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editorial

This issue focuses on the Immigration Act Review, featuring an article by Bernard Walsh, discussing the proposed changes to decision-making powers, and an article by Richard McLeod, looking at the review of the Immigration Act in light of the practice of interdiction. The Human Rights Commission's paper looking at the review is also summarised.

In addition, we include an article by Dr Love M Chile outlining the study commissioned by the Legal Services Agency to determine the needs of migrant and refugee communities in the Auckland region.

Helen Scott
Publishing Manager



Understanding the legal needs of migrant and refugee communities in the Auckland region

In this article, Dr Love M Chile (PhD), Research and Development Programme Leader, Institute of Public Policy, Auckland University of Technology gives a brief outline of the study commissioned by the Legal Services Agency.

Why is the research being conducted?

The Auckland region is home to an increasingly large and ethnically diverse population of migrant communities. The 2001 census showed that 15 per cent of the Auckland population consisted of people from ethno-cultural communities who were not European, Maori, and/or Pasifika. Auckland City Council had the highest proportion of this category, with 21 per cent of its population consisting of people from ethno-cultural communities other than European, Maori, and/or Pasifika.

A substantial body of research has been produced in relation to the unique challenges new migrants and refugees face on arrival, and ongoing problems they experience as they settle into New Zealand society. Some of the critical issues include:

- acquiring English language skills;
- access to employment;
- developing supportive networks; and
- accessing the range of appropriate services to help their settlement processes.

Despite these studies, there has been very little research done specifically on the legal needs of migrants and refugees. Anecdotal evidence, however, indicates that awareness of, and access to, legal services are areas of unmet need for many migrants and refugees, yet are currently unresearched. There is a need for information on how the legal system in New Zealand works, the rights of migrants and refugees to services, and the issue of access to, and appropriate advocacy and support in, areas such as education, employment, housing, family issues, benefit entitlements, debt, consumer rights, immigration, and the criminal justice system.

Previous studies that have helped to inform this research

Review of international literature relating to the welfare of migrants and refugees shows that access to legal services is a critical factor for effective settlement and integration into the host communities. The Australian Law Reform Commission, for example, argues that enhanced community education, improved access to, and use of, the legal system, and improved models of working for social justice through cross-cultural

sensitivity of the legal system, are critical aspects of responding to the growing diversity of Australian society.¹

Differences between New Zealand and the various jurisdictions that refugees and migrants come from, in terms of legal process and procedures, human rights obligations of government, and the rights and responsibilities of citizenship, demand that new migrants and refugees become informed about how to address legal issues as part of effective settlement and integration.

For a liberal western democratic society with a strong tradition of respect for individual and community human rights, the exercise of citizenship rights to participate in the life of their communities demands that new migrants have some basic education in civil and political rights and responsibilities, so that they understand the rights and responsibilities of access to human and social services, the functions of local governance processes, and the separation of powers and functions of government in a democratic system. This knowledge and understanding is critical for the sustainability of New Zealand's democratic tradition in a rapidly changing society.

A study by the University of Waikato in 2000 identified taxation, rates, house rental, driver licensing, immigration, and family law as some of the most common legal concerns to migrants in the Waikato Region.² Questions on the Immigration New Zealand (INZ) website identified issues relating to:

- work permit restrictions;
- visa and travel restrictions;
- applications for, and extensions or alterations of, visas and permits;
- eligibility issues; and
- general issues regarding finding information on jobs, doctors, consultants, English language requirements, ability to travel, and requirements for applications

as areas of concern for migrants and refugees.³ Other areas identified in international studies included access to information, awareness of legal rights and responsibilities, legal issues in employment, family law, understanding the refugee determination processes, family reunification processes, and lack of knowledge of available services.⁴

Legal issues for refugees are particularly critical because their personal circumstances, such as limited language skills, education, financial resources, and cultural practices, predispose refugees to depend on the support of advocates to walk

the complex bureaucratic maze of the refugee determination process, including the appeals and the Courts system. Moreover, as the international security systems tighten up, asylum seekers who arrive without travel documents are detained at special refugee detention centres or in prison remand facilities. In jurisdictions where detention facilities are located in remote areas, the difficulty of access to detention facilities by legal services providers invariably encroaches on access to justice and the right “not to be deprived of freedom arbitrarily or without just cause”, and effectively makes such detention arbitrary.⁵ Further, access to legal services often comes too little and too late to asylum seekers barred from reaching a host country in the first place by interdiction policies and measures such as visa requirements and special airport procedures.

