



**NEW ZEALAND  
IMMIGRATION**

# **Recent Migrant Victims of Family Violence Project 2019: Final Report**



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INNOVATION & EMPLOYMENT**  
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## Executive Summary

Action on family violence is a priority for the Government, with a number of 2018 reports referring to the necessity of doing more to increase awareness of family violence issues.<sup>1</sup> In this context, a cross-Immigration New Zealand (INZ) Victims of Family Violence Project was instigated to assess the effectiveness of INZ's approach to both preventing and responding to family violence for recent migrants - people who have lived in New Zealand for five years or less. The *Recent Migrant Victims of Family Violence Project 2019: Final Report* provides an account of the Project's key phases and findings.

## Background

The Settlement Unit within INZ led the Victims of Family Violence Project as part of its work to implement the New Zealand Migrant Settlement and Integration Strategy (the NZMSIS) – the Government's approach to effectively settling migrants in New Zealand.<sup>2</sup> The Project also supports one of the six areas of focus for INZ's 'Striking the Balance' strategy: *Minimising harm from immigration*.

The focus of INZ's Victims of Family Violence Project is on how INZ can minimise harm to recent migrant victims throughout the end-to-end immigration and integration process. This includes INZ's information provision, visa policy and processing responsibilities. INZ has two special visa categories for migrants in New Zealand who have experienced family violence: a temporary work visa and a special residence category visa (FV visas). While men can be victims of family violence, the visa data and literature reviewed as part of this Project, confirmed that most victims are female.

## Methodology

The Project began in January 2019 and comprises a four phase approach:

Phase One focuses on the scanning of international and national literature to produce a literature review. In addition to identifying common barriers and responses for recent migrant victims of family violence, the review also includes a summary of New Zealand's family violence statistics and FV visa data.

Phase Two compares New Zealand's legal framework and immigration policies for preventing and responding to family violence for recent migrants with those of our key comparator migrant-receiving countries – Australia, Canada, the United Kingdom and the United States. Although the main features of a country's response to family violence for recent migrants are evident in its legislation and immigration policies, it needs to be acknowledged that the theoretical approach is not always the actual practice.

Phase Three provides an assessment of 'policy in practice', based on interviews with key relevant non-government organisations (NGOs). The NGOs' observations on the barriers that recent migrants face in accessing and obtaining FV visas form the basis for internal INZ discussions and action, which is Phase Four of the Project.

This Final Report divides the four phases across three chapter summaries (Phases One-Three) and a conclusion (Phase Four).

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<sup>1</sup> For example, Office of the Prime Minister's Chief Science Advisor, *Every 4 minutes: A discussion paper on preventing family violence in New Zealand*, November 2018 and *Report on the Safer Ethnic Communities Ministerial Forum*, May 2018.

<sup>2</sup> The Settlement Unit was disestablished in September 2019. The Refugee and Migrant Support team within INZ is now responsible for implementing the NZMSIS.

## Key Project Findings

- New Zealand's family violence rates are one of the highest in the OECD.
- The majority of applicants for INZ's FV visas are from India or Fiji. Together with these, FV visa applicants from China, the Philippines and Tonga make-up the top five source countries.
- In addition to acknowledged levers of financial, emotional, physical and sexual abuse that occur across situations of family violence, some characteristics and types of violence are particular to the specific circumstances of recent migrant women. These include:
  - immigration law-related abuse and coercion
  - multiple perpetrators
  - violence perpetrated or supported across international borders, and
  - certain cultural values and practices that can impede help-seeking.
- Multi-lingual information and programmes available to the entire migrant community are vital to prevent and respond to family violence. That is, education on women's rights and family violence needs to be provided to the whole migrant community (including perpetrators), not just to victims.
- New Zealand, Australia, the United Kingdom (UK) and the United States of America (USA) have specific immigration policies for victims of family violence. Government-supplied online information about these policies is provided only by Australia and the USA.
- Australia provides the closest legislative and immigration policy comparison to New Zealand in relation to family violence.
- According to the NGOs, the following are barriers preventing recent migrant victims from considering an FV visa:
  - the complexity of INZ's FV visa applications
  - a lack of legal aid and support
  - the absence of the NGOs' relationship with INZ, and
  - the lack of INZ information on FV visas.
- According to the NGOs, there are multiple immigration policy and operational issues acting as barriers for recent migrant victims when they try to obtain a FV visa.
  - Policy-related barriers include the requirement for the abuser to be a New Zealand citizen or resident, and the lack of consideration allowed for children that results in situations where victims are returned to their home country and their New Zealand citizen or resident children are left here in New Zealand with abusive fathers.
  - Operational barriers include issues around INZ decision timeliness and consistency, the use of interpreters and the lack of specialised family violence training for INZ staff.

INZ, and other relevant teams within the Ministry of Business, Innovation and Employment (MBIE), have identified remediating actions to some of the operational barriers outlined above, including:

- designing specialist training for staff
- providing the NGOs with an INZ point of contact
- using the Language Assistance Services Programme to address interpreting issues, and
- making enhancements to INZ's information provision on FV visas.

Work to improve the effectiveness of INZ's approach to preventing and responding to family violence will remain an ongoing priority.

# Chapter One: Literature Review

## Purpose

This chapter summarises the Phase One literature review of INZ's Family Violence Project. The review was intended to provide context and a knowledge base for the Project. Literature for this review was predominantly sourced from the New Zealand Family Violence Clearinghouse online website (<https://library.nzfvc.org.nz/>). A bibliography for the review is provided as Appendix One.

INZ has two special visa categories for migrants in New Zealand who have experienced family violence (FV visas). This chapter provides an outline of:

- the New Zealand context - New Zealand's family violence statistics and associated FV visa data
- common issues and barriers for recent migrant victims identified in the literature, and
- common preventions and responses to family violence, particularly regarding information provision.

## New Zealand's family violence statistics

One in three New Zealand women experiences physical and/or sexual violence from a partner in their lifetime. This figure increases to more than half (55%) when psychological and emotional abuse are included in the definition of 'violence'.<sup>3</sup> Approximately half of all homicides in New Zealand are also family violence-related. Per capita, this family violence homicide rate is more than twice that of Australia, Canada or the United Kingdom. Across numerous international surveys, New Zealand's rates of family violence are alarmingly high.<sup>4</sup> The *International Crime and Victimization Survey* reported that the rate of family violence experienced by New Zealand men and women in the previous 12 months exceeded that for each of the other countries in the OECD. The *World Health Organisation's Violence Against Women Survey* reported the rates of physical and sexual violence for New Zealand women were higher than in any of the other developed countries.

While an estimated 76% of family violence in New Zealand goes unreported, this figure is likely to be even higher for the recent migrant population.<sup>5</sup> Recent migrant women face a number of additional barriers to seeking help, including financial, emotional, geographic and cultural values or practices. Consequently, the application rates for FV visas are far lower than the incidence of abuse.

The NGOs interviewed as part of this Project confirmed that many migrant women can make several attempts to leave an abusive relationship before they leave for good. One NGO observed that they had met multiple times with some clients over many months and these clients only made the decision to proceed with an FV visa application when the abuse became extreme (and in some cases life threatening). While it was unknown what happened to all of the women who did not return to seek help, the NGO observed that some could have ended up as a statistic in New Zealand's high family violence homicide rate. Based on a study of police administrative data, one stakeholder has observed that all homicides in the Indian migrant community since 2013 have been family violence-related.<sup>6</sup>

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<sup>3</sup> Office of the Prime Minister's Chief Science Advisor, *Every 4 minutes: A discussion paper on preventing family violence in NZ*, New Zealand, 2018.

<sup>4</sup> The following International Survey findings and statistics are as reported in Milne, Sandra; Maury, Susan; Gulliver, Pauline and Eccleton, Nicola, *Economic abuse in New Zealand: towards an understanding and response*, Abbotsford, Vic: Good Shepherd Australia New Zealand, 2018.

<sup>5</sup> Office of the Prime Minister's Chief Science Advisor 2018.

<sup>6</sup> It is currently not possible to identify recent migrants in the *Family Violence Death Review Committee* reports.

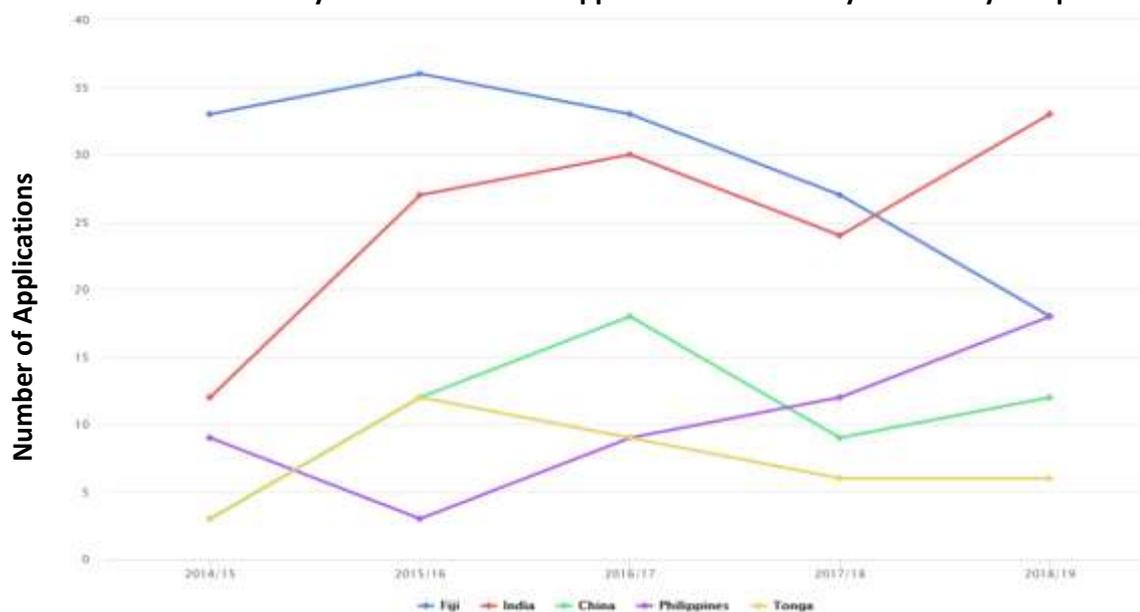
## New Zealand's family violence visa data

The following table shows the decision outcomes for the number of FV visa applications over the last five financial years (1 July to 30 June).<sup>7</sup>

Financial year	FV residence visa approved	FV residence visa declined	Total applications	FV work visa approved	FV work visa declined	Total applications
2014/15	42	8	50	91	14	105
2015/16	26	15	41	116	11	127
2016/17	28	21	49	126	19	145
2017/18	25	15	40	112	11	123
2018/19	33	17	50	123	16	139

The graph below shows the FV work visa application decisions for the last five financial years by nationality. The majority of applicants were from India or Fiji. India and Fiji are in the Top 5 FV work visa applicant countries with China, the Philippines and Tonga. This pattern is also reflected for the FV residence visas.

