

## **People trafficking and migrant smuggling**

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## Summary

This section contains the following topics:

- Introduction
- Purpose
- Health and safety duties
  - Maximising safety and minimising risk
  - Health and safety should be an everyday conversation

## Introduction

The offences of people trafficking and migrant smuggling are dealt with together in this chapter in order to avoid any confusion, by drawing distinctions between the two offences.

The terms people trafficking and migrant smuggling are often confused and used interchangeably by other agencies. People trafficking and migrant smuggling are also known as 'human trafficking' and 'people smuggling' respectively.

Migrant smuggling involves a person who has freely consented to be brought into New Zealand as an illegal immigrant and is not subjected to coercion or deception. People trafficking, on the other hand involves a person who is brought into New Zealand by means of coercion and/or deception. People are often trafficked in order to exploit them in the destination country, e.g. as forced labour, for removal of their organs or most commonly, for sexual exploitation.

In 2000, a protocol to prevent, suppress and punish the trafficking of people, especially women and children, was added to the United Nations convention against trans-national organised crime. New Zealand ratified this protocol in 2002.

A New Zealand Inter-Agency Working Group on people trafficking was set up in 2006 and through this Working Group, agencies agreed to implement various anti-trafficking initiatives. As a result, in July 2009 the New Zealand Government released a [Plan of Action to Prevent People Trafficking](#).

Each agency has roles as defined in the Plan of Action to Prevent People Trafficking. The Ministry of Business, Innovation and Employment (MBIE) will continue to lead the New Zealand Government's anti-trafficking efforts and coordinate the Plan of Action. Under the plan, the responsibilities of New Zealand Police are divided into three areas of Prevention, Protection and Prosecution. Where a case of suspected people trafficking is identified, as defined by section [98D](#) of the Crimes Act 1961, Police will lead the investigation and any resultant prosecutions.

## Purpose

The purpose of this chapter is to detail Police responsibilities in respect of:

- **migrant smuggling offences,**
- and
- **people trafficking offences.**

## Health and safety duties

### Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk at work is the responsibility of all Police employees and persons engaged by Police to provide a service including contractors and their employees, trainees, interns and volunteers. It is delivered through meeting the obligations under the [Health and Safety at Work Act 2015](#) and Police safety policies.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

The expectation of the Commissioner and the Act is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given in order to comply with the [Health and Safety at Work Act 2015](#) or regulations under that Act. They will co-operate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to them and take immediate action to stop any perceived or potential breach of the act or if impractical, immediately report the matter to a

supervisor.

## **Health and safety should be an everyday conversation**

Relevant Police instructions include:

- [Hazard management](#)
- [Health, safety and wellbeing](#)
- this chapter in relation to the safe investigation procedures into people trafficking and migrant smuggling.

## Defining the crimes

### People trafficking

'People trafficking' is a serious trans-national crime that abuses the human rights of its victims. It involves a person being brought into New Zealand by means of coercion and/or deception, for gain. People are often trafficked for exploitation in the destination country, such as forced labour, the removal of organs or (most commonly detected) sexual exploitation. The victim of the offence is the person who has been trafficked. Section [98D](#) of the Crimes Act 1961 refers.

### Migrant smuggling

The smuggling of migrants involves a person being brought illegally into New Zealand for financial or other gain. The smuggled person is not subjected to coercion or deception and freely consents to being brought into this country. The migrants' entry into New Zealand is contrary to immigration laws; therefore the unlawful migrant is considered a willing party to the offence of migrant smuggling and is liable under section [98C](#) of the Crimes Act 1961. The victim of the offence is the state.

**Notes:** When dealing with what appears to be a case of migrant smuggling, abduction, kidnap, family violence, immigration offence, money laundering, sexual abuse or extortion, it is important that victims of people trafficking are properly identified and certified by Police in accordance with the government Plan of Action as they have unique humanitarian and protection needs, unlike migrants who are willingly smuggled.

### Other related definitions of terms

Other terms used in people trafficking and migrant smuggling legislation are defined by section [98B](#) of the Crimes Act 1961.

### Differences between people trafficking and migrant smuggling

This table explains the key differences between people trafficking and migrant smuggling.

| Issue  | People trafficking   | Migrant smuggling  |
|--|--|--|
| <b>Consent</b>   | Consent is absent. Any consent obtained for movement of the victim is negated by the force, coercion, deception, fraud or force used to obtain it.   | Consent is present. The person who is smuggled freely gives consent to being moved.  |
| <b>Purpose of the travel or movement</b>                       | Exploitation based - of a victims' sexuality, labour or organs, for profit or gain.  | Transportation based - for profit.   |
| <b>Relationship between the person moved, and the mover(s)</b> | <b>Victim - Exploiter</b><br>Long-term relationship. The victim remains under the control of the traffickers beyond completion of the movement. The initial facilitator may only be one link in a chain. | <b>Buyer- Supplier</b><br>Short-term relationship which terminates on completion of the movement (i.e. once the person is moved into the destination country). |
| <b>Violence, intimidation or coercion</b>                      | Characteristic of trafficking and necessary to maintain the victim in an exploitative situation.   | Unlikely, but may be incidental to the movement of the individual. Common issues include lack of care, overcrowding or minimum safety considerations.          |
| <b>Liberty</b>   | Often deprived / severely compromised.   | Compromised only to the extent necessary for successful movement. Generally not severely so.   |
| <b>Profit</b>  | Primarily derived from ongoing exploitation of the victim.   | Solely derived as payment for the movement of the individual, from that person or their sponsor.   |

### Transitional crimes

The status of some who commence their journey to New Zealand as willing smuggled migrants, may change to that of victims of people trafficking, where the actions of those responsible for facilitating travel or providing transportation take on the characteristics

of people trafficking, before the migrant enters New Zealand.

Traffickers may deceive victims into travelling, for example by lying to the victim about the true purpose of their travel. Such victims may appear to be willing unlawful migrants free from any coercion and ostensibly acting of their own accord, until they learn the traffickers' true exploitative purpose for their journey.

