



Report of the Petitions Committee

Petition of Makahokovalu Pailate for Pacific Leadership Forum: Provide pathways for overstayers to gain permanent residency in NZ on compassion

March 2022

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Petition of Makahokovalu Pailate for Pacific Leadership Forum

Recommendation

The Petitions Committee has considered the petition of Makahokovalu Pailate for Pacific Leadership Forum—Provide pathways for overstayers to gain permanent residency in NZ on compassion—and recommends that the House take note of this report.

Petition request and our process

The petition was presented to the House on 21 July 2020. It requests:

That the House of Representatives provide pathways for overstayers under compassionate grounds to gain permanent residency in New Zealand.

The Education and Workforce Committee of the 52nd Parliament began considering the petition. The Education and Workforce Committee of the 53rd Parliament resumed consideration and received written submissions from the petitioner and the Ministry of Business, Innovation and Employment. The petition was transferred to us on 20 May 2021. We received further written submissions from the petitioner and the ministry. On 3 November 2021, we also wrote to the Minister of Immigration as part of our process.

On 12 August 2021, we hosted the Pacific Leadership Forum in the Legislative Council Chamber. We acknowledge and thank the dozens of people who came in support of the Pacific Leadership Forum's oral submission. Many of the supporters who filled the chamber travelled to Wellington specially. The ministry also spoke on this day.

Comments from the petitioner

The petition is in the name of Makahokovalu Pailate. Mr Pailate represents the Pacific Leadership Forum, an assembly of independent Pacific organisations and Pacific leaders in New Zealand. Its purpose is to enable Pasifika to live with dignity and fully participate in New Zealand society. It represents communities from Samoa, Fiji, Tonga, Tuvalu, Kiribati, Cook Islands, Solomon Islands, Niue, Tokelau, and Vanuatu.

The petitioner wants there to be pathways for overstayers to gain permanent residence in New Zealand “under compassionate and humanitarian grounds”. The petitioner gives three overarching reasons:

- First, he believes that it would provide relief and stability to overstayers and their families. He believes it would reduce their anxiety and other mental health problems.
- Second, he believes that it would make overstayers less afraid to participate in public health measures against COVID-19, thereby reducing the risk to overstayers and the overall population.
- Third, he believes that it would benefit New Zealand economically to utilise the skills and experiences of overstayers who can work.

Contributions of overstayers

The petitioner said that many overstayers came to New Zealand for a better life. He submitted that many overstayers began with few assets and little wealth but have worked hard for their families in jobs most New Zealanders do not want. Many overstayers work as cleaners, factory workers, caregivers, and labourers. Many were essential frontline workers who continued to work during COVID-19 lockdowns. The petitioner said that well-settled overstayers regard themselves, and their children, as New Zealanders.

The petitioner said that overstayers make important economic contributions. He submitted that overstayers contribute \$32 million a year through GST and \$92 million a year through PAYE tax for an estimated total of \$124 million. Over ten years, the petitioner estimates, overstayers contribute nearly \$1 billion in tax revenue.

The petitioner noted that there are labour shortages in certain sectors because the borders are closed. He said overstayers could make up these shortages if they could gain visas. Similarly, he noted that overstayers could make up for the shortage of tradespeople.

The petitioner said that some of New Zealand's sports stars are children of former overstayers. He also highlighted the important community and church work of overstayers.

COVID-19

The petitioner said that overstayers and their families are particularly vulnerable due to COVID-19. He believes that overstayers are afraid to be tested for COVID-19, to seek medical treatment, or be vaccinated due to their legal status.

According to the petitioner, many overstayers do not access basic services or seek government support because they fear being identified and deported. This is true in regular times, but a particular cause for concern with regards to COVID-19 public health measures. He said it is a huge health risk to have large sections of the community "living in fear and not willing to be tested".

The petitioner submitted that deporting overstayers during the pandemic would be deeply unfair, given the risks posed by COVID-19 and given that many overstayers are well settled. He asks that the kindness that was shown during the pandemic be extended to overstayers.

