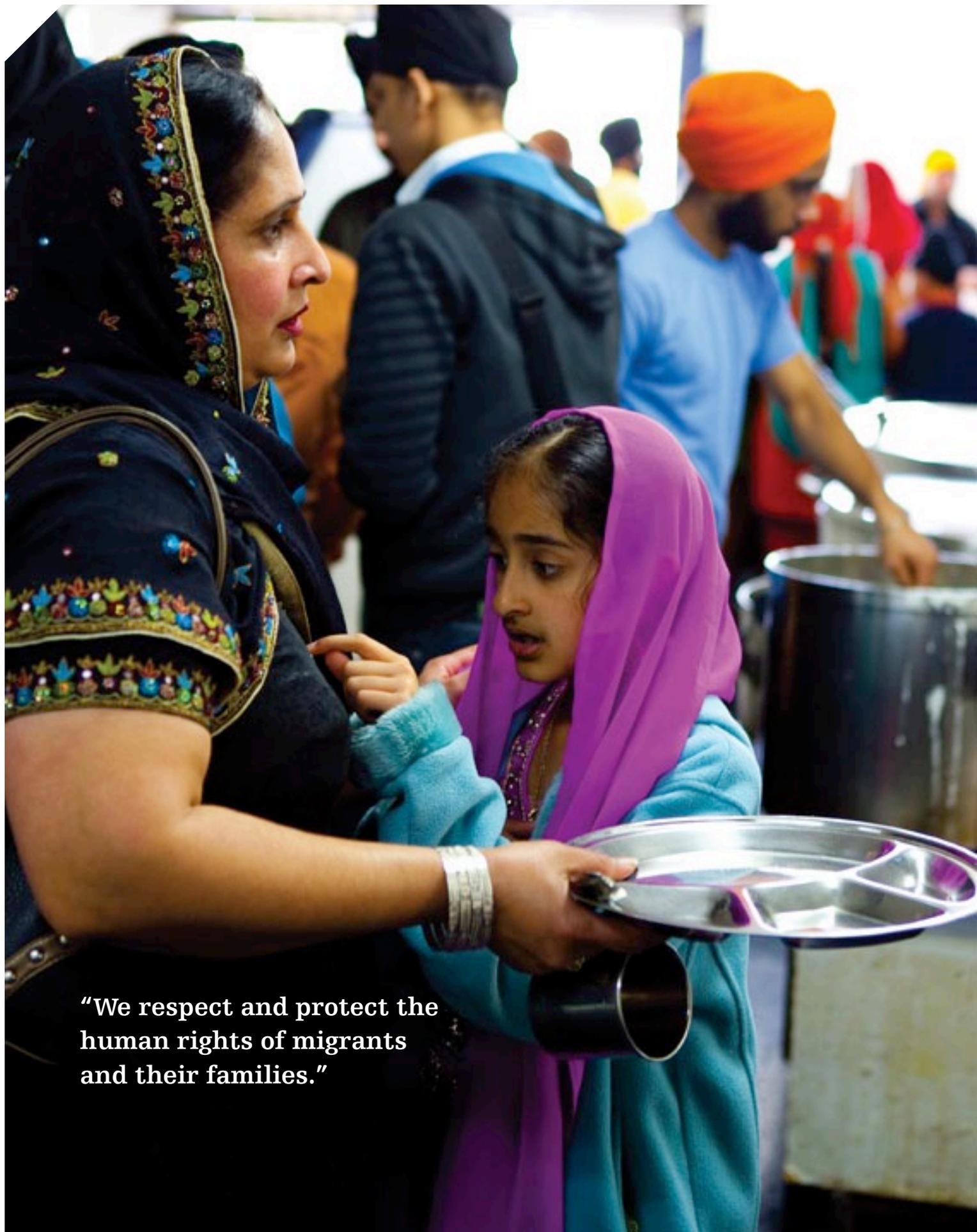


## 20. Rights of Migrants

Tikanga o ngā Tāngata Kaiheke



**“We respect and protect the human rights of migrants and their families.”**

## We respect and protect the human rights of migrants and their families.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 7

### Introduction Tīmatatanga

More people live outside their country of birth today than at any other time in history. The number of people moving across international borders is expected to continue to rise in the future. While people have a right to leave a country, there is no automatic right to enter or reside in another country. Governments may exercise their national sovereignty to decide who to admit into their territory. Once an individual has entered a country, the national government is responsible for the protection of his or her rights. All persons, regardless of their nationality, race, legal or other status, are entitled to fundamental human rights and basic labour protections.