To be a victim of people trafficking, their entry into New Zealand must have been arranged by either coercion or deception. Accordingly, people trafficking offences can only occur as a cross-border/trans-national offence, i.e. it cannot be committed against an unlawful migrant after they have entered New Zealand. Any coercion or deception used towards a migrant who has already entered New Zealand will not amount to people trafficking, but may be evidence of offences covered by other domestic legislative tools such as abduction or kidnap.

## Migrant smuggling - definition

### Penalty

The offence of migrant smuggling under section [98C](#) of the Crimes Act 1961 is punishable by imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

This table details the ingredients for the offence of migrant smuggling.

| Ingredient  | Definition   |
|---|--|
| Arranges for a person   | 'Arranges' includes acts such as: <ul style="list-style-type: none"> <li>- carries to a state; or</li> <li>- recruits for bringing to a state; or</li> <li>- organises or procures the bringing to a state.</li> </ul> <p><b>Note:</b> In this context, 'procure' means 'facilitate' or 'enable'.</p>  |
| To either: <ul style="list-style-type: none"> <li>i. enter New Zealand or any other country; or</li> <li>ii. be brought to New Zealand or any other country.</li> </ul> | (i) The offence is complete when the arrangement is made; it does not matter that the migrant never enters New Zealand, or the other country.<br><br>(ii) The offence is complete when the arrangement is made; it does not matter that the migrant is never brought to New Zealand, or the other country.   |
| For a material benefit  | No prescribed legal definition.  |
| Either knowing, or being reckless as to whether the person is   | The accused must either know that the person whose entry is arranged is unlawful or must be reckless as to that status. As to knowledge, refer CA20.20-22. The standard of required for this offence is subjective recklessness therefore it will not be sufficient for this offence that the accused was negligent or careless in not establishing that a would-be migrant was authorised. An arrangement made under a mistaken belief (especially one induced by the migrant) that the migrant is authorised will not be an offence, refer CA20.23-30. |
| An unlawful migrant   | An 'unlawful' or unauthorised migrant means a person who is neither a citizen of the state nor in possession of all the documents required by or under the law of the state for the person's lawful entry into the state.  |



## Investigative response - migrant smuggling

Migrants smuggled into the New Zealand by air or sea travel may be moved individually or in small numbers. They may also be transported in larger numbers, most likely by sea.

### Suspected unlawful migrant smuggling - (individuals or small groups)

Unlawful migrants smuggled individually or in small numbers may have superficially legitimate documentation, or they may have destroyed them en route. This table provides guidance on the steps to follow when Police encounter them.

| Step | Action   |
|------|--|
| 1    | Make enquiries without alerting either: <ul style="list-style-type: none"> <li>- the person suspected of being an unlawful migrant; or</li> <li>- any person(s) suspected of having arranged for the person to be brought to or to enter New Zealand.</li> </ul>   |
| 2    | Where it is necessary to do so, for example to prevent the person from evading prosecution, arrest: <ul style="list-style-type: none"> <li>- the person suspected of being an unlawful migrant; and/or</li> <li>- any person(s) suspected of having arranged for the person to be brought to or to enter New Zealand.</li> </ul>           |
| 3    | Advise the on-duty or on-call member of the Criminal Investigation Branch ( <a href="#">CIB</a> ), as appropriate.   |
| 4    | Advise the New Zealand Immigration Service. Where an arrest is made of an individual born outside New Zealand, a copy of the name, date of birth, gender, address, contact telephone numbers, charges and arresting officer details must be forwarded to New Zealand Immigration Service for investigation as to their immigration status. |
| 5    | Advise the Interpol office at <a href="#">PNHQ</a> .   |
| 6    | Investigate those responsible for smuggling the unlawful migrant by following the investigation steps in ' <a href="#">People trafficking</a> '.   |

### Suspected illegal entry vessel smuggling (mass arrivals)

New Zealand is geographically distant from the likely countries of origin of most refugees and it is unlikely a ship from such a country would reach New Zealand's shores without first refuelling. There are human rights issues involved in the prolonged detention and possible prosecution of significant numbers of smuggled migrants who may claim asylum. The response by Customs, Immigration and Police to the arrival in New Zealand of large numbers of unlawful migrants would therefore be a politically sensitive situation and would be subject to special procedures from a Customs, Immigration and Police perspective.

The New Zealand Customs Service is the operational lead agency for the interdiction of an identified vessel carrying sea-borne illegal migrants. The responsibilities of respective agencies are outlined below in respect of either a confirmed or suspected venture of migrant smuggling. Any such response strategy must take full account of the Mass Arrivals of Potentially Illegal Immigrants Response Manual published by the Department of the Prime Minister and Cabinet. For access to this manual, contact the National Criminal Investigations Group at [PNHQ](#).

#### Within international waters

The lead agency will be the New Zealand Customs Service. New Zealand Police involvement will be determined in consultation with other agencies and may include contributing to intelligence reports.

Where a foreign government intervenes to stop a vessel, New Zealand Police, in conjunction with Crown Law and MFAT, will liaise with the appropriate authorities to consider whether a criminal investigation should be undertaken.

Where a criminal investigation is supported by the foreign government, in liaison with local law enforcement agencies, priorities include:

- mutual assistance requests, via Crown Law
- securing the vessel and its' contents for forensic examination, under an appropriate legal authority

- obtaining access to suspects for interviews
- separating suspects from witnesses
- restricting the movement of potential illegal immigrants around the vessel, to preserve evidence.

When you investigate and gather evidence, you must abide by New Zealand criminal court rules for admissibility of evidence.

### **Within New Zealand territorial waters**

The New Zealand Customs Service is the lead agency for all matters within territorial waters. However, Police will contribute toward intelligence and where a craft demonstrates non-compliance with New Zealand authorities. Police may also contribute toward the process of deciding whether and how to board a vessel and to which quarantine anchorage it will be taken.

Vessels can be boarded without prior notice or permission within 24 nautical miles from shore. In cases of foreign flagged vessels, the flag state's permission is required outside the 24 nautical mile line. Within the contiguous zone which extends between 12 and 24 nautical miles from shore, Police powers are limited to those they may exercise as designated Customs officers. Police are only afforded full powers, protections and legislative authority within territorial waters, i.e. 12 nautical miles from shore.

