

Speaking Up, Speaking Out, Speaking With:

Advocacy Challenges for Civil Society's Work with Migrants in Vulnerable Situations

*It follows that there are two ways for the nature
and use of human power to change. One is that
an order might issue from the palace, a
command unto the people saying "It is thus."
But the other, the more certain, the more
inevitable, is that those thousand thousand
points of light should each send a new message.
When the people change, the palace cannot hold.*

Naomi Alderman, *The Power* (Penguin, 2017)

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Disclaimer and Declaration of Interest

This report was prepared by Eve Lester, Independent Researcher and Consultant. She is a board member of the Jesuit Refugee Service (JRS) Australia, which administered the project. However, any findings, conclusions, or recommendations are those of the author, and do not necessarily reflect the views of JRS Australia, the International Detention Coalition, or the project's funders, Igniting Change, Planet Wheeler Foundation, or the Sidney Myer Fund.

Every care has been taken to ensure both the accuracy and broad reach of this report. Although the Consultant contacted and spoke with representatives of as many organisations and individuals as possible in the time available, the study does not claim to be comprehensive.

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Executive Summary

There is a **common perception** that migrants who come to Australia ‘the right way’ are welcomed and integrated into an inclusive society through high quality settlement programs and, therefore, are not vulnerable. Yet, if we scratch below the surface, there is an extraordinary disconnect between this perception and its accompanying rhetoric, on the one hand, and the living realities of many migrants in Australia, on the other. Indeed, there is considerable evidence that temporary and recently arrived permanent migrants can find themselves in some of the most vulnerable situations. One of the main reasons for this is that they are subject to policies of social exclusion or policy blind spots, which are creating a rapidly growing underclass.

The **purpose** of this report is to provide an initial scoping of the capacity of Australian civil society to identify and respond to the problems encountered by non-citizens who are vulnerable because of their migration status (‘the target population’). The study’s focus is primarily on migrants in vulnerable situations rather than refugees and asylum seekers. Nevertheless, the report takes the view that sharp distinctions between refugees and migrants can not only be unhelpful, but they can also be damaging. As such, it recognises that there are **grey areas**, that the experience of many refugees and asylum seekers is analogous to that of migrants, and that together they ‘face many common challenges and have similar vulnerabilities.’

Design and Methodology

This study explores and assesses civil society responses to problems encountered by the target population with a view to identifying what more may be needed. Designed around **five questions**, the study scopes the types of problems faced by the target population, where those problems are most acute, who is working on them and how. Covering regional and metropolitan areas in Victoria and New South Wales, data was collected through a combination of desk-based research, interviews, focus group discussions, and attendance at pre-scheduled interagency and other meetings and workshops. The study benefited from the rich knowledge, insights and experience of a range of stakeholders, including 98 individual informants working (for the most part) in more than 45 organisations. A preliminary report was presented to the project’s funders in June 2019. This version of the report, published in April 2020, is gaps ed for wider circulation and discussion. Although it relates to research conducted between September 2018 and March 2019, in view of its mid-pandemic publication, it includes a **postscript** on the impact of COVID-19 on migrants in Australia.

Observations and Findings

The study reached out to **individuals and organisations** working in a range of fields — law, policy, healthcare and social services — and found an extremely active ‘human mobility’ sector. Depicted through an **issues matrix**, the study identified a range of problems that make migrants **structurally and/or personally vulnerable** in both regional and metropolitan areas. While at the core of this matrix is a vulnerability described as alienage (or ‘otherness’), four overarching issues — visa status; access and eligibility; work; and risks to wellbeing — which are distinct yet deeply intertwined, shape the experience of migrants. Addressing a range of **systemic issues**, the study finds an impressive body of **research** and a range of different approaches to **advocacy**. In this connection, it considers two **case studies**, one on domestic and family violence affecting women on temporary visas that is illustrative of a creative, collaborative and

evidence-based approach to advocacy, the other on the spike in asylum applications from Malaysia.

The study identifies a number of **challenges** facing the sector in Australia, particularly in terms of whether and how civil society engages in ‘outside track’ advocacy. It finds that the following factors have shaped whether and how organisations do advocacy on migration issues:

- the **impact of funding sources**, conditions and constraints, which has often led to self-censorship, however reluctantly;
- a socio-political culture that is hostile to **rights talk**; and
- a polarised refugee-asylum debate that has contributed to a **divide** between the refugee and migration sectors.

The study also finds that the experience of many in the sector is that **burnout** is a major challenge, negatively impacting not only affected individuals but also the sector more broadly. Finally, despite the interconnected nature and range of problems facing migrants in vulnerable situations, the report finds that civil society analysis of and approaches to addressing those problems have been **incredibly siloed**, which is inhibiting prospects for effective change.

Conclusions and Recommendations

Based on these findings, the report **concludes** there is an urgent need for a multidimensional civil society approach to advocacy, which is rights-based (or at the very least rights-informed), in order to build a broader civil society movement seeking justice for migrants. Such an approach would help drive a policy agenda that recognises the centrality of the lived experience of migrants. It would also build solidarity across civil society. It would draw on an already rich and growing body of evidence-based research on key issues in this area and would give voice to the rights and needs of all migrants living in Australia *regardless of status*. To this end, and to maximise impact on the national policy agenda, the report makes two **recommendations** designed to bring civil society and people with lived experience together in order to build and strengthen their capacity to work together in a more coordinated, collaborative and effective way.

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## List of Acronyms

|       |                                                          |
|-------|----------------------------------------------------------|
| ABF   | — Australian Border Force                                |
| AFP   | — Australian Federal Police                              |
| AWAVA | — Australian Women Against Violence Alliance             |
| BV    | — Bridging Visa                                          |
| COPE  | — Community of Practice and Experience                   |
| DFV   | — domestic and family violence                           |
| DHA   | — Department of Home Affairs                             |
| CALD  | — Culturally and Linguistically Diverse Backgrounds      |
| FWO   | — Fair Work Ombudsman                                    |
| GCM   | — Global Compact for Safe, Orderly and Regular Migration |
| GCR   | — Global Compact on Refugees                             |
| GMG   | — Global Migration Group                                 |
| IDC   | — International Detention Coalition                      |
| ILO   | — International Labour Organization                      |
| JRS   | — Jesuit Refugee Service                                 |
| MCA   | — Migration Council of Australia                         |
| OHCHR | — Office of the High Commissioner for Human Rights       |
| SHEV  | — Safe Haven Enterprise Visa (temporary)                 |
| SGBV  | — sexual and gender-based violence                       |
| SRSS  | — Status Resolution Support Services Program             |
| TPV   | — Temporary Protection Visa                              |
| WHV   | — Working Holiday Visa                                   |



# 1. Purpose, Background and Context

The situation of migrants in Australia who are in vulnerable situations is a complex and contentious area that not only raises important public policy issues but also tells us much about who we are and the changing fabric of our society. This report is the result of a study whose purpose was to scope the capacity of Australian civil society to identify and respond to the problems encountered by non-citizens who are vulnerable because of their migration status ('the target population'). To this end, the report asks how civil society is meeting the challenges of a society in which an emergent underclass of migrants is expanding. It explores how civil society might come together more effectively around the spectrum of issues that puts migrants in situations of vulnerability. It finds that many migrants with a precarious migration status are vulnerable to exploitation or abuse in both domestic and work contexts, and that in large measure this is either caused or exacerbated by policies of social exclusion that apply regardless of need or by policy blind spots.

The report's starting premise is that it is incumbent on civil society to work together to ensure that the safety and dignity of migrants in vulnerable situations are effectively protected regardless of status and that change begins by not accepting the status quo as inevitable. With this in mind, the report begins by positioning the inquiry in a global context, before focusing in on the national landscape.

## 1.3 The Global Compact for Migration

Globally, concern about the rights and needs of migrants in vulnerable situations has acquired a new momentum. In September 2016, the UN General Assembly unanimously adopted the *New York Declaration for Refugees and Migrants* ('New York Declaration').<sup>1</sup> The New York Declaration came out of a Summit that sought to recognise all refugees and migrants as rights holders and to condemn acts and manifestations of racism, xenophobia and other forms of intolerance. The Declaration not only reaffirmed the importance of the international refugee regime, but it also contained a wide range of commitments by UN member states to strengthen and enhance mechanisms to protect people on the move, whether refugees or migrants. The Declaration paved the way for consultations and negotiations of two new global compacts in 2018: one on refugees ([GCR](#)) and the other for safe, orderly and regular migration ([GCM](#)).<sup>2</sup> Importantly, the GCM — the first-ever international cooperation framework for effectively addressing issues that concern the world's 258 million people on the move in countries of origin, transit and destination — recognises that refugees and migrants 'face many common challenges and have similar vulnerabilities.'<sup>3</sup>

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<sup>1</sup> *New York Declaration for Refugees and Migrants*, GA Res 71/1, UNGA, 71st sess, UN Doc A/RES/71/1 (3 October 2016) ('New York Declaration').

<sup>2</sup> *Global Compact for Safe, Orderly and Regular Migration*, GA Res 73/195, UNGA, 73rd sess, UN Doc A/RES/73/195 (11 January 2019) ('GCM').

<sup>3</sup> GCM, above n 2, [3]; see also *New York Declaration*, above n 1, [6].

Many NGOs in Australia were closely involved in discussions and negotiations around the GCR. In contrast, and with three exceptions,<sup>4</sup> most Australian NGOs were not actively engaged in GCM negotiations. This non-engagement was explained by some informants as being because in their view ‘it was in good hands’<sup>5</sup> or strategically ‘it wasn’t the right timing’.<sup>6</sup> While others were aware of the process ‘only in an incidental way’,<sup>7</sup> one informant described non-engagement as a broader problem, with Australians being ‘generally leery about multilateralism’ and ‘our peak [migration] bodies [being] principally domestically focused.’<sup>8</sup>

In contrast, the Australian government was one of the most active participants in the process of developing and negotiating the GCM, bringing to the table an agenda strongly focused on border control. Ultimately, however, the Australian government elected not to adopt the GCM at an international conference of member states in Marrakech in December 2018 — claiming the GCM to represent ‘a threat to sovereignty’.<sup>9</sup> Confirming this in a joint media release on 21 November 2018, Prime Minister Scott Morrison, Home Affairs Minister Peter Dutton, and Foreign Affairs Minister Marise Payne declared Australia to be ‘the most successful immigration nation on earth.’<sup>10</sup> The Ministers insisted that Australia already achieves the overarching GCM objective of ‘safe, orderly and regular migration’ and that ‘[Australia’s] settlement programs, focused on integration and inclusion, are the best in the world’.<sup>11</sup> In other words, they intimated Australia did not need international cooperation to achieve its migration goals.

## 1.4 A Common Perception

Despite the Ministers’ self-assured claims to a well-oiled migration program, the incidence of vulnerability — both structural and personal — experienced by many migrants in Australia because of their visa status is disturbingly high and appears to be increasing. The

prevalence of such vulnerability belies the enduring narrative that migrants who come to Australia ‘the right way’<sup>12</sup> fall neatly into the following categories: ‘skilled’ workers, ‘beloved’

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*Australia is a nation of migrants. For Australians, migrants are skilled workers, beloved family members, industrious students, wide-eyed tourists and refugees in dire need.*

[Migration Institute of Australia](#)

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<sup>4</sup> The three exceptions were JRS Australia, the International Detention Coalition (IDC) and the Australian Red Cross.

<sup>5</sup> Jo Szwarc, General Manager, Community and Sector Development, The Victorian Foundation for Survivors of Torture. Interview conducted February 2019.

<sup>6</sup> Name, title and organisation on file. Interview conducted December 2018.

<sup>7</sup> Name, title and organisation on file. Interview conducted February 2019.

<sup>8</sup> Robyn Bicket, Senior Consultant. Interview conducted December 2018.

<sup>9</sup> On the weakness of this claim as a justification for withdrawal, see Carolina Gottardo, ‘[Migration Compact Will Benefit Australia](#)’ *Eureka Street* (online), 5 August 2018, and Anne Gallagher, ‘[3 Reasons All Countries Should Embrace the Global Compact for Migration](#)’ *World Economic Forum* (online), 22 August 2018.

<sup>10</sup> The Hon Scott Morrison MP, Prime Minister, The Hon Peter Dutton MP, Minister for Home Affairs, Senator the Hon Marise Payne, Minister for Foreign Affairs, ‘[Global Compact for Migration](#)’ (Joint Media Release, 21 November 2018).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.



family members, ‘industrious’ students, or ‘wide-eyed’ tourists.<sup>13</sup> Implicit in this upbeat narrative is a common perception that migrants are not — indeed, cannot be — vulnerable because they have these attributes. In contrast to refugees (and asylum seekers), who are more likely to be recognised as being ‘in dire need’ (unless they come uninvited), it is not only assumed that it is possible to ‘pick the perfect [migrant] who won’t need any services’,<sup>14</sup> but also that they should not need and should therefore not be entitled to settlement or other social services. And were, for example, an exploited migrant worker to be a visa overstayer, or to be working in breach of visa conditions, they would find little public sympathy, populism and perception instead dictating that they get what they deserve. As two informants critical of these attitudes highlighted, the assumption is that ‘they can just leave’<sup>15</sup> and should therefore ‘go back to where they came from.’<sup>16</sup>

The political-economic drivers behind this narrative reflect a highly selective (‘very picky’),<sup>17</sup> utilitarian and market-based approach to migration policy. They are also reflected in an institutional self-talk that insists that Australia is a ‘migration super power’,<sup>18</sup> its migration

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*‘We are able to be very picky about who comes to Australia as permanent migrants. And that’s our right, it’s our country.’*

[Prime Minister Malcolm Turnbull](#)

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program is already and only ‘safe, orderly and regular’, and its settlement program is without peer. As this report notes, the perception that this narrative reinforces even permeates parts of civil society. In contrast to civil society

perspectives in many other countries of destination, civil society actors in Australia are often uncomfortable — even unwilling — to engage with or promote rights-based approaches, particularly when it comes to people perceived as underserving of assistance.

Accompanying this institutional narrative is an equally insistent silence about some inconvenient and uncomfortable truths. For example, the assumption that the universal visa system is a marker of complete control of the migration program conceals the reality that not all authorised migration to Australia may be considered safe, orderly or even regular. This institutional silence also masks the reality that, even if Australia’s settlement programs were the ‘best in the world’,<sup>19</sup> temporary migrants are ineligible for such programs regardless of need and however long they have been in Australia. Yet there is growing evidence that Australia, traditionally a country of permanent migration, is embracing temporary migration as an economic strategy that offers massive benefits to the Australian economy at minimal cost to the taxpayer in Australia. Indeed, one of the effects of cuts to the permanent migration program in recent years has been a corresponding growth in temporary migration occasioned

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<sup>13</sup> Migration Institute of Australia, [Migrating to Australia](#).

<sup>14</sup> Name, title and organisation on file. Interview conducted December 2018.

<sup>15</sup> Laura Vidal, Social Work and Human Rights Consultant; PhD Candidate. Interview conducted February 2019.

<sup>16</sup> Karen Verguizas, Program Manager, The Salvation Army. Interview conducted December 2018.

<sup>17</sup> Editorial, [‘Immigrants are not pawns in the game of politics’](#), *Sydney Morning Herald* (online), 23 July 2018, quoting Prime Minister Malcolm Turnbull.

<sup>18</sup> The Hon Peter Dutton MP, Minister for Home Affairs, [Address to the Australian Strategic Policy Institute](#), (Canberra, 15 September 2016).

<sup>19</sup> Above n 10.

