). *International Federation of the Red Cross and Red Crescent 2020 World Disaster Report* <https://www.ifrc.org/document/world-disasters-report-2020>

645 International Federation of the Red Cross and Red Crescent (2015). A response plan to meet the humanitarian needs of vulnerable migrants: A Movement coordinated approach focusing on the Mediterranean and neighbouring regions. <https://reliefweb.int/report/world/response-plan-meet-humanitarian-needs-vulnerable-migrants-movement-coordinated-approach>

646 International Federation of the Red Cross and Red Crescent (2020). Residents of Moria camp must be moved now Red Cross head. September. <https://media.ifrc.org/ifrc/press-release/residents-moria-camp-must-moved-now-red-cross-head>

assistance could hinder future applications for permanent residency.⁶⁴⁷

Prior to Visitor Care Manaaki Manuhiri, New Zealand Red Cross also supported refugees and asylum seekers during lockdown through the Pathways to Settlement programme. Pathways to Settlement helps resettled refugees in their first six months in the country. Level 4 lockdown periods, Pathways to Settlement workers were considered essential workers and maintained their connection, via phone, to recently settled refugees. They also ensured that official health and safety information was translated into 15 key languages.⁶⁴⁸

The March 15 Attacks on two mosques in Christchurch, which killed 51 people, led to a combined response from New Zealand Red Cross migration and emergency management teams. In addition, migration teams from around the country provided support to new arrivals, particularly to the Muslim community, who were affected by the Attacks.

One of the core skills offered by New Zealand Red Cross has been translation and interpreting services in the aftermath of disasters. This key skill has also been used with WREMO to develop community skills around rapid translation, which is often required in the aftermath of disasters. These collaborations are continuing. New Zealand Red Cross also supports migrants during and after disasters by managing the Restoring Family Links (RFL) work as part of the National CDEM Plan. New Zealand Red Cross works closely with the New Zealand Police, who have requested the activation of the Family Links website twice: for the Whakaari White Island eruption and for the March 15 Attacks, both in 2019. This RFL page on the New Zealand Red Cross website in turn for people to register as being alive.⁶⁴⁹

In the event of an emergency, the Restoring Family Links service would share information on how overseas enquiries can access the service across the Red Cross Red Crescent Family Links Network and provide situation updates to the Movement. New Zealand Red Cross RFL service may also receive enquiries if the enquirer prefers not to interact with the New Zealand authorities.

In addition, New Zealand Police has developed an in-house platform for “Persons Inquired for” to be launched in an emergency response. This platform includes the 105 non-emergency number for enquiries, dedicated lines to receive enquiries, and a website to register people as “I am Alive” or “I am looking for” which, while still in the testing phase, will be accessible in many languages.

New Zealand Red Cross works with the Asia Pacific Migration Network (APMN) to collaborate on the Movement Leadership model for migration. As co-lead of the Climate Change, Migration and Displacement stream within APMN, New Zealand Red Cross is focused on feeding into regional knowledge sharing and capacity building for National Societies’ responses to emergencies and disasters. These forums support individual National Societies to improve responses to migrants in times of disaster, as well as ensuring that individual Societies contribute to global aims of the International Red Cross and Red Crescent Movement.

Overseas Government(s)

When a disaster has struck or an emergency is in place, foreign governments are often quick to become involved to make sure their citizens are protected and assisted. In this space, the New Zealand Ministry of Foreign Affairs liaises with these governments in the same way that they work together if a New Zealand citizen requires assistance overseas. Depending on the country, their capacity and number of citizens affected, assistance can be as simple as ensuring verified flows of information, or as extensive as providing repatriation flights and short-term economic support, as we have seen during COVID-19.

Migrant and faith communities

Migrant communities play a key part in response and recovery efforts. While these efforts can often be undocumented acts of mutual aid from

647 These concerns were often raised by groups like the Migrant Workers Association. See Robson, S. (2020). Benefits for migrant workers to match standard dole rate. *Radio New Zealand*. 22 November. <https://www.rnz.co.nz/news/national/431197/benefits-for-migrant-workers-to-match-standard-dole-rate>

648 New Zealand Red Cross (2020). Leaving No-One Behind. <https://www.redcross.org.nz/stories/new-zealand/leaving-no-one-behind>; See also Checkpoint (2020). Covid-19: How volunteers are helping refugees in New Zealand lockdown. *Radio New Zealand*. 7 April. <https://www.rnz.co.nz/national/programmes/checkpoint/audio/2018741881/covid-19-how-volunteers-are-helping-refugees-in-nz-lockdown>

649 However, there were problems with this as some journalists used names on the “missing” list as if they were missing rather than people who were sought and used this information to contact families before any official process had begun, which distressed families. “Missing” was then amended to “I am looking for”.

those within the same cultural and linguistic communities, it is necessary to acknowledge the role of community leaders, who take on positions that are rarely paid, bridging official positions and funds from government to those in need.

One good example of community-based mutual aid came in March 2020 when COVID-19 led to a nation-wide lockdown in New Zealand. Gaurav Sharma, editor of the *Multicultural Times*, describes how both the Sikh and other Indian community groups rallied together to offer food and support to Indian communities as well as to other New Zealanders.⁶⁵⁰ This support extended to donations to other organisations such as the Downtown Community Ministry and Wellington Night Shelter.⁶⁵¹ The success of these programmes was highlighted on TVNZ *Sunday* programme in late 2021.⁶⁵² Academic research has shown how churches in Pacific communities in Auckland, as well as faith groups more generally, carry out important roles in organisation, dissemination of information, and mutual aid.⁶⁵³

10.3 What are the needs and gaps?

There is no one NGO or part of the government that is the **point of contact** for migrants in a disaster. While New Zealand Red Cross has contributed to this space in recent disasters, there is a need for resourcing and investment to ensure migrants are not ignored in any of the readiness, response and recovery stages of an emergency or disaster. There are a range of strategic and operational needs that must be addressed:

- a clear lead agency for coordinating engagement with vulnerable migrants – particularly former refugees and asylum seekers/convention refugees during a disaster

- provision of interpreting and translation services on a regular basis by government departments
- provision of vertical connections between government and migrant groups pre-disaster
- better understanding of how transnational media networks inform migrants during a disaster
- a specific preparedness strategy for CALD communities.

While there has been much work done to provide **accessible information** for migrant communities since the Canterbury earthquakes, gaps and challenges remain for rapid dissemination. Lessons from the WREMO/New Zealand Red Cross citizen translator project can be shared throughout New Zealand. More broadly, questions remain around equity of access to translations and translator services across the regions of the country. As one New Zealand Red Cross member noted, CDEM is funded by rates rather than on an as-needs basis. This means some regions with high-risk but low populations may be particularly under-resourced to assist with CALD communities.

In addition to providing preparedness information in a range of relevant languages, there is a need for more **proactive knowledge** about how ethnic communities respond to disasters. This need was highlighted by some of the inequalities in the COVID-19 response. While some NGOs are already acting in this area with occasional assistance from the Race Relations Commissioner, many are small and under-resourced.

Relationships and networks with migrant communities need to be better maintained outside of the specific disaster response space, to build trust and resilience. For example, instead of setting up a centralised disaster response space and expecting all people to know about and come to this spot, decision-makers may need to pay more attention to where vulnerable migrant communities go for assistance. Similarly, producing material so that community groups can effectively use these translated documents, or pointing to places where people can go for information in their own languages, would likely increase uptake.

