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Te Kāhui Tika Tangata  
Human Rights Commission

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# The RSE Scheme in Aotearoa New Zealand: A Human Rights Review



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Te Kāhui Tika Tangata, the New Zealand Human Rights Commission is an independent Crown Entity. One of its primary functions is to promote and protect the human rights of all people in Aotearoa New Zealand. The Commission works towards a free, fair, safe, and just Aotearoa, where diversity is valued, and human dignity and rights are respected.

Under the Human Rights Act 1993, the Commission's primary functions include advocating and promoting respect for, and an understanding and appreciation of, human rights in New Zealand society, and promoting equal employment opportunities (s 5(1)(a) and (d)). In order to carry out its primary functions, the Commission, monitors compliance with the implementation of international human rights treaties ratified by New Zealand (s 5(2)(kc)) and promotes the human rights dimensions of Te Tiriti o Waitangi (s 5(2)(ca)). To that end, the Equal Employment Opportunities Commissioner upholds and protects the human rights of workers, including ensuring that businesses and the government meet their human rights obligations and responsibilities.

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# Executive summary

1. The Recognised Seasonal Employers (“**RSE**”) scheme has provided economic benefits to Pacific nations and Aotearoa New Zealand, through supporting our horticulture and viticulture industries while providing workers with better wages than they would receive in their home countries.
2. However, the Commission is concerned about the treatment of migrant workers under the Scheme. Throughout 2022, the Human Rights Commission (“**Commission**”), led by the Equal Employment Opportunities Commissioner (“**EEO Commissioner**”), Saunoamaali’i Karanina Sumeo, undertook a series of consultations with RSE workers, employers, industry leaders, and other relevant stakeholders connected to the RSE scheme. Based on these engagements, we have observed and are concerned about what appear to be human rights breaches taking place under the RSE scheme.<sup>1</sup>
3. The Commission has identified the following human rights issues that are relevant to the RSE scheme:
  - a. **Right to equality and freedom from discrimination:** Everyone has a right to be treated equally and with dignity, regardless of migrant status.
  - b. **Right to just and favourable conditions of work:** Everyone is entitled to remuneration which ensures fair wages, a decent living and safe and healthy working conditions.
  - c. **Right to freedom of movement:** Everyone must be able to move freely within the country.
  - d. **Right to privacy:** Everyone has the right to privacy.
  - e. **Right to culture:** Everyone has the right to enjoy their own culture, which includes the right to enjoy leisure activities, such as kava drinking outside of work hours.
  - f. **Right to freedom of association:** Everyone has the right to join a trade union, which is a fundamental cornerstone of workers’ rights.
  - g. **Right to an adequate standard of living:** Everyone is entitled to adequate living conditions, including accommodation that is warm, dry, safe, secure, affordable, and accessible.
  - h. **Right to health:** Everyone is entitled to the enjoyment of the highest attainable standard of health and equality of access to health services.
4. The Commission has repeatedly heard that there are a “few bad apples in the industry”. However, our engagements have revealed what we consider are gaps in the scheme, which may enable systemic pattern of human rights abuses throughout the country. Due to a lack of oversight, regulation, enforcement, and human rights protections within the RSE scheme, employers are able to exploit workers with few consequences if they wish.

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<sup>1</sup> See New Zealand Government, *Combatting Modern Forms of Slavery: Plan of Action against Forced Labour, People Trafficking and Slavery 2020-2025* at p. 5 for definition of modern slavery <https://www.mbie.govt.nz/dmsdocument/13568-combatting-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery> (“While there is no formal definition of “modern slavery”, this is a term that is increasingly being used internationally and within New Zealand to describe a range of exploitative practices. The use of the term “modern” is being used to distinguish between present-day slavery and slavery-like practices from historical practices. The exploitative crimes that are commonly taken to comprise modern slavery include forced labour, debt bondage, forced marriage, other slavery and slavery-like practices, and people trafficking.”)



5. In outlining these issues, the Commission also encourages business to take up their responsibility to respect human rights. While many human rights are embedded into New Zealand laws, they are not always protected in day-to-day business activities, whether intentionally or unintentionally. Yet nearly all human rights are relevant to business. A company's operations can have both a positive and negative impact on many people, including employees, contract workers, customers, suppliers and the wider community.
6. The Commission urges Government to carry out the review of the RSE scheme with a human rights lens, with a view to implementing a rights-based scheme as soon as possible.
7. Government has a duty to protect human rights in business, and businesses also have a duty to respect and uphold human rights in their conduct. We encourage the business leaders to consider how they can be part of stamping out these negative practices and contribute towards a practice where business and human rights are not distinct.
8. The Commission hopes that the analysis and recommendations contained in this report will be considered by all stakeholders involved in defining and reviewing policy and legislation relevant to the RSE scheme, with a view to stamping out exploitation and upholding the dignity and human rights of all workers in New Zealand.

# Overview of the Recognised Seasonal Employer Scheme

9. In 2007, Aotearoa New Zealand launched the RSE scheme to fill seasonal labour shortages in its horticulture and viticulture industries. Under the scheme, employers can apply for “Recognised Seasonal Employer” status and fill vacant seasonal positions with workers from Pacific Island countries when there are no domestic applicants. Workers can be recruited from nine Pacific Island nations: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu. Employers may also recruit from other countries where they can demonstrate pre-established relationships.
10. The scheme allows seasonal workers to stay in New Zealand for up to 7 months in any 11-month period. Workers may be re-employed in subsequent years. This re-employment may be by the previous employer or with a new employer.
11. The RSE scheme is advertised as a mutually beneficial partnership supporting the economies and communities of both Pacific nations and Aotearoa New Zealand. Pacific workers are promised training, mentoring and the development of skills to take home to begin their own business ventures, while ensuring they will earn an income that can be sent back to their families and their wider community. At the same time, the scheme supports New Zealand businesses during peak harvest times, enabling the horticulture and viticulture industries to grow.
12. The Government determines the number of RSE places that can be taken up in any one year. In its inaugural year in 2007, the cap was set at 5,000 places. Since then, the RSE scheme has grown to match demand for labour, with the number of places having increased to 19,000 in 2022.<sup>2</sup>

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<sup>2</sup> See New Zealand Immigration, Recognised Seasonal Employer (RSE) scheme research: <https://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme>.