Scheelbeek’s study of female migrants in Australia found that they were unable to negotiate the legal and bureaucratic systems to obtain redress. In employment disputes, for example, situations which began as a cultural or communication breakdown between a worker and management often escalated into major conflicts.⁶ Other issues for women included awareness of rights and how to assert rights, lack of awareness of the authorities responsible for protecting them, and difficulties accessing legal protection and redress.

The purpose of this study

The key purpose of this study is to understand the need for, and identify effective ways of, delivering community legal services to refugee and migrant communities within the Auckland region. An action plan will be created outlining opportunities for improving and increasing service delivery. There are two main expected outcomes.

First, to produce a report that provides information on the following areas:

- the demographic profile of migrant and refugee communities in the Auckland region;
- legal issues faced by migrants and refugees;
- types of legal help required;
- barriers to access;
- identified stakeholders;
- a map of current services;
- identification of any gaps in service provision;
- identification of opportunities to build capacity and add value; and
- identification of any possible models of service delivery.

The second expected outcome is to provide a proposal for service delivery for the Legal Services Agency that includes:

- a detailed service delivery model; and
- a strategic action plan for its implementation.

How is the study formulated and what are the methods used?

The methodological approach adopted for this research is qualitative, using a combination of structured interviews and

focus group discussions. A number of interviews will be conducted with individual refugees and migrants to understand the legal issues that are important to them. Refugees and migrants who have been offered legal assistance will be sought out for interviews to understand their experience of legal services. Some of the issues covered in the interviews will include what they want legal services for, their awareness of and access to legal aid services, and their views on the appropriateness and effectiveness of service received.

Research participants

There are two groups of participants. The first group consists of individual refugees and migrants. These will include those who may not have used legal services, as well as those who have used legal services and/or have been offered legal assistance in the past. The objective is to determine their level of awareness and access, as well as understand their experience of legal services.

The selection procedure consists of three processes. Information about the study will be provided to community newspapers to inform the general public about the study and inviting people to volunteer. Legal and social service provider agencies will also be approached to recommend participants to the study. Information about the study will be provided to service agencies to give to their clients, who may then contact the research team directly. Thirdly, the research team will use their networks to inform people about the study and invite them to participate. Other key informants within refugee and migrant communities such as community leaders, members of the refugee council, and ethnic organisations will also be interviewed to gain some insight into the legal issues that are important to them and their communities. Some of these may include refugees and migrants who also provide legal services to other migrants and refugees.

Given the diversity of migrant and refugee communities in the Auckland region, it is important to have a good sized sample in order to effectively represent as wide a range of ethno-cultural communities and the diversity of users and providers of legal services as possible. Owing to the sensitive nature of legal issues within ethnic communities, the research team has decided not to recruit participants through ethnic community leaders. This is to ensure the confidentiality and anonymity of respondents because of the dynamics and sensitivities pertaining to legal issues in refugee and migrant communities.

Interview guides have been designed to help focus the line of inquiry during the conduct of interviews, and to help maintain consistency between respondents. These consist of both “tick boxes” and a set of open-ended questions that incorporate information on awareness of, and access to, legal services, what organisations they used, their satisfaction with the services provided, and their views on how best to provide legal services for refugee and migrant communities.



Participants who require interpreters to help clarify issues and questions relating to the study will have access to interpreters from the RMS Refugee Resettlement services, the Auckland Regional Migrant Services (ARMS), and the Office of Ethnic Affairs Language Line. Participants who require interpreters and/or support persons during the course of the interviews will be provided with these through ARMS.

The second group of participants consists of service providers who are most likely to offer professional legal services to clients, or know about the legal needs of migrants and refugees. These include people working at community law centres, private legal practitioners working with refugees and migrants, Citizens Advice Bureaux, community organisations, the police, and Court officials. Others in this group also include Youth Law, trade unions, budget advisory services, and RMS Refugee Settlement. The group also includes immigration consultants, lawyers who have represented refugees and migrants in status appeals and Court cases, health professionals, social workers, and women's refuges.

Because of the size and complexity of the organisations delivering services to migrants and refugees, it is unrealistic to attempt to undertake personal interviews with a large number of service providers. A number of focus groups will be held with people from the range of government departments, community not-for-profit and non-government organisations, and a variety of individuals to explore their experiences, opinions, wishes, and concerns. Some of these may be followed up with further interviews or conversations to pursue particular themes that may emerge in the focus group discussions.