#### **s.6(c) OIA**

The New Zealand Customs Service determines the degree of border control processing required (i.e. bio-security, environmental security and medical screening) and whether particular procedures will be conducted onboard the vessel or delayed until the vessel is berthed.

On request from Customs/ Immigration New Zealand, Police will assist to secure the crew and passengers using the Police [Mass arrest planning](#)' model.

In conjunction with the New Zealand Customs Service, Ministry for Primary Industries (Fishing & Agriculture) and the NZ Immigration Service, Police may assist with border control processing including searching of the vessel, crew and passengers (including all cargo and belongings).

### **Securing vessel as a crime scene**

It is imperative Police secure the craft as a crime scene using a Search and Surveillance Act search warrant.

**Note:** Such a warrant may not be obtained to be executed within the contiguous zone. Any documents and other evidence relating to the unlawful arrival of the vessel, its crew and passengers must be secured and any offences under New Zealand domestic legislation investigated. Police will be responsible for maintaining control of the vessel and obtaining authority for its seizure, relocation and disposal.

Under Immigration Act powers, Police may hold illegal migrants in custody pending completion of immigration processing and deliver detainees to designated places of containment in accordance with any warrants of commitment.

On completion of the disembarkation process, Police must:

- coordinate activities with Immigration and Customs
- locate and detain illegal migrants as soon as possible after they have been detected
- apprehend anyone seeking to evade immigration procedures
- initiating standard Police mass arrest processing procedures to record the identity of migrants and assess their risk
- investigate and obtain evidence for criminal prosecutions.

## New Zealand Immigration Service

The New Zealand Immigration Service is the lead agency for:

- all individuals refused entry to New Zealand; and
- all removals from New Zealand.

On request of the New Zealand Immigration Service Police must expediently carry out all possible inquiries, nationally and internationally, to obtain information that will assist the New Zealand Immigration Service to make a determination of whether the person is unlawfully in New Zealand, as defined by section [115](#) Immigration Act 2009.

Together with New Zealand Immigration Service, Police must:

- activate own agency border / mass arrival response plans
- investigate and organise a suitable facility for immigration assessment
- ensure all cultural, health and safety aspects are addressed to a high standard.

The final decision in respect of the disposition of investigations referred to Police by the New Zealand Immigration Service rests with Police. Refer: New Zealand Immigration Service [MOU](#).

## Police powers of entry and search

Sections [466](#) and [293](#) Immigration Act 2009 empower constables to exercise the powers of Immigration Officers e.g. to enter and search aircraft, ships or buildings when they believe on reasonable grounds this is necessary to detect offences against the Immigration Act 2009 or to apprehend a person who is unlawfully in New Zealand. The different powers conferred by sections of the act are summarised below:

- [278](#) - Powers of entry and inspection relating to records of education providers.
- [283](#) - Powers at borders.
- [284](#) - Power of entry and search of craft.
- [285](#) - Power of entry and search at border place.
- [286](#) - Powers of entry and search relating to deportation.
- [287](#) - Special powers pending deportation or turnaround.

Police may encounter unlawful migrants in one of three situations, i.e.:

- when the person has been refused entry to New Zealand; or
- when they are subject to a removal order or deportation order, or
- when large numbers of unlawful migrants enter New Zealand either with or without permission, as part of a mass arrival. Refer '[Suspected illegal entry vessel smuggling \(mass arrivals\)](#)'.

## Persons refused entry to New Zealand

Means someone who arrived in New Zealand from another country and who is required to have an immigration permit, but has failed to meet entry requirements because they:

- failed to apply for a permit in the prescribed manner; or
- are refused a permit; or
- are a stowaway; or
- are a person whose permit has been revoked by an Immigration Officer.

## Persons subject to a removal order or deportation order

For the purposes of serving or executing under the Immigration Act 2009 means any person who is subject to:

- any removal order or deportation order or any copy of such an order; or
- a warrant of commitment; or
- a removal warrant.

Police acting in support of the Immigration Service must follow the process which is outlined in the Memorandum of Understanding between Police and Immigration Service, [Annex 1: Execution of removal orders, removal procedures, deportation orders and process](#).

## Power of arrest - migrant smuggling

Section [98C](#) of the Crimes Act 1961 empowers Police to arrest and detain any person without warrant, who they have good cause to suspect of having committed migrant smuggling.

The New Zealand Courts have jurisdiction over criminal conduct entirely performed outside New Zealand by section [7A](#) of the Crimes Act 1961, including:

- migrant smuggling
- trafficking in people (or active participation in a group engaged in such offences)
- dealings with young persons with a view to their exploitation sexually, or for forced labour, or by the removal of body parts.

The prior consent of the Attorney-General is required to prosecute an offence of people trafficking or migrant smuggling against sections [98C](#) or [98D](#). Section [98F](#) of the Crimes Act 1961 refers.

## Power of arrest - Immigration Act 2009

Under section [313](#) Immigration Act 2009, a constable may, and, if requested by an immigration officer, must, for a purpose set out in section [310](#), arrest a person without warrant and detain them in custody.

### Persons liable to arrest

Under section [309](#) Police may arrest any person who:

- is liable for turnaround or deportation
- is suspected to be liable for turnaround or deportation but who fails to supply satisfactory evidence of their identity when requested under section [280](#) of the Immigration Act 2009
- on reasonable grounds, is suspected of constituting a threat or risk to security.

### Purpose of arrest

The reasons Police may exercise their power of arrest under section [313](#) are for any of the specified in section [310](#) Immigration Act 2009, namely:

- to place the person on the first available craft leaving New Zealand
- to detain the person pending the making of a deportation order
- to detain the person pending satisfactory establishment of their identity.

**Note:** The person arrested may only be detained as long as necessary to achieve the purpose of the arrest and detention, and must not be detained for more than 96 hours.