# Background to this report

13. While the RSE scheme has provided economic and social benefits to Pacific nations and Aotearoa New Zealand, concerns have been raised about the impact of the scheme on local communities,<sup>3</sup> as well as the working and living conditions of RSE workers.<sup>4</sup>
14. In June 2022, the International Labour Organization (“ILO”), produced a report on Australia’s Seasonal Worker Programme and New Zealand’s RSE scheme through the lens of international human rights and labour standards.<sup>5</sup> The ILO recommended that New Zealand undertake a review of the agreements establishing the RSE scheme in consultation with participating Pacific Island Countries, trade unions, workers, employers’ organisations, employers and civil society organizations.<sup>6</sup> The ILO also made numerous recommendations to improve compliance with international human rights and labour standards including with regard to pay and pay deductions, leave provisions, accommodation, access to healthcare, membership of trade unions and access to justice.<sup>7</sup>
15. In January 2022, a key stakeholder in the RSE industry invited the EEO Commissioner to visit an RSE accommodation site to meet workers and listen to their concerns. Following that visit, the Commission has undertaken consultations with RSE workers, employers, industry leaders and other relevant stakeholders connected with the RSE scheme.
16. In these engagements, the Commission inquired into workers’ work and living conditions. The Commission spoke to over 20 RSE workers in Northland and over 60 workers in Marlborough, and visited eight accommodation sites. We also spoke to individuals with links to the RSE scheme in the Hawkes Bay and Otago regions, as well as union representatives, RSE employers, and leaders in the horticulture and viticulture industry.
17. The Commission observed and heard about potential violations of the workers’ human rights under the RSE scheme through exploitation, unreasonable deductions from their pay, denial of personal and cultural freedoms and grossly inadequate housing.

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<sup>3</sup> See Ministry of Business Innovation and Employment, RSE Impact Study: New Zealand Stream Report <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-new-zealand-stream-report.pdf>.

<sup>4</sup> See Dr Rochelle Bailey, New Zealand’s Recognised Employer Scheme (RSE), 10 YEAR LONGITUDINAL CASE STUDY, 2019 Australian National University Department of Pacific Affairs; Amalgamated Workers Union Aotearoa New Zealand, Education and Workforce Committee Inquiry into Migrant Exploitation, 2022, <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-new-zealand-stream-report.pdf>.

<sup>5</sup> International Labour Organization, Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards, Technical report [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms\\_847010.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_847010.pdf). The review consisted of two components: (1) Legal reviews of the schemes with respect to migration policies and laws governing the schemes in light of human rights and labour standards; and (2) Review of the two schemes in practice, particularly from the point of view of the seasonal workers themselves. The review included 121 individual interviews with seasonal workers in Fiji, Kiribati, Samoa and Vanuatu, who had participated in the schemes since 2018. 52% of interviewees has worked in New Zealand.

<sup>6</sup> At p. 154.

<sup>7</sup> See recommendations from p. 158.

18. Following the Commission's public comments raising these concerns,<sup>8</sup> the Government announced that the Labour Inspectorate would conduct individual investigations.
19. In September 2022, the Government announced that in response to global workforce shortages, 3,000 additional spaces for workers would be provided under the RSE scheme.<sup>9</sup> The Commission raised further concerns about the decision to expand the scheme given the human rights concerns it had already raised about the scheme.
20. In the meantime, the Commission has continued to engage with industry leaders and key informants in the horticulture and viticulture industries to gather their views and insights as to the prevalence and systemic nature of the potential human rights violations that may occur under the RSE scheme.
21. The Commission has continued to call for the RSE scheme to be urgently reviewed in its entirety.<sup>10</sup> We remain gravely concerned that migrant workers can be exploited and subjected to serious human right violations.
22. This report sets out the human rights and labour law standards that are applicable to migrant seasonal workers. We then apply these standards to what we have heard and observed over the past year. We make recommendations to the government and to businesses in the industry on how the scheme can be improved to meet basic human rights and labour standards. By focusing on New Zealand's human rights commitments, we hope to provide a constructive framework to improve the RSE scheme in accordance with human rights standards.

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<sup>8</sup> See Stuff, "Blatant exploitation: Migrant workers packed in freezing, damp rooms for \$150 a week" (8 August 2022) <https://www.stuff.co.nz/business/129496019/blatant-exploitation-migrant-workers-packed-in-freezing-damp-rooms-for-150-a-week>; RNZ, "Equal Employment Opportunities Commissioner details grim conditions for RSE workers" (15 August 2022) <https://www.rnz.co.nz/national/programmes/checkpoint/audio/2018853580/equal-employment-opportunities-commissioner-details-grim-conditions-for-rse-workers>.

<sup>9</sup> Hon Damien O'Connor and Hon Michael Wood "3000 more RSE workers to ease workforce pressures" (27 September 2022) <https://www.beehive.govt.nz/release/3000-more-rse-workers-ease-workforce-pressures>.

<sup>10</sup> See 1news, Call for 'urgent review' into Recognised Seasonal Employer scheme (2 October 2022) <https://www.1news.co.nz/2022/10/02/call-for-urgent-review-into-recognised-seasonal-employer-scheme/>.