650 Sharma, G. (2020). How Indian communities stepped up in lockdown New Zealand. *The Spinoff*. 17 May. <https://thespinoff.co.nz/society/17-05-2020/how-indian-communities-stepped-up-in-lockdown-new-zealand>

651 Ibid.

652 Sunday (2021). Time of Need. *Television New Zealand*. 5 September.

653 Marlowe, J., Neef, A., Tevaga C. & Tevaga, C. (2018). A New Guiding Framework for Engaging Diverse Populations in Disaster Risk Reduction: Reach, Relevance, Receptiveness, and Relationships. *International Journal of Disaster Risk Science*, 9, 507–518.



Lin Thuam Cin featured in the Essential Kiwi Legends campaign put together by New Zealand Red Cross to celebrate the work of former refugees in the community.

Spotlight

Te Ao Māori and migration

Recent years have seen increased attention paid to kaupapa Māori approaches to immigration. This has been most recently sparked by the overview of long-term migration settings from the Productivity Commission and MBIE contracting kaupapa Māori organisations to provide refugee settlement services as part of the Settlement services tender decisions in 2022: in Auckland services are being run by Kāhui Tū Kaha (Ngāti Whātua) while Christchurch is being provided by Purapura Whetu Trust.⁶⁵⁴

The terms of reference for the Productivity Commission's enquiry into immigration included a focus on "how the Crown can honour Te Tiriti o Waitangi and the mana of Māori in its development and application of immigration policy, to ensure it reflects the interests and aspirations of tangata whenua as whānau, hapū and iwi."⁶⁵⁵ At the same time as the Commission was assessing long-term migration settings, the Minister of Immigration embarked on an Immigration Reset, focused on short-term settings and did not explicitly engage with Te Tiriti or te ao Māori.⁶⁵⁶

Much of the preliminary media coverage by the chair of the Productivity Commission, Dr Ganesh Nana, focused on Te Tiriti o Waitangi, with three key actions being noted in the draft report. These were:

1. The Treaty interest should be reflected in immigration policy and institutions.
2. The Treaty was developed and signed in response to immigration, and directly refers to immigration.
3. The Crown also has a duty to actively protect Māori interests.⁶⁵⁷

In response to these preliminary findings, Dr Arama Rata questioned the way that the Crown had interacted with Māori on immigration matters over many years and asserted the capacity of iwi and hapū to control borders, as shown by regional COVID-19 responses. In concluding, she said, "in upholding tino rangatiratanga in accordance with our tikanga, the question is not whether Māori should take a seat at the Crown's decision-making table, but whether (or not) the Crown should be welcomed onto our marae."⁶⁵⁸ Dr Khylee Quince noted the opportunities in the Immigration Reset to apply Te Tiriti, writing, "we can frame our migration policies in ways that recognise and provide for indigenous rights and recognition, whilst sharing our land in the spirit of manaakitanga."⁶⁵⁹

654 Immigration New Zealand (2022). Final provider of refugee settlement locations for quota refugees announced. INZ. 14 June. <https://www.immigration.govt.nz/about-us/media-centre/media-releases/final-provider-of-refugee-settlement-locations-for-quota-refugees-announced>

655 Robertson, G. (2021). Terms of Reference – New Zealand Productivity Commission Inquiry into Immigration Settings for New Zealand's Long-Term Prosperity and Wellbeing. 12 April. <https://www.productivity.govt.nz/assets/Documents/Terms-of-reference-v5.pdf>

656 Nash, S. & K. Faafoi (2021). Immigration Reset: Setting the scene. NZ government. 17 May. <https://www.beehive.govt.nz/speech/immigration-reset-setting-scene>

657 New Zealand Productivity Commission. (2021). Immigration – Fit for the future: Preliminary findings and recommendations. NZPC. https://www.productivity.govt.nz/assets/Documents/Immigration_draft-report.pdf p. 2

658 Rata, A. (2021). Rangatiratanga and Immigration. *E-Tangata*. 5 December. <https://e-tangata.co.nz/comment-and-analysis/rangatiratanga-and-immigration>

659 Quince, K. (2021). Immigration Reset allows us to honour the bargain struck in te Tiriti. Stuff. 26 June. <https://www.stuff.co.nz/pou-tiaki/125559229/immigration-reset-allows-us-to-honour-the-bargain-struck-in-te-tiriti>

Heather Ratahi from New Zealand Red Cross performs a karanga ahead of welcoming the manuhiri onto the Araiteuru Marae in Ōtepoti/Dunedin



The final version of the report from the Productivity Commission, including Dr Nana's foreword, sought to add more emphasis to Te Tiriti. It included responding to the lack of historical engagement with Māori on migration, citing Dr Rata and acknowledging "that [the Commission] has neither the mana nor the expertise to make definitive recommendations on how best to reflect Te Tiriti in immigration policy and institutions".⁶⁶⁰

While the Immigration Reset and the Productivity Commission report focused on high-level migration strategies and goals, the contracting of two kaupapa Māori refugee settlement providers

in May 2022 will see an attempt at new settlement practices be developed specifically for Aotearoa New Zealand. At the time of publication, it is too early to see what new approaches these new providers will offer to former refugees, though there have been some high-profile criticisms of the process of transitioning to these new providers.⁶⁶¹

⁶⁶⁰ New Zealand Productivity Commission. (2022). Immigration – Fit for the future. Final report. NZPC. April. www.productivity.govt.nz/inquiries/immigration-settings p. 79.

⁶⁶¹ New Zealand Herald (2022). Editorial: NZ should take pride in our welcome mat for refugees. *New Zealand Herald*. 6 October. <https://www.nzherald.co.nz/nz/editorial-nz-should-take-pride-in-our-welcome-mat-for-refugees/ZTUT32AMGHNAFZ3OGRDLTTHLYM>; Davison, I. (2022). Concerns over new refugee resettlement providers post Red Cross. *New Zealand Herald*. 3 October. <https://www.nzherald.co.nz/nz/concerns-over-new-refugee-resettlement-providers-post-red-cross/IMJNNBYMV5S2CAA455VGSOIL5M>; O'Callaghan, J. (2022). Refugees feel 'abandoned' and isolated after handover to new Christchurch resettlement providers. *Stuff*. 8 September. <https://www.stuff.co.nz/pou-tiaki/129804924/refugees-feel-abandoned-and-isolated-after-handover-to-new-christchurch-resettlement-providers>

11. CHANGES TO HOW THE PUBLIC PERCEIVES MIGRANTS AND REFUGEES

Public perceptions directly affect how well migrants settle in New Zealand. For example, perceptions can reduce opportunities to migrants and refugees (such as increasing barriers to employment) and serve to validate discrimination and other manifestations of racism. To consider the public perception of migrants and refugees in New Zealand is also to consider contentious questions around infrastructure, identity, religion and place. The last decade has seen record levels of new permanent migrants to New Zealand, with related questions around the degree of planning for both new and existing populations, the role of tangata whenua, and the support systems in place to welcome new communities.



For the last decade New Zealand Red Cross has organised a World Refugee Day event at Parliament in Wellington. This year featured Madiha Ali from New Zealand Red Cross' Migration Advisory Group, Minister of Immigration, Hon Michael Wood, poet Khadro Mohamed, and Pip Stewart Vice President, New Zealand Red Cross.