### Following an arrest

Following any arrest made under section [313](#):

- the constable or immigration officer will serve a deportation order on the detainee
- the constable will endorse the time of arrest on the order and provide copies to the arrestee and immigration officer
- if required, the person will be taken to a Police station, where they will be interviewed by the immigration officer
- Immigration New Zealand will arrange for the person's departure from New Zealand, or if this is not possible within 96 hours of the initial arrest and detention, arrange for the person to be brought before a District Court Judge to be detained under a warrant of commitment, or released on conditions.

For information on how to deal with people in New Zealand who are in breach of immigration laws, see the '[People unlawfully in New Zealand](#)' chapter.

**Note:** For guidance on dealing with migrants who are smuggled voluntarily who fraudulently claim to be the victim of people trafficking, refer to '[Immigration fraud](#)' in this chapter.

# People trafficking

## Objectives

The objectives of a people trafficking investigation are to:

- recognise and address the humanitarian needs of adult and child victims who are likely to be suffering the effects of trauma, abuse and exploitation
- enable victims to assist the Police investigation of their case
- enable trafficking offenders to be successfully prosecuted, thereby deterring/preventing further offending.

## International issues

People trafficking offences involve international dimensions and may involve enquiries overseas. All requests to obtain information from overseas for a criminal investigation and the provision of investigative assistance between the New Zealand Police and other overseas law enforcement agencies must be sent to Interpol Wellington. Interpol provide 24 hour advice and assistance via [PNHQ](#) on telephone numbers listed on the Interpol intranet site.

**Note:** Where enquiries are conducted by overseas authorities on behalf of New Zealand Police in relation to a prosecution based in New Zealand, any documentation used and the standard to which the enquiry is conducted must be appropriate to meet the admissibility requirements of a New Zealand court. In particular, it is vitally important to secure as soon as possible, any vessel used to transport victims of people trafficking, as a crime scene. For guidance, refer to the '[Mass arrivals](#)' section of this chapter.

## Multi-agency approach

Victims of people trafficking have immediate and varied needs for safety and support, which need to be addressed almost simultaneously. A multi agency and whole-of-government approach to the investigation and management of people trafficking cases is essential to enhance the protection of victims, accountability of offenders, and serve as a deterrent to future traffickers. This approach should include other relevant government agencies, appropriate Non Government Organisations (NGOs), community partners and overseas agencies. They should be involved at the earliest stage possible.

Government agency members of the people trafficking Inter-Agency Working Group are:

- [Ministry of Business, Innovation and Employment \(MBIE\)](#) (lead agency)
- New Zealand Immigration Service (See - [Police and New Zealand Immigration Service MOU](#))
- [Ministry of Social Development](#)(MSD)
- [Ministry of Health](#) (MOH)
- [Ministry of Justice](#) (MOJ)
- [New Zealand Customs Service](#)
- [Ministry of Women's Affairs](#)
- [Ministry of Foreign Affairs and Trade](#) (MFAT)
- [Department of Prime Minister and Cabinet](#)
- New Zealand Police.

## Information sharing

As criminal groups diversify into areas of offending such as people trafficking that are the responsibility and interest of a wide range of government agencies, inter agency co-operation is increasingly important. A vital component of such co-operation is the effective and timely exchange of information between Police and other government agencies. This is appropriate and necessary to combat organised, trans-national, complex, and other crime that impacts upon New Zealand and New Zealand's interests.

Any exchanges of information between agencies must follow the provisions of the [Privacy Act 2020](#) and the Official Information Act 1982 (OIA). The main consideration for assessing the privacy interest associated with a request for information is Information Privacy Principle 11 in section [6](#) of the Privacy Act 2020.

## Identifying people trafficking

Front line constables are the eyes and ears of Police. It is they who attend incidents and develop knowledge of the individuals and

groups within the communities they police.

## Indicators

The following are indicators of people trafficking situations. These facts may be established by either observing or asking questions of the victim:

- **Age:** Generally, the older the person is, the less likely it is that the case involves trafficking. This is particularly so in sexual exploitation cases as there is little 'client demand' for older people. Similarly labour exploitation targets younger victims who are more productive.
- **Gender:** Sex trafficking predominantly affects females.
- Live in poor or substandard **accommodation**.
- Unusually **high security around premises**, designed more to keep persons inside rather than out (e.g. locks on outside of doors).
- **Brothels** advertising 'exotic' women.
- **Prostitutes**, workers or cooks working in brothels or other workplaces who:
  - do not speak English
  - have an unusual fear of authorities
  - are withdrawn when spoken to (e.g. avoid eye contact/avoid answering questions)
  - live at their place of work
  - another person observes them or speaks on their behalf
  - answer questions as though the answers were prepared in advance
  - are never seen outside the work environment or brothel, or never seen alone
  - are subject to control over their movements
  - work excessive hours with no time off for sightseeing / shopping etc
  - are without identification documents or their documents are held by another
  - do not know their banking details / immigration status etc
  - have no communication with their country of origin
  - have no friends, family or contacts in New Zealand
  - have a debt, particularly to their employer, often having engaged in a contract or loan to cover their initial costs
  - have limited practical clothing and possessions
  - have vague travel plans and little knowledge about New Zealand
  - have items of baggage that are not consistent with their purpose of travel
  - have travelled extensively to countries considered high risk of sex workers
  - signs of emotional distress, physical neglect or substance abuse.

## Investigative structure

The investigative options must reflect the three components of trafficking; geographic, structural and commercial.

### Geographic

|                        |                            |
|------------------------|----------------------------|
| Country of origin      | recruitment and export     |
| Country of transit     | transportation             |
| Country of destination | reception and exploitation |

Within these three geographic divisions, traffickers must necessarily become involved in one or more of the following structural activities.