# Human rights framework

23. Human rights are basic rights and freedoms to which every person in the world is entitled. These basic rights are based on shared values such as dignity, fairness, equality and respect. They govern how individuals live in society and with each other as well as the State's relationship to their people and the State's obligations to those people. Human rights are inherent to all peoples based on our common humanity; they are inalienable in that no one can give up their rights, nor can the government deprive people of their rights. They are also universal in that they apply to everyone without distinction on grounds such as race, religion or migrant status.
24. The New Zealand Bill of Rights 1990 ("**NZBORA**") sets out the basic rights that apply to all New Zealanders, regardless of migrant status. These rights include the right to be free from discrimination, the right to freedom of movement, the rights of minorities, and the right to freedom of association.
25. Aotearoa New Zealand is a party to seven international human rights treaties, including the International Covenant on Civil and Political Rights ("**ICCPR**"), which upholds the right to freedom of movement<sup>11</sup> and association with others,<sup>12</sup> regardless of migrant status or citizenship. These rights are also enshrined in the NZBORA.<sup>13</sup>
26. Aotearoa New Zealand is also a party to the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**"), which upholds the right of all people to just and favourable conditions of work (including access to fair wages and safe and healthy working conditions)<sup>14</sup>, as well as an adequate standard of living<sup>15</sup> and the right to health<sup>16</sup>, without discrimination.
27. Aotearoa New Zealand is also a party to the Convention on the Elimination of Racial Discrimination ("**CERD**"). General Recommendation Number 30 is particularly relevant to RSE workers as it elaborates on the responsibilities of States parties to protect non-citizens from discrimination. Notably, Art 29 requires States parties to "remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health" while Article 35 affirms the rights of all individuals regardless of immigration status to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated".<sup>17</sup>

## International human rights law

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<sup>11</sup> Art 12.

<sup>12</sup> Art 22.

<sup>13</sup> See ss 17 and 18. See also UN Human Rights Committee (HRC), CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, available at: <https://www.refworld.org/docid/45139acfc.html> at [7] which states that all people regardless of migrant status "have the right to liberty of movement and free choice of residence; they shall be free to leave the country"

<sup>14</sup> Article 7(a)(i) and (b)

<sup>15</sup> Article 11

<sup>16</sup> Article 12

<sup>17</sup> UN Committee on the Convention on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against non-citizens (5 August 2004).

28. As a member of the International Labour Organization (“ILO”) and party to numerous conventions that set out international labour standards,<sup>18</sup> New Zealand is subject to international labour and human rights standards, which are applicable to seasonal migrant workers. Most relevant to the rights of migrant workers is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which applies to the living and working conditions of migrant workers under the RSE Scheme. Despite international pressure to do so, Aotearoa has not ratified the treaty.<sup>19</sup> Nevertheless, the treaty elaborates on existing treaties to which Aotearoa is a party including the ICCPR and the ICESCR. The treaty is relevant to the rights of RSE workers in Aotearoa in that it aims to foster respect for migrants’ human rights through guaranteeing equality of treatment and the same working conditions as other workers.

### United Nations Guiding Principles on Business and Human Rights

29. Also relevant are the United Nations Guiding Principles on Business and Human Rights (“**UN Guiding Principles**”), which are a set of non-binding principles endorsed by the UN Human Rights Council.<sup>20</sup> They establish a minimum, modest threshold of human rights

principles designed to provide guidance to businesses and governments.<sup>21</sup> The UN Guiding Principles are built around the following three pillars known as the Protect, Respect and Remedy framework:

- The State duty to **protect** human rights
- The corporate responsibility to **respect** human rights
- The need for rights and obligations to be matched to appropriate and effective **remedies** when breached.

30. Employment New Zealand’s ethical and sustainable workplace practice resources refer to the UN Guiding Principles, highlighting the demand and support for ethical and sustainable work practices. The Government has also agreed to initiate a National Plan of Action to implement the UN Guiding Principles.<sup>22</sup> This will be an important measure for promoting and upholding human rights among the business community.

Aotearoa New Zealand’s human rights commitments provide the framework for both government and businesses uphold the inherent dignity of all workers in New Zealand, regardless of their migrant status.

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<sup>18</sup> Of relevance are C029 - Forced Labour Convention, 1930 (No. 29), C097 - Migration for Employment Convention 1949 (No. 97), C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

<sup>19</sup> As part of the Universal Periodic Review of New Zealand a number of countries recommended that New Zealand ratify the Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. See Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/41/1 (1 April 2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>

<sup>20</sup> UN Human Rights Council, Protect, respect and remedy: a framework for business and human rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, 7 April 2008, A/HRC/8/5, [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>21</sup> Employment New Zealand, Demand for ethical and sustainable work practices, <https://www.employment.govt.nz/workplace-policies/ethical-sustainable-work-practices/demand-for-ethical-sustainable-work-practices/>

<sup>22</sup> Report of the Working Group on the Universal Periodic Review: New Zealand, A/HRC/41/1/Add.1, 17 June 2019, paragraph 20.



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## Te Tiriti o Waitangi and Immigration

31. Te Tiriti o Waitangi re-affirms existing rights that Tangata Whenua held prior to 1840, including the article two provision that guarantees the right to exercise tino rangatiratanga or the “authority to make and enforce law over their people or their territories.”<sup>23</sup> Under article one, rangatira agreed “to share power and authority with Britain”<sup>24</sup> and “allowed the Governor to control settlers and thereby keep the peace and protect Māori interests.”<sup>25</sup>
32. The arrival of non-Māori people in Aotearoa New Zealand in the late 18th and early 19th centuries, and the resulting disruptions, was one reason behind the signing of Te Tiriti. Thus Te Tiriti can be seen as the first immigration policy for the nation. Through Te Tiriti, as well as its obligation to govern immigration and immigrants in a manner consistent with ‘Māori interests’ and tino rangatiratanga, the Crown has a duty to ensure equal rights for all throughout the country. This means that those who enter the country, regardless of visa status, must have their rights protected through, and by, government laws, policies, and practices.

