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POLICY BRIEF 10

Climate Change, Disasters and Mobility: A Roadmap for Australian Action

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Executive summary

Across the globe, the adverse impacts of disasters and climate change are prompting millions of people to move. Disasters now displace many more people within their countries each year than conflict, and the Asia-Pacific region is the hardest hit. Between 2008 and 2018, this region alone saw more than 80 per cent of all new disaster displacement.

Australia cannot afford to ignore the fact that in its own region, internal and cross-border displacement within and from the Pacific Islands is likely to increase as disasters intensify and become more frequent, exacerbated by the impacts of climate change. While Australia cannot stop such displacement altogether, it can implement policy changes now that would help to reduce its scale and impact. Preventative measures, such as mitigation, adaptation and disaster risk reduction, along with proactive measures, such as enhanced mobility, could significantly reduce the risk of future displacement, and thereby also reduce economic, social and human costs and suffering.

Most Pacific Islanders want to remain in their homes, and this should be enabled to the extent possible through disaster risk reduction, climate change adaptation and development policies. At the same time, there is widespread recognition that planning for mobility is necessary so that people can move before disaster strikes. Smart migration policies can provide people with choices to take control of their own lives, rather than being displaced when disasters occur.

This report focuses on the role of mobility as a release valve for Pacific Islanders at risk of displacement in the context of disasters and climate change. It demonstrates why Australia should proactively develop laws and policies that enable people in the Pacific region to move out of harm's way, thereby harnessing migration as a climate change adaptation strategy in its own right.

Key findings and recommendations

Section 1: Introduction

Internal and cross-border displacement within and from the Pacific Islands is likely to increase as disasters intensify and become more frequent. Most Pacific Islanders want to remain in their homes, and this should be enabled to the extent possible through disaster risk reduction, climate change adaptation and development policies. At the same time, there is widespread recognition that planning for mobility is necessary so that people can move before disaster strikes.

Section 2: The scale and nature of displacement

Most displacement in the Pacific is temporary and internal, but it is a phenomenon recurring with increasing regularity. Compounding the challenge of disasters is the dramatic youth bulge in many Pacific countries, along with a shortage of employment opportunities, which will affect people's need, ability and desire to move.

Section 3: Existing legal protection and practices

Australia must not send people back to countries where their lives are at risk because of the impacts of disasters or climate change. While refugee law and human rights law provide some protection, they are a partial solution.

Humanitarian visas could be created for people from the Pacific who are adversely affected by the impacts of disasters or climate change. Protection could also be provided on a prima facie basis to Pacific Islanders already in Australia at the time a disaster strikes where it is unsafe or unreasonable for them to return home.

Countries in the Pacific, including Australia and New Zealand, should develop bilateral and/or regional plans to address climate change-related displacement and mobility, which could include a regional, rights-based framework.

Section 4: Global developments

Australia should implement the roadmap provided by the Nansen Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change, endorsed by Australia in 2015. Targeted policy interventions on disaster risk reduction, climate change adaptation, humanitarian protection, migration and planned relocation could reduce the risk and extent of future displacement linked to the impacts of disasters and climate change in the Pacific.

Section 5: Regional developments

Some Pacific governments have developed guidelines on internal displacement and planned relocations in the context of climate change and disasters, and Fiji has established a trust fund to support relocations. Like New Zealand, Australia should contribute to Fiji's Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure.

Section 6: Why Australia needs to act

Responding to displacement is not just a humanitarian imperative, but it is also in Australia's national interest. The stability and prosperity of Pacific Island countries directly impact Australia, and Australia benefits from the economic and social contributions Pacific Islanders make as temporary and permanent migrants. Migration employment programs will be undermined by displacement-driven instability, directly affecting those Australian employers who have become dependent on reliable and effective workers from the Pacific.

Section 7: The role of migration in enhancing mobility

Migration can be a form of adaptation to climate change. It provides an important risk management strategy that can enhance the resilience of those who move, as well as those who stay behind. If only one per cent of the Pacific's population were permitted to work permanently in Australia, this would bring more benefits to the Pacific than Australia's aid contribution.

Smart migration policies can provide people with choices to take control of their own lives, rather than being displaced when disaster strikes. Policies could include bilateral or regional free movement agreements, training programs that prepare individuals to find work abroad, and the creation of special visa categories for people living in at-risk areas. Pacific Islanders could also be given preferential access to existing labour, education or family visas.

For migration to form a larger part of Australia's proactive response to reducing climate change-related displacement risks, human dignity must be front and centre. Migration can be disruptive to family ties, cultures, individual identity and belonging, and this should not be compounded by the risks of exploitation or trapping migrants in low socio-economic stasis.

Section 8: Australia's existing Pacific migration schemes

The Seasonal Worker Programme (SWP) should become the primary employment source for Australia's agriculture and horticulture industries by 2030. The scheme already has bipartisan support within Australia, and overwhelmingly positive reviews by Pacific Islanders who have participated in it.

The Pacific Labour Scheme (PLS) provides a longer-term temporary work option, which enables people to earn and remit more income, and gives regional Australian businesses longer-term employment confidence. However, the scheme should be changed to enable workers' families to accompany them, given the detrimental effects of prolonged separation. It should also contain a pathway to permanent residence, especially if it is to provide a long-term strategy for Pacific Islanders who are at risk from the impacts of disasters and climate change.

Australia should create a Pacific Access Category visa, with appropriate settlement support, for Pacific Island countries which do not have free movement arrangements with other states.

The Australian government should harness the Pacific diaspora's knowledge and experience in discussions about all future migration schemes.

> Our people want to remain and live meaningful lives on their islands. We must continue to push for mitigation of greenhouse gas emissions and adaptation measures to allow our people to live in our islands. However, … we cannot ignore the fact that the movement of people needs to be discussed and bought [sic] out into the open from the shadows of disaster risk reduction and climate change debate. Failing to do so will be like burying our heads in the sand.[1]

1 Introduction

Across the globe, the adverse impacts of disasters and climate change are prompting millions of people to move. Some people are evacuated or displaced (involuntarily uprooted from their homes), others migrate in search of better conditions, and others are relocated permanently to safer areas.

Disasters now displace many more people within their countries each year than conflict.[2] Asia-Pacific is the hardest hit region: more than 80 per cent of all new disaster displacement between 2008 and 2018 occurred in the Asia-Pacific region, encompassing around 187 million people.[3] Australia is not immune: the bushfires in summer 2019–20 saw more people displaced and evacuated than at any other time in Australian history.[4]

In the Pacific Islands, king tides, cyclones, drought and flooding displace people on a regular basis, and the capacity of certain countries to sustain their populations over the longer-term raises existential questions for states like Kiribati and Tuvalu.

The impacts of climate change play a significant role. Climate change is a 'threat multiplier',[5] compounding stressors people are already experiencing, such as poverty, resource scarcity, poor-quality land, and existing displacement.[6] Climate change also exacerbates the frequency and/or severity of certain sudden-onset disasters, such as cyclones, which are already incredibly destructive to Pacific Islanders' economies and livelihoods. It contributes to slower-onset processes, such as drought and sea-level rise.

Displacement will be most obvious when there is a sudden-onset event, like a flood or cyclone, as people move to escape immediate risks. However, people may also move in response to more gradual impacts of climate change, such as the erosion of land or saltwater-intrusion into fresh water supplies and decline in arable land to grow fresh produce (as a consequence of astronomical tides, linked to higher sea levels). As these impacts start to affect people's living conditions, work opportunities and food supplies, they may seek to move on.[7]

Australia cannot afford to ignore the fact that in its own region, internal and cross-border displacement within and from the Pacific Islands is likely to increase as disasters intensify and become more frequent.[8] Disasters already contribute to significant economic shocks in the region, making it less prosperous and more unstable. Preventative measures taken now, such as mitigation, adaptation and disaster risk reduction, along with proactive measures, such as enhanced mobility, could substantially reduce the risk of future displacement, and thereby also reduce economic, social and human costs and suffering.

The UN Office for Disaster Risk Reduction has estimated that there could be a 60-fold return for each dollar spent on preparing for disasters.[9]

Most Pacific Islanders want to remain in their homes.[10] Leaving one's country is the least preferred option for most people, particularly given its potential to negatively impact 'nationhood, control over land and sea territory, sovereignty, culture and livelihoods'.[11] At the same time, however, there is widespread recognition that planning for mobility is necessary. Pacific perspectives on the role of migration in responding to the impacts of climate change vary, depending in part on the underlying development, economic and environmental challenges facing each country and existing options for movement.

