

# Compendium of Legislation and Institutional Arrangements for Labour Migration in Pacific Island Countries



This report has been produced as part of the Pacific Climate Change and Migration (PCCM) Project entitled, 'Enhancing the Capacity of Pacific Island Countries to Manage the Impacts of Climate Change on Migration'. The PCCM Project is a three year project (2013-2016) funded by the European Union and implemented by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), the International Labour Organization (ILO) and the United Nations Development Programme (UNDP).

The vision of the project is to:

- To increase protection of individuals and communities that are vulnerable to climate change displacement and migration through targeted national and regional policies; and
- To increase labour mobility opportunities for Pacific Islanders, through well-managed labour migration schemes.

The Project covers the Federated States of Micronesia, Kiribati, Nauru, Republic of Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. In the 'target countries' of Kiribati, Tuvalu and Nauru the Project will have national actions aimed at institutional strengthening through developing migration indicators and sharing of information on labour migration; gathering data on community attitudes to climate change induced migration; assisting with the development of climate change responses and national action strategies to mitigate the risk of displacement; and enhancing national capacity to effectively participate in regional, bilateral and global schemes on labour migration.

## **ESCAP**

The Economic and Social Commission for Asia and the Pacific (ESCAP) is the regional development arm of the United Nations and serves to foster cooperation between its 53 members and 9 associate members. ESCAP provides the strategic link between global and country-level programmes and issues. It supports Governments of the region in consolidating regional positions and advocates regional approaches to meeting the region's unique socio-economic challenges in a globalizing world. The ESCAP headquarters is located in Bangkok, Thailand.

The ESCAP Pacific Office (EPO) strengthens the United Nations' regional presence, development programmes and interventions in the Pacific. EPO provides focused and in-depth technical assistance to address key development challenges, including capacity-building activities; and serves as a catalyst to further the analytical and normative work of ESCAP in the Pacific.

## **ILO**

The International Labour Organization (ILO) is the United Nations agency devoted to promoting rights at work, encouraging decent employment opportunities for women and men in conditions of freedom, equity, security and human dignity, and enhancing social protection. It is unique in that it brings together representatives of governments, employers and workers to jointly shape policies and programmes and strengthen their dialogue. The ILO develops international labour standards and works with members States to ensure they are respected in practice as well as principle.

The ILO Office for Pacific Island Countries based in Fiji, provides technical assistance to nine Pacific member States, as well as to non-member States in the region as required, on a wide range of areas including: labour migration; the elimination of child labour; promotion of gender equality; labour law reform; protecting seafarers; labour market statistics; occupational safety and health; HIV/AIDs in the workplace; youth employment; and entrepreneurship development.

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UNITED NATIONS  
**ESCAP**

Economic and Social Commission for Asia and the Pacific



**EUROPEAN UNION**



International  
Labour  
Organization

# **COMPENDIUM OF LEGISLATION AND INSTITUTIONAL ARRANGEMENTS FOR LABOUR MIGRATION IN PACIFIC ISLAND COUNTRIES**

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The information contained in each country profile represents a summary of the information the authors have been able to locate. Insofar as each profile contains a description of the legal requirements for entry and stay as migrant workers, or as dependents thereof, the material provided is by way of information only, and is not intended to be legal advice. In this regard the document should be considered a draft.

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# INTRODUCTION

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## Context

Labour migration abroad has a long history in the Pacific and takes many forms, including seasonal migration in Australia and New Zealand through government organized programs; the employment of seafarers on foreign vessels; skilled migrants who spend anywhere from a year to their entire working lives in other Pacific Island countries or in other parts of the world (often working as nurses, peacekeepers, accountants and teachers); and migrants who leave permanently, such as Pacific Islanders eligible to go to New Zealand under the Pacific Access Category. These opportunities are often welcomed by migrants' families, communities and countries of origin, as labour migration can bring a number of important benefits including the transfer of remittances, knowledge, technology and skills that can stimulate development at home. The labour migration of a member of the household can also be an important income diversification strategy for families, to ensure that in case of environmental or other disasters, there remains a source of income which can be used to rebuild homes and livelihoods.

## Purpose of Compendium

Bilateral discussions and an understanding of legal and regulatory systems between sending and receiving countries can contribute to more streamlined and harmonized processes for labour migration, thus better enabling workers who want to move, to do so. This mutual understanding can also lead to better outcomes for migrants and their families through countries' cooperation in enforcement of legal provisions protecting workers' rights – whether in sending or receiving countries.

This Compendium of Legislation and Institutional Arrangements for Labour Migration in Pacific Island Countries ('Compendium') is intended to assist in building this understanding by providing a synthesis of information on key aspects of the legal and administrative frameworks and associated practices in eleven Pacific countries. Each profile is introduced by a summary of some key migration trends and characteristics and contains a review of relevant national legislation, regulations and, where possible, policy statements relating to labour migration to and from the country concerned, together with a summary of the relevant institutional arrangements and responsibilities.

It is anticipated that this Compendium will form a valuable resource for policymakers, administrative staff and academics both in the countries covered by this document, as well as countries which are connected to labour migration in the Pacific, including Australia, New Zealand and the US – which comprise the main receiving countries outside of the Pacific region.

## Methodology

The methodology employed in the preparation of the Compendium has been primarily a desk-based review of information available on government websites, together with the websites of the Pacific Immigration Directors' Secretariat (PIDSEC) and the Pacific Islands Legal Information Institute (PacLII). This information has been supplemented by communication (via e-mail) with senior officials in the relevant ministries or agencies in each country, as well as with some other stakeholders.

PacLII, an initiative of the University of the South Pacific School of Law, contains legal materials from 20 Pacific Islands countries. It is the most comprehensive on-line collection of regional legislation but subsidiary legislation (regulations) relevant to the entry, stay and employment of migrant workers is often not available. The material available on government websites relating to labour migration is highly variable across the Pacific region.

While in some instances it has proven relatively easy to locate relevant information, this has been true in only a minority of cases and typically only the main legislation is available. It has been a much more complex exercise locating relevant regulations, and other legal instruments, such as official notices and policy documents, are few and far between. In a number of cases, where it has not been possible to locate the relevant regulations, an overview of processes has been derived from a review of the forms employers and migrant workers are required to complete, and by consulting the websites of the country's overseas Embassies or Consulates.

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# ACRONYMS

<b>ADB</b>	Asian Development Bank	<b>MOH</b>	Ministry of Health
<b>APEC</b>	Asia-Pacific Economic Cooperation	<b>MOTEYS</b>	Ministry of Training, Employment, Youth and Sport
<b>CAP</b>	Chapter Number	<b>MOU</b>	Memorandum of Understanding
<b>CFA</b>	Compact of the Free Association	<b>MSG</b>	Melanesian Spearhead Group
<b>CIIP</b>	Capital Investment Immigration Programme	<b>MTC</b>	Marine Training Centre
<b>CNMI</b>	Commonwealth of the Northern Marianas	<b>MV</b>	Motorized Vessel
<b>CPMA</b>	Central Pacific Maritime Agency	<b>MWTI</b>	Ministry of Works, Transport and Infrastructure
<b>CPPL</b>	Central Pacific Producers Ltd	<b>NED</b>	National Employment Services Division
<b>CSC</b>	Chuuk State Code	<b>NFMRA</b>	Nauru Fisheries and Marine Resources Authority
<b>DLIR</b>	Department of Labour and Industrial Relations	<b>NUS</b>	National University of Samoa
<b>ESCAP</b>	Economic and Social Commission for Asia and Pacific	<b>NZ</b>	New Zealand
<b>ESU</b>	Employment Services Unit	<b>OPM</b>	Office of the Prime Minister
<b>FED</b>	Foreign Employment Division	<b>OSL</b>	Occupational Shortage List
<b>FFA</b>	Forum Fisheries Agency	<b>PAC</b>	Pacific Access Category
<b>FISUI</b>	Friendly Islands Seafarers' Union	<b>PACER</b>	Pacific Agreement on Closer Economic Relations
<b>FLNKS</b>	Le Front de Liberation Nationale Kanak et Socialiste	<b>PacLII</b>	Pacific Islands Legal Information Institute
<b>FMI</b>	Fisheries and Maritime Institute	<b>PAILS</b>	Pacific Islands Labour Sending
<b>FNTC</b>	National Fisheries and Nautical Training Centre	<b>PCCM</b>	Pacific Climate Change Migration
<b>FNU</b>	Fiji National University	<b>PICTA</b>	Pacific Island Countries Trade Agreement
<b>FSM</b>	Federated States of Micronesia	<b>PIDSEC</b>	Pacific Immigration Directors' Secretariat
<b>FTC</b>	Fisheries Training Centre	<b>PIO</b>	Principal Immigration Officer
<b>GDP</b>	Gross Domestic Product	<b>PNG</b>	Papua New Guinea
<b>GEIC</b>	Gillbert and Ellice Islands Colony	<b>PNGICSA</b>	PNG Immigration and Citizenship Service Authority
<b>IAU</b>	Interagency Understanding	<b>PSWPS</b>	Pacific Seasonal Worker Pilot Scheme
<b>ILO</b>	International Labour Organization	<b>RMI</b>	Republic of the Marshall Islands
<b>IMO</b>	International Maritime Organization	<b>RSE</b>	Recognised Seasonal Employer
<b>INA</b>	Immigration and Nationality Act	<b>SBD</b>	Solomon Islander Dollar
<b>IOM</b>	International Organization for Migration	<b>SICHE</b>	Solomon Islands College of Higher Education
<b>JICA</b>	Japan International Cooperation Agency	<b>SINU</b>	Solomon Islands National University
<b>JMSC</b>	Japan Marine Service Company	<b>SOFA</b>	Status of Forces Agreement
<b>JTFC</b>	Japan Tuna Fishing Corporation	<b>SPC</b>	Secretariat of the Pacific Community
<b>KAI</b>	Kiribati and Otoshiro	<b>SPMS</b>	South Pacific Marine Services
<b>KANI</b>	Kiribati Australia Nursing Initiative	<b>SPP</b>	Strengthening Pacific Partnerships
<b>KEMS</b>	Kiribati Employment Marine Services	<b>SSEU</b>	Samoa Seasonal Employment Unit
<b>KFS</b>	Kiribati Fisherman Services	<b>STCW</b>	Standards of Training Certification and Watchkeeping for Seafarers
<b>KIOSU</b>	Kiribati International Overseas Seamen's Union	<b>SWP</b>	Seasonal Worker Programme
<b>KIT</b>	Kiribati Institute of Technology	<b>TIST</b>	Tonga Institute of Science and Technology
<b>KOSEA</b>	Kiribati Overseas Seamen's Employment Agency	<b>TMPI</b>	Tonga Maritime Polytechnic Institute
<b>KSC</b>	Kosrae State Code	<b>TOP</b>	Tongan Pa'anga
<b>LMU</b>	Labour Mobility Unit	<b>TTPI</b>	Trust Territory of the Pacific Islands
<b>MBIE</b>	Ministry of Business, Innovation and Employment	<b>TTS</b>	TT Services
<b>MCIL</b>	Ministry of Commerce, Industry and Labour	<b>UN</b>	United Nations
<b>MCS</b>	Monitoring, Control and Surveillance	<b>UNDESA</b>	United Nations Department of Economic and Social Affairs
<b>MCTL</b>	Ministry of Commerce, Tourism and Labour	<b>UNDP</b>	United Nations Development Programme
<b>MFAET</b>	Ministry of Foreign Affairs and External Trade	<b>USA</b>	United States of America
<b>MFAI</b>	Ministry of Foreign Affairs and Immigration	<b>USCIS</b>	US Citizenship and Immigration Services
<b>MFAT</b>	Ministry of Foreign Affairs and Trade	<b>VAC</b>	Visa Application Centre
<b>MFATTEL</b>	Ministry of Foreign Affairs, Trade, Tourism, Environment and Labour	<b>VMS</b>	Vessel Monitoring System
<b>MIA</b>	Ministry of Internal Affairs	<b>YSC</b>	Yap State Code
<b>MLCI</b>	Ministry of Labour, Commerce and Industries		
<b>MLHRD</b>	Ministry of Labour and Human Resources Development		

# Federated States of Micronesia



# FEDERATED STATES OF MICRONESIA

## SUMMARY OF INTERNATIONAL MIGRATION

The Federated States of Micronesia (FSM) is the only country in the northern Pacific where the great majority of the population live in rural communities (SPC, 2013). According to the *FSM 2010 Census of Population and Housing* only 22 percent of the 102,843 residents in the four States of Yap (11,377), Chuuk (48,654), Pohnpei (36,196) and Kosrae (6,616) were living in urban areas, and only one urban area (Weno in Chuuk) had a population in excess of 10,000 (Division of Statistics, n.d.). The main urban concentrations of FSM citizens are found overseas – in the USA (including Hawai'i), Guam, and the Commonwealth of the Northern Marianas (CNMI).<sup>1</sup>

There is an extensive history of movement between the island groups that comprise FSM's States and other parts of the former Trust Territory of the Pacific Islands (TTPI), especially their near neighbours of Guam and CNMI. There had been considerable mobility between islands during the periods of Japanese administration (1914-1945) and the American administration of the TTPI when FSM was part of the Caroline Islands that included Palau.<sup>2</sup> The main urban area in the Caroline Islands during the Japanese and American administrations was Koror in Palau; the small towns in Yap, Chuuk (then Truk), Pohnpei and Kosrae were district administration centres and, until the establishment of a separate constitutional government for the four districts in 1979, and the development of government services for the new Federation, there was limited migration to local towns.<sup>3</sup> The demand for skilled labour in FSM has attracted immigrants from the United States, Philippines, Korea and Japan. Connell (1983a) reports that in 1978 there were 500 'aliens' in Yap (222), Pohnpei (152) and Chuuk (126) including 220 from the United States, 115 from the Philippines, 87 from Korea and 55 from Japan.

Following the signing of the Compact of Free Association (CFA) with the United States in 1986 both immigration of skilled labour into FSM and emigration of FSM citizens to the United States, Guam and the CNMI accelerated. By 1994 there were over 3,200 foreign-born migrants in FSM, two-thirds of whom were from Asia (mainly the Philippines), most living in Pohnpei (Connell and Lea, 1998, p.63). Migration of FSM citizens to the CNMI was in response to an economic boom there in the 1980s, while movement to Guam (education, employment) and the USA (education, employment, welfare benefits) was for a range of reasons. By 1994 there were 8,750 FSM citizens in Guam and Saipan (CNMI) (including 5,900 from Chuuk and 1,800 from Pohnpei) and it was estimated that 15 percent of all FSM households were receiving remittances with 75 percent of the total flowing into Chuuk (Connell and Lea, 1998; Rubenstein, 1993; Hezel and Levin 1996).

By 2013 FSM had the highest crude rate of emigration of the seven countries and territories in Micronesia at -18.5 per 1,000 population, and the fourth highest emigration rate of all Pacific countries. The UN Population Division estimated the number of people born in FSM, who were resident overseas in 2013, to be just under 30,000 (the equivalent of 28 percent of the resident population). Almost 66 percent (19,800) of this diaspora is in North America (19,750 USA, 50 Canada), a further 9,400 in other parts of Micronesia (7,580 Guam, 1,230 the Northern Marianas, 440 Palau and 150 Marshall Islands) (UNDESA, 2013). Very small numbers were resident in Australia (17) and New Zealand (13) at their last censuses in 2011 and 2013 respectively, and few Micronesians born in FSM had migrated to Asia despite very strong historical and contemporary links with countries like Japan, Philippines and China.

The summary statistics available for FSM's 2010 Census of Population and Housing do not contain any information on the numbers and origins of overseas-born in the country. The UN Population Division's estimate for 2013 is 2,600 with just under half from Philippines (540) and the USA (530). Immigration from other parts of Micronesia contributed around 700 to FSM's population in 2013 – 300 from Guam, 260 from the Marshall Islands and 140 each from Palau and CNMI. China was the only other major source with an estimated 340 in FSM in 2013. Unlike Palau, where the overseas-born comprise 40 percent of the total population, in FSM only 3 percent of the residents are 'aliens'. Emigration, rather than immigration, is a much more important driver of population change. FSM has the only population in Micronesia that the SPC projects could be smaller in 2050 (97,270) than it was at the time of the 2010 census (102,950) (SPC, 2013).

1 According to a survey conducted in 2012, approximately 50,000 FSM citizens (including children of migrants) live in the US or its territories of Guam and the Commonwealth of the Northern Mariana Islands, which are located to the north of FSM (Hezel and Levin, 2012; Hezel, 2013).  
2 A useful periodization of Micronesian mobility has been suggested by Ritter (1980).  
3 There is an extended discussion of internal migration in FSM during the 1970s and 1980s in Connell (1983a).

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of migrant workers (national)*

- FSM Code, Title 50: Immigration Act
- Immigration Regulations (not dated)
- FSM Code, Title 51: Protection of Resident Workers Act

#### *Employment of migrant workers (state)*

- Pohnpei: Pohnpei Residents Employment Act 1991; Pohnpei State Labor Regulations
- Chuuk: Title 9 CSC Public Service System (Public sector only)
- Kosrae: Title 18 KSC Public Service System (Public sector only)
- Yap: Title 8 YSC Public Service System (Public sector only)

#### *Employment of citizens abroad*

- None

### Employment of Migrant Workers (inward migration)

#### *Entry of labour migrants*

The FSM Constitution was ratified in 1979, with the voters of the Pohnpei (Ponape), Kosrae (Kusaie), Chuuk (Truk), and Yap Districts approving the Constitution. These four districts in the former TTPI recognised their sovereign right to form the Federated States of Micronesia (FSM) and make the FSM Constitution the supreme law of the land. Article IX(2)(c) of the FSM Constitution expressly delegates the power to regulate immigration, emigration, nationality and citizenship to the Congress of the Federated States of Micronesia. An autonomous TTPI citizenship status no longer exists, and all TTPI citizens, who were domiciled in districts which ratified the FSM constitution, have a constitutional right to FSM citizenship under Article III(1) of the Constitution.

Despite the change in constitutional status, there has been no modification in the language and terminology from the era of the TTPI in many instances.<sup>4</sup> The Trust Territory legislation has been incorporated into publically available versions of the FSM code, which retains references to the governmental authorities and citizens of the Trust Territory, despite the transition to constitutional government. For the purposes of this profile, the authors have interpreted references to “citizens of the Trust Territory” as citizens of FSM.

Under the Immigration Act, a migrant wishing to work in the FSM can be issued with an alien worker’s permit for the duration of period of their employment. The employment must comply with all relevant regulations relating to work in the different states that comprise the Federation. The permit can be reviewed upon extension of employment status, although it is not possible to transition in-country from a work permit to another type of permit.<sup>5</sup> Applications must be made on the prescribed form.

For a permit to be issued in respect of employment in the private sector, the employer must prove compliance with all requirements under the Protection of Resident Workers Act.<sup>6</sup> The Protection of Resident Workers Act provides the overarching national legal framework regulating the employment of migrant labour. An employer wishing to employ non-resident migrant worker(s) must file an application stating the place and nature of the employer’s business, the number of workers desired and their occupational qualifications. Details of the wages to be paid, the date on which such workers are desired, and the district(s) in which the workers are desired must also be supplied.

Upon receipt of the application, the Division of Immigration and Labor must first endeavour to fill the vacancies by referral of available and qualified resident labour-force registered with the Division, failing which it must advertise or otherwise make the vacancies publicly known. No non-resident migrant worker can be employed until the expiry of specified periods of publicity. Such of the vacancies which cannot be filled by resident labour must be notified to the Chief of the Division who must determine whether the employment of non-resident workers will be in the best interests of FSM, and for what period of time and under what conditions the employer should be authorised to hire non-resident workers for those positions.<sup>7</sup>

<sup>4</sup> See National Public Auditor (2013).

<sup>5</sup> Immigration Act, ss 103(6) and 104(3). Special provision is made for US citizens who are exempted from the requirement to obtain work permits; see, Reg 8.2 Immigration Regulations.

<sup>6</sup> Immigration Regulations, Reg. 4.2.

<sup>7</sup> Protection of Resident Workers Act, s 131-134.

Once the decision is communicated to the employer, the employer must enter into a written agreement with the Chief of the Division of Immigration and Labor confirming a number of specified matters including agreement to comply with minimum requirements under relevant employment law. Prior to entry, the non-resident worker must file an affidavit attesting to their having at least two years' relevant work experience, their address and familial circumstances and character. Their employer must file a copy of the individual employment agreement with the non-resident migrant worker.<sup>8</sup> The migrant worker may apply for a permit authorising a change of employer.<sup>9</sup> Although the Protection of Resident Workers Act vests the Chief of the Division of Immigration and Labor with authority to develop labour rules and issue regulations, none have been developed or issued (National Public Auditor, 2013, p.9).

### *Dependents*

The spouse and dependent child of a migrant worker may be issued with an entry permit for the same duration as the migrant worker.<sup>10</sup>

### *Restricted occupations*

Legislation enacted in 2001 tightened policy relating to the employment of migrant workers by introducing a temporary and partial moratorium on their employment in specified occupations and industries.<sup>11</sup> While it always has been essential to the local economy that FSM citizens be given preference in employment in all occupations and industries, the number of non-citizen migrant workers employed in the country in occupations and industries for which there are trained FSM citizen workers has steadily increased. There has been limited control of the movement of people from neighbouring Micronesian states, especially Palau, the Northern Marianas and the Marshall Islands (Hezel, 2003, pp.8-10). This has reduced employment opportunities for FSM citizens and, in the public interest, the employment of non-citizen migrant workers in such occupations and industries is now limited.

The legislation empowered FSM's President, after consultation with each State's Governor, to declare specific occupations and industries in the FSM for which there are deemed insufficient trained FSM citizens. Thereafter, unless otherwise provided by law, for a period of one year from the date of enactment of the Act, the entry of additional non-citizen alien workers into the FSM was limited to entry for employment in those declared occupations and industries. While the legislation requires that a list of specific occupations and industries for which there are insufficient trained FSM citizens was to be updated and published annually,<sup>12</sup> it does not appear that the moratorium extended beyond the year provided for in the Act.

## **Employment of FSM Citizens Abroad (outward migration)**

### *Migration from FSM under the Compact of Free Association*

In 1986, the CFA between the FSM and the USA entered into force. Broadly, in return for conferring security and defence-related rights on the US, citizens of the FSM by birth, and certain categories of citizens by naturalisation and their relatives, enjoy privileged rights of entry into the US. They do not require entry visas, and are exempt from the employment provisions of the US Immigration and Nationality Act (INA). An amended compact agreement was signed in 2003, which expressly applied the INA to CFA migrants.<sup>13</sup> Although the right of entry and access to the labour market remains undisturbed, other provisions of the INA, including those upon which admission can be denied or legal stay brought to an end, remain operative.<sup>14</sup>

As noted earlier, CFA-related migration from FSM has been significant. The 2012 survey carried out by Hezel and Levin calculated the total population of FSM migrants and their children on the mainland United States as being 24,048 with particular concentrations in Portland (Oregon) and in Kansas City (Missouri) (Hezel, 2013, p.31). The FSM population on Guam was calculated to be 13,558 and of these 39 percent aged 15 years and over were employed, with many performing entry-level jobs in convenience stores, fast-food restaurants and hotels (Hezel, 2013, p.25). The FSM population in Hawai'i was estimated to be 7,948 with 35 percent of those aged 15 and over working but, again, mostly in entry-level jobs (Hezel, 2013, pp.29-30). The same survey recorded the FSM population in the CNMI at 4,286 persons (Hezel, 2013, p.2).