Dawn Raids and historical context

The petitioner's submissions considered the historical treatment of Pasifika overstayers in New Zealand. The petitioner said it was unfortunate that the term "overstayer" has become synonymous with Pasifika given that the majority of people who remain in New Zealand after their visas have expired are not from the Pacific. This was also true during the 1970s.

The Government formally apologised for the Dawn Raids on 1 August 2021. The petitioner submitted that the Government's apology will not seem genuine unless it is coupled with meaningful action, specifically an amnesty. He said that inaction would disregard the legacy of families who were raided. He said that New Zealand would be behind the United States, which has a pathway to residence and citizenship programme for over 10 million undocumented immigrants.

The petitioner said that overstayers continue to be subject to racism. This includes the mentality that overstayers are "dole bludgers" who steal jobs from New Zealanders.

The petitioner noted that in February 1976, the Pacific community presented a petition to the Minister of Immigration to end the Dawn Raids and grant an amnesty. In April 1976, the Minister announced a three-month amnesty that allowed overstayers to register with the Department of Labour in return for immunity from prosecution. He hopes his petition will have a similar result.

Suggested pathways

The petitioner recommends that:

- there should be a transitional scheme to regularise overstayers
- unfilled Pacific Access Quota visas should be backfilled by overstayers¹
- overstayers should be upskilled to meet current labour market shortages
- whāngai (Māori adoption practice) should be explored as an option for overstayers with established links to iwi.

¹ The Pacific Access Quota is a ballot scheme that invites citizens of Kiribati, Tuvalu, Tonga, and Fiji to apply for residence. It has been suspended since 2020 due to COVID-19.

Comments from the Ministry of Business, Innovation and Employment

The Ministry of Business, Innovation and Employment (MBIE) hosts Immigration New Zealand (INZ). MBIE has some responsibilities for labour market policy, while INZ is responsible for visas and the immigration system.

MBIE acknowledged the harms and risks associated with overstaying. It said it understands why there are calls to address overstaying. It said there is no doubt that overstayers make a real contribution to New Zealand society. It has no doubts that an amnesty would benefit current overstayers.

However, MBIE said it has to consider more than just the current cohort of overstayers. It said it must consider the future effects of granting an amnesty. An amnesty may increase the likelihood of people breaking the law for a chance to live in New Zealand, which would put them at risk of exploitation and other harm. MBIE said it also has to consider how New Zealand is perceived by other countries.

MBIE said that existing options are available to individual overstayers. They include voluntary departure, requesting ministerial intervention, appealing to the Immigration and Protection Tribunal, and applying for a visa as a special case under section 61 of the Immigration Act.

MBIE said that the systemic causes of overstaying have to be addressed in order to reduce the number of overstayers in New Zealand. It said an amnesty would not achieve this.

New Zealand's immigration laws

The Immigration Act 2009 is the overarching piece of legislation that establishes and manages New Zealand's immigration system.² The ministry submitted that New Zealand immigration laws are intended to protect New Zealanders and migrants, and balance New Zealand's national interests and international obligations.

The ministry submitted that the ability to distinguish between citizens and non-citizens is a basic attribute of a country's sovereignty. The Immigration Act requires everyone in New Zealand to either be a citizen or hold a valid visa. Among other things, the Act:

- sets out the requirements foreign nationals must meet and the information they must give to Immigration New Zealand
- provides the grounds for deportation and creates criminal offences relating to immigration
- established the independent Immigration and Protection Tribunal, which hears residence appeals, refugee and protection appeals, and appeals against deportation.

The ministry submitted that the Act is designed to encourage non-New Zealanders to comply with their visa conditions through a framework of decreasing rights and increasing obligations:

² The Immigration Act 2009 can be accessed on the [New Zealand Legislation website](#).

- Non-New Zealanders who are outside the country or lawfully in the country can apply for further visas, but non-New Zealanders with expired visas cannot.
- There is a limited timeframe (up to 28 days after the expiry of a visa) for non-New Zealanders to appeal their deportation.
- Non-New Zealanders who are deported receive a five-year ban from re-entering New Zealand. They must also repay the costs of deportation before they can apply for another visa.
- Non-New Zealanders who are going to be deported but leave voluntarily can apply to have their automatic five-year ban against re-entering New Zealand set aside.

