

# Immigration Practitioners BULLETIN

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## editorial

In this issue:

Issue 5 of the Bulletin canvasses several different and important topics: Jeremy Hubbard examines the Australian experience in the regulation of migration agents in light of New Zealand's new Immigration Advisers Act 2007; Dr Love Chile presents the results of the Legal Services Agency study into the legal needs of immigrants and refugee communities; and we dissect the Immigration Bill.

*Helen Scott*  
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## Understanding the legal needs of migrant and refugee communities

*Dr Love M Chile PhD, Research and Development Programme Leader at the Institute of Public Policy, Auckland University of Technology, presents the results of the study commissioned by the Legal Services Agency on the legal needs of the migrant and refugee communities in the Auckland region.<sup>1</sup>*

### Introduction

In the first of this two-part article published in the September 2006 issue of *Immigration Practitioners Bulletin*, we discussed the purpose of the study commissioned by the Legal Services Agency (LSA), identified the key participants in the study, and what we hoped to achieve. In this second part we present some of the key findings of the study, and some of the recommendations which we suggest could form the basis for action plans to be developed with the communities and stakeholders in order to address some of the challenges of meeting the legal needs of migrants and refugees in the Auckland region.

The article is divided in four main sections, the first section reports on the key legal issues faced by migrants and refugees, followed in section two by the types of legal assistance required or requested from service providers. Section three discusses some of the barriers to accessing legal services faced by migrants and refugees, while the final section summarises the key recommendations to addressing the barriers to effective legal services provision.

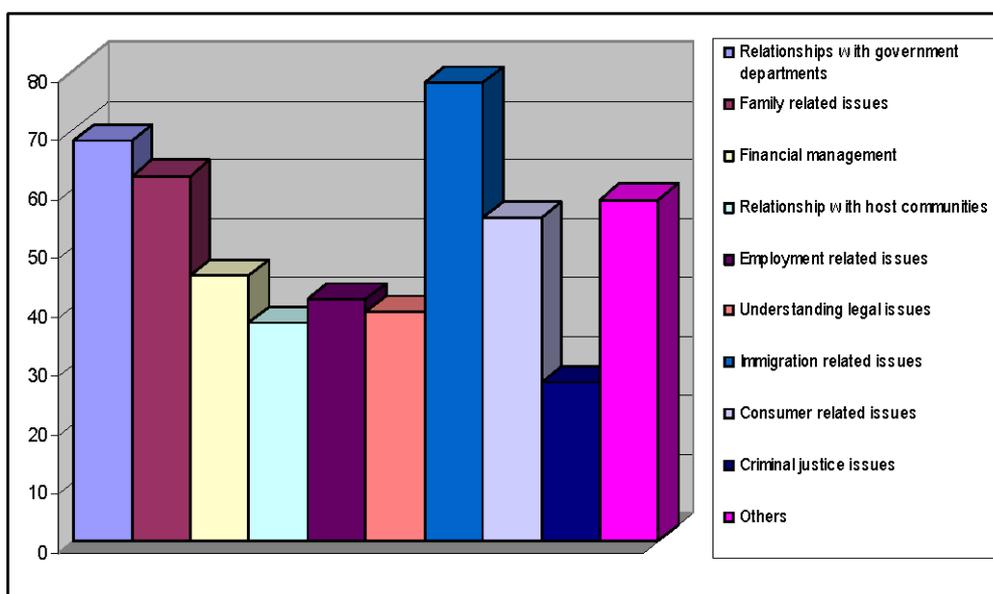
### Legal issues faced by migrants and refugees

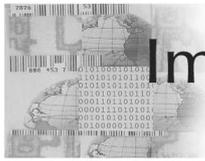
The legal issues faced by migrants and refugees are, in most cases, not radically different from those faced by most other New Zealanders with similar socioeconomic circumstances. However, the additional challenge of coming into a new country where the social, economic, and political environment is drastically different from their countries of origin creates further difficulties for migrants' and refugees' capacity to access services. Refugees, in particular, have additional complications caused by their experiences of trauma, coupled with cultural shock, which can exacerbate these difficulties. Figure 1 summarises the top nine legal issues faced by migrants and refugees as identified by both migrant and refugee participants and service providers.