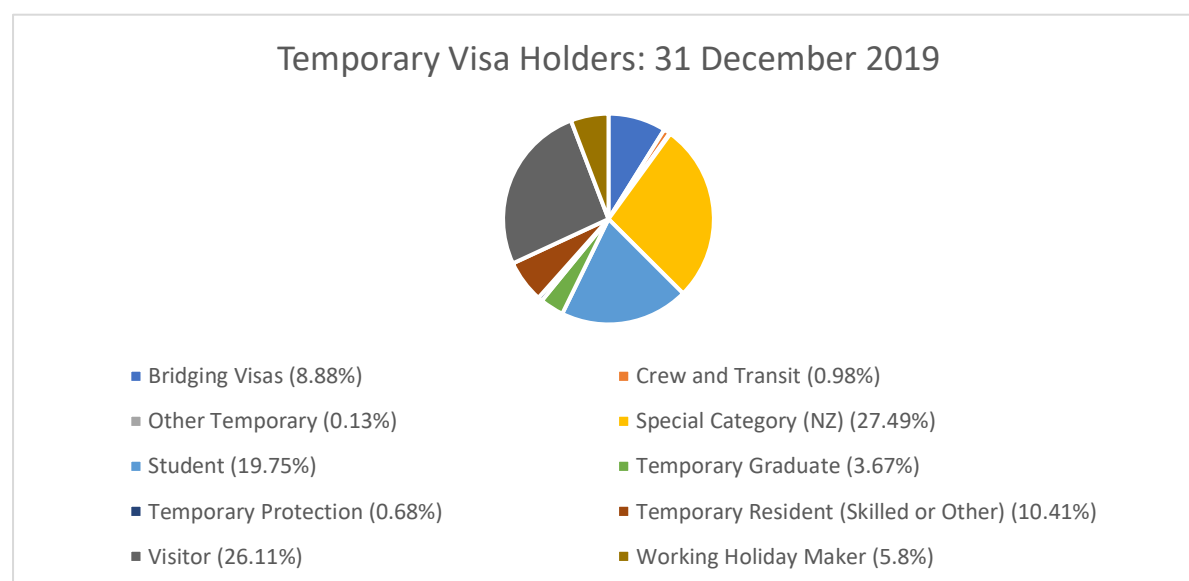
by both processing delays for a declining number of permanent places and a priority of meeting short-term labour shortages.

## 1.5 Facts and Figures

So, what sort of numbers are we talking about? This section provides some facts and figures relating to the current population of temporary migrants as well as newly arrived permanent migrants.

### 1.5.1 People Living in Australia on Temporary Visas

As at [December 2019](#), and summarised in the pie chart below, there were 2.4 million people in Australia who were temporary visa holders, 216,141 of whom held bridging visas (BVs).<sup>20</sup> This is understood to include boat arrivals who have sought asylum and are living in the community: 10,988 BV holders and another 2,156 who are awaiting grant of a further BV.<sup>21</sup> It is also understood to include an estimated 83,133 onshore asylum seekers — known as ‘non-illegal maritime arrivals’ — most of whom are living in the community on BVs.<sup>22</sup> In addition, this figure covers some 141,142 Working Holiday Visa holders (WHV), more than 158,000 temporary residents (‘Skilled’ or ‘Other’) and almost 570,000 international students and temporary graduates.<sup>23</sup>



<sup>20</sup> Department of Home Affairs (DHA), [BP0019 Temporary Visa Holders in Australia](#), (created 21 March 2018, updated 30 January 2020).

<sup>21</sup> DHA and Australian Border Force (ABF), [Illegal Maritime Arrivals on Bridging E Visa](#) (Commonwealth of Australia, 31 December 2019) 4.

<sup>22</sup> DHA, [Monthly Update: Onshore Protection \(Subclass 866\) Visa Processing](#) (December, 2019). These figures include 24,566 new applicants in 2018–19: DHA, [Onshore Humanitarian Program 2018–19](#) (Delivery and Outcomes for non-IMAs as at 30 June 2019) (Commonwealth of Australia, 2019). [Figures updated May 2020]

<sup>23</sup> Above n 20.

This means roughly 9 per cent of Australia's population are temporary migrants. While about 2 per cent hold visitor visas,<sup>24</sup> many visitors habitually extend their stay.<sup>25</sup> Although it is impossible to tell how many temporary visa holders who have permission to work are actually working, it nevertheless suggests that there is a significant proportion of the Australian population at any one time that is either part of the temporary migrant workforce or dependent on it for livelihood.<sup>26</sup> Temporary visa holders (including those on visitor visas) may also be working irregularly, in breach of 'no work' or 'limited work'<sup>27</sup> visa conditions.

Also included in the temporary visa holder figures above are almost 17,000 recognised refugees who arrived in Australia by boat and, for policy reasons, are only entitled to temporary protection. As at February 2020, this included 5,563 people holding temporary protection visas ('TPV') and 11,384 people holding Safe Haven Enterprise Visas ('SHEV').<sup>28</sup> Also not included in these figures are an estimated 60,000 people who are 'unlawful non-citizens',<sup>29</sup> currently in Australia without a valid visa. Most have overstayed visitor or work visas. Many are likely to be working. Some 12,000 such people are estimated to have been in Australia for more than 20 years.<sup>30</sup>

Regarded as unworthy of our concern, but a population on which the horticulture sector has most notably become heavily reliant, undocumented and irregular migrant workers can be in a particularly precarious situation and reports are common that they are subject to exploitation and even extortion.<sup>31</sup> They, like many other migrant workers (including asylum seekers who are BV holders), commonly pick and pack fruit and vegetables or work in the meat processing and packaging industry. Similarly, in metropolitan areas, they tend towards the on-demand and gig economies and other casual labour markets including cleaning, food services, hospitality and the care sector (aged care, child care and disability care),<sup>32</sup> as well as construction and security. These industries have attracted strong criticism, including for exploitative labour practices by growers and labour hire contractors that include wage theft, dirty, dangerous and degrading working conditions, including sexual abuse and exploitation, and squalid, overpriced and overcrowded housing.

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<sup>24</sup> Ibid.

<sup>25</sup> Abul Rizvi, '[Worst Ever Immigration Minister: Asylum Seekers Jet In Under Dutton's Nose](#)', *Sydney Morning Herald* (online), 9 March 2019. Of course, COVID-19 has significantly impacted this dynamic.

<sup>26</sup> See, eg, RMIT ABC Fact Check, '[Fact check: Are one in 10 workers in Australia on temporary work visas?](#)' *ABC Online*, updated 12 July 2018; see also Sanmati Verma, '["We Feed You": The Real Cost of Undocumented Labour in Australia](#)' *Overland* (online), 22 March 2019.

<sup>27</sup> This is particularly relevant to the international student cohort, whose visa conditions include restrictions on working hours.

<sup>28</sup> DHA, [IMA Legacy Caseload Report on Status and Processing Outcomes December 2019](#), (Commonwealth of Australia, 2019).

<sup>29</sup> Tim McIlroy, '[More Than 64,000 People Overstaying Visas in Australia](#)', *Sydney Morning Herald* (online), 18 July 2017.

<sup>30</sup> Ibid.

<sup>31</sup> Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek and Chris F Wright, '[Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry](#)' (University of Adelaide and University of Sydney, 2019).

<sup>32</sup> Matt Wade and Ben Weir, '[The Care of Our Young, Elderly and Disabled is Increasingly Reliant on Overseas-Born Workers](#)', *Sydney Morning Herald* (online), 3 February 2019.

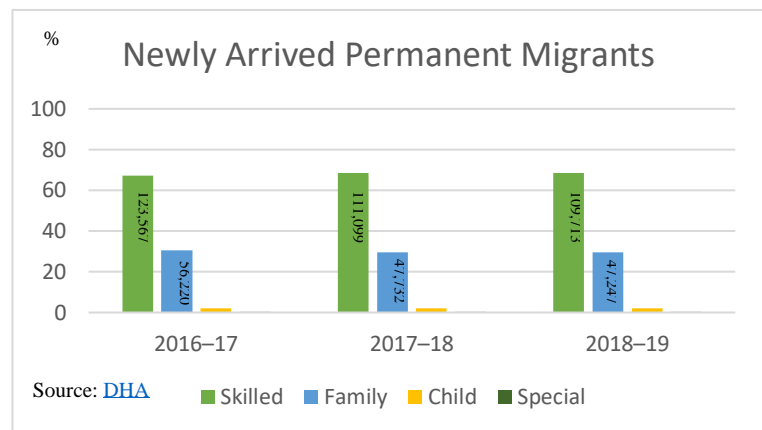
### 1.5.2 Newly Arrived Permanent Migrants

Statistics for newly arrived permanent migrants are published by the [Department of Home Affairs](#) (DHA) annually. Over the last three full years, overall numbers have declined from 183,608 in 2016–17, to 162,417 in 2017–18, and most recently to 160,323 in 2018–19.

As discussed [below](#),<sup>33</sup> in March 2019 the Prime Minister announced that permanent migration would be capped at 160,000. Furthermore, access to income support, aged care and disability care is ordinarily delayed for between four (4) and ten (10) years. This is elaborated in the next section, and the impact of COVID-19 discussed in the Postscript.

Permanent migration is divided into four broad categories:

1. **Skilled:** comprising employer sponsored migration, general skilled migration, business innovation and investment; and distinguished talent. Overall, skilled migration is just shy of 70% of the permanent migration intake.
2. **Family:** comprising partner (84.5% of the family stream), parent (14.4%), and ‘other family’ migration (1.1%). Overall, family migration represents just under 30% of the permanent migration intake.
3. **Child:** representing around 2% of the permanent migration intake.
4. **Special Category:** comprising people receiving Ministerial Intervention grants under the Former Resident (Subclass 151) visa, representing about 0.1% of the permanent migration intake.



## 1.6 All Benefit, No Cost

Two political-economic assumptions put many migrants in vulnerable situations and also help explain the refusal to acknowledge or address their vulnerability adequately. First, migrants

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*‘economics isn’t everything ... there’s a really important social contribution that people make ... it’s not just a simple equation’*

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and notably temporary migrants are seen as a rich economic resource, injecting billions into the Australian economy yet costing little; whether backpackers, seasonal, skilled or semi-skilled

workers, or international students. A boon to the budget bottom line, they have no access to — and are assumed not to need (or deserve) — social safety nets, including those ‘best-in-the-world’ settlement services.

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<sup>33</sup> See [below](#), 8.

A second assumption anticipates certain migrants to be a burden on the taxpayer and to society, which plays out in the framing of policy. A clear turning point in this regard was the decision of the Howard government to enhance the skilled migration program and cut family reunion.<sup>34</sup> So, for example, a crude cost-benefit analysis of non-economically driven permanent migration — such as spousal and family reunion migration — is perceived to be a potential drain on the public purse. Responsibility for income support for recently arrived migrants for up to four (4) years, and aged care or disability care for up to ten (10) years, is therefore shifted to the migrants themselves and to their family members. Delaying access to support on the basis of status rather than need is characterised as being ‘to enhance the self-sufficiency expectation for newly arrived migrants’<sup>35</sup> and to protect the hardworking Australian taxpayer.<sup>36</sup> Because this hardworking Australian taxpayer is depicted as an Aussie battler in the public imagination rather than a taxpayer *in Australia*, we can also see that both temporary migrant workers and newly arrived permanent migrants are easily marginalised rhetorically and politically, even though many are of course taxpayers. And, unlike in comparable democracies, most are taxpayers who have no political voice no matter how long they have been resident; a state of affairs that has been described as ‘a significant democratic deficit’.<sup>37</sup>

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*‘our social policy infrastructure ... hasn’t kept pace with increasing temporary nature of migration and focus on economic imperatives of migration program have led to a perception that we are selecting people who don’t need services’*

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reunion.<sup>34</sup> So, for example, a crude cost-benefit analysis of non-economically driven permanent migration — such as spousal and family reunion migration — is perceived to be a potential drain on the public purse. Responsibility for income support for recently arrived migrants for up to four (4) years, and aged care or disability care for up to ten (10) years, is therefore shifted to the migrants themselves and to their family members. Delaying access to support on the basis of status rather than need is characterised as being ‘to enhance the self-sufficiency expectation for newly arrived migrants’<sup>35</sup> and to protect the hardworking Australian taxpayer.<sup>36</sup> Because this hardworking Australian taxpayer is depicted as an Aussie battler in the public imagination rather than a taxpayer *in Australia*, we can also see that both temporary migrant workers and newly arrived permanent migrants are easily marginalised rhetorically and politically, even though many are of course taxpayers. And, unlike in comparable democracies, most are taxpayers who have no political voice no matter how long they have been resident; a state of affairs that has been described as ‘a significant democratic deficit’.<sup>37</sup>

In this ‘all benefit no cost’ equation, no value is attached to the social contribution of migrants. Nor is consideration given to the social and economic price paid by individuals and families impelled to support needy family members in the absence of a safety net, the short- and long-term impact of such policies on social cohesion,<sup>38</sup> or the demands they place on the time and resources of already over-stretched community services.<sup>39</sup> As one informant observed, the view that temporary and recently arrived migrants should be excluded from services ‘sets up our migration program to fail because it doesn’t foresee the adjustment that is required for anybody moving to a new country, whether temporarily or permanently.’<sup>40</sup> Another described this as a ‘very 1950s attitude towards migrants’.<sup>41</sup>

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<sup>34</sup> The Treasury and DHA, *Shaping a Nation: Population Growth and Immigration Over Time* (Commonwealth of Australia, 2018) 18.

<sup>35</sup> Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-Sufficiency For Newly Arrived Migrants) Bill 2018* (Cth).

<sup>36</sup> Christopher Knaus, ‘[Plan to Restrict Pension for Older Migrants “Unprecedented” in Australia](#)’, *The Guardian* (online), 28 June 2017.

<sup>37</sup> Joo-Cheong Tham, ‘[Australia’s Growing Democracy Gap](#)’, *Inside Story* (online), 2 October 2018.

<sup>38</sup> Judith Betts, ‘[Malcolm Fraser’s Real Mistake](#)’, *Inside Story* (online), 12 April 2019.

<sup>39</sup> Department of Social Services, [Social Security Payments – Residence Criteria](#), last updated 30 January 2019; James Elton-Pym, Rashida Yosufzai, ‘[Budget 2018: Tax Relief for Workers, Migrants Wait Longer for Welfare](#)’, *SBS News* (online), updated 9 May 2018.

<sup>40</sup> Name, title and organisation on file. Interview conducted December 2018.

<sup>41</sup> David Manne, CEO and Principal Solicitor, Refugee Legal. Interview conducted October 2018.

## 1.7 A Growing Underclass

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*‘the roads are clogged, the buses and the trains are full, the schools are taking no more enrolments.’*

Prime Minister, Scott Morrison, November 2018

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In November 2018, Prime Minister Scott Morrison foreshadowed cuts in the migration program because, he said, ‘the roads are clogged, the buses and trains are full, the schools are taking no more enrolments’.<sup>42</sup> To be clear, however, his formal

announcement of the policy in March 2019 indicates that it is *permanent* migration that is to be capped as a way of ‘prioritising Australians for Australian jobs’.<sup>43</sup> In striking contrast, the Prime Minister’s announcement was silent about the expanding temporary migration program, which he knew to be filling jobs that the Australian economy needs done but that Australians will not do.

The rapid growth of the temporary migration program has been criticised as both unplanned and ad hoc.<sup>44</sup> With processing backlogs growing and pathways to permanent residence becoming increasingly protracted, complex, and indeed limited, many migrants (some of whom have been in Australia for years) are becoming ‘permanently temporary’;<sup>45</sup> a state of affairs which, as demographer Liz Allen has noted, will ‘leave people in limbo for years’.<sup>46</sup>

Processing delays and inaction are clearly serving the needs and interests of primary industry, particularly in regional areas where temporary migrant workers populate the harvest trail and the meatpacking industry.

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*‘It is expensive to detain, deport and provide services, but there is a high institutional tolerance of creating uncertainty’*

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Economic advantage is taken of bureaucratic delays and inaction, and are part of what one informant described as ‘a high institutional tolerance of creating uncertainty’<sup>47</sup> for those

affected. So, while there is no evidence that the cuts in permanent migration are likely to unclog the roads, buses and trains, there is strong evidence that ‘permanent temporariness’ is both economically useful and taking its toll, pressing people into a holding pattern that makes them highly exploitable and in which they hover at the margins of socio-economic engagement

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<sup>42</sup> Biwa Kwan, “‘Enough, Enough, Enough’: PM to Cut Australia’s Migration Intake”, *SBS News* (online), updated 20 November 2018.