8 Protection of Resident Workers Act, s 135 and 139.

9 Protection of Resident Workers Act, s142(2)

10 Immigration Act,s 103(12)

11 Public Law 12-013, s 1(1)-(5)

12 Public Law 12-013, s 2. A list of the occupations for which there is deemed to exist an adequate supply of trained and available citizen workers in Pohnpei State is found in National Public Auditor (2013), Appendix E.

13 The amended Compact with FSM was signed into US Law under the CFA Amendment Act 2003.

14 The CFA agreement in relation to FSM is explicit in this regard. See generally, US Citizenship and Immigration Services (2008).

## Seafarers

FSM has a Fisheries and Maritime Institute (FMI) located on Yap on the site of a former US Coast Guard Station. It is a campus of the College of Micronesia-FSM and has been offering majors in fishing, navigation and marine engineering since 2000 (FSM Fisheries and Maritime Institute General Catalog, 2011-2013).<sup>15</sup> The navigation and marine engineering programmes are offered in accordance with the requirements of the International Convention on Standards of Training Certification and Watchkeeping for Seafarers (STCW Convention). The FMI was designated as the maritime training centre for seafarers in FSM in April 2001. Small numbers of students take the two-year majors (32 in 2007, 28 in 2008 and 37 in 2009) and it is not known whether graduates have gained employment with overseas shipping companies. The certificates of proficiency gained through the programme qualify graduates for work either in the merchant marine service or in the fishing industry (College of Micronesia-FSM, 2011).

## Other labour migration programmes

The FSM, as a member of the Pacific Forum, is able to participate in New Zealand's Recognised Seasonal Employer (RSE) scheme. There have been no special arrangements made either by Immigration New Zealand or the relevant authorities in FSM to facilitate recruitment of FSM citizens for work in New Zealand and no employers have sought workers from this part of Micronesia. FSM does not have a Memorandum of Understanding with Australia relating to labour migration, like the one southern neighbours, Nauru and Kiribati, have that gives them access to Australia's Seasonal Worker Program.

# INSTITUTIONAL REVIEW

## National Government and State Ministries/Departments

Multiple agencies at the national and state level have control over the entry, presence and employment of migrant labour, and perform overlapping functions. These include:

### National level

- Ministry of Justice (Division of Immigration and Labor)

### State level

- Pohnpei: Department of Finance and Administration (Division of Personnel, Labor and Manpower Development)
- Chuuk: Department of Commerce and Industry (Division of Labor)
- Kosrae: Department of Administration of Services (Division of Personnel and Employment Services)
- Yap: Department of Resources and Development (Division of Manpower and Development Services)

The Protection of Resident Workers Act required the establishment of an Employment Service within the Division of Labor of the then Department of Resources and Development.<sup>16</sup> Subsequent Executive Orders have resulted in the transfer of its functions to the Division of Immigration and Labor within the Ministry of Justice. The Division is responsible for issuing entry permits to non-resident migrant workers and for enforcing the conditions to which they are subject and to regulate their entry and presence in FSM.<sup>17</sup> The Division is responsible for the oversight, monitoring and review of the use of migrant workers, including in relation to matters relating to health, safety, meals, lodging, and working hours and conditions.<sup>18</sup>

The individual states have also adopted their own statutory provisions that require the preferential hiring of residents to fill vacancies within their respective jurisdictions. Each states' labour office has implemented its own labour laws and performs overlapping functions with the national Division. These activities include, announcing vacant positions, reviewing job applications and hiring of resident workers if available, or notifying the national Division if a skilled resident worker is not available and there is, therefore, a need to hire a non-resident worker (National Public Auditor, 2013, p.4). A recent audit of the workings of the national Division has revealed that practise has been to leave to states' labour offices the responsibility for announcing job vacancies, reviewing and placing of local workers, and recommending the hiring of non-resident workers. The national Division's function is currently limited to the final review of work permits and evaluation of the need to hire non-resident workers (National Public Auditor, 2013, p. 8).

<sup>15</sup> See also the SPC's Coastal Fisheries Programme website for information on FMI <http://www.spc.int/coastfish/en/publications/directories/marine-training-directory/290-marine-training-directory-mr001.html> (accessed 19 April 2014).

<sup>16</sup> Protection of Resident Workers Act, s 151

<sup>17</sup> Regulation 1.4, 2.3 and 4.2 Immigration Regulations. See also, s V.D Executive Order No 1 (as amended 2008). Source: National Public Auditor (2013), Appendix A-1.

<sup>18</sup> Protection of Resident Workers Act, s 152(3), as amended by PL 12-80 (2003).

The Division also has responsibility for regulating the recruitment of FSM citizens for employment abroad. It may promulgate regulations establishing a system for the registration of recruiters and establishing minimum requirements for overseas contracts.<sup>19</sup> No regulations appear to have been issued to date.

## NATIONAL POLICIES ON LABOUR MIGRATION

### *Policy on inward migration*

The Protection of Resident Workers Act expressly states national labour policy (National Public Auditor, 2013, p.1). Preference in employment is to be given to citizen workers, and that the employment of non-citizen workers in such occupations and industries must not impair the wages and working conditions of citizen workers.<sup>20</sup> Non-resident migrant workers can only be employed to supplement the labour force of available and qualified resident workers.<sup>21</sup>

### *Policy on outward migration*

None that the authors are aware of.

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19 Protection of Resident Workers Act, s 152(4), as amended by PL12-80 (2003).

20 Protection of Resident Workers Act, s 113. In the code, this refers to citizens of the trust territory but this status has been subsumed within the citizenship laws of the FSM and the other states which comprised the former TTPI.

21 Protection of Resident Workers Act, s 114. Employment of non-resident migrant workers for a period not exceeding 90 days is exempted from the Act's requirements. Temporary employment exemptions can be issued, upon application, for a further 90 days where the employer wishes to retain the migrant worker's services. Only one such extension is permitted; see §121 Protection of Resident Workers Act.

# Republic of Kiribati





# REPUBLIC OF KIRIBATI

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## SUMMARY OF INTERNATIONAL MIGRATION

The 21 inhabited atolls, reef islands and a raised coral island (Banaba or Ocean Island) that comprise the Republic of Kiribati had a population of just over 103,000 in 2010 (national Statistics Office, 2012). The national population has the lowest sex ratio (ratio of men to women) of all Pacific states and territories (97 men per 100 women (Statistics and Development Division, 2013)) despite the absence of any privileged entry for residence in Pacific rim countries other than a small annual residence quota (75) under New Zealand's Pacific Access Category (PAC) since 2002 (Bedford, 2008). The low sex ratio is due in part to the absence overseas of I-Kiribati labour migrants, especially seafarers trained at the country's highly regarded Marine Training Centre (MTC) in Betio (South Tarawa), an institution that has been training ships crew for overseas shipping companies since 1967.

The history of systematic contract labour migration overseas goes back to the late 1840s when 22 I-Kiribati were recruited for work on sheep and cattle farms in New South Wales.<sup>22</sup> In the late 1850s a further 51 I-Kiribati were recruited for work on Reunion in the Indian Ocean and in the early 1860s over 300 were caught up in the short-lived Peruvian slave trade (Maude, 1981). From the late 1860s Kiribati was a significant source of labour for the expanding system of plantation agriculture elsewhere in the Pacific. Munro and Bedford (1990: 173) note that: "Recruiting for employment in Tahiti (1867-85), Samoa (1867-95), Fiji (1868-95), Hawai'i (1877-87), Central America (1890-92) and Australia (Queensland, 1895) involved approximately 10,500 I-Kiribati [out of an estimated total of around 27,000 in the early 1890s] and resulted in fairly constant circulation of labour away from and back to their home islands". I-Kiribati were, perhaps, the most active labour migrants in the 19<sup>th</sup> century Pacific on a per capita basis.

This commitment to labour migration has continued through to the present with the dominant flows for much of the 20<sup>th</sup> century being to the phosphate islands of Banaba (within the colonial boundaries of the Gilbert and Ellice Islands Colony) and, especially after the Second World War, to Nauru which was administered on behalf of the British Government by the British Phosphate Commission from 1920 until independence in 1968 (Macdonald, 1982; Williams and Macdonald, 1985). Resettlement of both the Banaban population in Fiji in the late 1940s, as well as some hundreds of I-Kiribati in the Solomon Islands in the 1950s and 1960s, extended the diaspora of these atoll dwellers within the region.

On independence in 1978 it was estimated that the equivalent of 14 percent (8,100) of Kiribati's total population (56,200) were in long-term residence in other Pacific countries with the main concentrations being in Fiji (2,900), Solomons (2,800) and Nauru (1,460). A further 720 were on contract as seafarers and around 120 were overseas studying or undergoing medical treatment (Bailey and Macrae, 1980). In the post-independence period the movement of I-Kiribati to Australia, New Zealand and the United States (via the Marshall Islands) has intensified, partly as a result of a work permit scheme in New Zealand from the early 1990s, and the introduction of the PAC in 2002. By 2013 there were around 3,000 people of I-Kiribati ancestry (Australia, 700) and ethnicity (New Zealand, 2,300) living in the two southern Pacific Rim countries.<sup>23</sup> A 'culture of migration' is well established in these central Pacific atolls, and preparing people for work overseas is a major government-sponsored activity in Kiribati in the early 21<sup>st</sup> century.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of migrant workers*

- Immigration Ordinance 1991 (CAP 41, Revised Edition 1980)
- Immigration Amendment Act 1983
- Immigration Amendment Act 2002
- Immigration Regulations

#### *Employment of citizens abroad*

- None

#### *General Employment*

- Employment Ordinance 1966 (CAP 30, Revised Edition 1980)

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22 A useful summary of labour migration from Kiribati (and Tuvalu) can be found in Munro and Bedford (1990). There is an extensive literature on I-Kiribati migration and many of the important studies published before 1990 are listed in the Notes in Munro and Bedford (1990, p. 176).

23 Unpublished data from the 2011 Census of Population and Housing in Australia and the 2013 Census of Population and Dwellings in New Zealand.

- Employment (Amendment) Act 1980
- Employment (Amendment) Act 2008
- Employment (Return) Regulations
- Employment (Housing Standards) Regulations

Note: Pre-Independence legislation is called an Ordinance, while legislation since Independence is called an Act. Where an Ordinance or Act has been subsequently amended, the name of the law does not change - the Act (or Ordinance) is read together with any amendment, and the combined laws are simply referred to by the name of the original piece of legislation. The last official consolidation of the laws of Kiribati was undertaken in 1977, with some laws reprinted in 1979, 1980 and 1981. There has been no authorised reprint of any law since 1981. All laws that were in force as at the time of the last reprint were given a chapter number (abbreviated as 'Cap'). Subsequent Acts simply have the year they were originally passed.<sup>24</sup> Regulations made immediately prior to Independence were added at the end of the reprint of the relevant Ordinance at that time. The Government Gazette, which was traditionally used to publish regulations, has been dormant for many years now.<sup>25</sup>

## Employment of Migrant Workers (inward migration)

### *Entry of labour migrants*

A person seeking to enter Kiribati for the purpose of employment must apply for a permit to enter and reside under the Immigration Ordinance.<sup>26</sup> Conditions can be imposed specifying the profession or occupation in which the person may be employed, the employer(s) for whom the person may work, and any other matters deemed fit. These conditions may be varied and extensions granted.

A migrant worker, whose passage to Kiribati has been provided for in return for a promise to take up employment, is a worker for the purposes of the Employment Ordinance, the provisions of which regulate their employment.<sup>27</sup> The Ordinance and its accompanying regulations specify conditions relating to hours of work, wages, care of workers, and other employment-related matters. The Employment (Housing Standards) Regulations contain detailed provisions regarding the type of housing, construction, and facilities required of housing provided for workers, including migrant workers. The 2008 amendments to the Employment Ordinance introduced a new Part VII, which contains provisions prohibiting discrimination on the grounds of "national extraction" and "social origin".<sup>28</sup>

Recruitment of migrant workers must be done under licence obtained from the Commissioner for Labour.<sup>29</sup> The employer must pay for the repatriation of the worker, and any dependent of the worker brought to the place of employment by the employer, upon termination or cancellation of the contract.<sup>30</sup> Every employer of five or more workers must file an annual return with the Commissioner for Labour, containing specified particulars relating to their workforce including gender-disaggregated data as to how many citizen and non-citizen workers are employed, and in what capacity.<sup>31</sup>

Special provisions apply for contracts made outside Kiribati for employment in Kiribati, including the payment by the Commissioner for Labour of repatriation costs in the event of default by the employer. In such circumstances, the Commissioner may recover the expenses from the employer.<sup>32</sup>

### *Dependents*

No specific permit is provided for the dependents of migrant workers under the Immigration Ordinance.<sup>33</sup> However, the Ordinance does not expressly exclude an entitlement to apply for a permit to enter and reside alongside the migrant worker, and the Employment Ordinance contemplates an employer's liability for their repatriation costs where the employer has brought them to the worker's place of employment.

## Employment of I-Kiribati Abroad (outward migration)

There is no specific legislation relating to employment of I-Kiribati overseas. Contracts issued in Kiribati for employment of I-Kiribati abroad are regulated by the Employment Ordinance. Contracts generally must be in writing, and be attested to by the Commissioner for Labour prior to departure. The worker may be required to undergo a medical examination prior to departure. The maximum period of employment under any contract with a Kiribati employer for work outside Kiribati is two years, or three if their family accompanies the worker. Limited extensions can be sought.<sup>34</sup>

<sup>24</sup> Email correspondence with David Lambourne, 10 March 2014.

<sup>25</sup> Email correspondence with David Lambourne, 11 March 2014.

<sup>26</sup> Immigration Ordinance 1991, s 9.

<sup>27</sup> See the definitions of 'immigrant worker' and 'worker' in, Employment Ordinance, s 2.

<sup>28</sup> Employment Ordinance 1991, s 75A.

<sup>29</sup> Employment Ordinance 1991, s 2 and 68

<sup>30</sup> Employment Ordinance 1991, s 69. Expenses include travel and subsistence costs. Exemptions can be granted.

<sup>31</sup> Employment Ordinance, Return Regulations.

<sup>32</sup> Employment Ordinance 1991, s 67.

<sup>33</sup> Provision is made for the dependents of persons employed by the government, and the dependents of diplomats and other officials, all of whom may enter Kiribati without a permit; see section 8.

<sup>34</sup> Employment Ordinance 1991, s 55, 59, 61(2)-(3) and 66.

The Commissioner for Labour is responsible for issuing licences to recruitment agents/agencies that provide workers to overseas employers. Approval is normally granted when the applicant satisfies all of the recruitment requirements specified under the Employment Ordinance. These include establishing to the satisfaction of the Commissioner that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited and that “all necessary measures” have been taken for the protection of the workers while overseas. The Commissioner may require the applicant to furnish financial or other security for proper conduct as a licensee, and may require the licensee, if an employer, to furnish financial or other security for the payment of wages due.<sup>35</sup>

A licence may be issued subject to conditions including: the period during which and the places from which workers may be recruited, the number of workers who may be recruited during a specified period or from a specified place, the manner in which recruited workers are to be transported to and from the place of employment, the vessel(s) to be used in transporting workers, the reports or returns to be made by recruiters, the maintenance and welfare of the recruits from the time of recruitment until the time their employment begins, the return of the workers to their homes upon conclusion of their employment.<sup>36</sup>

Generally, any recruiter acting under a licence is required to defray all expenses connected with the journey of the workers to the place of employment and shall ensure that whenever possible suitable transport is provided and in all cases adequate accommodation, food, water and medicines is available. The Employment Ordinance does not exempt recruitment for employment overseas from this requirement.<sup>37</sup>

The Ministry of Labour and Human Resource Development (MLHRD) monitors compliance with provisions in the Ordinance during the course of recruitment, and the Commissioner for Labour may refuse to renew licences for recruiting agents/agencies if they fail to satisfy the requirements.

### *Seafarers*

The most common form of overseas employment for I-Kiribati since the closing of the Nauru phosphate mine in the 1990s has been as seafarers on cargo and some passenger ships operated by German and other European shipping lines. As noted earlier, Kiribati’s Marine Training Centre in South Tarawa has been providing ships crew for European shipping lines since the late 1960s and the country has the most well-developed and respected marine training programme in the region.

While there is no specific legislation relating to recruitment of seafarers, there is a well-developed set of arrangements between the MLHRD (which oversees the MTC), South Pacific Marine Services (SPMS – an employment agency established in 1970 by the German shipping lines employing I-Kiribati labour), the Kiribati Overseas Seamen’s Employment Agency (KOSEA) and the Kiribati International Overseas Seamen’s Union (KIOSU) (Borovnik, 2003). I-Kiribati recruits undergo a comprehensive training programme at the MTC and can be employed for up to 18 months on container ships, bulk carriers, coasters and tankers worldwide (Ogden, 1994; Nero and Rehuher, 1993). There are options for consecutive contracts depending on the shipping company, and the working hours are regulated according to the nation of the ship’s flag. By the late 1990s just under 1,400 I-Kiribati were employed through the SPMS (Ogden, 1994; Nero and Rehuher, 1993). Borovnik (2003: 80) notes that by 1999 1,366 I-Kiribati were employed on 161 ships - 76 registered under the German flag and 85 vessels registered under flags of convenience (Liberia, Cyprus, Antigua, Panama and Ireland).

Competition between providers of seafarer labour, including countries in Europe, is severe and numbers of I-Kiribati employed on overseas shipping lines has declined in recent years. In 2010 there were 880 I-Kiribati working on cargo ships, with an expectation that numbers would increase to around 1,000 as the global economy recovered from the 2008 financial crisis.<sup>38</sup> Annual intakes of trainees at the MTC also increased in 2010 from 150 to 200. On-going investment in the MTC by New Zealand and Australia is ensuring that the MTC maintains programmes and facilities at recognised international standards. The curriculum includes training at the deck and engineer officer-level as well as for I-Kiribati women interested in seafarer training.

In the late 1980s fisheries training was added to the suite of programmes offered by the MTC and Japanese aid has supported this development. Trainees were offered employment on Japanese fishing vessels. Pressure for space at the MTC saw the establishment of a separate Fisheries Training Centre at Bikenibeu in South Tarawa in 1995. The Fisheries Training Centre (FTC) is also overseen by MLHRD and is currently supported by government funding and aid from the Japan International Cooperation Agency (JICA) and, since 2007, the Japan Marine Service Company (JMSC). According to the Kiribati FTC’s website over 1,000 I-Kiribati have graduated from the FTC since 1989. Several agencies are licenced to recruit for overseas fishing companies including Kiribati Fishermen Services (KFS), Kiribati Employment Marine Services (KEMS), Central Pacific Producers Ltd (CPPL) and the Central Pacific Maritime Agency (CPMA). The key employers in 2011 were: Japan Tuna Fishing Corporation (JTFC), Japan Marine Services Company Ltd (JMS), Kiribati and Otoshiro (KAI), Taijin Kiribati, Marine Marawa and various other overseas companies through CPPL.<sup>39</sup>

35 Employment Ordinance 1991, s 38

36 Employment Ordinance 1991, s 39.

37 Employment Ordinance 1991, s 50(1).

38 ‘New Zealand pumps more aid to MTC’, pp. 1-2, Rongorongo Man AMI Tauteka, Vol. 11, Issue 7, February 18, 2010.

39 Information on the FTC has been obtained from Borovnik (2003) and from the Fisheries Training Centre website <http://www.ftc.info.ki/> (accessed 11 March 2014). The website was last updated in 2011.

There are plans to bring the FTC under the oversight of the MTC again with a view to strengthening the former's training programme and to enable FTC trainees to have the benefit of the respected MTC brand internationally. Of all the Pacific countries that have set up marine training establishments with a view to providing overseas employers with well-qualified seafarers and fishermen, Kiribati has been the most successful. The MTC will celebrate its 50<sup>th</sup> anniversary in 2017 as a training centre internationally recognised for the quality of its trainees.

### *Seasonal workers*

Kiribati has been part of New Zealand's and Australia's seasonal work programmes since their inception, and sent their first group of RSE workers to New Zealand in 2008 and to Australia in 2010. Numbers of I-Kiribati workers recruited for both the Recognised Seasonal Employer (RSE) scheme and Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS) and its successor, the Seasonal Worker Program (SWP), have been small. In the year ended 30 June 2013 138 (RSE) and 34 (SWP) I-Kiribati were employed on the seasonal work schemes.<sup>40</sup> The costs of participation in the seasonal work programmes are higher for I-Kiribati than for workers from several other Pacific countries, partly because of distance from New Zealand and Australia and partly because of the way costs of fares are shared between employers and prospective workers. The Government of Kiribati has recognised the need to provide financial support through a rotating loan fund for I-Kiribati who need to cover travel and visa costs, as well as some money to cover living costs at the destination before they start receiving payments from their employers.<sup>41</sup>

As is the case in other Pacific states participating in the seasonal work schemes, the conditions governing employment of I-Kiribati in the two countries are covered by: 1) an Interagency Understanding between the relevant Ministries in New Zealand and Kiribati (Ministry of Business, Innovation and Employment, 2011); and 2) a Memorandum of Understanding between the Australian and Kiribati Governments.<sup>42</sup> The IAU and the MOU both allow for on-going assistance from New Zealand and Australia in the operation of the seasonal work schemes, and New Zealand's Ministry of Foreign Affairs and Trade has funded several training programmes for I-Kiribati officials in-country as well as in New Zealand under its Strengthening Pacific Partnerships (SPP) project.<sup>43</sup>

Although there is a long history of I-Kiribati contract labour migration overseas in the region, and Kiribati had a work permit scheme with New Zealand in the 1990s and early 2000s (Bedford, 2008), it has not been easy to find New Zealand or Australian employers for seasonal workers from this part of the Pacific. A small number that have been employing I-Kiribati for many years (such as Southern Paprika in Warkworth, New Zealand) have found them to be the best workers for their particular enterprises. But building their numbers in the total RSE and SWP workforces has been a challenge for the staff in Kiribati's MLHRD and for the agencies in New Zealand and Australia that oversee the seasonal work schemes. Recruitment of I-Kiribati for the schemes is managed directly by the MLHRD's Labour Officers. Unlike the situation relating to seafarer employment overseas, there are no recruitment agencies in Kiribati who seek out employment opportunities for seasonal workers. The Kiribati Government is considering shifting to a recruitment agent-based system for managing their participation in the RSE and SWP, rather than managing this through the MLHRD.<sup>44</sup>

### *Other labour migration programmes*

The Kiribati Institute of Technology (KIT), formerly the Tarawa Technical Institute, was established in 1970 and is the major provider of technical and vocational education and training in Kiribati (Asia Pacific Youth Employment Network, 2012). With the support of aid from Australia, the Institute has been upgrading its training programmes to meet international standards with a view to providing I-Kiribati with qualifications that will be recognised elsewhere in the region both for entry into further qualifications overseas as well as for employment. In 2013 an MOU between the Fiji National University (FNU) and KIT was a significant step towards providing new training opportunities for I-Kiribati and is the first agreement of its kind between KIT and an overseas tertiary provider (Islands Business, 2013).