As the Secretary General of the Pacific Islands Forum explained so powerfully: 'The COVID-19 public health emergency and its ensuing humanitarian and economic fallout offers us a glimpse of what the global climate change emergency can become – if it is left unchecked and if we do not act now.'[12] As Australia reshapes the way it interacts with the world in response to COVID-19, it also needs to create well-informed, complementary policies across a range of different sectors to tackle the climate crisis. While the most important action on climate change must happen domestically, by curbing its greenhouse gas emissions as part of a concerted global effort, the Australian government can take more proactive policy measures to reduce some of the displacement-related impacts of disasters in the Pacific Islands region.

This report focuses on the role of mobility as a release valve for Pacific Islanders at risk of displacement in the context of disasters and climate change. The report recognises, however, that mobility is just one of a number of concurrent policy strategies that states should pursue to address the adverse impacts of climate change in the Pacific.

Three main types of movement are typically discussed in the context of disasters and climate change.

Displacement refers to people who feel forced to leave their homes, whether in response to a sudden disaster or on account of slower, cumulative pressures.

Migration refers to movement that is mainly voluntary. It is more likely to be an adaptive response in anticipation of future harm, rather than a spontaneous response to a disaster.

Planned relocation refers to the permanent movement of people (and possibly even whole communities) to a new location to protect them from foreseeable risks. It is carried out under the authority of the state, even if initiated by the community itself.

Displacement, migration and planned relocation may be internal or cross-border in nature, although migration typically refers to cross-border movement and relocations are predominantly internal.

Mobility is an umbrella term that is often used to encapsulate all these forms of movement. The notion of 'enhancing mobility', discussed here, implies proactive, lawful and dignified pathways for movement.

2 The scale and nature of displacement

Disasters linked to sudden-onset natural hazards continue to trigger the largest number of new internal displacements annually – 75 per cent of all global displacement in 2019 (24.9 million people), compared to 25 per cent triggered by conflict and violence (8.5 million people).[13] Since there are no global estimates of the numbers of people displaced by slow-onset hazards, these numbers are 'very conservative'.[14] Movement in response to slow-onset processes is difficult to monitor because 'it encapsulates a wide range of phenomena, drivers, triggers, impacts and movement types' and can be hard to distinguish from internal migration.[15]

In 2019, 9.6 million people were displaced by disasters in East Asia and the Pacific alone – 30 per cent of the global total.[16] It can be difficult to obtain reliable data for the Pacific,[17] but large numbers of people living in the region have been impacted by disasters.[18] Both the Asian Development Bank and the International Monetary Fund acknowledge that Pacific Island countries face the highest disaster risk of any region in the world, when measured per capita on total life-years lost and on economic impact.[19] No Pacific Island country is immune, but some are much more prone to disaster impacts on an annual basis than others.

While the primary cause of migration in the Pacific remains the pursuit of economic opportunity, displacement is a concern shared by all Pacific states. Most displacement in the Pacific is temporary and internal (including short-term evacuations), but it is a phenomenon recurring with increasing regularity.[20] For instance, large proportions of Vanuatu's population were displaced by Cyclone Pam in 2015[21] and by Cyclone Harold just five years later.[22] In Papua New Guinea, a prolonged drought in the highlands between 2015 and 2016, and resultant food shortages, killed thousands of people and displaced tens of thousands.[23] This internal displacement in such a remote and densely populated part of the country exacerbated tribal conflicts and poverty.[24]

The most high-profile case of displacement risk in the Pacific has come from Kiribati, under the leadership of former President Anote Tong. Already dealing with severe overpopulation on its capital atoll, Tarawa, his government spent millions of dollars buying church-owned land in Fiji as an 'insurance policy' against future climate risks.[25] While Tong acknowledged that it was primarily for food security – a place to grow crops for the population at home – it was widely rumoured that it was also a possible relocation site should people need to move.[26] While the current President's focus is on adaptation rather than movement, his government is also hedging its bets by looking for foreign interest and investment in a US$300 million land reclamation project, almost double the country's annual GDP.[27]

Compounding the challenge of disasters is the demographic profile of Pacific states. The median age in Melanesia is 22, while in Polynesia and Micronesia it is 26. Australia's median age is much higher (37.5).[28] This dramatic youth bulge, the highest youth population of any region,[29] shows no prospect of slowing down. The population of the three countries in western Melanesia (Papua New Guinea, the Solomon Islands and Vanuatu), representing 80 per cent of the region's inhabitants, is forecast to grow by 58 per cent between 2020 and 2045 (more than double that of Australia). A century ago, British colonial

authorities in the Pacific identified 'overcrowding' as a significant problem when it came to ensuring sufficient resources for small, coral island populations.[30] This issue will be compounded by a shortage of formal sector employment opportunities,[31] and the impact of disasters, which affect water supply, crops and food, and habitability of land. In turn, these may affect people's need, ability and desire to move.

3 Existing legal protection and practices

Over the past decade, a number of international instruments have been developed that include commitments relating to climate change, disasters and displacement.[32] None formally requires states to admit people who are at risk, however, and existing international protection frameworks provide an incomplete and imperfect solution.

International refugee law is not an easy fit in this context, and no refugee claim based on the risks of climate impacts alone has succeeded so far.[33] Primarily, that is because it is difficult to show that these impacts on their own amount to 'persecution', and that they are occasioned 'for reasons of' one's race, religion, nationality, political opinion or membership of a particular social group.[34] However, refugee law should not be automatically dismissed either.[35] Disasters and climate change may provide a backdrop for persecution, such as where humanitarian assistance is withheld from particular groups, or existing discrimination is exacerbated.[36] Additionally, disasters and climate impacts may intersect with other drivers of displacement, such as conflict, giving rise to a well-founded fear of persecution.[37] Indeed, UNHCR emphasises the importance of focusing on the broader 'social and political characteristics of the effects of climate change or the impacts of disasters' and their potentially 'significant adverse effects on State and societal structures and individual well-being and the enjoyment of human rights.'[38] As decision-makers start to adopt this more nuanced, contextual approach, it is likely that more people will be recognised as having international protection needs.

'Climate refugees'?

Although the notion of the 'climate refugee' has excited the public imagination and media, it is an inaccurate label. First, most climate-related displacement occurs within countries. By definition, a refugee is someone who has crossed an international border, and the international refugee law framework will be ill-fitting in most cases. Secondly, and perhaps most importantly, the 'climate refugee' term has consistently been rejected by people to whom it has been applied, such as Pacific Islanders. They feel it turns them into victims and robs them of agency over their own destiny. Thirdly, there is a risk that by combining already politicised terms – 'refugees' and 'climate change' – existing hostilities in some countries towards refugees may be inflamed, and debates will simply go over old-trodden political ground. Finally, using the term 'climate refugee' risks essentialising how and why people move in response to the impacts of disasters and climate change, thereby potentially narrowing the range of policy responses that might otherwise be considered in finding solutions.

While this paper does not endorse the term 'climate refugee', it nevertheless acknowledges that the label may serve as a call to arms – both to highlight the plight of those who move, and to advocate for a protection-focused response.

International human rights law prevents governments from removing people to any place where they face a real risk of being arbitrarily deprived of their life, or subjected to torture or cruel, inhuman or degrading treatment or punishment.[39] These obligations are partially reflected in Australia's complementary protection provisions in the *Migration Act* 1958 (Cth).[40]

In 2019, the UN Human Rights Committee found that it was unlawful for governments to send people back to countries where climate change impacts expose them to life-threatening risks.[41] The matter concerned New Zealand's deportation of a man to Kiribati, where he claimed that his life was increasingly threatened by erosion, inundation and insufficient fresh water. The Committee observed that 'the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized', meaning that people should be able to receive protection before their life is imminently threatened.[42] Although the Committee's decision itself is not legally binding, the international legal obligations on which it is based are. It effectively puts governments on notice to ensure that their national laws enable people to claim – and receive – protection from the (cumulative) impacts of disasters and climate change, or to otherwise move out of harm's way to a place of safety.