### Structural

|                              |   |
|------------------------------|---|
| Advertising                  | as part of the recruitment or later exploitation and profit making process                                      |
| Renting /purchasing premises | premises purchased or rented to be used as 'safe houses' and/or brothels  |
| transportation               | identity and travel documents - transit process, whether legal or unlawful                                      |
| Communications               | across the recruitment, exploitation and profit channels  |
| Financial transactions       | applicable to all above processes in which funds and profits are secured. See 'Commercial' section, next below. |

**Commercial**

|  |   |
|--|---|
| Applicable to all geographic and structural components | <p>Financial investigation has a key role in successful investigation of people trafficking. Financial aspects of people trafficking are present in at least two key aspects:</p> <p>1. The crime primarily concerns money and people engaged in people trafficking crimes must become involved in financial activities, for example:</p> <ul style="list-style-type: none"> <li>- initial investment to create infrastructure</li> <li>- costs of delivering people for exploitation</li> <li>- ongoing costs of managing the exploitation process and proceeds</li> <li>- laundering and moving profits.</li> </ul> <p>2. People trafficking crimes take time to establish / develop and become a lifestyle crime. Other aspects of the offender's lifestyle, such as the mode of travel, expenditure on luxury items such as cars and jewellery, and leisure activities will point toward the offenders illegitimate revenues.</p> |
|--|---|

**Note:** When a criminal investigation is conducted into people trafficking offences, a parallel financial crime investigation should also take place. The Financial Crime Group including Asset Recovery Units should be consulted.

**Investigative approaches**

Depending upon the specific features of each case, the investigative approach options for this crime-type broadly fall into three categories of Reactive investigation, Proactive investigation and Disruption investigation.

|  |  |
|--|--|
| <p><b>Reactive investigation</b></p>   | <p>Victim led and often initiated by an approach to Police by the victim or another person acting on behalf of the victim.</p> <ul style="list-style-type: none"> <li>- Is there any requirement to act immediately?</li> <li>- Have any witnesses been identified?</li> <li>- If so, are they willing to support the investigation and give evidence?</li> <li>- Is it safe for them to give evidence?</li> <li>- Does any evidence exist to corroborate the alleged crime?</li> <li>- Is witness protection required?</li> </ul>   |
| <p><b>Proactive investigation</b></p>  | <p>Police led. A combination of standard investigation techniques supplemented by intelligence resources to identify and locate the traffickers, gather evidence and instigate proceedings against them.</p> <p>s.6(c) OIA</p>   |
| <p><b>Disruption investigation</b></p> | <p>Particularly appropriate in cases where:</p> <ul style="list-style-type: none"> <li>- the level of risk to victim or other person(s) demands an immediate response</li> <li>- there is a need to address an identified problem quickly</li> <li>- pro-active and reactive approaches are not practicable options</li> <li>- legislation precludes the use of proactive tactics.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- Not a long term solution</li> <li>- May simply displace the problem to another location</li> <li>- May not cause the problem to cease but drive it 'under ground' by causing offenders to become more discreet</li> <li>- Use of a multi-agency approach is recommended.</li> </ul> |



## Victims

It would be difficult to overstate the critical role of victim liaison in the successful investigation of people trafficking. International experience has shown that securing successful prosecutions against traffickers relies heavily on victim / witness statements. It is therefore essential victims feel empowered to participate in the criminal justice process.

### Victim profiles

People traffickers exploit the vulnerabilities of their victims, those who are vulnerable to human trafficking because:

- they started out believing they were to be smuggled as illegal migrants
- they are stateless persons having had all proof of their country of origin deliberately destroyed or taken from them
- they lack financial support
- they may lack the ability to speak in anything other than their native language, increasing their vulnerability and deterring them from considering escape
- 80 % of victims are female
- 50 % of victims are minors.

**Note:** Adult victims who have been exploited for sexual servitude should be dealt with in accordance with the established principles of '[Adult sexual assault investigation \(ASAI\) policy and procedures](#)'.

Child victims who have been exploited must be treated in accordance with the principles of the '[Child protection investigation policy and procedures](#)' Police Manual chapter.

### Victims' needs

Victims of trafficking (both adults and children) are often traumatised by the exploitation and abuse, and have unique humanitarian needs for immediate support, assistance and rehabilitation. Their primary focus will be their own safety, possibly their families' safety as well as their own needs (food, housing, medication etc). These issues should be addressed so the victim reaches a position where they feel able to assist the Police investigation, and therefore prosecution of the offender(s).

Trafficked victims can have no possessions other than the clothes they are wearing. Police, together with other government departments; are responsible for ensuring victims of people trafficking are provided with adequate assistance. This includes providing for their immediate as well as longer term welfare needs, such as:

- protecting the victims' personal safety
- supporting them through the criminal prosecution process
- addressing their humanitarian needs in a timely fashion, such as:
  - accommodation
  - immigration status (refer '[Immigration issues](#)' and '[Police certification](#)')
  - health services such as medication, assessment and treatment
  - social service and financial assistance
  - assistance with repatriation
  - interpreting services
  - advising next of kin who are situated overseas.

**Note:** Where a child is identified as a victim of people trafficking, immediate and close liaison with [Child, Youth & Family \(CYF\)](#) will be required.

The victim will require ongoing support and rehabilitation from initial contact, formal interview, court proceedings, final or further action and immigration review through to possible resettlement.

In line with the requirements of the Trafficking Protocol, the Ministry of Social Development's operational arm, Work and Income New Zealand, will offer tailored financial assistance to suit the needs of victims of trafficking. Relevant government agencies will also provide publicly-funded programmes and services on a par with New Zealand residents including housing, health, disability and employment.

The level of care provided to victims by Police must be appropriate and adequate to meet the needs of the victim. Make sure the level of assistance provided is not excessive, and does not create a perception that assistance is provided as an inducement to support the Police investigation or to support prosecution of the offender(s). Any such perception could adversely affect prosecution outcomes.