The other significant development which is designed to provide opportunities for small numbers of I-Kiribati trainees to gain qualifications that will enable them to access employment opportunities in overseas labour markets is the Kiribati Australia Nursing Initiative (KANI). KANI is a direct response to the Government of Kiribati's concern about youth unemployment and the need to create opportunities for I-Kiribati, with internationally recognised qualifications, to participate in areas of recognised global skill shortage. One of these areas is nursing and in 2006 KANI was formalised as part of a joint Australia-New Zealand development assistance programme in which Australia leads on education, public sector reform and human resource development while New Zealand leads on issues relating to the development of Kiribati's urban areas (Department of Foreign Affairs and Trade, 2006).

40 Data sources: PAALS Forum (2013); SWP unpublished data provided by Mark Roddam, Department of Employment, Canberra, 6 November 2013.

41 The variable costs of participating in the RSE scheme for workers from different Pacific countries are discussed in Bedford (2013).

42 The MOU between the Australian and Kiribati Governments that covers the Seasonal Worker Program, and its pilot, the PSWPS that ran until July 2012, is not available on the Australian Department of Employment's website.

43 See Nunns, Roorda, Bedford, and Bedford (2013).

44 Personal communication, Anne Masoe, Senior Adviser RSE:SPP, Settlement, Protection and Attraction Division, Ministry of Business, Innovation and Employment, Wellington (13 March 2014).

KANI provides scholarships to I-Kiribati to study for a Bachelor of Nursing in Australia. The four-year programme commences with an intensive 16 week Academic Preparation Program in Kiribati, followed by a 16 week Nursing Diploma Preparation Program at an Australian university. Eligible students then progress to an 18 month Diploma in Nursing, and may then continue on to complete an additional 24 month Bachelor of Nursing degree. Since November 2006 82 students have received scholarships to obtain these nursing qualifications. The programme is scheduled to finish in June 2014.

In New Zealand, Fruition Horticulture, under the RSE Worker Training Programme (known as 'Vakameasina') funded by New Zealand's Ministry of Foreign Affairs and Trade, delivers training aimed at enhancing the skills of recruited workers over a range of areas, including numeracy, literacy, and basic computer skills. Since 2012, some 79 I-Kiribati workers, including 57 women, have participated in the programme.

## **INSTITUTIONAL REVIEW**

### **Government Ministries/Departments**

There are three Government Ministries that have responsibilities for dealing with labour in 2014:

1. The Ministry of Foreign Affairs and Immigration (MFAI) (immigration policy and the issuing of visas)
2. The Ministry of Labour and Human Resources Development (MLHRD) (employment policy, vocational training institutions and overseas employment)
3. The Ministry of Health (MoH) (administers the Kiribati Australia Nursing Initiative)

The Principal Immigration Officer (MFAI) is the senior official dealing with immigration issues in Kiribati and the Secretary of MLHRD also acts as the Commissioner for Labour in Kiribati. Within MLHRD the Senior Labour Officer and the Labour Officer are Assistant Labour Commissioners under the Employment (Amendment) Act 2008.

### **Procedures for sending/receiving migrant workers**

As a participating country in New Zealand's RSE Work Policy and Australia's SWP, Kiribati's MLHRD co-ordinates the selection and pre-departure training of workers for both schemes. The MLHRD maintains a work-ready pool of prospective seasonal workers and, in common with some other Pacific states, a cross-Departmental team is involved in both the selection and pre-departure training processes.

New Zealand's Ministry of Business, Innovation and Employment and Australia's Department of Employment both provide assistance with capacity building for staff in Pacific states who are participating in their seasonal work schemes. During the year ended July 2013, for example, the major provider of training under New Zealand's Strengthening Pacific Partnership (SPP) programme, Brandheart, provided courses on marketing and branding, delivering excellent customer service and negotiating and influencing for strategic outcomes. These courses aim to assist in achieving better outcomes for states participating in the seasonal work schemes through negotiating, issues management and marketing skills.

## **NATIONAL POLICIES ON LABOUR MIGRATION**

### *Policy on inward migration*

None

### *Policy on outward migration*

The Beretitenti (President) of Kiribati, in his capacity as Minister of Foreign Affairs and Immigration, has been actively seeking employment opportunities for Kiribati overseas for at least a decade. He is on record at successive meetings of the Pacific Islands Forum arguing for greater access by Pacific states to the labour markets of New Zealand and Australia especially. His policy with regard to labour migration has two key dimensions: firstly ensuring employment opportunities for I-Kiribati at home are maximised, and secondly ensuring increasing numbers of I-Kiribati are able to migrate with dignity as their island homes are progressively degraded by environmental changes that Kiribati cannot control.

# Republic of Marshall Islands



# REPUBLIC OF MARSHALL ISLANDS

## SUMMARY OF INTERNATIONAL MIGRATION

The Republic of the Marshall Islands (RMI), like its nearest neighbour to the south, the Republic of Kiribati, has no 'high islands' – it is comprised entirely of low-lying coral islands, mainly atolls. The 34 atolls, which contain over 1,200 islets and associated reef systems, have a total land area of 181 km<sup>2</sup> spread over two million km<sup>2</sup> of ocean. Twenty-six of the atolls are inhabited and the highest population densities in the Pacific are found in urban areas on Majuro atoll (the Darrit-Uliga-Dalap strip) and Kwajalein atoll (the islet of Ebeye) where 74 percent of Marshallese were living in 2011 (Economic Policy, Planning and Statistics Office, 2012). Following decisions by the American administration in the 1950s to establish an administrative capital for the Marshall Islands on Majuro and to turn Kwajalein into a missile testing range for the US military, migration to these two atolls has dominated all other kinds of population movement for the best part of four decades (Connell and Lea, 1998, p.55). Between 1963 and 1973 the share of the RMI's population living on Majuro and Kwajalein increased from 36 percent to 63 percent – the most rapid urbanisation of any Pacific population on record and a rate of urban growth that has posed enormous challenges for development in the country (Connell and Lea, 1998, p.74; Connell, 1983c).

In 2011 the RMI had a population of 53,158 that was growing rapidly despite extensive emigration to the USA (SPC, 2013). According to the Secretariat of the Pacific Community (SPC) the RMI has a total fertility rate of 4.1 children per woman, the highest of any of the former TPI states and territories, and the highest teenage fertility rate in the Pacific (85 births per 1000 women aged 15-19 years). It also has the second highest international net migration loss of population in Micronesia (-17.1 per thousand, just behind FSM's -18.5). While Marshallese moved to other parts of the TPI under the German, Japanese and American colonial administrations, it is only since the signing of the Compact of Free Association (CFA) in 1986 that significant movement out of Micronesia to California and Hawai'i has occurred.<sup>45</sup>

The UN Population Division estimated that by 2013 almost 10,000 people born in the RMI were living overseas – the equivalent of 19 percent of the resident population in 2011 – and 90 percent of these emigrants were in the United States (UNDESA, 2013). The only other concentrations of RMI-born migrants were in Guam (270) and FSM (260) with Palau and the Commonwealth of the Northern Marianas having very small numbers of Marshallese (45-50 each according to the UN Population Division's estimates), and Australia (33) and New Zealand (20) having just over 50 between them according to their latest censuses in 2011 and 2013 respectively.

Immigration to the Marshall Islands (excluding the movement of military personnel associated with the base on Kwajalein which is not included in national censuses (Connell and Lea, 1998, p.30)) has increased in recent years and in the 2011 census 3,250 people born overseas were recorded as residents of the RMI (Economic Policy, Planning and Statistics Office, 2012, pp.34-35).<sup>46</sup> Over 40 percent (1,417) of the immigrants had been born in the US with virtually equal shares coming from the mainland and Hawai'i. Included in these immigrants would be Marshallese children born overseas while their parents were based in the US. The other two major groups of immigrants were from countries in Asia (936), the major sources being the Philippines and China, and other Pacific Island countries (775), especially FSM, Kiribati and Fiji. Precise numbers for people born in each country are not given in the 2011 census report.

Since the late 1990s the RMI has been actively encouraging foreign investors to contribute to the development of the country's private sector (Republic of the Marshall Islands United States Embassy, 2005) and for a brief period (2003-2006) passports were being sold especially to Chinese entrepreneurs.<sup>47</sup> The Government of RMI formally recognised Taiwan (the Republic of China) in 1998 in return for a substantial aid package which included contributions to the RMI Trust Fund that has been set up to support the country's economy after the withdrawal of direct financial support from the US as part of the CFA. Taiwanese are the main Chinese immigrants who now own a significant share of the more prominent businesses in Majuro.<sup>48</sup>

45 See Ogden (1994) and Nero and Rehuher (1993).

46 The Census Report notes (p. 32) that: "The Marshall Islands has witnessed a significant increase in the volume of international migration, with the number of immigrants during the past five years, April 2006 to March 2011, rising to 1,434, up from 544 during the period January 1994 to May 1999, according to the 1999 census."

47 For a summary of Chinese involvement in the RMI economy see Hezel (2006). Hezel (p. 5) notes that around 2,000 passports were sold but that: "It is difficult to determine just how many of those who purchased the RMI passports are still living and working in the Marshalls today [the scheme simply facilitated migration to the US for many]. What the passport scheme certainly did accomplish, however, was to bring about the inflow of an ethnic Chinese population that has claimed a major share of business in Majuro today."

48 Hezel (2006) points out that in 2006 95 of the 272 registered retail stores and 30 of the 67 import business licenses were either owned or being operated by Chinese, most of whom were from Taiwan.

# LEGISLATIVE OVERVIEW

## Legislation and Regulations

### *Employment of migrant workers*

- Immigration Act 2006
- Labor (Non-Resident Workers) Act 2006

### *Employment of citizens abroad*

- None

### *General Employment*

- The Protection of Resident Workers (Amendment) Act 1990

## Employment of Migrant Workers (inward migration)

### *Entry of labour migrants*

In the Protection of Resident Workers (Amendment) Act 1990 and Labor (Non-Resident Workers) Act 2006 the RMI Government acknowledges that its responsibilities include creating employment for, and enhancing the skill levels of, its citizens (RMI, 2005, p.3). The citizen workforce does not necessarily include people with appropriate skills and experience in all of the areas that the public and the private sector require and, consequently, work permits are granted to non-resident workers to occupy highly skilled professional and technical positions. A non-resident worker is defined as a person who is capable of performing the required services or labour and who is not a citizen of RMI or an immigrant alien admitted to the country for permanent residence (RMI, 2005, p.3).

Entry and stay in the RMI is regulated generally by the Immigration Act 2006, which provides for the issuing of a work visa. A work visa can be issued to an employer for a period of up to two years for a non-resident migrant worker who has been issued with a work permit. The visa will be valid for the same duration as any work permit issued. A valid medical certificate, showing clearance of HIV/AIDs, TB and other contagious diseases, together with a police clearance certificate, must be submitted with the application.<sup>49</sup>

The Labor (Non-Resident Workers) Act 2006 regulates the issuing of a work permit authorising the employment of migrant workers. Citizens of the USA, the Republic of Palau and the Federated States of Micronesia are exempted from the provisions of the Act.<sup>50</sup> Employers wishing to employ migrant workers must submit applications for a work permit to the Labor Division in the Ministry of Foreign Affairs.<sup>51</sup> Work permits can be extended and be transferred to another employer.<sup>52</sup> Employers must ensure that every migrant worker departs RMI after two years from the date of entry and repatriates to the point of hire at the end, or prior to termination, of the contract of employment.<sup>53</sup> A work permit may not be granted to a person within three years of their last repatriation from RMI.<sup>54</sup> A work permit may be issued to a person already in the RMI, but only in “exceptional circumstances” and provided other criteria apply such as their not being unlawful in RMI.<sup>55</sup>

There are different types of work permits.<sup>56</sup> For employment of a migrant in a professional occupation listed on the Occupational Shortage List, an OSL Professional Work Permit can be issued. For employment in occupations not on the list, a general work permit can be issued. Different criteria apply. For example, with an application for a general work permit, the employer must provide proof that the position has been advertised in the media for a specified period of time, and that this did not yield a suitably qualified and available citizen worker. However, there is no such requirement in relation to an application for an OSL Professional Work Permit.

Other types of work permits include a Temporary Work Permit, to enable an employer to employ a migrant worker for a period of up to six months to address emergencies, train staff, or carry out short-term technical work. There is also a Family Work Permit, which can be issued to the legally married spouse of a citizen who is lawfully in the RMI.

Upon approval of an application for a work permit, the Chief of the Labor Division must make a request to the Immigration Division for a work visa to be issued.

49 Immigration Act 2006, ss 13(2), 30, 36, and 40

50 Labor (Non-Resident Workers) Act 2006, s 10(2). Other categories of person are also exempted.

51 Late applications may attract a penalty fee if they are accepted; see, Labor (Non-Resident Workers) Act 2006, s 13

52 Labor (Non-Resident Workers) Act 2006, ss 24 and 25

53 Labor (Non-Resident Workers) Act 2006, s 26

54 Labor (Non-Resident Workers) Act 2006, s 12(2)(b)

55 Labor (Non-Resident Workers) Act 2006, s 23(1)

56 See, generally, Labor (Non-Resident Workers) Act 2006, ss 14-19



### *Dependents*

The spouse and dependent child of a migrant worker may apply for a general visa to enter and stay in RMI.<sup>57</sup>

### *Quota*

Unless exempted by an Order-in-Cabinet, all employers must maintain a workforce comprised of at least 50 percent Marshallese, and give first preference in employment to citizens. Non-resident workers may only be recruited to supplement the local labour force, and only where there is a lack of suitably qualified and available resident workers.<sup>58</sup>

### *Non-citizen investors*

If the employer is an overseas investor, the Government requires them to hire, or have already hired, and train one or more citizen workers to perform the work for which the non-resident worker is employed. The investor must also pay a levy of US\$0.25 per hour for every hour of work performed by the non-resident workers. The levy is paid into the Resident Workers Training Account for the purposes of training citizen workers, and repatriating non-resident workers should the need arise.<sup>59</sup>

Non-citizen investors are permitted to enter the RMI under a 30-day visitor's entry permit. They can then convert to a non-resident work permit and obtain an alien registration card once in the country. Entry permits, non-resident work permits and alien registration cards are obtained by applying to the Chief of Immigration in the Office of the Attorney General (RMI, 2005, p.5).

There are several economic sectors and business activities that are reserved for citizen investors. In 2004-05 the Reserves List included the following (RMI, 2005, p.4):

- Small-scale agriculture for local markets
- Small-scale mariculture for local markets
- Bakeries and pastry shops
- Motor garages and fuel filling stations
- Land taxi operations, not including airport taxis used by hotels
- Rental of all types of motor vehicles
- Small retail shops with a quarterly turnover of less than US\$1,000.00 (including mobile rental shops and/or open-air vendors/take-outs)
- Laundromat and dry cleaning, other than service provided by hotels/motels
- Tailor/sewing shop
- Video rental
- Handicraft chop
- Delicatessen, deli shop or food take-out

### *Employment of Migrant Workers in the RMI by the US Government under the Compact of Free Association*

In 1986, a Compact of Free Association (CFA) between the RMI and the United States of America (US) entered into force, which confers security and defence-related rights on the US. The US government, its federal agencies, or their local contractors, must give preference to citizens and lawful permanent residents of the RMI in employment related to the provision of services and associated programmes under the terms of the Compact of Free Association.

Where it is proposed to hire a migrant worker (a 'third-country national') for such employment, the United States government must formally notify the RMI Ministry of Foreign Affairs of the intention to do so, which may approve the employment or suggest that there are local personnel or contractors who are qualified and available.<sup>60</sup> Where the employment of a migrant worker is approved, the United States Government, or the relevant federal agency or contractor must apply for a work permit to the Labor Division of the Ministry of Foreign Affairs. The migrant worker must supply a health clearance and undergo health immunisation requirements.<sup>61</sup> Upon issuance of a work permit, the migrant worker will be issued with an entry permit. Both permits are limited to that specific employment.<sup>62</sup> The US Government, or the relevant federal agency or contractor, is responsible for ensuring the repatriation of the migrant worker upon the termination of their contract of employment.<sup>63</sup> There are separate, more time-bound, provisions relating to the employment of migrant workers under the Status of Forces Agreement (SOFA) that apply to the workforce in the military base on Kwajalein atoll.<sup>64</sup>

57 Immigration Act 2006, s 35

58 Labor (Non-Resident Workers) Act 2006, s 29

59 See RMI (2005, p. 4).

60 Labor (Non-Resident Workers) Act 2006, Schedule 1, paragraph 1 and 2

61 Labor (Non-Resident Workers) Act 2006, Schedule 1, paragraph 3

62 Labor (Non-Resident Workers) Act 2006, Schedule 1, paragraph 4

63 Labor (Non-Resident Workers) Act 2006, Schedule 1, paragraph 7

64 Labor (Non-Resident Workers) Act 2006, Schedule 2

## Employment of RMI Citizens Abroad (outward migration)

### *Migration from RMI under the Compact of Free Association*

Under the CFA, in return for conferring security and defence-related rights on the US, citizens of the RMI by birth, and certain categories of citizens by naturalisation and their relatives, enjoy privileged rights of entry into US. They do not require entry visas, and are exempt from the employment provisions of the US Immigration and Nationality Act (INA). An amended compact agreement was signed in 2003,<sup>65</sup> which contains new provisions expressly applying the INA to CFA migrants. Although the right of entry and access to the labour market remains undisturbed, other provisions of the INA, including those upon which admission can be denied or legal stay brought to an end, remain operative.<sup>66</sup>

Many Marshallese migrate to Hawai'i, California and Arkansas. In a decennial census conducted in Arkansas in 2010, 4,121 persons identified their race as being 'Marshallese' (US General Accounting Office, 2011). Reflecting the destination of many Marshallese under the CFA, RMI has consular representation in Hawai'i and in Arkansas, in addition to the main embassy in Washington D.C.

### *Seafarers*

The RMI's US Embassy website refers to the operation of a National Fisheries and Nautical Training Center (FNTC) under the auspices of the Marshall Islands Marine Resources Authority (MIMRA).<sup>67</sup> The FNTC was established, with support from the Asian Development Bank, in 1992 and replaced a Marine Training Center that had been operating under the Ministries of Education and Transport & Communications since 1988.

The Center provides 75 students a year with the skills to enable them to work on commercial fishing vessels operating in the RMI's Exclusive Economic Zone or in other parts of the northern Pacific. Applicants must have completed 9<sup>th</sup> grade and be 17 years old minimum to be eligible. The 9 month integrated curriculum aims to train seafarers to meet the international standards required in the maritime industry and includes at-sea training whether in deckhand operations or marine engineering.<sup>68</sup> It is not known if graduates from the RMI's FNTC have been successful in gaining employment with international shipping lines.

### *Other labour migration programmes*

The RMI, as a member of the Pacific Forum, is able to participate in New Zealand's Recognised Seasonal Employer (RSE) scheme. There have been no special arrangements made either by Immigration New Zealand or the relevant authorities in the RMI to facilitate recruitment of Marshallese for work in New Zealand and no employers have sought workers from this part of Micronesia. The RMI does not have a Memorandum of Understanding with Australia relating to labour migration, like the one their southern neighbours, Nauru and Kiribati, have that gives them access to Australia's Seasonal Worker Program.

## INSTITUTIONAL REVIEW

### Government Ministries/Departments

There are two Government agencies that have responsibilities for dealing with migrant workers:

1. Ministry of Justice (Immigration)
2. Ministry of Foreign Affairs (employment of migrant workers)

The Labor (Non-Resident Workers) Act 2006 gives the Secretary of the Ministry of Foreign Affairs the statutory responsibility to consider and determine all applications and issue work permits under the Act. The Secretary must also enter into written agreements with employers concerning the employment of non-resident migrant workers and ensure the "strict enforcement" of the Act and regulations.<sup>69</sup> The Act also establishes a Labor Division within the Ministry of Foreign Affairs, comprised of a Chief of Labor and Labor Officers.<sup>70</sup> The statutory functions of the Labor Division include making recommendations to the Secretary of the Ministry of Foreign Affairs on the issuing of work permits, and overseeing, monitoring and reviewing the recruitment of non-resident migrant workers. The Division must liaise with other relevant agencies such as the Immigration Division.<sup>71</sup>

<sup>65</sup> The amended Compact with RMI was signed into US Law under the CFA Amendment Act 2003.

<sup>66</sup> The CFA agreement in relation to RMI is explicit in this regard. See generally, US Citizenship and Immigration Services (2008).

<sup>67</sup> See entry under 'Investing: Commercial Fisheries' (Republic of the Marshall Islands United States Embassy, 2005).

<sup>68</sup> See entry under RMI Fisheries and Nautical Training Center, SPC's Coastal Fisheries Programme website (SPC, 2010).

<sup>69</sup> Labor (Non-Resident Workers) Act 2006, s 8(1)

<sup>70</sup> Labor (Non-Resident Workers) Act 2006, s 9

<sup>71</sup> Labor (Non-Resident Workers) Act 2006, s 9(4)

The Immigration Act 2006 establishes an Immigration Division within the Ministry of Justice.<sup>72</sup> The Act authorises the Division to issue work visas to employers.<sup>73</sup> The Division is headed by a Director of Immigration, who reports to the Attorney General. Executive responsibility for the Immigration Division rests with the Minister of Justice or such other Minister as appointed by the President.<sup>74</sup>

## **NATIONAL POLICIES ON LABOUR MIGRATION**

### **Policy on inward migration**

The RMI Government is actively seeking to grow employment opportunities for its citizens in all sectors of the economy and sees private investment in its fisheries, tourism, manufacturing and agriculture sectors as being essential to achieving this. As the RMI's US Embassy points out on its website: "The Government appreciates that the domestic private sector alone is not yet able to contribute sufficiently in this regard. It is therefore actively seeking direct foreign investment to assist the country meet its goals". These include: employment generation, human resource development, generation of foreign exchange and import substitution (Republic of the Marshall Islands United States Embassy, 2005). The Government is aware that the citizen workforce does not necessarily include people with the appropriate skills and experience in all areas that citizen and non-citizen investors may require. Consequently work permits can be issued to non-resident workers as long as steps are taken to train citizens to meet the on-going skill needs of employers.

### **Policy on outward migration**

None that the authors are aware of.