Since the Commission's review of human rights in 2004, new immigration legislation has been enacted. The Immigration Act 2009, which came into force in 2010, governs immigration in New Zealand. The Immigration Advisers Licensing Act 2007 provides for the regulation of persons who give immigration advice.

The adoption of the Recognised Seasonal Employers Scheme (RSE) in 2007 and the introduction of the Supplementary Seasonal Employment (SSE) permit in 2009 provide workers from the Pacific with access to the New Zealand labour market and aim to better protect the rights of these workers.

Since 2004, there has also been an increased emphasis on successful settlement and providing more support to migrants through central and local government and the voluntary sector. This has included the development of a national settlement strategy and action plan and regional settlement strategies in Auckland and Wellington; the establishment of a settlement support network; the opening of migrant resource centres; and the launch of local newcomers networks.

### International context Kaupapa ā taiao

Three fundamental notions characterise the protections in existing international law for migrants and their families:

- Migrants and nationals receive equal treatment<sup>2</sup>
- Core universal human rights apply to all migrants, regardless of status<sup>3</sup>
- International standards providing protection in treatment and conditions at work – safety, health, maximum hours, minimum remuneration, non-discrimination, freedom of association, maternity, etc – apply to all workers.<sup>4</sup>

Migrants' rights are set out in two sets of international instruments:

- the core human rights treaties, whose provisions apply universally and thus protect migrants
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention) and the International Labour Organisation (ILO) conventions, which specifically apply to migrant workers.<sup>5</sup>

1 Most of New Zealand's human rights obligations are summarised in Ministry of Foreign Affairs and Trade (2008), Handbook on International Human Rights (3rd edition) (Wellington: MFAT). The international human rights instruments are accessible online at the website of the Office of the UN High Commissioner for Human Rights, <http://www.ohchr.org>

2 It is noted, however, that certain social services, such as New Zealand Superannuation, have residence requirements.

3 This was established implicitly and unrestrictedly in ILO Convention 143 on Migration for Employment (Supplementary Provisions) (1975), and later delineated explicitly in the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families (1990).

4 This notion was upheld in an opinion issued by the Inter-American Court in 2003 (Corte Interamericana de Derechos Humanos: *Condición Jurídica y Derechos de los Migrantes Indocumentados*. Opinión Consultativa OC-18/03 de 17 de Septiembre de 2003, solicitada por los Estados Unidos de Mexico). In its conclusions, the court decided unanimously that "the migrant quality of a person cannot constitute justification to deprive him of the enjoyment and exercise of his human rights, among them those of labour character. A migrant, by taking up a work relation, acquires rights by being a worker that must be recognized and guaranteed, independent of his regular or irregular situation in the state of employment. These rights are a consequence of the labour relationship."

### CORE HUMAN RIGHTS TREATIES

The human rights and fundamental freedoms of all migrants, regardless of their immigration status, are protected by the:

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Rights of the Child (UNCROC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Vienna Convention on Consular Access, which respects the right of all migrants to consular access and protection
- various International Labour Organisation (ILO) conventions.<sup>6</sup>

Migrants' rights in the most extreme situations (e.g. war, genocide or crimes against humanity) are protected under international criminal law and international humanitarian law.

### CONVENTIONS THAT APPLY SPECIFICALLY TO MIGRANT WORKERS

Historically, the ILO has led the way in defining and enforcing workers' rights. While the early United Nations conventions do not make reference to migrant workers, the ILO has addressed migrant labour rights through specific conventions and recommendations. The 1998 Declaration on Fundamental Principles and Rights at Work, which binds all ILO members, protects all migrant workers regardless of status.<sup>7</sup> The two key ILO

conventions are 97, on Migration for Employment (1949), and 143, on Migrant Workers (supplementary provisions) (1975).

ILO convention 97 provides the foundations for equality of treatment of nationals and regular migrants,<sup>8</sup> in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations. It sets out details for contract conditions and the participation of migrants in job training or promotion, and deals with provisions for family reunification and appeals against unjustified termination of employment or expulsion, as well as other measures to regulate the entire migration process.

ILO Convention 143 was adopted at a time when concern about irregular migration (including smuggling and trafficking) was growing. It sets out requirements for respecting the rights of migrants with an irregular status, while providing for measures to end clandestine trafficking and penalise employers of irregular migrants.

Other ILO conventions that protect migrant labour include:

- Forced Labour (29)
- Freedom of Association and Protection of the Right to Organize (87)
- Equal Remuneration (100)
- Discrimination (Employment and Occupation) (No. 111)
- Minimum Age (138).