While New Zealand often ranks near the highest in the world in welcoming attitudes to migrants,⁶⁶² there have been significant activities that have not been welcoming, such as the Dawn Raids in the 1970s, and other hate crimes based on race. This section deals primarily with the public perception of migrants, and while this will necessarily touch on experiences of racism and discrimination, it is not a full catalogue of migrants' experiences of the New Zealand public's attitude towards them.⁶⁶³ Recently released research from Immigration New Zealand shows refugees are perceived the least favourably among all migrants. However, since 2015, favourable attitudes towards refugees have grown by the largest rate of any migrant group.⁶⁶⁴ Within this group, asylum seekers are one of the most often vilified and least understood, especially in response to international media.

“

“In all 28 countries surveyed, the majority agree with the principle that people should be able to take refuge in other countries to escape war or persecution.”

*Ipsos, 2022.*⁶⁶⁵

662 For a widely reported, international quantitative study, see Ipsos (2016), *Ipsos International Immigration, Refugee & Brexit Poll*. <https://www.ipsos.com/en-nz/ipsos-international-immigration-refugee-brexit-poll>

663 For a grounding, wider overview of migrants' experiences of New Zealand, see Butcher, A., Spoonley, P. & Trlin, A. (2006). *Being Accepted: The Experience of Discrimination and Social Exclusion of Migrants and Refugees in New Zealand*. Working Paper. https://www.researchgate.net/publication/270884434_Being_Accepted_The_Experience_of_Discrimination_and_Social_Exclusion_by_Migrants_and_Refugees_in_New_Zealand; or Immigration New Zealand (2018). *Recent migrants experiences of settling and adjusting to life in New Zealand*. National Migrant Consultations 2018. <https://www.immigration.govt.nz/documents/about-us/national-migrant-consultations-2018.pdf>

664 Ministry for Business, Innovation and Employment (2021). *Community perceptions of migrants and immigration*. <https://www.mbie.govt.nz/dmsdocument/18768-community-perceptions-of-migrants-and-immigration-2021>

665 Ipsos (2022). *World Refugee Day: Global Attitude towards Refugees*. June. <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-06/Ipsos%20World%20Refugee%20Day%202022%20Global%20Part%20-%20Global%20attitudes%20towards%20hosting%20refugees.pdf>

11.1 The global context

The history of the world could be written as the story of the movement of people and, as such, any attempt to describe the international context for migration is bound to fall short of a comprehensive study of reasons and outcomes. This section will focus more on the recent surveys and theories that help explain public perceptions of migration. While there is crossover in the issues of racial and religious discrimination, this section will focus on all migrants. That said, given the focus is on public perception, those migrants who are most culturally and linguistically diverse, in contrast to a Pākehā majority, will feature most prominently.

Academic literature shows that migration leads to economic growth, but the benefits of that growth have not been felt by all. Over the past decade, the austerity policies implemented by many countries, driven by neo-liberal economic orthodoxy, have seen public services truncated or abandoned.⁶⁶⁶ In that climate of underinvestment, migrants and refugees are often scapegoated as the cause of problems. While much anti-immigration sentiment can be due to conscious and subconscious xenophobia, looking at a wide range of causes can attend to not just the existing population's perceptions, but the underlying circumstances that drive those perceptions.

This section considers:

- a range of surveys and studies on national-level attitudes to migrants and migration
- the broad theories of prejudice that shape attitudes
- how different parts of the population are more, or less, supportive of migrant and refugee settlement.

It also considers factors that may impact the host community's willingness to support integration, including the use of political narrative and perceptions of "good" and "bad" refugees and migrants.

Surveys on public perceptions of migration

Prior to the heightened attention to refugee movements from 2015 onwards, Gallup and the International Organisation for Migration (IOM) conducted a multi-year set of 183,000 qualitative interviews on what people's views were on migration in over 140 countries.⁶⁶⁷ This study was unique in its depth compared to many of the usual polls that focus on ranking countries through responses to a range of questions around fears, welcoming attitudes, and perceptions of threat. The key finding was that Southern Europe and the United Kingdom were alone in wanting immigration to decrease, whereas other countries wanted it to stay the same or increase. They also saw a strong correlation between a high self-reported economic optimism about the future and an individual's likeliness to want more migration. Oceania had the lowest percentage of people who suggested migration should decrease (26 per cent) and the greatest percentage who said that it should stay the same (41 per cent) or increase (28 per cent).

The previous year has seen two large-scale conflicts, in Afghanistan and Ukraine, which resulted in mass displacement and dominated media headlines. These conflicts have, according to Ipsos, led to a much more positive attitude towards people forced to flee their homes than in previous years.⁶⁶⁸ Ipsos has previously noted that only three countries had less than a majority of those surveyed in favour of the protections afforded by the 1951 Refugee Convention.⁶⁶⁹ As stated previously, these protections ensure that refugees cannot be discriminated against, subject to refoulment (sent back to the state from which they have fled) in general must have access to the same education, social security and welfare as citizens of the country where they are

⁶⁶⁶ Clark, D. (2016). *The global financial crisis and austerity: A basic introduction*. Bristol: Bristol University Press.

⁶⁶⁷ Esipova, N. Ray, J. Pugliese, A. & Tsubutashvili, D. (2015). How the World Views Migration. International Organisation for Migration. https://publications.iom.int/system/files/how_the_world_gallup.pdf

⁶⁶⁸ Ipsos (2022). World Refugee Day: Global Attitude towards Refugees. June. <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-06/ipsos%20World%20Refugee%20Day%202022%20Global%20Part%202%20-%20Global%20attitudes%20towards%20hosting%20refugees.pdf>

⁶⁶⁹ Ipsos (2019). Global Attitudes towards Refugees. June 2019. <https://www.ipsos.com/sites/default/files/ct/news/documents/2019-06/World-Refugee-Day-2019-Ipsos.pdf>

claiming refuge.⁶⁷⁰ These protections are vital, and somewhat basic, for the protection of refugees, and it is concerning that some countries continue not to be in favour of these protections. Some scholars criticise the scope of these surveys to explain why these perceptions exist and they suggest surveys ought to focus more on why these beliefs are held and should also discuss emigration.⁶⁷¹

At the state level, specific policies can also be a public demonstration of a nation's approach to migration. Policies that demonstrate inclusive integration have been linked to lower levels of perceived threat. For example, Canadian Prime Minister Justin Trudeau's inclusive messaging about refugees was identified as one reason for an increase in public support – from 42 per cent to 52 per cent – for the refugee settlement programme.⁶⁷² At the same time, negative political leadership can lead to increased stereotyping around migrant communities. One particularly prominent issue has been terror attacks in the global north, resulting in misguided fear of assailants hiding within refugee communities.