Family violence work visa application decisions by nationality – Top 5<sup>8</sup>



With India, China and the Philippines remaining within New Zealand's top source countries of migrants for the past five financial years, it could be argued that these countries would logically make up the majority of applicants in most visa categories. However, the same cannot be said for

<sup>7</sup> INZ administrative data sourced from [https://mbienz.shinyapps.io/migration\\_data\\_explorer/ w\\_1a44be24/ w\\_1a44be24/](https://mbienz.shinyapps.io/migration_data_explorer/ w_1a44be24/ w_1a44be24/) - accessed 31 July 2019.

<sup>8</sup> Ibid.

Fiji and Tonga. As the following section of this literature review will show, studies have indicated that family violence is a significant problem in each of these two Pacific countries.<sup>9</sup> Research supports the fact that applicant countries for INZ's FV visas reflect those countries that have high incidences of family violence.

## **Common issues and barriers for recent migrant victims of family violence**

In addition to acknowledged levers of financial, emotional, physical and sexual abuse that occur across situations of family violence, some characteristics and types of violence are particular to the specific circumstances of recent migrant women. These include:

- immigration law-related abuse and coercion
- multiple perpetrators
- violence perpetrated or supported across international borders, and
- certain cultural values and practices that can impede help-seeking.

### **Immigration law-related abuse**

An Australian study of family violence victims on temporary visas found that many women had not been directly involved in obtaining their own visas.<sup>10</sup> The majority were also unaware of their migration status or visa type. This lack of awareness contributed to them becoming victims of immigration law-related abuse, where a perpetrator controlled their migration status.

For many recent migrant women, their ability to remain in the host country can often depend on their husband. That is, it is usually the husband who is the principal applicant of a joint application, or he is the sponsor of his wife's application. In both situations, the husband controls his wife's legal immigration status. He has the ability to delay her visa process and/or refuse to sponsor her on a partner residence visa, thereby forcing her to remain on a temporary visa, which restricts her access to employment, social security, housing, healthcare, childcare and education services. This refusal of sponsorship (real or not), or the threat of being removed from a joint application, is often enough to prevent family violence victims, particularly those with children, from seeking help or reporting the abuse.<sup>11</sup> It is not possible to identify the prevalence of this kind of immigration law-related abuse as data on it is not routinely gathered.

### **Abandonment or trafficking and domestic slavery?**

One aspect of immigration law-related abuse where attempts to gather data have been made relates to the concept of abandonment. A British study provided multiple examples of abandonment, where Indian men used the migration system of the United Kingdom to exercise control over and abuse their wives.<sup>12</sup> Three forms of abandonment were identified in the study:

1. A woman, migrating after marriage to her Indian-origin husband's country of residence, may be ousted or (less commonly) flee after a period of abuse.

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<sup>9</sup> Fiji Women's Crisis Centre, *Somebody's life, everybody's business! National research on women's health and life experiences in Fiji (2010/2011): A survey exploring the prevalence, incidence and attitudes to intimate partner violence in Fiji*, Suva, Fiji, 2013; and Ma'a Fafine mo e Famili Inc., *National study on domestic violence against women in Tonga 2009*, Nuku'alofa, Tonga, 2012.

<sup>10</sup> Segrave, Marie, *Temporary migration and family violence: an analysis of victimisation, vulnerability and support*, Monash University, Melbourne, 2017.

<sup>11</sup> Ghafournia, Nafiseh and Easteal, Patricia, *Are Immigrant Women Visible in Australian Domestic Violence Reports that Potentially Influence Policy?* The University of Sydney, Camperdown, Sydney, Australia, 2018.

<sup>12</sup> Anitha, S; Roy, A and Yalamarty, *Disposable women: Abuse, violence and abandonment in transnational marriages*, University of Lincoln, United Kingdom, 2016.

2. A woman who has migrated with her husband after marriage may be deceived into returning to India for a vacation and abandoned there, while her husband returns to the UK and revokes her visa and/or undertakes other means to prevent her from returning to the UK.
3. A woman may be left behind in India after marriage while her husband returns to the UK. The husband assures his new wife that he will sponsor her visa to the UK, but the woman is left in India with her in-laws as a caregiver and is eventually ousted from their home or leaves because of family violence.

An Australian study took the concept of abandonment further and aligned Example 2 above with a people trafficking offence and Example 3 above with forced labour.<sup>13</sup> The broad definition of human trafficking includes the movement (planned or actual) of someone across a (international) border for the purposes of exploitation in the country of destination using coercion, threat or deception to facilitate that movement. The Australian study reviewed 300 cases of family violence in 2015-2016 where the victim was a temporary visa holder and found 11 cases where there were elements of human trafficking evident.

Of the 300 cases in this research study, 20 involved discernible evidence of potential offences relating to forced labour and servitude, and deceptive recruiting for the purpose of these offences. The majority involved women being forced to work within the context of domestic labour. That is, they were forced to maintain the home for the immediate, and often extended, family who shared the home. In addition, in some cases the woman's passport and other identification documentation was confiscated, her movement was confined, there was no access to finances or support, and specific references were made by the perpetrator(s) to the victim as a 'slave' or as being 'owned' by the perpetrator(s). Consistent across the cases is evidence of numerous forms of abuse that, in addition to meeting the definition of forced labour, could also be connected to migration offences, regarding the sponsor's failure to provide adequate support.

### **Multiple perpetrators**

As touched on above, international research indicates that migrant women victims of family violence are more likely to have multiple perpetrators than non-migrants. The involvement of mothers-in-law in family violence, particularly in a migration context, is prevalent in anecdotal evidence. However, the focus of most available research is on migrant victims and thus, little is known about the perpetrators or their families.

Multiple perpetrators are not always members of the perpetrator's family and it must be acknowledged that, in the migration context, such abuse and threats can extend across international borders. In the research reports, the most comprehensive examples of this occurring were usually in relation to arranged marriages and the dowry system, which is prevalent in India despite being ostensibly banned by the Dowry Prohibition Act of 1961.<sup>14</sup> Dowry demands and harassment occurred irrespective of where either family lived. Threats could be made via telephone to the bride or her family, or were carried out by the extended family of the groom in India or the host country. In a further abuse of migration systems, a groom with permanent residence or citizenship in a (usually Western) host country could use his migration status to leverage dowry demands upwards on the promise of sponsoring a bride into the host country.<sup>15</sup>

### **Technology**

Technology plays an important role in facilitating abuse across international borders. Perpetrators of family violence use technology in three main ways: to create a sense of omnipresence, to isolate,

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<sup>13</sup> Segrave 2017.

<sup>14</sup> Somasekhar, Sripriya, *"What will people think?": Indian women and domestic violence in Aotearoa / New Zealand*, A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy at The University of Waikato, New Zealand, 2016.

<sup>15</sup> Ibid.

and to punish and humiliate.<sup>16</sup> Perpetrators can exercise control by refusing victims (who often have limited finances) access to an independent communication device. Recent migrants are significantly more vulnerable when their own family (immediate and extended) are in another country and they are either cut off from or restricted in their contact with them.

### **Isolation**

To gain support and end their isolation from family, some women attempt to bring family members (particularly parents) to the host country but the migration system becomes a barrier.<sup>17</sup> If the family lack finance to support themselves during their stay and/or sponsorship is required, a victim of family violence may not have the finance and/or migration status to do this herself. She then becomes further reliant on her abuser to act as a sponsor for her family.

### **Children**

If a recent migrant woman has school-aged children, they can often help alleviate her social isolation by linking her with schools, service providers and the wider school community. However, the opposite can occur if a woman has younger children. The Australian study that reviewed 300 cases of family violence, where the victim was a temporary visa holder, found the majority of the women's dependent children (where their ages were known) were under four years old.<sup>18</sup> Women with babies and young children, especially when there is only one child, are often more isolated and, arguably, more easily isolated in this time period, when full-time contact with external education is not required.

For most mothers, children play an important role in influencing their decisions, including decisions to remain in situations of family violence. In the context of temporary migration, these decisions are further complicated by the possibility that a mother may be forced to leave the host country while their citizen children remain.<sup>19</sup> Therefore, a perpetrator of family violence can use the potential (or actual) long-term separation from a child across international borders as a way to control their victim and prolong the abusive relationship.

### **Finance and Housing**

Another barrier for temporary visa holders in abusive relationships is their lack of access to financial support from the government. Many of these women do not have money of their own and/or employment so are unable to support themselves (and their children) if they leave the relationship. This lack of finance can also prevent them from obtaining housing. In addition, there are related issues due to their migration status that provide a barrier, including:

- having no previous rental history - often because they had only ever lived with the perpetrator, who had been responsible for any previous lease, and
- having no referee to speak for the victim as a potential tenant.<sup>20</sup>

### **Church and Religion**

The literature was divided about whether the church and religion helps or hinders recent migrant victims of family violence. While some reports purport that religious leaders play a vital part in combating family violence, others suggested "the inequitable cultural values and structures present in organised religions increase women's vulnerability to violence".<sup>21</sup> In addition, tithing, fa'alavelave (giving) and other fundraising activities imposed by the church were identified as one of the

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<sup>16</sup> Segrave 2017.

<sup>17</sup> Somasekhar 2016.

<sup>18</sup> Segrave 2017.

<sup>19</sup> Ibid.

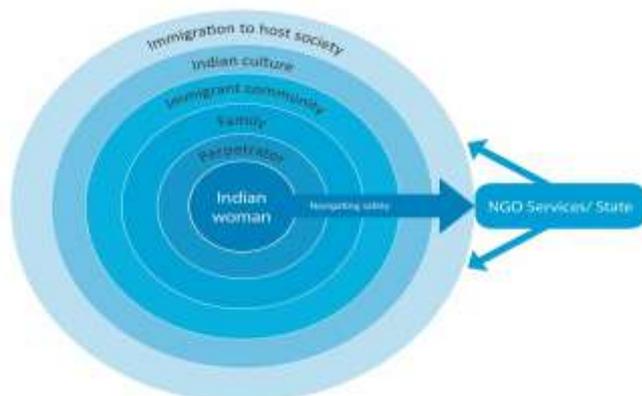
<sup>20</sup> Ibid.

<sup>21</sup> Joyce, Andrew; Foenander, Emily; Russo, Alana and Iqbal, Nida, *An evaluation of the preventing violence against women and their children in culturally and linguistically diverse communities project*, Swinburne University of Technology, Melbourne, 2016.

contributing factors for family violence, because of the financial pressures it creates within the family, and 'differences of opinion' on how much to give.<sup>22</sup>

## Migrant Community

Somasekhar's PhD thesis used the Ecological Framework, depicted below, to explain the difficulties for some Indian migrant women trying to break free from family violence.<sup>23</sup> The framework illustrates how a perpetrator's behaviour is nested within the context of family, which in turn is nested in wider migrant community practices and norms, and what shapes the migrant community is Indian culture. Importantly, migration to a host society creates the final barrier.