The ministry submitted that the Act's intent is to reduce the level of scrutiny that it places on non-New Zealanders who wish to temporarily enter the country. This scrutiny is replaced by the expectation that people will understand their obligations and leave when their visa expires.

The Act penalises employers who employ people who cannot legally work in New Zealand. This is intended to make overstaying and unlawful work less attractive. Employers can receive a prison sentence if they are found to have exploited their workers.

MBIE submitted that policy settings reinforce this legal framework and its aims. For example, the Recognised Seasonal Employer programme enables further visas to be granted to people who did not overstay a previous visa. Also, overstayers cannot apply for the Samoan Quota Resident Visa or the Pacific Access Category.

Systemic causes of overstaying

The ministry identified various causes of overstaying:

- job opportunities
- family or other social connections
- access to education or healthcare services, which New Zealand provides for free and irrespective of visa status
- inadequate screening of visa applications and travel history
- a belief that an amnesty may be likely in the future
- employers not checking their employee's visa status, either deliberately or because they are unaware of their obligation to do so.

These "pull factors" that the ministry identified align with the reasons given by the petitioner.

There are roughly 14,000 overstayers in New Zealand

As an island nation with no shared borders, New Zealand is more readily able than other countries to identify people who enter its borders. However, the ministry said it is still difficult to provide an exact estimate because of the inherent hidden nature of overstaying. It noted that providing data on overstayers also requires substantial collation.

As at December 2017, MBIE estimates that there were between 13,422 and 14,367 overstayers in New Zealand. These are the ministry's most recent figures. The ministry said

that most overstayers previously held visitor visas. People in their prime working years (between 25 and 44) had the highest likelihood of overstaying. The ministry does not forecast future numbers of anticipated overstayers.

Figure 1: Estimated numbers of overstayers in New Zealand as at December 2017, according to nationality

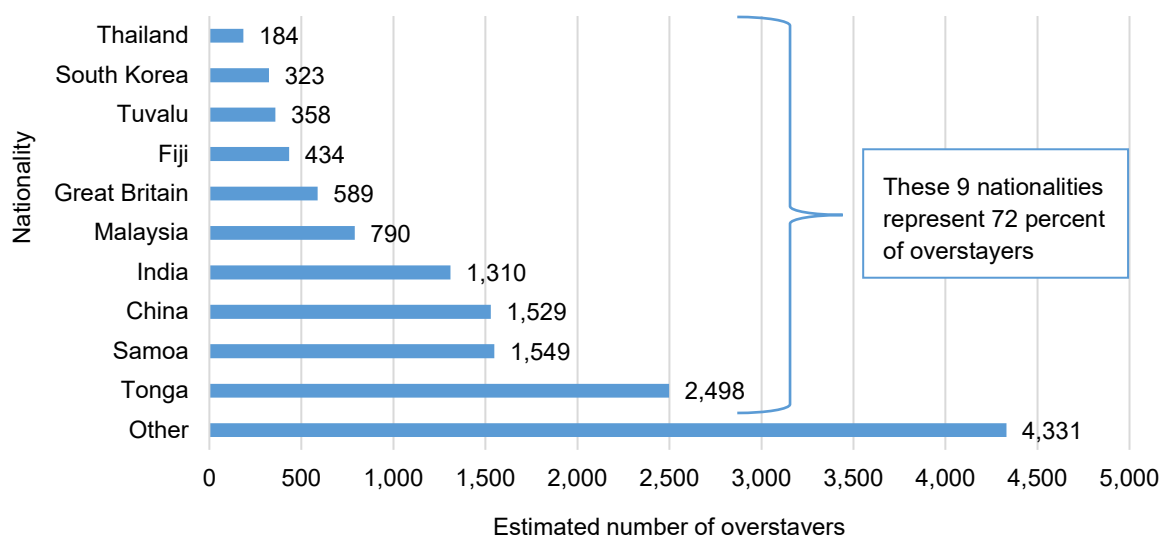


Figure 2: Estimated numbers of overstayers in New Zealand as at December 2017, according to age group