Media plays a role in dehumanising refugees, which leads to contempt and using incorrect labels such as “illegal” that influence public attitudes.⁶⁷³ Much of this type of political rhetoric is linked to security or crisis framing, which DeBono argues enables authorities to undertake actions that have dehumanised people seeking protection.⁶⁷⁴ While terms such as “asylum seeker” and “refugee” are legal definitions, these terms have strongly associated stereotypes that result in different threat perceptions. Due to incorrect arguments that asylum seekers have “jumped the queue” or are “illegal”, there is significantly higher animosity towards asylum

seekers than to refugees in Australia⁶⁷⁵ and with the 2022 deal between the United Kingdom and Rwanda, these attitudes may spread.⁶⁷⁶

Theories of prejudice

The public is not a homogenous group and numerous studies have shown how migrants are perceived differently by different groups. For example, those less likely to be personally affected by perceived competition for resources are more likely to identify symbolic threats such as changing group norms and a concern about retaining cultural norms.⁶⁷⁷ Historical antagonisms also structures present social attitudes and these are often grounded in intransigent racial prejudice. In the European Union, colonial pasts have been identified as factors in racist views and perceived superiority over refugee arrivals.⁶⁷⁸ Age and education have been shown to be a factor, with older demographics more likely to identify a threat from migrants. These predispositions are likely for several reasons, including that education provides people with opportunities to think critically, and exposes them to diverse views and engagement with a variety of teaching and student bodies.⁶⁷⁹

Policies that limit or create barriers to economic or social integration will inevitably result in worse integration outcomes for both individuals and families. The degree to which the state is active in building social integration depends on both the type of migrant (refugees are likely to receive more support than students or people on working visas) and the capacity and attitude of the receiving state. For instance, limiting access to financial support to enable refugees to “gain economic independence” may restrict their opportunity to develop local language skills and limit their ability to integrate, even though that

670 United Nations High Commissioner for Refugees (1951). Convention and Protocol Relating to the Status of Refugees. <https://www.unhcr.org/3b66c2aa10>

671 Dennison, J. (2019). Public opinion on migration. Data Bulletin: Informing the implementation of the Global Compact for Migration. https://cadmus.eui.eu/bitstream/handle/1814/63124/data_bulletin_16.pdf

672 Pedersen, A., Watt, S., & Hansen, S. (2006). The role of false beliefs in the community's and the Federal Government's attitudes toward Australian asylum seekers. *Australian Journal of Social Issues*, 41(1), 105–124.

673 Esses, V., Medianu, S., & Lawson, A. (2013). Uncertainty, Threat, and the Role of the Media in Promoting the Dehumanization of Immigrants and Refugees. *Journal of Social Issues*, 69(3), 518–536.

674 DeBono, D. (2018). In Defiance of the Reception Logic: The Case for Including NGOs as Human Rights Monitors in the EU's Policies of First Reception of Irregular Migrants. *Peace and Conflict: Journal of Peace Psychology*, 24(3), 291–295.

675 Verkuyten, M. (2004). Emotional Reactions to and Support for Immigrant Policies: Attributed Responsibilities to Categories of Asylum Seekers. *Social Justice Research*, 17(3), 293–314.

676 Hanne Beirens and Samuel Davidoff-Gore (2022). The UK-Rwanda Agreement Represents Another Blow to Territorial Asylum. Migration Policy Institute. 22 April. <https://www.migrationpolicy.org/news/uk-rwanda-asylum-agreement>

677 Hynie, M., & Moghaddam, F. (2018). Refugee Integration: Research and Policy. *Peace and Conflict: Journal of Peace Psychology*, 24(3), 265–276.

678 Mestheneos, E., & Ioannidi, E. (2002). Obstacles to Refugee Integration in the European Union Member States. *Journal of Refugee Studies*, 15(3), 304–320.

679 Bohman, A. (2015). It's who you know. Political Influence on Anti-Immigrant Attitudes and the Moderating Role of Intergroup Contact. *Sociological Research Online*, 20(3), 1–17; Pettigrew, T. (1997). Generalized Intergroup Contact Effects on Prejudice. *Personality and Social Psychology Bulletin*, 23(2), 173–185.

limitation is couched as an initiative aimed at building independence.⁶⁸⁰

Most theories on racial prejudice are founded in group threat theory which originated from Blumer's hypothesis that social positioning of different racial groups affects intergroup interactions. He theorised that groups' self-definition automatically occurs and is reinforced when building concepts of a different group, essentially, what is it about "them" that makes them different from "us".⁶⁸¹

Realistic threats are threats from the out-group that may impact on the in-group's economic, political or physical situation. This threat is founded in the idea of scarcity of resources results in competition.⁶⁸² For example, the argument that refugees take jobs or housing from the host community. In contrast, symbolic threats are based on a perceived threat of how differences in the values, beliefs, and customs of the out-group may impact the in-group's own cultural norms. This threat is most prominent when there is a host community preference for assimilation as opposed to multiculturalism.

Allman's intergroup contact theory seeks ways to counter these threats. He thinks that while these threats are often articulated as collective struggles, racial prejudice is socialised at an individual level, and, in the same way it is learnt, it can be changed through contact between groups.⁶⁸³ Intergroup contact has been shown to reduce prejudice or anti-immigration attitudes.⁶⁸⁴

11.2 New Zealand context

New Zealand's society has grown in the past 50 years from one focused on the needs of a monoculture to one that is beginning to address biculturalism while also emerging as a

multicultural society. With only a few exceptions, New Zealand operated a "white New Zealand policy" with a strong preference for British, European and North American migrants. It was not until the mid-1980s that immigration policy widened to include non-traditional countries of immigration, particularly with the 1987 Immigration Act.⁶⁸⁵

According to the most recent census, New Zealand is home to 200 ethnic groups and 160 languages. Significant growth of specific groups has occurred, most notably the Asian population which, in a 30-year period, has grown from 48,000 (in 1983) to 707,598 (in 2018).⁶⁸⁶ With 27.4 per cent of people not born in New Zealand,⁶⁸⁷ this speed of change has been identified as challenging to New Zealand's ability to maintain inclusiveness and harmony.⁶⁸⁸ A more recent study has added more context to what might be seen as a challenge, noting that many of those people not born in New Zealand have spent a significant amount of their childhood in the country and the cohort remains young and well qualified.⁶⁸⁹

Surveys have shown New Zealanders are more positive about immigration than Australians and significantly more so than our European counterparts. New Zealanders are more likely to see immigration as positive for the economy, want to prioritise immigrants who can fill job shortages, and value an integration approach as opposed to assimilation. Immigrants are generally seen as making the country more interesting, while it is also recognised that immigration can place pressure on services.⁶⁹⁰

680 Hynie, M. & Moghaddam, F. (2018). Refugee Integration: Research and Policy. *Peace and Conflict: Journal of Peace Psychology*, 24(3), 265–276.

681 Blumer, H. (1958). Race Prejudice as a Sense of Group Position. *Pacific Sociological Review*, 1(1), 3–7.

682 Croucher, S. (2013). Integrated Threat Theory and Acceptance of Immigrant Assimilation: An Analysis of Muslim Immigration in Western Europe. *Communication Monographs*, 80(1), 46–62.

683 Allport, G. (1954). *The Nature of Prejudice*. Garden City, NY: Doubleday Anchor Books.

684 Bohman, A. (2015). It's who you know. Political Influence on Anti-Immigrant Attitudes and the Moderating Role of Intergroup Contact. *Sociological Research Online*, 20(3), 1–17; Pettigrew, T. (1997). Generalized Intergroup Contact Effects on Prejudice. *Personality and Social Psychology Bulletin*, 23(2), 173–185.

685 Beaglehole A. (2013). *Refuge New Zealand: a nation's response to refugees and asylum seekers*. Dunedin: Otago University Press.

686 Statistics New Zealand (2020). Ethnic group summaries reveal New Zealand's multicultural make-up. 3 September. <https://www.stats.govt.nz/news/ethnic-group-summaries-reveal-new-zealands-multicultural-make-up>

687 Statistics New Zealand (2019). New Zealand's population reflects growing diversity. 23 September. <https://www.stats.govt.nz/news/new-zealands-population-reflects-growing-diversity>

688 Department of Internal Affairs (2017). *Briefing to the Incoming Minister for Ethnic Communities*, New Zealand Government.