### Immigration-related issues

By far the most-frequently mentioned issue for which migrants and refugees required legal assistance was immigration. This

*Figure 1: The top ten legal issues faced by migrants and refugees*





ranged from having serious problems with immigration consultants, understanding visa requirements, changing visa status, refugee status claims including permit issues, family reunification, and going through the immigration appeals process.

## Relationship with government departments and agencies

Migrants, refugees and service provider participants all reported difficulties with understanding some of the bureaucratic processes of government departments. In particular, there were issues with welfare benefits, unhelpful, and often obstructive, staff, inconsistent interpretations of policies depending on the staff, or the day, incorrect or out-of-date information about clients, and waiting times for Housing New Zealand homes. While some of these issues are not specifically “legal” in the sense that they require the services of a lawyer, they are nonetheless perceived by many individuals and groups as constituting issues in which they would seek support of a “legal nature”.

Of particular concern for many migrant and refugee participants was the role of the Department of Child, Youth, and Family Services (CYFS). Key concerns related to understanding the relationship between parents and their children, threats to remove children, time delays in addressing child-parent disputes, and the lack of understanding by some migrant and refugee communities of the role of CYFS as a child protection agency.

Many participants also identified difficulties with understanding the New Zealand welfare system, how it works, and issues around access to entitlements and benefits, as well as the attitudes of some officials of the departments. Some participants, for example, spoke about being “pushed from pillar to post”, and being “lost in the system”, and “system barriers”, etc. This means that when access to services such as education, social welfare, health, and other essential services are denied, some migrants and refugees do not know where to go to find redress. Examples were given of some schools creating problems for students on temporary permits who had minor brushes with the school authorities, and of actions taken against pupils by schools on the grounds that they did not have permanent residence. Reports were given of some students being threatened with expulsions or stand-downs, some children as young as seven years of age being suspended, and of parents not knowing where to go or what to do to seek assistance or redress.

One participant reported being medically misdiagnosed, and then refused medical treatment because he was not a resident. This person had not realised that he did not necessarily require permanent residence to access treatment, but did not have access to legal advice.

Issues associated with the police included a lack of awareness of the rights of individuals at the point of arrest, such as the right to consult a lawyer before making any statements to

the police, the right to refuse to make a statement, etc. “Allegations” of victims of crimes such as violent assault in public places who complained to the police not being informed about the legal processes, police harassment, and (mis)understanding of police methods and requirements; for example, what is expected of a driver when stopped by the police at a roadblock, for breath-testing, or for other traffic infringements. One participant reported being “harassed” by police for not stopping at a checkpoint as there was a misunderstanding where the checkpoint was close to road works, and confusion as to when red cones indicate road works and when they indicate a police checkpoint.

It is important to emphasise that some of the issues perceived by migrants and refugees as “legal issues” may not require the services of a lawyer. Social and human service organisations with the appropriate expertise are often able to assist with many of these issues, such as waiting lists for Housing New Zealand, and other matters relating to social welfare and other government departments. However, legal education for community advocates working with migrant and refugee communities, and skills in advocacy for service provider agencies as well as improved information in a range of community languages, would go a long way in addressing some of these issues.

## Family-related issues

Family breakdowns, divorce, children leaving home, disputes over custody of children, and violence in the home, were some of the issues for which participants reported not knowing what to do or where to go for legal advice or assistance. Specific examples included people being forced to sign prenuptial agreements without first seeking independent legal advice, because they did not know that they could access cost-effective or even free independent legal advice. Participating service providers reported cases where marriages entered into overseas broke up in New Zealand and the partners (usually women) were left high and dry without residence, and the right to live and work in the country. Some women in such situations often faced deportation which forced them to go underground for months or even years without access to any form of legal assistance or welfare benefits.

Domestic violence and intra-family disputes, which led to family breakdowns, with the consequent involvement of CYFS, the police, and subsequent issuing of protection orders often resulted in protracted Family Court proceedings.