In practice, many countries do admit – or refrain from removing – people in the aftermath of disasters.[43] Practices are wide-ranging and ad hoc, spanning special humanitarian visas,[44] temporary stay arrangements,[45] expedited processing of or flexibility with requirements for migration visas, and temporary labour migration schemes to help people move out of precarious circumstances.[46] Free movement agreements can also allow people to enter or remain in a country following a disaster.[47]

On occasion, Australia has provided Temporary Safe Haven Visas to enable particular national groups who need protection (but who may have 'no treaty-based entitlement to it'[48]) to enter and remain in Australia for a set period. For instance, a country or regional-based humanitarian arrangement could be created for people from the Pacific affected by disasters or the impacts of climate change, with the possibility to transition to a different type of visa (including a permanent visa) while in Australia.[49]

For people already in Australia when their country is affected by political or other upheaval, Australia has at times provided protection on a prima facie basis by extending visas and providing pathways to permanent residence (for instance, to Chinese nationals following the Tiananmen Square protests in 1989, and to Hong Kong residents following the passage of national security laws in 2020). This shows that where political will exists, anything is possible – including to assist Pacific Islanders whose country is severely impacted by a disaster, for instance.

Furthermore, Pacific Island countries, in partnership with Australia and New Zealand, should develop bilateral and/or regional plans to address climate change-related displacement and mobility in a systemic and holistic fashion. This could include a regional, rights-based framework on mobility in the context of disasters and climate change.

4 Global developments

In 2012, the first intergovernmental body dedicated to the study of climate change, disasters and displacement was created: the Nansen Initiative on Disaster-Induced Cross-Border Displacement. It was superseded in 2016 by the Platform on Disaster Displacement, which Fiji will chair from 2021. Australia has been on the Steering Group of both organisations since their inception.

In 2015, Australia was one of 109 governments that endorsed the Nansen Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change. This non-binding document outlined the normative gaps in addressing displacement, migration and planned relocation, and set out a number of effective practices that states could incorporate into their own laws and policies,[50] drawing on the outcomes of regional consultations.

Its underlying rationale was that people should be enabled to stay at home when this is what they desire and it is safe, but that it is also important for states to provide options for them to move before disasters strike. The Protection Agenda set out a 'toolbox' for action with five core elements:

a) enhance disaster risk reduction and climate change adaptation strategies;
b) ensure that the needs of internally displaced persons (IDPs) are addressed by relevant laws;
c) review and develop humanitarian protection mechanisms for (at least temporary) admission and stay;
d) enhance migration opportunities as a positive form of adaptation ('migration with dignity'); and
e) consider the use of planned relocation as a preventative or remedial measure.

These recommendations have been buttressed by a number of other international instruments (addressing disaster risk reduction, sustainable development, climate change, humanitarian responses, displacement and migration[51]) and institutional arrangements.[52]

In endorsing the Protection Agenda, Australia stated that it was 'pleased to see that the Agenda recognises the need to bring together policy and implementation areas in responding to the complex issue of disaster-induced human mobility'.[53] In particular, it noted that:

> Building disaster response capacities, and strengthening resilience within countries, is critical. In the Pacific, Australia is working with our small island neighbours to climate-proof new investments and ensure that development impacts are lasting. Promoting safe and well managed migration schemes, such as the already mentioned Seasonal Worker Programme, is also a key part of building resilience.[54]

By contributing 45 per cent of all foreign aid to the Pacific region in any given year, and having committed 'to spend $500 million over five years from 2020 to help Pacific nations invest in climate change and disaster resilience',[55] Australia is the largest contributor to

resilience and adaptation activities in the Pacific. The Department of Foreign Affairs and Trade (DFAT) is also working to 'climate proof' all existing and future aid projects in the Pacific where appropriate. As we explore below, however, Australia could make a further, significant contribution by expanding opportunities for mobility.

We do not need to reinvent the wheel. The Australian-endorsed 'toolkit' set out in the Nansen Initiative's Protection Agenda provides the roadmap. Targeted policy interventions by Australia across a range of areas could reduce the risk and extent of future displacement linked to the impacts of disasters and climate change in the Pacific. In doing so, however, it is vital that Australian policymakers ensure that initiatives are attuned to the needs and interests of Pacific communities themselves.

5 Regional developments

In 2018, Pacific leaders (including Australia) adopted the Boe Declaration on Regional Security, which identifies climate change as 'the single, greatest threat to the livelihoods, security, and well-being of the peoples of the Pacific'.[56] In 2019, the leaders endorsed the Boe Declaration Action Plan.[57] Three of its six strategic focus areas are: climate security, human security and humanitarian assistance, and environment and resource scarcity. Although enhancing mobility is not specifically mentioned in the document, the Pacific Climate Change Migration and Human Security Programme, funded by the UN Trust Fund for Human Security, is seeking to protect and empower individuals and communities adversely affected by climate change and disasters in the Pacific region, focusing specifically on climate change and disaster-related migration, displacement and planned relocation.[58]

In many respects, Pacific governments are already well ahead of Australia. For instance, both Fiji and Vanuatu have developed guidelines on internal displacement in the context of climate change and disasters to assist the government and other stakeholders 'to address and reduce vulnerabilities associated with displacement' and to consider 'sustainable solutions to prevent and minimize the drivers of displacement on the affected communities in relation to climate change and disaster-associated events'.[59] Fiji has also created national guidelines on internal planned relocations and established a Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure[60] (seed funded by a percentage of Fiji's Environment and Climate Adaptation Levy).[61] A number of communities have already been relocated from areas highly susceptible to disasters where continued settlement is unsafe and unsustainable.

New Zealand has donated A$3 million to Fiji's relocation fund (as part of a broader package of climate change assistance).[62] Australia should also consider contributing to the fund to assist Fiji with its own strategies to protect and assist its people.

6 Why Australia needs to act

Australia is a critical partner to Pacific Island states: it is its largest aid donor, trading partner, investor, source of tourism, and one of the largest recipient countries of Pacific migrants. As our neighbours, the Pacific Islands' stability and prosperity have a direct impact on Australia's own interests. While the measures taken to prevent the spread of COVID-19 in

the Pacific and Australia have been effective, they have also devastated economies throughout the region and may amplify existing pressures in these fragile nations.

We may not be able to stop climate change displacement dead in its tracks: no matter what mitigation or adaptation strategies are put in place now, some displacement will still be inevitable.[63] However, we can certainly 'flatten the curve' and reduce its potential scale and impact – but only if we act now.

Responding to displacement is not just a humanitarian imperative. It is also in Australia's broader national interest to take action.

First, increased displacement – whether internal or cross-border – will make the Pacific region more unstable, contributing to cultural tensions, poverty and potentially even civil unrest. A core objective of Australia's interests, and aid investments, in the Pacific is to maintain stability and promote prosperity, and displacement will undermine this. Internal movement is already impacting on overcrowded urban settlements where there are limited resources, poor prospects for employment and little (if any) government support. If cross-border displacement does occur, the primary destination will not be Australia but rather other Pacific nations, in particular, Fiji. Few Pacific Islanders have the means or the desire to move to a country like Australia, which is markedly more expensive, and more 'foreign', than closer Pacific neighbours.[64] Furthermore, whereas Australia requires non-citizens to hold a visa, many Pacific Island states grant mutual privileges such as visa waivers or visa-on-arrival for visitors,[65] which partly explains the high degree of mobility between these countries.

Secondly, a number of Pacific Islanders have already sought protection in Australia as refugees or beneficiaries of complementary protection.[66] Although no claim has succeeded so far, this is partly a result of the specific facts and timing of the cases, rather than legal principle. If the underlying conditions in which people are living in parts of the Pacific are not addressed, and lawful pathways for movement are not provided, then we may see more of these cases in the future. The Australian government can either leave it to the tribunals and courts to determine the way forward, or it can choose to devise proactive policies of its own.

Thirdly, Australia benefits from the contributions Pacific Islanders make to our economy as seasonal and temporary workers, as well as through long-term or permanent migration, often via New Zealand. This, in turn, helps to promote economic opportunities in home communities as livelihoods can be diversified and remittances sent home. Seasonal employment programs have the potential to grow to five times their current size by 2040,[67] but they could be undermined by displacement-related instability in sending communities. This would directly affect those employers in Australia who have come to rely on these workers. Finally, as a good international citizen, Australia should honour the commitments it has made to respect the right to life, dignity and full realisation of other human rights, and to assist other countries to do the same.