<sup>43</sup> The Hon Scott Morrison MP, Prime Minister, and Minister for Cities Urban Infrastructure and Population, Minister for Immigration Citizenship and Multicultural Affairs, Minister for Regional Services, Sport, Local Government and Decentralisation, and Minister for Education, ‘[A Plan for Australia’s Future Population](#)’, (Media Release, 20 March 2019).

<sup>44</sup> See, generally, Peter Mares, *Not Quite Australian: How Temporary Migration is Changing the Nation* (Text Publishing, 2016).

<sup>45</sup> David Crowe and Shane Wright, ‘[Migration Crackdown Would Hurt Economy, Trigger Temporary Worker Influx, Critics Warn](#)’ *Sydney Morning Herald* (online), 21 March 2019, quoting Carla Wilshire, Migration Council of Australia.

<sup>46</sup> Katharine Murphy, ‘[Morrison Says Capping Migration at 160,000 is to Save the Budget Bottom Line](#)’ *The Guardian* (online), 20 March 2019.

<sup>47</sup> Nishadh Rego, Policy, Advocacy and Communications Manager, JRS Australia. Interview conducted November 2018.



in a growing underclass of ‘permanently temporary residents’.<sup>48</sup> Policies such as these, that see and treat — or acquiesce in the treatment of — migrants as units of labour or commodities rather than as people with human needs, not to say rights, have an immediate and deleterious impact on the lives of individual migrants and their families. And though some may see such policies as serving the interests of industry and the economy, there can be no doubt that they are damaging Australia’s social fabric. The long-term societal costs of these policies will assuredly be enormous.

## 2. Design and Methodology

### 2.1 Five Questions

The project was designed around five questions. Together they provided both context and direction for the inquiry:

1. What are the problems faced by migrants in a vulnerable situation?
2. Where are the problems most acute?
3. Who is working with migrants who are or become vulnerable because of their migration status?
4. Who is working to address the systemic issues underpinning these problems through research and advocacy?
5. What more is needed?

### 2.2 Data Collection

The 9-week study took place over a period of six (6) months, between September 2018 and March 2019. Informants were from national peak bodies and lead service providers working in the fields of law, healthcare, and community support and social services.<sup>49</sup> The study’s geographical coverage included Sydney, Melbourne and two regional locations in each of New South Wales (North Coast and Riverina) and Victoria (Goulburn Valley and La Trobe Valley). It also included Canberra and Geneva to meet with peak bodies and inter-governmental organisations.

Qualitative data was collected through a combination of desk-based research, face-to-face or telephone interviews, focus groups in target locations, and public meetings. The Consultant also attended several pre-scheduled meetings and workshops. Data was gathered from 98 individual informants. Most worked in more than 45 organisations. Others included local councillors, medical practitioners (doctors, nurses, psychologists), private lawyers and migration agents, staff or former staff from government and UN agencies and people with lived experience. Interviewees included people from culturally and linguistically diverse (‘CALD’) backgrounds from the following regions: Africa, East Asia, Latin America, Middle East, South Asia, and South East Asia.

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<sup>48</sup> Crowe and Wright, above n 45.

<sup>49</sup> See Appendix A. Although beyond the scope of the present study, several informants emphasised that people working in education, notably at primary and secondary levels, have rich insight into the impact of vulnerability on migrant children and their families. Like medical professionals, school staff, whether teaching, wellbeing or other support staff, gain insights that are both rich and raw into their living realities.

## 2.3 Participation in the Study

Participation in the study was voluntary. Informants who participated in interviews or focus group discussions were invited to sign a consent form and were assured that any comments they made would not be attributed in the final report without prior consent. Some participants did not sign the consent form, expressing a preference for informality. Either way, the Consultant has erred on the side of caution: that is, unless sources are publicly available or identification of an informant has been specifically authorised, they have been de-identified. Reflecting the sensitivity of this area of public policy, 34 per cent of people interviewed requested anonymity for themselves and 18 per cent for the organisations for which they work.<sup>50</sup>

## 2.4 Understanding ‘Vulnerability’

‘Vulnerability’ may be understood as the quality or state of being susceptible to attack or injury of a physical or non-physical nature.<sup>51</sup> While migrants are not inherently vulnerable and are recognised as having both agency and resilience, migrant vulnerability can arise both structurally and personally.<sup>52</sup>

For many migrants, these two dimensions to vulnerability are linked. Structural vulnerabilities are those vulnerabilities created by law and policy, whether intentionally or inadvertently. While personal vulnerabilities are not inherently connected to migration status, such status may create, exacerbate or perpetuate those vulnerabilities. This is because vulnerabilities associated with age, cultural and linguistic diversity, disability, gender, health status, housing, labour, pregnancy and maternity, racial background, religious belief, or sexual identity are often tied to and/or exacerbated by migration status and visa conditions, as well as remittance pressure. These conditions not only govern access to justice and eligibility for basic social and settlement services and assistance, but they also make temporary migrants in particular a highly exploitable population.

## 2.5 Refugees and People Seeking Asylum

Although this study’s focus is on migrants in vulnerable situations not otherwise covered by the refugee sector, there are of course grey areas. Often the circumstances of a refugee or asylum seeker are analogous to other temporary migrants, especially in contexts such as work. For those who are holders of bridging visas (BVs),<sup>53</sup> even with work rights, the precarious nature of their status presses them into the casual or seasonal labour markets. This happens especially but not only where short-term bridging visa extensions (for, say, 3–6 months) also means short-term work rights.

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<sup>50</sup> Appendix A.

<sup>51</sup> Shorter Oxford Dictionary.

<sup>52</sup> For further detail, see Office of the High Commissioner for Human Rights (OHCHR) and Global Migration Group (GMG), *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (OHCHR & GMG, 2018).

<sup>53</sup> It is Australian government policy that, on the basis of their mode of arrival in Australia, people who arrived in Australia by boat and are recognised as refugees are only eligible for temporary status (TPVs) or must live in regional areas for a period of five years (SHEVs) with the possibility of securing permanent residence.

Although eligible for some support services, holders of [TPVs](#) lack access in perpetuity to permanent protection pathways. People on [SHEVs](#) are also eligible for some support services. However, if they do access support services it can affect their eligibility for permanent residence. The terms of the SHEV visa provide that holders are denied even the option of applying for certain permanent visas unless they have worked in a designated [SHEV regional area](#) *without* receiving social security benefits *and/or* engaging in full time study for a total of [42 months \(3.5 years\)](#) of their 5 year visa. In other words, the experience in the labour market of holders of these temporary protection visas is similar to other temporary migrant workers.

Some rejected asylum seekers (sometimes known in the refugee sector as ‘double negatives’ because they have been rejected at primary and merits review stages) also fall within the study’s scope. They may be awaiting the outcome of court appeals or requests for (discretionary) ministerial intervention on humanitarian grounds. Processing delays leave people in a protracted state of insecurity and uncertainty. In cases where rejected asylum seekers have exhausted all available remedies but cannot be removed,<sup>54</sup> they live in a perpetual limbo. Even with work rights, people in this situation regularly experience chronic homelessness, mental illness and destitution. A strategy of ‘creating a returns conducive environment’<sup>55</sup> means they are denied access to the policy-based social assistance scheme, Status Resolution Support Services (SRSS).<sup>56</sup> As one informant observed, suggesting that cultural diasporas are bearing the burden of supporting the homeless and destitute, the likelihood that many are couch-surfing or accessing short-term exploitative leases in exchange, for example, for serving as 24/7 live-in maids or carers ‘is the only plausible explanation for why we don’t have thousands at our doors.’<sup>57</sup> Several informants reported people so broken by this experience that they were heavily medicated and found it difficult or impossible to hold down a job. Although comparatively small now, this cohort is not only profoundly vulnerable, but it is set to increase.

It is well documented that women and children who experience domestic and family violence (DFV) or sexual and gender-based violence (SGBV) while on temporary visas include asylum seekers on BVs.<sup>58</sup> Whether international students or their dependents, provisional spouse or fiancé visa holders, skilled migration visa holders (particularly as secondary visa holders), or people seeking asylum, women and children on temporary visas who experience DFV or SGBV are particularly vulnerable both structurally and personally because not only do they lack social capital — manifesting most notably as cultural, educational, language and financial

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<sup>54</sup> In most instances these are stateless persons or people who cannot be returned to their country of origin against their will.

<sup>55</sup> Rego, above n 47.

<sup>56</sup> On the implications of having a policy-based scheme, see Eve Lester, ‘[Planned Destitution for People Seeking Asylum: An “Act of Grace”?](#)’ *Right Now Magazine* (online), 20 August 2018; for a more detailed discussion, see Eve Lester, *Making Migration Law: The Foreigner, Sovereignty and the Case of Australia* (Cambridge University Press, 2018) 231–80.

<sup>57</sup> Rego, above n 47.

<sup>58</sup> JRS Australia, ‘[Free From Violence Against Women and Girls \(VAWG\)](#)’ (Report, 2018); National Advocacy Group on Women on Temporary Visas Experiencing Violence, [Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children](#) (Report, 2018).

barriers to accessing support services — but they are excluded by policies applicable to their migration status.<sup>59</sup> They are therefore covered by this report.<sup>60</sup>

A final category of asylum seeker encompasses people seeking asylum as a last resort. People in this situation may do so as a desperate measure in the face of accident, illness, hardship, destitution or other misfortune, in order to access particular services that would not otherwise be available to them — say, SRSS or Medicare. In other cases, they may do so because they have been caught up in a (possibly highly organised) strategy to access the unskilled labour market. Finding themselves to be unlawful or without permission to work, they seek asylum as a way out of their predicament. In other words, the lack of basic safeguards for migrants on temporary visas or safe alternative visa pathways has driven the decision to apply for asylum.

## 3. Findings

As noted above, this study has scoped the types of problems faced by the target population, where those problems are most acute, who is working on them and how. The following findings are based on qualitative data collected in the aforementioned regional and metropolitan areas in Victoria and New South Wales, as well as Canberra and Geneva.

### 3.1 Who: Organisations and their Mandates

In Australia, members of civil society work with migrants in vulnerable situations in a range of different ways, and at different levels. Informants to the study worked predominantly in the following areas: direct service provision; community engagement; research and policy; and advocacy.

Civil society organisations work with migrants in vulnerable situations in several ways:

- i. on the strength of an explicit mandate;
- ii. in the context of a more broadly-based mandate to work with people in vulnerable situations, or
- iii. in the face of compelling need but in the absence of a mandate specific to migrants.

As elaborated below, organisational mandates may constrain not only the capacity of an organisation to work with the target population, but also impact referral options or pathways. This problem was highlighted in the following areas: crisis accommodation; longer-term housing; legal services and health care.

What became clear during the course of the study was that part of the organisational mandate challenge is internal; that is, it relates to the scope of organisational mandates. The other part of it is external, relating to funding structures and sources. In this connection, the shaping of organisational mandates by external factors is particularly noticeable in relation to organisations that receive government **funding**. However, even where funding is from non-government sources, whether small or larger-scale donations, there seems little doubt that the public conversation on migration affects the extent to which donors are persuadable. This appears to have led some organisations to manage optics by backgrounding their work with migrants in favour of refugees who they gauge will attract higher levels of public interest and

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<sup>59</sup> Focus Group discussion conducted December 2018.

<sup>60</sup> A description of how civil society has tackled this issue is discussed **below**, 21.

concern. Over time, therefore, and together with the government and media rhetoric, both organisational mandates and funding prospects begin to shape the way in which stakeholders think about and present their work and the principles and beliefs that underpin it.

This suggests that the willingness of government-funded organisations to assist migrants in vulnerable situations was strongly influenced by the terms of funding agreements, which are often project-based and of course reflect policy priorities. To manage funding conditions and constraints in these circumstances, some informants described mitigating hardship for migrants falling through the policy cracks by ‘stretching’ their criteria or spotting ‘loopholes’ to access emergency support.<sup>61</sup> Stretched criteria and loopholes notwithstanding, it is clear that the impact of policies of social exclusion has been to create particularly acute shortages of services that have historically been government-funded — notably crisis accommodation, longer-term housing, health care, and legal services. As discussed in relation to the challenge of **burnout**, such policies also place heavy burdens on the staff of under-resourced and over-extended community services and are unsustainable.

### 3.2 What: Issues Matrix

In order to think about *how* Australian civil society organisations engage with the problems that members of the target population encounter in their day-to-day lives, it is necessary to provide an overview of the sorts of issues they face. As a way of summarising the complexity and intersectionality of these issues, the Issues Matrix set out below — which is illustrative rather than exhaustive — outlines the types of problems facing the target population, as described by informants.<sup>62</sup>

Depicted as a wheel, the problems migrants face radiate out from a central axis of alienage (or ‘Otherness’). This context underpins and shapes the sorts of problems that migrants face and from which the range of vulnerabilities they may experience stem. Here, it is important to note that although alienage does not equate to racial or religious ‘Otherness’, at the heart of how some migrant communities experience vulnerability in Australia is racial and religious intolerance, sometimes manifesting as a lack of ‘cultural humility’. The toxic effects of commentary around the so-called ‘African gangs’ issue in Victoria<sup>63</sup> and the devastating massacre at mosques in Christchurch, New Zealand, in March 2019 remind us that racial and religious ‘Othering’ and attendant vulnerabilities feature dominantly in the experience of many migrants.<sup>64</sup>

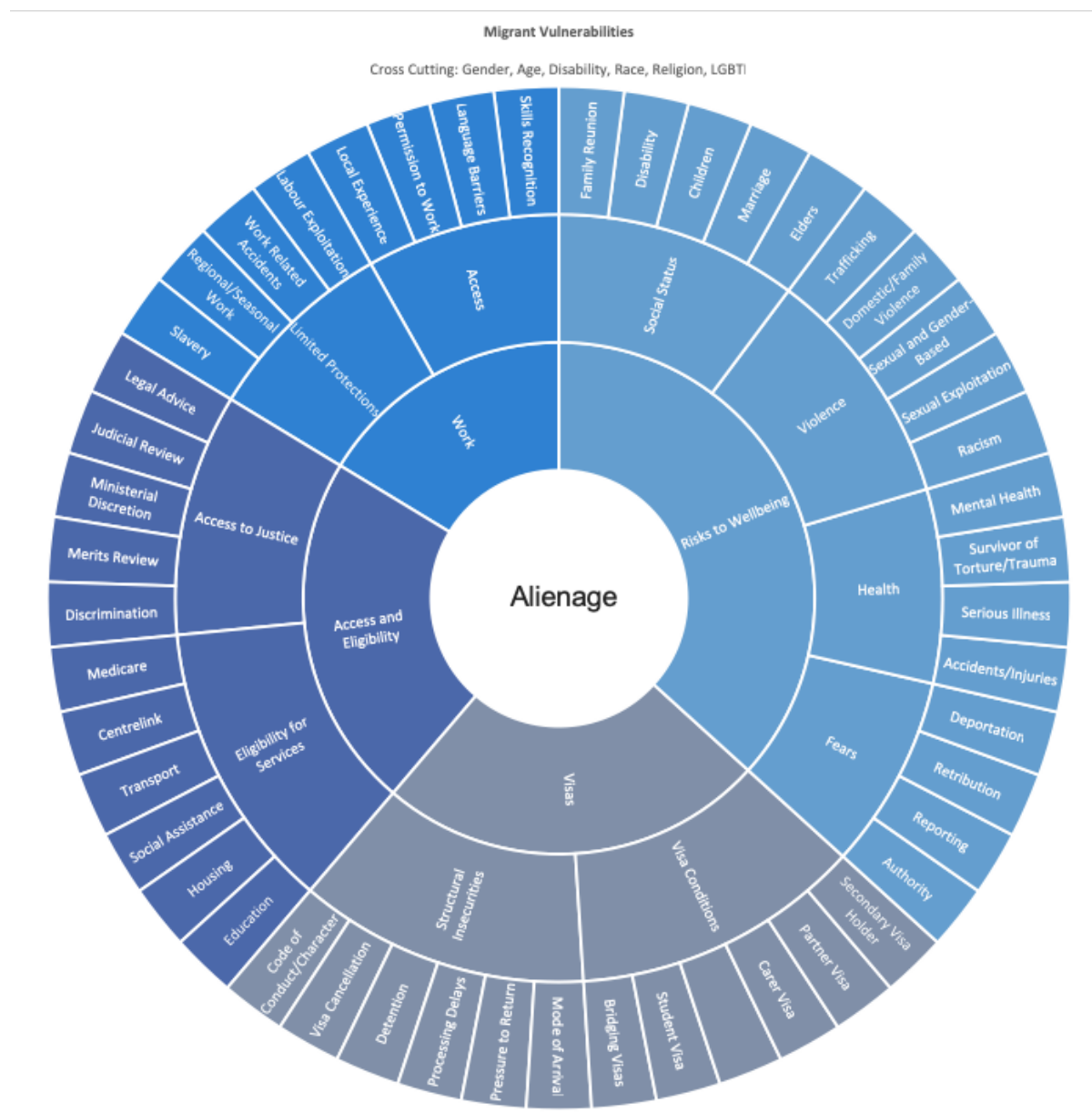
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<sup>61</sup> Name, title and organisation on file. Interview conducted November 2018.