## Victim reluctance

Overseas intervention and research has indicated a number of factors which influence victims to become reluctant to seek help. This table shows some of the key factors.

| Reason                               | Consequence  |
|--------------------------------------|--|
| Debt bondage                         | Traffickers often impose a debt and interest charges on victims for transportation costs etc. The victim may receive payment for their services such as sexual exploitation, but can often never earn enough to achieve repayment of the debt. Debts are either imposed on the victim, or their family and friends in their country of origin.   |
| Isolation                            | Traffickers employ various techniques to psychologically and physically isolate victims, including: <ul style="list-style-type: none"> <li>- retention or destruction of victims' passport or identity papers</li> <li>- threats made to inform authorities (a trafficked person may have begun as a smuggled migrant)</li> <li>- language barriers</li> <li>- physical imprisonment.</li> </ul> |
| Drug dependency                      | Traffickers who coerce people into prostitution may force or encourage victims to use unlawful drugs as a means of sedation and control.   |
| Shame and stigma                     | Victims of trafficking for sexual servitude and people from some cultures may be particularly reluctant to engage with the criminal justice system. This may be due to their knowledge or perceptions of corruption in their own country.  |
| Threats of violence and intimidation | Traffickers may use deception or coercion to transport victims abroad. Even where victims are deceived and initially agree to be transported, traffickers often use violence and intimidation to control victims, once the victim becomes aware of the exploitative purpose of their journey.  |
| Reprisals to friends & family        | See ' <a href="#">Risks to victim</a> ' section below.   |
| Mistrust of authorities              | Victims of trafficking often come from countries with corrupt public officials including law enforcement officers. Overseas law enforcement officers are complicit in some cases of trafficking. For such reasons, victims may be reluctant to cooperate with Police.  |

## Risks to victims

People trafficking offences are predominantly committed by organised criminal enterprises. By assisting Police, victims of people trafficking may be placing themselves in danger from the trafficker(s) or their associates within New Zealand. This danger may extend to the trafficked person in their country of origin should they return there, and to their friends and family.

## Responsibilities of respective Government agencies

The respective responsibilities of Government agencies involved are summarised in this table.

| Agency | Action  |
|--------|---|
| Police | Identify/certify the victim.  |
| Police | Address the victim's immediate needs.                                     |
| MBIE   | Establish whether the victim wishes to return to their country of origin. |

| <b>Where the victim wishes to return to their country of origin</b> |   |
|---|---|
| Police/ MBIE/ MFAT  | Police will assess any associated risks to the safety of the victim and their family, in consultation with MBIE and MFAT.                                     |
| Police  | Determine whether any risks associated with the victim and their family returning to their country of origin, are considered acceptable, and inform the MBIE. |
| MBIE  | Make travel arrangements, where the victim wishes to return to their country of origin and any risks are considered acceptable.                               |
| MFAT  | Notify the country of origin.   |
| MBIE  | Where risks are considered unacceptable, refer to asylum procedures and/or other protective provisions.   |

| <b>Where the victim does not wish to return to their country of origin (or does not continue to meet immigration policy requirements).</b> |   |
|--|---|
| MBIE   | Regularise the victim's immigration status.   |
| MSD  | Case-manage the victim's access to social services, in conjunction with Ministry of Health, NGOs and service providers. |
| MBIE   | Determine whether the victim continues to meet requirements of the immigration policy.                                  |
| If the victim continues to meet immigration policy requirements.   |   |
| Police   | Provide ongoing protection for the victim, if required.   |
| MBIE   | Coordinate reintegration, and settlement support  |
| MSD  | Continue case-management to meet the victim's long term needs.  |

| <b>Where the victim does not continue to meet immigration policy requirements</b> |   |
|---|---|
| Police  | Determine whether any risks associated with the victim and their family returning to their country of origin, are considered acceptable, and inform the MBIE. |
| MBIE  | Make travel arrangements, where risks are considered acceptable and the victim wishes to their country of origin.   |
| MFAT  | Notify the country of origin.   |
| MBIE  | Where risks are considered unacceptable, refer asylum procedures and/or other protective provisions.  |

## Victim interviews

In cases where the trafficked person has been located, has escaped or been liberated and they are no longer at risk, a thorough interview of the victim is vitally important for evidential purposes.

The interview of victims should be carried out as soon as possible, subject to their well-being and level of trauma experienced. The interview process will inevitably require an extended and detailed interview and should not be rushed. People trafficking victims should be treated as key witnesses.

Victims may not disclose their full story in the first interview but may open up during subsequent interviews, as they gain confidence, trust and security. Victim interviews should be staggered and planned.

The interview of the victim should be:

- conducted by an experienced investigator, preferably a [National Standard Level 3 trained Investigative Interviewer](#) (or a specialist child evidential interviewer, in the case of a child victim)
- recorded on video as per the Video Recorded Interview procedure
- conducted in accordance with the principles of the '[Investigative Interviewing Witness Guide](#)'
- conducted as a cognitive interview to establish what the victim recalls in terms of what they heard, smelt, felt and touched throughout their captivity. The victim may have been bound, gagged, blindfolded or drugged during their period of captivity.

Police should consider making an application for the victim to give evidence in alternative ways as provided for under section [103](#) of the Evidence Act 2006. Criteria for such applications include the trauma suffered by the victim, the victim's fear of intimidation and the nature of the evidence the victim is expected to provide.

## Child victims

International data indicates 50% of all people trafficking victims are under 18 years of age, the age of a 'child' as specified by New Zealand legislation.

Child victims who have been exploited must be treated in accordance with the principles of the '[Child protection investigation policy and procedures](#)' Police Manual chapter and interviews of child victims should be conducted by a specialist child evidential interviewer.

Any unaccompanied child victim of trafficking falls under the care of the Ministry of Social Development (MSD); specifically under its operational arm, [Child, Youth & Family \(CYF\)](#). A legal guardian or representative will be appointed for any unaccompanied child, to support a repatriation or residence decision.

If a child is trafficked with their parent, immigration decision-makers will work to ensure that the family remains together, where that is in the best interest of the child.

Children under 18 years who are trafficked to New Zealand are able to apply for residence in their own right immediately, whether or not they have obstructed the Police investigation. This recognises the special circumstances of children who may be at greater risk of being re-trafficked if returned to their home country. Child victims are also able to access publicly-funded education while on their temporary visa. For further details, see the section '[Immigration issues - Child victims](#)' below.

People trafficking victims of any age are encompassed in offences under section [98D](#) of the Crimes Act 1961.