While Somasekhar's thesis acknowledged that some community members stepped forward to help Indian migrant women, they usually did not suggest intervention by service providers. This finding was reinforced in other reports that identified and elaborated on two main reasons for the reluctance of migrant communities to help victims:

1. Surveillance of the wider host society and the pressure the migrant community experience to uphold a positive image in the host society.<sup>24</sup> This is achieved by denying and concealing social problems within the community, thereby family violence is tolerated and normalised. For example, following the events of 11 September 2001, women in Muslim communities were identified as being at particular risk as these migrant communities felt more pressured to provide a positive image.<sup>25</sup>
2. Reluctance of migrant communities to help migrant victims relates to the erosion of cultural norms and values. Elders pass on to the next generation the version of the culture they brought with them, "including harmful norms and practices, failing to recognize that culture is not static".<sup>26</sup>

The surveillance of a host society, as noted in 1 above, can also manifest as discrimination by a host society against migrants. This discrimination, whether experienced or perceived, can further isolate migrant victims of family violence, making it more difficult for them to access support services, and reach out for help.<sup>27</sup>

<sup>22</sup> Boodoosingh, Ramona; Beres, Melanie and Tombs, David, *Research briefing: Violence against women in Samoa*, Women's Studies Journal, New Zealand, 2018, 32(1/2): 33 - 56.

<sup>23</sup> Somasekhar 2016.

<sup>24</sup> Ghaleiha, Amin, *Iranian New Zealander men's perception of domestic violence*, A thesis submitted in fulfilment of the requirements for the degree of Master of Social Sciences in Psychology at the University of Waikato, New Zealand, 2018.

<sup>25</sup> Ghafournia and Easteal 2018.

<sup>26</sup> Somasekhar 2016.

<sup>27</sup> *Report on the Safer Ethnic Communities Ministerial Forum*, 2018.

## Common preventions and responses to family violence

While many of the research reports were adamant that culture in itself was not a cause of family violence, when victims are recent migrants it is relevant to consider the 'norms and values' of their homeland. A lack of research on recent migrant victims of family violence, coupled with a lack of understanding and research on the specific cultural context of recent migrants, is problematic when considering effective responses to family violence.

### More research needed

Given New Zealand's large overseas-born population, it is surprising that research about migrant women experiencing family violence in New Zealand is so limited. Current research tends to be small scale and focused on one specific cultural community. Moreover, available data on family violence may also not be completely reliable as international studies show that migrants have a comparatively lower tendency to report family violence.<sup>28</sup> Therefore, the scope and nature of family violence suffered by recent migrants in New Zealand is unknown. This lack of 'customer knowledge' impedes the creation of targeted responses.

In addition, an Australian project investigating responses to family violence in culturally and linguistically diverse (CALD) communities recommended that more bilateral comparative studies with researchers in a host country and researchers in the major migrant source countries were required.<sup>29</sup> This research would improve responses and support available to women experiencing family violence in both their homeland and in a host country.

As previously stated, the overwhelming majority of applicants for FV visas in New Zealand come from India or Fiji. While there are no bilateral comparative studies between either of these two countries and New Zealand, comprehensive studies of family violence in India, Fiji and New Zealand have found it to be a significant problem in each individual country.<sup>30</sup>

### Greater understanding of culture needed

The Pacific Conceptual Framework to address family violence in New Zealand outlined how understanding a culture requires an understanding of a people's worldview.<sup>31</sup> To paraphrase, this worldview is shaped by the traditional social structures, where roles are clearly prescribed according to a family's membership of each level of the traditional hierarchy. Order is maintained and promoted when members know their place in the social hierarchy and work hard not to transgress it. In Fiji and many Pacific Islands, the major churches support the hierarchical nature of culture and promote a conservative, patriarchal, and heteronormative view of Christianity. Biblical verses are used to support the concept of a woman as being the helpmate of her husband, and she is expected to be obedient to him.<sup>32</sup>

In this hierarchal context, both sexes may believe to varying degrees that family violence is acceptable under certain circumstances - 43% of women surveyed in Fiji agreed with one or more justifications for a man to beat his wife.<sup>33</sup> In addition, family violence is often perceived as a 'family difference' that should be settled within the family – it is not a matter for public discussion, given

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<sup>28</sup> Ghaleiha 2018.

<sup>29</sup> Vaughan, Cathy; Davis, Erin; Murdolo, Adele; Chen, Jasmin; Murray, Linda; Block, Karen; Quiazon, Regina and Warr, Deb, *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia, The ASPIRE Project: research report*, NSW: ANROWS, Australia, 2016.

<sup>30</sup> For example, Fiji Women's Crisis Centre 2013 and Office of the Prime Minister's Chief Science Advisor 2018.

<sup>31</sup> Taskforce for Action on Violence within Families, *Nga vaka o kāiga tapu: a Pacific Conceptual Framework to address family violence in New Zealand*, Ministry of Social Development, Wellington, New Zealand, 2012.

<sup>32</sup> Boodoosingh, Beres and Tombs 2018.

<sup>33</sup> Fiji Women's Crisis Centre 2013.

the 'shame' this could bring victims.<sup>34</sup> Consequently, victims are often pressured to stay in abusive relationships and those who do speak out about family violence can be viewed as traitors and ostracised by their family and communities.

The act of migration can become an instigator for family violence as changes in individual and collective roles can result in a loss of 'respect' and confusion around relational boundaries in hierarchal cultures.<sup>35</sup> A frequent example given is that of men being unable to sustain their traditional role as sole breadwinner or women having to go to work to help supplement their family's income. Interestingly, research tends to focus on the low rates of women's economic participation in their homelands, but does not juxtapose this with the economic participation of women in the migration host country. The underlying assumption is that the latter is high. However, even in New Zealand women experience lower employment rates and lower median wages than New Zealand men. When they are employed they face additional barriers to pay equity, including being over represented in precarious and low-paying jobs such as clerical or sales occupations.<sup>36</sup>

Culture shapes gender and gender roles and migration reshapes these concepts once again.<sup>37</sup> In order to appropriately assess and respond to issues of family violence for recent migrants, migrants' perceptions and cultural customs need to be contextualised within the cultural norms of the host country. Migrants bring their own cultural and religious beliefs to a host country, but these beliefs are sometimes changed and mediated within the host country.

In a study of Iranian migrant men in New Zealand, it was found that religious upbringing and social learning had major and long lasting effects on participants' perceptions on family violence, but that some of these perceptions changed as a result of migration.<sup>38</sup> For example, a number of men had become more accepting of women's freedom and body autonomy after migrating to New Zealand. Unfortunately, there is a lack of longitudinal research on how this acculturation affects the prevalence of family violence and violence-supporting attitudes in migrant communities to help inform the development of responses to family violence. A more thorough conceptualisation of migrant men's perceptions on family violence could also be helpful in identifying potential risks and forming prevention and recovery strategies for victims as well as perpetrators.

### **'Culturally appropriate' information**

A common theme in the reports was that, while information on women's rights and family violence laws exist, it is largely targeted at Western English speakers and not culturally relevant nor applicable to the circumstances of other cultural groups.<sup>39</sup> Aside from language, few research reports elaborated on how 'culturally relevant' information provision on family violence differed from 'Western' information provision on family violence.

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<sup>34</sup> Across the refugee-related research, the most common word in the discourse about women's experiences of sexual violence is the word 'shame', which is used to describe both a refugee woman's response to rape and sexual abuse, and the response of her family and community - Zannettino, Lana; Pittaway, Eileen; Eckert, Rebecca; Bartolomei, Linda; Ostapiej-Piatkowski, Beata; Allimant, Annabelle and Jill Parris, *Improving responses to refugees with backgrounds of multiple trauma: Pointers for practitioners in domestic and family violence, sexual assault and settlement services*, NSW: Australian Domestic and Family Violence Clearinghouse, 2013.

<sup>35</sup> Taskforce for Action on Violence within Families 2012.

<sup>36</sup> Milne, Maury, Gulliver, and Eccleton 2018.

<sup>37</sup> Ghaleiha 2018.

<sup>38</sup> Ibid.

<sup>39</sup> Chung, Donna; Fisher, Colleen; Zufferey, Carole and Thiara, Ravi K, *Preventing sexual violence against young women from African backgrounds*, Trends & Issues in Crime and Criminal Justice, no. 540, April 2018, Canberra, ACT: Australian Institute of Criminology, 2018.

A notable exception is the *Pacific Conceptual Framework to address family violence in New Zealand*, where a three-part overall approach to address family violence has been identified:

1. **Dispel** the notion that violence is normal, acceptable or culturally valid.
2. **Remove** opportunities for violence and violations to occur. For example, overcrowding in households is a possible trigger of violence in the family.
3. **Educate** about the alternatives to violence or discuss the detrimental effects of knowingly remaining silent about family violence in the community.<sup>40</sup>

The framework recognised that while family values would be subject to change and modification as a result of being in a new country, the key was to identify and promote the positive aspects of those values for dealing with issues such as family violence.

### **Importance of language and ethnic media**

Ideally, 'culturally appropriate' information should be provided in the language of a person's homeland. One of the challenges in working with translations is the potential for English words and their definitions to have a levelling effect on the meanings of culturally specific concepts and principles.<sup>41</sup> Consequently, ethnic media is essential for information dissemination to migrant communities. Radio broadcasts and pictorial material are also important to target members of the community with poor literacy skills.

### **Information targeted at migrant communities and perpetrators**

Rather than targeting information for victims, most reports recommend that the whole migrant community be targeted. Multi-language written and audio resources need to be developed for broad dissemination in places that are central to daily life, such as health services, housing services, shopping and community centres.

Some reports in the literature review acknowledged that the majority of migrant women chose to remain with abusive partners, particularly if family violence did not occur before migration. They also stressed the need to present family violence as a 'men's issue' as well as a 'women's issue' and recommended using celebrities, such as sports stars, to draw attention to the issue.<sup>42</sup>

### **Face-to-face information delivery preferable**

Many reports cited the trend of government services shifting their primary mode of information dissemination to online platforms as problematic. Face-to-face engagement and education was preferred over other forms of information provision for recent migrants. It was felt that face-to-face delivery of information engendered trust, was more accessible to women who may not read in any language, and had been effective in "getting the word out" through community networks about available services in local areas.<sup>43</sup>

### **Leverage off existing (women's) classes or groups**

Face-to-face information dissemination is comparatively labour and resource intensive. To reduce costs, an Australian project investigating responses to family violence in CALD communities recommended integrating family violence information into existing programmes or groups, such as newcomer networks, women's handicraft groups or children's play groups.<sup>44</sup> In addition, the study identified English classes as important avenues in and of themselves for women to access the family violence support system. While English language skills help migrant women to be able to seek and receive help for family violence, the English language class also provided access to teachers and/or peers in whom victims were able to confide, particularly if the class was women only.

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<sup>40</sup> Taskforce for Action on Violence within Families 2012.

<sup>41</sup> Ibid.

<sup>42</sup> For example, Zannettino, Pittaway, Eckert, Bartolomei, Ostapiej-Piatkowski, Allimant and Parris, 2013.