<sup>62</sup> The author acknowledges the care and creativity of Letitia Tunmore who developed this Issues Matrix.

<sup>63</sup> See, eg, John Budarick, [‘Why the Media are to Blame for Racialising Melbourne’s “African Gang” Problem’](#) *The Conversation* (online), 1 August 2018.

<sup>64</sup> The COVID-19 crisis, discussed in the Postscript, also provides an example of racism and xenophobia, manifesting in this case as Sinophobia: Andrew Jakubowicz, [‘How Sinophobia Goes Viral: Building Resilience Against Australia’s Latest Anti-Chinese Contagion’](#), *ABC Religion and Ethics* (online), 20 February 2020.



A range of obstacles inhibit migrants' access to justice and eligibility for services; impact their access to work rights, employment opportunities, and decent working conditions; and represent risks to their wellbeing. These obstacles are social, economic and systemic, and are often heightened by the trend towards mainstreaming of services (that are not necessarily expected to be culturally competent), the perennial problem of budget cuts and the increasing digitisation of services (which pose a challenge from the perspectives of both language and digital competence). Central to these obstacles is, for the most part, an insecurity that attaches to their visa status. Although vulnerability may not flow automatically from visa status, the type of visa a migrant holds has an undeniable centrality in the way she experiences vulnerability. In other words, although not conclusive, it is clear that visa status is a critical determinant of vulnerability.



For migrants, as with all other members of society, work is well recognised as being ‘an essential part of the human condition’.<sup>65</sup> This reality is brought into sharp relief for migrants for whom access to work rights, suitable employment opportunities, and decent work and working conditions<sup>66</sup> is shaped by migration law and policy. As the Issues Matrix outlines, they may also encounter other work-related vulnerabilities.

Finally, a combination of factors heightens risks to the wellbeing of migrants, demonstrating the intersectionality of their vulnerabilities. These threats or risks often arise as a direct result of obstacles to access to justice, ineligibility for social services, visa status, employment conditions or lack of work rights. With alienage at its heart, the Issues Matrix identifies four key vulnerabilities in which these threats or risks to wellbeing emanate: violence; fear; social status, and health status.

### 3.3 Where: Geographical and Social Isolation

Already exposed on account of their migration status, the most acute problems migrants who are in vulnerable situations encounter are attributable either to their geographical location, the nature of the problems that they face, or both. In regional and remote areas, migrants have limited access to services, not least legal services, community support networks, and safe and affordable transport. This means that their vulnerability can arise because of their physical isolation. On the other hand, for some migrants it is the nature of the problems they face rather than geography that makes their vulnerability particularly acute. For example, even in metropolitan areas, a woman on a temporary visa experiencing DFV is vulnerable and isolated

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*‘The most vulnerable are  
the people that civil  
society doesn’t even find.’*

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if she has no income, because she cannot access crisis accommodation without either income or a Centrelink number to mitigate costs. In such situations, having no income may mean that she is forced either onto the streets or to remain in a violent and abusive relationship.

Perhaps the most salient and discomfiting reminder of the reality of isolation for migrants is the observation by one informant that ‘the most vulnerable people are the people that civil society doesn’t even find.’<sup>67</sup> In this regard, the combination of geographical and social isolation is particularly problematic. For example, several informants described cases of mail order brides who were living in remote areas and whose lived experience was akin to domestic servitude and sexual slavery.<sup>68</sup> At the same time, there were also reports of such exploitation taking place in metropolitan areas and regional centres,<sup>69</sup> both across and within cultural communities, and in both commercial and personal spheres.

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<sup>65</sup> Paul Sieghart, *The Lawful Rights of Mankind* (Oxford University Press, 1986) 123.

<sup>66</sup> See GCM, especially Objectives 5 and 6. See generally ILO conventions: *Migration for Employment Convention (Revised)*, 1949 (No 97), *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No 143), *Equality of Treatment (Social Security) Convention*, 1962 (No 118), and *Domestic Workers Convention*, 2011 (No 189).

<sup>67</sup> Carolina Gottardo, Director, Director, JRS Australia. Interview conducted December 2018.

<sup>68</sup> Three informants. Names, titles and organisations on file. Interviews conducted in October and December 2018.

<sup>69</sup> Focus Group discussion conducted December 2018. In contrast, two informants described in positive terms the practice of securing mail order brides within their own cultural community.

### 3.4 How: Towards Systemic Change

In a public policy environment where law- and policymakers have enormous power and minimal legal (constitutional) constraints, prospects for achieving meaningful and substantial systemic change are scarce. This can arise because of institutional resistance to change. Less obviously, and even if government recognises there to be a problem, the lack of a rights-based or rights-informed perspective still positions the state rather than the individual at the centre of its sphere of concern. One informant expressed the view that ‘the system is really structured to put [migrants’] rights and lives in jeopardy.’<sup>70</sup> In the result, responses focus on state-centred preoccupations such as border control, state security (rather than economic or personal security) or criminalise problems that are first and foremost social problems.

In order to meet the challenge of ensuring that the lived experience of migrants in vulnerable situations is made safe and dignified in this climate of resistance, two interrelated approaches are necessary. The first is rigorous evidence-based research. The second is an effective advocacy strategy that deploys ‘inside track’ and ‘outside track’ avenues for advocacy — each equally important and complementary advocacy techniques — using a rights-based framework. As experience shows, both strategic advocacy that is grounded in authoritative research is crucial for challenging the status quo and achieving effective systemic change.<sup>71</sup> Turning first to research matters, this section discusses some of the study’s observations about how civil society engages in this work in the migration space and with what results.

#### 3.4.1 Research Matters

One of the most encouraging findings of this study is that there is an impressive amount of high-quality research by members of civil society. Researchers offer authoritative and persuasive evidence and insights based on their particular areas of expertise, making recommendations to governments and statutory bodies through a range of processes.

##### 3.4.1.1 A Rich Body of Research

The study found an important and rich body of research emanating from both academia and the NGO sector, which is strongly focused on migrants in vulnerable situations.<sup>72</sup> Important work has also been undertaken as part of inquiries by statutory authorities (eg, the Office of the Fair Work Ombudsman (FWO)) or ad hoc taskforces such as the Migrant Workers’ Taskforce.<sup>73</sup> In some instances, the research generates standalone reports and in others, the research grounds submissions to parliamentary inquiries. Of course, some do both.

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<sup>70</sup> Manne, above n 41.

<sup>71</sup> See, eg, the #KidsOffNauru campaign which drew on authoritative research, including strong evidence about the health and developmental impact of ‘[the first thousand days](#)’ of a child’s life; see also [the Home Stretch campaign](#), which campaigned successfully for out of home care for young adults to be extended from 18 to 21 years of age, drawing on coordinated networks of NGOs working collaboratively and was deeply informed by authoritative research, studies and documented outcomes for youth in the out of home care system.

<sup>72</sup> See, for example, reports of [Anti-Slavery Australia](#), the [Immigration Advice and Rights Centre](#), the [Jesuit Refugee Service](#), the [Migrant Workers Justice Initiative](#), the [Monash Trafficking and Slavery Research Group](#), the [National Advocacy Group on Women on Temporary Visas Experiencing Violence](#), the [Red Cross](#), [Refugee Legal](#), and [WEstjustice](#).

<sup>73</sup> Fair Work Ombudsman (FWO), [Harvest Trail Inquiry: A Report on Workplace Arrangements Along the Harvest Trail](#) (FWO, 2018); Migrant Workers Taskforce, [Report of the Migrant Workers’ Taskforce](#)

The research tends to approach problems faced by migrants in vulnerable situations from particular angles, whether human rights, labour rights, slavery and trafficking, or gender. Other research is richly informative on particular aspects of the migration program and its policy context but tends to be more economically- and industry-oriented than people-centred.<sup>74</sup> For example, a recent report on the 457 temporary skilled visa program flags issues of migrant vulnerability for further research rather than addressing them substantively.<sup>75</sup> As a general observation, while the quality of research is high, it has a tendency to reinforce a sectoral or siloed approach to the issues. As such, as one informant observed, there can be a tendency for those working on, say, labour rights, human rights, or slavery and trafficking issues to see themselves *as* a sector rather than as *part* of a sector, overlooking the complex dimensions of the issues with which they are dealing and opportunities for collaborative responses.<sup>76</sup>

#### 3.4.1.2 Parliamentary and Other Inquiries

Parliamentary and other inquiries deserve particular mention here because much of civil society's data has been gathered in the context of service delivery and then collated for the purposes of preparing submissions to such inquiries. It is particularly significant that, when asked about research and advocacy, the first response of most informants engaged in 'inside track' advocacy was to cite making submissions to inquiries as their key entry point for systemic advocacy.

An enormous amount of time and energy goes into writing submissions to parliamentary inquiries. Many are written to a very high standard. Of course, this is important work and such efforts can be (and indeed have been) an effective way of pressing for systemic change. Nevertheless, while we know the announcement of parliamentary and other inquiries can be the result of advocacy and lobbying by civil society, the power to call such inquiries and to implement their recommendations still lies with government. Importantly, if research and associated advocacy is primarily focused on such processes it is more likely that systemic advocacy will be reactive and responsive rather than agenda-setting. This is especially so where this is the principal, or only, form of advocacy in which an organisation is engaged.

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*Without [evidence-based research], you're just a person with an opinion. Unless there's something to back it up it's just a view.*

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#### 3.4.1.3 Why Aren't Things Changing?

Sometimes evidence-based research triggers a policy response, but it does so in form rather than substance. That is, while the response provides some acknowledgement of the existence of problem(s) identified in such research, and the establishment of taskforces, national action plans or working groups appear to signal positive engagement, without more there is a risk that

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(Commonwealth of Australia, 2019). The Migrant Workers' Taskforce was established as part of the Government's response to the revelation of significant wage underpayments in certain industry sectors, such as 7-eleven franchisees, recognising that the problem was demonstrably more widespread.

<sup>74</sup> See, for example, [Migration Council of Australia](#) (MCA). In a recent report by the MCA [on 457 visas](#), the analysis flags issues of migrant vulnerability for further research rather than addressing them substantively.

<sup>75</sup> MCA, [A Reworked 457 Visa Program: Temporary Skilled Migration in Australia](#) (Report, 2017) 14–15.

<sup>76</sup> Heather Moore, Managing Director, Trafficking and Slavery Research Group, Monash University. Interview conducted March 2019.

such initiatives will leave law- and policymakers wondering why things are not changing. Alternatively, these initiatives will look like window dressing. The following two short examples relating to the issues of forced marriage and trafficking and slavery are illustrative.

#### *3.4.1.4 Forced Marriage*

Some informants working on the issue of forced marriage were critical of the nature and adequacy of legal and policy responses that treat forced marriage primarily as a criminal justice issue. As one informant observed in the context of the 2013 decision to criminalise forced marriage, Australia is pursuing initiatives in a policy context where ‘there’s no empirical evidence’ that criminalisation of forced marriage works.<sup>77</sup> Moreover, they said, ‘there’s no evaluation of whether the [legislative] changes [have been] effective’,<sup>78</sup> meaning that ‘the government response is based on untested assumptions.’<sup>79</sup> As one of these informants noted, the criminalisation path that ties forced marriage into the narrow law enforcement mindset of trafficking, slavery and transnational organised crime ‘ignores the broader [social and cultural] context around complex family violence and migration’.<sup>80</sup> The effect of this is to erect ‘one of the most significant barriers’ to working with communities to address the problem of forced marriage because, by criminalising forced marriage, ‘we’ve automatically stigmatised [this] behaviour.’<sup>81</sup>

#### *3.4.1.5 Trafficking and Slavery*

In 2014, the Australian government developed a [National Action Plan to Combat Human Trafficking and Slavery 2015–19](#). As part of this, the National Action Plan describes the Australian government as having ‘built a strong and effective relationship with civil society and unions, including through the National Roundtable on Human Trafficking and Slavery (National Roundtable)’. This it describes as ‘the primary consultative mechanism on human trafficking and slavery.’ However, as one informant observed, notwithstanding the establishment of these mechanisms ‘Australia’s response to trafficking doesn’t have an evidence base – we have a national action plan in its [last] year and we are no closer to ending slavery and no closer to understanding whether what we’re doing is actually working.’<sup>82</sup> The problem is that the statistics suggest that the number of trafficked persons in Australia is small. So, while the Australian Federal Police (AFP) has specialist trafficking teams, the DHA provides training for its staff and the FWO has done its work on exploitation on the harvest trail, as the same informant observed ‘the fact remains we only have a slow drip of recognised [trafficking] victims per year of 25–30 people.’<sup>83</sup> One explanation for this is that government policy is to condition protection for trafficked persons upon engagement with the criminal justice system as witnesses. So, trafficked persons who, for whatever reason,<sup>84</sup> do not wish to

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<sup>77</sup> Vidal, above n 15.

<sup>78</sup> Ibid.

<sup>79</sup> Moore, above n 76.

<sup>80</sup> Vidal, above n 15.

<sup>81</sup> Ibid.

<sup>82</sup> Moore, above n 76.

<sup>83</sup> Ibid.

<sup>84</sup> Objections to participation in the trafficking program include fear of being a witness especially where return to a country of origin may follow. As such the program is criminal justice-centred rather than people-centred.

engage with it are excluded and therefore marginalised, leaving civil society searching for alternatives, such as through Protection Visa applications. Another explanation may be that there is insufficient awareness of the indicators of trafficking and how to respond, including in regional areas.

In February 2019, the Australian Institute of Criminology released the government's first national estimates of victims of trafficking from 2015–2016 to 2016–2017,<sup>85</sup> which it put at between 1,300 and 1,900. In striking contrast to these figures, the [Global Slavery Index](#), which assesses government responses around the world, estimates that 15,000 people are in some kind of slavery on any given day in Australia, including in the context of forced marriage. Although the methodologies for reaching these estimates differ,<sup>86</sup> such conflicting numbers make meaningful engagement on the issue particularly challenging. Still, as one observer noted, even if the figure of 1,300–1,900 were accurate, it would mean that few victims (about two (2) per cent) are being identified or are prepared to come forward. Worryingly, one informant took the view that underlying the statistical deficiencies may be a 'motivation on the part of policymakers for keeping the numbers low because — God forbid! — if we peel back the surface and we see what's really there, the truth will come with all sorts of obligations to put more money into this.'<sup>87</sup> Whatever the case, as it stands, the government can maintain that it has listened to concerns, has systems in place for addressing the problem of trafficking and that those systems demonstrate that the problem of trafficking is not widespread.<sup>88</sup>

### 3.4.2 Advocacy Matters

As the foregoing reminds us, while high quality evidence-based research is necessary, it is not enough. Only through the research-advocacy combination can stakeholders understand, explain and expose in a meaningful and authoritative way systemic obstacles to enjoyment of the basic rights and dignity of migrants in vulnerable situations. As one informant noted '[t]here are things that [the government] won't agree with even if there's rigorous research... [However] rigorous research exposes the politics. [Without it] you wouldn't be able to see the politics so clearly.'<sup>89</sup>

Advocacy happens at many levels. Unsurprisingly, the study found that many lawyers, social workers, and other service providers engage in advocacy at an individual case level. Many see this as either the professional or practical limit of their advocacy role. Other informants are involved in a community engagement style of advocacy. Again, for many involved in such

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<sup>85</sup> Samantha Lyneham, Christopher Dowling and Samantha Bricknell, [Estimating the Dark Figure of Human Trafficking and Slavery Victimisation in Australia](#) (Australian Institute of Criminology, Australian Government, 15 February 2019); Senator the Hon Linda Reynolds CSC, Assistant Minister for Home Affairs, ['New Research Calculates Extent of Human Trafficking and Slavery in Australia'](#) (Media Release, 15 February 2019).