<sup>23</sup> Waitangi Tribunal *He Whakaputanga me te Tiriti, The Declaration and the Treaty, The Report on Stage 1 of the Te Paparahi o te Raki Inquiry* (WAI 1040, 2014) at 526 – 527.

<sup>24</sup> At 526 – 527.

<sup>25</sup> At 528.

# Rights most relevant to seasonal migrant workers

## Right to equality and freedom from discrimination

33. Human rights protections apply to everyone, without discrimination, including all migrants, regardless of their migration status. The principle of non-discrimination is set out in article 2.2 of the ICESCR and International Covenant for Civil and Political Rights ("ICCPR").
34. The ILO Multilateral Framework on Labour Migration provides that the human rights of all migrant workers, regardless of their status, should be promoted and protected.<sup>26</sup> In practice, this means that "governments should ensure that national laws and practices that promote and protect human rights apply to all migrant workers and that they are respected by all concerned."<sup>27</sup>

## Right to just and favourable conditions of work

35. Article 7 of the ICESCR guarantees the right of everyone to the enjoyment of just and favourable conditions of work, including remuneration which provides all workers, as a minimum with:
- Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- Safe and healthy working conditions;
- Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

36. The Committee that monitors the implementation of the ICESCR has commented that just and favourable conditions of work is a right of everyone, including migrant workers and that the right must be exercised without discrimination.<sup>28</sup>

## Right to freedom of movement

37. Article 13 of the Universal Declaration of Human Rights and article 12 of the ICCPR guarantee the right to freedom of movement within a country and the right of everyone to leave and to return to their country.
38. Section 18 of the NZBORA guarantees the right to freedom of movement. That is: "Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand."

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<sup>26</sup> Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration [https://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_178672/lang-en/index.htm](https://www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang-en/index.htm).

<sup>27</sup> Principle 8, p. 15.

<sup>28</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 23 on right to just and favourable conditions of work (2016) at paras 5 and 53.



39. Liberty of movement is an indispensable condition for the free development of a person.<sup>29</sup> Once a foreign national is lawfully within a country, his or her freedom of movement within the country and his or her right to leave the country can only be restricted to protect national security, public order, public health or the rights or freedom of others.<sup>30</sup>

### Right to privacy and family

40. Article 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation.
41. This right is given effect domestically through the Privacy Act 2020.
42. The UN Human Rights Committee has noted that this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.<sup>31</sup>

### Right to an adequate standard of living

43. The right to an adequate standard of living is guaranteed under Article 11.1 of the ICESCR. It includes adequate food, clothing and housing, and the continuous improvement of

living conditions. With regard to housing, the Human Rights Commission has published guidelines on the right to a decent home in Aotearoa.<sup>32</sup> The guidelines clarify the government's international obligations on the right to housing, including a right to a warm, dry, safe, secure, affordable, accessible, and decent home.<sup>33</sup> Like all human rights, the right to decent housing is a right that applies to everyone in New Zealand, including migrant workers.

### Right to culture

44. Article 27 of the ICCPR protects the rights of minorities to enjoy their own culture and article 15 of the ICESCR guarantees a right for everyone to take part in cultural life. The right has been described by the UN Committee on ICESCR as essential to human dignity.<sup>34</sup>
45. Article 20 of NZBORA protects the rights of minorities, which includes the right of minority groups to enjoy their culture.

### Right to freedom of association

46. As a member of the ILO, New Zealand is required to promote freedom of association, which includes the right to join trade unions. This is reflected in section 17 of the NZBORA which protects the right to freedom of association, including the right to join trade unions. ILO Convention 87 on Freedom of Association and Protection of the Right to Organise Convention sets out what is required for governments to ensure the right to join a trade union is recognised.<sup>35</sup>

<sup>29</sup> UN Human Rights Committee, General Comment no. 27: (Article 12 (Freedom of Movement) at para 1.

<sup>30</sup> ICCPR art 12.3; NZBORA s 18(4).

<sup>31</sup> UN Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy).

<sup>32</sup> New Zealand Human Rights Commission, Aratohu tika tangata ki te whai whare rawaka i Aotearoa, Framework Guidelines on the right to a decent home in Aotearoa (August 2021) [https://communityhousing.org.nz/wp-content/uploads/2021/09/Framework\\_Guidelines\\_on\\_the\\_Right\\_to\\_a\\_Decent\\_Home\\_in\\_Aotearoa\\_FINAL.pdf](https://communityhousing.org.nz/wp-content/uploads/2021/09/Framework_Guidelines_on_the_Right_to_a_Decent_Home_in_Aotearoa_FINAL.pdf).

<sup>33</sup> At p 11.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)* at para 1.

<sup>35</sup> New Zealand has not ratified ILO Convention 87, but it is considered bound in any event, based on the enactment of the Employment Relations Act 2000. See P Rishworth et al *The New Zealand Bill of Rights* (Oxford University Press, Melbourne, 2033) at 354).



Photo courtesy of Ryan Arnst (unsplash.com)

47. ILO Recommendation 100 Protection of Migrant Workers (Underdeveloped Countries) provides that: "The right of association and freedom for all lawful trade union activities should be granted to migrant workers in the centres where they work and all practicable measures should be taken to assure to trade unions which are representative of the workers concerned the right to conclude collective agreements with employers or employers' organisations."<sup>36</sup>

### Right to health

48. New Zealand recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health under article 12.1 of ICESCR. The right

requires governments to provide equality of opportunity for everyone to enjoy the highest attainable level of health, without discrimination.<sup>37</sup>

49. The ILO recommends that steps to be taken for migrant workers should include appropriate arrangements, without discrimination, for medical care for workers.<sup>38</sup> These arrangements should include medical supervision in accordance with local possibilities by periodical visits in the course of employment, and in case of sickness; and first aid, free medical treatment and hospitalization facilities in accordance with standards to be prescribed by the competent authority.<sup>39</sup>

<sup>36</sup> R100 - Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100) at para. 41.