## Understanding the legal and Court systems

Coming from countries where the legal system is different from New Zealand, many migrants and refugees find it difficult to understand how New Zealand’s legal system works. Some participants reported that they preferred to resolve disputes to their disadvantage rather than risk going through the legal processes; for example, accepting responsibility for a vehicle

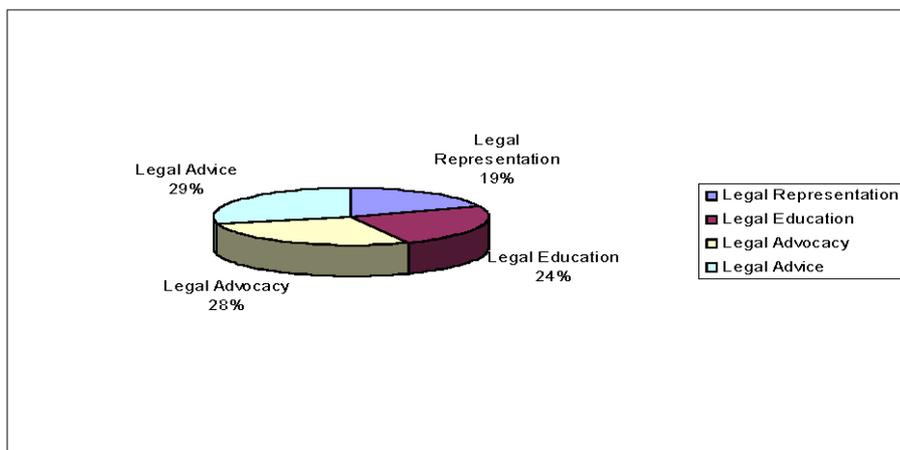
accident even when the other driver was at fault because seeking legal assistance could cost more than paying for the repair of the other driver's car.

Understanding New Zealand law and areas of conflict between cultural practices in countries of origin and accepted practices under New Zealand law was an area that came up with both migrants and refugees, and service-provider participants. Particular examples related to acceptable methods to discipline children, relationships between husbands and wives, relationships with the police, and an individual's rights to the presumption of innocence. These were areas that participants

Employment-related issues included difficulties understanding union-related matters, the differences between collective agreements and individual contracts, basic requirements of work-related contracts and job descriptions, wages and payment arrangements, discipline, termination and dismissals.

There were also reports of workers being exploited, especially in low-paid occupations. In situations where new migrants and refugees were out of employment for extended periods of time, having a job was considered more important than taking time to go through the fine print and legal details of employment contracts.

Figure 2: Types of legal services offered by service providers



thought had been inadequately covered in the settlement education programmes for both migrants and refugees.

Some financial management issues raised included managing personal debt and loan agreements, student loans, and access to independent advice on financial transactions. Issues relating to understanding the implications of signing up for credit, interest rates on unsecured loans, debt management and defaults, and reading the fine print on loan agreements, the responsibilities of loan guarantors, repossession following defaults, debt collectors, and debt collection summonses served on defaulting debtors.

## Consumer-related issues

Many participants reported that they did not know where to go when involved in consumer disputes, and how legal advice could help in the process of resolving such issues. Some situations mentioned included insurance claims, franchise agreements signed up without the option of seeking independent legal advice, and hire purchase agreements. There were reports of insurance companies trying to take advantage of clients because the persons involved did not understand their rights. Other issues related to renting houses, tenancy disputes with landlords, and purchase agreements for landed property that ended badly because buyers depended on the advice of the land agents rather than independent legal advice.

## Types of legal assistance required

Four main types of legal assistance were identified by participants in the study: legal representation at points of arrest, in Court, and in immigration status hearings; legal advocacy; legal education; and legal advice. Figure 2 shows a fairly even distribution between these, even though legal representation was the service least commonly provided. Private legal practitioners were the predominant providers of legal representation.

Legal information and education consists of providing information to, and raising the awareness of individuals, groups, organisations and communities about the available legal services, how to access them, opportunities for referrals, and education about the rights, responsibilities and obligations of individuals, service providers, government agencies and departments. It relates to creating community understanding of the roles of the law and law enforcement agencies, and the relationship between these agencies and the communities they serve. It also deals with educating individuals and communities about the nature of New Zealand society, the democratic environment, and the obligations of individuals in a participatory democracy.

A number of organisations provide legal information and education services in various forms, ranging from simply handing out information about individual rights, and how to



access information and avenues to lodge complaints. These include quasi-statutory agencies such as the Human Rights Commission, the Office of the Children's Commissioner, the Office of Ethnic Affairs; and non-government organisations such as the Refugee Council and community-based non-government organisations such as Citizens Advice Bureaux, Women's Refuges and Community Law Centres, among many others. However, only a small number of organisations deal with education issues around governance, central and local government, participation in the democratic process, and individual and community advocacy around legal issues.