Continuing international concern about the rights of migrant workers led to the adoption by the United Nations of the Migrant Workers Convention in 1990. The convention brings together the rights that already protect migrants (including irregular workers) and that have already been accepted by most states through 'core' human rights treaties. The convention is based on concepts and language drawn from ILO conventions 97 and 143. It considerably extends the legal framework for migration, the treatment of migrants and the prevention

5 The term 'migrant worker' is used internationally to refer to a "person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a national" (Article 2(1) of the Migrant Workers Convention).

6 For further information on the international human rights protections, see the chapter on the International Human Rights Framework.

7 The ILO conventions are accessible online at <http://www.ilo.org/ilolex/english/convdisp1.htm>

8 A regular migrant is a migrant who is lawfully entitled to be present in a country.

of exploitation and irregular migration,<sup>9</sup> and identifies some further rights, including the right to family reunification.

Family reunification of migrants is the social and legal process of reuniting migrants with their families in the host state.

There are two basic prerequisites: the legal (regular) residence of the principal in the host State; and the subsequent (post-principal) entry of the principal's family members from the country of origin into the host state, following appropriate authorisation by the host state.

A right to family reunification is found in Article 9 of the CRC and the Migrant Workers Convention. According to Article 44 of the Migrant Workers Convention, states are required to "take appropriate measures to ensure the protection of the unity of the families of migrant workers", and "take measures that they deem appropriate and that fall within their competence to facilitate the reunification" of the migrant workers' families.<sup>10</sup>

The socio-political significance of migrant family reunification has been stressed by the ILO:

**Uniting migrant workers with their families living in the countries of origin is recognised to be essential for the migrants' well-being and their social adaptation to the receiving country. Prolonged separation and isolation lead to hardships and stress situations affecting both the migrants and the families left behind and prevent them from leading a normal life. The large numbers of migrant workers cut off from social relations and living on the fringe of the receiving community create many well-known social and psychological problems that, in turn, largely determine community attitudes towards migrant workers.**<sup>11</sup>

There has been considerable controversy over the promotion, ratification and implementation of the ILO conventions and the Migrant Workers Convention, highlighting the tension between a human rights approach to social protection and the increasingly deregulated, globalised use of labour. Although there has been relatively widespread ratification of convention 97, there has been less ratification of convention 143. Only 42 countries have so far ratified the Migrant Workers Convention, which entered into force on 1 July 2003. An additional 16 states have signed but not ratified it, and no industrialised host countries have ratified it.

## **New Zealand context** **Kaupapa o Aotearoa**

### **LAW AND POLICY**

Civil and political rights are guaranteed under the New Zealand Bill of Rights Act 1990 (BoRA).<sup>12</sup> Generally, rights and freedoms contained in the BORA apply equally to all persons in New Zealand, irrespective of their immigration status.

The Human Rights Act 1993 (HRA) prohibits discrimination on the grounds of race, colour, and national or ethnic origins, and the incitement of racial disharmony and racial harassment. Section 392 of the Immigration Act 2009, which governs immigration in New Zealand, prevents the Human Rights Commission from investigating alleged discrimination in the Immigration Act and under policy developed pursuant to that act. Only complaints of alleged discrimination in New Zealand Immigration Service (NZIS) delivery can be accepted. This is based on the argument that immigration law and policy is, by its nature, discriminatory. The act does provide for the Commission to make public statements in relation to groups of persons who are in or may be coming to New Zealand and who are or may be subject to hostility,

9 It emphasises that the rights contained in the convention apply to 'all' migrant workers, irregular as well as regular, by obliging state parties to ensure that "migrant workers are not deprived of any right by reason of any irregularity in their stay or employment" (Article 25(3)).

10 A secondary (i.e., derivative) right to family reunification may be argued to be a clear outcome of the primary right to found a family that is expressly recognised in contemporary human rights law.

11 The Government has considered the right to family reunification to be one of the barriers to ratification of the Migrant Workers Convention.

12 Although not all the rights contained in the ICCPR are given explicit domestic legal expression or protection, BoRA affirms New Zealand's commitment to the ICCPR.

or have been or may be brought into contempt on the grounds of race, colour, ethnic origin or other grounds of discrimination listed in the act.

The Immigration Act 2009 governs immigration in New Zealand. In general, all persons other than New Zealand citizens (including the people of Niue, Tokelau and the Cook Islands, who are New Zealand citizens) must hold a visa to travel to or be in New Zealand. Australian citizens are exempt by regulation from the requirement to hold a visa, as are persons covered by diplomatic privileges and immunity and certain other classes of person. There are a number of visa categories: permanent resident, resident, temporary, limited, interim and transit.