<sup>37</sup> UN Committee on Economic Social and Cultural Rights, General comment no. 14 (2000), *The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*

<sup>38</sup> ILO Recommendation No. 100 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 at para 45.

<sup>39</sup> At para 46(a)-(b).



# Application of human rights approach to RSE Scheme

50. As described earlier in the report, throughout 2022 the Commission consulted with RSE workers, employers, industry leaders and other stakeholders linked to the RSE scheme in Aotearoa. Through these engagements, a number of concerning human rights issues were brought to the Commission's attention regarding working conditions, living conditions and equality of treatment. The follow section outlines the key issues that the Commission has observed in the operations of the RSE scheme with the application of the previously outlined human rights framework.

## **Right to equality and non-discrimination, and right to just and favourable conditions of work:**

### **Tying visas to employers**

51. A key aspect of the RSE Scheme is that RSE workers can only work for the employer specified on their visa. They may only transfer to a new employer if their current employer provides written approval of the transfer. However, this information is not provided to workers in the pre-departure information booklet.<sup>40</sup> Furthermore, employers do not have to provide reasons to workers if they are not re-hired for future seasons. This power imbalance between employers and workers thus increases the risk of exploitation.

52. The ILO has highlighted that it is problematic when workers are bound to a specific employer as it creates fear among workers that actions against their employers will lead to the cancellation of their visa by the employers.<sup>41</sup> The ILO noted that migrant workers are more likely to be exposed to exploitation when their employer yields power over them concerning the right to remain and work in the country.<sup>42</sup> Specifically in relation to the RSE scheme, the ILO has found that this practice of tying visas to employers under the RSE scheme "contravenes the principle of equality of treatment and creates the risk of worker exploitation stemming from the power this gives to employers."<sup>43</sup>

53. The ILO General Principles and Operation Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs set out non-binding ILO general principles and operational guidelines for fair recruitment and are derived from international labour standards and related ILO instruments and provide that migrant worker should not require the employer's or recruiter's permission to change employer.<sup>44</sup>

54. The Commission has made previous submissions calling for the removal of the visa tying in previous contexts.<sup>45</sup>

<sup>40</sup> See International Labour Organization, Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards, Technical report at 38 [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms\\_847010.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_847010.pdf).

<sup>41</sup> At p. 106.

<sup>42</sup> At p. 106.

<sup>43</sup> At p. 40.

<sup>44</sup> General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (2019) at Part 1(iii), para. 12. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_703485.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_703485.pdf)

<sup>45</sup> See for example the New Zealand Human Rights Commission's *Submission on Petition of World Vision New Zealand and Trade Aid: Take Action Against Modern Slavery*, 8 October 2021; *Submission on the Inquiry into Migrant Exploitation*, 3 February 2021; *Submission on Modern Slavery and Worker Exploitation proposed legislation*; 7 June 2022.

## Deductions from wages

55. Many workers informed us of their concerns about regular deductions from their pay. Often workers' payslips were not clear on what the deductions were for and many workers could not obtain the reasons for the deductions when they questioned their employer. They told us that this left them feeling exploited. When the reason for the deductions were provided on payslips, they ranged from things such as costs for accommodation, food, transport to and from work, health insurance, income tax, and recovering the debts in the recruitment process.

56. Every worker that we spoke to said that the total weekly deductions were too high, leaving them with little to spend on themselves. Some of the payslips that the Commission observed had some workers being left with \$35 net pay at the end of a fortnight, after some of the following deductions:

- **Tools of trade:** Many workers that we spoke to routinely had deductions made from their pay for the tools of trade, such as gloves, boots, and pruning and trimming equipment. Workers expressed concerned that they were being charged for equipment necessary to perform the job when they were employees and not contractors.
- **Transport:** All of the workers that we spoke to were charged between \$20-\$45 per week for transport between the accommodation and work site. Usually workers were transported in 12-seater vans that were owned by the employer. We heard about one instance where a group of workers purchased their own vehicle and were told by the employer that they were not allowed to use it to get to and from work and must use the

company's van. We were told that the workers were forced to sell the vehicle under threat that it would be burned by the employer.

- **Food:** The Commission visited one site where workers were required to purchase five meals from the employer at \$10 per dinner. The workers told us that they wished to make dinner for themselves and had raised this with their employer. However, they were not able to negotiate and had to purchase the meals.
- **Undefined debts:** Many of the workers' payslips that were viewed by the Commission showed deductions labelled as "debt", "loan", or "arrear", without any other explanation. At one accommodation unit, we heard from workers who had \$250 deducted from their pay every time the smoke alarm in the kitchen went off.

57. As noted below, accommodation and health insurance were also deducted from pay. The Commission found that after deductions were made many workers were left with less than the minimum wage.

58. The Wages Protection Act 1983 requires that any deductions from wages can only be made with the written consent of the worker.<sup>46</sup> An employer cannot make unreasonable deductions under the Act.<sup>47</sup>

59. The Immigration NZ operational manual requires that pay deductions must meet the Wages Protection Act; the consent of the worker is required, and that they must be for actual, reasonable and verifiable purposes.<sup>48</sup>

60. ILO Recommendation No. 100 provides that "employers should be required to restrict any advances to workers to a small proportion of their monthly remuneration."<sup>49</sup>

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<sup>46</sup> Section 5(1).

<sup>47</sup> Section 5A.

<sup>48</sup> WH 1.20.10 Pay deductions <https://www.immigration.govt.nz/opsmanual/#34417.htm>.

<sup>49</sup> ILO Recommendation No. 100 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 at para 33.