Age group (years)	0-4	5-17	18-24	25-34	35-44	45-64	65-84	85+
Estimated number of overstayers	105	908	1,535	3,525	2,887	3,631	1,209	93

Historical context, amnesties, and their effectiveness

New Zealand Governments have previously offered a number of amnesties, including in the 1970s, the 1980s, and 1991. The most recent amnesty was granted in 2000 and was called the transitional policy. The transitional policy was time-bound and focused on people who were well settled. Eligibility criteria included:

- being in a stable and genuine relationship with a New Zealand citizen or resident
- having a New Zealand-born child
- living in New Zealand continuously for five or more years.

All nationalities were eligible. People who were lawfully in New Zealand on a valid visa were eligible to apply, reflecting the view that they should have the same opportunity to remain as overstayers. However, student visa holders, business visa holders, and asylum claimants were excluded.

The policy provided a two-step pathway to residence. The successful applicants would first receive a two-year probationary permit. If the applicants did not commit a crime and did not receive a benefit during that period, they were granted residence.

By 2008, a total of 5,296 people were approved for residence under the programme. Of those approved, roughly 78 percent were Pasifika and roughly half were unlawfully in New Zealand.

The ministry said that the programme did not significantly decrease the number of overstayers in New Zealand. In October 2000, there were an estimated 20,349 overstayers. By April 2004 there were still an estimated 20,328, despite almost 2,900 overstayers gaining visas under the programme. The ministry said that the constant level of overstayers between 2000 and 2004 may also reflect difficulty in accurately estimating the number of overstayers.

The ministry attributed the decrease in the number of overstayers between 2004 and 2017 to data improvement and increased prevention and removal activity.

MBIE said that amnesties are generally found to be counterproductive in terms of reducing unlawful migration over time. The systemic causes leading to overstaying remain, and others are incentivised to overstay in the future. MBIE cited international studies, in addition to the New Zealand experience from 2000.³

We asked whether MBIE is actively considering an amnesty. The ministry said that issues related to overstayers are currently being considered alongside other immigration settings. MBIE said that any decision to implement an amnesty programme would require careful consideration of the costs and benefits.

MBIE noted that the legislative framework has changed since the 2000 amnesty. It believes that an amnesty would very likely require legislative change that the Government would have to initiate.

The effects of COVID-19 on overstayers

Noting that amnesties have been offered in the past, we asked MBIE whether the COVID-19 pandemic was sufficient justification for another. MBIE said there are a number of complex considerations associated with an amnesty programme. It said that COVID-19 is not necessarily a significant factor in overstaying, so any amnesty programme would not necessarily be targeted towards that issue.

The ministry noted that the Minister of Immigration has exercised his powers to ensure that temporary visa holders stuck in New Zealand because of COVID-19 do not become unlawful. The Minister has extended the visas of those onshore on several occasions and streamlined visa requirements where appropriate.

We asked whether MBIE had any concerns about overstayers not being able to fully participate in the COVID-19 public health response. The ministry said it is confident that the health response has not created barriers to access. It noted that testing and treatment is free to all people in New Zealand, irrespective of immigration status. It emphasised that testing and treatment is in complete confidence and that no information is given to Immigration New

³ The international studies that MBIE cited were: Levinson, A. (2005), The regularisation of undocumented migrants: Literature survey and country case studies. Oxford: Centre on Migration, Policy and Society (COMPASS); and Sunderhaus, S. (2007), Regularization programs for undocumented migrants, Migrant Letters, 4, pp 65-76.

Zealand or other government agencies. The ministry said it believes this has been communicated clearly to the public through Ministry of Health messaging.

Exploitation

MBIE acknowledged that overstayers are at greater risk of exploitation by unscrupulous employers. It said that overstayers are often hesitant to use the existing mechanisms and protections for exploited workers because they fear deportation.

MBIE said that work is under way that aims to eliminate migrant exploitation, regardless of immigration status. For example, Immigration New Zealand has introduced the Migrant Exploitation Protection Work Visa. The intent behind this visa is to ensure that exploited workers do not lose their immigration status unfairly as a result of their employer's actions. Also, Employment New Zealand has a reporting form and dedicated helpline (0800 200 088) to enable all migrants who are being exploited to make a report regardless of legal status. They are then referred to other government services.