7 The role of migration in enhancing mobility

Research on mobility in the context of climate change and disasters shows that migration itself can be a form of adaptation to climate change. Temporary, circular and permanent migration provide important risk management strategies that can enhance the resilience of those who move, as well as those who remain behind. They can enable individuals and households to diversify their livelihoods and broaden their networks for financial security. They may also alleviate demographic and resources pressures back home and foster positive development in communities of origin.[68]

> **Temporary migration** describes movement to a country for a specified and limited period of time, which is usually undertaken for a specific purpose. According to the OECD's 2019 International Migration Outlook, there were 5.2 million people engaged in temporary labour migration in 2017 among OECD member nations. Of this total, 726,000 were working in Australia, making it one of the greatest beneficiaries of temporary migration in the developed world.
>
> **Circular migration** describes situations where people move back and forth between countries, as is the case with seasonal worker schemes. Sometimes circular migration programs are crafted as a quasi-development response to enable people to move temporarily for a period of employment, then return home.
>
> **Permanent migration** describes long-term and/or permanent movement to another country, with the right to remain there indefinitely.

Unlike more reactive responses to displacement, smart migration policies can provide people with choices to take control of their own lives. When it comes to enabling people to move in anticipation of future disasters and climate change impacts, such policies could include bilateral or regional free movement agreements, training programs that prepare individuals to find work abroad, as well as the creation of special visa categories for people living in at-risk areas. They could also be premised on giving people in vulnerable circumstances preferential access to existing labour, education or family visas. In this context, temporary mobility schemes could provide another lifeline, especially in the aftermath of a disaster.

The Lowy Institute has pointed out that if only one per cent of the Pacific's relatively small population were permitted to work permanently in Australia, this would bring more benefits to the people of the Pacific than Australia's aid contribution.[69] Given that remoteness from large markets, small market size and weak governance hamper economic growth in the Pacific, enhanced mobility would provide a great economic boost. Furthermore, it is clear that Australia has a strong interest in seeing a stable, prosperous, and developed Pacific.[70] Pacific communities, meanwhile, would like labour mobility schemes to be strengthened, including by increasing the number of opportunities and investing in their operation, especially to reduce risks linked to poor working conditions and exploitation.[71]

For migration to form a larger part of Australia's proactive response to reducing climate change-related displacement risks, it is essential that human dignity is front and centre of

any migration policy. Migration can be disruptive to family ties, cultures, individual identity and belonging. This disruption should not be compounded by the risks of exploitation or trapping migrants in low socio-economic stasis.

Of course, migration is not a new phenomenon for the Pacific. For almost a century, Pacific Islanders have been moving so that individuals and families can pursue educational and economic opportunities. The bulk of contemporary migration from Pacific Island countries in recent decades has involved a mix of temporary labour flows and permanent settlement abroad, and more than a million Pacific Islanders now live outside their immediate region, largely in Australia, New Zealand and the United States.[72]

However, it is easier for some Pacific Islanders to move than others. For instance, the United States has Compacts of Free Association with the Federated States of Micronesia, Palau and the Republic of the Marshall Islands, which provide visa-free entry to citizens of those states and allow them to reside and work in the US.[73] However, amendments to the compacts in 2003 mean that entry and stay are not guaranteed, and people with insufficient means to support themselves may be deported. Further, any period of time spent in the US pursuant to this scheme does not count towards the five years of lawful permanent residence required for naturalisation.[74] The US's international green card scheme is open to all who have completed secondary school, and there is no priority access for Pacific Islanders.

People from the Cook Islands, Niue and Tokelau can travel freely to New Zealand as citizens of that country.[75] By extension, as New Zealand citizens, they can also live and work indefinitely in Australia pursuant to the 1973 Trans-Tasman Travel Arrangement.[76] As discussed below, New Zealand also has quota-based permanent migration options for people from Fiji, Kiribati, Samoa, Tonga and Tuvalu, and both Australia and New Zealand maintain growing seasonal worker programs. In the 2016 census, 139,173 people living in Australia had been born in the Pacific Islands. The number claiming Pacific Islander ancestry was considerably larger (206,673).[77]

For some Pacific nations, migration is now a structural component of their economies. In 2018, remittances made up 14 per cent of GDP in the Marshall Islands, 18 per cent in Samoa and 40 per cent in Tonga, making it the most remittance-dependent economy in the world.[78] With mounting demographic pressures in several Pacific countries, and the risks posed by climate change, migration will need to play an even bigger role in the region's future.

The free movement arrangements described above can provide a self-help mechanism, including in response to the impacts of disasters and climate change.[79] For example, the Trans-Tasman Travel Arrangement enabled 3,600 New Zealanders to move to Australia after the Christchurch earthquakes in 2010–11.[80] Even though the Arrangement was never envisaged as a disaster response tool, it provided a ready-made self-help mechanism that let people take charge of their own lives, rather than requiring government intervention. Anecdotal evidence suggests many families moved back once the situation stabilised.

8 Australia's existing Pacific migration schemes

After decades of advocacy from Pacific leaders, the World Bank, and the academic community, Australia now runs two temporary migration schemes with the Pacific, the Seasonal Worker Programme (SWP) and the Pacific Labour Scheme (PLS).

Seasonal Worker Programme

The SWP, established as a pilot in 2008 and fully implemented in 2012, has so far provided more than 33,000 jobs to Pacific and Timorese peoples to work in Australia's horticulture industry. It is a form of circular migration and has been described by the Australian government as 'a key part of building resilience'.[81] With its cap removed in 2015, numbers continue to grow: 12,200 people participated in 2018–19 alone, representing a 44 per cent increase from the previous financial year.[82] The SWP is now the same size as its longer-running New Zealand counterpart, the Recognised Seasonal Employer (RSE) scheme, which retains a cap.[83] To be eligible for the SWP, workers must be aged between 21 and 45, and willing to work in low-skilled roles for up to nine months at a time where Australian workers are not available to fill the gaps. The program is overseen by the Department of Employment, Skills, Small and Family Business.

The SWP has clear benefits for the Australian horticulture and agriculture industries. Surveys show that more than a third of peak seasonal jobs in horticulture are filled by overseas workers[84] – typically backpackers often only working to extend their visas. Research has shown that Pacific Islanders stay at a farm up to six times longer on average than backpackers, frequently return in future years, and are, on average, 20 per cent more productive than other workers.[85] With Australia's COVID-19 international travel restrictions expected to last for more than a year, a potential travel bubble with the main Pacific source countries could be established in the interim. The impact of travel restrictions, and the resulting economic fallout in backpacker-sending states, also means there is likely to be greater demand for the SWP in the years ahead.[86]

The SWP has had dramatic, positive impacts on the lives of the Pacific and Timorese peoples involved. A World Bank survey of nearly 400 participants revealed that the average worker takes home close to net A$9,000 over six months after paying for associated living and travel costs.[87] For the average Pacific Islander, this represents more than a four-fold increase in what they otherwise would earn in a year in the islands. Between 2012 and 2018, the SWP injected approximately A$144 million in net income gains directly into the pockets of Pacific communities.[88] In Tonga, the scheme is now more important than aid and trade combined.[89] It can also have other positive social benefits: for instance, research has shown that the children of seasonal workers are 10–14 per cent more likely to attend school than other Tongan children.[90] When SWP participants were asked about their satisfaction with the scheme on a scale of 1 to 10, the average result was 8.6 across all participating countries. Overall, 98 per cent would recommend the program to others, and 95 per cent want to return the following year.[91]

Like many temporary migration schemes, the SWP also has some negative social impacts, resulting largely from the absence of family members for extended periods. Many more men participate in the scheme than women, and their absence from home can lead to neglect,

including through their failure to provide regular financial support for their families.[92] Between 2012 and 2017, twelve people died while participating in the scheme (from car accidents or pre-existing health conditions).[93] Workers have also been exploited by employers, third parties, and even as a result of restrictive visa conditions.[94] Self-evidently, exploitation must never be tolerated. Exploitation is not an inherent part of temporary migration, but is a symptom of an underregulated labour hire industry in Australia, and something that must be safeguarded against through good policy design and oversight.