The Immigration Advisers Licensing Act 2007 aims to “promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice”.<sup>13</sup> The act describes immigration advice as “using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward”.<sup>14</sup> Under this act, anyone giving immigration advice about New Zealand must be licensed, unless they are exempt.<sup>15</sup> Licences must be renewed annually, can only be held by individuals, not organisations, and cannot be transferred to anyone else. It is an offence to knowingly provide immigration advice without a licence, and this may be punishable by a fine of up to NZ\$100,000 and/or as much as seven years in prison.

The Citizenship Act 1977 deals with New Zealand citizenship. Citizenship can be acquired by birth, descent or grant. Non-New Zealand citizens are defined as “aliens” for the purposes of the Act, with the exception of Commonwealth citizens (British subjects), British ‘protected persons’ and Irish citizens. To be granted citizenship, an applicant is generally required to have

been legally resident in New Zealand for a period of five years; be entitled under the Immigration Act 2009 to be in New Zealand indefinitely; be of good character; have sufficient knowledge of the responsibilities and privileges attached to New Zealand citizenship; have sufficient knowledge of the English language; and intend to continue to reside in New Zealand or work for the Government, for an international organisation of which New Zealand is a member, or for a New Zealand employer overseas.

The Employment Relations Act 2000, the Health and Safety in Employment Act 1992, the Minimum Wage Act 1983 and the Holidays Act 2003 ensure minimum national employment condition norms are upheld in all sectors.

## INSTITUTIONS

The New Zealand Immigration Service (NZIS), a part of the Department of Labour, operates under the Immigration Act 2009, issuing visas for people travelling to New Zealand to visit, work, study or live. The NZIS provides policy advice to the Government and is responsible for ensuring compliance with New Zealand’s immigration laws. The NZIS’s operational policy is set out in the NZIS Operational Manual.<sup>16</sup> The manual is subject to regular adjustment to reflect changes in policy.

The Department of Labour has the lead role in providing initial settlement activities that help migrants settle quickly and adjust to life in New Zealand.

The Department of Internal Affairs administers the Citizenship Act 1977, including issuing citizenship and passports.

The Ministry of Social Development, through Family and Community Services, delivers the Settling In programme, which works with migrant and refugee communities to develop social services that meet their needs.

The Office of Ethnic Affairs is responsible for minority ethnic communities. It provides advice to the

13 Immigration Advisers Licensing Act 2007, section 3

14 Immigration Advisers Licensing Act 2007, section 7

15 Lawyers and members of parliament are exempt

16 The manual is accessible online at <http://www.immigration.govt.nz/opsmanual/index.htm>

Government; works with ethnic communities and service providers, to promote community development, better services to ethnic communities and better access to information; manages the Language Line telephone interpreting service, enabling non-English speakers to have equal access to services; promotes understanding of ethnic issues in the wider community; encourages discussion; and promotes and supports the development of intercultural competence.

A number of other government departments, including the Ministry of Education, the Ministry of Health and the New Zealand Police, work closely with migrant communities and provide migrant-specific services.

#### COMPLIANCE WITH INTERNATIONAL TREATIES

New Zealand has ratified the core human rights conventions. New Zealand has a reservation against the CRC that reserves the right to distinguish between persons according to the nature of their immigration status in New Zealand. The Government is working towards removing this reservation.

New Zealand has ratified ILO Convention 97. It has not ratified ILO Convention 143 or the Migrant Workers Convention, but successive governments consider that New Zealand law and practice is in compliance with the principles that underlie them. In its response to the Universal Periodic Review in May 2009, the Government said:

**At present, New Zealand is not considering ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. New Zealand has various laws to adequately protect all workers in New Zealand, including migrant workers, on an equal basis.**

New Zealand generally complies with the provisions of ILO Convention 97. However, it does not comply with a number of aspects of ILO Convention 143 or the Migrant Workers Convention. For example, migrants continue to experience discrimination and harassment, and have

difficulty accessing educational services, pre-settlement information and social services. Migrants continue to face barriers to employment and, when employed, are subject to adverse working conditions. In addition, New Zealand does not fully support the right to family reunification.<sup>17</sup> For example, because of changes made to immigration policy in 2009, migrant workers on supplementary seasonal employment<sup>18</sup> are not eligible to support their partner and children for permits under visitor, student or work policies.