Data collected for this project will consist primarily of narratives rather than elaborate statistical information. Information will be sought on what issues prompted the need to seek legal services, types of services used, frequency of use, and number of referrals by agencies. Much of the statistical information on demographics of migrants and refugees will be secondary rather than primary data. Such secondary data will be mainly descriptive statistics relating to the ethno-cultural, educational, employment, and other data to help build up the profiles of refugee and migrant communities, rather than individual participants.

What is hoped to be achieved from the study?

At present, there is very limited understanding about the availability of legal services in migrant and refugee communities, which limits access to such services. It is important that legal services for migrants and refugees are planned for in a cohesive and integrated manner across the Auckland region, in order to maximise and build on existing capacity and resources, so that there is a strategic approach to filling any identified service gaps.

A number of strategies have been developed to assist the settlement and integration of migrants and refugees by the

central government, such as the *Settlement Support New Zealand* rolled out by the Department of Labour in July 2005; the *Auckland Regional Settlement Strategy* currently with the Cabinet and due for release in September 2006; and the *Auckland City Settlement Strategy* launched by the Mayor Dick Hubbard in March 2006.⁷ These strategies seek to promote good practice in the delivery of effective settlement services to migrant and refugee communities. It is important that an understanding of the legal needs and options for legal services delivery becomes part of the broader strategic framework for delivering settlement services.

This current research therefore seeks to gather information that will enhance our understanding of migrants' and refugees' legal needs within the Auckland region, and identify effective ways of delivering services to meet those needs. This study will develop an action plan that outlines opportunities for improving and increasing service delivery. The findings of this study will assist the Legal Services Agency (the LSA) with the planning of legal services as well as with identifying opportunities for connecting with relevant regional settlement initiatives.

The research has been commissioned by the LSA to inform its long-term strategic goals of:

- developing community legal services to overcome barriers that people face when accessing needed services; and
- working collaboratively with other Auckland community law centres and external organisations on key initiatives that improve service delivery and take a whole-of-Auckland approach to meeting the unmet legal needs of the greater Auckland community.

While the present study focuses on the Auckland region, it is our expectation that when the LSA has digested the findings and the recommendations from the report, and also tested the recommended models for service delivery, the study may be extended to cover the whole country.

Feedback of findings to research participants

All participants will be sent a copy of the summary of the findings of the study on completion of the final report. The summary of the findings from the study will also be posted on the notice board in all participating service-provider agencies. The final report will be submitted to the LSA with strong recommendations that the recommendations of the study:

- be translated and published in some of the languages of the participating communities; and
- be published in community newspapers and journals for general information of the migrant and refugee communities.

Acknowledgment

This study is jointly undertaken by the Institute of Public Policy at Auckland University of Technology, and ARMS. The

research assistants undertaking the interviews are third and fourth year law students from the Equal Justice Project at the University of Auckland, under the leadership of Claire Achmad and Ana Richards.

Information about the study may be obtained from:

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Footnotes

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7. For more information go to www.sustainableauckland.govt.nz.

Immigration Act Review — decision making: the use of discretion in residence applications

In this article, Bernard Walsh, a solicitor at Auckland law firm Jones Walsh and Chairman of the New Zealand Association for Migration and Investment, discusses the Immigration Act Review proposals for the decision-making process in the assessment of immigration applications.

Introduction

Section 5 of the Discussion Paper on the Immigration Act Review issued by the government in April 2006 (the Discussion Paper) deals with the decision-making process in the assessment of immigration applications. It raises three principal questions for discussion:

- 5.1 Who should make individual immigration decisions?
- 5.2 In which cases should potentially prejudicial information and reasons for decisions be given to immigration applicants?
- 5.3 What additional tools are required for effective decision making?

This article deals with the first question: Who should make individual immigration decisions? It also focuses on the key

question discussed in s 5.1 (paras 143–194) of the Discussion Paper: Should the power to make positive exceptions to residence policy be delegable to selected senior immigration officials?

Decision making and discretion under the current Act

The Immigration Act 1987 (the Act) currently provides that no person is entitled, as of right, to any permit, visa, or invitation to apply for residence (ss 8–10A). In each case, the question whether or not to issue or grant any such permit, visa, or invitation to apply lies solely within the discretion of the Minister of Immigration (the Minister) or of any immigration official to whom the Minister has delegated his or her powers.