## Offence of dealing in children under 18 years

Section [98AA](#) of the Crimes Act 1961 relates to dealing in people aged under 18 for prohibited purposes including sexual exploitation, removal of body parts and forced labour. Although primarily designed to address offences committed within New Zealand, one prohibited act (under section [98AA\(1\)\(e\)](#)) is importing persons under 18 for one of the specified exploitative purposes (sexual exploitation, removal of body parts or forced labour).

When dealing with importing of victims aged less than 18 years for exploitation, offences under section [98AA](#) are complete without any requirement to prove any coercion; deception; fraud or abduction etc, unlike offences of people trafficking offences under section [98D](#).

## Immigration issues

Victims of people trafficking are often stateless persons as their proof of their country of origin and identification documents are deliberately destroyed.

### Department of Labour - Victims of Trafficking policy

Under the policy, adult victims of trafficking will be issued a 12 month temporary resident visa and thereby remain lawfully in New Zealand. This entitlement is conditional on the victim meeting the '[Eligibility for a temporary residence visa](#)' which includes Police having certified that the person is believed to be a victim of trafficking. In cases where Police confirm the victim has obstructed the Police investigation, the person would not be eligible for an extension of the temporary visa under the policy.

### Eligibility for a temporary residence visa

Under the 'Victims of Trafficking Policy', adult trafficking victims must meet the following criteria to be eligible to apply for a temporary residence visa. They **must**:

- have been certified by Police that they are believed to be a victim of people trafficking, **and**
- not have obstructed the Police investigation of their people trafficking case during the temporary visa period (as confirmed by Police), **and**
- satisfy usual health and character criteria (or be granted a health and/or character waiver), **and**
- be considered to be either:
  - to be endangered in their country of origin as a consequence of being trafficked, **or**
  - at risk of being re-victimised or suffering significant social and financial hardship as a result of the stigma of being trafficked, if they were to return to their country of origin.

Victims who require ongoing protection may also be eligible for a longer term immigration resolution provided they meet the criteria of the immigration policy.

### Certification of victims

Under the agreed policy, Police are responsible for certifying a person as being a victim of people trafficking. Certification will be based on an assessment of available evidence.

Police certifications can be issued at the time when a case of trafficking is identified, but can also be later withdrawn. This is to mitigate the risk of immigration fraud if further investigation reveals the trafficking claims are not genuine (covered further under 'Immigration issues').

This Police certification must be endorsed and signed by the relevant District Manager Criminal Investigations, or their authorised deputy. Police certification of a victim will be based on an assessment of available evidence and witness statements.

Police certificates will be issued when there is a reasonable suspicion the person in question has been trafficked to New Zealand pursuant to section [98D](#) of the Crimes Act 1961 (amended in 2002), provided the victim meets the criteria required for certification.

Police certification will take the form of a letter confirming a Police investigation is being conducted into an offence of people trafficking as defined by section [98D](#) of the Crimes Act 1961, that the person named in the letter is suspected of being a victim of that offence and that they have not obstructed the Police investigation of their people trafficking case. Refer 'Template Letter':

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[People\\_trafficking\\_and\\_migrant\\_smuggling\\_-\\_Certification\\_Letter.doc](#)

181 KB

Police certification will trigger a victims' eligibility to a range of social support services which a person on a temporary immigration permit would otherwise not have access to.

During the 12 month temporary visa period, victims will be able to:

- access financial assistance provided under the Special Needs Grants Ministerial Welfare Programme
- access publicly-funded health services, subject to a provision to this effect in a new Eligibility Direction issued by the Minister of Health

- co-operate, if willing, with the Police investigation into their trafficking case
- receive information about the court process from Court Victims Advisors
- access interpreting services as arranged by each agency providing the particular service. For example, Immigration New Zealand arranges interpreters to assist with communicating immigration advice as required
- work legally, and
- organise their personal affairs so that they may return to their country of origin voluntarily, if that is feasible.

Trafficking victims who do not meet the criteria for residence under the policy may seek residence through other avenues. They may make refugee and/or protection claims under United Nations conventions and where they are liable for deportation, appeal rights are available.

## Child victims

Under the 'Victims of Trafficking Policy', victims are considered a 'child' for immigration purposes when they are under the age of 18 years at the time they are identified. An application for residence can be made immediately in respect of child victims.

Child trafficking victims will be issued a 12-month temporary visa, while decisions about repatriation or residence are taken. Child victims on a temporary visa will be eligible to access publicly-funded education as well as social assistance.

The eligibility criteria for child trafficking victims differ from those of adults. Child victims are immediately eligible for residence, regardless of whether or not the child obstructs the Police investigation. Any obstruction by the child will not be a factor in the decision regarding their residence.

Instead, decisions of a child victim's residence or repatriation will be based on the 'best interest of the child' considerations.

## Risks

### Perceived inducement to testify

The 'Victims of Trafficking Policy' provides a pathway to residence only for those victims who do not obstruct the Police investigation into the trafficking offence, and who also require ongoing protection.

The policy is framed to minimise the risk of a claim of inducement being made against a victim who chooses to co-operate with the Police investigation of the trafficking case or prosecution of an alleged trafficker. Victims are not offered a positive inducement to co-operate with the Police investigation nor penalised if they choose to remain silent when questioned and not co-operate. The test for eligibility for residence is that they must not obstruct the Police investigation. Examples of obstruction include deliberately misleading Police, destroying evidence, or colluding with their alleged trafficker by passing on information such as the questions Police asked.

Any inducement risk is further mitigated by the grant of residence to victims who meet the residence criteria, regardless of the stage or the outcome of the criminal justice process. The investigation and prosecution of traffickers may take two years or more and it is highly likely that granting of residence to an eligible victim would be made long before the alleged trafficker came to trial.

In providing assistance to a victim of people trafficking, ensure the level of assistance provided to the victim by Police, would not be perceived as an inducement intended to encourage the victim to provide evidence to support prosecution of the offender(s). Any such perception could adversely affect prosecution of offenders. Nevertheless, the level of support provided to victims of people trafficking must be adequate and effective in meeting victims' needs.