Some of these issues could be addressed through changes specifically relating to migrants, while others would require changes that would affect all citizens.

#### INSTITUTIONAL MECHANISMS AND PRACTICAL MEASURES

Recent immigration policy changes have placed greater emphasis on successful settlement of migrants. These changes include the establishment of migrant resource centres, and co-ordinated planning at the regional level between government departments, local councils, and employer, migrant and community groups.

Persons approved for residence have to pay a migrant levy, in addition to the standard visa/permit application fees, before they receive their residence visa.

The purpose of the migrant levy is to contribute to the funding of programmes intended to assist the successful settlement of migrants. For instance, the levy funds help with costs related to the Language Line telephone interpreting service, the Migrant Employment Assistance service, and the Citizens Advice Bureau Language Link service. The levy also includes a contribution towards English for Speakers of Other Languages (ESOL) tuition for adults and children.

The New Zealand Settlement Strategy (NZSS) provides a whole-of-government framework aimed at achieving a consistent nationwide approach to settlement-related policies and services. Following its launch in 2004, it was then revised in 2006. The NZSS seeks to promote a society in which the local and national integration of newcomers is supported by responsive services, a

17 For example, Article 44 of the Migrant Workers Convention requires states to “take appropriate measures to ensure the protection of the unity of the families of migrant workers” and “take measures that they deem appropriate and that fall within their competence to facilitate the reunification” of the migrant workers’ families.

18 Department of Labour (2009), Quota Refugees in New Zealand Approvals and Movements [1999–2008]. Accessible online at <http://dol.govt.nz/publications/research/quota-refugees/quota-refugees.pdf>

welcoming environment and a shared respect for diversity by:

- ensuring migrant and refugee families have equitable access to the support and choices they need to be secure and able to reach their full potential in all aspects of social and economic life
- promoting understanding and acceptance of cultural diversity – migrants, refugees and their families have a sense of place and belonging in New Zealand, while maintaining their cultural identities that contribute to New Zealand's social and cultural vibrancy.

Regional settlement strategies have been completed for Auckland (2006) and Wellington (2008). These strategies have been developed in partnership with the Government and local bodies, non-government organisations and other stakeholders with settlement-related interests, including migrants and refugees.

The Wellington Regional Settlement Strategy addresses the importance of migrants building a relationship with Māori. Two actions in the strategy focus on welcoming manuhiri/newcomers to the Wellington region and providing information about the Treaty of Waitangi, regional history and environment.

The Department of Labour has the lead role in providing initial settlement activities that help migrants settle quickly and adjust to life in New Zealand. Settlement activities funded by the department's Settlement Division cover:

- settlement information for migrants at the pre-arrival and initial settlement stages
- information that supports employers to recruit and retain skilled migrants
- co-ordination support, through management of the Settlement Secretariat, for cross-agency activities that contribute to settlement outcomes.

The Department of Labour supports 19 regional settlement support offices. These help provide access to settlement information and co-ordinate service delivery to support migrants and their families in their first two

to three years in New Zealand. In 2008–09, settlement support offices provided services to 9400 migrants and 887 local service providers.

In addition, the Department of Labour funds a variety of settlement programmes, which support newcomers' access to orientation and settlement information, and support employers to secure and retain the skills that workplaces need.<sup>19</sup>

The Ministry of Social Development's 'Settling In' programme works directly with refugee and migrant communities to help them find solutions to meet their own needs. It was established in 2003 to build relationships between refugee, migrant and host communities, and ensure that government policy affecting them is developed in a collaborative way. The programme aims to:

- identify social service needs in refugee and migrant communities
- purchase services where available
- develop capacity, skills and knowledge within the refugee and migrant communities
- work across government, NGO and community sectors.

There have been a number of initiatives by employer and professional groups and education providers to assist migrants in overcoming barriers to employment. For example, Opportunities for Migrant Employment in Greater Auckland (OMEGA) matches migrants with professionals who share the same skills and industry knowledge, in occupation-specific mentoring. The Auckland Chamber of Commerce operates the New Kiwis website for onshore migrant job-seekers and a recruitment-focused website for prospective migrants offshore.<sup>20</sup> The Canterbury Chamber of Commerce's Employment Programme assists work-ready migrants to find employment and help relieve the skills shortage in the Canterbury region.

For non-English speaking migrants, the most immediate educational need is English for Speakers of Other Languages (ESOL). The Government provides funding for some ESOL programmes. The Ministry of Education administers a number of programmes to improve learning outcomes for migrants.