We note that the Education and Workforce Committee has an active inquiry into migrant exploitation. Amongst other things, the inquiry will investigate the scale of migrant exploitation in New Zealand, the effects on migrants and their families, and possible solutions. We await the final inquiry report with interest.

Pacific Access Quota and Samoan Quota Resident Visa

The Pacific Access Quota and the Samoan Quota Resident Visa are residence pathways specifically for people from Pacific nations. Under both schemes, people are drawn from a ballot and then invited to apply for New Zealand residence. Each year, 1,100 places are available under the Samoan Quota. Under the Pacific Access Quota, there are spaces for 75 Kiribati citizens, 75 Tuvaluan citizens, 250 Tongan citizens, and 250 Fijian citizens.

The Pacific Access Category and Samoan Quota ballots were not drawn for 2020 and 2021 due to COVID-19. MBIE said that under the current Act it cannot legally grant residence to people when there is no prospect of border entry. This is why these schemes were put on hold.

The total number of unfilled places in those ballots for 2020 and 2021 is 3,500. One of the petitioner's recommendations is to make those unfilled places available to overstayers. MBIE said that the Minister could decide to spread the unfilled places across future years. However, overstayers cannot apply for a visa while they are unlawfully in the country, so the unfilled spots could not go to them without changes to the scheme.

Comments from the Minister of Immigration

We also invited the Minister of Immigration to make a submission on this petition. We wrote to him on 3 November 2021. He replied on 26 November.⁴

The Minister said that New Zealand has a special relationship with Pacific nations because of “enduring whakapapa connections” and strategic positioning in the Pacific region. He noted the Government’s Pacific Reset, which emphasises strong relationships with Pacific nations. He said that to support the Pacific Reset, MBIE is undertaking a review of immigration policy settings as they relate to Pasifika.

While noting that no one is exempt from the legal obligation to hold a valid visa, the Minister acknowledged that overstayers often have compelling personal reasons for remaining in New Zealand. He said many overstayers are well settled, have their family here, and contribute to the economy.

However, the Minister said that while an amnesty for overstayers would reduce their vulnerability, it would not resolve the systemic factors that contribute to overstaying. He said MBIE is exploring issues related to overstayers alongside other immigration settings. This work will be part of the Government’s immigration rebalance.

The Minister noted that there are special residence pathways for Pasifika, including the Pacific Access category and Samoan Quota scheme. We note that these schemes remain suspended due to COVID-19. The Minister said that Immigration New Zealand is processing applications that were made in 2019.

The Minister’s letter also addressed COVID-19. He said he wanted the petitioner to be assured that the Government is focused on ensuring testing, vaccination, and treatment is accessible to all Pasifika in New Zealand, including overstayers. He reiterated MBIE’s comments that overstayers are eligible for testing and vaccinations regardless of visa and citizenship status, and that their information will be kept confidential and will not be given to Immigration New Zealand.

Finally, the Minister acknowledged the work of the Pacific Leadership Forum in establishing the Pacific Response Coordination Team to support the Government’s response to COVID-19. He thanked the Forum for its written and oral submissions.

⁴ The Minister’s full letter can be accessed on the [Parliament website](#).

2022 Hunga Tonga eruption and tsunami

In December 2021, the Hunga Tonga–Hunga Ha’apai submarine volcano began erupting. Hunga Tonga is 65km north of Tongatapu, Tonga’s main island. The eruption came to a climax on 15 January 2022. It caused a tsunami, which in turn caused extensive damage to Tongan homes and infrastructure. Five people died, and many others were injured.

On 8 February 2022, the petitioner wrote to us about the eruption. He noted that nearly 2,500 of the roughly 14,000 overstayers in New Zealand are Tongan. He asked that they be allowed to remain in New Zealand, saying that if they were to be deported, it would further stress Tonga’s infrastructure. He said most would have no home to return to. He asks that the Government urgently give Tongan overstayers a pathway to work and live legally in New Zealand.