### Immigration fraud

Potential exists for people (particularly migrants who are smuggled voluntarily) to fraudulently claim to be a victim of trafficking, in order to access legal immigration status. This possibility must not be permitted to undermine the professional service Police provide to genuine victims of people trafficking.

These risks are mitigated by the requirement for victims to hold Police-certification in order to be eligible for the temporary visa (and therefore access social assistance). Police certification must also be maintained in order to apply for residence. Police may revoke certification at any time if a victim's claims of trafficking are discovered on further investigation, to be false. A visa holder is liable for deportation if the visa was obtained through fraud, forgery, false or misleading representation or concealment of relevant information.

## **Organised Crime - people traffickers**

International evidence has established that people trafficking crime can generate vast amounts of revenue and that organised crime groups are largely responsible for these crimes. Organised crime groups exist within New Zealand, often with international connections.

## Offenders

This section contains the following topics:

- Related legislation
  - Crimes Act 1961
  - Prostitution Reform Act 2003
  - Immigration Act 2009

Those identified as responsible for committing offences of people trafficking and their accomplices should be prosecuted to the full extent of the law.

Due to the exploitative nature of people trafficking, further legislation is referenced to enable investigators to reach appropriate charging decisions, particularly where offences involve sexual servitude of adults and those under 18 years. See '[Related legislation](#)'.

While people trafficking and migrant smuggling offences are predominantly committed by organised criminal enterprises, participation in an organised criminal group is an offence against section [98A](#) of the Crimes Act 1961.

Traffickers are often composed of a loosely based family organisation with different family members performing different roles such as recruiter, transporter or exploiter.

Proceedings for offences against section [98C](#) or [98D](#) require the prior consent of the Attorney General. However a person may be arrested for an alleged offence against sections [98C](#) or [98D](#), or a warrant issued and executed for their arrest, and the person may be remanded in custody or on bail, even though consent to bring proceedings against the person has not been obtained from the Attorney-General.

## Related legislation

The additional legislation specified below may assist investigators to reach appropriate charging decisions when dealing with people trafficking and migrant smuggling offenders.

### Crimes Act 1961

| Section              | Offence  |
|----------------------|--|
| <a href="#">98</a>   | Dealing in slaves.   |
| <a href="#">98A</a>  | Participating in organised criminal group.   |
| <a href="#">98AA</a> | Dealing in people aged under 18 within New Zealand for prohibited purposes, including sexual exploitation, removal of body parts or forced labour, and the importing of persons under 18 for exploitation. |
| <a href="#">98B</a>  | Definitions of terms and concepts relevant to migrant smuggling and people trafficking offences, such as coercion and deception.   |
| <a href="#">98C</a>  | Smuggling migrants.  |
| <a href="#">98D</a>  | Trafficking in people by means of coercion or deception.   |
| <a href="#">98E</a>  | Aggravating factors concerning elements of the offence and sentencing.   |
| <a href="#">208</a>  | Abduction for purposes of marriage or sexual connection.   |
| <a href="#">209</a>  | Kidnapping.  |
| <a href="#">209A</a> | Young person under 16 cannot consent to being taken away or detained.  |
| <a href="#">210</a>  | Abduction of young person under 16.  |



**Prostitution Reform Act 2003**

| Section            | Offence   |
|--------------------|---|
| <a href="#">16</a> | Inducing or compelling a person to provide sexual services or earnings from prostitution. |
| <a href="#">21</a> | Assisting a person under 18 years to provide commercial sexual services.                  |
| <a href="#">22</a> | Receiving earnings from commercial sexual services provided by a person under 18 years.   |
| <a href="#">23</a> | Contracting for sexual services from, or be a client of, a person under 18 years.         |

**Note:** Other provisions may apply under [Health and Safety in Employment Act 1992](#) and the [Employment Relations Act 2000](#) and the Employment Relations Act 2000. Where breaches of labour laws are suspected, advice may be sought from the [Ministry of Business, Innovation and Employment \(MBIE\)](#), who will also investigate any cases referred by Police, and where practicable, prosecute offences committed under the provisions of the Immigration Act 1987.

**Immigration Act 2009**

| Section   | Offence  |
|---|--|
| <a href="#">350(1)</a><br><a href="#">(a) &amp; (b)</a> | Employing persons not legally entitled to work in New Zealand.   |
| <a href="#">351(1)</a><br><a href="#">(b)</a>           | Employer exploiting people by hindering or preventing the person from: <ul style="list-style-type: none"> <li>- leaving employment</li> <li>- leaving New Zealand</li> <li>- obtaining their legal entitlements</li> <li>- disclosing the circumstances of their work for the employer, to any person.</li> </ul> Punishable by up to 7 years imprisonment or a \$100,000 fine, or both. |
| <a href="#">351(1)</a><br><a href="#">(a)</a>           | Prevent a person by failing to comply with minimum employment standards such as minimum wages, holiday pay or wage protection - punishable by up to 7 years imprisonment or a \$100,000 fine, or both  |

This table shows Immigration Act offences relevant to people unlawfully in New Zealand.

| <b>Section</b>      | <b>Offence</b>   |
|---------------------|--|
| <a href="#">342</a> | Providing false information in support of an immigration application.  |
| <a href="#">343</a> | Aiding/abetting/counselling/inciting/procuring another person to be in New Zealand unlawfully or to breach permit conditions.      |
| <a href="#">344</a> | Obstruction or failing to meet requirements of an immigration officer.   |
| <a href="#">345</a> | Improper dealings with immigration or identity documents.  |
| <a href="#">346</a> | Impersonating immigration officer or a refugee and protection officer.   |
| <a href="#">347</a> | Publishing/disseminating information, knowing it to be false or misleading, to influence the immigration of any (class of) person. |
| <a href="#">348</a> | Altering documents required for immigration act purposes.  |
| <a href="#">349</a> | Offences relating to carriers, and persons in charge, of craft.  |
| <a href="#">354</a> | Failure to maintain confidentiality in relation to refugee or protection matters.  |