<sup>86</sup> The Global Slavery Index uses a [combined methodology](#) that draws on diverse data sources for estimating the various forms of modern slavery, as no single source provides suitable and reliable data on all the different types of forced labour and forced marriage: International Labour Office, Walk Free Foundation, and International Organisation for Migration, [Methodology of the Global Estimates of Modern Slavery: Forced Labour and Forced Migration](#) (Geneva, 2017).

<sup>87</sup> Moore, above n 76.

<sup>88</sup> Although beyond the scope of this study, one informant noted that the problem of trafficking is multi-layered and may well include internal trafficking of Australian residents and nationals: Name, title and organisation on file. Interview conducted December 2018.

<sup>89</sup> Gottardo, above n 67.



advocacy, this is the limit of their advocacy role. Both forms of advocacy are of course critical in achieving individual outcomes and community impact.

As noted above, many informants are engaged in ‘inside track’ systemic advocacy that seek to influence policy or legislation through direct engagement with government, whether through parliamentary inquiries, other formal government

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*‘I don’t think the government really values advocacy’*

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processes, or lobbying. In contrast, the study found that very few organisations are engaged in ‘outside track’ forms of advocacy that seek to engage a wider public and to exert external influence on policymakers through campaigns, media (including social media) and other forms of public engagement. In this regard, it is noteworthy that, with occasional exceptions, most social justice-oriented civil society voices commenting in the media on migration issues are academics or representatives of unions or faith-based organisations, which are, or are more likely to be, structurally and financially independent. Although many would say that it is for good reason, it is striking that the advocacy strategy of choice for a large number of informants to the study was that ‘inside track’ or ‘soft advocacy’ behind closed doors or in high-level roundtable discussion, and such advocacy was seen as an alternative rather than a necessary complement to ‘outside track’ advocacy. This begs the question: why the preference?

#### 3.4.2.1 Why the Preference for Soft Advocacy?

There is no doubt that ‘inside track’ advocacy can demand that power make concessions and can deliver results. It is also clear that it is less confronting for governments. Indeed, one informant expressed the view that the advocacy of government-funded organisations can be more credible and effective, because it ‘[benefits] from additional authority and access [to government]’ and ‘government and politicians ... are more open to hearing from organisations that come with the backing of government funding.’<sup>90</sup>

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*Power concedes nothing without a demand. It never did and it never will.*

Frederick Douglass (1857)

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One of the shortcomings of relying on ‘inside track’ advocacy alone is that government chooses the civil society actors with which it will engage. As one informant noted, for example, many academics doing applied research on aspects of slavery and exploitation

sit outside the formal government framework — that is, the National Roundtable on Slavery and Trafficking even though it is the key mechanism for government engagement with civil society. In this regard, there is more work to be done about enhancing the limited participation in the national roundtable discussions. So, although it is encouraging that [Anti-Slavery Australia/University of Technology Sydney](#) is a member of the National Roundtable, the process would be strengthened through more formal and ongoing participation from other bodies that are doing ground-breaking applied academic research in this area. As one observer said: ‘there may be some reluctance to engage with researchers whose work exposes problems that there does not seem to be great appetite to deal with, such as the tensions between border protection and victim protection priorities.’<sup>91</sup> Furthermore, the research exposes the ‘huge

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<sup>90</sup> Iona Roy, Manager, Harmony Alliance: Migrant and Refugee Women for Change. Interview conducted December 2018.

<sup>91</sup> Moore, above n 76.



contradiction between immigration policy and trafficking policy – [that is,] detain and deport as a matter of first course rather than treating [people] as potential victims to earn their trust.’<sup>92</sup> This state-centred approach privileges migration control at the expense of victims’ rights and foregoes an important opportunity for deeper understanding of the social and economic dynamics at play.<sup>93</sup> Instead, the law enforcement approach means that for the trafficked persons government is fulfilling ‘the threat that the traffickers have used ... by detaining first and [in a custodial environment] asking questions later’.<sup>94</sup> The nature of current protocols to screen and engage potential victims is not conducive to disclosure and cooperation within the system.

### 3.4.2.2 Cultural Undervaluing of Advocacy

As some observed, there is a cultural tendency in Australia for government (particularly but not only at a federal level) to see both advocacy and rights talk as an irritation and to undervalue and politicise civil society’s knowledge and expertise. In the words of one participant: ‘I don’t think the government really values advocacy. Advocacy is seen as something for governments to react to. [They] don’t appreciate us highlighting the gaps and we get no thanks for bringing things to their attention.’<sup>95</sup>

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*‘The [Federal] government doesn’t make it easy to do policy work, especially in the migration space where there is little appetite for any kind of criticism.’*

Laura Vidal, Social Work and Human Rights Consultant; PhD Candidate.

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A number of informants observed that the federal government has sought to introduce a range of strategies for undermining advocacy, including ‘no-advocacy’ clauses in funding agreements and the Foreign Donations Bill 2018 (Cth), latterly amended but which threatened to ‘endanger robust political discourse by civil society.’<sup>96</sup> One of the most dangerous effects of such strategies is that they create a hostile environment for public debate on certain issues and, as a result, ‘the government approach filters down to civil society’.<sup>97</sup> This leads to a tendency to self-censor, sometimes for fear of losing government funding, traction, or access (‘government-funded [organisations] have most of the access’).<sup>98</sup> From the perspective of the state, self-censorship is very effective and powerful because it benefits from the silence it engenders but can deny responsibility for gagging. In the words of one observer: ‘I’ve heard accounts where NGOs ... do not work in particular areas because they think it will jeopardise

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<sup>92</sup> Ibid.

<sup>93</sup> See, further, Heather Moore, Marie Segrave, Bodean Hedwards, and Sanja Milivojevic, ‘Australia’s Response to Human Trafficking Nationally and Regionally: A Question of Impact’ in Jennifer Bryson Clark and Sasha Poucki, *The SAGE Handbook of Human Trafficking and Modern Day Slavery* (Sage, 2019), Ch 23.

<sup>94</sup> Moore, above n 76.

<sup>95</sup> Name, title and organisation on file. Interview conducted November 2018.

<sup>96</sup> Yee Fui-Ng, ‘[The Foreign Donations Bill Will Soon Be Law — What Will It Do, and Why Is It Needed?](#)’ *The Conversation* (online), 28 November 2018.

<sup>97</sup> Gottardo, above n 67.

<sup>98</sup> Vidal, above n 15.

government funding even if [that area] is squarely within their mandate. It's self-censorship.'<sup>99</sup> And as another observed, in some cases this can also happen with academics, especially when they depend on unmediated government funding.

There are few in the migration sector who would self-identify as 'activist'. Indeed, many informants were wary of activist branches of the refugee sector. In the words of one informant:

I'm not sure having the civil society activism has always served [the refugee sector] well... Sometimes [advocacy is] best done quietly [and] making it a public issue is not the best way forward. ... Put it this way, [the risk is that] if you had a huge big cross section of society [expressing concern] about vulnerable migrants, the response is going to be to shut the program down.<sup>100</sup>

In essence, what we see therefore is that activism is seen as a dirty word. One of the challenges (discussed below) is to understand what lies at the heart of this cultural undervaluing of advocacy other than in highly controlled contexts and environments.

While to some advocates these observations might be striking, there are many reasons for this view. For example, there are genuinely held concerns about the political sensitivity of the migration debate especially in the context of a volatile political climate in which populist anti-immigration and racialised discourses have immense traction. There is also a belief that access to senior law and policymakers is more important than the debate in the public square, and given the impact of funding constraints these views cannot be completely ignored. However, these reasons raise a red flag. They signal a perspective on migration policy engagement that traps civil society into believing that policy change can only be achieved by 'soft advocacy' that does not startle the electorate; that is, without 'outside track' engagement. Failure to challenge the power relation that encases this mindset stifles the possibility of transformative systemic change. As a critical first step to addressing this problem it is imperative that candid and constructive conversations be facilitated *within* civil society and *across* the divide between the migration and refugee sectors. In this context, some compelling examples run counter to those of 'inside track' advocacy persuasion.

In preparing this report a number of observers suggested that it is often 'outside track' examples such as 'that 4 Corners program about backpackers' (*Slaving Away*) or 'the one about 7-eleven's exploitation of migrant workers' (*7-Eleven: The Price of Convenience*) that leave the most lasting imprint. These kinds of investigations have been game-changers that have, together with agitation from unions and others working in the labour rights space, given profile to the issues and created pressure for change. There is no doubt that the telling of these stories has had a powerful impact and reaches a much wider audience and voting public than submissions to parliamentary inquiries. So, while not wishing to diminish the importance of the detailed, authoritative and evidence-based research and analysis that grounds 'inside track' advocacy, these examples suggest that there are significant gains to be made by engaging in

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<sup>99</sup> Professor Joo-Cheong Tham, Director, Electoral Regulation Research Network, Melbourne Law School. Interview conducted November 2018. Although this issue is neither new nor unique to the migration and refugee sectors, it is extremely pertinent in these contexts: Sarah Maddison and Andrea Carson, *Civil Voices: Researching Not-for-Profit Advocacy* (Pro Bono Australia, Human Rights Law Centre, 2017); Sarah Maddison, Richard Denniss, and Clive Hamilton, *Silencing Dissent: Non-Government Organisations and Australian Democracy* (Discussion Paper, Australia Institute, 2004).

<sup>100</sup> Name, title and organisation on file. Interview conducted December 2018.

complementary ‘outside track’ advocacy that appears absent in much of the work of civil society in this area.

### 3.4.2.3 Undervaluing Cultural Diversity

Another way in which advocacy is impacted relates to who is funded to do the work. In one example, in response to the so-called ‘African gangs’ issue in Victoria, rather than funding African community organisations, two ‘generic’ organisations were, according to one informant,<sup>101</sup> given \$5.5 million by the Victorian government for a one-year project. Although some African community organisations doubted their own capacity, submitting to the implication that certain culturally specific organisations may face challenges around both management of funds and delivery of project outcomes, to paraphrase one observer: at times like this, the African community needs allies but those allies should not drain culturally-specific community-based organisations of resources. If such organisations are denied funding there is no opportunity to build capacity. And yet if the generic organisation achieves nothing, the African community and community-based organisations will get the blame.<sup>102</sup>

## 3.5 Case Studies

The following case studies provide a useful illustration of collaboration on evidence-based research and advocacy and on the need for it. The first case study, which considers collaboration around policy and protection gaps for women on temporary visas experiencing domestic and family violence or other forms of sexual and gender based violence, has been selected for what it tells us about the creative ways in which collaborative research and advocacy efforts grow and develop. The second case study considers the range of issues that appear to be behind a spike in onshore asylum applications since late 2018 from, among others, people from Malaysia.

### 3.5.1 Collaboration Matters: Violence against Women on Temporary Visas

In 2014–2015, a group of CALD women leaders hosted 29 kitchen table conversations throughout Australia with women from more than 40 ethnic and cultural backgrounds about domestic and family violence and sexual assault. The kitchen table conversations were established under the *National Plan to Reduce Violence against Women and their Children 2010–2022* and the *Second Action Plan 2013–2016: Moving Ahead*. The hosts invited women from their networks and communities and provided a culturally appropriate and accessible setting.<sup>103</sup>

The challenge for women escaping violence while living in Australia on temporary visas was raised in the majority of these conversations.<sup>104</sup> The lived experience of participants in the kitchen table conversations was crucial to ensuring that organisations working to reduce

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<sup>101</sup> Panel Discussion, Challenges Facing South Sudanese and Horn of Africa Youth in Melbourne, Alfred Deakin Institute for Citizenship and Globalisation, 2 August 2018.

<sup>102</sup> Ibid.

<sup>103</sup> Department of Social Services, *Hearing Her Voice: Report from the Kitchen Table Conversations with Culturally and Linguistically Diverse Women on Violence Against Women and Their Children* (Commonwealth of Australia, 2015).

<sup>104</sup> Ibid, 25–27.

violence against women and their children recognised the particular vulnerability of women on temporary visas and their children. These organisations observed that where such women experience violence they face specific barriers to seeking support including fear of deportation and loss of custody of their children. Many lack social networks, do not understand their rights, have no or limited English language skills, and struggle to access justice in the absence of reporting firewalls. Moreover, perpetrators of violence against women on temporary visas use these barriers to maintain power and control and to continue to use violence against women.

Through these kitchen table conversations, it became evident that when migrant women in this situation seek help, they face significant difficulties accessing support to meet their basic needs, and those of their children. They are often unable to access any income because they are ineligible for Centrelink. They may not have the right to work. Even with work rights, they may have childcare responsibilities and be unable to work because they are ineligible for childcare subsidies and the cost of childcare is prohibitive. Also ineligible for services such as social and community housing, many service providers do not have the resources or capacity to support women in this situation. These services may also lack the expertise to assist them to navigate the complexities of the immigration and legal systems and to provide interpreting in appropriate languages as well as culturally competent support.

The financial support required of a women's refuge or other homelessness service is significant, providing for both material needs and support through the justice system. Processing delays for women on temporary visas means that it is less likely they can be exited safely from crisis accommodation. Longer stays in crisis accommodation also reduce a service's ability to support other women and children experiencing violence. This has led many crisis accommodation services to either refuse accommodation outright or limit the number of women on temporary visas they are willing to accommodate. These complexities infuse an already extremely challenging situation for a woman and her children with impossibly difficult dimensions that not only impact the individuals affected, but also put a huge strain on the services.

Lack of access to crisis accommodation and other services can have devastating consequences. Not only is the risk of homelessness heightened, but also a woman on a temporary visa who is unable to access crisis accommodation may decide to stay with, or return to, a violent partner.

In response to policy failures around this issue, Domestic Violence NSW co-convened a 'Community of Practice' ('CoP') and an advocacy group in NSW that focused on the issues facing women on temporary visas who are experiencing domestic and family violence. The CoP is a collaborative model of engagement which cultivates relationships and knowledge around a particular issue through shared discussion, activities and learning about the knowledge, experience, methods, stories and tools of its members. This model has provided crucial grass roots level support for organisations. The CoP also enabled members to recognise that although many of these organisations viewed their advocacy role as being at an individual case-management level first and foremost, they needed to take a broader view and to come together to advocate for legal and policy change. To this end, they identified a range of achievable systemic reforms that were needed at both state and federal levels to ensure policy coherence.

One of the key challenges was that Commonwealth law and policies (that denied people on temporary visas access to social safety nets) were shaping the way state-based organisations were able to operate and respond. So Domestic Violence NSW reached out to the Australian

Women Against Violence Alliance (AWAVA) and other peak bodies to form a national alliance specific to women on temporary visas. This led to the establishment of a National Advocacy Group on Women on Temporary Visas Experiencing Violence. Around 60 national and state peak bodies and a diverse range of services, including women's refugees and other homelessness services, have come together under this umbrella. The National Advocacy Group meets regularly and has enabled organisations to link up with others nationally.