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72 Immigration Act 2006, s 4

73 Immigration Act 2006, s 6(1)(b)

74 See definition of 'Minister' in Immigration Act 2006, s 2

# Republic of Nauru



# REPUBLIC OF NAURU

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## SUMMARY OF INTERNATIONAL MIGRATION

The Republic of Nauru comprises a single raised coral island that is 21 km<sup>2</sup> in area with a resident population of 10,084 at the time of the Census of Population and Housing in 2011 (Bureau of Statistics, 2013). Nauru has the highest average population density (498 persons per km<sup>2</sup>) of any Pacific country, ahead of Tuvalu where there is a slightly larger population and a land area of 26 km<sup>2</sup> spread over nine atolls and reef islands. Nauru is unusual in the Pacific in having a population that is almost entirely urban-resident, with a very small proportion of households (13 percent) growing food for local consumption and only 10 percent of the labour force engaged in primary production (agriculture, forestry and mining) (Bureau of Statistics, 2013, p.95 ff).

Notwithstanding the population's high level of urbanisation and heavy dependence on cash incomes for their livelihoods, fertility levels remain high. Nauru's Total Fertility Rate of 4.3 is similar to Vanuatu (4.1) and Solomon Islands (4.1) which have very low levels of urbanisation. Life expectancy at birth is low (57.5 years for males and 63.2 years for females), 20 years below levels in Australia and New Zealand with similar levels of urbanisation, and net migration is low (estimated to be around -100 per year between 2006 and 2011). Nauru's Census of Population and Housing reports: "at present Nauruans are not known for migrating permanently overseas at any significant measure [sic], while Nauru itself is not an immigration country either." (Bureau of Statistics, 2019, p.153).<sup>75</sup> Nauru had been a significant country of immigration for much of the 20<sup>th</sup> century because of its phosphate industry, but when the major reserves of phosphate were exhausted in the late 1990s the non-Nauruan labour force (and their dependents) was reduced dramatically.

For much of the post-Second World War period non-Nauruans outnumbered Nauruans, with I-Kiribati, Tuvaluan and Chinese workers comprising the bulk of the phosphate mining labour force.<sup>76</sup> At the time of the 2002 Census of Population and Housing, soon after major exports of phosphate ceased, there were 2,493 people resident on Nauru who were not Nauruan by nationality including 1,259 I-Kiribati, 423 Tuvaluans and 491 Chinese (Bureau of Statistics, 2013, p.61). By 2011 the non-Nauruan population had fallen to 632 including 178 I-Kiribati, 42 Tuvaluans and 152 Chinese. Between 2002 and 2006 over 1,700 I-Kiribati, Tuvaluans and Chinese are estimated to have left Nauru, and net migration losses have continued at a lower rate since 2006 according to the 2011 census (Bureau of Statistics, 2013, p.166).

Evidence of Nauru's small overseas diaspora can be seen in the census statistics for Australia, which administered Nauru on behalf of the United Nations from 1947 until independence in 1968. The Nauru Government invested heavily in Australia following its purchase of the Nauru assets of the British Phosphate Commission and the Nauru-born population in Australia increased from 222 in 1966 to just under 500 in 1971.<sup>77</sup> By 2011 there were 513 Nauru-born in Australia, 412 of whom were Nauruan by ancestry.<sup>78</sup> Although there were plans to resettle Nauru's entire population on an island off the coast of the York Peninsula in Queensland in the 1960s, Nauru's leaders turned down this opportunity in favour of retaining their identity and sovereignty as Nauruans (Tabucanon and Opeskin, 2011). The number of Nauru-born living in Australia at any census has never exceeded 550. Nauru is one of the Pacific states participating in Australia's Seasonal Worker Program (SWP), but numbers of recruits have been very small - 10 Nauruans were employed on seasonal work visas in the year ended June 2013.<sup>79</sup>

The numbers of Nauru-born resident in New Zealand are much smaller - 60 in 1991 (when there were 548 in Australia) and 272 in 2013 (127 of whom identified as Nauruans).<sup>80</sup> Nauruans are eligible to participate in the Recognised Seasonal Employer (RSE) scheme but to date employers have not been seeking labour from Nauru. The UN Population Division's migrant stocks database for 2013 also indicates there are very small numbers of people born in Nauru living in the United States (159) and in other parts of the Pacific (150, mainly in Kiribati) (UNDESA, 2013). Nauru, in the second decade of the 21st century, is neither a country of immigration or emigration and, in this sense, it has more in common with some of the larger Melanesian countries in the western Pacific than with its Micronesian neighbours in the northern Pacific.

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75 The 700 or so asylum seekers currently in camps awaiting refugee status determination are not regarded as "immigrants".

76 There is an extensive literature on the phosphate industry on Nauru. See, for example, Viviani (1970); Connell (1983d); Williams and Macdonald (1985).

77 Unpublished Australian census data provided by Margaret Young, Australian Population and Migration Research Centre, University of Adelaide.

78 Data provided by Margaret Young, Australian Population and Migration Research Centre, University of Adelaide.

79 Unpublished data provided by Mark Roddam, Department of Employment, Canberra, 6 November 2013.

80 Unpublished New Zealand census data provided by Robert Didham, Statistics New Zealand, Christchurch.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of migrant workers*

- Immigration Act 2014
- Immigration Regulations 2014
- Immigration (Amendment) Regulations 2014

#### *Employment of citizens abroad*

- None

#### *General Employment*

- Workers (Contract of Service) Act 1922

### Employment of Migrant Workers (inward migration)

#### *General Process and Conditions*

Entry of migrant workers is regulated by the Immigration Act 2014 and associated regulations. Generally, a person seeking permission to enter and remain in Nauru must apply for a visa authorising entry and presence in Nauru.<sup>81</sup>

The Act provides that classes of visa may be prescribed by regulation.<sup>82</sup> The 2014 Regulations (January 2014) initially provided that migrant workers seeking to enter Nauru had to apply to the Principal Immigration Officer for an employment visa. However, the Immigration Amendment Regulations (February 2014) removed this class of visa altogether.<sup>83</sup> It was replaced by a Business Visa (Employment), which allows the holder to take up specified employment in Nauru.<sup>84</sup>

An application for a business visa can be made before or after entering Nauru. A non-citizen cannot transition to a Business Visa (Employment) from another visa in-country.<sup>85</sup> Beyond only taking up specified employment, the conditions which may attach to a Business Visa (Employment) are not expressly set out in the 2014 Regulations. However, the Regulations allow for the visa to be issued subject to such reasonable conditions as the Secretary for Justice and Border Control may provide.<sup>86</sup> The application form requires submission of certificates of good health and character.<sup>87</sup>

The Workers (Contract of Service) Act 1922 regulates the conditions of employment, but it only applies to people who have been declared to be workers, either individually or as a class, under section 3 of the Act. It is unclear, however, if any such declaration has been made.<sup>88</sup> For those workers whose employment is subject to the Act, the Act provides that the contract of employment requires Ministerial approval.<sup>89</sup> The employer must also provide adequate housing, sanitation, and rations.<sup>90</sup>

#### *Dependents*

A dependent visa can be granted to the dependents of a migrant who enters Nauru as the holder of a Business Visa (Employment). A dependent visa expires upon the expiry of the migrant worker's visa.<sup>91</sup>

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81 Immigration Act 2014, s 10(1)

82 Immigration Act 2014, s 33

83 Immigration Regulations 2014, Regulation 8 as amended by Immigration (Amendment) Regulations, Regulation 2

84 Immigration regulations 2014, Regulation 6(2) and 6(4)(g), as amended by Immigration (Amendment) Regulations 2014, Regulation 6

85 Immigration (Amendment) Regulations 2014, Regulations 3 and 4, omitting Immigration Regulations 2014, Regulations 5(8) and 6(1)

86 Immigration Regulations 2014, Regulation 6(4)(g) (v)

87 Immigration Regulations 2014., Schedule 1, form 1

88 Email correspondence, David Lambourne, 11 March 2014

89 Workers (Contract of Service) Act 1922, Section 4(1).

90 Workers (Contract of Service) Act 1922, Section 28, 30 and 31

91 Immigration Regulations 2014, Regulation 7

## Employment of Nauruans Abroad (outward migration)

### *Seasonal workers*

Although there is no specific legislation relating to employment of Nauruans overseas, and there is no established tradition of Nauruan labour migration to other parts of the Pacific or to countries on the Pacific rim, this central Pacific Micronesian country is one of the eight Pacific states that are participating in Australia's Seasonal Worker Program. A Memorandum of Understanding was signed between the Australian and Nauruan governments once the decision was taken in Canberra late in 2011 to continue with their seasonal work pilot scheme (Nauru was not part of the pilot).<sup>92</sup>

Nauru's delegation, to the inaugural SWP conference in Sydney in August 2012, led by Hon Mathew Batsiua MP, presented a strong case for recruiting Nauruans for work in Australia, emphasising the country's sizeable youthful population and the limited opportunities for paid employment outside of the public service. The 2011 Census of Population and Housing reported high levels of unemployment for Nauruans aged 15-19 (70 percent) and 20-24 years (36 percent) and Nauru's government is keen to gain greater access to opportunities for work overseas (Bureau of Statistics, 2013, p.83).

### *Other labour migration programmes*

Small numbers of Nauruans do gain entry to Australia and New Zealand under their regular residence and temporary work/residence programmes. During the five years between July 2008 and June 2013, Immigration New Zealand approved 18 applications by citizens of Nauru for residence in the family sponsorship and international/humanitarian streams. Australia's immigration authorities approved 24 applications for residence by Nauru citizens over the same period, with 19 of these being in the family migration category (Immigration NZ, 2013).<sup>93</sup> A total of 20 temporary visas for work in New Zealand were approved for Nauru citizens during this five year period, half of which were for partners of people approved for temporary or permanent residence. In Australia between 25 and 30 457 temporary work visas were approved for Nauru citizens along with a further 100 temporary residence visas (including the 10 SWP workers) most of which were in the sport and diplomatic sub-classes.

Nauru has no formal contracts with overseas shipping lines for employment of Nauruans as seafarers. However, 51 percent of Nauruan households were reported to engage in fishing on the reef or in the ocean (23 percent in deep-sea fishing) (Bureau of Statistics, 2013, p.103). Nauru has a strong interest in the management of fisheries in its territorial waters and played a major role in the negotiation of the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest that was signed by all of the independent Micronesian states as well as Papua New Guinea and Vanuatu in February 1982 (Tuvalu subsequently became a Party to the Nauru Agreement, 1982). Parties to the Nauru Agreement manage exploitation of the world's largest sustainable tuna purse seine fishery and provide Fisheries Observers for all purse seine fishing vessels operating in the central and western Pacific. In January 2014 the Nauru Fisheries and Marine Resources Authority (NFMRA) was seeking potential Fisheries Observers to work on purse seiners during the tuna fishing season (*Nauru Bulletin*, Issue 1 -2014/98, 17 January 2014).

## INSTITUTIONAL REVIEW

### Government Ministries/Departments

There are three Government Departments that have responsibility for immigration, employment and labour migration in 2014:

1. Department of Justice (immigration)
2. Department of Foreign Affairs and Trade (bi-lateral labour migration agreements)
3. Department of the Chief Secretary (human resources and labour)

The Principal Immigration Officer (PIO)<sup>94</sup> is the head of the Nauru Immigration and Passport section, which is responsible for controlling immigration. The Principal Immigration Officer reports directly to the office of the Secretary for Justice and the Office of the Minister for Justice & Border Control. The immigration office is divided into administration and operations sections. The administration section is responsible for issuing visas (Government of the Republic of Nauru, 2014).

<sup>92</sup> The MOU between the Australian and Nauruan governments that covers the Seasonal Worker Program (SWP) is not available on the Australian Department of Employment's website.

<sup>93</sup> The Australian data were provided by the Department of Immigration and Border Protection, Canberra.

<sup>94</sup> There are in fact two PIO positions provided for under the Act, one in charge of administration, the other in charge of operations.

The Human Resources and Labour Section of the Chief Secretary's Department is responsible for training and development; recruitment, selection and monitoring; employee relations; salaries and employee benefits.<sup>95</sup>

#### *Procedures for sending/receiving migrant workers*

As a participating country in Australia's Seasonal Worker Program, the Human Resources and Labour Section in the Department of the Chief Secretary co-ordinates the selection and pre-departure training of workers for the SWP. The Department uses an Expression of Interest approach rather than having a work-ready pool of prospective seasonal workers.<sup>96</sup>

Nauruan citizens, resident on Nauru, who are not also permanent residents of Australia, are aged between 21 and 45 years, are fit and agree to undergo a full medical examination, speak English fluently, have a police clearance and are of good character and have experience or knowledge operating heavy machinery or in agriculture and horticulture are invited, on demand from Australia, to submit Expressions of Interest to the Project Co-ordinator in the Office of the Chief Secretary. Applicants are short-listed and the relevant names provided to SWP accredited employers seeking labour.

The information sheet relating to the call for Expressions of Interest makes it clear that decisions regarding offers of employment are made by the employers themselves, not by the Office of the Chief Secretary. The Project Co-ordinator ensures those selected are briefed about work in Australia and the process to be followed to obtain the relevant special program work visa.

## **NATIONAL POLICIES ON LABOUR MIGRATION**

#### *Policy on inward migration*

None that the authors are aware of.

#### *Policy on outward migration*

The Nauru Government does not have a national policy on labour migration. The Census of Population and Housing, 2011 does contain a section on population projections and policy implications of these. Significant growth in the working age population is an inevitable consequence of continued high fertility in Nauru and it is estimated that the working age population will increase from 6,000 in 2011 to somewhere between 9,000 and 12,900 by 2050 (depending on net migration assumptions). The report notes that: "The needs of this larger population size and its different population subgroups should be considered in development plans in areas as diverse as health, education, employment, social welfare, people with special needs, environment, economic growth, climate change and disaster management to fulfill the aspirations of Nauru's communities" (Bureau of Statistics, 2013, p.167).

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<sup>95</sup> Information on Human Resources and Labour Section provided by Bernard Grundler (Chief Secretary, Department of the Chief Secretary, Nauru), 24 March 2014.

<sup>96</sup> Seasonal Workers Program, Expression of Interest, circulated from the Office of the Chief Secretary, 3 July 2012.



# Republic of Palau



# REPUBLIC OF PALAU

## SUMMARY OF INTERNATIONAL MIGRATION

The Republic of Palau, with a resident population of just under 20,000 at the time of the last full census in 2005,<sup>97</sup> has the lowest average population density of any Micronesian country and around 77 percent of its residents living in urban areas, especially in Koror on the island with the same name.<sup>98</sup> Palau is unusual amongst the independent countries of the Pacific in having over 40 percent of its resident population with overseas birthplaces. There were 6,000 overseas-born in 2005, 72 percent of whom had been born in countries in Asia, especially the Philippines (16 percent of the total population and 74 percent of the Asia-born population). The other main Asian birthplaces were: China (550), Vietnam (around 300), Japan (163) and Korea (80). Palau also had over 1,000 residents born in other parts of Micronesia: Federated States of Micronesia (FSM, 465), Commonwealth of the Northern Marianas (280) and Guam (274). A small share of the population (377, just under 2 percent of the total) had been born in the United States of America.<sup>99</sup>

Not surprisingly, given its location close to the Philippines (Palau shares maritime boundaries with the Philippines and Indonesia), its initial settlement from the Philippines, and its diverse and complex history of colonial administration, the Republic of Palau has strong connections with countries in Asia.<sup>100</sup> Currently, visitors from Japan, China (especially Taiwan which is recognised as a separate state by the Government of Palau), Japan and Korea dominate the country's important tourism industry,<sup>101</sup> and the exploitation of its extensive Exclusive Economic Zone has effectively been dominated by Asian business interests.<sup>102</sup>

In addition to being a country of immigration, Palau has also been a country of emigration, especially during the era of colonial administration by the USA as part of the UN-mandated Trust Territory of the Pacific Islands. Palauan international migration has been more extensive than elsewhere in Micronesia since 1947, and by the early 1970s it was estimated that there were over 2,500 Palauans resident overseas (the equivalent of 22 percent of the 11,210 enumerated in Palau during the 1970 census).<sup>103</sup> At this time Guam was the main destination (1,230, including 400 students), with urban areas in the Northern Marianas, the Federated States of Micronesia (410), Hawai'i (350) and the west coast of the USA (150) being the other main destinations. In 2013 the UN Population Division estimated there were at least 3,000 Palauans in North America, 2,200 in other parts of Micronesia (including 1,500 in Guam), around 250 in southeast Asia (Philippines and Vietnam) and small numbers in Europe (25), Australasia (28), Latin America and the Caribbean (50) (UNDESA, 2013).<sup>104</sup> A diaspora of around 5,300 is equivalent to 28 percent of the resident population in 2005 – a very significant diaspora by Micronesian standards.

While the flows of emigrants are to islands and nations to the east of Palau, the flows of immigrants have been predominantly from Asian countries to the west and neighbouring Micronesian islands. The two flows in recent years have effectively balanced each other resulting in a situation approaching zero net migration (SPC, 2013).<sup>105</sup> While the great majority of immigrants from Asia are classified as temporary residents, it can be noted that in the 2005 census 60 percent of the 5,900 people who were not citizens of Palau had arrived before 1975 (Office of Planning and Statistics, 2005, p.22). Temporary migration to Palau does not necessarily mean short-term migration.

97 A 'mini-census' was conducted in 2012 in Palau with the assistance of the Secretariat of the Pacific Community's (SPC) Statistics for Development Division. The population of Palau in 2012 is reported in the SPC's 2013 Pacific Island population summary to be 17,445, around 1,500 fewer than the census resident population (including temporary absentees overseas) in 2005. As there are no detailed statistics available for the 2012 enumeration, data from the 2005 census is used in this summary.

98 The total land area of Palau is 459 km<sup>2</sup> and 86 percent of this comprises the island of Babeldaob (396 km<sup>2</sup>). The main urban population is on the neighbouring island Koror (18 km<sup>2</sup> with 12,676 of the 19,907 residents in 2005). The number of residents on Babeldaob, which includes the administrative capital of Ngerulmud, was 5,877 – just under 30 percent of the total in 2005.

99 Office of Planning and Statistics (2005).

100 Palau, and the larger cluster of islands in Micronesia it was part of during the colonial era, experienced several colonial administrations under Spain, Germany, Japan and the United States of America. All of these periods of colonial rule had impacts on international migration in Micronesia, especially the Japanese era when an estimated 100,000 settlers and military personnel moved into these islands between 1920 and 1942 according to Munro (1990). The population of Palau in 1938 was just over 22,000 (larger than it was in 2005) with the 6,400 Palauans comprising only 29 percent of the total according to Connell (1983b, p.13).

101 The Republic of Palau's official website contains statistics on tourist arrivals during 2013. Of the 114,127 visitor arrivals, 69 percent were from Japan (36,058), Taiwan (25,834) and Korea (16,997) (Republic of Palau National Government, 2014).

102 In 2014 the Government of Palau plans to close the country's EEZ to commercial fishing in the interests of sustainable management of tuna and promotion of marine tourism. See Magbanau (2014).

103 See, for example, Connell (1983b, p.21) and Connell and Lea (1998).

104 It should be noted that the total diaspora for Palau is given as 9,700 in the UN's estimates but this includes almost 4,200 Palau-born people living in Bangladesh which must be a coding error. There is no tradition of migration between Palau and Bangladesh as far as the authors are aware, and there is no Bangladesh-born component in Palau's population.

105 There is a column for net international migration in these estimates, and for Palau and the Northern Mariana Islands (another country of extensive immigration and emigration) zero net migration is recorded.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of Migrant Workers*

- Palau Legal Code, Title 30: Protection of Resident Workers Act
- Palau Legal Code, Title 13, Chapter 10: Foreign Labor<sup>106</sup>
- Labor Rules and Regulations 2005

#### *Employment of citizens abroad*

- Compact of Free Association with US, Article IV

#### *General Employment*

- Labor Rules and Regulations 2005

### Employment of Migrant Workers (inward migration)

#### *General Process and Conditions*

The employment of migrant labour is regulated by the Protection of Resident Workers Act and by the provisions of the Labor Rules and Regulations (“the Regulations”).<sup>107</sup> Parts IV and V of the Regulations sets out the general process. Under Part IV, all vacancies must first be advertised for a period of 30 days and the Division of Job Placement must attempt to fund a suitably qualified resident worker.<sup>108</sup> If the position(s) remain unfilled, an employer wishing to employ a non-resident migrant worker must file an application with the Bureau of Labor and Human Resources stating the place and nature of the employer’s business, the number of workers desired, their qualifications, the wages to be paid, the date on which such workers are desired, and the locations where such workers are to be employed. The application must be accompanied by various documents, including health and character certificates, and affidavits from two of the worker’s former employers indicating at least two years’ relevant work experience. A copy of the vacancy announcement form issued under Part IV must also be filed.<sup>109</sup> Subject to limited exceptions, non-resident migrant workers must be between 21 and 60 years old.<sup>110</sup>

Upon receipt of the application, the Director of the Bureau of Labor and Human Resources (hereafter referred to, respectively, as the Director and the Bureau) must determine whether the employment of non-resident workers will be in the best interest of Palau.<sup>111</sup> For those positions where it is accepted that a non-resident may be hired, a written agreement is entered into between the employer and the government, which authorises the employer to hire the worker.<sup>112</sup> The agreement must confirm relevant particulars including the wages to be paid, and the employer’s agreement to comply with minimum employment conditions prescribed by law.<sup>113</sup>

Once the employer has paid the non-resident worker fee, the Bureau will issue a Non-Resident Workers Identification Certificate and must notify the Bureau of Immigration that it has done so.<sup>114</sup> The migrant worker may not be legally employed by the employer and may not otherwise work in Palau until such time as this certificate is issued.<sup>115</sup>

The Bureau may also issue a provisional identification certificate to allow a migrant worker to enter Palau and take up employment while the work permit application is pending. In these circumstances, the Bureau of Immigration will need to issue a Provisional Labor visa before the migrant worker may lawfully enter Palau. If the migrant worker does not enter Palau and commence employment within 60 days of the issuing of the provisional certificate, the certificate expires.<sup>116</sup> Migrant workers issued with a provisional identification certificate must, within 30 days of entry, surrender the document to a Labor Office and present evidence that he/she has completed the necessary physical examination and obtained a social security number. At this time, the migrant worker will be issued with a Non-Resident Workers Identification Certificate valid for up to two years.<sup>117</sup>

Prior to entry into Palau, each migrant worker must file an affidavit with the Director confirming specified particulars, including two years’ minimum relevant experience, their marital status, and particulars of any dependents. The employer must present to the Director a signed contract of employment containing details of matters such as job

<sup>106</sup> It has not been possible to locate a copy of this legislation.

<sup>107</sup> Palau National Code. Chapter 1, Title 30, see, in particular: Chapter 1, Subchapter IV, ss161-174 and Chapter 2 ss201-207, and the Labor Regulations 2002.

<sup>108</sup> If the vacancy relates to a managerial position, discretion exists to process the application immediately if there are reasonable grounds to believe that no qualified citizen or permanent resident is available. It is not clear if this Division, which is expressly named in the 2005 Regulations continues under this name, or whether its functions has been assumed by another Division within the Bureau of Labor and Human Resources.