We note that the Government has announced \$3 million in humanitarian funding for Tonga.⁵ The Minister of Foreign Affairs said that this money would provide crucial supplies (such as drinking water and food) as well as engineering equipment and tools to clear debris. The HMNZS *Canterbury* was sent from Devonport to deliver these supplies. Deliveries have been contactless in accordance with Tonga’s COVID-19 protocols. Those involved in the relief efforts have undergone testing before departure, and while on deployment.

We urge the Government to continue to support Tonga through its recovery.

Our response to the petition

We thank Makahokovalu Pailate and the Pacific Leadership Forum for their petition. We again acknowledge and thank the attendees of our talanoa in the Legislative Council Chamber.

As the Minister of Immigration said, there are often compelling personal reasons that motivate people to overstay their visa. We acknowledge that overstayers make important contributions to society, are often well settled, and have deep ties to their families and communities in New Zealand. Overstayers often work as frontline workers who have played an important role in the COVID-19 pandemic.

However, we note MBIE’s comments that an amnesty will not address the systemic factors that lead to overstaying and may not lead to an overall reduction in the number of overstayers. We believe the Government’s efforts should be focused on mitigating those systemic causes.

We encourage the Minister of Immigration to reflect on the Pacific Access Quota and the Samoan Quota Resident Visa as part of the immigration rebalance.

We would like to encourage the Education and Workforce Committee to thoroughly consider the issues raised by the Pacific Leadership Forum. We note that, in addition to its inquiry into migrant exploitation, it also has two immigration-related briefings open. The first briefing is into the 2020/21 performance and current operations of Immigration New Zealand. The

⁵ The Government’s announcement of \$3 million for Tonga can be accessed on the [Beehive website](#).

second briefing is on undocumented Tuvaluans in Auckland. We intend to write to the Education and Workforce Committee and will attach a copy of this report.

Green Party differing view

The Green Party supports introducing a broad amnesty for overstayers, particularly ahead of the reforms to our immigration system signalled by the Government.

We agree with the Pacific Leadership Forum that the unique challenges and disruption posed to overstayers by COVID-19, including limited access to public services, justify providing an opportunity for overstayers to gain legal status.

We recognise the significant risk of migrant exploitation faced by overstayers in Aotearoa, and the lack of protections and recourse available for victims of migrant exploitation without legal status.

We agree with the petitioners that the historic Government apology for the Dawn Raids should be backed up with action, including the introduction of long-term pathways to residence and a broad amnesty for overstayers. We note the 2021 Resident Visa provides a pathway to residence for some migrants, and support this being expanded to all migrants currently in New Zealand, recognising the exceptional circumstances of the past two years. Introducing a broad amnesty programme does not preclude the Government reforming our immigration system to mitigate the systemic causes of overstaying, and would give overstayers security throughout these immigration reforms.

We also agree with the petitioner's letter that overstayers from Tonga should be allowed to remain in Aotearoa due to the 2022 Hunga Tonga–Hunga Ha'apai eruption and tsunami. Providing security for people to remain in Aotearoa when there are disasters or conflict in their homelands should become standard policy, particularly as the Pacific faces more climate change driven disasters.

Appendix

Committee procedure

The petition was referred to the Education and Workforce Committee of the 52nd Parliament. The petition was reinstated with the Education and Workforce Committee of the 53rd Parliament. It received written submissions from the petitioner and the Ministry of Business, Innovation and Employment.

The petition was referred to us on 20 May 2021. We met between that date and 17 March 2022 to consider it. We received further written submissions from the petitioner, the Ministry of Business, Innovation and Employment, and the Minister of Immigration. We heard oral evidence from the petitioner and the ministry on 12 August 2021.

Committee members

Hon Jacqui Dean (Chairperson)
Rachel Boyack
Dr Liz Craig
Shanan Halbert
Nicole McKee
Todd Muller
Teanau Tuiono

Evidence received

The documents we received as evidence in relation to this petition are available on the Parliament website, www.parliament.nz.

Recording of our hearing

Our hearing with the petitioner and the ministry can be accessed on the [Parliament Vimeo webpage](#).