Legal advice and assistance consists of counselling individuals, families, groups and organisations on specific matters they may be facing. Often this comes after the client has got into some difficulty and needs the assistance of expert advice as to his or her rights and responsibilities and how to proceed.

Legal advice also includes working with clients to find ways through the legal system, including alternatives to Court actions; supporting clients through the emotional trauma associated with dealing with the legal processes; and assisting them through the trial, sentencing and working through fines and/or committal. Some legal practitioners felt that some of these were not "legal" processes, but social and human services agencies felt that given the special circumstances of migrants and refugees, these were important areas of practice that supported the needs of clients.

Legal advice was a key service offered by most of the participating organisations. The Community Law Centres, including Youth Law and private lawyers, are the primary

community-based agencies which provide professional legal advice. Community-based organisations such as the Citizens Advice Bureaux (CABs) did not have the necessary professional expertise, and so served mainly as referral agencies.

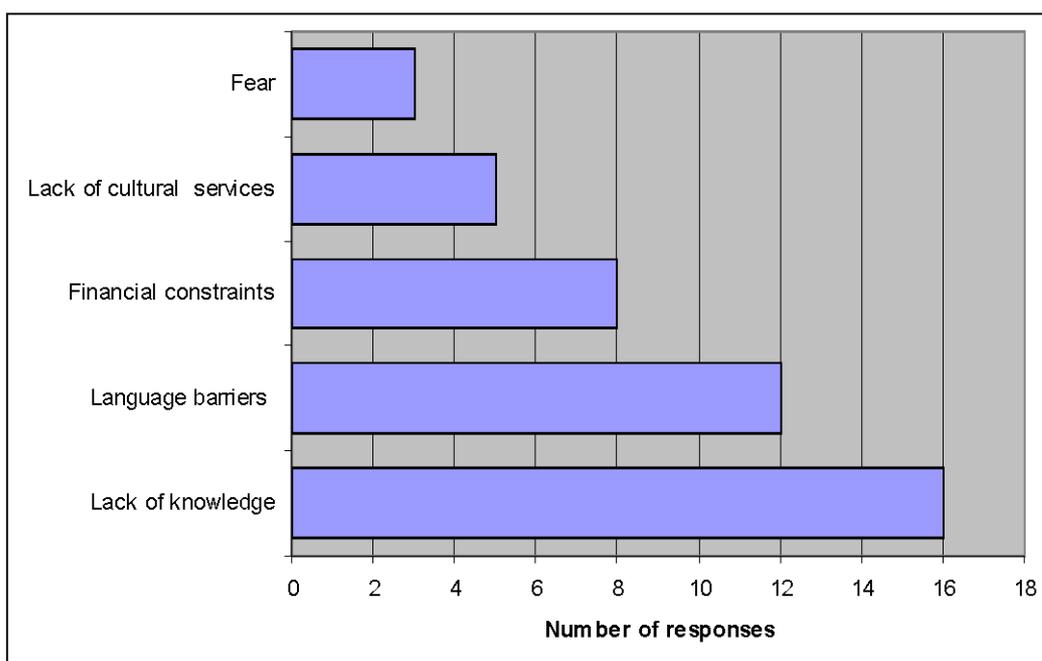
Legal representation is the most professional form of legal service, and is provided primarily by legal experts. This ranges from simple tasks such as making a phone call advising an arresting police officer about the rights of someone who has failed a breath test, or been arrested for an alleged offence, or accused of committing an offence, writing letters to the same or similar effect, to representing clients in appeals hearings at the High Court and Appeals Tribunals.

Migrants and refugees, as well as service-provider participants, reported varying degrees of satisfaction with legal representation services. The most common complaint was the high cost of lawyers' fees, and in some cases clients were left with huge legal debts because they could not access legal aid. Cost was a prohibiting factor and some participating organisations reported attempts by clients to represent themselves.

## Barriers to accessing legal services

The analysis of the barriers to accessing legal services was undertaken separately for migrant and refugee participants and service-provider participants. This was considered necessary because, even though common issues were raised by service-providers, it was unclear whether the service providers were reflecting their needs, or the needs of their clients. The barriers identified by the two groups of participants are summarised in figure 3 and figure 4.