Clearly, this alliance has played an important role in enabling organisations to coalesce around the particular issues facing women on temporary visas who are experiencing violence. One of its first initiatives was to spearhead a national survey of women on temporary visas experiencing violence, having observed a lack of national data about this cohort of women and their children. The results of this survey were published in late 2018 in a report entitled [\*Path to Nowhere\*](#).<sup>105</sup>

*Path to Nowhere* found that the problems encountered by women on temporary visas were widespread across a range of visa categories. This included women on temporary partner visas, international students, bridging visas (including women seeking asylum), carer visas, and other working visas. The report highlights the complexity of the legal framework, demonstrating why legal support is so critical for ensuring access to justice and safety.

As the *Path to Nowhere* example demonstrates, the way in which this collaboration has evolved has enabled organisations in NSW and Victoria to link in with those working on this issue at a national level as well as at a state/territory level in other parts of Australia. Thus, we can see that as information-sharing expanded it became very clear that this was an issue affecting DFV organisations as well as those working in the asylum and migration sectors nationwide, and that collaboration both enriched and strengthened the contribution.

In light of this research, the National Advocacy Group worked to develop a model for women on temporary visas to access safety that is being used as the basis of a joint advocacy initiative. In May 2019, the National Advocacy Group convened a workshop in Canberra to explore ways of taking this model forward. Participants in the workshop included representatives working on migration, refugee, trafficking, DFV, and health issues in the NGO sector and academia. A sub-working group, led by AWAVA, developed a '[\*Blueprint for Reform\*](#)' with detailed law and policy recommendations which was released in October 2019.<sup>106</sup>

This is an excellent example of collaboration and strategic advocacy. Needless to say, however, it has not been without its challenges. One particular issue identified in the course of the study was that despite having brought together a number of organisations under the umbrella of the National Advocacy Group, there is no clear leadership in the form of a Secretariat. No individual organisation has been resourced to do the work, which makes managing a 'rotating' Secretariat both demanding and costly. For example, as one informant noted, even a teleconference of more than 25 people is a major expense which must be hosted by one of the member organisations.

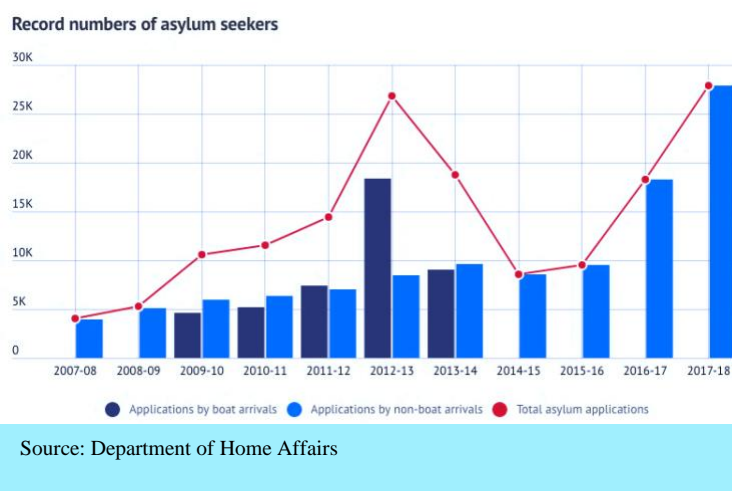
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<sup>105</sup> National Advocacy Group on Women on Temporary Visas Experiencing Violence, [\*Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children\*](#) (Report, 2018).

<sup>106</sup> AWAVA, [\*Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence Who are On Temporary Visas\*](#) (October, 2019).

### 3.5.2 Collaboration Matters: Malaysian Asylum Seekers Case Study

Since late 2018, there has been a **spike in onshore asylum applications** prompting strong media commentary by a former departmental official and journalists.<sup>107</sup> The key message has been that because onshore asylum applications have exceeded those made at the peak of unauthorised boat arrivals, the voting public should be concerned.



Statistics from the Department of Home Affairs suggest that one of the main source countries for such applications has been Malaysia and there has reportedly been a 98 per cent rejection rate.

| Onshore Protection Visa Applications |         |         |         |         |
|--------------------------------------|---------|---------|---------|---------|
| Year                                 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
| Total                                | 8,587   | 9,554   | 18,290  | 27,931  |
| Malaysia                             | 1,401   | 3,549   | 8,579   | 9,319   |
| China                                | 1,299   | 1,099   | 2,269   | 9,315   |
| India                                | 674     | 582     | 1,133   | 1,529   |

Source: Various onshore humanitarian program reports – Department of Home Affairs

While there is no doubt that Malaysia may be regarded as a refugee-producing country, the surge in numbers coincides with a growth in Malaysian recruiters in labour hire companies in the agricultural sector, where many Malaysian asylum seekers are working. This suggests that there may be more to this issue than meets the eye.

Reactions to these reports and analysis from informants to this study working in the refugee sector have included concern that such applications lack merit and will create a **backlog in the asylum system**. Refugee advocates defend their **right to seek asylum**, pointing out that some applicants have been successful. Other refugee advocates see them as **taking jobs away from recognised refugees** who they regard as more deserving.

At the same time, some commentary has suggested that the spike in claims signals a **border protection failure**. These commentators point to the irony (or ‘success’) of stringent border protection policies that detain ‘real’ refugees in offshore processing facilities while at the same time others are coming to Australia on visitor visas, applying for asylum on what they see as dubious grounds, secure work rights and find employment in the agricultural sector. And yet, the government appears to be turning a blind eye.

<sup>107</sup> See, eg, Abul Rizvi, ‘[Dutton Sets New Asylum Seeker Application Record](#)’, John Menadue — *Pearls and Irritations* (blog), 10 December 2018; Abul Rizvi, ‘[Worst Ever Immigration Minister: Asylum Seekers Jet In Under Dutton’s Nose](#)’, *Sydney Morning Herald* (online), 9 March 2019; Mike Secombe, ‘[Undocumented Labour a New Underclass](#)’, *The Saturday Paper* (online), 9–15 March 2019.



From a labour rights perspective,<sup>108</sup> some commentators have suggested that these kinds of responses play into binary distinctions between the worthy and unworthy asylum seeker, are counterproductive and distract from the real issues that are at play. The real issues are, first, that the horticulture industry has become structurally dependent on cheap and often undocumented migrant labour.<sup>109</sup> Second, significant labour rights breaches affect the temporary migrant labour population (many of whom are asylum seekers), who are recruited through labour hire companies to do piecework and who face wage theft and other forms of exploitation.<sup>110</sup> In some cases, Malaysian asylum seekers (and no doubt others) are working in the agricultural sector for as little as \$10 per hour. Viewed from this perspective, a critical dimension emerges, viz. the significant economic advantage that this population delivers. It seems clear that there are many who are unaware of the full spectrum of issues at play.

Some informants to this study suggest there is evidence that the recruitment of Malaysian labour is highly organised, beginning in Malaysia, and seeking asylum appears to be part of the labour hire strategy. While some describe this as ‘people smuggling’, patterns of behaviour suggest that there may be an element of trafficking. While it can be hard to tell the difference between smuggling and trafficking, smuggling involves a level of volition and the unauthorised crossing of an international border. Trafficking on the other hand encompasses elements such as recruitment, deception, and exploitation.<sup>111</sup> Although some trafficking and slavery experts cautioned against jumping to conclusions about whether there is an element of trafficking into indentured or other forms of exploitative labour in this story, other informants had a very different view. In the words of one interviewee:

I can guarantee you that [trafficking] is happening. Malaysian [labour hire contractors] use WeChat for their labour recruitment. Malaysians are [definitely] being targeted. Fees are being extracted — \$4,000 to \$5,000 — for what [the workers] think is a legitimate work opportunity and they come here and they discover that they’re unlawful. They are the perfect exploitable workforce, because their unlawfulness can so easily be used against them. And those participating in the trafficking of workers can easily obscure their crime within a very complicated context because it is understood by government and some branches of civil society to be a completely different problem.<sup>112</sup>

This case study raises a number of **questions**: Are Malaysian asylum seekers in a vulnerable situation? Do they have a right to seek asylum? Are they abusing the asylum system in order to work in the agricultural sector? Is this a failure of border security? Does the answer lie in ensuring that people don’t get visas in the first place? Is the problem about exploitative labour practices and wage theft, and this cohort simply a significant subset of a wider population of temporary migrant workers on the ‘harvest trail’ who are in a similar situation? Are farmers and/or labour hire companies implicated in trafficking for the purposes of exploitation?

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<sup>108</sup> Sanmati Verma, [“‘We Feed You’: The Real Cost of Undocumented Labour in Australia’](#), *Overland* (online), 22 March 2019.

<sup>109</sup> Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek and Chris F Wright, [‘Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry’](#) (University of Adelaide and University of Sydney, 2019).

<sup>110</sup> Bassina Farbenblum and Laurie Berg, [‘Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia’](#) (Migrant Workers Justice Initiative, 2018).

<sup>111</sup> See [Protocol against the Smuggling of Migrants by Land, Sea and Air](#) art 3(a) and [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#) art 3(a).

<sup>112</sup> Moore, above n 76.

So, by way of **conclusion**, if we only think about these questions through the lens of our organisational mandate or expertise, it becomes clear that we are more likely to generate one-dimensional responses. On the other hand, if we open up our inquiry to ask *What is going on here? What issues can we see? Who should we speak to? How should we respond?* our inquiry is more likely to yield answers that speak to the complexity of this multi-dimensional issue and the need for civil society to come together across the ‘human mobility’ sector in order to respond more thoughtfully, collaboratively and strategically.

## 4. Challenges

As we face the societal challenges of an emergent and expanding underclass of temporary migrants, there are a number of things specific to civil society that need to be addressed. This section identifies some of them to help think about and shape the research and advocacy trajectory, recognising that all the challenges are multi-faceted and inter-connected.

The discussion offered here appreciates the reality that the migration sector operates in a highly politicised space in its own right and alongside a highly polarised refugee-asylum debate. To be clear, therefore, identifying these issues as challenges for the migration and refugee sectors is not intended to be critical of those working in either sector. Rather, its purpose is to acknowledge the challenges and think both realistically and imaginatively about how civil society might come together more effectively around the spectrum of issues that puts migrants in Australia in situations of vulnerability. For one thing is clear: there is an urgent need to raise awareness in this area and to dispel in meaningful ways any perception that migrants in vulnerable situations are not a priority for or undeserving of civil society advocacy.

Overall, this section paints a picture of a sector in which the following issues have impacted approaches to advocacy and shaped whether and how organisations are prepared to do advocacy on migration issues:

- funding sources, conditions and constraints;
- a socio-political culture that is hostile to using rights talk; and
- a polarised refugee-asylum debate that has divided the refugee and migration sectors.

The report also finds that the experience of many in the sector is that Battling Burnout is a major challenge, a factor which negatively impacts not only affected individuals but also the capacity of the sector more broadly to make effective advocacy interventions. Finally, despite the interconnected nature and range of problems facing migrants in vulnerable situations, the report finds that civil society analysis of and approaches to addressing those problems have been extremely siloed, an observation that many informants offered and no one disputed.

### 4.1 Bridging the Divide

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*If we cannot break free from a discourse that insists that the lens through which we look at their need uses a filter of worthiness or goodness, we buy into the political rhetoric.*

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From the vantage point of the migration sector in Australia, there can be a righteousness in the refugee sector that assumes a superior worthiness of its cause. And from this vantage point, the toxic nature of public discussion and political rhetoric on refugee and asylum policy makes some civil society actors within the migration sector want to distance themselves from particular

organisations or advocates, or the debate in general. Although in many ways these positions fit a long-established pattern that sees refugee and asylum policy as different and separate from migration policy, it is of concern that external political dynamics shape internal relations within the ‘human mobility’ sector. It is also of concern that this divide feeds perspectives that characterise people on the move as either ‘deserving’ or ‘undeserving’ governing what civil society actors will say and do, and for whom. As one informant observed in this regard: ‘[many in the migration and refugee sectors] don’t understand or don’t engage with the issues of human mobility where [motivations and frameworks] are unclear.’<sup>113</sup> As this informant noted, the reality is that:

we’re going to see more and more of these cases, whether they are ‘double negatives’ or plane people or overstayers or part of the wider and growing population of skilled and unskilled temporary migrant workers, including international students. If we cannot break free from a discourse that insists that the lens through which we look at their need uses a filter of worthiness or goodness, we buy into [the political rhetoric].<sup>114</sup>

Although this divide is not impenetrable, there is no doubt that it is firmly embedded in the thinking of many, even within civil society. As such, lines between asylum and migration are readily drawn at both the macro and micro levels despite the fact that those lines often do not reflect human realities. In this regard, one of the broad messages of this report is that it is unhelpful to compartmentalise refugee and migration issues because it creates cracks through which those in the grey areas will invariably fall. Thus, there is a need for the refugee and migration sectors to be less insistent about their separateness and start thinking about themselves more holistically; that is, as a ‘human mobility’ sector.<sup>115</sup>

## 4.2 Using Human Rights Talk

A key challenge for the ‘human mobility’ sector is to think about whether, when and how using rights talk will advance the interests of migrants in vulnerable situations. In Australia, particularly at the federal level, a deeply entrenched resistance on the part of government and much of the political class to rights language is both a constitutional and cultural reality. In this connection, there is no doubt that Australia’s history as a highly racialised white settler society that was foundationally resistant to basic constitutional safeguards such as due process rights has shaped the enduring resistance to rights talk, particularly (but of course not only) in the migration and asylum policy space. Furthermore, there is an established pattern of Australia exploiting the unenforceability of international law, not least international human rights law, often claiming it to be an affront to sovereignty.

So, notwithstanding the promise of a growing number of human rights frameworks in some states and territories, talking human rights at a federal level remains particularly challenging. As one informant observed, for example, even the Parliamentary Joint Committee on Human Rights established following publication of the 2009 [Report on the National Human Rights Consultation](#) is ‘largely ineffectual in terms of outcomes’ and is therefore ‘in danger of

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<sup>113</sup> Gottardo, above n 67.

<sup>114</sup> Ibid.

<sup>115</sup> This insistent separateness has been described in the European context as ‘categorical fetishism’: Heaven Crawley and Dimitris Skleparis ‘Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe’s “Migration Crisis”’ (2018) 44(1) *Journal of Ethnic and Migration Studies* 48, 59.

becoming another way of authenticating processes' rather than challenging or scrutinising them.<sup>116</sup>

It is of concern that this reluctance to use rights language has also filtered into the wider community. Tellingly, pockets of resistance notwithstanding, many civil society organisations working on migration issues have come to see it as counter-productive to talk rights. This is not necessarily because they disagree with rights perspectives, but because they believe that such language is so unpalatable for government that they feel impelled to choose other ways. In many respects this is understandable, because advocates need to speak a language with which their interlocutors will engage. However, if the rejection of rights-based perspectives means that research and advocacy is not at the very least rights-*informed*, the fundamental underpinnings of respect and dignity for the humanity of individual migrants who are in vulnerable situations is at great risk of being lost. What we see, therefore, is that when the language of engagement is not rights-based, or rights-informed, the measure of suffering or hardship becomes relativised rather than a matter of basic human dignity. Two examples are illustrative.

In the first example, the rights-resistant perspective asks: Who are we to object if a vulnerable migrant's quality of life has been vastly improved because they have at least had the opportunity to come to Australia, may have been separated from their children who are being raised by grandparents (which is really difficult), but because of remittances we are offering them more than they would get at home? This perspective assumes that conditions are less terrible than they were before, and also accepts that even if 'we' would find a migrant worker's working and living conditions to be inhumane or intolerable, indeed unlawful, we should remain silent because if we speak up the response will be to shut down the migration program and everyone loses. It is an either/or rather than a both/and approach. That is, it imagines that we must choose *either* to accept the choice and agency of the individual migrant worker and the conditions in which she works in Australia *or* see the program shut down. In contrast, if we adopt the other approach, we can *both* respect her choice and agency *and* advocate that her working and living conditions should comply with domestic and international standards.