19 For example, Auckland Regional Migrant Services (ARMS), CAB Multilingual Information Service, Relationship Services – Relating Well in New Zealand, Chinese New Settlers Services Trust (Auckland), PEETO (Christchurch), Christchurch Resettlement Services, Auckland Chamber of Commerce New Kiwis programme, Wellington Chamber of Commerce, Canterbury Employers Chamber of Commerce

20 <http://www.newkiwis.co.nz/>

English Language Partners New Zealand is New Zealand's largest organisation working with migrants and refugees. It operates in 23 locations throughout the country, delivering English language tuition and settlement support to adult refugees and migrants.<sup>21</sup>

The Government, through the Tertiary Education Commission, funds other migrant-specific courses and bridging programmes, such as the Workplace Communication for Skilled Migrants programme run by Victoria University of Wellington, which aim to develop appropriate communication skills and improve cultural understanding of New Zealand workplaces among skilled migrants. Funding for these adult community education programmes, which provide a building block for people who would not otherwise be engaged in education, was reduced in 2009.

Local councils administer a number of programmes for migrants. For example, the Migrant and Refugee Work Experience Programme helps migrants and refugees gain useful local work experience in roles with Wellington City Council.

## **New Zealand today** **Aotearoa i tēnei rā**

The global economic turndown has had a significant impact on migration flows worldwide and poses new challenges for migrants. It is having repercussions on migrants' earnings, the remittances they send home and their ability to gain residence.<sup>22</sup>

In New Zealand, while the demand for temporary workers has decreased, export education (international students) continues to increase and expand into new markets.

Concerns about protection of the rights of migrants in New Zealand have been raised by treaty bodies, including CERD and CEDAW, and by the Human Rights Committee in monitoring the ICCPR and ICESCR. Migrant workers' rights were raised in the context of New Zealand's Universal Periodic Review in 2009. It was recommended that New

Zealand ratify or consider ratifying the Migrant Workers Convention. One of the themes of the 2009 Durban Review Conference was protecting the rights of migrant workers. The Race Relations Commissioner identified this as one of five themes relevant to New Zealand.

### **DISCRIMINATION**

While discrimination on the grounds of race, colour, and ethnic and national origins is unlawful in a range of public contexts under the Human Rights Act 1993, migrants report that they continue to experience it.<sup>23</sup> Statistics New Zealand's 2008 General Social Survey found that 10 per cent of New Zealanders experience discrimination. The most common grounds were nationality, race, ethnic group or skin colour. Asians experienced the most discrimination.

### **CHILDREN**

Some children migrate to New Zealand with their families and some come independently as international students. Child migrants (defined as those under 18 years of age) are covered by the UNCROC and are entitled to the protection, provision and participation rights it confers, unless they fall within the reservation.<sup>24</sup>

Until recently, children of migrants whose parents' immigration status was unclear were unable to receive early childhood, primary or secondary education. This was changed in the Immigration Act 2009. However, certain practical barriers remain, such as the fear of being identified as being unlawfully in New Zealand.

### **INTERNATIONAL STUDENTS**

The results of a 2007 survey of international students, for the Ministry of Education and Department of Labour, found that although experiences of discrimination were infrequent, three-quarters of respondents said they had experienced some discrimination on campus by other students. Approximately 50 per cent had experienced discrimination by teachers, administrative or support staff and other international students.

21 For example, the Home School Partnership

22 Some temporary workers on the work-to-residence scheme have failed to gain residence due to employers giving preference to New Zealand workers.

23 Further information on discrimination can be found in the chapter on Equality and Freedom from Discrimination.

24 The UNCROC is considered in more detail in the chapter on Rights of Children and Young People.

The number of international students approved to study in New Zealand in 2008–09 was 73,926. In 2009, there was a 6 per cent increase in international fee-paying student enrolments compared with 2008.

In 2009 15,462 international students were enrolled in primary, intermediate and secondary schools, making up approximately 16 per cent of all international students in New Zealand.<sup>25</sup> The majority of these students are under 18 years of age, and are therefore protected by the rights set out in the UNCROC, including the right to be raised by their parents or legal guardians, to be protected from harm, and to preserve their identity. Concerns have been raised about the quality of care and protection afforded to young international students. The recent revision of the Code of Practice for the Pastoral Care of International Students is a welcome development. However, pressures from schools to allow enrolment of young children and the desire of parents to access a New Zealand education for their children risk compromising the rights and overall well-being of young international students.