<sup>109</sup> See, generally *ibid.* Regulation 5.1

<sup>110</sup> *Ibid.* Regulation 6.2

<sup>111</sup> The grounds upon which this may be found not to be in Palau’s best interest are set out in *ibid.* Regulation 5.2.1. They include where the job classification is one occupied by a sufficient number of Palauan workers or entrepreneurs, where the employer has been issued with a written notice of violation of the Act previously, and where the employer has not demonstrated a commitment to train a resident worker for the position applied for.

<sup>112</sup> *Ibid.* Regulation 5.2.2

<sup>113</sup> Protection of Resident Workers Act, s 165

<sup>114</sup> *Ibid.* Regulation 5.3

<sup>115</sup> *Ibid.* Regulation 5.2.3

<sup>116</sup> *Ibid.* Regulations 5.4 and 5.5.1

<sup>117</sup> *Ibid.* Regulation 5.4

title, wages and hours of work.<sup>118</sup> The contract must contain a statement that the worker may not work for any other employer in Palau for five years following the date of termination of any previous employment in the country.<sup>119</sup> The worker must also obtain a Certificate of Freedom from Contagious Disease issued no earlier than 90 days preceding their entry into Palau from a physician in their country of origin.<sup>120</sup>

Within 10 days of arrival in Palau, the worker must successfully complete a medical examination. The migrant worker is to bear the cost of the examination.<sup>121</sup>

A certificate of identity/work permit is valid for a maximum period of two years. The permit may be renewed for further periods of two years' employment with the same employer. The migrant worker cannot work for any other employer.<sup>122</sup> Applications for extensions may be sought but must be submitted at least 45 working days prior to the expiry of the current non-resident identification certificate.<sup>123</sup> Temporary certificates may be issued for employment for periods of less than 90 days.<sup>124</sup>

Parts VI and VIII of the Labor Regulations detail the obligations of the employer regarding the provision of adequate housing and shelter, sanitation, cooking, and washing and laundry facilities to migrant workers. The employer must agree to meet repatriation costs, but can recover the costs of the worker's return to the point of origin through deductions from the worker's wages if this is provided for in the employment contract.<sup>125</sup> The Regulations specify minimum rates of remuneration for both skilled and unskilled migrant workers and stipulate that resident workers must receive at least equivalent remuneration.<sup>126</sup>

The employer must pay an annual fee for each worker, up to 50 percent of which can be deducted from the worker's wages where the employer has notified the worker of an intention to do so prior to the worker departing their country of origin. This must be contained in the employment contract signed by the employer and worker.<sup>127</sup>

### *Dependents and Quotas*

A dependent entry permit may be issued to the spouse and children of a non-resident migrant worker, but only where the family income exceeds \$15,000, and the employer consents to such a permit being issued. Such family members are subject to the same requirements regarding obtaining a health certificate and undergoing a medical examination as the worker.<sup>128</sup>

According to a report by the Asian Development Bank in 2007, permission to do business is conditional on foreign employers ensuring that at least 20 percent of their workforce is Palauan (ADB, 2007, p.14).

## **Employment of Palauan Workers Abroad (outward migration)**

### *Migration from Palau under the Compact of Free Association*

In 1994, a Compact of Free Association (CFA) between Palau and the United States of America (US) entered into force. Broadly, in return for conferring security and defence-related rights on the US, citizens of Palau by birth (but not non-citizen spouses and children), and certain categories of citizens by naturalisation, enjoy privileged rights of entry into US. They do not require entry visas, and are exempt from the employment provisions of the US Immigration and Nationality Act (INA). Although the agreement with Palau does not expressly incorporate the other sections of the INA, these provisions - including those upon which admission can be denied or legal stay brought to an end - remain operative for the Department of Homeland Security, which is the agency charged with the administration of the INA (US Citizenship and Immigration Services, 2008a).

### *Other labour migration programmes*

While Palau does not have specific arrangements with other countries relating to labour migration, its citizens are eligible to participate in New Zealand's Recognised Seasonal Employer (RSE) scheme which is open to workers from all Pacific Forum countries subject to demand by employers and has an annual maximum of 8,000 seasonal workers employed in New Zealand. To March 2014 no Palauans had been recruited for seasonal work and it is unlikely that there will be much interest in Palau in such work opportunities. One of the reasons for the large temporary migrant population in Palau is the lack of local workers interested in employment in the primary sector.

118 Protection of Resident Workers Act, s 168

119 Protection of Resident Workers Act, s165(b)(7)

120 Ibid. Regulation 5.5

121 Ibid. Regulation 5.6

122 Protection of Resident Workers Act. ss 164(a) and 169

123 Ibid. Regulation 10.2

124 Ibid. Regulation 5.8

125 Ibid. Regulation 6.4

126 Ibid. Regulation 7.1 and 7.2

127 Protection of Resident Workers Act, s 172

128 Protection of Resident Workers Act, s 173

## INSTITUTIONAL REVIEW

### Government Ministries/Departments

There are two Government agencies, both within the Ministry of Justice, that have responsibility for dealing with labour in 2014:

1. The Bureau of Immigration (immigration policy and the issuing of visas)
2. The Bureau of Labor and Human Resources (employment policy, and the employment of migrant workers)

The Director of the Bureau of Labor and Human Resources has overall statutory responsibility for administering the Protection of Resident Workers Act. The Director's functions include the enforcement of the provisions of the Act, as well as the agreements which the Director enters into with employers concerning the employment of non-resident workers. This includes the performance of investigatory functions as appropriate. The Director is also empowered to establish occupational categories as required and establish minimum standards of qualification procedures, and minimum wage requirements for workers.<sup>129</sup>

### Procedures for sending/receiving migrant workers

Although the Protection of Resident Workers Act establishes an Employment Service, it is not clear whether this continues to exist, or if its function has been subsumed into the work of Divisions in the Bureau of Labor and Human Resources. Specific statutory functions of the Employment Service under the Act include conducting surveys of manpower needs, assisting in the preparation of training programmes and recommending other measures for alleviating shortages and reducing the need for non-resident workers. Other functions include overseeing, monitoring and reviewing the use of non-resident workers including, but not limited to, matters relating to health, safety, meals, lodging, salaries, working hours and conditions, and specific contractual provisions.<sup>130</sup>

In 2009, a Bill was introduced to transfer the responsibility for authorising the entry of migrant workers from the Division of Labor to the Bureau of immigration.<sup>131</sup> The impetus behind the bill is recorded in section 1, which states:

The Olbiil Era Kelulau [Palau National Congress] finds that the low cost of foreign labor and relative higher cost of resident workers has deterred businesses from hiring Palauan citizens. Many Palauans remain unemployed or underemployed, affecting the strength of our economy. Reliance on foreign workers has dramatically increased in the last twenty years. In 1990, there were fewer than two thousand foreign workers employed in Palau, with twice as many citizens employed as compared to foreign workers. By 2000, the number of foreign workers employed had grown to almost five thousand, a number that exceeded the number of citizens employed in Palau. Today, the number of citizens employed is greater than the number of foreign workers employed, however, the ratio is close to one to one. Palau is relying heavily on foreign labor at the expense of our own human resources.

As well, the process through which employers hire foreign labor is inefficient and not cost effective. Efforts are duplicated by the Division of Labor and the Bureau of Immigration. A lack of uniformity exists between Labor and Immigration with respect to standards for entry. These functions should be consolidated, with the Bureau of Immigration taking responsibility for authorizing workers for entry, allowing the Division of Labor to focus on the enforcement of labor and employment laws.

Among the proposed changes was the removal of the exception for employment of migrant workers on a temporary basis for less than 90 days. Further, the Chief would also have to agree to any extension of employment beyond an initial two-year period. As at the date of writing, this Bill does not appear to have been passed into law.

## NATIONAL POLICIES ON LABOUR MIGRATION

### *Policy on inward migration*

Section 102 of the Protection of Resident Workers Act sets out national policy regarding the employment of migrant workers in Palau.<sup>132</sup> This states:

The Olbiil Era Kelulau finds and declares that it is essential to a balanced and stable economy in the Republic that workers who are citizens of the Republic be given preference in employment in occupations and industries in the Republic, and that the public interest requires that the employment of noncitizen workers in such occupations and industries not impair the wages and working conditions of citizen workers.

This statement of policy is echoed in the Labor Rules and Regulations 2005.<sup>133</sup>

### *Policy on outward migration*

None that the authors are aware of.

<sup>129</sup> Protection of Resident Workers Act, s 143

<sup>130</sup> Protection of Resident Workers Act. ss 141-142

<sup>131</sup> Senate Bill 8-16 (January 2009)

<sup>132</sup> This may also be reflected in §1020 of the Foreign Workers Act. Personal Communication, R. Rechirei (30 April 2014).

<sup>133</sup> Labour Rules and Regulations 2005, Part II.

# Papua New Guinea



# PAPUA NEW GUINEA

## SUMMARY OF INTERNATIONAL MIGRATION

According to the UN Population Division's estimates of migrant stocks in 2013, Papua New Guinea (PNG) had the fourth largest birthplace population living overseas (40,400) of all of the Pacific states and territories (UNDESA, 2013). Much larger numbers of people born in Fiji (191,170) and Samoa (129,150) were estimated to be living in other countries, while Tonga, with a resident population of just over 103,000 in 2011, had an estimated 60,300 Tonga-born living overseas in 2013. While 40,400 PNG-born residents in other countries looks quite a large number (by Pacific standards), it is very small by comparison with the country's resident population of 7,059,600 in 2011 (SPC, 2013). PNG's per capita diaspora at just under 6 migrants per 1,000 population is the smallest in the region and the great majority of the people born in PNG living overseas are not Papua New Guinean by ancestry. Just over 80 percent (33,400) of the 40,400 PNG-born people estimated to be overseas in 2013 by the UN Population Division were in Australia. Australia's 2011 Census of Population and Housing recorded 26,789 PNG-born as being usually resident and only 8,752 (33 percent) recorded a PNG indigenous ancestry. The diaspora of Papua New Guineans is much smaller than the diaspora of those born in the country (which includes some thousands of Australians) – possibly closer to 2 migrants per 1,000 population in PNG.

Papua New Guinea is as much a country of immigration as emigration and a crude net migration rate of zero is recorded in the Secretariat of the Pacific Community's (SPC) population estimates for 2013 (SPC, 2013).<sup>134</sup> However, this should not be interpreted as an indication of limited population movement across Papua New Guinea's borders each year. PNG's Tourism Promotion Authority reported that there were over 164,000 arrivals on short-term visitor visas in 2011 – 44 percent for business purposes and a further 28 percent for employment-related reasons (Marketing Promotions and Research Division, 2011). PNG's dynamic extractive resources industry sector attracts a significant number of skilled migrants and short-term advisers, many from neighbouring countries in Asia.<sup>135</sup> Business-related activities rather than holidays are the primary reasons for flows of people into the country, and entrepreneurs and skilled technicians and professionals from neighbouring APEC countries are major contributors to these flows in the early 21<sup>st</sup> century.<sup>136</sup>

The main destination for Papua New Guineans travelling overseas is Australia. During the year ended June 2012 just over 38,400 people born in PNG arrived in Australia – 35,700 as short-term visitors (7,700 for work or business reasons), 1,600 as long-term visitors, just under 800 on temporary work visas and 278 as residents, most (150) in the family sponsorship stream.<sup>137</sup> A very small number have arrived under Australia's Seasonal Worker Program (a total of 47 visas to December 2011); PNG is a small player in this scheme despite being part of the pilot from 2010. PNG is also a very small player in New Zealand's Recognised Seasonal Employer (RSE) scheme and it was not until August 2013 that it became one of the states receiving assistance with participation under the Strengthening Pacific Partnerships (SPP) programme.

Population movement within Papua New Guinea is much more extensive than movement out to neighbouring countries. Notwithstanding at least a century of extensive internal mobility and several urban places with populations in excess of 100,000 (Port Moresby has a population approaching 1 million by some estimates), less than 20 percent of PNG's population is reported to live in urban areas.<sup>138</sup> PNG's population remains essentially rural resident – it is not a population that has the skills that are in demand in the international labour market for 'talent'.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of Migrant Workers*

- Migration Act 1978
- Migration Regulations 1979
- Employment of Non-Citizens Act 2007
- Employment of Non-Citizens Regulations 2008

134 The Solomon Islands, Vanuatu, Palau, the Northern Mariana Islands and Tuvalu also have a crude net migration rate of zero. This does not mean there is no migration; it indicates that, on average, the volume of in-migration compensates for the volume of out-migration. In PNG's case the UN Population Division's estimates suggest a crude net loss of around 15,000 people when their estimate of the number of people born overseas living in Papua New Guinea (25,400) is compared to the number of PNG-born living overseas (40,400).

135 The UN Population Division (2013) has estimated that there were just over 25,400 people born overseas living in PNG in 2013. The birthplaces for almost 90 percent of these migrants were countries in Asia: Indonesia (12,500), China (7,100), Philippines (1,300), Malaysia (520), India (340), Sri Lanka (320), Korea (260). The PNG census data on the birthplaces of the population resident in the country in 2011 are not yet available.

136 PNG, the only Pacific member state of APEC, will host the APEC Summit in Port Moresby in 2018

137 Data provided by Margaret Young, Australian Population and Migration Research Centre, University of Adelaide

138 The SPC's (2013) statistical summary of Pacific populations records 13 percent of the population in 2011 living in urban areas. This is likely to be a significant underestimate because of the difficulties of enumerating the thousands of Papua New Guineans living in squatter settlements in and around the major towns. But the total population resident in towns is unlikely to exceed 1.5 million or around 20 percent of the total of 7.06 million.

### *Employment of citizens abroad*

- None

### *General Employment*

- Employment Act 1978

## **Employment of Migrant Workers (inward migration)**

The Migration Act 1978 and 1979 Regulations control entry into PNG generally, and provide for the issuing of entry permits. If a work permit is issued, the migrant worker must apply to PNG's Immigration and Citizens Services for the issue of a Working Resident Entry Permit. A copy of the work permit must be provided, together with a certificate of good health, including a chest x-ray and HIV test result, and police clearance certificate. Entry permits are valid for six months.

The Employment of Non-Citizens Act 2007 and the 2008 Regulations regulate the issuing of work permits.<sup>139</sup> Prior to engaging a migrant (non-citizen) worker, the employer must obtain a work permit.<sup>140</sup> The migrant worker must be outside PNG at the time the permit is granted. General work permits are granted by the Department of Labour and Industrial Relations (DLIR) and can be granted on a short-term basis, for a period of up to 6 months, or on a long-term basis for between 6 months and 5 years. Short-term work permits will not be renewed. Long-term work permits may be issued for 1-3 years, at the employer's nomination. Only employers designated as 'Good Corporate Citizens' will be granted work permits of 5 years duration.<sup>141</sup>

PNG's Immigration Act (1978) and Regulations (1979) have been under review since November 2012, with technical assistance being provided by the International Organization for Migration (IOM). Rapid economic growth over the past two decades, coupled with extensive immigration of foreign investors and workers, has brought many challenges which require the updating of immigration law. The key principles under the new legislation have been stipulated by the PNG Immigration and Citizenship Service Authority as: protection of the integrity of the borders and visa system, dealing with abuses, efficient processes, supporting economic development, supporting social objectives and promoting accountability. The new draft legislation is expected to be placed before the National Parliament in the second half of 2014 (Pato, 2014).

Work permits are granted for employment in a specified occupation for a specified employer and can be subject to conditions. Employers must ensure the repatriation of migrant workers, together with any of their accompanying dependents, back to the country of origin upon cancellation or termination of the contract of employment. The Act requires compliance with other applicable law.<sup>142</sup>

Renewals may be applied for prior to the permit's expiry. An extension for up to 60 days may be granted if the application is not determined prior to the expiry of the current permit. If a migrant worker wishes to work for a different employer, a new application must be lodged. A bridging work permit visa may be applied for if such an application is not determined prior to expiry of the current permit.

Vacancies in certain specified occupations must be advertised before a work permit can be issued, and no work permit can be issued for these occupations unless the Secretary of the DLIR is satisfied that no suitable citizen is able to be employed.<sup>143</sup> The advertisement must specify the nature of the position offered and stipulate the minimum qualifications and skills required. A report must then be filed by the employer setting out the advertising history and justifying why a citizen is not suitable. Schedule 3 to the Regulations sets out the occupations subject to these requirements which are largely trades-related.

No work permit can be issued unless the migrant worker proves his/her proficiency in English, Pisin or Hiri Motu.<sup>144</sup> Also, as a general rule, migrant workers should possess a relevant degree or tertiary qualification and be able to demonstrate at least 3-5 years' relevant work experience. No work permit will be issued to a person under 22 years old. While there is no upper age limit, persons over 65 years may have to provide additional medical clearances.<sup>145</sup>

Applications must be in the prescribed form, which specifies the information required. This includes copies of the signed employment contract. Certified evidence of required qualifications must be provided. Proof of professional registration must be provided, where this is required by PNG law. Applications are processed by the Foreign Employment Division of DLIR. All new work permit and renewal applications must, by law, be dealt with within 42 days.<sup>146</sup>

<sup>139</sup> See, in particular, Employment of Non-Citizens Act 2007 ss 4-32, and Employment of Non-Citizens Regulations 2007.

<sup>140</sup> It should be noted that a self-employed person may also apply for a work permit to carry out self-employed work in PNG.

<sup>141</sup> See DLIR Work Permit Guideline (2009), at p. 12. Good Corporate Citizens must be declared by Public Notice in the Official Gazette; see Act, s 52

<sup>142</sup> Ibid. s 54.

<sup>143</sup> Ibid. s 13 and, Regulation 13. The form of advertisement is set out at Regulation 12.

<sup>144</sup> Ibid. Schedule 4 of the Regulations contains a list specified countries, the citizens of which are deemed to have sufficient English language proficiency. Evidence of proficiency in Pisin or Hiri Motu must be submitted.

<sup>145</sup> See Guidelines at 11.1 and 11.2 respectively, regarding qualifications and experience and age.

<sup>146</sup> Ibid. Section 22(2)



Migrant workers' employment contracts fall within the scope of the Employment Act 1978<sup>147</sup> and attract the rights thereunder relating to conditions of employment. These conditions may, by agreement, relate to the provision of housing, food and clothing. Mandatory health and welfare provisions also apply.<sup>148</sup> The Act applies to where a contract is made outside PNG relating to employment within the country.<sup>149</sup>

### *Dependents*

Dependents can be issued with entry permits. Dependents include spouse, children aged under 18 years and aged parents (PNG Immigration and Citizenship Service Authority, 2013).

### *Reserved Occupations*

A work permit may not be granted in respect of a reserved occupation.<sup>150</sup> Schedule 2 of the Employment of Non-Citizen Regulations 2008 contains a list of occupations reserved for citizens. It includes occupations such as gardeners, nanny/babysitter, childcare workers, cafe workers, waiters, logging plant operators, taxi and bus drivers.

### *Special Provision for Citizens of Melanesian Spearhead Group (MSG) Countries*

Under the MSG Skills Movement Scheme PNG has made provision for up to 400 people from the member countries to work in scheduled occupations. These are mostly of a technical or managerial nature. Citizens of independent countries in the MSG (Fiji, Solomon Islands and Vanuatu) who are visiting PNG are not required to purchase a visa at the border. Citizens of all other countries are required to have valid visas on entry to PNG.

### *Worker-Recruiters and Employment Agents*

The Employment Act 1978 regulates the activities of worker-recruiters and employment agents.<sup>151</sup> Worker-Recruiters commissioned in writing by their employers to recruit other employees must also have written authority from the DLIR's National Employment Services Division (NED) to recruit on behalf of their employer. They can only recruit for one employer at any one time, carry out their recruitment duties as part of their regular employment, and cannot charge a fee to the prospective recruit. Penalties apply for non-compliance and non-licenced Worker-Recruiters can be punished by imprisonment.<sup>152</sup>

Employment agents act as independent intermediaries for the purpose of obtaining employment for an employee, or for supplying an employee for an employer. They must be registered and issued with licences by the DLIR's National Employment Service. Licences must be renewed annually.<sup>153</sup> Licences are issued in the name of individuals, not companies or associations, and can only be transferred to other individuals with the approval of NED. Fees are charged to employers for the services of employment agents, not to employees, and there are penalties for receiving remuneration from employees.<sup>154</sup> Licences will be cancelled by NED if Employment Agents fail "to perform a duty he is required to perform under this Act".<sup>155</sup>

The Employment Act 1978 includes numerous provisions relating to different types of contracts for employment (including piece-rate contracts and repatriation), employment conditions, payment and protection of wages, employment of women and young persons, housing, health and welfare. Many of these apply to employees recruited by Worker-Recruiters and Employment Agents.

## **Employment of PNG Citizens Abroad (outward migration)**

Citizens of Papua New Guinea have access to employment in overseas countries subject to the regular immigration policies of those countries. The only privileged access PNG citizens have to work in other countries is through the seasonal work schemes developed to assist the horticulture industries in Australia and New Zealand (discussed below), and through the Melanesian Spearhead Group's Skills Movement Scheme which had not resulted in any outward migration of Papua New Guineans as of April 2014.

### *Seafarers*

Papua New Guinea, in common with many other Pacific countries, has a maritime training institution which provides qualifications that are recognised and accepted world-wide. The Papua New Guinea Maritime College, located in Madang, accommodates 120 trainees (being upgraded to 240 with Australian development assistance) in marine

147 In 2012 the ILO Office for the Pacific commissioned Massey University to conduct a situational analysis of employment policies in PNG to inform the development of a new National Employment Policy. The results of this analysis have been published in Parker and Arrowsmith (2012).

148 For details, see Employment Act, §§68-73 and 120-130.

149 Employment Act 1978, s 11(3)

150 Ibid. Section 12 and Regulation 10

151 See, Employment Act 1978, ss 106-118. The Act distinguishes between employees, acting on behalf of their employer, to recruit additional workers ('Worker-Recruiters', ss 106-109) and people licenced to recruit labour for other employers ('Employment Agents', ss 110-118).

152 Employment Act 1978, s106

153 Employment Act 1978, s 112

154 Employment Act 1978, s116

155 Employment Act 1978, s114

engineering and nautical studies.<sup>156</sup> The Faculty of Marine Engineering offers training through the Chief Engineer Grade 1, while the Faculty of Nautical Studies offers training to Master 1. The courses and systems are audited by the Australian Maritime Safety Authority to the same standards as the Australian Maritime College. The PNG Maritime College has attained the International Maritime Organization's (IMO) desired "white listing" in recognition of the quality of its courses.

The College attracts students from other Pacific countries, including the Solomon Islands, the Marshall Islands and also from Timor Leste because its qualifications are recognised internationally. It is not known how many PNG graduates from the College have obtained employment with overseas shipping lines. However, given the considerable volume of coastal trade and commercial fishing in PNG's extensive Exclusive Economic Zone, "there is great demand for qualified Deck and Engineering Officers from the shipping industry" according to the College's entry on the SPC's Coastal Fisheries Programme website.