Figure 3: Barriers to access to legal services: migrant and refugee participants



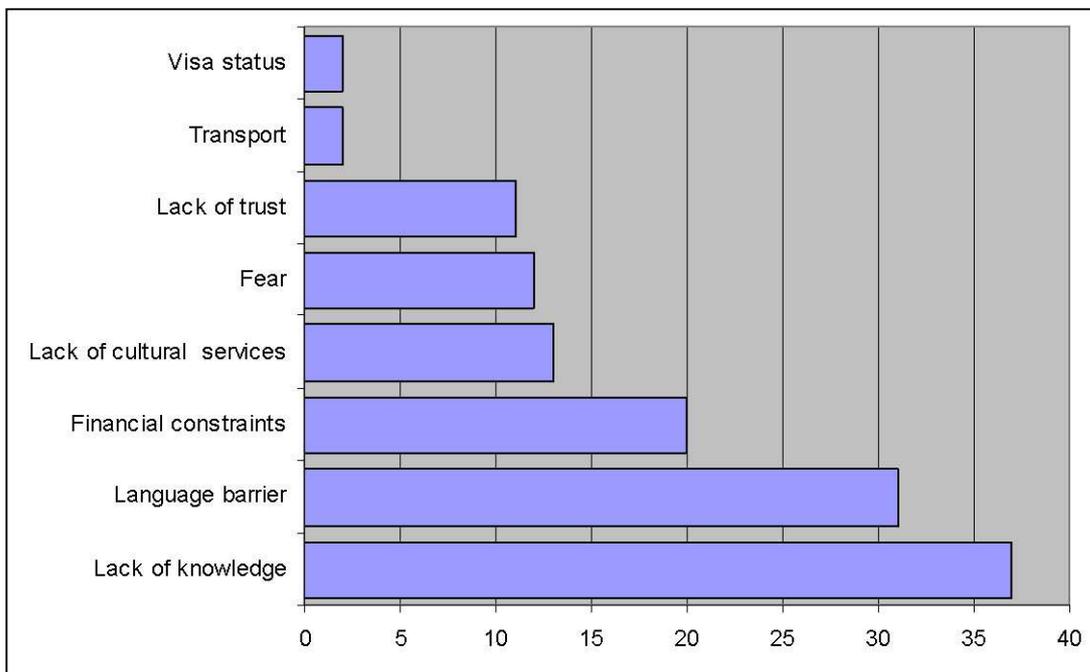
The top two most important barriers identified by migrants, refugees, and service-provider participants were a lack of knowledge and language issues. Lack of knowledge includes not knowing where to go to find information, a lack of knowledge about rights and entitlements, and knowledge about available services. Lack of knowledge was mentioned by 34 per cent of the participating migrants and refugees, while language issues were mentioned by 26 per cent of the same group. The corresponding figures for service-providers were 24.5 and 21.4 per cent respectively. Averaged across these two groups of participants, these two factors were respectively

false claims by not disclosing the true nature of their relationships according to New Zealand definitions. Some refugees may come to New Zealand without the correct papers, or showing different dates of birth, making them seem much younger than they truly may be. These issues may create ethical and moral dilemmas for service providers.

## Barriers facing refugees and asylum seekers

Particular sub-groups identified as being especially affected by lack of knowledge of what services were available were

Figure 4: Perceived barriers to access to legal services: service-providers' responses

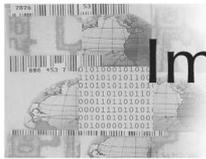


identified by 27 per cent and 23.5 per cent of the respondents as the most critical barrier to meeting the legal needs of migrants and refugees.

Language and cultural issues exacerbate the problem of lack of awareness because language difficulties impact on the capacity of clients to access legal information and education. A lack of proficiency in English, and poor interpretation, or the lack of appropriate interpreters, are often further complicated by cultural differences, with varying cultural understandings and expectations between the client and service-provider. Lack of awareness of cultural practices often created doubts about the credibility of clients from some service providers. For example, to take advantage of resettlement opportunities, some refugees coming to New Zealand from camps bring children and siblings for whom, under New Zealand law, they may not be legal parents, but are nonetheless culturally custodial guardians. This invariably means that such persons have made

asylum seekers. This is reflected in figure 4, with a number of service-providers identifying the visa status of clients as a barrier to access. Responses from both groups of participants confirmed suggestions in the literature that there is a high degree of ignorance about the refugee determination process, the interests at stake, and the proper role of the legal profession in assisting the accurate identification of refugees, the provision or withholding of legal aid to asylum seekers, and the impact this has on fulfilling New Zealand's international obligations to asylum seekers.