In 2009, Human Rights Commissioners at the annual Australia-New Zealand Race Relations Roundtable noted that the human rights of international students were a major issue in both countries. They viewed recent instances of racial harassment, abuse and violence directed at international students as symptoms of a range of human rights issues that need to be addressed. These include rights to non-discrimination; equality of treatment; security of the person; access to justice, housing, and information; freedom of religion and culture; and labour rights.

### TEMPORARY/SEASONAL WORKERS

Complaints to the Human Rights Commission since 2005 suggest that some seasonal workers continue to face discrimination, difficult work conditions (which sometimes fall below minimum standards) and difficulty accessing social services. Temporary workers are also often unable to bring their families to New Zealand.

The Recognised Seasonal Employer (RSE) policy was introduced in 2007 to meet labour shortfalls in the fruit picking sectors, generate income for Pacific Island countries and discourage overstaying. The policy allows employers in the horticulture and viticulture industries to recruit temporary workers from Pacific Island countries if there are no New Zealand workers available for these positions. In 2008–09, 7617 RSE applications were approved – almost double the 4426 approvals in the first year the scheme operated.

In 2010 the Department of Labour commissioned an evaluation report of the RSE scheme.<sup>26</sup> It identified the following positive impacts from the scheme for employers:

- Employers in the horticulture and viticulture industries have access to a reliable and stable seasonal workforce
- Labour supply crises pre-RSE have been avoided and employers can now plan and manage their business with confidence
- Significant productivity gains for employers began to emerge in the second season.

The following positive impacts for RSE workers were identified in the RSE evaluation report:

- Workers were able to develop skills.
- Workers were generally satisfied with the amount they earned over 4–7 months, as this was more than they could earn in their home countries.
- Workers from Vanuatu, Tonga and Samoa benefited financially from working in New Zealand.
- Workers' earnings enhanced the wellbeing of their families and enabled individuals and communities to pursue business ventures.
- Many workers engaged with the local community through church, sports, and cultural activities.

Although steps have been taken to address some early issues with the scheme, key issues previously identified are raised again in the RSE evaluation report. These

25 Ministry of Education (2010), *International student enrolments in New Zealand 2003–2009* (Wellington: MoE), May. Accessible online at <http://www.educationcounts.govt.nz/publications/international/15260/76293>

26 Evaluate Research (2010), *Final Evaluation Report of the Recognised Seasonal Employer Policy (2007–2009)* (Wellington: DoL), accessible online at <http://www.dol.govt.nz/publication-view.asp?ID=327>

include accommodation, particularly costs and overcrowding; lack of awareness and understanding of rights and obligations; fears of adverse consequences of complaining; and unfavourable reactions from the host community.

As a result of changes made to immigration policy in 2009, migrant workers on supplementary seasonal employment (SSE)<sup>27</sup> are not eligible to support their partner and children for permits under visitor, student or work policies.

The global economic downturn and a rise in unemployment have put pressure on the Government to limit the flow of migrant workers. A key policy principle for temporary work is protecting opportunities for New Zealanders. Many temporary workers have not been able to renew their permits, despite already being employed, because their employers must first prove that suitable New Zealand workers are unavailable.

Some migrants on work-to-residence visas and permits have been unable to fulfil their employment obligations and achieve residence. The work-to-residence scheme allows people wanting to live in New Zealand to test their skills against the local labour market. If they cannot find work, they are required to leave. Immigration New Zealand issued 2261 work-to-residence visas and permits in 2009, despite 44 per cent of those migrants already in New Zealand on such visas failing to find employment.

## EDUCATION

In 2009, the Government announced funding cuts that will adversely impact on migrants' ability to access educational services. For example, the 'migrant study grant' has been abolished from 2010. This allowed courses such as the Workplace Communication for Skilled Migrants programme to operate, and opened tertiary study opportunities to migrants. Funding for adult community-education classes, which provide a building block for people who would not otherwise be engaged in

education, has been dramatically reduced.

In 2010, the Government announced that it was considering implementing a two-year stand-down period before new permanent residents can access student loans to fund tertiary studies in New Zealand. This would create a significant barrier to migrants accessing tertiary education services.

## QUALIFICATIONS

A third of new migrants have university qualifications.<sup>28</sup> However, many highly skilled migrants (in particular those from non-English-speaking backgrounds) continue to face serious problems finding a job because their qualifications are not accepted in New Zealand.

## ASTRONAUT MIGRATION

'Astronaut' migration<sup>29</sup> is a migration pattern first identified in the 1980s. It refers to migrants who, after taking up residence, spend lengthy periods out of New Zealand.