### *Seasonal workers*

As already noted, PNG is participating in both the Australian and the New Zealand seasonal worker programmes that have been established since 2007. PNG was included in Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS) in 2010, following the signing of an MOU in Port Moresby, and in August 2013 an Interagency Understanding covering PNG's participation in the RSE scheme was signed in Wellington. During the year ended June 2013 a total of 57 Papua New Guineans were employed in the two schemes – 31 in New Zealand and 26 in Australia.

The DLIR works with a cross-Departmental task force that oversees the selection and pre-departure training of PNG citizens seeking employment in these seasonal work schemes. The task force has a deliberate policy of selecting workers from rural communities and for ensuring that all Provinces, other than the National Capital District (where Port Moresby is) are represented in the intakes of workers.<sup>157</sup> The seasonal work schemes are seen as opportunities for earning capital and acquiring skills that will be of assistance to rural residents and the development of their communities.

### *Other labour migration programmes*

PNG's Department of Labour and Industrial Relations is actively seeking labour mobility agreements with other countries (reference has already been made to the negotiations with the Philippines in this regard). *Vision 2050* also makes reference to the need to upgrade PNG's tertiary institutions to ensure the qualifications gained by graduates are internationally recognised and competitive when it comes to assessment of PNG citizen applications for entry under skilled migrant categories in countries like Australia, New Zealand, Canada and the USA.

PNG citizens who were born in the country are eligible to apply for the 50,000 immigration visas made available annually through the United States Diversity Visa Program, also known as the Green Card Lottery. Applicants must have been born in countries with low rates of immigration to the United States over the previous five years and PNG qualifies on this basis with an estimated total PNG-born population of around 2,700 resident in the USA in 2013 (UNDESA, 2013).

## **INSTITUTIONAL REVIEW**

### **Government Ministries/Departments**

The two government agencies that have responsibility for dealing with migrant workers in Papua New Guinea are:

1. The PNG Immigration and Citizenship Service Authority (PNGICSA) (visa processing and issuing of passports)
2. The Department of Labour and Industrial Relations (employment, labour migration agreements)

The PNGICSA is responsible for managing Papua New Guinea's borders in relation to the movement of persons into and out of the country. Their work includes visa processing, integrity checking and compliance, and enforcement activities. The agency is also responsible for assessing applications for PNG passports and supporting the Citizenship Advisory Committee in relation to applications for PNG citizenship.

PNG recently reviewed its visa approval policy and the Office of the Chief Migration Officer issued a Public Notice on 31 March 2014 announcing a new Visa on Arrival Eligible Country List which included 72 countries and their associated territories (e.g. Cook Islands, Niue and Tokelau citizens travelling on New Zealand passports) (Rabura, 2014). Arrivals carrying passports from these countries can purchase a single entry tourist or single-entry business visa. Citizens of countries not included in the list must obtain a visa from the nearest PNG mission abroad prior to their travel.

<sup>156</sup> See entry under Papua New Guinea Maritime College, SPC's Coastal Fisheries Programme website (SPC, 2010a)

<sup>157</sup> Kennewton Kennedy, DLIR, personal communication, February 2014.

Conspicuous by its absence from the list is Australia and, following a decision by PNG's National Executive Council in December 2013, which was re-affirmed in February 2014, Australian passport holders will not be able to obtain visitor (all classes), business (short-term single entry and restricted employment facility) visas on arrival at any port in PNG after 1 March 2014. These visas must be obtained in Australia before departure and, under a Public Notice issued by the Office of the Chief Migration Officer on 19 February 2014, all international operating airlines have been instructed not to allow boarding of Australian passport holders to PNG who do not possess a valid visa (Rabura, 2014a). Given that Australia is the single most important source of visitor arrivals for holidays (17,873 of the 32,635 arrivals for holidays in 2011)(Marketing, Promotions and Research Division, n.d.) and a major source of short-term visitors on business, the current dispute over reciprocal visa on arrival privileges for PNG citizens in Australia will have implications for engagement at several levels between the two countries.

The DLIR, through its National Employment Services Division (NED) oversees employment promotion and labour market services, licensing of employment agents, seasonal worker programmes and employment statistics. The Foreign Employment Division (FED) within the DLIR handles work permit processing and screening. The National Employment Division administers the Employment Act No. 373 (Sections 116-118) 1978, and the Placement Services Act 1966.

### **Procedures for sending/receiving migrant workers**

Staff in the DLIR's National Employment Services Division play a major role in the selection and pre-departure training of workers for the seasonal work programmes in Australia and New Zealand. PNG is the only country participating in these schemes that requires prospective workers to attend a three-week preparation programme in Port Moresby. Most countries have a pre-departure briefing meeting that is confined to a day. PNG's seasonal work task force also requires seasonal workers to spend time in Port Moresby at the end of their employment overseas for debriefing and preparation for reintegration into their rural communities.

## **NATIONAL POLICIES ON LABOUR MIGRATION**

### *Policy on inward migration*

In the section on Immigration in the Medium Term Development Plan 2011-2015 it is argued that "clear, effective policies, legislation, organizational structures and funding are required for the social integration of the immigrant population, as well as for the protection of Papua New Guinean migrants overseas, in co-operation with countries of origin and destination on the management of migratory movements" (Department of National Planning and Monitoring, 2010, p.152).

### *Policy on outward migration*

In 2010 the Government of Papua New Guinea committed to *Vision 2050*. Derived from a National Strategic Plan Framework that was endorsed by the PNG Government in 2008, it has seven strategic focus areas or pillars, the first of which is human capital development, gender, youth and people empowerment (National Strategic Plan Taskforce, 2010). Arising from *Vision 2050*, and the associated Medium Term Development Plan 2011-2015, is a commitment by government to create three million employment opportunities for Papua New Guineans by 2020. These opportunities will be within the country as well as overseas.

Furthermore, the Department of National Planning and Monitoring stated in the PNG Medium Term Development Plan 2011-2015: "Papua New Guinea's economic prospects and demographic trends make migration a necessity and a key factor for future development" (Department of National Planning and Monitoring, 2010, p.152). To this end, they went on to add that PNG "needs to align its migratory and other relevant legislation and procedures with current international laws, standards and principles."

Whilst there is no specific policy relating to employment of PNG citizens overseas, there is considerable discussion within the government about increasing opportunities for Papua New Guineans to access work in other countries and the DLIR currently manages the relationships relating to labour migration agreements, including New Zealand's RSE scheme, and Australia's Seasonal Worker Program (SWP). In 2013, at the time New Zealand and PNG officials were negotiating the Interagency Understanding (IAU) that underpins facilitated participation in the RSE scheme, the DLIR was exploring the possibility of a Memorandum of Agreement on labour co-operation and related matters with the Government of the Philippines.<sup>158</sup> This was part of a wider process of developing labour and employment policies that would assist the PNG Government meet the challenge of providing new employment opportunities for PNG citizens.

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<sup>158</sup> Michael Gene, DLIR, personal communication, February 2013.

# Samoa



# SAMOA

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## SUMMARY OF INTERNATIONAL MIGRATION

Samoaan international migration has been having a significant impact on the country's population for at least 40 years. Between the censuses in 1921 and 1971 the average annual rate of population growth between censuses was never less than 2.1 percent and got as high as 3.7 percent between 1945 and 1951.<sup>159</sup> Since the 1971 census, however, the average annual rate of growth has never exceeded 0.9 percent and fell as low as 0.1 percent between 1981 and 1986. Overall average rates of population growth in Samoa since the early 1970s have been significantly dampened by net losses of Samoans to New Zealand and the United States of America in particular, despite persistent high fertility.

The Secretariat of the Pacific Community's (SPC) latest statistical summary for Pacific Island populations indicates that Samoa continues to have the region's highest Total Fertility Rate (4.7 children per adult woman), the highest crude birth rate in Polynesia (29.1 births per 1,000 population; there are some higher rates in Melanesia and Micronesia), the largest average household size (7 persons) while at the same time having the second highest crude net migration rate (-24.1 per 1,000 population, slightly lower than Niue's -25.0 per 1,000) (SPC, 2013). The population at the time of the last census in 2011 (187,820) was larger than the one at the 2006 census (180,741) but an absolute decline in numbers is forecast for the period 2011-2020 before the population increases slowly again to reach a projected total of 191,100 in 2030 (SPC, 2013). The projected net loss between 2011 and 2020, if it eventuates, will be the first since Samoa's census in 1921.

The Samoan ancestry/ethnic population living in Australia (55,800, 2011), New Zealand (144,100, 2013) and the United States (184,400, 2010) at the beginning of the second decade of the 21<sup>st</sup> century exceeded 384,000. The combined populations of the Independent State of Samoa and the US unincorporated territory of American Samoa in 2011 was around 234,340 – just over 60 percent of the size of the Samoan ancestry/ethnic population in the main Pacific rim destinations.<sup>160</sup> The diaspora of people born in the Independent State of Samoa is much smaller. The UN Population Division estimated the number of Samoa-born living overseas in 2013 to total 129,150, with 65,000 in New Zealand, 31,900 in American Samoa, just under 20,000 in Australia and 12,400 in the USA (UNDESA, 2013). The New Zealand Census of Population and Dwellings in 2013 recorded just under 50,700 Samoa-born as usually resident in the country which is probably an undercount given acknowledged under-enumeration of Pacific people in New Zealand's censuses.

Samoans, like Tongans and their Polynesia neighbours in the Cook Islands, Niue and Tokelau Islands, have a well-established 'culture of migration'.<sup>161</sup> Samoans have had privileged access to New Zealand through a Samoan Quota and a series of work permit schemes since the late 1960s. They are active participants in New Zealand's managed seasonal migration programme, the Recognised Seasonal Employer (RSE) scheme, and have recently become a participating state in Australia's Seasonal Worker Program (SWP). They have used their kinship ties with fellow-Samoans in American Samoa to gain access to the United States for years. There is unlikely to be any decline in labour migration from, and back to, Samoa in the near future.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of Migrant Workers*

- Immigration Act 2004
- Citizenship Act 2004
- Permits and Passports Act 1978

### Labour and Employment Relations Act 2013

#### *Employment of Citizens Abroad*

- None

#### *General Employment*

- Labour and Employment Relations Act 2013
- Foreign Investment Act 2000

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<sup>159</sup> Statistics on Samoa's population at censuses since 1921 come from a data set for Pacific populations that used to be available on the SPC's website – Table 1: Population growth rate and density at censuses since 1900. This table is no longer available at the website.

<sup>160</sup> Samoans overseas, when counted by ancestry (USA and Australia) or ethnicity (New Zealand), include people from both Samoa and American Samoa.

<sup>161</sup> John Connell has referred to several Pacific peoples, amongst other island-based populations, as having a 'culture of migration'. See Connell (2013).

## Employment of Migrant Workers (inward migration)

### *General Process and Conditions*

Entry into Samoa generally is regulated by the Immigration Act 2004, which requires all non-citizens to obtain a valid entry permit prior to entry. A Temporary Resident Permit may be issued to allow a migrant worker to enter and remain in Samoa for a period of up to three years for the purposes of employment.<sup>162</sup> These can only be issued to a worker who has been granted an employment permit. The worker must meet health, character and other eligibility criteria specified by Public Notice. Samoa Immigration's mandate states that the provisions of the Immigration Act 2004, the Citizenship Act 2004 and the Permits and Passports Act 1978 "allow for the Minister responsible for immigration [currently the Prime Minister] to issue Public Notices notifying the public of important changes to immigration policy and practice."<sup>163</sup> These Public Notices are, in effect, the regulations relating to immigration in Samoa.

Part IX of the Labour and Employment Relations Act 2013 regulates the employment of migrant workers ("foreign employees").<sup>164</sup> A migrant worker must apply to the Chief Executive Officer of the Ministry of Commerce, Industry and Labour (MCIL) for an employment permit prior to taking up employment.<sup>165</sup> Before granting the permit, account must be taken of the qualifications and training of the migrant worker, any work references supplied, the development of the industry, and the number of Samoans citizen employees in that industry.<sup>166</sup>

According to the MCIL website (MCIL, 2008), an application for a Temporary Resident Permit for the purposes of working in Samoa must be accompanied by a completed employer sponsorship form together with evidence of relevant qualifications, education and work references. If the position is a newly established post, there must be evidence that efforts have been made to recruit or find a local person to fill the vacancy. If the position is an existing one, proof must be provided that efforts were made to employ locals in the past. A check for evidence to that effect, such as wages records, payroll, and other related sources, may be made. A permit may be issued subject to conditions and is valid for an initial maximum period of two years.<sup>167</sup>

Part VII of the Labour and Employment Relations Act sets out the general conditions of employment, such as wages, hours of work etc. According to the sponsorship form to be completed by the employer, the employer is responsible for the ensuring the care of the worker, and any dependents included in the form, including the cost of any medical treatment, and for ensuring their repatriation.

### *Transferring to another category of permit while in Samoa*

It is possible to transfer from a visitor's permit to a Temporary Resident Permit for the purposes of working in Samoa while in the country, but the fees are much higher (WS\$1,200) than if the application is made offshore (WS\$600).<sup>168</sup> An on-shore application for a Temporary Resident Permit for work in Samoa must also be accompanied by an employer sponsorship form.

### *Dependents*

The Immigration Act allows a Temporary Resident Permit to be issued for dependents accompanying a person holding a permit approved for employment purposes.<sup>169</sup> No other eligibility criteria are provided for in the Act, but the application form indicates that a spouse and dependent children may be included.<sup>170</sup> As noted, the employer's sponsorship form indicates that the employer is responsible for ensuring the care of dependents included in the form, and for ensuring their repatriation.

### *Restricted enterprises*

Samoa's Foreign Investment Act 2000 reserves selected business and economic activities for citizens of Samoa exclusively and "no approval may be given under this Act, or any other law, for a non-citizen to own or participate in any business or venture that includes any of the activities in the Reserved List".<sup>171</sup> The Reserved List attached to the Act includes: buses for transportation of the general public, taxis, vehicles for hire, retailing and sawmilling.

In 2010 the Samoa Chamber of Commerce observed in a news item that it was "very concerning seeing that foreign investors are setting up everywhere in the retail sector. ... The private sector is very concerned as the Foreign Investors Act (sic) exists to protect the smaller operator and Samoan people in areas where there are too

162 Immigration Act 2004s 13(2)(b)

163 See Samoa Immigration website at <http://www.samoaimmigration.gov.ws>

164 Labour and Employment Relations Act 2013, s 2. The 2013 Act repealed part 8 of the Immigration Act 2004 which had more detailed statutory provisions regarding employment of migrant workers in Samoa.

165 Labour and Employment Relations Act 2013s 58 and 59

166 Labour and Employment Relations Act 2013, s 60

167 Labour and Employment Relations Act 2013, s 60(3),

168 See fees information in Samoa Immigration website.

169 Immigration Act 2004. s 13(2)(h)

170 Temporary resident application Form found in Samoa Immigration website

171 Foreign Investment Act 2000, s 3(1)

many players in the market. And the retail corner store is one of them. We're seeing so many retailers that are foreign investment" (Tauafi, 2010). The extent to which the Reserved List is still applied in Samoa, especially to the operations of and employment in retail businesses in 2013 is not known, but there is no legislation that has removed the list contained in the Foreign Investment Act 2000.

### **Employment of Samoans Abroad (outward migration)**

The Labour and Employment Relations Act 2013 contains no specific provision regulating the employment of Samoans abroad under contracts entered into in Samoa. Such contacts are not, however, expressly excluded from the scope of the Act, which is stated to apply to all private or non-governmental business activities "including in the agricultural and fisheries sectors".<sup>172</sup>

Citizens of Samoa have had privileged access to employment opportunities in New Zealand under the Samoan Quota which was established following Samoa's transition to independence from New Zealand in 1962. The Samoan Quota allows for up to 1,100 citizens of Samoa, who were born in Samoa or whose parents were born in Samoa, to be selected through an annual ballot process for residence in New Zealand, subject to a range of age, English language, job offer, minimum income and health and character requirements.<sup>173</sup> Related, but smaller, quotas exist under New Zealand's Pacific Access Category for citizens of Tonga, Kiribati and Tuvalu, and will be extended to Fiji in 2014.

The Samoan Quota has played and continues to play a very important role in the evolution of the large Samoan population in New Zealand, although it needs to be acknowledged that in the Census of Population and Dwellings in 2013 62 percent of the 144,138 residents identifying with Samoan ethnicity were New Zealand-born. Just over 50,300 Samoans (35 percent) had been born in Samoa or American Samoa.

#### *Seafarers*

Until 2006 Samoa Polytechnic's School of Maritime Training provided basic training for seafarers for the country's coastal shipping services. Certificates of Achievement in Maritime Training, Navigational Watchkeeping and Masters (Class 5) were available (SPC, 2010b). The Maritime Division of the Ministry of Works, Transport and Infrastructure approved the training modules at the School of Maritime Training and conducted the required audits of Standards of Training, Certification and Watchkeeping (STCW) for seafarers in accordance with the 1995 STCW Convention (Ministry of Works, Transport and Infrastructure, 2013).

In 2006 Samoa Polytechnic merged with the National University of Samoa (NUS) as the Institute of Technology, and in November 2013 the Acting Vice-Chancellor of NUS announced a new centre "for training as per International Maritime Organization (IMO) convention standards on training and certification of seafarers (STCW 1995)" (Tavita, 2013). The new campus will enable Samoa to retain its status within the IMO's White List for internationally recognised training of seafarers for work on foreign vessels, including cruise ships.

#### *Seasonal workers*

Samoa is a foundation member of New Zealand's RSE scheme and became a participant in Australia's SWP in 2012. During the year ended June 2013 1,137 Samoans were employed as seasonal workers in New Zealand's horticulture and viticulture industries and 22 were employed in the horticulture sector in Australia. Since the second year of the RSE Samoa has sent more than 1,000 seasonal workers to New Zealand each year, and Samoa is third in the ranking of Pacific RSE providers after Vanuatu and Tonga.

The conditions governing employment of Samoans in these two countries are covered by: 1) an Interagency Understanding (IAU) between the relevant Ministries in New Zealand and Samoa and 2) a Memorandum of Understanding (MOU) between the Australian and Samoan Governments. The IAU and the MOU both allow for on-going assistance from New Zealand and Australia in the operation of the seasonal work schemes, and New Zealand's Ministry of Foreign Affairs and Trade has funded several training programmes for Samoan officials under its Strengthening Pacific Partnerships (SPP) project.<sup>174</sup>

#### *Other labour migration programmes*

Samoans have been travelling overseas to obtain tertiary qualifications that will allow them to find work at home as well as in other countries for several decades.<sup>175</sup> Remittances from Samoans working overseas are frequently used to cover the costs of education and training. Samoa hosted the second Pacific Islands Labour Sending (PAILS) Forum in October 2013 and the Ministry of the Prime Minister and Cabinet, through the Chief Executive and the SSEU, is actively seeking additional opportunities for Samoan village residents especially to earn cash incomes overseas.

<sup>172</sup> Labour and Employment Relations Act 2013, s 3(4)

<sup>173</sup> See Samoa Quota Scheme Registration Form in Samoa Immigration website.

<sup>174</sup> See Nunns, Roorda, Bedford and Bedford (2013).

<sup>175</sup> There is an extensive literature on Samoan migration to New Zealand and the United States especially. A useful contemporary review is Macpherson and Macpherson (2009).

## INSTITUTIONAL REVIEW

### Government Ministries/Departments

There are two Government Ministries that have responsibilities for dealing with labour in 2014:

1. The Ministry of the Prime Minister and Cabinet (immigration policy and seasonal worker programmes)
2. The Ministry of Commerce, Industry and Labour (MCIL), (employment and labour relations, issuing of work permits)

The Immigration Division (Samoa Immigration) of the Ministry of Prime Minister and Cabinet administers the Immigration Act. The MCIL is responsible for the administration of the Labour and Employment Relations Act.<sup>176</sup> Samoa Immigration provides three key services to Samoan citizens and citizens of other countries: 1) the issuing of travel documents for Samoan citizens and the processing of citizenship applications by foreign citizens; 2) the processing and issuing of entry permits to foreign citizens, especially temporary residence permits for a range of purposes including study, business investment and employment; and 3) the issuing of visitor permits for foreign citizens travelling to Samoa for less than 60 days.<sup>177</sup>

Within the MCIL the Industrial Relations, Occupational Safety & Health and Work Permits Division (IROSH&WP) assesses all applications for work permits.<sup>178</sup> From 23 March 2014, an application for a work permit is to be submitted directly to MCIL.<sup>179</sup> Previously, the application was received by the Immigration Division, which sought the advice of and a recommendation from MCIL before issuing the appropriate Temporary Resident Permit. Now MCIL issues work permits directly.

### Procedures for sending/receiving migrant workers

The Samoa Seasonal Employment Unit (SSEU) within the Ministry of the Prime Minister and Cabinet oversees the operation of the RSE and SWP in Samoa. The Unit maintains a work-ready pool and some employers, including New Zealand's largest apple grower, Mr Apple, rely on the Unit's staff to select new workers for them from this pool. Direct recruiting by employers and the use of Samoan agents are also accepted ways of obtaining seasonal workers but all those chosen for work in New Zealand must undergo approved pre-departure training co-ordinated by the SSEU.

New Zealand's Ministry of Business, Innovation and Employment and Australia's Department of Employment both provide assistance with capacity building for staff in Pacific states who are participating in their seasonal work schemes. During the year ended July 2013, for example, the major provider of training under New Zealand's Strengthening Pacific Partnership (SPP) programme, Brandheart, provided courses for Samoa Immigration staff on communicating for success, marketing and branding, negotiating and influencing for strategic outcomes, planning and customer relationships management.

## NATIONAL POLICIES ON LABOUR MIGRATION

### *Policy on inward migration*

None that the authors are aware of.

### *Policy on outward migration*

Outside of active Samoan participation in the PAILS Forum and the negotiations around the draft mobility chapter in the PACER-Plus free-trade agreement between Pacific states and Australia and New Zealand the authors are not aware of any specific national policy on labour migration for Samoa. The Government's Strategy for the Development of Samoa 2012-2016 does not address labour migration issues directly, although reference is made to the importance of remittances from the diaspora in the section on macroeconomic stability:<sup>180</sup>

Remittances from the large diaspora have traditionally been equivalent to about 24% of GDP but [between 2008 and 2012] were affected by the closure of canneries in American Samoa and rising unemployment in the USA and New Zealand in particular. Samoa already has a significant expatriate population in NZ, the US and Australia, however increased labour market integration, including short-term employment opportunities (Recognised Seasonal Employment scheme) offers potential benefits for both labour sending and receiving countries (Economic Policy and Planning Division, 2012, p.4).

176 Labour and Employment Relations Act 2013, s 11

177 See the Division's website for further details <http://www.samoaimmigration.gov.ws/>.

178 See the MCIL website for further details [http://www.mcil.gov.ws/irosch\\_wp.html](http://www.mcil.gov.ws/irosch_wp.html).