<sup>43</sup> Vaughan, Davis, Murdolo, Chen, Murray, Block, Quiazon and Warr 2016.

<sup>44</sup> Ibid.

## **Equal access to migrant-specific and mainstream support services**

A number of reports emphasised the importance of recent migrant women having the option to choose to access migrant-specific or mainstream family violence support services. A mainstream service provider that had undertaken robust cultural competence training was seen to be just as aware of migrant women's needs as a migrant-specific service. Bicultural support workers were also seen as invaluable in bridging language, cultural and conceptual barriers that may arise in a mainstream service.<sup>45</sup>

Somasekhar's PhD thesis on Indian women and family violence in New Zealand gave examples of family violence victims accessing migrant-specific services where a staff member was related and/or known to the husband's family and the victim was counselled to stay with her abuser.<sup>46</sup> These incidents become increasingly likely if a migrant community is small or newly established in an area.

## **Information provided through the immigration system**

The immigration system was identified as a key channel through which family violence information can be disseminated. Three main avenues were identified:

1. **Pre-departure and 'on arrival' information.** A common example was distributing a (hardcopy and electronic) publication like the booklet, *Life in Australia*, to provide information on how to seek help.<sup>47</sup>
2. **Targeting information to partners.** As previously outlined, it should not be assumed that principal applicants or sponsors pass on information. In Australia, the Commonwealth and state and territory governments are focusing on further strengthening the support to overseas spouses in two ways:
  - a. Requiring additional information disclosure by the Australian husband, including direct contact details for any partners.
  - b. Developing resource materials to inform, and thereby support, overseas spouses about essential services and emergency contacts in Australia.<sup>48</sup>
3. **Ongoing information provision** to visa holders via a comprehensive text/verbal/visual communication strategy.

## **Information required**

As previously stated, many recent migrant women lack awareness and knowledge of their migration status, let alone of immigration laws and policies. One report stated that the main problem with New Zealand's family violence visa policies was that very few people knew they existed.<sup>49</sup>

The literature suggested that alongside information on immigration and support services, there should be a clear definition of family violence in New Zealand. A number of reports discussed the narrow definitions of family violence in victims' home countries and the lack of response there to instances of it by authorities.<sup>50</sup> This means that there could be a difference between migrants' understanding of what counts as abuse compared to what New Zealanders consider abuse, and low expectations of what help might be available from police and other official agencies in the host society. As previously suggested, such myths and misperceptions need to be dispelled.

Lastly, given that many reports identified gender inequality as a key driver of violence against women, providing general information about women's rights in New Zealand would also be helpful as a prevention mechanism.

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<sup>45</sup> Joyce, Foenander, Russo and Iqbal 2016.

<sup>46</sup> Somasekhar 2016.

<sup>47</sup> Ghafournia and Easteal 2018.

<sup>48</sup> Segrave 2017.

<sup>49</sup> Somasekhar 2016.

<sup>50</sup> For example, Joyce, Foenander, Russo and Iqbal 2016.

## **Conclusion**

This chapter provided an overview of INZ's FV visa data alongside New Zealand's family violence statistics. Common issues and barriers for recent migrant victims were outlined, including immigration law-related abuse and coercion, multiple perpetrators, violence perpetrated or supported across international borders, and certain cultural values/practices that can impede help-seeking. Common recommendations in the literature for providing information to address family violence included using ethnic media, the immigration system, mainstream services and face-to-face delivery through existing migrant service channels, where possible.

## Chapter Two: Comparison of Legislative and Policy Frameworks<sup>51</sup>

### Purpose

This chapter summarises Phase Two of INZ's Family Violence Project. It provides an outline and comparison of the legislative and policy frameworks for (recent migrant) victims of family violence in New Zealand, Australia, the United Kingdom (UK), Canada and the United States (USA).<sup>52</sup> Since information provision to recent migrants is a focus area for the Project, the chapter concludes with a summary of what online information is available about immigration policies related to family violence.

### International conventions

New Zealand has ratified a number of international treaties that contain recommendations or objectives related to migrant women and/or preventing violence against women. The most relevant is the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Often described as an international Bill of Rights for women, CEDAW has been ratified by 189 states.

States that have ratified or acceded to CEDAW must submit national reports periodically to a monitoring committee (the Committee), detailing the steps they have taken to comply with their obligations. In July 2018, the Committee considered the eighth periodic report of New Zealand (CEDAW/C/NZL/8) and raised the following concerns related to recent migrant victims of family violence:

- *The situation faced by migrant women with children, who do not hold permanent visas and who lose their partners' sponsorship as a consequence of separation or divorce. The Committee is further concerned that, in some cases, these women are returned to their country of origin leaving their children behind with the abusive fathers.*
- *That women may remain in abusive relationships so as not to lose their visa status which is dependent on the status of the perpetrator.*
- *That women in such situations face particular obstacles in their access to justice due to a range of knowledge and language barriers, as well as a lack of legal aid.*

As a result of these concerns, the Committee made the following recommendations:

- *Revise immigration laws with a view to facilitating access to permanent residency permits for mothers of children who hold New Zealand nationality;*
- *Ensure the availability of shelters for migrant women who are victims of violence, including family violence, and provide them with free legal and psychological counselling, rehabilitation and other support services; and*
- *Create adequate conditions for women migrants to bring complaints, including by ensuring that they are properly informed about their rights and available remedies to complain about violations of those rights, including in a language that they can understand.*

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<sup>51</sup> This chapter was prepared by researching publicly accessible information and does not constitute legal advice or a legal opinion. It was initially prepared as a preliminary exploration of legal and policy instruments for the information of INZ.

<sup>52</sup> Australia, the UK, Canada and the USA are 'traditional migrant settlement countries' and are commonly used as comparators for New Zealand's immigration activity.

Although New Zealand is not a signatory, the Council of Europe Convention on preventing and combating violence against women and family violence (also known as the Istanbul Convention) is important internationally. The Istanbul Convention aims to prevent violence, protect victims and end the impunity of perpetrators. As at March 2019, it has been signed by 46 countries and the European Union. The Convention's provisions are legally binding and many countries have developed, or are currently developing, action/implementation plans to support their adherence to it.

## Family violence legislation

### New Zealand<sup>53</sup>

On 1 July 2019, the Family Violence Act 2018 took effect and replaced the Domestic Violence Act 1995. The Act defines 'violence' as physical, sexual and psychological abuse, and includes dowry-related abuse. For violence to be 'family' violence, the victim and perpetrator must be in a 'family relationship', which does not mean that they need to be living together. Two people are in a family relationship if they are:

- spouses or partners (includes de-facto, same sex couples and biological parents of a child)
- family members (includes members of the same whānau or other culturally recognised family group)
- sharing a household (although this requires more than just occupying the same house, for example they interact and share responsibilities), or
- in a close personal relationship (judged by length, nature and intensity of the relationship).

The key form of protection under the Family Violence Act is the Protection Order (PO) – a formal court order granted by the Family Court (or by the criminal courts in some cases). This is the main way the Act tries to protect victims of family violence and their children from future violence and abuse. The PO names the person who has been violent or abusive (the respondent), and says they must not be violent or abusive towards the person who applied for the PO (the applicant) or the applicant's children. The PO imposes various other conditions on the respondent, such as not to cause damage to property and not to encourage anyone else to abuse the applicant or their children.

A PO can be made without notice to the respondent and, if granted, they have three months to lodge an objection. If the respondent fails to do so, or the objection is not upheld, the PO will be made permanent. While applying for a PO is cost free, some applicants will require the assistance of a lawyer to apply. Legal aid may be available if applicants are on a benefit or low income.

Another common form of protection provided by the Act is the Police Safety Order (PSO). These provide immediate, short-term protection for people at risk from family violence. They are issued by the police 'on the spot'. The key consequence of a PSO is that the person the order is made against must leave the home and stay away from the other person for up to ten days.

If children are involved, victims of family violence can also apply to the Family Court for a Parenting Order, which sets out the arrangements for the day-to-day care of the children and any contact between the children and a parent with whom they do not reside. Such contact may be supervised if the judge feels there is a risk of violence. That is, the contact between the father (usually) and children may occur under the supervision of organisations that are skilled in this work.

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<sup>53</sup> Information on New Zealand legislation is primarily sourced from: <http://www.legislation.govt.nz/act/public/2018/0046/latest/LMS112966.html/> and <https://communitylaw.org.nz/community-law-manual/chapter-13-domestic-violence-and-elder-abuse/protections-against-domestic-violence-an-overview/> - accessed 21 November 2019.

## Australia<sup>54</sup>

In Australia, the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 amended the Family Law Act 1975 and redefined family violence as "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful". The Act also provides an extensive, but not exhaustive, list of instances of family violence, including stalking and repeated derogatory taunts.

The Family Law Act contains provisions for POs, which are similar to those in New Zealand. POs are generally made under a prescribed law of a state/territory, so can be labelled differently in different states, such as Family Violence Order (Tasmania). Children can sometimes be included on Protection Orders made for a parent, but Australia also has Child Protection Orders that are made by a state Children's Court when it is believed that a child is in need of protection.

Finally, with regard to criminal law, the offences of trafficking and forced labour carry more gravity than family violence offences, yet the justice system is not designed to support or respond to trafficking and forced labour situations that are seen as complex.<sup>55</sup> The context within which these cases occur, which tends to be interpersonal and interfamilial by nature, creates significant obstacles to pursuing many trafficking and forced labour cases (given the evidentiary requirements of these offences) as the victim may be the only witness. Therefore, only the rarest of cases that involve women subject to the most abject forms of abuse will be successfully pursued. This is also the case in New Zealand.

## The UK

The UK has no statutory definition of family/domestic violence.<sup>56</sup> Instead, a 2013 Government definition of domestic violence is commonly referenced: "*Any incident or pattern of incidents of controlling coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality*". This definition encompasses psychological, physical, sexual, financial and emotional abuse. It also includes 'honour' based violence, female genital mutilation and forced marriage. Based on the Government's definition, the Serious Crime Act 2015 made "controlling or coercive behaviour in intimate or familial relationships" a crime, so perpetrators can be prosecuted.

The Family Law Act 1996 has two types of civil court order to protect victims of domestic violence<sup>57</sup>:

1. **Non-Molestation Orders** are designed to prevent an abuser from committing any further abuse, for example by prohibiting contact with the applicant.
2. **An Occupation Order** is used to enable the applicant to continue to live in accommodation that was previously shared.

Both orders can be made where the court considers that it would benefit the applicant or any relevant child, taking account of all the circumstances, including the need to secure the health, safety and wellbeing of the applicant or child.

## Canada<sup>58</sup>

In Canada, the *Criminal Code* contains laws related to criminal law and the rules of criminal procedure. Although the *Criminal Code* does not refer to specific family violence offences, many

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<sup>54</sup> Information on Australian legislation sourced from <https://www.legislation.gov.au/Details/C2011A00189> - accessed 6 June 2019.

<sup>55</sup> Segrave 2017.

<sup>56</sup> Information on the UK definition sourced from <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a02> – accessed 6 June 2019.