Agencies providing legal services to refugees and migrants face a number of challenges. These include communication, culture, and operational challenges such as the pricing and distribution of services which directly impact on accessibility. Financial constraints and lack of culturally appropriate services ranked third and fourth respectively for migrants, refugees, and service-provider participants.



Another issue the study encountered related to the different understanding of what constitutes legal advice and representation between migrant and refugees, social service-provider organisations, and some lawyers. The restrictions on who can provide legal advice privileges practising lawyers, thus limiting those working in the social and human services to what may be termed “legal assistance”. Hence, one participant suggested “I would not think there would be many lawyers who would provide emotional support to people, (it’s a bit hard to bill for that) and if that is what people expect a lawyer to do they will always be disappointed”. Some lawyers, however, particularly in the community sector, see supporting clients through the emotional trauma associated with dealing with the legal system, and assisting them through the trial, sentencing and committal, as part of their responsibility.

Fear and mistrust of the legal system were other important factors limiting access to meeting the legal needs of migrants and refugees. Refugees, in particular, have often been through traumatic situations where they have been betrayed by people they trusted with confidential information, such as the police, service-providers, etc. Comments such as “previous experience of intimidation by law enforcement agencies and the fear of consequences”; “loss of confidence in dealing with people outside their own culture” were reported by a number of individuals and organisations. A community leader suggested that “Many refugees and migrants don’t want to get involved with lawyers as members of their community may think that they have been involved in criminal activities”. Fear and a lack of trust could be a contributing factor as to why some potential participants were reluctant to take part in this study, for example.

Such a lack of trust can prolong cases that could otherwise be quickly resolved. As reported by Haines (1995), legal issues that would normally be resolved quickly often take twice as long. The investigation of the facts can be less thorough. Financial constraints, and the late discovery of eligibility for legal aid result in lawyers being engaged at the last moment. Translation difficulties and a lack of meaningful research from and on the client’s country of origin, can hold up refugee status hearings and determination for months or even years. Doubts about the credibility of evidence provided by clients may slow down the determination process because of the fact that written statements depart considerably from evidence given at a later stage of the process. Translation problems and statements may be unreliable as the client may not have been represented at the earlier stages of the process.

Altogether, 26 different services or agencies and organisations were approached for help with legal issues by migrant and refugee study participants, ranging from individual lawyers to government departments, churches, and trade unions. The most-mentioned legal services provider agency was the Citizens Advice Bureaux, which constituted over 24 per cent of all providers mentioned, and 34 per cent of the top ten most-frequently mentioned agencies. Although CAB’s role is

different in New Zealand from in the UK and Australia, its place in the delivery of legal services probably needs further examination because of its accessibility to migrants and refugees. Another surprising finding was the role of Justices of the Peace (JPs), who were mentioned the same number of times as the Community Law Centres (CLCs), and family and friends as those from whom legal assistance was sought. While most participants said that they went to JPs for document verification, the finding indicates that because of their frequent contact with migrants and refugees, JPs may be an important contact point for information about legal services. Moreover, the increasing number of JPs within the migrant and ethnic communities means that they could potentially perform a useful role in the legal information and education programmes if appropriately trained, supported, and monitored.

While lawyers were the second most-mentioned legal service provider, comments from some of the participants indicated that they consulted lawyers, not because they were lawyers, but because they were ethno-specific, were perceived to better understand the client’s culture and could speak the client’s language.