689 Waitakere Ethnic Board (2021) Ethnic minorities add \$64b to NZ: direct contributions high, opportunities for more. 12 October. <https://waitakereethnicboard.org.nz/wp-content/uploads/2022/03/Waitakere-Ethnic-Board-Ethnic-Economic-Contribution-Report.pdf>

690 Ipsos, (2016). *Ipsos International Immigration, Refugee & Brexit Poll*. <https://www.ipsos.com/en-nz/ipsos-international-immigration-refugee-brexit-poll>; Ministry of Business, Innovation and Employment (2015). *Community Perceptions of Migrants and Immigration*, Colman Brunton research. <https://www.mbie.govt.nz/assets/c3c87370d1/community-perceptions-migrants-immigration-2015.pdf> Ward, C. & Masgoret, A. (2008). Attitudes toward Immigrants, Immigration, and Multiculturalism in New Zealand: A Social Psychological Analysis 1. *International Migration Review*, 42(1), 227–248.

A 2021 MBIE survey identified that while the number of people who held positive views towards migrants had increased and sat at about two-thirds of the population, there was a growing feeling that the remaining New Zealanders were becoming progressively less welcoming to migrants.⁶⁹¹ Notably, the majority of other people were neutral about migrants, with only five per cent having a negative attitude.⁶⁹² Other key trends noted were that the New Zealanders most likely to feel positively towards migrants were between 25 and 29 years old, were wealthier, were Wellington based, and were born overseas or had friends who were. Māori were the ethnic group most likely to have a negative view of migrants. Others with the most negative views were people with an annual household income under \$40,000, those living in Hawke's Bay, and those without friends born overseas.⁶⁹³ In line with other international surveys, right wing voters (in this case, New Zealand First who are no longer in Parliament, followed by National) and immigrants who are well established in New Zealand are less likely to be pro-immigration.⁶⁹⁴

The actual size of New Zealand's refugee quota programme is not well known in New Zealand and consequently there is a perception that New Zealand is accepting more refugees than are being resettled. One UMR Market Research survey showed that only 26 per cent of respondents knew the correct number of annual refugee arrivals, with 24 per cent selecting "over 10,000 per year".⁶⁹⁵ The 2016 Ipsos poll showed only 14 per cent knew the correct number of refugee arrivals, and those who overestimated the number of refugee arrivals were more likely to be concerned about terror activity through the refugee quota and less confident that refugees integrate.⁶⁹⁶ People who hold false beliefs about immigration have been shown to have

higher negative beliefs about asylum seekers and refugees, so correcting misinformation is important in decreasing negative attitudes towards refugees.⁶⁹⁷

The Productivity Commission's recent overview of migration settings did not focus on public perceptions of migrants and refugees, but the findings and recommendations of the review will have implications for these groups.⁶⁹⁸

One important recommendation to aid in transparency and long-term planning was the creation of a Governmental Policy Statement which will list what the government wishes to achieve through welcoming migrants.

Migration in New Zealand has also become politicised in recent years around the United Nations Global Compact on Migration, foreign buyers of housing, a growth in immigration and calls for stronger hate speech legislation after the March 15 Attacks. While we will not go into the positions or rhetoric of political parties here, it is worth noting that while leadership on these issues can come from representatives, so can division.

Legal background for public perception of migrants and refugees

New Zealand has adopted the Convention on Elimination of Racial Discrimination (CERD), the International Convention on Civil and Political Rights, and the International Convention on Economic, Social and Cultural Rights. These international laws serve important, but slightly different, purposes to protect migrants and refugees in New Zealand. CERD supports dignity and respect being upheld for all people regardless of their race.⁶⁹⁹ The Convention on Civil and Political Rights states that all people should have their civil and political rights respected, even if they are a foreigner.⁷⁰⁰ The International Convention on Economic, Social and Cultural Rights (ICESCR) supports the rights of migrants to have their economic, social and cultural

691 Ministry for Business, Innovation and Employment (2021) Community perceptions of migrants and immigration. <https://www.mbie.govt.nz/dmsdocument/18768-community-perceptions-of-migrants-and-immigration-2021>

692 Ibid.

693 Ibid.

694 UMR Research (2017). New Zealand's views on Immigration. 20 June. <https://umr.co.nz/new-zealands-views-immigration>

695 Hall, D. (2017). With the election looming, a new poll reveals New Zealanders' views on immigration. *The Spinoff*. 12 June. <https://thespinoff.co.nz/society/12-06-2017/as-we-gear-up-for-an-election-a-new-poll-reveals-nz-views-on-immigration>

696 Ipsos, (2016). Ipsos International Immigration, Refugee & Brexit Poll. September. <https://www.curia.co.nz/wp-content/uploads/2016/10/ipsos-New-Zealand-Immigration-Refugees-and-Brexit-Survey-Report-2016.pdf>

697 Pedersen, A., Watt, S. & Hansen, S. (2006). The role of false beliefs in the community's and the Federal Government's attitudes toward Australian asylum seekers. *Australian Journal of Social Issues*, 41(1), 105–124.

698 See New Zealand Productivity Commission (2022). Immigration – Fit for the future. Final report. NZPC. www.productivity.govt.nz/inquiries/immigration-settings

699 United Nations (1966). General Assembly Resolution. International Covenant on Civil and Political Rights. December. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

700 Ibid.

rights respected.⁷⁰¹ However, the Human Rights Commission recently commented that while New Zealand is a signatory to many of these conventions and laws, there is a low level of knowledge and commitment by politicians and policy makers.⁷⁰²

New Zealand has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention takes into account the principles of CERD and ICESCR and calls for the protection of all migrant workers and their families, to ensure that they do not face additional vulnerabilities due to their visa status, and to prevent trafficking and exploitation of migrant workers. New Zealand ratifying this Convention would provide valuable protections for migrant workers and their families. Due to New Zealand's significant migrant worker population and the current high levels of exploitation within these communities, this could be an important step for the government to consider.

New Zealand does not currently have specific hate crime legislation but hate speech is addressed in the Human Rights Act (1993) and the Harmful Digital Communications Act (2015) which are considered in reference to the Bill of Rights Act (BORA) 1990. Section 61 of the Human Rights Act (1993) makes hate speech illegal, stating it is unlawful “to publish or distribute written matter which is threatening, abusive, or insulting, ... words which are threatening, abusive, or insulting ... or words likely to excite hostility against or bring into contempt any group of persons ... on the ground of the colour, race, or ethnic or national origins.”⁷⁰³ Section 131 of the Human Rights Act states it is unlawful to incite racial disharmony “with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.”⁷⁰⁴

In response to the March 15 attacks, the New Zealand Government launched the Christchurch

Call that seeks to ensure that an open and free internet is not used by extremists to organise and share their messages. The Christchurch Call also encourages governments to make sure that existing legislation is followed and enforced and to create industry standards around extremist content.⁷⁰⁵ The Prime Minister Jacinda Ardern, along with French President Emmanuel Macron, considered the action plan to be a success and suggested it would stop the sharing of a similar video to that of the March 15 Attacks if it were created online today.⁷⁰⁶