179 See, Public Notice Employment Permits and Applicable Fees (4 March 2014).

180 See the Ministry of Finance website for access to the Strategy for the Development of Samoa 2012-2016 <http://www.mof.gov.ws>.



# Solomon Islands



# SOLOMON ISLANDS

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## SUMMARY OF INTERNATIONAL MIGRATION

The Solomon Islands, like its neighbour to the southeast, the Republic of Vanuatu, had a larger number and share of its birthplace population living overseas at the beginning of the 20<sup>th</sup> century (at least 6,000 (Craig et al., 2014)) than it has in the early 21<sup>st</sup> century (around 3,600 (UNDESA, 2013)). The population of the Solomon Islands in 1900 was less than one-sixth the size of the population in 2013 (estimated to be around 610,000 (SPC, 2013)) and the ratio of Solomon Islanders overseas per 1,000 in the resident population in the islands had fallen from at least 60 to just under 6.

The most extensive labour migration between the Solomon Islands and other parts of the region occurred in the late 19<sup>th</sup> century when an estimated 35,000 Solomon Islanders were recruited for work on plantations in Samoa (at least 5,000), Fiji (around 10,000), New Caledonia (up to 1,000) and Australia (just under 19,000).<sup>181</sup> A legacy of this 19<sup>th</sup> century movement is found in contemporary populations of mixed Solomon Islands ancestry in Samoa, Fiji and Queensland especially.<sup>182</sup>

Overseas migration of Solomon Islanders effectively ceased with the termination of the 'blackbird' era of labour migration between 1901 and 1911. Between 1911 and 2011 the Solomon Islands-born population in Australia has never risen above 1,800 in any census. At the time of the 2011 Census of Population and Housing there were 1,757 Solomon Islands-born people living in Australia, only 897 (51 percent) of whom had Solomon Islands ancestry.<sup>183</sup> The second largest contemporary concentration of Solomon Island-born people resident overseas are in New Zealand (618 at the time of the Census of Population and Dwellings in March 2013), many of whom are temporary residents, including students and seasonal workers. The other main overseas destinations for Solomon Islanders are other countries in Melanesia (Papua New Guinea, Vanuatu and Fiji especially), with only small numbers heading for North America (140) and further afield to Europe (100) according to the UN Population Division.

Migration into the Solomon Islands is also quite limited according to the Solomon Islands 2009 Population and Housing Census, which recorded a total of 2,797 residents who had been born overseas (Solomon Islands National Statistics Office, 2013, p.17). The largest group of overseas-born (612 or just under 22 percent) were from Papua New Guinea followed by Australia (302). Countries in Asia were the birthplaces for 680 people (including 71 from Hong Kong and 32 from Japan). Details of the birthplaces of other groups of the Asians are not given but it is likely that Malaysia and Taiwan are important sources in this group because of the involvement of Malaysian firms in the Solomon Islands timber extraction industry and the recognition of Taiwan as a separate state by the Solomon Islands Government.

The Solomon Islands Government established a Labour Mobility Unit (LMU) within the Ministry of Foreign Affairs and External Trade (MFAET) in 2008 to oversee negotiations for access to employment opportunities for Solomon Islanders in other countries. With one of the fastest growing populations in the Pacific, and limited employment opportunities for a burgeoning youthful workforce in local urban areas (80 percent of Solomon Islanders live in rural communities), it is inevitable that pressure for access to work and residence overseas will increase significantly in the future.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of Migrant Workers*

- Immigration Act 2012
- Labour Act (CAP 73) [1996 Edition]
- Work Permit Rules

#### *Employment of Citizens Abroad*

- None

#### *General Employment*

- Employment Act (CAP 72) [1996]
- Labour Act (CAP 73) [1996 Edition]
- Labour (Housing Standards) Rules
- Labour (Rations) Rules
- Labour (Seamen) Rules
- Maritime Safety Administration Act 2009

<sup>181</sup> A comprehensive summary of statistics on overseas Pacific labour migration between 1850 and 1930 can be found in Munro (1990).

<sup>182</sup> See, for example, Liki (2007) and Moore (2001).

<sup>183</sup> Data provided by Margaret Young, Australian Population and Migration Research Centre, University of Adelaide.

## Employment of Migrant Workers (inward migration)

### *General Process and Conditions*

The Immigration Act 2012 regulates the entry of migrant workers into the Solomon Islands. It provides for employment visas to be issued by the Director of Immigration to non-citizens who apply for a permit to enter and reside prior to entering the Solomon Islands.<sup>184</sup> The permit is valid for two years and can be renewed.

Non-citizens seeking approval to reside and work in the Solomon Islands must provide a document guaranteeing the Solomon Islands Government that any future repatriation costs and expenses shall be borne by the applicant or his employer or sponsor.<sup>185</sup> In addition, police certificates, medical reports, and certified marriage (if applicable) and birth certificates for children under 18 years must be supplied. Foreign workers with jobs arranged in the Solomon Islands must also obtain a work permit from the Commissioner of Labour's office in the Labour Division of the Ministry of Commerce, Industries, Labour and Immigration (MCILI) and submit this with their application for a residence permit.<sup>186</sup>

Employment of migrant workers is regulated by the Labour Act, which is administered by the Commissioner of Labour. The Labour Act applies to migrant workers whose travel to the Solomon Islands for the purposes of employment has been paid for by the employer.<sup>187</sup> The Act prohibits their employment unless the worker has obtained a work permit from the Commissioner.<sup>188</sup> A prospective employer may, however, apply on behalf of the worker. The application must be accompanied by evidence of the worker's qualifications and education, and relevant work experience. A separate application for entry and residence has to be made to the Director of Immigration.

Additionally, the employer must provide details of the number of Solomon Island citizens employed as at date to application, as well as at two and four years previously. In addition the employer must outline arrangements to comply with the employment and localisation policy, including providing the names and qualifications of Solomon Islanders who applied for the role and reasons for their rejection, along with the grounds for preferring the migrant worker.<sup>189</sup>

The work permit must specify the work to be undertaken.<sup>190</sup> The migrant worker may not undertake any kind of work, work at any place, or work for a different employer other than as specified.<sup>191</sup> A variation can, however, be applied for, either by the migrant worker or the employer on the worker's behalf.<sup>192</sup>

A scale of fees applies for work permits based on duration of the permit (SBD\$150 for 3 months or less to SBD\$1,100 for 20 months or more).<sup>193</sup> In addition there is a SBD\$200 application fee and a SBD\$500 fee for varying the conditions of a work permit.

Part IX of the Labour Act provides for the care of workers by the employer, covering matters such as sanitation, the provision of food and water, and medical care and treatment. The Labour (Rations) Rules sets out the kind of food which may be supplied. Any housing constructed for workers must comply with the requirements of the Labour (Housing Standards) Rules, which sets out minimum standards in relation to housing for single persons, for families, and for temporary workers.

### *Dependents*

There is no specific provision in the Immigration Act regarding the dependents of migrant workers. The general provision of the Labour Act regarding the care of workers and rules indicate, however, that dependents may be able to lawfully accompany a worker to a place of employment. The Resident Permit Checklist allows for admission of non-working dependent spouses and children under the age of 18 years, subject to meeting standard police, medical and other documentation requirements.<sup>194</sup>

### *Special Provision for Citizens of Melanesian Spearhead Group (MSG) Countries*

Under the MSG Skills Movement Scheme the Solomon Islands has made provision for up to 400 people from the member countries to work in scheduled occupations. These are mostly of a technical or managerial nature. During 2013 there has been discussion about possible exchanges of skilled labour between the Solomon Islands and other MSG members.<sup>195</sup> For example, the Deputy Prime Minister for the Solomon Islands made reference to increasing opportunities for Solomon Islanders in Papua New Guinea in the Statement by the Solomon Islands to the 68<sup>th</sup> session of General Assembly of the United Nations on 30 September 2013 when he observed: "Papua

184 See, Immigration Act 2012, ss 17(b) and 12(1) and (2)

185 See Residing in the Solomon Islands, available at the Ministry of Commerce, Industries, Labour and Immigration website

186 See Resident Permit Checklist, available at the Ministry of Commerce, Industries, Labour and Immigration website.

187 See Labour Act 1996, section 2 for definition of 'immigrant worker'.

188 Labour Act 1996, s 37

189 See Work Permit Rules Form 1, Part 2 at Schedule 1

190 Labour Act 1996, s 37

191 Work Permit Rules Regulation 6

192 Work Permit Rules Regulation 7

193 Work permit application and fees, Investment Division, Department of Commerce, Employment and Trade found in the Ministry of Commerce, Industries, Labour and Immigration website. (Accessed 24 April 2014).

194 See Resident Permit Checklist.

195 In the East-West Center's daily 'Pacific Islands Report' on 21 October, 2013, an article by Reginald Chandar on the establishment of a Fiji-Solomons Business Council noted that: "There are around 400 Fijians living in the Solomon Islands apart from students and this is expected to grow even further as the Melanesian Spearhead Group Skilled Labour Movement (sic) comes into implementation".

New Guinea continues to provide opportunities for young Solomon Islanders in terms of employment and scholarships. Visa free work schemes were launched and trade relations continue to grow to new heights.”<sup>196</sup>

## **Employment of Solomon Island Citizens Abroad (outward migration)**

Under the Employment Act, every contract entered into in the Solomon Islands for employment abroad, must be in writing and contain specified particulars including, remuneration, hours of work, holidays, holiday pay and passages, and notice period for termination.<sup>197</sup> Where the contract for employment is for manual work, or for work as a seaman, the employer must deposit with the Commissioner of Labour, prior to the worker’s departure, a sum sufficient to cover the repatriation costs of the worker to the Solomon Islands upon the termination of the contract.<sup>198</sup>

Recruitment of seasonal labour for work overseas is managed by agents operating under licences issued by the LMU. Agents cannot charge prospective employees for their services; the costs of their services are borne by employers who are seeking the seasonal labour. The introduction of specific legislation relating to recruitment of seasonal labour for work overseas, similar to that which exists in Vanuatu, has been under consideration in the Solomon Islands.<sup>199</sup> The authors are not aware of the introduction of such legislation to March 2014.

### *Seafarers*

The Labour (Seamen) Rules extend the provisions of the Labour Act to the employment of Solomon Islanders as seamen, with some exceptions relating to days and hours of work, overtime, etc. The Rules contain specific provisions relating to the payment of seamen’s wages. There are also International Maritime Organization (IMO) requirements relating to seafarers working on vessels, especially merchant ships. These include Firefighting Certificates and First Aid Certificates amongst others. Oversight of the employment and welfare of seamen, including compliance with all IMO conventions and agreements is the function of the Maritime Safety Administration.<sup>200</sup>

The Solomon Islands National University (SINU) (formerly the Solomon Islands College of Higher Education, SICHE) has an Institute of Maritime Studies within its School of Technology and Maritime Studies. The Institute offers certificates and diploma-level studies in marine engineering and Masters certification at varying levels. It is not known if these courses are certified by the IMO and accepted as qualifications for seafarers serving on overseas shipping lines.

Also located in Honiara is the headquarters of the Pacific Islands Forum Fisheries Agency (FFA), a regional organisation with 17 members that is involved in the sustainable management and development of the tuna resources of the western and central Pacific ocean. The FFA provides training in Monitoring, Control and Surveillance (MCS) to fisheries personnel in its member countries and in-country workshops on operational aspects of its Vessel Monitoring System (VMS) that allows members to track and monitor fishing activities across the region.

### *Seasonal workers*

Solomon Islanders have been involved in New Zealand’s RSE scheme since the outset but a formal Interagency Understanding (IAU) between the LMU in MFAET and the former New Zealand Department of Labour (now part of the Ministry of Business, Innovation and Employment, MBIE) was not signed until April 2010. During the year ended June 2010 there were 256 Solomon Islanders in New Zealand on special-purpose seasonal employment visas and all of their contracts had been negotiated between recruiting agents in Honiara and employers in New Zealand. The Solomon Islands is distinctive in the RSE scheme in that it is the only country where agents rather than a government department (or a mix of private sector agents and government agencies) effectively manage the recruitment process.

From April 2010 the LMU has had the responsibility of managing the relationship between the Solomon Islands Government and MBIE with regard to facilitating participation in the RSE scheme. Solomon Islands officials have participated regularly in meetings organised under the Strengthening Pacific Partnerships (SPP) programme and the Solomon Islands Minister of Foreign Affairs and External Trade made an official visit to New Zealand in 2013 to meet employers and workers involved in the RSE.

New Zealand’s High Commission in the Solomon Islands works closely with the LMU to promote the interests of the Solomon Islands within the scheme and early in 2014 the LMU and the High Commission jointly announced an increase in the number of Solomon Islanders eligible to participate as RSE workers (up to 594 – a 20 percent increase on numbers recruited in 2013) (Ministry Foreign Affairs and Trade, 2014). The Solomon Islands is the fourth largest provider of RSE workers for New Zealand after Vanuatu, Tonga and Samoa.

The Solomon Islands also became a participant in Australia’s Seasonal Worker Program following the transition from the pilot to the on-going scheme in July 2012. The first Solomon Islands seasonal employees were recruited late in 2012 and during the year ended June 2013 42 Solomon Islanders worked in Australia under the SWP (there were 423 RSE workers during the same year).<sup>201</sup>

196 Hon Manasseh Maelanga, MP (Deputy Prime Minister) Statement Before the General Debate of the Sixty-Eighth Session of the United Nations General Assembly, 30 September 2013, New York, p. 4.

197 Employment Act 1996, s 18

198 Employment Act, 1996, s 19

199 Barrett Salato, LMU (personal communication 2012) in an interview relating to the operation of labour recruiting in the Solomon Islands for overseas employers.

200 of the Maritime Safety Administration Act 2009, ss 7(1)(a)(v) and 23(1)(a)

201 See media release by the Australian High Commission in Honiara, 20 December 2012 ‘Pick of the bunch! Seasonal workers fly to Australia’. <http://www.scoop.co.nz/stories/W01212/S00335/pick-of-the-bunch-seasonal-workers-fly-to-australia.htm> (accessed 24 April 2014).

The LMU manages the recruitment of workers for Australia and the relevant visas are requested via the LMU from the Australian visa processing office in Hobart. The special-purpose visas for RSE workers were processed through the High Commission in Honiara until September 2012 when a TTS Visa Application Centre (VAC) was opened in Honiara. All visas for Solomon Islanders wishing to travel to New Zealand are now handled by the Suva Branch of Immigration New Zealand, via the VAC in Honiara (Ministry of Foreign Affairs and Trade, 2012).

#### *Other labour migration programmes*

The authors are not aware of any other formal agreements relating to labour migration of Solomon Islanders overseas beyond the IAU with New Zealand (RSE), the MOU with Australia (SWP) and the Solomon Islands membership of the MSG Skills Movement Scheme.

## **INSTITUTIONAL REVIEW**

### **Government Ministries/Departments**

The two government agencies that have responsibility for dealing with migrant workers in the Solomon Islands are:

1. The Ministry of Commerce, Industries, Labour and Immigration (MCILI) (work visas and immigration generally, employment and labour)
2. The Labour Mobility Unit (LMU) within the Ministry of Foreign Affairs and External Trade (MFAET) (labour agreements with overseas countries; oversight of seasonal labour migration schemes).

The Director of Immigration heads the Immigration Division within MCILI and the Commissioner of Labour heads the Labour Division within the same Ministry. The LMU is within the External Trade Division of MFAET.

### **Procedures for sending/receiving migrant workers**

The Labour Mobility Unit within the MFAET oversees negotiations relating to international labour mobility agreements. The LMU is directly responsible for managing the relationships between the Solomon Islands Government and the agencies responsible for New Zealand's Recognised Seasonal Employer (RSE) scheme and Australia's Seasonal Worker Program (SWP).<sup>202</sup>

There are different arrangements for the selection and pre-departure training of workers for the seasonal work schemes in New Zealand and Australia. In the case of New Zealand, the recruiting agents are responsible for both selecting the workers and arranging for their pre-departure training. The LMU has become more involved in monitoring how these processes are managed since the IAU was signed in 2010, but the responsibility for both rests with the agents. In light of the critical role agents play in the Solomon Islands' engagement with the RSE scheme, the Strengthening Pacific Partnerships (SPP) programme has ensured training is provided for agents by Brandheart, the consultancy firm employed to increase the capacity of Pacific states to maximise opportunities from seasonal labour migration overseas. During 2013 Brandheart provided a programme on communicating for success for agents, as well as training in marketing and branding, planning and relationship management and conversations for results for wider stakeholder groups in the Solomon Islands.

In the case of Australia's SWP, the LMU oversees the selection and pre-departure training in consultation with the labour hire companies in Australia that are seeking Solomon Islands labour.

## **NATIONAL POLICIES ON LABOUR MIGRATION**

### *Policy on inward migration*

In the Solomon Islands Foreign Policy and Government Guide, a USA International Business publication, it is stated that: "The Solomon Islands Labour Force Policy clearly aims to promote the employment of Solomon Islanders and to control the level of foreign workers. All foreign workers require work permits."<sup>203</sup> The Solomon Islands Government through the MCILI is working with several agencies, including the European Union, the World Bank and the ILO, to address a number of issues linked with labour market policy. A major concern is the number of young people exiting from the school system with low levels of education and very limited prospects of finding work outside the village agricultural system.<sup>204</sup>

### *Policy on outward migration*

None that the authors are aware of.

<sup>202</sup> See Ministry of Foreign Affairs and External Trade (2013).

<sup>203</sup> See Usa (2009).

<sup>204</sup> See, for example, ILO (2009); European Union (2012) and World Bank (2013).

# Kingdom of Tonga



# KINGDOM OF TONGA

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## SUMMARY OF INTERNATIONAL MIGRATION

Tongans are renowned for their international mobility and by the second decade of the 21<sup>st</sup> century the number of people of Tongan ancestry or ethnicity living in Australia (25,000), New Zealand (60,000) and the United States (57,000) was greater than Tonga's total resident population of 103,000 in 2011 (Statistics Department Tonga, 2011).<sup>205</sup> A widely used expression in the migration literature – transnational corporation of kin (Marcus, 1981) – owes its origins to the strategies elite Tongan families have employed since the 1960s to ensure they had kinfolk accessing opportunities for education and employment in the major cities of west coast United States, east coast Australia and northern New Zealand. In 2013 the United Nations Population Division (UNDESA, 2013) estimated there were over 60,000 people born in Tonga living in other countries and recent censuses in Australia (18,051 in 2011) and New Zealand (22,414 in 2013) accounted for just under 41,000 of these. The great majority of the remaining 20,000 were living in the United States and American Samoa.

Tonga was never formally colonized by a European power, so it has never had privileged access to any country on the Pacific rim or in Europe. But Tongans, especially the nobility, have used every opportunity to further the interests of their families both within the islands as well as in other countries. As a result, Tonga has the highest per-capita rate of doctoral degree completions of any Pacific country, and well-educated Tongans tend to be more occupationally mobile within the labour markets of the Pacific rim countries than some other Pacific groups.<sup>206</sup>

Migration overseas has not been confined to Tonga's elites, however. Tongan commoners (those who are not nobles) have responded to opportunities for work on farms and in factories in New Zealand since the 1960s. In 1971 there were just over 1,200 Tonga-born living in New Zealand. Twenty years later this number had increased to 13,000, the majority of whom had come to New Zealand initially as temporary workers. The growth of Australia's Tonga-born population was equally spectacular over the same period – from just under 450 in 1971 to almost 6,200 in 1991. Many of Australia's Tongan migrants during this period came via New Zealand – Australia has never had any policies that targeted Tongan workers until the Pacific Seasonal Worker Pilot Scheme (PSWPS) in 2009 and its successor from July 2012, the Seasonal Worker Program (SWP). New Zealand, by contrast, had a Tonga work permit scheme from the mid-1970s until the 1990s, and has had an annual quota of 250 residence visas for Tongans since 2002 (Bedford, 2008).

These two countries, along with the United States of America, have become very important sources of remittances for Tongans in the islands – a process that has been augmented since 2007 by the introduction of managed circular migration programmes to provide seasonal labour to selected industries in Australia and New Zealand. In these seasonal work schemes, Tonga is distinctive because it is the only Pacific country that was providing almost equal numbers of workers to New Zealand (1,600) and Australia (1,200) in the year ended June 2013. Tongans continue to demonstrate their willingness to travel overseas for work and, through their remittances, their commitment to the maintenance of their transnational family structures and networks.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

- Employment of Migrant Workers<sup>207</sup>
- Immigration Act, Laws of Tonga 1969 (1988 Revised Edition) CAP 62
- Immigration (Amendment) Act 1988
- Immigration Regulations (1988 Revised Edition) CAP 62.A
- Immigration (Amendment) Regulations 2010

### *Employment of Citizens Abroad*

- None

### *General Employment*

- None<sup>208</sup>

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<sup>205</sup> Censuses in the United States (2010), Australia (2011) and New Zealand (2013) are the sources of numbers of Tongans usually resident in the three countries.

<sup>206</sup> See, for example, Bedford and Ho (2003).

<sup>207</sup> There are no specific Acts in Tonga's legislation for the 20th or 21st centuries relating to labour migration. However, there are agreements relating to specific labour migration schemes such as New Zealand's RSE scheme, and Australia's Seasonal Worker Program. These agreements are managed by the Overseas Employment Division within the Ministry of Internal Affairs.

<sup>208</sup> An Employment Relations Bill (2013) was undergoing a process of public consultation in 2013. It has not been passed into law to date (March 2014). There are no specific Acts in Tonga's legislation since 1900 for Employment according to Tonga's Crown Law website (accessed 14 March 2014).

## Employment of Migrant Workers (inward migration)

### *General Process and Conditions*

The Immigration Act and Immigration Regulations generally regulate the entry of migrant workers into Tonga. The Immigration Act confers on the Principal Immigration Officer, the ability to issue a permit to enter and reside in Tonga including conditions relating to the occupation the permit holder may undertake and the person by whom he/she may be employed.<sup>209</sup> The application must be accompanied by a copy of the employment contract.<sup>210</sup> The employer is responsible for the repatriation of the worker at the end of the contract.

No further detail is provided in the Immigration Act or Regulations regarding the process involved for obtaining an entry permit. Nor has it been possible to locate legislation or regulations as to the processes involved in obtaining permission to employ migrant workers. However, an account of the process for obtaining an Employment Visa can be gleaned from a Tongan consular website which indicates that companies or businesses registered and operating in Tonga may bring non-citizen employees into the country, provided that the non-citizen holds a specialized skill. An assessment of the skill is undertaken by the Ministry of Labour, Commerce & Industries (MLCI) [Ministry of Commerce, Tourism and Labour (MCTL) since May 2012], which is said to be responsible for regulating the labour markets that are open for non-citizens to take up employment whilst in Tonga.<sup>211</sup>

The information on the consular website states that if a non-citizen fulfills all conditions for a permit, and MLCI (now MCTL), recognises the person's skill as required in the Tongan labour market, the Immigration Division will issue an employment permit. It is also possible to apply for transfer of the visa to another employer, but the criteria are not indicated.