In the second example, the worthiness perspective stipulates that support for an individual (whether for legal or social assistance) should immediately be stopped where that person's case is not regarded as having merit and regardless of the situation that the individual is in. In other words, to paraphrase one informant, from this perspective the label matters more than the person.<sup>117</sup> A framework that grants assistance only based on 'merit' has given rise to a view that destitute refugees and asylum seekers are 'deserving' (but only if their case has 'merit') while destitute migrants are 'undeserving'.

Another challenge in the context of human rights talk is the tension that exists between human rights approaches and labour rights approaches to migrant vulnerability. In some ways this is a healthy tension and a matter of perspective. In the view of some informants, one is to be preferred over the other. Certainly, from a labour rights perspective the success and effectiveness of labour rights approaches attributable to the strong place that the union movement holds in civil society, with its long tradition as an independent voice for marginalised workers, holds considerable sway. This suggests that in Australian society, there are good reasons to suppose that a labour rights approach will have more traction than a human

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<sup>116</sup> Manne, above n 41.

<sup>117</sup> Gottardo, above n 67.

rights approach. Indeed, the evidence supports this view. Witness labour exploitation as the area where the vulnerability of migrants has, more than any other, prompted parliamentary inquiries, the establishment of ad hoc taskforces, inquiries by statutory authorities and, indeed media attention. In this connection, the fact that a number of unions have now picked up on many of the labour rights issues affecting migrant workers and that the Migrant Workers Centre has been established within Victorian Trades Hall are welcome developments and have invigorated debate. However, we also need to remember that while labour rights may be seen as workers' human rights, a broader human rights approach means that a wider spectrum of rights violations can be captured. In other words, if the two approaches are seen as complementary, their coverage can be more comprehensive.

In view of the foregoing, this report suggests a transition phase that engages intentionally rather than incidentally in human rights-*informed* approaches to advocacy — human rights by any other name — as a way of stepping over time and more purposefully into using human rights talk. One way to enable a rights-informed approach to gain traction is to leverage the very successful initiatives that have brought to the fore self-leadership and self-advocacy by people with lived experience on the issues that affect their lives and ways to tackle them; issues that they, of course, understand better and can speak to more authoritatively than anyone. There are, no doubt, challenges when the issues relate to people whose lived experience remains legally, socially and economically on the margins. But there is much to be learned from the refugee space in this regard, where Australia has been a leader in self-representation at a global level. It was not so long ago that the participation of refugees in international deliberative processes was seen as either too hard or tokenistic. In the migration space, this 'Nothing About Us Without Us!' approach to advocacy and policy development can and should be productively embraced in real ways. There are definitely challenges, but it is incumbent upon us to face them.

### 4.3 The Impact of Funding

The significance of sources of funding for work by civil society organisations in the migration space cannot be underestimated. A range of different views were canvassed during the course of the study on this issue. These views related to the significance of funding levels and sources and the impact this has on whether and how organisations will do advocacy. Some informants described funding dependency for program delivery as making it hard to speak out. Others were emphatic that they were service-delivery organisations and that their role was not to engage in advocacy, especially if it involved challenging government policy. The issue appears to be particularly acute where government services are sub-contracted to the community sector. Overall, the most outspoken organisations tended to be those that do not receive, or do not rely heavily on, government funding.

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*'we all saw what happened  
to the Refugee Council'*

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In the words of one observer, heavy reliance on government funding means that 'the government has got civil society exactly where they want them'.<sup>118</sup> Although some of those who are funded by government say that it does not compromise their advocacy and gives them good access to government — as several noted, 'government-funded [organisations] have most

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<sup>118</sup> Name, title and organisation on file. Interview conducted November 2018.

of the access’<sup>119</sup> — many concede that funding sources affect how they do advocacy. So, it is telling that when a number of informants discussed the challenges of advocacy and funding, their response was ‘well, we all saw what happened to the Refugee Council’,<sup>120</sup> which lost government funding in 2014 because of its public advocacy. The cultural undervaluing of civil society and its advocacy as part of a healthy democracy is captured in the words of then Immigration Minister, Scott Morrison justifying the decision at the time: ‘It’s not my view, it’s not the Government’s view, that taxpayer funding should be there to support what is effectively an advocacy group.’<sup>121</sup>

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*‘It’s not my view, it’s not the Government’s view, that taxpayer funding should be there to support what is effectively an advocacy group.’*

Scott Morrison, Minister for Immigration, 2014

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It is also significant that a large number of informants to the study spoke freely but on the condition of anonymity.<sup>122</sup> This highlights in the first instance, the discomfort of

many about remaining silent and, in the second, how deeply the fear of loss of funding and jobs affects what many civil society actors will say and do publicly, even absent explicit constraints in funding agreements or legislation.

Notwithstanding the foregoing, the effect of government funding on the sense of freedom with which organisations felt they could speak was more granular. For example, much depended on whether the source of funding was from a state or federal government, or which federal government department was providing the funds. Some government departments were more receptive to public advocacy than others, partly it would seem because their portfolio was focused on services or issues related to the wider population rather than just migrants and refugees.

Another vexed challenge in the ‘human mobility’ sector relating to funding is the problem of organisations competing for funding for the same or like services in a space where the demand far exceeds available resources. As one informant said, ‘government funding does not necessarily mean well-resourced.’<sup>123</sup> And in the words of another, the government views competitive funding as designed ‘to increase rigour’.<sup>124</sup> However, as one informant observed, because ‘we’re competing for crumbs’ strategic approaches to funding create a mindset that ‘I have to make my issue more important and more exceptional than yours’.<sup>125</sup> A negative and damaging effect of this unhealthy mindset is that it undermines inter-organisational trust and sectoral solidarity, inhibiting cooperation and collaboration and the sharing of information.

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<sup>119</sup> Vidal, above n 15.

<sup>120</sup> Informants names, titles and organisations on file. Interviews conducted November and December 2018. Note, however, that RCOA took the opposite lesson, recognising that core government funding risks compromising independence.

<sup>121</sup> Latika Bourke, ‘[Scott Morrison Says Refugee Council’s Funding Was Cut Because Taxes Should Not Support Advocacy](#)’ *ABC News* (online), updated 30 May 2014.

<sup>122</sup> See Appendix A and pp 9–10, above.

<sup>123</sup> Name, title and organisation on file. Interview conducted November 2018.

<sup>124</sup> Vidal, above n 15.

<sup>125</sup> Tham, above n 99.



Although civil society reliance on government funding cannot be changed overnight, challenging its negative impact on advocacy should be constantly on the agenda. Although the fact that peak bodies working in the area meet quarterly points to an openness to collaboration, some informants felt that there was a need to do collaboration better to avoid duplication and enable resources to be better prioritised. As one informant observed, being ‘under-resourced can [mean that organisations] become [ironically] duplicative [because collaboration] is not systemic enough.’<sup>126</sup> In summary, therefore, a key message of this report is that organisations need to do three things if they are to be able to speak up, speak out and speak with migrants in vulnerable situations in pursuit of durable systemic change.

First, civil society organisations need to be encouraged to do collaboration better and in a way that steps up to meet the challenges of the growing phenomenon of temporary migration and related vulnerabilities. This should happen in a way that ensures that organisations that are smaller and/or more at risk of defunding can be shielded from criticism by umbrella bodies, whether peak bodies, coalitions, networks or consortia. Stronger collaboration would enable organisations to channel their influences and, without compromising the diversity of voices and perspectives, be aware of who is saying what. Second, organisations need to explore ways of diversifying their funding sources. This takes time but it is critical to countering the problem of gagging and self-censorship and therefore securing greater institutional and individual confidence to speak freely and openly. Finally, as part of their commitment to self-representation and self-advocacy, both peak bodies and ‘generic’ organisations need to ensure that they make space for and support culturally specific civil society organisations that are often best placed to represent and advocate for the rights, interests and dignity of their communities.

#### **4.4 Battling Burnout**

As with working with refugees and asylum seekers, working with migrants in vulnerable situations is time-consuming and demanding work, and many informants reported the sector battling high levels of burnout. For some workers, this had resulted in them leaving the sector altogether, or taking long stretches of time away. For others, the relentlessness of the day-to-day grind left them with little energy to turn their minds to systemic change — one informant described many working in the area as ‘drowning in their own practice’.<sup>127</sup> These conditions make it harder to find the mental bandwidth necessary to reach beyond reactive and responsive advocacy and into a proactive and agenda-setting mindset.

While much of the burnout battle is about resource constraints, it is also about how difficult it is to work with people for whom there are so few, if any, pathways to legal, social or economic security. This is why it is so important for service providers to be engaged in initiatives that seek systemic change. In this regard, most informants with whom this issue was discussed were energised by the possibility of their insights and experience being able to feed into research and advocacy that could then lead to broader systemic change. So, while the prevalence of burnout is concerning, there is every reason to believe that being part of a stronger movement for change could bring much needed hope, energy and belief in what can be an otherwise draining and dispiriting field of work.

As one informant observed when thinking about ways of strengthening the sector:

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<sup>126</sup> Joyce Chia, Director of Policy, Refugee Council of Australia. Interview conducted December 2018.

<sup>127</sup> Name, title and organisation on file. Interview conducted February 2019.

An audit of who's doing what, that would make my day! [Bringing people together] does promote camaraderie in the space, [and it helps] to know that there are lots of people who care about this issue. When people are feeling fatigued, a gathering of some kind would have value for that alone – giving us time to pause and acknowledge that the work is exhausting, that these kinds of gatherings are part of self-care, and that without it lots of brilliant people burn out and don't do the work anymore.<sup>128</sup>

## 4.5 Breaking Down Issue Silos

Many informants canvassed in the course of this study cited evidence that complexities and nuances were being lost or assistance being denied because of lack of communication and the siloing of service provision. While this appears to be attributable primarily to a lack of resources and training, a deeper problem of siloing arises in the context of broader policy engagement, which hampers the effectiveness of research and systemic advocacy.

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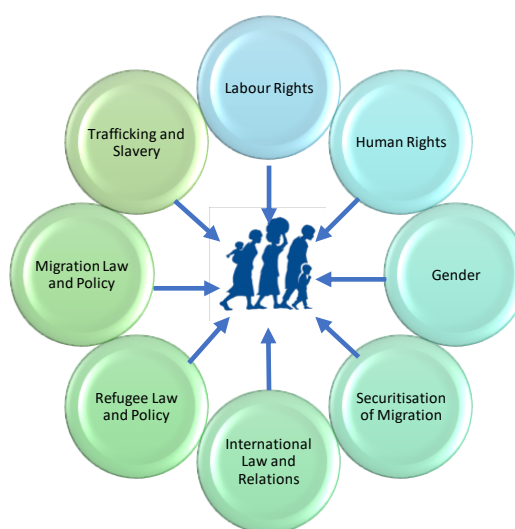
*'if it's not your area of work, it's easy not to see it'*

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Many informants described the sector as siloed, suggesting for example that certain actors see themselves as working in 'niche' areas in which only certain people have the capacity to work. While the problem of siloing in this context may come in part from a sense of

exclusivity, it appears primarily to relate to how different actors or sub-sectors of civil society understand or perceive a problem. That is, when questions arise as to who should be weighing in, from what perspective and how they should do so, there is a tendency to think inside the framework of one's own organisational priorities or expertise. As one informant who acknowledged the problem noted: 'if it's not your area of work, it's easy not to see it.'<sup>129</sup> As such, the answers to those questions are likely to be framed by mandate, resources, knowledge and expertise.

The *effect of siloing* is that both researchers and advocates can, intentionally or otherwise, become blinkered and one-dimensional about the breadth of the issues they are dealing with. As depicted in the diagram here, this is issue-centred rather than people-centred and therefore hampers the capacity of civil society to imagine, discuss and strategize collaboratively to determine whether and what action may be taken and how change might be achieved.



There is a range of views about *why siloing happens*. Some informants think it is territorial and related to the tendency of funding frameworks to ringfence issues (rather than needs). At

<sup>128</sup> Name, title and organisation on file. Interview conducted February 2019.

<sup>129</sup> Name, title and organisation on file. Interview conducted November 2018.

least in part, it may also be a coping mechanism or management issue attributable to factors such as burnout and funding sources — that is, it may feel easier to place boundaries around an issue or category rather than around human need. Indeed, some see funding as driving the creation of silos.

Whatever the case, at the heart of the problem of siloing appears to be civil society actors thinking about and responding to issues in a one-dimensional way. That is, they are more likely to ask themselves a closed question — Does *my organisation* need to respond to this issue? If so, how do I respond within the framework of my expertise? — rather than first asking themselves more open questions — What is going on here? What issues can we see? Who should respond? Responses to such questions invite us to think more broadly and deeply about how ‘we’, as a sector, should respond and to recognise that it will often be the case that no single perspective will provide the insights and answers that we need to address deeply complex problems in a meaningful way. Yet, as one informant observed, given the demands of the work, ‘one of the problems is not having time to develop relationships and make linkages.’<sup>130</sup>

## 5. Conclusion

This study has endeavoured to scope the issues facing migrants in vulnerable situations and to understand how they are being addressed by civil society organisations working in the migration space. It has sought to understand what is happening on the ground to support such migrants, and particularly what organisations are doing in terms of research and advocacy on these issues. Overall, the study has found that there is a very active migration sector producing an impressive and growing body of research in a number of key areas. At the same time, the study has also found that civil society faces some significant challenges in maximising its impact on the national policy agenda.

The key challenge that the study has identified relates to how civil society actors engage in effective advocacy in the migration sector. The roots of this challenge lie in the complexities of cross-sectoral engagement (across the divide between the migration and refugee sectors) in a context where migration is already a highly charged area of public policy, and its position alongside a highly polarised refugee-asylum debate. This context, and a broader cultural resistance to valuing the role of civil society and a hostility to rights discourse, affects approaches to and attitudes towards funding, mandates, and advocacy, and has even led to self-censorship. As we have seen, there is an associated tendency to silo the issues migrants face, the categorisation of people affected, and/or perspectives and approaches to the issues. As the report suggests, such siloing may arise because of funding or mandate constraints, or may otherwise be a coping mechanism in high-demand under-resourced branches of the sector.

With these challenges in mind, the key message of the report is that there is an urgent need to build a broader movement of justice for migrants regardless of status, one that recognises that collaborative and complementary approaches are necessary because the whole is always greater than the sum of its parts. This will require organisations to come together and work in coalition in new ways, maximising their impact by drawing on their complementary strengths and expertise. Even where organisations have a clear, strong and focused mandate, they need to operate with good peripheral vision and an awareness that lines between motives and

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<sup>130</sup> Manne, above n 41. This point was also made by several other informants.

mandates are sometimes blurred. That is, they need to work cooperatively and collaboratively to understand what is going on around them, how their mandates intersect and who falls through the cracks.

How Australians think about, talk about, listen to and engage with migrants who are or may be vulnerable matters. Migrants, whether temporarily or permanently resident, are part of our community. While many migrants may be in very highly skilled jobs, many more pick and pack our fresh fruit and vegetables, pack our chicken, serve us at the local 7-eleven, drive us home in an Uber, clean our office, and care for our children or our elderly. How Australians think about, talk about, listen to and treat such migrants and whether they embrace them as part of our community, particularly when they find themselves in vulnerable situations, also matters. The key message of this report is therefore that migrants, regardless of status, are members of our community who are entitled to be heard and to justice in all its dimensions. It is time for civil society to play a more pivotal and purposeful role in ensuring a people-centred approach to shaping both migration policy and the public conversation around migrants in vulnerable situations. For as long as populist political rhetoric remains a staple in both the refugee and migration space — othering the migrant, playing to base instincts and targeting marginal seats — it is incumbent upon civil society not to remain silent.