The SWP continues to grow but is vulnerable to the impacts of other employment and migration schemes. For example, the ratio of backpackers to Pacific workers remains high, at five to one, and the Australian government recently modified the backpacker scheme to enable people to remain in Australia for a third year if they spent more time working on farms.[95] The government has also made it easier for the agriculture and horticulture industries to recruit from Asia by easing and expanding existing visa categories to include the horticulture industry.[96]

The SWP should become the primary international employment source for Australia's agriculture and horticulture industries by 2030. The scheme already has bipartisan support within Australia, and overwhelmingly positive reviews by Pacific Islanders who have participated in it. The challenge for the Australian government is to convince certain Australian employers of its benefits: despite the SWP's rapid growth, only four per cent of 2,300 farms surveyed in 2018 used the SWP as a source of labour.[97]

Pacific Labour Scheme

In July 2018, the Australian government established the PLS. It was a response both to criticism from Pacific governments that they did not simply want their people 'picking Australia's fruit', and to longer-term concerns about labour shortages in rural Australia. It was also a recognition that migration could be a comparative advantage in the geopolitical contest with China. The PLS gives workers from nine Pacific Island countries plus Timor-Leste the opportunity for employment in low- and semi-skilled occupations in rural and regional Australia for up to three years.[98] Workers must be aged between 21 and 45, and can be engaged where labour market testing shows no Australian workers are available. The program is managed by DFAT.

Although small, employing only 203 workers in its first year and growing to 830 by January 2020[99] and 977 by July 2020,[100] the PLS has significant potential for growth. The initial annual cap of 2,000 workers has been lifted, and the scheme is open to all industries in rural and regional areas – including horticulture, agriculture, aged care, forestry, meat processing, and fishing and aquaculture.[101] Given this scope, over time the PLS has the potential to eclipse the SWP.

The benefits of the PLS are apparent – the extended timeframe to work in Australia will enable Pacific workers to earn and remit even more income, and will give regional Australian businesses longer-term employment confidence. However, its risks – particularly concerning the welfare of workers and potential negative impacts on sending communities – are significant and must be delicately managed. The strongest critique of the program is that it does not allow workers' families to accompany them. This is in contrast to other

Australian temporary migration categories (such as the Temporary Skill Shortage visa, formerly known as the '457 visa'), which do allow workers to bring their families. Not extending this to the PLS is concerning, especially when some workers may be engaged for more than one three-year period, resulting in separation from their families for six, or even nine, years.[102]

A further risk is that, unlike many other longer-term temporary migration schemes, the PLS does not have a built-in pathway to permanency. While employers may put workers on such a pathway by moving them to a different visa category at the end of their three-year visa term, control rests in the employers' hands rather than the employees'.[103] Employers may be reluctant to do this if they have to pay for additional skills-training so that employees are eligible. Additional risks include the gender distribution in the scheme leaving little room (so far) for women's participation, and the impact of the PLS on families and communities in sending countries. By its very nature, migration is disruptive to families and the adverse impacts can never be fully mitigated. However, sending countries can try to reduce these negative effects by ensuring that, over time, there is a cross-section of workers from different family and societal groups.

Finally, without a pathway to permanence, the PLS cannot provide a long-term strategy for Pacific Islanders who are at risk from the impacts of disasters and climate change.

Permanent migration

In the Pacific, more permanent migration might enable a smaller population to remain at home for longer, especially since population pressure places a strain on limited resources (which may become even scarcer as the impacts of climate change are felt).[104] Permanent migration options also address concerns about the family separation occasioned by long-term temporary migration schemes, since family members may accompany the primary applicant. Since many Pacific Islanders live in extended family networks, however, this should be factored into the assessment of eligible family members for the purposes of Australian visas. As New Zealand experts have noted:

> A fundamental determinant of the responsiveness of immigration policy to the challenges of voluntary adaptive migration and planned relocation is the extent to which chain migration of members of the wider family group, such as parents and siblings (and their families), is allowed.[105]

It is also essential to acknowledge the important role played by diaspora communities in helping newcomers settle into their new home.[106] The Australian government should harness the diaspora's knowledge and experience in discussions about future migration schemes.

Australia currently offers both employer-sponsored and points-based permanent migrant pathways. Of the 162,417 permanent migrants to Australia in 2017–18, 111,099 were skilled migrants, while a further 51,082 were families or children of skilled migrants.[107] No Pacific Island country was in the top 25 sending countries in either category. The costs of applying for the scheme, combined with fierce competition with migrants from larger countries with better education systems, means that the skilled migration pathway is not viable for most

Pacific Islanders.[108] The program has also generated criticism from Pacific peoples and governments about the risks associated with 'brain drain', or human capital flight. While many experts argue that the individual and structural benefits of migration counter such concerns,[109] for Pacific nations with relatively low levels of education, it remains a point of significant concern.[110]

New Zealand and the US also have skilled migration pathways that are open to Pacific Islanders. However, most Pacific migrants to those countries move either through (in the case of the US) the Green Card lottery or (in the case of New Zealand) the Pacific Access Category (PAC) and Samoan Quota Resident Visa schemes. While there are some conditions – including criminal background checks, health checks, and, in the case of New Zealand, a job offer – these schemes are greatly oversubscribed and are not limited to jobs of a specific skill level or type. For instance, New Zealand offers 1,750 places for permanent residence annually, selected by a ballot, but in the five years to 2014–15, the ratio of application numbers to available places was 16:1.[111]

There are many insights to be learnt from the New Zealand PAC scheme, which has been fine-tuned over time. The scheme is generally regarded as a successful migration program, both in terms of employment and income outcomes, and also well designed through its ballot system that prevents 'cherry picking' and brain drain concerns.[112] That said, the impact on Pacific communities already in New Zealand should not be overlooked: they often provide considerable economic and social support to new arrivals.[113] Another criticism is that the same number of places are available to nationals of Kiribati and Tuvalu. Since Tuvalu's population is a tenth of the size of Kiribati's, the scheme provides it with a much bigger safety net in real terms.

Australia should create its own Pacific Access Category visa, with appropriate settlement support, for Pacific Islanders whose countries do not have free movement arrangements with other states.[114] The scheme should initially at least match New Zealand's PAC numbers under a ballot approach, but it should grow over time. As in New Zealand, conditions could be imposed relating to health, education and employment, and could also pertain to particular areas of work for an initial period (eg regional areas).

9 Conclusion

Mobility creates lifelines to and from affected countries. The recommendations set out in this report provide a roadmap for action by the Australian government. They are based on sound evidence drawn from a range of sources, including governments, academics, think tanks, international organisations and Pacific Islanders themselves.

By enhancing mobility for Pacific peoples – by offering more opportunities for temporary movement, circular movement, long-term residence and permanent settlement – Australia could simultaneously foster mutually beneficial economic opportunities, provide a release valve for communities facing demographic, environmental and financial challenges, and reduce vulnerability to the impacts of disasters and climate change in Pacific countries. This would build upon Australia's longstanding investment in Pacific peoples and represent a significant contribution to the region as a whole.

Endnotes

[1] 'Chairperson's Summary' in Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Human Mobility, Natural Disasters and Climate Change in the Pacific: Outcome Report* (Pacific Regional Consultation, May 2013) 24.

[2] Internal Displacement Monitoring Centre (IDMC), *GRID 2020: Global Report on Internal Displacement* (IDMC, 2020) 1.

[3] Sylvain Ponserre and Justin Ginnetti, *Disaster Displacement: A Global Review, 2008–2018* (IDMC, 2019) 7.

[4] More than 65,000 people were displaced on account of bushfires between July 2019 and February 2020. That figure does not include tourists, who comprised 16 per cent of those evacuated: IDMC, *The 2019–2020 Australian Bushfires: From Temporary Evacuation to Longer-Term Displacement* (IDMC, 2020) 4, 10.

[5] This was recognised by the UN Security Council in an open debate on 'Addressing the Impacts of Climate-related Disasters on International Peace and Security', tabled by the Dominican Republic in January 2019: 'Climate Change Recognized as "Threat Multiplier", UN Security Council Debates Its Impacts on Peace', *UN News* (25 January 2019) <https://news.un.org/en/story/2019/01/1031322>.

[6] IDMC, *Global Report on Internal Displacement 2017* (IDMC, 2017) 11.

[7] Jane McAdam, Bruce Burson, Walter Kälin and Sanjula Weerasinghe, *International Law and Sea-Level Rise: Forced Migration and Human Rights*, FNI Report 1/2016 (2016), para 52.

[8] The Pacific Islands region encompasses 16 states and nine territories spread across 15 per cent of the world's surface.