61. The ILO General Principles and Operation Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs provide that “Recruitment fees or related costs should not be collected from workers by an employer such as through deductions from wages. The competent authority has flexibility to determine exceptions consistent with relevant international labour standards after consulting the most representative organizations of workers and employers.”<sup>50</sup>
62. Related costs, as referred to above, are defined as “expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment.”<sup>51</sup> They include:<sup>52</sup>
- a. medical costs
  - b. insurance costs
  - c. costs for training and orientation
  - d. equipment costs, including for tools, uniforms, safety gear and other equipment needed to perform assigned work safely and effectively
  - e. travel and lodging costs, including expenses incurred for travel, return or repatriation administrative costs relating to passports, visas, work and residence permits
- Right to freedom of movement: Early return home and system for repayment of migrant-related debt**
63. The Commissioner met with a group of workers who wanted to return home early because of unreasonable living conditions provided by their employer. Their employer was in charge of purchasing and arranging their return flights and deducted the cost of the flights through a fortnightly deduction from their pay. In this instance, the workers wanted to pay the flights off faster and wanted to have higher deductions so they could return home sooner. However, they were not able to negotiate the rate of deductions and were forced to stay and work longer than they wanted.
64. The INZ Operational Manual is silent as to costs when a worker does not fulfill their contract and wants to be repatriated. However, it states that the employer must “pay to the Ministry of Business, Innovation and Employment any costs reasonably incurred by the Ministry, to a maximum of NZ\$3000 per worker, in relation to the repatriation (including any maintenance and accommodation) of any non-New Zealand citizen or resident worker who requires repatriation as a result of a breach of the terms and conditions of their RSE limited visa.”<sup>53</sup>
65. ILO General Principles and Operation Guidelines for Fair Recruitment provide that “Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country.”<sup>54</sup>
66. The ILO recommends that migrant workers who have entered into a contract prior to departure should have the right to repatriation at the expense of the employer when: (i) the period of service stipulated in the contract has expired; (ii) the contract is terminated by reason of the inability of the employer to fulfil the contract; (iii) the contract is terminated by reason of the inability of the migrant worker to fulfil the contract owing to sickness or accident; (iv) the contract is terminated by agreement between the parties; (v) the contract is

<sup>50</sup> General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (2019) at p. 28.

<sup>51</sup> At p. 28.

<sup>52</sup> At p. 29.

<sup>53</sup> WH 1.5.5(c)(x) <https://www.immigration.govt.nz/opsmanual/#34417.htm>.

<sup>54</sup> General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (2019) at Part 1(iii), para. 12.

terminated on the application of either of the parties, unless the competent authority otherwise decides.<sup>55</sup>

67. A clear process should be established to enable workers to return home prior to the payment of their debt related to migration costs.

### **Right to freedom of movement and right to privacy and family: Restrictions on personal freedoms**

#### **Curfews and geographical restrictions**

68. Many workers informed us that their RSE employer placed them under curfews and geographical restrictions. These workers were not allowed to leave their designated region without permission from their employer. Industry leaders confirmed that these restrictions were in place so that employers could ensure workers did not abscond or abandon their employment.
69. We also heard from workers across all types of accommodation that they needed to ask their property managers or employers for permission to have visitors over.
70. The Commission spoke to community leaders who were involved in providing care for RSE workers from the same country. We heard examples of how they had hosted their country's national day celebrations and had to ask employers to allow workers to attend, while also providing a guarantee that the workers would behave and return promptly to their accommodation. In some cases, workers were not allowed to leave their accommodations to attend the celebrations.

71. It is a violation of the right to freedom of movement under s 17 BORA to stop workers from leaving their accommodation to go somewhere in their free time. This practice should be ceased immediately. Workers should also be allowed guests in their accommodation in their personal time.

#### **Alcohol**

72. Many workers told the Commission that they were banned from consuming alcohol for the duration of their employment. This included in their personal time when they were not at work. In some cases, those who were caught received disciplinary warnings and were told that their employment could be terminated.

#### **Control over personal relations**

73. The Commission heard accounts of how where the industry standard is to place multiple workers in one unit, the units are separated by gender. For married couples that come to New Zealand under the RSE scheme, they were separated from their partners for the duration of their employment. In 2020, a husband and wife were reprimanded by their employer for choosing to spend one night together.<sup>56</sup> The Commission was advised of one example where a woman who had entered into a relationship while under the RSE scheme was forced to present a negative pregnancy test to her employer or risk termination of her employment.

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<sup>55</sup> ILO Recommendation No. 100 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 at para 10(b).

<sup>56</sup> <https://www.newsroom.co.nz/hungry-and-scared-in-hawkes-bay>.



## **Right to an adequate standard of living: accommodation and rent**

74. RSE employers are required to make available appropriate pastoral care (including food and clothing and access to health services and suitable accommodation) to their non-New Zealand citizen or residence class visa holder workers at a reasonable cost during the period of the workers' RSE limited visas<sup>57</sup>
75. The Commission observed three types of accommodation that was used to house RSE workers:
  - a. Motels and camping ground cabins;
  - b. Rental houses owned by the RSE provider and rented out for RSE workers; and
  - c. Purpose-built units.
76. RSE workers that we spoke to were charged between \$150 to \$175 per week for accommodation, which included power and water. Workers' most frequent question to us was whether this cost was reasonable when the standard practice was for two to seven workers to share a bedroom. In some situations, this meant an employer was charging over \$1,000 per week per bedroom.
77. We heard about one situation where 18 workers were sleeping in a large hall across 9 bunk beds. Each worker was paying \$160 per week.
78. Their concerns of having to pay their own accommodation costs are further compounded by the poor standard of accommodation, explained further below.