The lack of specific hate crime legislation also results in a lack of data and statistics, so the scale of the problem in New Zealand is unknown. Unlike Germany and the United Kingdom, New Zealand does not currently record or report on hate or racially motivated crimes. The absence of recording these crimes has long been an issue, and the Human Rights Commission (HRC) – a primary advocate for change – included submissions made to the Universal Periodic Review on New Zealand in 2013.⁷⁰⁷

As a civil matter, complaints on breaches of the Human Rights Act are dealt with by the HRC. These complaints must be considered in reference to the freedom of expression protected in the BORA. Where intent can be proven, a criminal prosecution can be undertaken, but only with approval from the Attorney General. To date, only one conviction for hate speech has occurred – when Colin King-Ansell was prosecuted for distributing anti-Jewish pamphlets.⁷⁰⁸

Few human rights are exclusionary and the balance of rights, such as the freedom of expression and the right of safety and security of person, are examples of this need for balance. Section 14 of the BORA states “that everyone has the right to freedom of expression, including the right to seek, receive, and impart information and opinions of any kind”.⁷⁰⁹ While the freedom

701 Ibid.

702 Walters, L. (2022) Human Rights Commissioner: NZ's quality of life record 'alarming'. *Stuff*. 23 June. <https://www.stuff.co.nz/national/129051826/human-rights-commissioner-nzs-quality-of-life-record-alarming>

703 New Zealand Government. *Human Rights Act 1993*, Public Act 1993 No 82, Section 61, New Zealand

704 New Zealand Government. *Human Rights Act 1993*, Public Act 1993 No 82, Section 131, New Zealand

705 Christchurch Call (2020). The Call. <https://www.christchurchcall.com/call.html>

706 Radio New Zealand (2019). Christchurch terror attacks: Ardern and Macron hail success of Christchurch Call. *Radio New Zealand*. 15 May. <https://www.rnz.co.nz/news/political/416678/christchurch-terror-attacks-ardern-and-macron-hail-success-of-christchurch-call>

707 O'Connor, R. (2013). Kirikiriroa Human Rights Network HRC affiliated, speech, *Civil Society Briefing for the Universal Periodic Review on New Zealand*, December 2013, Geneva.

708 Cormack, T. (2019). Freedom of speech vs Hate speech. New Zealand Law Society. 4 April.

709 New Zealand Government. *New Zealand Bill of Rights Act 1990*, Public Act 1990, No 109, Date of assent 28 August 1990, Section 14.

of expression is not absolute, any limit on it must demonstrate significant detriment to the community.⁷¹⁰

Since the 1980s, a significant number of western countries have adopted hate crime legislation, including Canada, the USA, the United Kingdom and Germany.⁷¹¹ The term “hate crime” can be highly emotive and subjective, and it is difficult to establish one conclusive definition. The concepts of hate crime and hate speech can polarise opinions on limiting freedoms and rights, the thresholds between crime and hate crime, and appropriate punishment. In the United Kingdom, hate crime is defined as “any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person’s race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender”.⁷¹² There appear to be ongoing efforts, and challenges, to recording hate crimes in New Zealand.⁷¹³

New Zealand’s current legislation is limited in that laws do not protect minority groups in relation to religion, gender, sexual orientation or disability. Also, while existing defamation laws provide protection to individuals, they do not provide protection to groups. The HRC, Netsafe and United Nations Educational, Scientific and Cultural Organization (UNESCO), in examining New Zealand’s hate speech laws, began exploring their strength in the current changing world. However, lack of support for the discourse saw the project halted. After the March 15 Attacks, Justice Minister Andrew Little fast-tracked a pre-planned review of existing legislation governing hate speech, in recognition that the law is very narrow. He stated, “It applies to inciting racial disharmony, it doesn’t relate to expressions that incite discrimination on religious grounds

or identity or a range of other grounds.”⁷¹⁴ This review will cover the Human Rights Act, the Harmful Digital Communications Act and the Crimes Act.

With no current legislation identifying hate crime as an offence, New Zealand’s primary legal mechanism to address hate crime is sentencing legislation.⁷¹⁵ Police Minister Stuart Nash said, “We don’t actually prosecute for hate speech per se. We can for offensive behaviour or assault and hate speech or a hate crime actually is an aggravating consideration when determining what charge a person will face.” He also said, if police do decide to charge a person for reported hate crime or hate speech, “then the hate version of that is an aggravating feature in terms of determining the charge the person will face.”⁷¹⁶ While hate crime issues remain as a task for government after the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques, there have been few steps forward in progressing this legislation in the past year.⁷¹⁷

As recently as a year before the March 15 Attacks, Te Kāhui Tika Tangata|Human Rights Commission (HRC) was calling for New Zealand Police to collect statistics on hate crimes.⁷¹⁸ After the March 15 Attacks, former Race Relations Commissioner Joris De Bres said that, during his term, he repeatedly asked the government and police to create a central system for recording details about crimes motivated by hatred and racism.⁷¹⁹ HRC reports on the number of complaints it receives and identified that there had been an increase in complaints about racial disharmony. In 2018, over 400 complaints were received, which included complaints about hate speech, an increase of 26

710 Human Rights Commission (n.d.). Enquiries and Complaints. <https://www.hrc.co.nz/enquiries-and-complaints/faqs/racially-offensive-comments>

711 Mason, G. & Macintosh, K. (2014). Hate Crime Sentencing Laws in New Zealand and Australia: Is there a Difference? *New Zealand Law Review*, 647–709.

712 United Kingdom Crown Prosecution Service (n.d.) *Hate Crime*. <https://www.cps.gov.uk/hate-crime>

713 Daalder, M. (2022). Year-long delay on hate crime reform unexplained. *Newsroom*. 29 June. <https://www.newsroom.co.nz/unexplained-year-long-delay-on-hate-crime-reform>

714 Radio New Zealand (2019). Current hate speech law ‘very narrow’ Justice Minister Andrew Little. *Radio New Zealand*. <https://www.rnz.co.nz/news/political/386237/current-hate-speech-law-very-narrow-justice-minister-andrew-little>

715 Mason, G. & Macintosh, K. (2014). Hate Crime Sentencing Laws in New Zealand and Australia: Is there a Difference? *New Zealand Law Review*, 647–709.

716 One News (2019). Police Minister open to strengthening laws around hate speech. *TVNZ*, 26 March, <https://www.tvnz.co.nz/one-news/new-zealand/police-minister-open-strengthening-laws-around-hate-speech>

717 Daalder, M. (2022). Year-long delay on hate crime reform unexplained. *Newsroom*. 30 June. <https://www.newsroom.co.nz/unexplained-year-long-delay-on-hate-crime-reform>

718 Human Rights Commission (2017). We need to collect hate crime data. <https://www.hrc.co.nz/news/we-need-collect-hate-crime-data>

719 Greenfield, C. & Menon, P. (2019). Before mosque attacks, New Zealand failed to record hate crimes for years, Reuters. <https://www.reuters.com/article/us-newzealand-shooting-intelligence-anal/before-mosque-attacks-new-zealand-failed-to-record-hate-crimes-for-years-idUSKCN1RB0PW>

per cent since 2014. The HRC's 2017 "Give Nothing to Racism" campaign has also been a recent high-profile success, attracting celebrity and public endorsement, as well as being well received internationally, for example, by the recent West Indies cricket team.⁷²⁰ A second iteration of the campaign was launched in 2020, focusing on the voices of racism.

Organisations

In this section we will consider those who are working to improve public perception of migrants and those who are in a position of influence.