[9] UNISDR, Global Assessment Report on Disaster Risk Reduction 2015 (UN, 2015) ix. See also Bapon Fakhruddin and Lauren Schick, 'Benefits of Economic Assessment of Cyclone Early Warning Systems: A Case Study on Cyclone Evan in Samoa' (2019) 2 *Progress in Disaster Science* 1000346, 6.

[10] See eg Nansen Initiative (n 1); Carol Farbotko and Celia McMichael, 'Voluntary Immobility and Existential Security in a Changing Climate in the Pacific' (2019) 60 *Asia Pacific Viewpoint* 148.

[11] Nansen Initiative (n 1) 7; 2008 Niue Declaration on Climate Change (Pacific Islands Forum (PIF)).

[12] Dame Meg Taylor, 'COVID-19 and Climate Change: We Must Rise to Both Crises' (PIF, 17 April 2020) <https://www.forumsec.org/2020/04/17/covid-19-and-climate-change-we-must-rise-to-both-crises/>.

[13] IDMC 2020 (n 2) 1. As yet, there is no reliable data on cross-border displacement in this context since it is not systematically monitored, but there is evidence that most people tend to remain in countries within the same geographical region: IDMC 2017 (n 6) 53.

[14] IDMC, *GRID 2018: Global Report on Internal Displacement* (IDMC 2018) 52 (fn omitted). See also IDMC, *Global Report on Internal Displacement 2016* (IDMC, 2016), 14–31, 36, 65–66, 79; IDMC 2017 (n 6) 31.

[15] IDMC, *GRID 2019: Global Report on Internal Displacement* (IDMC, 2019) 73.

[16] IDMC 2020 (n 2) 14.

[17] Ibid, 43.

[18] Ibid, 39.

[19] Asian Development Bank (ADB), *Economic and Fiscal Impacts of Disasters in the Pacific* (April 2018) 3 <https://www.adb.org/sites/default/files/publication/415601/economic-fiscal-impacts-disasters-pacific.pdf>; Dongyeol Lee, Huan Zhang and Chau Nguyen, *The Economic Impact of Natural Disasters in Pacific Island Countries: Adaptation and Preparedness* (IMF Working Paper WP/18/108 IMF, May 2018) 7 <https://www.elibrary.imf.org/doc/IMF001/25123-9781484353288/25123-9781484353288/Other_formats/Source_PDF/25123-9781484356425.pdf>.

[20] This is consistent with predictions of the Intergovernmental Panel on Climate Change (IPCC): see 'Summary for Policymakers' in Christopher B Field et al (eds), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects* (Cambridge University Press, 2014) 20.

[21] Matthew Dornan, 'Vanuatu after Cyclone Pam: The Economic Impact', *Devpolicy* blog (10 April 2015) <http://devpolicy.org/vanuatu-after-cyclone-pam-the-economic-impact-20150410/>; '70 Percent of Vanuatu's Population Displaced: Official', Pacific Islands News Association (16 March 2015) <http://www.pina.com.fj/?p=pacnews&m=read&o=20970140535507a1fd8c02ba24b812>.

[22] Elisabeth du Parc and Nacanieli Bolo Spieth, 'Tropical Cyclone Harold and COVID-19: A Double Blow to the Pacific Islands', IDMC *Expert Opinion* (April 2020) <https://www.internal-displacement.org/expert-opinion/tropical-cyclone-harold-and-covid-19-a-double-blow-to-the-pacific-islands>.

[23] *El Niño 2015/2016: Post Drought Assessment: Report from Interagency Post Drought Assessment in Papua New Guinea* (Australian Government and Papua New Guinea National Disaster Centre, 2016) 7 <https://reliefweb.int/sites/reliefweb.int/files/resources/png_el_nino_post_drought_assessment_sep_2016_final_report.pdf>.

[24] Ibid.

[25] Laurence Caramel, 'Besieged by the Rising Tides of Climate Change, Kiribati Buys Land in Fiji', *The Guardian* (1 July 2014) <https://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu>.

[26] This would not have been possible without formal arrangements with the Fiji government concerning visas, residence status, and so on: see Jane McAdam, '"Under Two Jurisdictions": Immigration, Citizenship and Self-Governance in Cross-Border Community Relocations' (2016) 34 *Law and History Review* 281, 284.

[27] Laura Walters, 'New Plan Gives Pacific People Chance to Stay Home', *Newsroom* (25 April 2019) <https://www.newsroom.co.nz/2019/04/25/549041/groundbreaking-project-gives-pacific-people-chance-to-stay-in-their-homeland>.

[28] David Clarke and Peter Azzopardi, *State of Pacific Youth 2017* (United Nations Population Fund, 2019) 8 <https://pacific.unfpa.org/sites/default/files/pub-pdf/UNFPA%20_%20State%20of%20Pacific%20Youth%202017%20Report%20HRv3%20%28web%29%20%281%29%20%281%29.pdf>.

[29] World Bank, 'Well-Being from Work in the Pacific Island Countries' (9 May 2014) <https://www.worldbank.org/en/news/feature/2014/05/09/well-being-from-work-in-the-pacific-island-countries>.

[30] Jane McAdam, 'Relocation and Resettlement from Colonisation to Climate Change: The Perennial Solution to "Danger Zones"' (2015) 3 *London Review of International Law* 93.

[31] World Bank (n 29) 1.

[32] Sendai Framework for Disaster Risk Reduction 2015–2030, UNGA res 69/283 (23 June 2015); Transforming Our World: The 2030 Agenda for Sustainable Development, UNGA res 70/1 (25 September 2015); UNFCCC, Decision 1/CP.21, Adoption of the Paris Agreement in *Report of the Conference of the Parties on its Twenty-First Session, held in Paris from 30 November to 13 December 2015*, UN doc FCCC/CP/2015/10/Add.1 (29 January 2016); UNGA, *One Humanity: Shared Responsibility: Report of the Secretary-General for the World Humanitarian Summit*, UN doc A/70/709 (2 February 2016) Annex, viii; Global Compact on Refugees, UN doc A/73/12 (Part II) (2 August 2018), paras 8, 12, 63; Global Compact for Safe, Orderly and Regular Migration, UN doc A/RES/73/195 (19 December 2018), Objective 2, para 18(h)–(l); Objective 5, para 21(g)–(h); New York Declaration for Refugees and Migrants, paras 1, 18, 43, 50.

[33] The impacts of climate change or disasters will generally not satisfy the refugee definition elements of 'persecution' (which requires human agency) 'for reasons of' race, religion, nationality, political opinion or membership of a particular social group). New Zealand has the most developed case law on this issue: eg *AF (Kiribati)* [2013] NZIPT 800413; *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC 3125; [2014] NZCA 173; [2015] NZSC 107; *AF (Tuvalu)* [2015] NZIPT 800859; *AD (Tuvalu)* [2014] NZIPT 501370; *AC (Tuvalu)* [2014] NZIPT 800517–520. Australia has also considered cases in this context: see further Jane McAdam, 'The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement' (2015) 3 *Migration Studies* 131 endnote 2.

[34] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, read in conjunction with the Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

[35] See generally *AF* (n 33) paras 55–70; *AC* (n 33) paras 84–86, 97; Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press, 2020).

[36] Matthew Scott, 'Finding Agency in Adversity: Applying the Refugee Convention in the Context of Disasters and Climate Change' (2016) 35(4) *Refugee Survey Quarterly* 26, 28; Scott (n 35). See also the broader regional refugee definitions in Africa and Latin America: Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45, art 1(2); Cartagena Declaration on Refugees (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, 22 November 1984), conclusion III(3).

[37] See generally Sanjula Weerasinghe, 'In Harm's Way: International Protection in the context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change', UNHCR Legal and Protection Policy Research Series, PPLA/2018/05 (2018).

[38] UNHCR, 'Legal Considerations regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters' (1 October 2020) para 5 (fn omitted) <https://www.refworld.org/docid/5f75f2734.html>.

[39] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 3; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6, 7; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 37(a); UN Human Rights Committee, 'General Comment No. 20: Replaces General Comment 7 concerning Torture or Cruel, Inhuman or Degrading Treatment or Punishment (Art 7)' (10 March 1992), para 9; UN Human Rights Committee, 'General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (29 March 2004), UN doc CCPR/C21/Rev.1/Add.13, para 12; Committee on the Rights of the Child, 'General Comment No 6 (2005): Treatment of Unaccompanied and Separated Children outside Their Country of Origin', UN doc CRC/GC/2005/6 (1 September 2005), para 27.