Typically, astronaut migrants return to their country of origin to work or do business, leaving their spouses and children in New Zealand. The small amount of research literature available suggests that astronaut migrants tend to be from North Asia and that the practice is a consequence of an array of factors, including migrants' inability to find suitable employment in New Zealand.

Astronaut families may face particular issues with language barriers, barriers to employment, loneliness and isolation. In Christchurch in 2010, a Korean astronaut family of four committed suicide. It is understood that isolation and the effect of the economic downturn were significant factors in this tragedy.

## EXPLOITATION OF 'ILLEGAL' MIGRANT WORKERS

While trafficking and exploitation of illegal migrant workers constitute serious criminal offences, there is no

27 SSE policy allows employers to supplement their workforce with workers from overseas at times when their labour demand is greater than can be met by the available New Zealand workforce.

28 Waikato District Health Board (2008), Waikato District Health Board Health needs assessment and analysis (Hamilton: WDHB), HNA 2008, <http://www.hiirc.org.nz/page/16383/waikato-district-health-board-health-needs?tab=827&contentType=167>

29 Also referred to as 'Goose' or 'Satellite' migration

systematic process for identifying these issues.<sup>30</sup> Where they have been uncovered, it has mostly been in the horticulture, hospitality and sex industries.

## Conclusion

### Whakamutunga

Migrants in New Zealand represent a rich diversity of people and backgrounds. They come to New Zealand for a variety of reasons, including work, marriage, family and education. Most adjust well to their new home. In 2010, the Department of Labour's 'Longitudinal Immigration Survey' showed that new migrants adjusted well, and that more than 90 per cent were very happy with life and settled after 18 months of living in New Zealand.<sup>31</sup>

However, for some migrants settlement continues to be a difficult process. As strangers to a new society, they may be unfamiliar with the national language, laws and practice and thus be less able than others to know and assert their rights. They may face discrimination and be subjected to unequal treatment and unequal opportunities at work and elsewhere. 'Astronaut' migrants also face significant settlement issues, including language barriers, barriers to employment and isolation.

Since 2004, two major developments have impacted on the rights of migrants in New Zealand: an increased emphasis on successful settlement support through the central, local government and voluntary sectors; and the enactment of new immigration legislation.

The Immigration Act 2009 introduces a universal visa system that aims to maintain flexibility in managing people's travel to, and stay in, New Zealand. The act also provides alternatives and safeguards around the use of detention. While these are positive aspects, the act also gives rise to a number of human rights concerns, which will require close monitoring. These include:

- widening of the information that can be deemed classified and allowing its use in immigration determinations
- continuation of the exemption from the Human Rights

Act of immigration law, policies and practices.

The Government has taken a number of positive steps to support migrant settlement, including:

- the adoption of National and Regional Settlement Strategies and Action Plans
- the introduction of the 'Settling In' programme
- the establishment of 19 settlement-support offices
- the continuation on a permanent basis of Language Line.

A number of migrant resource centres and newcomers' networks have been established by local communities.

The adoption of the Recognised Seasonal Employers Scheme (RSE) in 2007 and the introduction of the Supplementary Seasonal Employment (SSE) permit in 2009 provide workers from the Pacific with access to the New Zealand labour market and aim for better protection of the rights of these workers.

The rights of migrants are generally well protected under New Zealand law and policy. Employment laws protect the rights of migrant workers and there are effective enforcement mechanisms.

Nevertheless, there continue to be a number of significant challenges facing migrants, such as discrimination and harassment, particularly against international students and Asians in New Zealand; barriers to employment; employment conditions, particularly for some temporary migrant workers; access to education; access to social services; and access to justice.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to advance the rights of migrants:

#### Public awareness

Promoting public awareness of the economic, social and cultural contributions made by migrants.

#### Employment

Addressing barriers to the employment of migrants, and ensuring the rights of temporary, seasonal and

30 Cases are dealt with by the police and immigration authorities when they come to light.

31 Department of Labour (2009), *New Faces, New Futures: New Zealand* (Wellington: DoL). Accessible online at [www.dol.govt.nz/publications/research/lisnz/index.asp](http://www.dol.govt.nz/publications/research/lisnz/index.asp)

rural workers and those on work-to-residence visas are respected.

**Discrimination**

Countering the relatively high incidence of discrimination and harassment experienced by international students and Asian migrants.

**Education**

Increasing access to ESOL and bridging programmes for migrants.

**Children**

Protecting the rights of migrant children – both those who migrate to New Zealand with their families and those coming to New Zealand as international students.

**Immigration act**

Monitoring the implementation of the new Immigration Act 2009.