## 6. Recommendations

Drawing on the rich data gathered during the course of this study, it is hoped that this report will be an important catalyst for new initiatives in the sector and a starting point for the conversations and activities necessary for the sector to achieve both cultural change and changes in practice. Ultimately for the benefit of migrants in vulnerable situations, it is hoped that this report and its recommendations will stimulate discussion and engagement across the wider ‘human mobility’ sector to address the many challenges in this area. On the basis of the findings and conclusions set out in this report, it is therefore recommended that:

1. A high-level **expert roundtable** be convened as soon as practicable in order to bring together key civil society actors to explore ways of developing cross-sectoral, collaborative advocacy initiatives both for and with migrants in vulnerable situations. Participant selection should ensure inclusion of the following:
  - a. representatives from leading NGOs working in the ‘human mobility’ sector (that is, both refugee- and migration-focused) and trade unions;
  - b. key academics and members of the philanthropic sector;
  - c. people with lived experience as migrants with an insecure legal status, including as refugees and asylum seekers;
  - d. people with a mix of disciplinary backgrounds and expertise, in particular gender, human rights, labour rights, migration law and policy, refugee law and policy, the securitisation of migration, and trafficking and slavery;
  - e. people with specific knowledge and experience on vulnerabilities in regional areas;
  - f. key former national- and/or UN-level bureaucrats.
2. A larger **symposium/conference** designed to bridge the divide between the refugee and migration sectors and break down the issue silos that have developed over time be convened in 2021. The symposium/conference would bring together service providers, researchers, advocates, and would include people with lived experience as migrants in vulnerable situations and/or as refugees with a view to establishing (or strengthening) cross-

disciplinary ‘Communities of Practice *and Experience*’ (‘COPE’ Communities) or analogous models of collaboration to ensure that the experience and voices of people with lived experience are at the heart of what they do. ‘COPE’ Communities might include:

- i. Delayed access to or in-eligibility for services and its impact;
- ii. Labour exploitation, including trafficking and slavery;
- iii. Marriage-related issues, including forced marriage and dowry abuse;
- iv. Racial and religious intolerance;
- v. Women on temporary visas experiencing SGBV;
- vi. Visa cancellation on character grounds.

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*There is a scent of something in the air, a smell like rainfall after a long drought. First one person, then five, then five hundred, then villages, then cities, then states. Bud to bud and leaf to leaf. Something new is happening. The scale of the thing has increased.*

Naomi Alderman, *The Power* (Penguin, 2017)

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## 7. Postscript – COVID-19

As this report is finalised for publication, the COVID-19 global pandemic has plunged our globalised world into uncharted waters. The pandemic is delivering a new poignancy to the context and findings of this report that few could have imagined, and for which no one appears to have been ready. Without a doubt, the crisis has heightened the vulnerability of many temporary migrants and members of their families, whether they are living in the community or in immigration detention.<sup>131</sup>

Joo-Cheong Tham reminds us that an estimated 900,000 temporary migrants in Australia have work rights.<sup>132</sup> Many have been contributing in a range of ways to the Australian economy. Failure to address their new and heightened vulnerabilities because they do not have access to structural safety nets — whether Centrelink, or the newly announced JobKeeper or JobSeeker schemes — will come at an incalculable social, and economic cost. But above all, it is a public health issue.<sup>133</sup> So, while workers from New Zealand are luckier than some because they will be eligible for the JobKeeper payment, their eligibility only extends to those who have been with the same employer for 12 months or more.<sup>134</sup> To think that we can tackle this public health crisis effectively without supporting all temporary migrants living in our community is a fool's errand. As Tham observes, by failing to include them in support packages such as JobKeeper, businesses that employ temporary migrants are penalised; fundamental rights are breached, based on migration status; members of our community are treated as if they do not belong; and above all, the fight against COVID-19 is undermined.<sup>135</sup> So, harm is done to multiple people in multiple ways and it will affect us all.

The impact of the crisis on the many skilled migrants and the businesses in which they work that have been forced to close or downscale has been highlighted by businesses. The suggestion that temporary migrants should draw on their superannuation to see themselves through the crisis has been described as 'illusory for victims of wage and superannuation theft'.<sup>136</sup> As we know, many temporary migrants, including asylum seekers, work in the gig economies and other casual labour markets and never receive superannuation. They have lost their jobs, are ineligible for social security and have nowhere to turn.

As Director of JRS Australia, Carolina Gottardo, has highlighted, demand on services like JRS for food bank and crisis support for people who are ineligible for social security increased twofold in the space of just two weeks. As she has noted, those who have lost their jobs have no income support, are hungry, are receiving threats from landlords, cannot afford basic

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<sup>131</sup> ASRC, [‘Medical Colleges and Human Rights Organisations are Ready to Work with the Government to Release 1400 People from Immigration Detention to Limit Viral Transmission and Infection’](#), *Media Release*, 9 April 2020.

<sup>132</sup> Joo-Cheong Tham, [‘Why Temporary Migrants Need JobKeeper’](#), *The Conversation* (online), 7 April 2020.

<sup>133</sup> Stephen Clibborn and Chris F Wright, [‘Protection of temporary migrants is now a ‘public health issue’](#), *The Age* (online), 6 April 2020.

<sup>134</sup> Brett Worthington, [‘Federal Government Offers \\$130b in Coronavirus Wage Subsidies for Businesses to Pay Workers’](#), *ABC News* (online), 31 March 2020.

<sup>135</sup> Tham, above n 132.

<sup>136</sup> Clibborn and Wright, n 133.



medicine, are especially vulnerable to domestic violence, and lack access to healthcare and hunger.<sup>137</sup>

No one in the community should be excluded from our response. However, despite high levels of government expenditure to protect the population and the economy, ‘Australia’s million-strong migrant workforce has been conspicuously absent.’<sup>138</sup> Many provide the essential services on which the Australian community depends: caring for children and the elderly, picking and packing our fresh fruit and vegetables, processing and packaging our chicken, and working in restaurants now only able to deliver meals to our doors. As Clibborn and Wright note, ‘we rely on temporary migrant workers to perform dirty, dangerous and demeaning jobs in food services, delivery, retail, horticulture, health, social care and cleaning. These jobs, and therefore temporary migrants, are crucial in the COVID-19 crisis.’<sup>139</sup>

So, at great risk to public health, taking an ‘all benefit, no cost’ approach to the temporary migrant population in the current crisis recognises that our temporary migrant labour force is ‘valuable to the Australian economy and way of life’ — essential services no less. Prioritising Australians and permanent residents as the government has resolved to do fails to recognise that COVID-19 cannot tell the difference.<sup>140</sup> It fails to recognise that many migrants living in Australia on temporary visas lead a hand to mouth existence and cannot leave Australia safely or at all. It fails to recognise that they may have lived here for years. The most far-reaching effect is that a temporary migrant who works in essential services but has no social safety net will likely feel impelled to continue working, even if she is feeling sick.<sup>141</sup> She may feel she has no alternative even though she is putting herself at risk as well as those who she cares for, with whom she works, or who consume the food she is handling. And others who have lost their jobs risk destitution and homelessness, so clearly a public health risk as well as a matter of basic human dignity.

The challenges ahead for the ‘human mobility’ sector are enormous. The current crisis brings into stark relief this report’s findings and recommendations confirming that strengthening cross-sectoral, collaborative advocacy initiatives both for and with migrants in vulnerable situations is imperative. It is also achievable. Already, the consistency of the message from civil society voices has been striking.<sup>142</sup> And new collaborations across the ‘human mobility’ sector are beginning to emerge. COVID-19 does not discriminate on the basis of social, economic or migration status.<sup>143</sup> Ideology and default policy settings have no place in this crisis. As Clibborn and Wright have noted, ‘we are all in this public health crisis together and we no longer have the luxury to exclude.’<sup>144</sup> And it is a false economy to do so.

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<sup>137</sup> Carolina Gottardo, ‘[COVID-19 Doesn't Discriminate, Nor Should We](#)’, *Eureka Street* (online), 6 April 2020.

<sup>138</sup> Ben Doherty, Josh Taylor and Paul Karp, ‘[“Left with nothing”: Australia's migrant workforce face destitution without coronavirus safety net](#)’, *The Guardian* (online), 1 April 2020.

<sup>139</sup> Clibborn and Wright, n 133.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Concern about the impact on the temporary migrant labour force has been expressed by a range of organisations, including [Joint Statement](#) endorsed by 83 organisations declaring that ‘We Cannot Leave Migrants Behind as We Face COVID-19’, 7 April 2020.

<sup>143</sup> Gottardo, above n 137.

<sup>144</sup> Clibborn and Wright, n 133.

## 8. Appendices

### Appendix A

#### List of Organisations Consulted

1. Asylum Seekers Centre
2. Asylum Seekers Resource Centre (ASRC)
3. Australian Women Against Violence Alliance (AWAVA)
4. Berry Street
5. Centacare
6. Centre for Multicultural Youth
7. cohealth
8. Domestic Violence NSW
9. Federation of Ethnic Communities Councils of Australia (FECCA)
10. Harmony Alliance: Migrant and Refugee Women for Change
11. Immigration Advice and Rights Centre
12. International Commission of Jurists, Australia
13. International Detention Coalition
14. International Labour Organisation (ILO)
15. International Organisation for Migration (IOM)
16. Jesuit Refugee Service, Australia
17. Legal Aid NSW
18. Migrant Workers Centre
19. Migration Council of Australia (MCA)
20. Multicultural Council of Wagga Wagga
21. Office of the High Commissioner for Human Rights (OHCHR)
22. Project Respect
23. Refugee Advice and Casework Service (RACS)
24. Refugee Council of Australia (RCOA)
25. Refugee Legal
26. Settlement Council of Australia (SCOA)
27. Settlement Services International (SSI)
28. Sisters Housing Enterprises
29. The Salvation Army
30. Victorian Foundation for Survivors of Torture (VFST)
31. Westjustice
32. Women's Domestic Violence Court Advocacy Services NSW

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|--------------------------------------------------------------------|----|
| Number of organisations specifically requesting anonymity:         | 8  |
| Number of organisations not explicitly authorising identification: | 5* |

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\* This figure does not include organisations participating in interagency meetings.

## **List of Individuals Consulted**

1. Andrew, Merrindahl, Program Manager, AWAVA
2. Arkan, John, Councillor, Coffs Harbour Council
3. Bicket, Robyn, Senior Consultant
4. Biok, Liz, Secretary General, International Commission of Jurists, Australia
5. Brick, Daniel, Sport Engagement Officer, Centre for Multicultural Youth
6. Brown, Maeve, Manager, The Arrupe Project, JRS Australia
7. Bruck, Simon, Refugee Advice & Casework Service
8. Campbell, Emma, CEO, FECCA
9. Charles, Cassily, Intern, Multicultural Council of Wagga Wagga
10. Chia, Joyce, Director of Policy, Refugee Council of Australia
11. Crain, Belinda, CEO, Multicultural Council of Wagga Wagga
12. Dam, Monique, Advocacy and Prevention Manager, Domestic Violence NSW
13. Dixon, Tina, Policy Officer, AWAVA
14. Fitzpatrick, Joanne, Settlement Engagement and Transition Support Worker, Centacare
15. Ghaly, Carmen, Senior Policy and Project Officer – International Protection, Settlement Services International
16. Gottardo, Carolina, Director, Jesuit Refugee Service Australia
17. Graydon, Carolyn, Principal Solicitor, Human Rights Law Program, Asylum Seekers Resource Centre
18. Guerra, Carmel, OAM, CEO, Centre for Multicultural Youth
19. Hardy, Tess, Senior Lecturer, Centre for Employment and Labour Relations Law, Melbourne Law School
20. Harris, Daniel, Caseworker, Settlement, Engagement and Transition Support Program, Multicultural Council of Wagga Wagga
21. Hemingway, Catherine, Employment Practice Manager, WEstjustice
22. Hogarth, Libby, Director and Principal Migration Consultant, Australian Migration Options Pty Ltd
23. Intoual, Alia, Director of Policy, FECCA
24. Jamieson, Priscilla, Senior Solicitor, Refugee Legal
25. Klein-Solomon, Michele, Director, Global Compact for Migration, Office of the Director General, International Organisation for Migration
26. Liljert, Pär, Chief of Mission – Australia; Coordinator & Advisor for New Zealand, Papua New Guinea and the Pacific, International Organisation for Migration
27. McMahon, Belinda, Manager, Sisters Housing Enterprises
28. Maimaiti, Rayila, Women's Domestic Violence Court Advocacy Service
29. Manne, David, CEO and Principal Solicitor, Refugee Legal
30. Maphanta, Emmanuel, Multicultural Youth Worker, CMY
31. Mojtahedi, Ali, Principal Solicitor, Immigration Advice and Rights Centre
32. Moore, Heather, Managing Director, Trafficking and Slavery Research Group, Monash University
33. Munasinha, Dinesh, Quality Assurance Coordinator, Program Manager, International Organisation for Migration
34. Murphy, Kerry, Partner, d'Ambra Murphy Solicitors
35. Oberoi, Pia, Advisor on Migration and Human Rights, Office of the High Commissioner for Human Rights
36. Paton, Thom, Community Development Officer, Multicultural Council of Wagga Wagga

37. Quiohilag, Jeremie, Senior Lawyer, Legal Aid NSW
38. Rayila Maimati, Women's Domestic Violence Court Advocacy Services NSW
39. Rego, Nishadh, Policy, Advocacy and Communications Manager, Jesuit Refugee Service Australia
40. Reilly, Rachel, Executive Director, Project Respect
41. Roy, Iona, Manager, Harmony Alliance: Migrant and Refugee Women for Change
42. Rush, Frances, CEO, Asylum Seekers Centre
43. Sampson, Robyn, Senior Advisor and Research Coordinator, International Detention Coalition
44. Szwarc, Jo, General Manager, Community and Sector Development, Victorian Foundation for Survivors of Torture
45. Tebbey, Nick, CEO, Settlement Council of Australia
46. Tham, Joo-Cheong, Director, Electoral Regulation Research Network, Melbourne Law School
47. Torpey, Leeanne, Communications and Campaign Coordinator, International Detention Coalition
48. Verguizas, Karen, Program Manager, The Salvation Army
49. Vidal, Laura, Independent Consultant, PhD Candidate, Churchill Fellow
50. Wilshire, Carla, CEO, Migration Council of Australia
51. Wrigley, Katie, Legal Aid NSW

Individuals or organisations requesting anonymity or not authorising identification

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|------------------------------------------------------------------|-----|
| Number of individuals specifically requesting anonymity:         | 33  |
| Number of individuals not explicitly authorising identification: | 14* |

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\* This figure does not include all individuals participating in interagency meetings.

## Appendix B

### **Collaborative Advocacy Networks, Initiatives and Relevant Peak Bodies\***

Asylum Seekers Interagency  
Australian Council of Social Services  
Australian Medical Association  
Australian Women Against Violence Alliance  
Coffs Harbour Interagency  
Cumberland/Parramatta DV/FV Committee  
Department of Home Affairs, NGO Forum on Refugees  
Housing Interagency (Parramatta)  
Federation of Ethnic Communities Councils of Australia  
Migration Council of Australia  
Migration Institute of Australia  
National Advocacy Group on Women on Temporary Visas Experiencing Violence  
National Social Security Rights Network  
National Refugee Health Service  
National Roundtable on Human Trafficking and Slavery  
Non-English Speaking Background Domestic Violence Interagency  
Refugee Council of Australia  
Settlement Council of Australia  
Victorian Refugee Health Network  
Wagga Wagga Interagency  
Waverley Council Multicultural Affairs Committee  
Women's Services Network

### **Research Centres and Institutes**

Alfred Deakin Institute for Citizenship and Globalisation, Deakin University  
Anti-Slavery Project, University of Technology Sydney  
Electoral Regulation Research Network, University of Melbourne  
Forced Migration Research Network, UNSW  
Hugo Centre for Migration and Population Research, University of Adelaide  
Kaldor Centre for International Refugee Law, UNSW  
Migration and Mobility Research Network, RMIT University  
Migrant Workers Justice Initiative, UNSW  
Monash Migration and Inclusion Centre, Monash University  
Peter McMullin Centre on Statelessness, Melbourne Law School  
Sydney Asia-Pacific Migration Centre, University of Sydney  
The Australian Population Research Institute  
Trafficking and Slavery Research Group, Monash University

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\* This list is no doubt incomplete and not all the networks listed here were consulted during the course of the Scoping Study. However, these networks or organisations would be important points of consultation for any follow up work in this area.