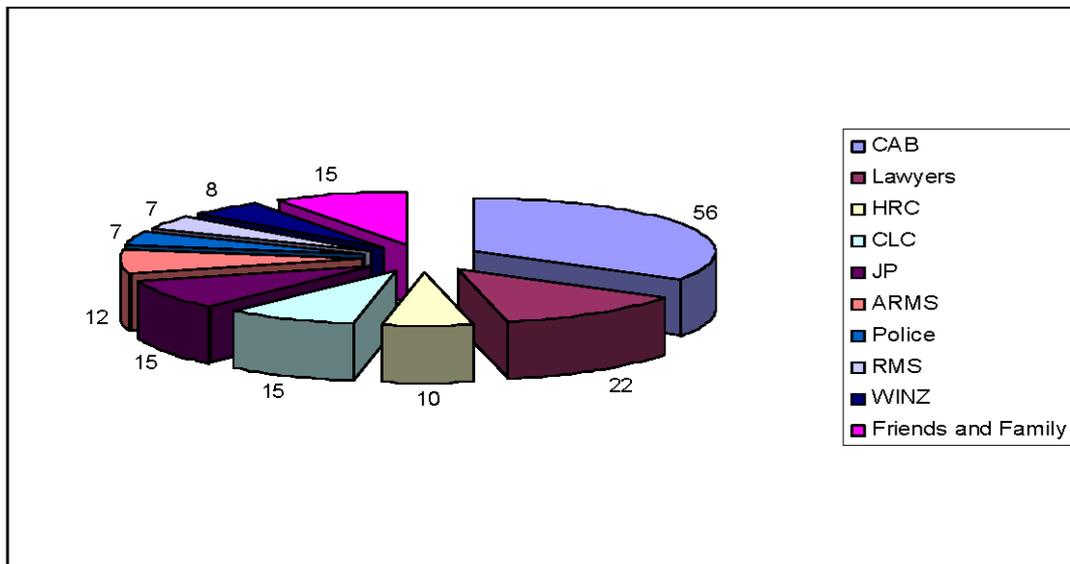
## Some recommendations to enhance access to legal services for migrants and refugees

Migrants and refugees come from socio-cultural and political contexts that are different from New Zealand, and their experience with governmental authorities, the legal system, and law enforcement agencies such as the police in their home countries often lead them to distrust such agencies. Refugees’ traumatic experiences of life in refugee camps add yet another complex dimension to their legal needs.

To enhance access to delivery, a focus on the legal needs of migrants and refugees must become integrated in the settlement strategies of governments and organisations at all levels. There are organisations available that could help: settlement networks (SSNZ-DOL); ethnic networks (OEA); refugee strengthening voices networks (Refugee Coalition); and other organisations such as Ethnic Voice, and the Refugee Council. So there are avenues available, which are not being tapped into, in which improved legal information and education and other legal services could be addressed.

Careful consideration needs to be given to the appropriate ways in which legal education and information can be provided more widely and effectively, whether by websites, workshops, directories, radio and TV, community meetings, or other means. At the moment, developmental work is being carried out by the Auckland Regional Migrant Services Trust (ARMS), endorsed by the Auckland Settlement Action Plan (ASAP), and the Settlement New Zealand Action Plan (SNAP), on creating a Settlement Framework, which would link all settlement-related information and services to ensure more streamlined pathways and settlement processes for migrants

Figure 5: Top ten agencies from whom legal help was sought by migrants and refugees



and refugees. Pathways to legal information and education need to be addressed within this framework to avoid a situation where legal needs and issues are left sitting outside other strategic initiatives across the Auckland region.

### Enhancing integrated services and agency networking

Many of the service-provider organisations that participated in this study already provide some level of legal services to migrant and refugee clients. They also work very closely with these communities and have strong links within some of the communities. However, they are limited by the fact that they do not have the capacity, nor are they resourced, to provide professional legal services to clients. Even the capacity of the Community Law Centres is limited.

Working with migrants and refugees at their points of contact with social service personnel could reduce these barriers. Locating lawyers within service-provider organisations working with migrant and refugee communities could enhance access in many ways. It locates lawyers within environments that are familiar for these clients. They will be in easily accessible locations where many migrants and refugees already access other services. It thus reduces the stigma and trauma of having to seek out lawyers' offices with all the implications that has for clients as discussed earlier. It also enhances the sharing of information in the coordination of services, and reduces the potential for retraumatisation of clients, such as women in domestic violence situations, and refugees telling their stories many times over to different agencies. It would also reduce cost and travel time for clients, service-providers, and interpreters. Many service-provider organisations already have access to interpreters who would be available for these lawyers.

Forming partnerships with carefully selected service-provider organisations such as CAB, ARMS, RMS and Women's Refuge to integrate legal services into their areas of practice is a key factor to enhancing access.

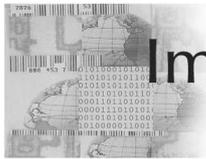
### Partnership with private providers through "certificate of service"

The "certificate of service" is a programme developed and implemented in the Canadian Province of Ontario. The basic premise of the programme is to enable clients to receive legal service from a private lawyer of their choice, or from lawyers employed by the legal services agency at accredited offices or community law centres, with the certificate as the lawyer's guarantee of payment subject to rates and limitations set out in the appropriate contracts.