<sup>57</sup> Information on UK legislation sourced from <https://www.legislation.gov.uk/ukpga/1996/27/contents> - accessed 6 June 2019.

<sup>58</sup> Information on Canada's legislation sourced from <https://www.justice.gc.ca/eng/cj-ip/fv-vf/laws-lois.html> - accessed 6 June 2019.

*Criminal Code* offences could be used to charge someone with acts of family violence. For example, relevant criminal offences could include offences related to the use of physical and sexual violence, financial abuse or some forms of psychological or emotional abuse within the family.

The *Criminal Code* also contains a number of special provisions that serve to protect victims. When charges relating to family violence have been laid, criminal courts have a wide range of powers to release or detain an accused person. Even where no offence has yet been committed, where personal injury or damage is feared, courts can also order peace bonds or recognisances, which require an individual to agree to specific conditions to keep the peace.

Provincial and territorial governments make laws in areas of their own jurisdiction. Consequently, some provinces/territories have specific legislation on family violence. These civil statutes are designed to complement protections in the *Criminal Code* and generally offer further protection to victims of family violence. Civil measures provided include emergency intervention orders, which may grant the right for only the victim to remain in the home and use the family vehicle. They may also restrain the abuser from communicating with or contacting the victim or members of the victim's family.

### **The USA<sup>59</sup>**

In the USA, domestic violence is considered a criminal offence and is covered in the *Criminal Code*. All States in the USA also have laws criminalising domestic violence and protecting victims. There is considerable variance among State's domestic violence laws. These differences range from the definition of domestic abuse — whether abuse must be physical or whether it also can be emotional, psychological, or financial — to the requirements under mandatory reporting laws. For example, in some States, medical professionals may have to report suspected abuse to the police.

However, according to the United States Department of Justice Office, the definition of domestic violence is “*a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain control over another intimate partner*”. This definition recognises that victims can be spouses, sexual/dating/intimate partners, family members, children or cohabitants.

The 1994 Violence Against Women Act (VAWA), with additions passed in 1996, outlined grant programs to prevent violence against women and established a national domestic violence hotline. In addition, new protections were given to victims of domestic abuse, such as confidentiality of new address and changes to immigration laws that allow a ‘battered spouse’ to apply for permanent residence. The key provisions of the VAWA include:

- full funding of rape kits and legal/court fees for domestic violence protection orders
- victim protection orders are recognised and enforced in all State, tribal and territorial jurisdictions within the USA
- implementation and funding of special domestic violence crime units in local communities
- special domestic violence and sexual violence training for law enforcement officers, and
- provision allowing undocumented migrants who are the victims of domestic violence to apply for a green card in exchange for helping law enforcement officials prosecute their abusers

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<sup>59</sup> Information on USA's legislation sourced from <https://family.findlaw.com/domestic-violence/federal-domestic-violence-legislation-the-violence-against-women.html> - accessed 6 June 2019.

## Legislative comparison

The table below provides a summary of the commonalities and differences between the five countries' legislation for family violence, as outlined above.

	'National' Family Violence Act	State/territorial family violence laws	Legal definition of family/domestic violence	Protection Orders
NZ	yes	n/a	yes	yes
Australia	yes	yes	yes	yes
UK	no	n/a	no	yes
Canada	no	yes	yes	yes
USA	yes	yes	no	yes

New Zealand, Australia and the USA have a specific Act relating to violence against women and/or families. In Australia, Canada and the USA, specific domestic/family violence laws are made at a provincial/territorial level. All countries have legislative provisions allowing victims to apply for POs against perpetrators. The UK and the USA do not have a legal definition of domestic/family violence.

## Immigration legislation and policy

### New Zealand

INZ's FV visa policy uses the same definition of 'family violence' as is in the Family Violence Act. Migrants can be granted an FV temporary work visa if:

- they are, or were, in a relationship with a New Zealand citizen or resident
- they had planned to apply for residence on the basis of this relationship
- the relationship has now ended because of family violence, and
- they now need to work to support themselves.

This visa gives victims of family violence their own visa status, independent of their ex-partner. The visa is valid for six months, but it can be extended to nine months if applicants apply for residence. Applicants need to provide evidence of their relationship with the perpetrator, such as a marriage certificate, correspondence or photos. Applicants also need to provide evidence that there has been family violence, which includes either a:

- final PO against the perpetrator<sup>60</sup>
- conviction in court for a family violence offence
- complaint of family violence investigated and confirmed by the New Zealand Police, or
- statutory declaration from the victim and two statutory declarations from 'professionals', such as a doctor or social worker.

Some victims of family violence apply for the work visa and the residence visa at the same time. The evidence requirements for the residence visa are the same as for the work visa, except that applicants also need to prove that, owing to financial incapacity or social stigma, they are unable to

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<sup>60</sup> Temporary POs and Police Safety Orders do not meet the evidence requirements.

return to their home country. Therefore, not everyone who secures the work visa will be eligible for the residence visa. People can be granted the FV residence visa if:

- they are, or were, in a relationship with a New Zealand citizen or resident
- they had planned to apply for residence on the basis of this relationship
- they have now separated from their ex-partner because of family violence
- they cannot return to their home country because they would have no way of supporting themselves financially, or because they would be abused or excluded from the community because of social stigma, and
- they meet the health and character requirements for residence.

A key objective of the FV residence visa is to recognise New Zealand's international obligations, particularly to CEDAW and Article 19 of the United Nations Convention on the Rights of the Child (protecting children from mental and physical violence). However, as previously noted, the CEDAW Committee has raised concerns that the policy does not go far enough to prevent situations where migrant women on temporary visas are forced to leave the country while their New Zealand citizen/resident children remain with an abusive father.

If a victim is declined or does not meet the requirements of the family violence residence policy, they could apply to the Immigration Protection Tribunal on the basis that their situation warrants an exception to immigration instructions. However, this is a lengthy and uncertain path with a relatively high application fee.<sup>61</sup>

To help protect recent migrant women from repeat perpetrators of family violence, INZ has eligibility requirements for supporting partners. Any supporting partner who has been convicted, either within New Zealand or any other country, of an offence involving family violence or an offence of a sexual nature is not eligible to be a sponsor. INZ does have discretion to grant a 'character waiver', which would then allow an ineligible supporting partner to become eligible. However, where a victim successfully gains an FV residence visa, the perpetrator is permanently prevented from supporting another person's temporary or residence visa applications. That is, no character waiver would be considered, regardless of whether they have any family violence convictions or not.

## **Australia<sup>62</sup>**

In Australia, the Family Violence and Partner Visa (FVP) allows victims of family violence to obtain permanent residence. Unlike New Zealand's residence policy, the FVP does not require a victim to prove that they would have no means of financial support, or that they would face abuse or exclusion in their home country.

To be eligible for an FVP, applicants must have lodged a spouse or de facto partner visa application and their relationship must have broken down due to family violence.<sup>63</sup> The family violence must have been committed by the sponsoring partner against the victim or dependent family member (usually a child). Australia's Migration Regulations define family violence as "*conduct, whether actual or threatened...that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety*".

Evidence is required to show that family violence has occurred. Similar to New Zealand, this includes judicially determined evidence, such as a court order or conviction, and non-judicially determined evidence. In the latter case, the minimum evidence required from an applicant is a statutory declaration, plus at least two documents from a list of specified evidence that includes a letter from

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<sup>61</sup> Information provided through correspondence with Community Law Aotearoa.

<sup>62</sup> Unless specified, information on Australian policy is sourced from: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/family-violence-and-your-visa> - accessed 7 June 2019.

<sup>63</sup> Temporary and permanent partner visas are applied for together.

a school principal, a medical report or a 'professional' statutory declaration. Applicants must also provide evidence to prove that there was a genuine relationship between them and their sponsor.

For migrants who are ineligible for FVP, they could apply for a Complementary Protection Visa (CPV). The CPV was introduced to receive claims from people who did not meet the refugee definition under the Refugee Convention, but there was a real risk that the person would suffer 'significant harm' if they were removed from Australia to their home country. However, findings from an Australian study indicate that there are few (pro bono) legal services that are able to handle protection applications, which are very challenging to put together.<sup>64</sup> Similarly, the Contributory Parent Visa, which is an option for migrants with Australian citizen or resident children, is expensive to pursue and acquire.<sup>65</sup>

Australia has recently introduced legislative changes to make it harder for people with a history of family violence to sponsor a partner visa. In April 2019, the Migration Amendment (Family Violence and Other Measures) Act 2018 amended the Migration Act 1958. The new legislation effectively introduces a two-step process to apply for a Partner Visa, involving a Sponsorship application followed by a Partner Visa application. Therefore, a Partner Visa application can only be made if the sponsorship application is first approved.

Currently, character checks are a mandatory requirement for all visa applicants, while sponsors are usually only required to provide police checks if a minor is included in the application. As part of the new Partner Visa process, all sponsors are required to undertake police and character checks for their sponsorship application to be approved. The results will be shared so that both parties can make fully informed decisions before committing to the visa application process. Therefore, the visa applicant will be made aware if their sponsor has a history of violence.

## **The UK<sup>66</sup>**

The Domestic Violence Rule (DVR) applies if a victim is in the UK as the wife, partner or civil partner of someone who is British or has Indefinite Leave to Remain (ILR) i.e. the victim is currently on, or was on, a spouse or partner visa. Women making applications under DVR can get accommodation and access to welfare benefits while they make their application.

The DVR states that the victim will be entitled to ILR if:

- they experienced domestic violence – the 2013 Government definition of domestic violence referred to above is used
- the relationship with their sponsor has broken down permanently because of this domestic violence
- the relationship broke down during the probationary period<sup>67</sup>, and
- they meet suitability criteria, such as 'being free from unspent convictions'.

At least two pieces of evidence need to be submitted along with the application. The most 'persuasive evidence' are court convictions or orders and police cautions for offences that fit within the definition of domestic violence. If this evidence is not available, statutory declarations from 'professionals', like a doctor or social worker, are requested. However, if none of this requested evidence is available, victims can write a letter outlining why they have no evidence and provide any documents that they do have, such as letters from a midwife or school principal or a neighbour who

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<sup>64</sup> Vaughan, Davis, Murdolo, Chen, Murray, Block, Quiazon and Warr 2016.

<sup>65</sup> The current cost of this visa is close to AUD\$50,000.

<sup>66</sup> Information on UK policy sourced from: [https://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW\\_Domestic-Violence-A4-DIGITAL.pdf](https://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW_Domestic-Violence-A4-DIGITAL.pdf) - accessed 7 June 2019.

<sup>67</sup> When someone is granted a spouse or partner visa, they are usually given leave to enter or to remain in the UK for 33 months or 30 months - this is referred to as the probationary period.

has witnessed incidents of the domestic violence. Evidence of a relationship with the victim's sponsor, such as that outlined above in the Australian policy, is also required.