### ***Motels and camping ground cabins***

79. Some RSE employers had rented out motels or camping ground cabins for their RSE workers that the workers then paid them for. The rooms we observed were shared between two to six men. Beds were

very close together and some workers were sleeping on bunk beds. The rooms were often cold, damp, and in some cases mouldy. Electricity was included in the rent, but many workers told us that they had purchased heaters because they were too cold. However, we heard that these were confiscated by some employers to save on electricity bills.

### ***Rental houses***

80. As with motel rooms and camping ground cabins, the Commission observed that it was standard practice for four or five workers to share one bedroom in a house. All the rental houses we observed were cold, mouldy, and run-down. In one house we could smell a gas leak and were told that the workers had complained to their RSE provider and were waiting for it to be fixed.
81. Workers told us that they had purchased their own heaters to heat their bedrooms, but had them confiscated, despite electricity being included in the rent.
82. At a number of rentals, we saw workers huddled together in the living room where one heater was allowed. In one house, we observed 18 workers sharing a five-bedroom house, each paying \$150 per week.

### ***Purpose-built accommodation***

83. ILO Recommendation 115 on Workers' Housing states that it is generally not desirable for employers to provide housing for their workers directly. However, in cases where housing is provided by the employer:<sup>58</sup>
  - (a) the fundamental human rights of the workers, in particular freedom of association, should be recognised;
  - (b) national law and custom should be fully respected in terminating the

<sup>57</sup> WH1.5.5 (c)(v) <https://www.immigration.govt.nz/opsmanual/#46619.htm>.

<sup>58</sup> R 115 – Workers' Housing Recommendation, 1961 (No. 115) at 12.

lease or occupancy of such housing on termination of the workers' contracts of employment; and (c) rents charged should be in conformity with the principle set out in Paragraph 4 above, and in any case should not include a speculative profit. (4) The provision by employers of accommodation and communal services in payment for work should be prohibited or regulated to the extent necessary to protect the interests of the workers.

84. While the government has set minimum worker accommodation standards for RSE Workers,<sup>59</sup> it appears that these standards are not being met or enforced. Furthermore, healthy home standards set out in the Residential Tenancies Act do not appear to be complied with.

85. The Commission observed several purpose-built accommodation units that were relatively new and in good condition. They were warm, dry, had Wi-Fi and a television in a common room. It was common practice for four workers to share a bedroom, with up to six bedrooms in one unit. Each person was charged \$150 per week, making the average weekly rent \$3,600 per week. Workers were subjected to five-minute limits on their showers.

### **Right to culture: restrictions on kava**

86. Many workers told the Commission that they were banned from consuming kava for the duration of their employment. The Commission observed formal disciplinary warnings for those who were caught having consumed kava in their personal time. Many workers found the prohibition of drinking kava to be offensive because it is seen as an intrinsic part of many Pacific peoples'

culture.<sup>60</sup> Industry leaders informed the Commission that such bans were necessary to ensure that RSE scheme workers would behave themselves.

87. Kava plays a unique role in Pacific culture and is integral to many Pacific peoples' cultural and social lives. It is a curtailment of the personal freedom of workers and the right to one's culture under s 20 NZBORA to control workers activities, such as kava drinking, outside of work hours (as long as these activities do not infringe on their ability to work). Employers should not be permitted to control the leisure time activities of seasonal workers. The ILO has suggested that penalties should be put in place for doing so.<sup>61</sup>

### **Right to freedom of association: Union membership**

88. The Commission repeatedly heard about RSE employers warning workers against joining a trade union. We were told that in some cases when workers had joined a union, they were not selected to come back to work for the following season.

89. The Commission also spoke to representatives of unions, who informed us that they faced barriers in assisting their union members. In some instances, they were banned from visiting union members in their homes in their personal time.

90. Given the temporary nature of the RSE scheme and the ability for employers to choose the hiring for each new season, the threats and repercussions of joining a trade union can go unregulated and thus unenforced, risking a breach of the freedom of association.

<sup>59</sup> See <https://worktheseasons.co.nz/uploads/rse-redeployment/worker-accommodation-standards-rse.pdf>

<sup>60</sup> Aporosa, S. 'Apo'. (2019). Kava and ethno-cultural identity in Oceania. In S. Ratuva (Ed.), *The Palgrave Handbook of Ethnicity* (pp. 1–15). Singapore: Springer Nature. [https://doi.org/10.1007/978-981-13-0242-8\\_134-1](https://doi.org/10.1007/978-981-13-0242-8_134-1)

<sup>61</sup> See International Labour Organization, *Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards*, Technical report at p. 164 [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms\\_847010.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_847010.pdf).



## Right to health: barriers in access to health services

91. A temporary work visa holder in Aotearoa New Zealand can access publicly funded health services only if they are eligible to be here for two years or more. However, RSE contracts are usually for a period of 7 to 11 months. Accordingly, workers are not entitled to publicly funded health services.
92. Workers must pay for private health insurance while working under the RSE scheme. The RSE employer organises the health insurance prior to arrival and the cost is deducted from their pay. Workers have no choice in provider, policy type, and cannot negotiate the matter. Workers are generally charged set premiums without correlation to the state of their health or previous history.
93. Many workers that the Commission spoke to had not received any information about their health insurance policy, despite their premiums being regularly deducted from their pay. Without documentation, it was not clear to some workers whether they had health insurance at all.
94. Further, many workers face difficulty in accessing their health insurance, explained further below. One health practitioner that the Commission spoke to, who has reported on the health needs of seasonal workers,<sup>62</sup> told us that most workers were in poor health and that their health needs were not being looked after.

## Pastoral care

95. Under the RSE scheme, employers must appoint pastoral care providers for their workers to ensure their wellbeing. Many workers that we spoke to expressed concern that pastoral care providers were often absent or did not act in the interests of

the workers. We were also told that some appointed pastoral care providers were friends or relatives of the employers who acted more like workplace supervisors, rather than independent advisers.