[40] *Migration Act* 1958 (Cth), ss 36(2)(aa), (2A)–(2C).

[41] *Teitiota v New Zealand*, UN doc CCPR/C/127/D/2728/2016 (24 October 2019), para 9.11.

[42] Ibid. See further Jane McAdam, 'Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of *Non-Refoulement*', forthcoming in American Journal of International Law <https://www.cambridge.org/core/journals/american-journal-of-international-law/accepted-manuscripts>.

[43] Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol 1 (2015) 6.

[44] Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol 2 (2015) 40, 46, referring to examples from Argentina, Peru, the United States, Finland, Mexico, Peru and Sweden, among others.

[45] Ibid, 26, 40, 51, 52, referring to Canada, the Americas and Singapore. See also UNHCR, 'Guidelines on Temporary Protection and Stay Arrangements' (February 2014).

[46] Protection Agenda, vol 2 (n 44) 43 (Spain and Senegal).

[47] Ibid, 43–44; Bruce Burson and Richard Bedford, 'Clusters and Hubs: Toward a Regional Architecture for Voluntary Adaptive Migration in the Pacific', Discussion Paper (Nansen Initiative on Disaster-Induced Cross-Border Displacement, 2013) 7–10.

[48] Savitri Taylor, 'Protection or Prevention? A Close Look at the Temporary Safe Haven Visa Class' (2000) 23 *UNSW Law Journal* 75, 75. This visa category was created in 1999 to provide temporary refuge to people from Kosovo. It includes the Kosovar Safe Haven (Temporary) Visa (subclass 448) and the Humanitarian Stay (Temporary) Visa (subclass 449) (which is not linked to a particular nationality, although was originally devised for people from East Timor in 1999). The future use of such visas should be without prejudice to individual protection claims made pursuant to the *Migration Act* 1958 (Cth) (since people may have a treaty-based protection need).

[49] *Migration Act* 1958 (Cth), s 37A. At present, the holder of such a visa cannot apply for another visa without the Minister's personal permission: s 91K.

[50] Protection Agenda, vol 1 (n 43); Protection Agenda, vol 2 (n 44).

[51] See n 32 for details.

[52] UNHCR and the International Organization for Migration (IOM) both have a strong institutional presence in this area. In addition to the Platform on Disaster Displacement, there is also a Task Force on Displacement within the UNFCCC process, established under the auspices of the Warsaw International Mechanism for Loss and Damage.

[53] Statement by Australia in Nansen Initiative, *Global Consultation: Conference Report* (Geneva, 12–13 October 2015) 76.

[54] Ibid, 77.

[55] DFAT, 'Development Assistance in the Pacific: Pacific Regional—Climate Change and Resilience' <https://www.dfat.gov.au/geo/pacific/development-assistance/Pages/resilience-pacific-regional> (accessed 8 July 2020).

[56] PIF, *Boe Declaration Action Plan* (2019) 9 <https://www.forumsec.org/wp-content/uploads/2019/10/BOE-document-Action-Plan.pdf>. The Declaration is included in this document. For all the region's declarations on climate change/environment, see Annex 2.

[57] Ibid.

[58] One of this paper's authors, Jane McAdam, is part of its Technical Advisory Group.

[59] Republic of Fiji, *Displacement Guidelines in the context of Climate Change and Disasters* (2019) 3; Government of Vanuatu, *National Policy on Climate Change and Disaster-Induced Displacement* (2018).

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[61] Ibid, s 12; see 'Official Launch of Fiji's Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure' (24 September 2019) <https://reliefweb.int/report/fiji/official-launch-fiji-s-climate-relocation-and-displaced-peoples-trust-fund-communities>.

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[63] Kumari Rigaud et al, *Groundswell: Preparing for Internal Climate Migration* (World Bank, 2018) xxv.

[64] See eg Robert Oakes, Andrea Milan and Jillian Campbell, *Kiribati: Climate Change and Migration: Relationships between Household Vulnerability, Human Mobility and Climate Change*, UN University Institute for Environment and Human Security Report No 20 (2016) <https://www.unescap.org/sites/default/files/Online_No_20_Kiribati_Report_161207.pdf>.

[65] Burson and Bedford (n 47) 8; see 41–42 for a detailed overview.

[66] See n 33 above.

[67] Richard Curtain et al, *Labour Mobility: The Ten Billion Dollar Prize* (World Bank, Pacific Possible series, 2016) 15 <http://pubdocs.worldbank.org/en/555421468204932199/labour-mobility-pacific-possible.pdf>.

[68] See eg Graeme Hugo, 'Migration and Development in Low-Income Countries: A Role for Destination Country Policy?' (2012) 1 *Migration and Development* 27; Olivia Dun and Natascha Klocker, 'The Migration of Horticultural Knowledge: Pacific Island Seasonal Workers in Rural Australia – A Missed Opportunity?' (2017) 48 *Australian Geographer* 27; Richard Curtain and Matthew Dornan, *A Pressure Release Valve? Migration and Climate Change in Kiribati, Nauru and Tuvalu* (Development Policy Centre, 2019) <https://devpolicy.org/publications/reports/Migration-climate%20change-Kiribati-Nauru-Tuvalu.pdf>.

[69] Leon Berkelmans and Jonathan Pryke, *The Development Benefits of Expanding Pacific Access to Australia's Labour Market* (Lowy Institute for International Policy, December 2016) 1 <https://www.lowyinstitute.org/sites/default/files/documents/The%20development%20benefits%20of%20expanding%20Pacific%20access%20to%20Australia%27s%20labour%20market.pdf>. See also Menzies Research Centre, *Oceans of Opportunity: How Labour Mobility Can Help Australia and Its Neighbours* (Menzies Research Centre, 2016).

[70] Australian Government, *2017 Foreign Policy White Paper* (2017) <https://www.fpwhitepaper.gov.au/foreign-policy-white-paper>.

[71] Tess Newton Cain, James Cox and Geir Henning Presterudstuen, *Pacific Perspectives on the World* (Whitlam Institute, 2020) 31. See also the recommendations in Heather Nunns, Charlotte Bedford and Richard Bedford, *RSE Impact Study: Synthesis Report* (22 May 2020) <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-synthesis-report.pdf>.

[72] Richard Bedford and Graeme Hugo, *Population Movement in the Pacific: A Perspective on Future Prospects* (NZ Dept of Labour, 2012) vii <https://www.mbie.govt.nz/dmsdocument/2750-population-movement-in-the-pacific-pdf>.

[73] See Compact of Free Association between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands (1985), art IV; Compact of Free Association between the United States and the Government of Palau (1986), art IV. See further Ama Francis, *Free Movement Agreements and Climate-Induced Migration: A Caribbean Case Study* (Sabin Center for Climate Change Law, Columbia Law School, September 2019) 26 <http://columbiaclimatelaw.com/files/2019/09/FMAs-Climate-Induced-Migration-AFrancis.pdf>.

[74] Burson and Bedford (n 47) 29, referring to the *Compact of Free Association Amendments Act* 2003 (US), ss 141(d), (f).

[75] Niue and the Cook Islands are states 'in free association with' New Zealand, while Tokelau is a non-self-governing territory of New Zealand. Until the end of 2005, children born in those countries were automatically citizens of New Zealand and thus could freely travel and reside there. Since 2006, at least one parent must be a New Zealand citizen or entitled to reside indefinitely in New Zealand, the Cook Islands, Niue or Tokelau: *Citizenship Act* 1977 (New Zealand), s 6 (note also s 2). People may also be eligible for citizenship by grant (s 8). In reality, this means that people who do *not* meet these criteria will be citizens of another country, since the law cannot permit people to be rendered stateless.

[76] See further Susan Love and Michael Klapdor, 'New Zealanders in Australia: A Quick Guide' (Australian Parliamentary Library, last updated 13 February 2020) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/NewZealandersInAustralia>.

[77] James Batley, 'What Does the 2016 Census Reveal about Pacific Islands Communities in Australia?', *Devpolicy* blog (28 September 2017) <https://devpolicy.org/2016-census-reveal-about-pacific-islands-communities-in-australia-20170928/>.