The DVR does not apply to victims without ILR i.e. temporary visa holders. Temporary visa holders could make a claim for asylum under either the Refugee Convention or Article 3 of the *European Convention on Human Rights* (the right to be free from torture, inhuman or degrading treatment). Applicants need to prove that if they were returned to their own country, they would face serious harm and their country would not be able to protect them. Women who make successful claims for asylum may be given either Refugee Leave or Humanitarian Protection for five years, depending on the nature of their case. Legal aid is available to migrants making asylum applications.

Women who have lived in the UK may also be able to apply for leave to remain on the basis of Article 8 of the *European Convention on Human Rights*. This article says that everyone has the right to respect for her or his private and family life. The Home Office has set out rules (which form part of the Immigration Rules) that state how someone can establish a right to a private or family life in the UK. The rules are limited to rights as:

- the partner of someone who is British or settled (has ILR) or has refugee status
- the parent of a British or settled (has ILR) child in the UK or a child who has lived in the UK for at least 7 years, or
- someone who has lived in the UK for a long time and can meet certain long residence criteria.

There is no legal aid available to assist with an Article 8 application. However, the second rule outlined above would prevent some situations where migrant women on temporary visas are forced to leave the country while their citizen or resident children remain with an abusive father.

## Canada<sup>68</sup>

Canada does not have a specific immigration policy for victims of family violence. The main policy that victims could use to apply for permanent residence in Canada is under the Humanitarian and Compassionate (H&C) consideration. The purpose of the policy is to allow Immigration, Refugee and Citizenship Canada (IRCC) flexibility to approve deserving cases not covered by other policies.

Normally, people must apply for permanent residence from outside Canada, but H&C applications are usually made onshore. There are two stages of approval. A successful applicant will be:

1. allowed to apply for permanent residence in Canada for humanitarian and compassionate reasons, and
2. approved for permanent resident status in Canada.

An applicant who is approved at the first stage could still be refused at the second stage, if they do not meet the requirements for permanent resident status.

An H&C applicant can give any reasons that they believe will support their application. One important factor is if an applicant has a dependent child who would be directly affected should they have to return to their home country. Examples of other factors that IRCC may consider include:

- establishment in Canada
- inability to leave Canada that has led to establishment
- ties to Canada
- health considerations
- family violence considerations

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<sup>68</sup> Information on Canadian policy sourced from <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/humanitarian-compassionate-considerations.html> - accessed 10 June 2019.

- consequences of separation from relatives, and
- factors in the country of origin (not related to seeking protection).

The decision on an H&C application is discretionary and made on a case-by-case basis, so an immigration officer has some freedom in deciding these applications. The H&C policy contains no outline of the evidence that applicants should provide, and therefore no indication of the most 'persuasive evidence'. H&C applications can take several years to decide and applicants are advised that the policy is only for 'exceptional cases'. Family violence legislation in a number of States allows H&C applicants to gain legal aid, for example Ontario's Family Violence Authorization Program.

### **The USA<sup>69</sup>**

There are two main ways migrants who become victims of domestic violence may apply for legal immigration status for themselves and their child(ren) in the USA: self-petitions for legal status under the Violence Against Women Act (VAWA) or U-nonimmigrant status.

#### ***Self-petitions for legal status under the VAWA***

USA citizens and legal permanent residents (green card holders) typically file an immigrant visa petition with the United States Citizenship and Immigration Services (USCIS) on behalf of a spouse or child in order for them to obtain legal status. Consequently, the immigration provisions of VAWA allow victims to 'self-petition' and remove control from their abuser through submitting their own application that is filed without the abuser's knowledge or consent.<sup>70</sup> The following 'basic' requirements must be met:

1. Legally married to a USA citizen or resident abuser. A self-petition may be filed if the marriage was terminated (by divorce or the abusive spouse's death) within the two years prior to filing.
2. Abused in the USA.
3. Considered a person of good moral character.
4. Entered into the marriage in good faith, not solely for the purpose of obtaining immigration benefits.
5. Resided with the abusive spouse.

#### ***U-nonimmigrant status (the U visa)<sup>71</sup>***

The U visa offers immigration protection for victims and is also a tool for law enforcement. To obtain U status, a victim must obtain a certification from law enforcement. This certification is then provided to USCIS to approve the visa and grant Government benefits. Victims are not required to have legal immigration status to apply, but they must:

1. Be a victim of qualifying criminal activity (includes domestic violence) and have suffered substantial physical or mental abuse as a result of the crime.
2. Possess credible and reliable information about the qualifying criminal activity.
3. Be, have been, or are likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.
4. Be a victim of criminal activity that violated USA law.

<sup>69</sup> Information on the USA policy sourced from <https://www.uscis.gov/humanitarian/battered-spouse-children-parents> - accessed 6 June 2019.

<sup>70</sup> Unmarried children under the age of 21, who have not filed their own self-petition, may be included in the petition as derivative beneficiaries.

<sup>71</sup> A T-nonimmigrant status visa is also available to provide immigration protection to victims of severe forms of trafficking in persons, who assist law enforcement in the investigation and prosecution of human trafficking cases.

## Immigration Legislation and Policy Comparison

The table below provides a summary of the commonalities and differences between the five countries' immigration legislation and policies.

	Specific family violence policy	Other related policies	Policy allows multiple perpetrators	Perpetrator must be citizen/resident	Policy has clear evidence requirement	Victim must be onshore <sup>72</sup>	Policy exceptions for citizen/resident children
NZ	yes	no	yes	yes	yes	yes	no
Australia	yes	no	no	yes	yes	yes	no
UK	yes	yes	yes	yes	yes	yes	no
Canada	no	yes	yes	no	no	no	yes
USA	yes	yes	no	yes	no	yes	no

All countries, except Canada, have a specific immigration policy related to family violence. While there are other general/humanitarian immigration policies that victims could apply through for residence, most are cost and time prohibitive. Australia and the USA's family violence policies are restricted to victims whose spouse is the perpetrator. New Zealand, Australia and the UK have clear evidentiary requirements as part of their policies. The specific family violence policies in all countries require victims to be onshore, spouses need to be a citizen or resident, and no policy exceptions are made for victims who have citizen or resident children and a temporary visa status.<sup>73</sup>

## Finding immigration policy information

Immigration agencies, as with all other government services, are shifting their primary channel for information dissemination to online platforms. Consequently, to find information about immigration policies on family violence the main website of each country's immigration agency was searched using the keywords 'family violence'.<sup>74</sup> This search provided no direct link to family violence visa information on the INZ website and the UK website.<sup>75</sup>

These results are surprising given that both countries have specific family violence immigration policies. For New Zealand, clear and accurate information about these policies is instead provided by Community Law Aotearoa. This information was easily found via a Google search using the keywords 'family violence immigration'. While the search did also bring up an archived version of

<sup>72</sup> The requirement to be 'onshore' precludes victims of transnational abandonment from applying for these visas.

<sup>73</sup> As Canada does not have a specific family violence policy, these requirements may not have to be met in H&C applications.

<sup>74</sup> The Canadian website was not searched since they do not have a specific immigration policy related to family violence.

<sup>75</sup> <https://www.immigration.govt.nz> and <https://www.gov.uk/browse/visas-immigration>. As part of the operationalisation of the Family Violence Act 2018, INZ's *New Zealand Now* website information on knowing your rights, family violence and where to go for help was enhanced (see <https://www.newzealandnow.govt.nz/living-in-nz/safety/keeping-safe-security>) but no information or guidance about the FV visas is included.

the INZ operational manual, the manual is not written in plain English and can be difficult for even native English speakers to understand.

For immigration agencies in Australia and the USA, a search of their main immigration websites led directly to webpages with information about the country's family violence policies.<sup>76</sup> The table below summarises the key information provided on these country's webpages.

	Definition of family violence	Eligibility criteria for family violence visa	Evidence needed for family violence visa	Where victims can get help and/or support	Interpreting service information	General settlement information	Exit page quickly & delete browser history
Australia	yes	yes	yes	yes	yes	yes	no
USA	no	yes	yes	yes	no	no	no

In addition to the information provided on the immigration agency website, the International Marriage Broker Regulation Act of 2005 (IMBRA) mandates that the USA Government give immigrating foreign fiancé(e)s and spouses accurate information about the immigration process, their legal rights and how to access help if their relationship becomes abusive. IMBRA also requires the Government to give these 'foreign partners' a copy of the criminal background check that USCIS does on their citizen-sponsors, as well as a copy of the visa sponsorship application.

## Conclusion

Australia provides the closest legislative and immigration policy comparison to New Zealand in relation to family violence. While the UK, Canada and the USA have different legislative approaches to family violence, the UK and the USA both have specific immigration policies for victims of family violence. Online, government-supplied information about immigration policies for victims of family violence is available only on the main immigration websites of Australia and the USA.

<sup>76</sup> Australia: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/family-violence-and-your-visa> USA: <https://www.uscis.gov/humanitarian/battered-spouse-children-parents>

## Chapter Three: Policy in Practice

### Purpose

This chapter summarises Phase Three of INZ’s Victims of Family Violence Project. Phase Three assesses how INZ’s FV visa policies are working in practice, based on interviews with key relevant non-government organisations (NGOs). Observations about the barriers that recent migrants face in accessing and obtaining FV visas are provided by four NGOs: Shakti (Auckland), Shama (Hamilton), Community Law Wellington & Hutt Valley and Wellington Women’s Refuge. All four NGOs provide support to significant numbers of recent migrant victims of family violence. Their observations and recommendations have been reported with minimal editorial additions or comment to provide an accurate reflection of the NGO perspective on how policy works in practice.

### Barriers to seeking FV visas

#### Lack of legal aid and support

Legal Aid is not available to assist individuals with applying for FV visas. Yet, as the NGOs emphasise, the FV applications require specialised knowledge and/or the assistance of a lawyer or immigration advisor. For example, meeting the FV visa criteria of obtaining Protection Orders or securing statutory declarations from two professionals can be a daunting, if not traumatic, exercise for victims to achieve on their own.

In Wellington, Women’s Refuge used to assist migrants with applications but they now refer this work on to Community Law. Due to an increase in demand, Community Law funded a full-time lawyer in Wellington in 2018/19 to provide legal assistance for these applications. However, this approach runs contrary to the funding model for Community Law services and its continuation is uncertain.<sup>77</sup> In Hamilton, Shama currently has a pro-bono lawyer to help some of their clients but other clients seek help from Community Law and other lawyers. In Auckland, Shakti provides pro-bono legal and immigration-related advocacy services to Asian, African and Middle-Eastern migrants.

There are no other services providing this support for free, so demand is high. Recent migrant victims can struggle to obtain the legal support they need, particularly if they live outside of Auckland and Wellington. A key recommendation from the NGOs was to make legal aid available to ensure that all recent migrant victims of family violence could access the level of legal support they need and require.