## Access to justice

96. Like many others on temporary work visas, RSE workers are on visas that tie their employment to one employer. If the employer terminates the employment, they no longer have a legal right to remain in New Zealand. Even if the termination is unlawful, workers felt that they would not be able to dispute the termination. Accordingly, many workers feared losing their employment or having their visas cancelled if they raised any issues relating to their employment. Workers were also concerned that the employer might threaten their re-employment for future seasons with other employers.
97. The ILO Multilateral Framework on Labour Migration – a set of non-binding principles and guidelines for a rights-based approach to labour migration – provides that effective remedies must be provided to all migrant workers for violation of their rights by creating effective and accessible channels to lodge complaints and seek remedies without discrimination, intimidation, or retaliation.<sup>63</sup>
98. ILO General Principles and Operational Guidelines for Fair Recruitment states that governments should take steps to ensure workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.<sup>64</sup>

<sup>62</sup> Lisa Blaker, Identifying the health needs of seasonal workers from the Pacific, Kai Tiaki: Nursing New Zealand (Vol 25, Issue 8) 2019.

<sup>63</sup> ILO Multilateral Framework on Labour Migration, principle 10 at p 20. <https://www.unhcr.org/50aa5cc59.pdf>

<sup>64</sup> General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (2019) at part 1(III), para. 8.

# Recommendations

99. Based on the Commission's observation, it appears that significant breaches of human rights and labour standards may be taking place under the RSE scheme. The recommendations below are based on what the Commission has seen and heard and reiterates many of the recommendations made by the ILO in its June 2022 report "Seasonal worker scheme in the Pacific through the lens of international human rights and labour standards".<sup>65</sup>
100. The Commission urges the Government to urgently review the RSE Scheme and implement human rights-based changes before the next season in 2023. The review should be done through a human rights lens, as identified in this report. The review of the scheme should include input from RSE workers, in a manner that is culturally and linguistically appropriate and safeguards the rights of workers, as well as representatives who can provide a Pacific voice.
101. New Zealand should also consider **ratifying relevant ILO instruments and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which would ensure greater consistency with international standards and lead to the enhanced protection of workers.**<sup>66</sup>
102. The Commission recommends that the **following issues be addressed immediately. Many of these recommendations reflect those made by the ILO in June 2022.**<sup>67</sup>
- Offer of employment:** All employers should be required to use standard form offers of employment and contracts that contain not only the terms of employment for the individual worker, but also information on minimum employment and accommodation standards required by New Zealand law. Employment conditions and worker deductions should be transparent in the agreement.<sup>68</sup>
- Choice of employment:** Ensure free choice of employment by removing the requirement that RSE worker visas are tied to a single employer and allow them to seek employment within the pool of approved Recognised Seasonal Employers.<sup>69</sup>
- Deductions:** Ensure deductions are minimal and transparent and comply with the Wages Protection Act 1983 and Minimum Wage Act 1983.
- Early return home and system for repayment of migrant-related debt:** Establish a clear process for workers who wish to return home prior to repayment of their debt related to migration costs.<sup>70</sup>

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<sup>65</sup> See recommendations from p. 158.

<sup>66</sup> See International Labour Organization, Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards, Technical report, p. 154.

<sup>67</sup> International Labour Organization, Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards, Technical report [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms\\_847010.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_847010.pdf).

<sup>68</sup> See ILO Report, p. 156

<sup>69</sup> See ILO Report, p. 161.

<sup>70</sup> See ILO Report, p 157.



**Accommodation:** Improve enforcement of accommodation standards to address substandard accommodation wherein workers are living in crowded conditions, with inadequate sized bedrooms and living areas, and lack of heating. This should include verification by officials on workers arrival to ensure that conditions meet minimum standards.<sup>71</sup>

**Rent:** Require that rents are reasonable in relation to wages earned.<sup>72</sup>

**Transport costs:** Workers should be charged fair and reasonable rates for transport between the place of accommodation and work and to other amenities.<sup>73</sup>

**Pastoral care:** Ensure that the Government is directly responsible for providing services to support the welfare and wellbeing of RSE workers and for funding a support person.

**Curtailement personal freedoms (kava and leaving accommodation):** Cease the practices curtailing the personal freedom of workers, such as kava drinking outside of work hours, restricting leisure activities, and freedom of movement within the region.

**Health:** Protect workers' ability to access health services for the duration of their employment in New Zealand.

**Access to justice:** Introduce processes to ensure workers are able to use employment protections and redress mechanisms that are available to all New Zealanders. This may include funding dedicated to provided legal aid or increased labour inspections.

**Union membership:** Ensure that workers are provided with all necessary information on joining trade unions before leaving home and after commencing work in New Zealand.<sup>74</sup> Employers should not discourage workers from joining trade unions and there should be no adverse treatment for those that do join trade unions.

**Ensure meaningful consultations for all future developments under the RSE scheme:** While there have been consultations with industry leaders and union leaders, the Commission has yet to see consultations under the RSE scheme that include the participation of representatives of workers themselves. The Commission recommends that any such future consultations or reviews must have those who can represent the Pacific voice in the consultations so as to ensure a meaningful process.

#### **Recommendations to Business:**

All RSE providers and those businesses that rely on the RSE providers to bring them workers should take greater responsibility of their workers by ceasing the practices mentioned in this report.

Businesses should adopt, implement and integrate a human rights policy applicable to their company's operations and supply chains. Assess the human rights impacts of the company's operations, directly or indirectly, on all people connected to the company's business activities and ensure that it is systemically monitored and enforced.

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<sup>71</sup> See ILO Report, p. 163.

<sup>72</sup> See ILO Report, p. 163.

<sup>73</sup> See ILO Report, p. 163.

<sup>74</sup> See ILO Report, p. 165-166.



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