Red Cross Red Crescent Movement

The International Red Cross and Red Crescent Movement's values of neutrality and impartiality are important, grounding positions that require its National Societies not to discriminate on the basis of nationality. This means that the Movement maintains a strong commitment to the humanitarian rights of migrants, regardless of how states consider an individual's status. A key position is that a National Society is not for or against migration but will speak to the humanitarian impacts of migration, and work to provide assistance and protection in these areas. As part of this commitment to migrants, the Movement pays particular attention to working with host communities and providing initiatives to promote understanding, interaction and social inclusion.

New Zealand Red Cross advocacy and communication strategies, in place since 2015, have focused on building public confidence in refugee settlement both as an existing process as well as in new settlement locations. This work is undertaken through working with media to share stories of the successes of, and contributions to communities made, by former refugees. These stories have been regularly published in newspapers, online, on television and on the radio since public interest in refugee movements grew during the 2015 refugee crisis.

Alongside this media work, New Zealand Red Cross has also run numerous campaigns to

counter stigma against refugees by showing the diverse backgrounds, contributions to the community and everyday lives of refugees resettled in New Zealand. In 2016, the Get to Know Me campaign sought to highlight the similarities of resettled refugees, in contrast to dominant media narratives about hardship which stressed the differences between New Zealanders and refugees.⁷²¹ The #KiwiLegends campaign from 2020, and the COVID-19 #EssentialKiwiLegends campaign from 2020, maintained the themes of focusing on individuals doing great things in the community, with the most recent version highlighting those former refugees who were essential workers during the COVID-19 lockdown period.⁷²²

These campaigns combine a range of communication methods from posters on streets and in our public facing locations, to social media and mainstream media placements and partnerships. For example, a full selection of stories about the #EssentialKiwiLegends was shared across *The Spinoff* website in the lead up to World Refugee Day.⁷²³ New Zealand Red Cross staff also take advantage of the opportunity to write Opinion Editorials on a range of refugee-related issues. Some of these are written as team-wide collaborations, including refugee-background staff members using their lived experience, especially in the lead up to World Refugee Day. Most recently, the Migration programmes team released an overview on how councils could best support refugee settlement in their regions.⁷²⁴

Workshops and public outreach in new settlement locations help build capacity in these regions through three overviews: an introduction

720 Voerman, A. (2020). Black Caps, West Indies take a knee in support of Black Lives Matter before first Twenty20. *Stuff*. 27 November. <https://www.stuff.co.nz/sport/cricket/black-caps/123525318/black-caps-west-indies-take-a-knee-in-support-of-black-lives-matter-before-first-twenty20>

721 New Zealand Red Cross (2016). Get to know me. <https://www.redcross.org.nz/stories/new-zealand/get-know-me>; Dooney, L. (2016). Refugee campaign wants Kiwis to get to know the truth behind the stereotypes. *Stuff*. 11 April. <https://www.stuff.co.nz/dominion-post/news/78641835/refugee-campaign-wants-kiwis-to-get-to-know-the-truth-behind-the-stereotypes>

722 New Zealand Red Cross (2020). #KiwiLegends. <https://www.redcross.org.nz/what-we-do/in-new-zealand/migration-programmes/kiwilegends>

723 See for example, Berthe, E. (2020). Essential Kiwi Legend: The Afghan refugee who became an emergency nurse. *The Spinoff*. 16 June. <https://thespinoff.co.nz/society/16-06-2020/essential-kiwi-legend-the-afghan-refugee-who-became-an-emergency-nurse>; Timmings, J. (2020). Essential Kiwi Legend: The Bhutanese refugee driving trucks in Nelson. *The Spinoff*. 19 June. <https://thespinoff.co.nz/society/19-06-2020/essential-kiwi-legend-the-bhutanese-refugee-driving-trucks-in-nelson>

724 New Zealand Red Cross (2022). A warm welcome: The role of councils in refugee settlement in New Zealand. https://media.redcross.org.nz/media/documents/RC_City_Councils_and_Settlement_Report_v7.pdf

to the refugee journey, a discussion of working cross culturally in settlement practice, and background to strengths-based integration theories. Central to this work is a Communication Pack that gives seven key messages around issues people are often asked about (why we resettle refugees; how employment works; housing issues), a background to how refugees arrive in New Zealand, a basic glossary of language, answers to frequently asked questions, and a suite of media links. Most recently, a series of conversations around the country were held with new employees and, occasionally, with other service providers, on navigating difficult conversations about refugee settlement.

New Zealand Red Cross has also worked with media and journalists to refine how former refugees are described in the media and, by extension, how the public thinks of the process of settlement. While “refugee” has often been used as a shorthand for people who have been resettled in New Zealand, the New Zealand Red Cross Communications team has also had success at modelling more accurate terminology such as “person with a refugee-background” or “former refugee”. This focus on language helps people see the refugee experience as something that does not define an individual but is, rather, something that an individual has lived through. Paying attention to this language, and influencing media where possible, is core to implementing a strengths-based approach to settlement.

NGOs and unions

The refugee crisis has led to a proliferation of public-facing campaigns on the representation of refugees and reflection on New Zealanders’ attitudes to refugees. Most recently, the Open Hearts and Minds campaign has focused on building empathy for former refugees through storytelling.⁷²⁵ Amnesty International Aotearoa New Zealand produced the “Our Voices” overview of New Zealanders’ attitudes to welcoming refugees, and Migrant Workers Association, with Unite Union and others, created the “Love Aotearoa, Hate Racism” campaign. There have

also been numerous other campaigns for migrant rights that include a focus on public perceptions, to build political pressure. Many of these in the past year have focused on the 2021 Residence Visa eligibility, the Acceptable Standard of Health criteria for migrants, and legal gender recognition for asylum seekers and refugees.

The Islamic Women’s Council has gained in public prominence since the March 15 Attacks,⁷²⁶ most recently featuring in a seven-part series and podcast on their work to warn State agencies about the threat to their community.⁷²⁷ For example, recently Anjum Rahman from the Islamic Women’s Council, has been speaking on the need for investment in deradicalisation programmes for any citizens returning from supporting ISIS in Syria.⁷²⁸ As noted in section one on refugee resettlement, Third Culture Minds has been active across refugee youth mental health work with a particular strength in engaging with the media.⁷²⁹ Inclusive Aotearoa is also doing significant work in reducing discrimination by increasing people’s sense of belonging in Aotearoa, with a strong grounding in Te Tiriti o Waitangi.⁷³⁰

Asia New Zealand has been tracking the attitudes of New Zealanders towards Asia and Asian people since 1997. Their most recent surveys have shown increased reports of understanding of Asia, connections through travel and work opportunities, and a positive attitude towards developing newer connections in the COVID-19 influenced world.⁷³¹

725 McCulloch, G. (2022). ‘Where are you from?’: Refugee writers aim to change hearts and minds. *Stuff*. 17 May. <https://www.stuff.co.nz/auckland/300571604/where-are-you-from-refugee-writers-aim-to-change-hearts-and-minds>; Ahmed, U. (2022). Refugee lives told through prose. *Stuff*. 18 February. <https://www.stuff.co.nz/national/127588604/refugee-lives-told-through-prose>

726 Rahman, A. (2019). We warned you. We begged. We pleaded. And now we demand accountability. *The Spinoff*, 17 March. <https://thespinoff.co.nz/society/17-03-2019/we-warned-you-we-begged-we-pleaded-and-now-we-demand-accountability>