#### Complexity of FV visa application

The overall perception that the NGOs have about FV visa applications is that they are time-consuming and complex applications to make, with an unpredictable outcome. One NGO observed that they were the ‘visas of last resort’. That is, if there is any other immigration avenue that a victim can pursue, they are advised to do so, even if it is clear that abuse has occurred in their relationship. Until last year, Essential Skills work visas were a common alternative pathway for some victims but the recent policy changes have made these visas more difficult to obtain.<sup>78</sup>

#### Relationship with INZ

Given the complexity of the FV application, and the alternative immigration avenues that their clients sometimes sought, the NGOs expressed a desire to have a person and/or small group of INZ staff, who were trained in family violence issues, as a point of contact. The absence of an informed

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<sup>77</sup> FV applications are significantly more time-consuming than most cases and do not fit Community Law’s usual funding model, which is on a per client basis.

<sup>78</sup> For example, for women with dependent children, the policy change limiting who can sponsor dependents has been particularly problematic.

and stable relationship with INZ was identified as a barrier for organisations working with recent migrants to access the FV visas.

The NGOs perceived that INZ was unduly fearful about fraudulent FV visa applications, and that this fear prevented INZ from having a more productive and efficient relationship with them. All the NGOs emphasised that they conducted thorough assessments to determine whether their clients' abuse was genuine before providing services to them. Further, if a client is seeking an FV residence visa, the NGOs will also conduct a risk assessment to verify if it is safe and feasible for the victim to return to their home country.

Over many years, each NGO noted they had only ever dealt with a handful of cases where recent migrants sought FV visas fraudulently. One NGO even noted that they had declined support for a couple of women and these women had subsequently found alternative legal support to apply for FV visas.<sup>79</sup> The NGO was seeking a way to notify INZ about these women, although finding the channel to communicate with the right person and/or INZ team is extremely difficult.

### **Lack of plain English information**

One NGO observed that the perception of INZ being fearful of FV visa policy misuse was also influenced by the fact that INZ does not provide any plain English information about the FV visas. They noted that awareness of the FV visas was extremely low and none of their clients knew of the policies until they were referred to their organisation. It was recommended that INZ needs to make information about the FV visas easy to find on its website, and in plain English (i.e. not in the form of an operational manual). A plain English printed resource (such as a pamphlet or brochure) translated into other languages would also be beneficial.

One NGO identified women migrants who entered into arranged marriages with New Zealand citizens/residents as a particularly vulnerable group that needed targeted information. A high percentage of their clients who had entered into an arranged marriage were on visitors visas in New Zealand (awaiting partnership residence visas) when the abuse in their relationships began. These women often had low literacy and/or English language skills, did not drive and were kept isolated. If from India, they were also highly likely to be victims of dowry abuse. The NGO suggested that INZ be required to provide these women with information on the immigration system and the Family Violence Act 2018. In addition, this information should be provided offshore in the women's own language, or plain English at least, at INZ branches (for example Mumbai) and/or with visa approval correspondence addressed directly to them.

## **Barriers to obtaining FV visas**

### **Partnership with a New Zealand citizen or resident**

One of the most problematic aspects of the FV visa policy reported by the NGOs is the requirement for victims to be, or have been, in 'a partnership with a New Zealand citizen or resident'. This requirement creates a situation whereby the immigration status of the perpetrator determines the immigration options for the recent migrant victim. Women whose abusers are temporary visa holders are ineligible for FV visas, even when they face significant stigma and hardship in their home country. The NGOs offered countless examples of clients who were ineligible for FV visas so chose to remain in an abusive relationship to await their partner's residence approval. Examples were also provided of cases where perpetrators, who were eligible to apply for residence in New Zealand, preferred to remain on a temporary visa to keep their victims dependent on them (see Case Study One below). It was noted that these cases were most frequent where the abuser was on a long-term temporary visa with high-paid employment, for example a Talent Work visa, as they were already eligible for publicly funded healthcare and had no need for the other benefits that residence confers.

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<sup>79</sup> The NGO noted that, in some cases, these immigration lawyers subsequently came back to them seeking statutory declarations from their authorised members.

The NGOs recommended that, where the perpetrator is not a New Zealand resident or citizen, the determining factor for their victim's immigration status should be 'inability to return to the home country'. This would remove the perpetrator's power to manipulate their immigration status in order to keep their partner dependent. At a minimum, recent migrant victims of long-term temporary visa holders should be eligible for FV visas.

**Case Study One:** A perpetrator on a long-term talent work visa frequently threatened his recent migrant wife with deportation if she left him. When she finally did leave him and obtained a protection order, he breached the order numerous times to assault her, but she was too scared to contact the police in case he had her deported. The perpetrator withheld child support payments and, at one point, she was forced to live in a garage with her two children. A Ministerial Direction was sought, but it took two and a half years before she was finally granted residence.

As noted in Case Study One above, limiting FV visas to partners of New Zealand citizens or residents forces victims to pursue alternative immigration-related avenues, including seeking Ministerial Directions and applying to the Immigration and Protection Tribunal (IPT). One NGO noted that some victims without a New Zealand citizen or resident partner applied for an FV visa knowing they would be declined, so they could lodge an appeal with the IPT in the hope that their circumstances would warrant an exception to instructions. The NGO noted between 2012-18, the IPT found 'special circumstances' warranted a referral to the Minister in only five of the 22 cases regarding FV residence visas.

Appealing to the (Associate) Minister of Immigration or IPT creates a lengthy and uncertain path, with no access to social benefits for already traumatised and desperate victims of family violence.<sup>80</sup> Neither the Minister (nor their advisors) nor the IPT receive specialised training on family violence, and their responses to certain cases can contradict international conventions (for example the United Nations Convention on the Elimination of All Forms of Discrimination Against Women) and/or wider government policy on family violence. For example, one Ministerial response described the violence as a matter for the family court and 'not one that requires an immigration solution'.

### **'Evidence of inability to return to the home country'**

Another problematic aspect of the FV residence policy that the NGOs reported was the assessment of 'Evidence of inability to return to the home country'. The NGOs perceived major inconsistencies between teams within INZ in the application of this policy. For example, INZ declined the visa application of one NGO's Fijian-Indian client because she would not "be at risk of abuse or exclusion because of stigma". However, when the NGO reviewed their client's INZ case file, they found information from INZ's Country Research Branch stating: "*divorce may well be the ugliest word in the [Fijian] Indian community. So much stigma does it contain that...there remain many parents who would prefer to see their children, especially daughters, live miserably for the rest of their lives rather than be divorced...When a man abuses his wife, the community not only expects her to suffer it, but often blames her for it too*".

In the example provided above, the perception of inconsistency across INZ teams is exacerbated by the lack of any clear guidance from INZ about how 'stigma' is defined and assessed. The NGOs noted that the assessment seemed to vary from case to case and recommended that there be clearly communicated criteria from INZ that cannot be open to interpretation.

The NGOs also advised that the nature of victims and abusers has changed over the years and this needs to be acknowledged in the assessment process. For example, a victim's social media profile and number of facebook friends is not necessarily an indicator of an 'existing support network' in their home country. A key aspect of immigration-related abuse is that of perpetrators controlling

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<sup>80</sup> Appealing to the IPT costs NZ\$700.

their victim's use of technology and social media to facilitate and continue their abuse across international borders.

NGOs noted that currently it is not INZ but the IPT that is providing the clearest messages on how 'inability to return home' is being assessed. The IPT has stated that the FV residence visa "is not designed for women from first-world nations".<sup>81</sup> One NGO noted that this makes the visas more akin to a form of refugee status and puts New Zealand out of step with comparable jurisdictions, such as the UK and Australia. In both of these countries, family violence-based visas are driven by a policy intent that ensures a woman does not stay with someone who is abusing her, regardless of where she comes from.

### ***Dependent children should be core to the assessment***

The current FV policy specifies 'financial hardship' and 'stigma' as the key considerations when INZ assesses a victim's 'inability to return to the home country'. The NGOs noted that in cases where a victim has dependent children, especially New Zealand citizen/resident children, the children should provide the deciding factor for INZ's assessment. The current policy does not go far enough to prevent situations where migrant women on temporary visas are forced to leave the country while their New Zealand citizen/resident children remain with an abusive father. Perpetrators are therefore able to manipulate this situation to control their partners – the NGOs gave numerous examples of perpetrators threatening victims with separation from their children if they leave the relationship (see Case Study Two below).

**Case Study Two:** A South American woman on a partnership visa has a dependent child with her New Zealand citizen husband. The husband has been convicted of serious abuse towards her, including strangulation and threats to kill, but she will not leave the relationship as he has also threatened to deport her and keep their child in New Zealand. His threats have been supported by the INZ Contact Centre who told her that, because she was on a partnership visa, she would have 48 hours to leave New Zealand if she left her husband. Given the current messaging that the FV residence visa is not for women from first-world nations, she has no immigration-related avenue to pursue except to begin the long and uncertain process of appealing to the Minister.

### **The requirement to be in New Zealand**

Over the past year, two of the NGOs have noticed an increase in the number of clients who have experienced or been threatened with 'transnational marriage abandonment'. That is, the abandonment of migrant women in their country of origin in order to deprive them of their legal rights in their husband's country of residence. One NGO has specifically seen a pattern where, in the context of escalating violence, women are deceptively taken from New Zealand to their home country and abandoned there while their husband waits for their visa to expire or revokes his sponsorship. These women can be left to a life of destitution and servitude in the husband's extended family or suffer the stigma of life as a single woman or divorcee. The NGOs recommend that INZ allow women, who are victims of offshore abandonment, the ability to apply for FV residence visas.

### **The prescriptive list of acceptable evidence of violence**

The NGOs noted that INZ's list of acceptable evidence for proving the occurrence of family violence is overly prescriptive. They identified issues that victims faced obtaining each of the four conclusive forms of evidence, outlined below, and recommended that INZ should be able to have the discretion to consider other relevant evidence. It was noted that comparative jurisdictions, such as the UK, do not impose a limited catalogue of documents and similar discretion should be introduced in New Zealand.

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<sup>81</sup> [2016] NZIPT 203384.

### ***Protection Orders***

While the Family Violence Act 2018 has made it possible to apply for a Protection Order (PO) online, this is not a viable option for migrant victims with poor English and/or technical literacy. The PO requires the completion of a long and complex application for which many victims will require legal support to complete. One NGO noted that the process for obtaining a PO could take up to three sessions with a lawyer over many months, and cost a minimum of \$1000 in lawyer fees.

Before obtaining a final PO victims are first issued with a temporary PO. The NGOs noted that the time it takes for a temporary PO to become final facilitates opportunities for an abuser to perpetrate immigration system abuse and/or coerce victims into returning to the abusive relationship. The following chain of events was given as a common example of how the abusive partner retaliates when their victim obtains a temporary PO. They:

- contact INZ and withdraw their sponsorship of the victim's temporary visa and/or residence application, making the victim liable for deportation
- obtain an Order Preventing Removal of children (if dependent children are involved), and
- file a defence to the temporary PO. Their lawyer will then advise them not to contact the victim before the hearing and, provided there is no post-separation contact, it is usually very difficult for the victim to get a Final PO before they are forced to leave New Zealand i.e. before they become unlawful.

In cases where the chain of events may be as described above, NGOs suggested that INZ should have the discretion to consider the temporary PO as acceptable evidence.