[78] World Bank, 'Personal Remittances, Received (% of GDP)' <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS> (accessed 10 July 2020).

[79] For their utility in other regions, see Francis (n 73); Tamara Wood, *The Role of Free Movement of Persons Arrangements in Addressing Disaster Displacement: A Study of Africa* (Platform on Disaster Displacement, 2019) <https://disasterdisplacement.org/wp-content/uploads/2019/06/52846_PDD_FreeMovement_web-single_compressed.pdf>.

[80] Peter Lafferty, 'International Migration to/from Christchurch after the Earthquakes' (Statistics New Zealand, 29 November 2011) <http://www.population.org.nz/wp-content/uploads/2012/02/3b3_peter-lafferty.pdf>.

[81] Statement by Australia (n 53) 77. The eligible countries are Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu.

[82] Holly Lawton, 'Australia's Seasonal Worker Program Now Bigger than NZ's', *Devpolicy* blog (25 July 2019) <https://devpolicy.org/australias-seasonal-worker-program-now-bigger-than-nzs-20190725/>.

[83] Ibid. For an excellent analysis of the impact of that scheme, and recommendations for improvements, see Nunns, Bedford and Bedford (n 71).

[84] Niki Dufty, Peter Martin and Shiji Zhao, *Demand for Farm Workers: ABARES Farm Survey Results 2018* (Australian Bureau of Agricultural and Resource Economics and Sciences, 2018) vi–vii <https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/abares/DemandForFarmWorkers_FarmSurveys2018_v1.0.0.pdf>.

[85] Shiji Zhao et al, *What Difference Does Labour Choice Make to Farm Productivity and Profitability in the Australian Horticulture Industry? A Comparison between Seasonal Workers and Working Holiday Makers* (Australian Bureau of Agricultural and Resource Economics and Sciences Research Report prepared for the World Bank, Canberra, February 2018) 1 <http://data.daff.gov.au/data/warehouse/9aap/2018/WhatDifferenceDoesLabourChoiceMake/whatdifflabourchoice_20180206_v1.0.0.pdf>.

[86] The Australian government permitted up to 200 workers from Vanuatu to fly to the Northern Territory for the mango harvest, on account of labour shortages within Australia. Employers agreed to pay for the cost of the workers' 14-day quarantine: Kath Sullivan and Matt Brann, 'Federal Government Set to Allow Fruit Pickers from Vanuatu into Australia Despite Coronavirus Border Closure', *ABC News* (31 July 2020) <https://www.abc.net.au/news/2020-07-31/government-vanuatu-pick-fruit-coronavirus-borders/12509316>.

[87] World Bank, *Maximizing the Development Impacts from Temporary Migration: Recommendations for Australia's Seasonal Worker Programme* (World Bank, 2018) 34. <http://documents.worldbank.org/curated/en/572391522153097172/Maximizing-the-development-impacts-from-temporary-migration-recommendations-for-Australia-s-seasonal-worker-program>.

[88] Jesse Doyle and Manohar Sharma, 'Maximising the Development Impacts from Australia's Seasonal Worker Programme', *Devpolicy* blog (29 March 2018) <https://devpolicy.org/maximising-development-impacts-seasonal-worker-programme-20180329/>.

[89] Stephen Howes and Beth Orton, 'For Tonga, Australian Labour Mobility More Important than Aid and Trade Combined', *Devpolicy* blog (21 January 2020) <https://devpolicy.org/for-tonga-australian-labour-mobility-more-important-than-aid-and-trade-combined-20200121/>.

[90] David McKenzie and John Gibson, 'The Development Impact of a Best Practice Seasonal Worker Policy', World Bank Policy Research Working Paper 5488 (November 2010) 18.

[91] World Bank (n 87) 44.

[92] World Bank, *The Social Impacts of Seasonal Migration: Lessons from Australia's Seasonal Worker Programme for Pacific Islanders* (World Bank, 2017) x <http://documents1.worldbank.org/curated/en/816101528777323284/pdf/The-Social-Impacts-of-Seasonal-Migration-Final-Report-P151959.pdf>. See also Nunns, Bedford and Bedford (n 71).

[93] Emma Field and Vanessa Marsh 'Seasonal Workers Program: Push for Full Inquiry after 12 Farm Deaths', *The Courier Mail* (19 December 2017) <http://www.couriermail.com.au/news/queensland/seasonal-workers-program-push-for-full-inquiry-after-12-farm-deaths/news-story/5bbeb1a77625c6fb43467748ccce49ae>.

[94] See Bassina Farbenblum and Laurie Berg, 'Submission 33 to Senate Select Committee on Temporary Migration' (18 March 2020), section II.

[95] Stephen Howes, 'Revisiting the Agricultural Visa', *Devpolicy* blog (3 May 2019) <https://devpolicy.org/revisiting-the-agricultural-visa-20190503/>.

[96] Henry Sherrell, 'More Agricultural Visa by Stealth', *Devpolicy* blog (6 March 2020) <https://devpolicy.org/more-agricultural-visa-by-stealth-2020-03-06/>.

[97] Dufty, Martin and Zhao (n 84) vii.

[98] Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu. This builds on the Northern Australia Worker Pilot Program which enabled recruitment from Kiribati, Nauru and Tuvalu for three-year placements.

[99] Holly Lawton, 'Pacific Labour Scheme: Beefing up Australia's Meat Industry', *Devpolicy* blog (21 February 2020) <https://devpolicy.org/pacific-labour-scheme-beefing-up-australias-meat-industry-20200221/>.

[100] 'Pacific Labour Scheme at a Glance: The Latest Numbers' (accessed 31 July 2020) <https://pacificlabourmobility.com.au/media/>.

[101] Stephen Howes and Holly Lawton, 'The Pacific Labour Scheme: Is It a Flop?', *Devpolicy* blog (29 July 2019) <https://devpolicy.org/the-pacific-labour-scheme-is-it-a-flop-20190729/>.

[102] Stephen Howes, 'The Pacific Labour Scheme: No Families Allowed?', *Devpolicy* blog (23 February 2018) <https://devpolicy.org/pacific-labour-scheme-no-families-allowed-20180223/>.

[103] Lawton (n 99).

[104] See Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, 2012) 36; Richard Bedford and Charlotte Bedford, 'International Migration and Climate Change: A Post-Copenhagen Perspective on Options for Kiribati and Tuvalu' in Bruce Burson (ed), *Climate Change and Migration: South Pacific Perspectives* (Institute of Policy Studies, Wellington, 2010).

[105] Burson and Bedford (n 47) 9.

[106] Ibid.

[107] Department of Home Affairs, 'Australia's Permanent Migration Outcome: The Migration and Child Program, 2017–18' <https://www.homeaffairs.gov.au/research-and-stats/files/report-migration-program-2017-18.pdf>. The remaining 236 places were in the Special Eligibility stream (used for special circumstances, such as permanent residents returning to Australia after a period of time away).

[108] Curtain et al (n 67) 25.

[109] See eg Hugo (n 68) 28; Hein de Haas, 'Migration and Development: A Theoretical Perspective' (2010) 44 *International Migration Review* 227; Dun and Klocker (n 68) 29; Ryan Edwards, 'Thinking about Brain Drain', *Devpolicy* blog (3 September 2019) <https://devpolicy.org/thinking-about-brain-drain-20190903/>.

[110] Catherine Graue, 'Is Australia's Labour Scheme Creating a "Brain Drain" in the Pacific?', *Pacific Beat* (ABC radio, 3 July 2019) <https://www.abc.net.au/radio-australia/programs/pacificbeat/aus-labour-scheme-and-pacific-brain-drain/11273406>; David de la Croix, Frederic Docquier and Maurice Schiff, 'Brain Drain and Economic Performance in Small Island Developing States' in Andrés Artal-Tur, Giovanni Peri and Francisco Requena-Silvente (eds), *The Socio-Economic Impact of Migration Flows: Effects on Trade, Remittances, Output, and the Labour Market* (Springer, 2014).

[111] Curtain et al (n 67) 27. There are 1,100 places for Samoans, and 250 for Fijians, 250 for Tongans, 75 for i-Kiribati and 75 for Tuvaluans.

[112] Ibid, 28.

[113] Deborah McLeod, 'Potential Impacts of Climate Change Migration on Pacific Families Living in New Zealand' in Burson (n 104).

[114] These countries are Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.