727 Bingham, E. (2022). How pleas for help in the lead-up to the Christchurch attacks fell through the cracks - Chapter 1: The Iceberg. *Stuff*. 31 May. <https://www.stuff.co.nz/national/300598389/how-pleas-for-help-in-the-leadup-to-the-christchurch-attacks-fell-through-the-cracks--chapter-1-the-iceberg>

728 One News (2021). Calls for deradicalization programme in NZ amid debate over NZ-born accused terrorist. *TVNZ*. 20 February. <https://www.tvnz.co.nz/one-news/new-zealand/calls-deradicalization-programme-in-nz-amid-debate-over-born-accused-terrorist>

729 See Third Culture Minds (2020). Racism and Islamophobia are a mental health issue. *Re: News*. 23 June. <https://www.renews.co.nz/racism-and-islamophobia-are-a-mental-health-issue>

730 See Inclusive Aotearoa (2022). About Us. <https://inclusiveaotearoa.nz/about-us>

731 Asia New Zealand (2020). New Zealanders’ perceptions of Asia and Asian peoples: 2019 Annual Survey. <https://www.asianz.org.nz/assets/Perceptions-of-Asia-2019.pdf>

Tangata whenua

There are a wide range of views on New Zealand's migrant and refugee settings expressed by different Māori politicians and political groups, iwi, public commentators and scholars. While some link migration to housing shortages, leading to proposals for a total halt to migration,⁷³² plenty of other thinkers are analysing the differences in migration settings with the challenges to infrastructure and inequality.⁷³³ One clear theme from pro-migration advocates is that the structures of colonialism are often the same as those that seek to blame migrants for contemporary problems, and that settlers of colour and Māori need to strengthen their relationships to allow for non-colonial approaches to welcoming migrants.⁷³⁴

While the Productivity Commission was keen to cite Māori interests in immigration, one scholar noted that there was no investigation into what that meant, especially with regards to tino rangatiratanga.⁷³⁵ As mentioned earlier in this report, Rata also noted an example of rangatiratanga through the control over internal borders in response to COVID-19, offering the following summary: "In upholding tino rangatiratanga in accordance with our tikanga, the question is not whether Māori should take a seat at the Crown's decision-making table, but whether (or not) the Crown should be welcomed onto our marae."⁷³⁶

Government

The Ministry for Ethnic Communities, established in 2021, is the lead government department

on ethnic diversity in New Zealand, providing information, advice and services to ethnic communities with the aim of supporting community development and social cohesion. After the March 15 Attacks, the Department of Internal Affairs received an additional \$1.8 million for its portfolio and \$9.4 million over four years in the budget. The Ethnic Communities Development Fund also received an immediate \$1 million increase.⁷³⁷

The Human Rights Commission has informally recorded racially motivated crime by collating what was reported through mainstream media, while also widely advocating for improved social inclusion across four key areas in their race relations work: engaging with the Royal Commission of Inquiry into the attack on Christchurch masjidain, Monitoring the Convention on the Elimination of Racial Discrimination, hosting the Race Unity Speech Awards and continuing to update and collaborate on the Statement on Religious Diversity.⁷³⁸

The Welcoming Communities initiative has passed through a pilot phase and will now be rolled out to 30 centres and regions in addition to the original ten.⁷³⁹ As of July 2022, 18 councils have been accepted into the initiative. Led by Immigration New Zealand in partnership with the Ministry for Ethnic Communities and the Human Rights Commission, the initiative supports the development of "communities that make newcomers feel welcome," which "are likely to enjoy better social outcomes, greater social cohesion and stronger economic growth. In this environment, everyone can fully participate in the economic, civic and social life of the community. Building connections between locals and newcomers means everyone feels included and knows they belong." Pilot locations included three settlement locations, Ashburton, Invercargill

732 Radio New Zealand (2020). Māori Party housing policy includes immigration halt, homes on ancestral land. *Radio New Zealand*. 24 September. <https://www.rnz.co.nz/news/political/426797/maori-party-housing-policy-includes-immigration-halt-homes-on-ancestral-land>

733 For example, see Rata, A. (2020). 5 reasons the Māori Party's anti-immigration stance is kaka. *eTangata*. 3 October. <https://e-tangata.co.nz/comment-and-analysis/5-reasons-the-maori-partys-anti-immigration-stance-is-kaka>; Stoddart-Smith, C. (2020). My beloved Māori Party has let me down with its immigration policy. *The Spinoff*. 3 October. <https://thespinoff.co.nz/atea/03-10-2020/my-beloved-maori-party-has-let-me-down-with-its-immigration-policy>

734 See, for example, Rata, A. & Al-Asaad, F. (2019). Whakawhanaungatanga as a Māori Approach to Indigenous-Settler of Colour Relationship Building. *New Zealand Population Review*, 45, 211–233. https://www.waikato.ac.nz/_data/assets/pdf_file/0004/676201/8fc2bb0a753d9621b60d98edc735cd4389adc0e0.pdf

735 Rata, A. (2021). Rangatiratanga and immigration. *E-tangata*. 5 December. <https://e-tangata.co.nz/comment-and-analysis/rangatiratanga-and-immigration>

736 Ibid.

737 New Zealand Government (2020). Making New Zealand Safer for Everyone. 8 December. <https://www.beehive.govt.nz/release/making-new-zealand-safer-everyone>

738 New Zealand Human Rights Commission (2022). Social Inclusion. <https://www.hrc.co.nz/our-work/social-inclusion/religious-diversity-statement/>

739 Ministry of Business, Innovation and Employment (2020). Briefing for the Incoming Minister of Immigration. November. <https://www.mbie.govt.nz/dmsdocument/12539-briefing-for-the-incoming-minister-of-immigration>

and Palmerston North, while the expansion of the programme⁷⁴⁰

11.3 What are the needs and gaps?

While stronger connections from migrant communities and the settlement sector to tangata whenua approaches to immigration and refugees are slowly emerging, specific approaches to multiculturalism based on the bi-cultural Te Tiriti o Waitangi foundations are still to be developed. Araiteuru marae in Dunedin.⁷⁴¹ Formal partnerships to make a marae visit part of the welcome to all new refugees in the region where they are settled could increase Māori/migrant connections and relationships.

While public sentiment is more positive towards migrants in New Zealand than in many other countries, there are still basic misunderstandings around what differentiates types of refugees and migrants. More work could also be done to highlight how migrants solve infrastructure problems through addressing skills shortages, rather than simply exacerbating them. For example, refugees are regularly criticised for taking up state housing, but few people know that many of the iconic post-World War Two architects, and hence people who were helping to solve housing issues, were refugees.⁷⁴² There is a need to show the productive side of new migrants, rather than seeing the quota or new migrants as simply numbers.

740 See New Zealand Red Cross (2022). A warm welcome: The role of councils in refugee settlement in New Zealand. https://media.redcross.org.nz/media/documents/RC_City_Councils_and_Settlement_Report_v7.pdf

741 Harwood, B. (2020). Call for community to gather for powhiri. *The Star*. 19 November. <https://www.odt.co.nz/the-star/call-community-gather-powhiri>

742 Fitzpatrick, C. (2016). Diaspora by Design: Jewish Refugee Architects and Wellington City. https://www.holocaustcentre.org.nz/uploads/1/2/2/4/122437058/jewish_architects_2.pdf