### ***Convictions and Police confirmation***

As with a final PO, a conviction may take many months to secure. Safety or cultural concerns can also prevent victims from seeking help from the Police. In addition, even when the Police are certain that family violence occurred they are unable to confirm this (as required by the FV requirements) without having personally witnessed abuse or obtaining concrete evidence that they can use to charge a perpetrator under the criminal justice system.

### ***Statutory Declaration***

Given all the issues outlined above, the NGOs note that statutory declarations from professionals are the most viable form of 'acceptable evidence' for the majority their clients. However, the list of acceptable professionals and organisations able to provide a statutory declaration is outdated and needs to be revised, or INZ should at least have the discretion to consider alternatives.

Since the FV visa policy was introduced, there have been advances and expansions in professional practices and organisations. For example, additional forms of therapy have become common practice and new (migrant-focused) family violence service providers have been established.

One NGO gave an example of a client who had the following three declarations rejected by INZ before the victim was able to obtain a statutory declaration from a nurse and her FV application was approved.

1. An agency the victim worked with provided a support letter but it was not accepted by INZ as it was not in the form of a statutory declaration.
2. The refuge that worked with the victim was unable to assist with a declaration as they were not affiliated to the National Collective of Independent Women's Refuges Inc.
3. The victim had a psychotherapist with 20 years' experience in FV cases but her declaration was rejected because therapists must be either counsellors or psychologists.

As alluded to in 1. above, a professional can be on INZ's 'acceptable list', but if their evidence is not in the correct statutory declaration format INZ will reject it as a form of 'acceptable evidence'. Many difficulties were noted by NGOs in obtaining these declarations, which need to be witnessed by a Justice of the Peace (JP). One NGO explained how they often had to provide professionals with examples of what they should write and then had to arrange for a JP to be at the professional's office to witness the declaration.

It was noted that many professionals have misconceptions about what the declaration requires. For example, uncertainty about whether:

- their organisation permits them to write declarations
- they can write one if they do not personally witness violence
- the abuser might find out about the declaration and seek retribution, or
- they might be examined in court.

Rather than statutory declarations, the NGOs recommend that statements from professionals should be acceptable evidence for INZ and/or INZ needs to produce guidance information for professionals about making statutory declarations.

### **Police and medical checks**

Not all recent migrant victims of family violence want to seek residence in New Zealand. Some victims apply for the FV work visa to enable them time to put their affairs in order before they leave the country. For these victims in particular, the requirements to provide police and medical checks when they may have already been in New Zealand for some time seems onerous and unnecessary. Moreover, medical checks can be expensive for some women (approximately \$300). The NGOs recommend INZ either remove the requirements for police and medical checks for the FV temporary visas or establish a funding mechanism to pay for them.

### **Pathway to FV work visa**

Before they obtained an FV work visa, one NGO noted that most of their clients were put on an Interim Visa. However, Interim Visas do not allow their holders work rights. This is particularly problematic given victims cannot receive benefit assistance while their work visa application is being processed.<sup>82</sup> Alternatively, some of the NGO's clients sought help towards the last few days of their visa expiring and a Section 61 request was required.<sup>83</sup>

When an Interim Visa or s.61 request was required for FV applicants, it was observed that it could be more expedient for these to be processed by the same INZ team processing the FV visas. In addition, there should be an automatic process of varying visa conditions to allow work rights for Interim Visa holders applying for FV visas.

### **'Specialised Training'**

One NGO made an Official Information Act request to INZ about the 'specialised training' provided to immigration officers handling FV visa applications. INZ's response portrayed the training as a replication of the relevant immigration instructions and it appeared there was no training given about the dynamics of family violence. The NGO noted that this lack of training was being reflected in decision quality. For example, INZ suggested that one of their clients approach her abusive

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<sup>82</sup> Once the FV work visa is granted, victims can receive a 'Domestic Violence Programme' Special Needs Grant. This provides a minimal amount of support and must be renewed at regular appointments.

<sup>83</sup> Section 61 of the Immigration Act provides the Minister of Immigration (delegated to the Associate Minister of Immigration and to senior immigration officers) with the power, in his or her absolute discretion, to grant a visa of any type to a person unlawfully in New Zealand and otherwise liable for deportation (unless they are subject to a deportation order).

partner for written consent to keep her children in New Zealand. However, her partner posed an extreme physical safety risk to her and her children and was subject to a final PO and bail conditions prohibiting contact. The father is a permanent resident and thus the request was not necessary. The NGO concluded that INZ needs to ensure that it is providing staff assessing the FV visas with the specialised training on family violence specified under the FV policy.

### **‘Priority Processing’**

FV visa policy specifies that these applicants are given ‘priority processing’. The NGOs questioned whether this was the case in practice. One NGO noted, of the residence applications they assisted with in 2018, the fastest approval took seven months and that an application submitted 12 months ago was still in progress. This prolonged uncertainty causes great mental distress for applicants, and severely limits the services and support they can access as non-residents during this period.

In light of the lengthy processing times, it was observed that granting the FV work visas for six-nine months was inadequate. This creates more work for the NGOs and INZ alike, as numerous extensions and renewals of work visas are required, since the length of the work visa is not long enough for the residence application to be processed. The NGOs also thought six months was insufficient time for victims to access specialist support and work through the necessary legal processes. Consequently, it was recommended that the length of the work visa needed to be extended. At a minimum, however, one NGO noted that there could be greater consistency and flexibility among some immigration officers, who had refused to consider granting an FV work visa for nine months.

### **Inconsistent INZ assessments and decisions**

While one NGO commented that centralising the processing of FV visas in Hamilton has had a positive impact for them and their clients, another NGO observed that the move has resulted in a decrease in decision quality and inconsistencies between immigration officers’ assessments. A particularly worrying development for this NGO has been the increase in immigration officers requesting interviews with victims. They noted that INZ appeared to have no conception of how these interviews would re-traumatise victims, and provided the following examples:

- several requests were required before a female interviewer was allocated (i.e. males had been assigned in the first instance)
- interviewers seemed ‘culturally unaware’, for example unfamiliar with common religions and languages, and
- some interpreters were unprofessional, for example distracted by children in the background while providing interpretation via phone.

The NGOs have also noted that FV visa applications from ‘certain countries’ are processed in Porirua, rather than Hamilton. It was observed that applications assessed in Porirua were processed faster, interviews with applicants were not requested and the decision quality was high.

To increase the consistency and quality of decisions, the NGOs suggested that INZ designate specialist technical advisors, who have been trained in family violence, to review **all** FV visa decisions.

## Conclusion

This chapter has provided a summary of the views and experiences of key NGOs about INZ's family violence policy in practice. The NGOs interviewed as part of this Project pointed out a number of barriers that prevent recent migrant victims from considering an FV visa, including:

- lack of legal aid and support
- the complexity of FV applications
- the NGOs' relationship with INZ, and
- the lack of INZ information on FV visas.

The NGOs also identified multiple INZ-related barriers for recent migrant victims when they did try to obtain a FV visa, which included both policy issues and INZ operational/processing issues.

## Final Report Conclusion

Action on family violence is a priority for the Government. The final phase of INZ's Victims of Family Violence Project is consequently being undertaken in a wider context of Government-led change and incremental progress to address family violence. A key underpinning to this change has been the introduction of a modern and enabling legislative framework to effectively address family violence - *the Family Violence Act 2018* and *the Family Violence (Amendments) Act 2018* (the Family Violence legislation).

Building on this, the 2019 Wellbeing Budget also delivered a comprehensive funding package dedicated to eliminating family violence and sexual violence in Aotearoa. To aid the implementation of initiatives within this package, a cross-government joint venture is developing new and integrated ways of working across government and with iwi and communities to reduce family violence.

### **INZ has updated information for migrants and reviewed information sharing**

To support the enactment of the new Family Violence legislation, INZ enhanced information about knowing your rights, family violence and where to go for help on its *New Zealand Now* website. The terminology in the INZ Operational Instructions was also changed to align with the Family Violence legislation (changing references from 'domestic' to 'family' violence, and referencing the new legislation where appropriate).

The Family Violence legislation has introduced rules about when personal information can or must be shared between family violence agencies and social services practitioners. As one of the named family violence agencies, INZ has reviewed its internal processes to ensure safe and appropriate information sharing.

### **MBIE is developing family violence policies to inform and support its staff**

The capability of government workforces is critical to transforming the response system to family violence. The Ministry of Business, Innovation and Employment (MBIE) is currently considering new ways to both raise staff awareness of family violence issues and ensure its staff can get support if they are affected by family violence. As a key part of this response, MBIE has developed (hardcopy and online) guidance to support new legal protections in the workplace for people affected by family violence in the *Domestic Violence – Victims' Protection Act*.<sup>84</sup> This Act gives employees affected by domestic violence the right to:

- take at least 10 days of paid domestic violence leave
- ask for short-term flexible working arrangements for up to 2 months, and
- not be treated adversely in the workplace because they might have experienced domestic violence.

### **Operational changes being progressed by INZ will address some of the issues raised by NGOs**

Remediating actions to address a number of the issues NGOs raised in Phase Three of INZ's Victims of Family Violence Project are being progressed in alignment with the work outlined above and the wider Joint Venture work programme. To date, the following operational changes have already been made, or are underway:

1. Training on the 'dynamics of family violence' is currently being designed for relevant INZ staff.
2. NGOs involved in the Project have been provided with a specialist point of contact within INZ.

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<sup>84</sup> <https://www.employment.govt.nz/assets/Uploads/tools-and-resources/documents/40d89abf29/domestic-violence-victims-protection-act-factsheet.pdf>

3. A Language Assistance Services Programme will potentially address some of the issues that the NGOs raised about interpreting services.<sup>85</sup>
4. Changes to INZ's internal assessment processes for FV residence visas, particularly the assessment of 'inability to return home', are under consideration. These changes should help to improve decision consistency and timeliness.
5. Enhancements to INZ's information provision on FV visas are being developed.

### **Competing policy priorities mean that a policy review is not currently programmed**

The NGOs raised a number of immigration policy issues during Phase Three of the Victims of Family Violence Project. Due to competing Government priorities, policy work to investigate these issues further and any consequent remediating actions cannot be undertaken at this time. However, within the wider context of Government action to eliminate family violence additional immigration operational and policy changes may be considered in the future as part of a longer-term work programme.

### **The Project has provided an opportunity to review processes to ensure that the Government's objectives are effectively addressed**

INZ's Victims of Family Violence Project was instigated in response to assess the effectiveness of INZ's approach to both preventing and responding to family violence for recent migrants - people who have lived in New Zealand for five years or less. The existence of specific immigration policies for some of these migrant victims provides a strong basis on which INZ can respond to family violence. However, during the course of the Project operational barriers to accessing and obtaining these visas were identified. In response, work to address these barriers and improve the effectiveness of INZ's approach to preventing and responding to family violence will be ongoing.

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<sup>85</sup> Further details on the Language Assistance Services programme are available on the INZ website - <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/the-language-assistance-services-project>

## Appendix One: Literature Review Bibliography

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