Certificates can be limited or open for a variety of legal problems including criminal, family, immigration, civil, and refugee matters. Eligibility could be based on clearly defined criteria, which may include financial status, type of legal issue, etc. Certificates could cover full or partial costs with clear guidelines and criteria for eligibility for contributory certificates. Such a certificate programme would provide the opportunity for clients who require ethno-specific, gender-specific or other special requirements to access such services with minimal difficulties. This avoids creating new infrastructure and other related costs of setting up ethno-cultural specific services.

### Community legal education programmes with student volunteers

One of the most important outcomes of this study was the involvement of law students from the Equal Justice Project (EJP), an organisation of third and fourth-year law students



from the University of Auckland Law School. They conducted all the interviews and attended some of the focus group discussions, which extended their networks, as well as informed them about migrant and refugee communities. This opportunity has raised the potential to increase the acceptability of this group within these communities through the extension of community legal education programmes. Greater use could be made of such groups to provide legal information and education because of their commitment, credibility, language ability, and cost-effectiveness.

## Conclusion

The objective of this study was to report on the legal issues faced by migrant and refugee communities in the Auckland region with a view to providing a framework for the development of an action plan.

A range of models of legal services delivery were identified but the key underpinning all legal service delivery is the need to recognise that education, information, and awareness, are fundamental to meeting the legal needs of any community,

including migrants and refugees. Legal services for migrants and refugees should therefore be integrated in all settlement strategies and plans, and to further enhance effective access, legal services should be integrated and networked closely with other information and social and human services. One way of accomplishing this is through partnership programmes such as certificates of service, duty counsels, and inter-agency collaborations.

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## Footnotes

1. This study was jointly undertaken by the Institute of Public Policy (IPP) at Auckland University of Technology, and the Auckland Regional Migrant Services Trust (ARMS). The research assistants who conducted the interviews were third and fourth-year law students from the Equal Justice Project (EPJ) at the University of Auckland, under the leadership of Claire Achmad and Ana Richards. The copyright to the full report belongs to the Legal Service Agency.

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# The Immigration Bill

The Immigration Bill was introduced to the House on 8 August 2007. The Bill is a significant part of the wider immigration change programme currently being undertaken by the government to create a more modern, simpler, more transparent and more accountable immigration system.

Immigration Minister, Hon David Cunliffe, claimed that “changes in [the] Bill will clarify and strengthen border security, tighten the law against those who pose a risk to New Zealand’s well-being, and facilitate the entry of those migrants we want”.

Like its predecessor, the Immigration Act 1987, the Bill is primarily framework legislation which allows the detail of immigration policy to be developed elsewhere (residence and immigration policy under the 1987 Act; immigration instructions under the Bill). This note briefly summarises the parts of the Bill, and some of the main differences from the current regime.

## Decision making and core provisions

The core provisions relating to eligibility criteria to enter New Zealand, excluded persons, and the obligation of persons unlawfully in New Zealand to leave are set out in cls 7-14. These are largely the same as under the 1987 Act, but some broader exclusion criteria have been inserted.

The decision-making powers of the Minister and various officials are summarised in cls 15-19. The role of the Minister of Immigration in decision making in individual cases is

retained, but there is also provision for the Minister to delegate positive discretion in residence decisions. The Bill also enables automated decision making in certain situations to take advantage of developing technology (see cls 27-28).

Classified information, as defined in cl 5, may be used in immigration and refugee and protection decision making where it relates to matters of security, criminal conduct, or matters that may have a significant impact on New Zealand’s international reputation. Where the Minister determines that classified information may be used, the Minister must make any immigration decisions, or direct the information to be referred to the Tribunal to make refugee or protection status decisions. The substance of this information is not disclosed to the applicant, although, where possible, a non-classified summary of allegations should be disclosed. The use of special advocates to represent individuals’ interests in any review or appeal proceedings has been provided for in the Bill. (See cls 30-36 regarding classified information, and cls 235-239 regarding special advocates.)

The Bill (at cl 29) also enables the collection of biometric information, such as fingerprints and iris scans, for identity verification purposes, or to assist in decision making under the Bill. This clause is one which is set aside as likely to be given a later commencement date.

## Visas

Visas are dealt with in Part 3. The single term “visa” replaces the current terms “visa”, “permit”, and “exemption”. The types