### *Transferring to another category of visa while in Tonga*

Visitors can transfer to another category of visa after they arrive in Tonga. Transferring from a visitor's visa to an employment visa (or permit) if applying in the country carries a cost of TOP\$5,000 per person (2012).<sup>212</sup> If the transfer is to a visa/permit entitling the holder to operate a business that is not in the restricted category (see below) then the fee is TOP\$7,500. If an employment or business permit is being requested by a dependent who is in Tonga accompanying someone approved for residence in the country then the fee is TOP\$1,000.

### *Dependents*

An applicant for a permit to enter and reside may include in the application his/her spouse and any accompanying children.<sup>213</sup>

### *Restricted enterprises*

Tonga, like many other Pacific countries has restrictions on the work (or businesses) non-citizens can undertake (or invest in).<sup>214</sup> These include cultivating plant crops or farming animals exclusively for sale on the domestic market, small-scale timber milling operations, small-scale retail activity, producing handicrafts and cultural artefacts, operating buses, taxis and hire car services, laundry services that are not part of hotel operations, market vending or roadside stalls, domestic help services, guarding services for offices with fewer than 20 employees or domestic dwellings, office and lawn cleaning services not associated with hotels.

Tongan citizenship, and the right to participate in these activities, can be obtained by non-Tongans through marriage to Tongans provided they lodge a written declaration with the Minister of Foreign Affairs that they wish to assume Tongan nationality and take the oath of allegiance prescribed by the Nationality Act.<sup>215</sup>

## Employment of Tongans Abroad (outward migration)

As noted earlier, Tonga does not have an Employment Act, although there have been several attempts over the past 30 years to get legislation addressing fundamental rights and principles in the workplace. The Employment Relations Bill that has been undergoing an extensive consultation process since May 2013 outlines employee and employer entitlements and gives provisions for equal employment opportunity but it has run into strong opposition from employers.<sup>216</sup>

209 Immigration Act, 1969, s 9

210 Immigration Regulations 1988, Regulation 2(5)

211 Ministries in Tonga have been restructured significantly over the past four years. In May 2012 the Ministry of Labour, Commerce and Industries became the Ministry of Commerce, Tourism and Labour. Oversight of seasonal labour migration schemes, formerly in MLCI, was transferred to the Ministry of Training, Employment, Youth and Sport (MOTTEYS) which had been created in 2006. In 2013 MOTTEYS was combined with the District/Town Officer Department (formerly in the Prime Minister's Office) to form the Ministry of Internal Affairs (MIA). Seasonal work schemes are now managed through MIA.

212 Immigration (Amendment) Regulations 2010 Schedule (Regulation 11) Fees. These are the fees that were confirmed on 6 March 2012. <http://crownlaw.gov.to/cms/images/LEGISLATION/AMENDING/2012/2012-0009/ImmigrationAmendmentRegulation.pdf>.

213 Ibid. Section 2(2)

214 Foreign Investment Regulations 2006, Schedule 2 Reserved List (Section 9, Regulation 15)

215 Nationality (Amendment) Act 2007 repealed Section 2 of the Principle Act (CAP 59).

216 Tonga's Chamber of Commerce and Industry has been particularly critical of the proposed reform to paid leave entitlements, including proposed 20 days of paid holidays, 10 days' sick leave and 30 days of maternity leave a year. They see these proposals, amongst others, including provisions for a minimum wage which Tonga does not have at present (March 2014) causing businesses to reduce their labour forces or even close down because of the costs (Australia Network News, 2013).



The Employment Relations Bill has a short section (24) on employment of foreign employees by employers in Tonga but does not address specifically employment of Tongans overseas.

### *Seafarers*

Tonga, like many other Pacific countries, trains seafarers for work on ships in-country as well as overseas. In the 1980s the Tonga Maritime Polytechnic Institute (TMPI) was set up by the Ministry of Education and Training to provide training of personnel for the shipping and related industries (Tonga Maritime Polytechnic Institute, 2007). In the mid-2000s the Institute was graduating around 150 trainees with Master Certificates (Classes 5 and 4) as well as marine engineering and on-deck skills. In 2007 oversight of the TMPI and the Tonga Institute of Science and Technology (TIST), which shared a site and facilities, were transferred to the Ministry of Training, Employment, Youth and Sport (MOTEYS, now part of the Ministry of Internal Affairs) to provide a combination of maritime and trade training for young people.

When the inter-island ferry, the MV *Princess Ashika*, sank in 2010, the Tongan Government was rumoured to consider closing down the Tonga Maritime Polytechnic Institute after overseas shipping lines began refusing to accept its training qualifications. The Tongan Government's website <http://www.foi.gov.to/index.php/ministries/106>, under Education and Training, still makes reference to MOTEYS providing oversight of three training providers: "Tonga Maritime Polytechnic Institute" (in inverted commas), the Tonga Institute of Science and Technology (TIST) and the National Centre for Vocational Studies.

The Marine and Ports Division of the Ministry of Infrastructure (formerly Ministry of Transport) is responsible, amongst other things, for certification of seafarers under the terms of Tonga's Shipping Act (1988 Revised Edition).<sup>217</sup> This Act applies to all Tongan ships on any voyage in any waters, and to every ship in a Tongan port or harbour. Tongan seafarers are employed by a number of overseas shipping lines, with support in placements being provided by the Marine and Ports Division of the Ministry of Infrastructure.

Conditions of employment of Tongan seafarers are monitored by the Friendly Islands Seafarers' Union Incorporated (FISUI, the country's only private sector trade union), which is a member of the International Transport Workers' Federation (ITF Seafarers, 2012). Tonga also belongs to the International Maritime Organization and is on that organisation's White List of countries that comply fully with the revised Standard of Training, Certification and Watchkeeping Convention (STCW 95) (Tonga Ministry of Transport, 2010).

### *Seasonal workers*

Tonga has been a foundation participant in New Zealand's and Australia's seasonal worker pilots and programmes since 2007. Tonga is the only Pacific country to date that has succeeded in getting more than 1,000 workers a year into both the New Zealand RSE scheme and the Australian Seasonal Worker Program (SWP). In the year ended June 2013 there were 1,575 Tongan workers employed under the terms of the RSE scheme, second to Vanuatu with 2,829 workers. In Australia, the 1,199 Tongans employed under the terms of the SWP were by far the largest group with 119 from Vanuatu in the same year a distant second.<sup>218</sup>

The conditions governing employment of Tongans in these two countries are covered by: 1) an Interagency Understanding (IAU) between the relevant Ministries in New Zealand and Tonga (Ministry of Business, Innovation and Employment, 2007) and 2) a Memorandum of Understanding (MOU) between the Australian and Tongan Governments.<sup>219</sup> The IAU and the MOU both allow for on-going assistance from New Zealand and Australia in the operation of the seasonal work schemes, and New Zealand's Ministry of Foreign Affairs and Trade has funded several training programmes for Tongan officials under its Strengthening Pacific Partnerships (SPP) project.<sup>220</sup>

Tongan residents in Australia and New Zealand have played a major role in assisting rural communities in Tonga to engage with the two seasonal work programmes. In Australia, where labour hire companies recruit the majority of the seasonal workers, Tongan contractors have either gained accreditation as approved employers of Pacific seasonal labour, or act as recruiters on behalf of their employers. In New Zealand, where most of the recruitment for the horticulture industry is managed directly by employers, New Zealand-resident Tongans have been contracted by some orchards to recruit labour for them in Tonga using their networks. The Ministry of Interior's Overseas Employment Division allows for two types of recruitment of seasonal labour: recruitment through the Division drawing on their work-ready pool of seasonal labour (option 1); or direct recruitment by employers or their approved agents (option 2).<sup>221</sup>

217 Tonga Shipping Act 1988 (Revised Edition) CAP 136. Part 4, Certification of Seafarers, sections 56-66.

218 Data sources: PAILS Forum (2013); SWP unpublished data provided by Mark Roddam, Department of Employment, Canberra, 6 November 2013.

219 The MOU between the Australian and Tongan governments that covers the Seasonal Worker Program (SWP), and its pilot, the Pacific Seasonal Worker Pilot Scheme that ran until July 2012, is not available on the Australian Department of Employment's website.

220 See Nunns, Roorda, Bedford and Bedford (2013)

221 Details of Tonga's selection process can be found in Gibson, McKenzie and Rhorua (2008).

### *Other labour migration programmes*

Tonga's Institute of Science and Technology, which has recently been upgraded with support from Japan (Tonga Ministry of Information and Communication, 2013), provides technical training in four key areas: seafaring and marine engineering; agriculture, hospitality and tourism and construction and engineering. Graduates mainly gain employment within Tonga, but there are links between some of these programmes and overseas training providers that allow for transition into overseas qualifications.

Tongans have placed considerable emphasis on the importance of tertiary training for many decades and there is an extensive network of private and government-sponsored training institutions in the country. Migration for training overseas with a view to qualifying for work outside of Tonga is common and Tonga's Ministry of Internal Affairs is an active partner in the Pacific Islands Labour Sending (PAILS) Forum and advocate for greater access to labour markets overseas. Tonga hosted the initial meeting of the PAILS Forum in 2011 (Tonga Ministry of Information and Communications, 2011).

## **INSTITUTIONAL REVIEW**

### **Government Ministries/Departments**

There are three Government Ministries that have responsibilities for dealing with labour in 2014:

1. The Ministry of Foreign Affairs and Trade (MFAT) (immigration policy)
2. The Ministry of Commerce, Tourism and Labour (MCTL), (labour relations)
3. The Ministry of Internal Affairs (MIA) (employment, overseas seasonal worker programmes)

As noted in the previous section, there is no general employment legislation in Tonga, and the office of Commissioner of Labour does not exist. Information on labour migration needs to be sought in all three Ministries, depending on the focus of the inquiry. The Overseas Employment Division of the Ministry of Internal Affairs, headed by a Deputy CEO of the Ministry, is the best place to start with questions about labour migration schemes involving international movement of Tongans. This Ministry also oversees Tonga's main technical training institutions and manages pre-departure training for seasonal workers employed in New Zealand and Australia.

### **Procedures for sending/receiving migrant workers**

As a participating country in New Zealand's RSE Work Policy and Australia's SWP, Tonga's Ministry of Internal Affairs co-ordinates the selection and pre-departure training of workers for both schemes. The Ministry of Internal Affairs maintains a work-ready pool of prospective seasonal workers and, in common with some other Pacific states, a cross-Departmental team is involved in both the selection and pre-departure training processes.

New Zealand's Ministry of Business, Innovation and Employment and Australia's Department of Employment both provide assistance with capacity building for staff in Pacific states who are participating in their seasonal work schemes. During the year ended July 2013, for example, the major provider of training under New Zealand's Strengthening Pacific Partnership (SPP) programme, Brandheart, provided courses on marketing and branding as well as on negotiating and influencing for strategic outcomes. These courses aim to assist in achieving better outcomes for states participating in the seasonal work schemes through negotiating, issues management and marketing skills.

## **NATIONAL POLICIES ON LABOUR MIGRATION**

### *Policy on inward migration*

Outside of active Tongan participation in the PAILS Forum and the negotiations around the draft mobility chapter in the PACER-Plus free-trade agreement between Pacific states and Australia and New Zealand the authors are not aware of any specific national policy on labour migration for Tonga. However, the Tongan consular website (Tonga Consulate General, 2014) consulted contains the following statement which gives a sense of the underlying approach. It states:

Tonga has a very high unemployment rate, particularly amongst its youth. In order to help combat this problem the Tongan Government has attempted to protect the Tongan labour market for Tongans by not allowing non-citizens to enter the Kingdom looking for job opportunities.

### *Policy on outward migration*

None that the authors are aware of.

# Tuvalu



# TUVALU

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## SUMMARY OF INTERNATIONAL MIGRATION

Tuvalu, with a population in March 2014 of just under 11,000 (SPC, 2013)<sup>222</sup> scattered over eight inhabited atolls and reef islands totalling 26 kms<sup>2</sup> in land area (half residing in Funafuti, the small nation's only urban area), has a long history of labour migration dating back to the mid-nineteenth century. In the 1860s Peruvian slavers kidnapped unsuspecting islanders from the central Pacific, including Tuvalu, to work in mines in Latin America (Maude, 1981). Following incorporation of the islands that currently comprise the independent state of Tuvalu into the former Gilbert and Ellice Islands Colony (GEIC), administered by Great Britain, Tuvaluans (or Ellice Islanders as they were then known), were employed in the Colony's capital, Tarawa (now the main urban area in Kiribati) and on the phosphate islands of Banaba (Ocean Island, also within the GEIC) and Nauru. At any one time in the 1960s and 1970s, before the GEIC split into the two independent states of Kiribati and Tuvalu, as many as 1,000 Tuvaluans were working off-shore, either on contracts or as long-term residents.

Since independence in 1979, and the cessation of phosphate mining on Banaba (1979) and Nauru (2002), labour migration off-shore has been essentially confined to contracts for seafarers trained in the country's small Maritime Training Centre in Funafuti (a legacy of the colonial era – training seafarers for work on commercial shipping lines was initiated in Tarawa in 1967) and, since the mid-1980s on various work permit schemes in New Zealand (Bedford, Bedford and Ho, 2010). In the year ended 30 June 2013 56 Tuvaluans were employed on seasonal work contracts in New Zealand under the Recognised Seasonal Employer (RSE) scheme. During 2013 the Tuvalu and Australian governments signed a Memorandum of Understanding to facilitate Tuvaluan seasonal employment under Australia's Seasonal Worker Program (SWP). The first workers are scheduled to take up contracts for four or more months of work in Australia during 2014.

According to the United Nations Population Division's 2013 "Trends in International Migrant Stock: Migrants by Origin and Destination" just over 4,000 people born in Tuvalu were estimated to be living in other countries. Over 75 percent of these people were residing in countries in Oceania (3,248), especially New Zealand (1,580) and Kiribati (1,046). Tuvalu has a high per capita birthplace diaspora – the equivalent of 40 percent of its resident population. Indeed its diaspora is only marginally smaller than that for Kiribati (4,800 according to the UN Population Division) from a population ten times larger than that in Tuvalu.

The Tuvalu Government is keen to find work opportunities overseas for its citizens, and there is considerable circulation of Tuvaluans between Funafuti and Fiji. Fiji is Tuvalu's main gateway to the rest of the world, the main destination of their shipping, the location of their nearest major hospital and tertiary education institutions, and home to the descendants of some hundreds of Tuvaluans who resettled in Fiji from the 1950s following the purchase of the island of Kioa by the people of Vaitupu. Tuvaluans have three major population concentrations overseas in Kiribati, Fiji and New Zealand and smaller nodes in Australia, the United States of America, Nauru and their Polynesian neighbours (Tokelau, Samoa and Niue).

Tuvalu offers few opportunities for on-going employment for people from overseas countries outside of specialist skills required by government agencies on a short-term consultancy basis, or for small numbers of specialists in the hospital, and some training institutions (such as the Tuvalu Maritime Training Centre). The UN Population Division estimated that there were around 150 overseas-born people living in Tuvalu in 2013. Tuvalu is a country of emigration like its Polynesian neighbours, Tokelau Islands, Samoa, Niue and the Cook Islands. But Tuvaluans do not have the same access to overseas destinations as these other Polynesian countries and territories.

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of Migrant Workers*

- Immigration Act (2008 Revised Edition) CAP 24.15
- Immigration Regulations (2008 Revised Edition) CAP 24.15.1
- Employment Form For Workers Recruiting Licence Regs (2008 Revised Edition) CAP 40.28.1

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<sup>222</sup> The total population enumerated in the last census in November 2012 was 10,564.

### *Employment of Citizens Abroad*

- Employment Act (2008 Revised Edition) CAP 40:28

### *General Employment*

- Employment Act (2008 Revised Edition) CAP 40:28

## **Employment of Migrant Workers (inward migration)**

### *General Process and Conditions*

Entry of migrant workers into Tuvalu is regulated by the Immigration Act, which confers on the Principal Immigration Officer a general power to issue a permit to enter and reside in Tuvalu for the purposes of employment, including in a professional capacity. The permit may specify the employer(s) in respect of whom the migrant worker may be employed.<sup>223</sup> The permit must be applied for by the worker. The application form requires the person to specify the details of intended occupation and any prospective employer.<sup>224</sup> Migrant workers do not need to obtain visas or work permits in advance, as that can only be done in Tuvalu. On arrival non-residents are granted a three month visitor's visa and during that period they must finalise arrangements for work permits. Tuvalu's Embassies, High Commissions and Consulates do not issue visas or permits.

A Tuvaluan employer may not employ a migrant worker unless he/she has been granted a licence to do so by the Commissioner of Labour. Licences may be granted to professional recruiters acting on behalf of a specific employer(s), and are valid for 12 months. The Commissioner must be satisfied that the applicant is a fit and proper person to hold a licence.<sup>225</sup> The Commissioner may require the applicant to show that adequate provision has been made for the health and welfare of the workers, the payment of a security to cover wages or, in the case of a professional recruiter, a security for proper conduct as a licensee. Conditions may be imposed regarding the period during and places from which the workers may be recruited, transportation and repatriation, and any other matters thought fit.<sup>226</sup>

A migrant worker, whose passage to Tuvalu has been provided for in return for a promise to take up employment, is a worker for the purposes of the Employment Act.<sup>227</sup> Such workers are therefore covered by the provisions of the Act as they relate to general employment conditions such as wages, hours of work and provision of adequate water, sanitation, housing and medical services.<sup>228</sup> Conditions of employment may include for the provision of rations by the employer, and the Commissioner may require this if not otherwise agreed between the employer and the worker.<sup>229</sup>

The maximum duration of a contract is two years, unless the worker is accompanied by his or her family, in which case the maximum duration is three years. The contract may be extended and can be transferred to another employer by consent and with the endorsement of the Commissioner.<sup>230</sup> The employer is responsible for covering the repatriation costs of the worker, which includes travel and subsistence costs.

Responsibility for enforcement of the Act lies with the Commissioner of Labour.<sup>231</sup>

### *Dependents*

Although no specific dependent permit is provided for under the Immigration Act, the legislative framework allows spouses and dependent children to accompany a migrant worker. They all enter as visitors and apply for permits to stay on in the country together. The application form for a permit to enter and reside for employment purposes requires the applicant to declare details of any spouse and dependent children accompanying the worker. Further, the obligation on employers to cover repatriation of workers extends to the repatriation costs of "any dependent" of a migrant worker brought to the place of employment by the employer.<sup>232</sup>

## **Employment of Tuvaluans Abroad (outward migration)**

Contracts for employment outside Tuvalu are regulated by the Employment Act. All such contracts must be in writing, and be attested to by the Commissioner of Labour prior to the worker leaving Tuvalu. The Commissioner may not attest the contract unless satisfied that the contract terms are fair, that the worker understands its terms, and has freely entered into the contract. The Commissioner must also be satisfied that the contract complies with

223 Immigration Act 2008, s 9

224 Immigration Regulations 2008, Regulation 2 and Schedule, Form 1

225 Employment Act 2008, s 68 and 35(1)

226 Employment Act 2008, ss 38-39, and Employment (Form For Workers Recruiting Licence) Regulations 2008.

227 See definitions of 'immigrant worker' and 'worker' in Employment Act 2008, s 2.

228 Employment Act 2008, ss 104-107

229 Employment Act 2008, s 103

230 Employment Act 2008, ss 61(2) and (3) and 62(1)

231 Employment Act 2008, s 4

232 Schedule to Immigration Regulations 2008 Form 1 and Employment Act 2008, s 69(2)

the general requirements of the Act, and that it includes provisions designed to ensure that the employer covers the cost of the worker's repatriation to Tuvalu at the end of the contract. The employer may be required to pay a cash deposit or enter into a bond to cover repatriation costs.<sup>233</sup>

Persons wishing to recruit Tuvaluans for employment overseas must first obtain a licence from the Commissioner. The Commissioner cannot issue the licence unless satisfied that all necessary measures have been taken for the protection of the recruits while abroad. The Commissioner must also take into account the effect of withdrawal of adult males from the "social life and organisation of the population".<sup>234</sup> This latter requirement links with some specific policy goals in Tuvalu's National Population Policy 2010-25 (see Section on National Policies on Labour Migration).

### *Seafarers*

There are no specific regulations relating to the recruitment and employment of seafarers, but there are International Maritime Organization (IMO) requirements relating to any seafarer working on vessels, especially merchant ships. These include Firefighting Certificates, First Aid Certificates, etc. Once the Maritime Training Centre has trained the seafarers, their 'Discharge Books' (seafarer passports and ID) are issued by the Tuvalu Government's Marine Department.

Recruiting agencies that assist seafarers to find work are not required to report regularly to the Commissioner of Labour. However, they are required to renew their recruiting licenses every year and that is the opportunity for the Commissioner of Labour to consider their performance before their licenses are renewed. Tuvalu ratified the Maritime Labour Convention (MLC) 2006 in late 2012, which regulates how labour in the maritime industry should be employed. Tuvalu was one of the first 20 countries to ratify this Convention.

### *Seasonal workers*

Tuvalu has signed agreements with the New Zealand and Australian governments relating to managed seasonal labour migration. An Interagency Agreement (IAU) with New Zealand was signed in 2007 giving Tuvalu facilitated access to the RSE scheme. In 2013 a Memorandum of Understanding (MOU) was signed with Australia giving Tuvalu access to the SWP.

These agreements cover arrangements for selection of labour recruits from a work-ready pool administered by Labour Officers in the Ministry of Foreign Affairs, Trade, Tourism, Environment and Labour (MFATTEL). At the time of writing the government of Tuvalu had not granted recruiting licences to individuals or companies in Tuvalu who wished to select workers for these seasonal work contracts. This has remained a process that is managed centrally (Bedford, Bedford and Ho 2010). The IAU and the MOU both allow for on-going assistance from New Zealand and Australia in the operation of the seasonal work schemes, and New Zealand's Ministry of Foreign Affairs and Trade has funded several training programmes for Tuvaluan officials under its Strengthening Pacific Partnerships (SPP) project.<sup>235</sup>

Regular contact is maintained between staff in the RSE Unit in Wellington and the Labour Officers in the MFATTEL in Funafuti, and the SPP project supports capacity building amongst senior officials in Tuvalu.

## **INSTITUTIONAL REVIEW**

### **Government Ministries/Departments**

There are three Government agencies that have responsibilities for dealing with labour:

1. The Office of the Prime Minister (OPM) (immigration policy)
2. The Ministry of Foreign Affairs, Trade, Tourism, Environment and Labour (MFATTEL) (employment policy and labour relations)
3. The Ministry of Education, Sport and Culture (Maritime Training Centre – training of the seafarers)

The Commissioner of Labour's office is located in the MFATTEL and the current Commissioner is also the Permanent Secretary of the Ministry.

Within the MFATTEL there is a Labour Officer who administers the labour regulations and oversees an Assistant Labour Officer whose primary responsibility is to manage the seasonal work schemes in New Zealand and Australia. There is no specific unit dealing with labour migration.

<sup>233</sup> Employment Act 2008, ss 55, 57 and 66

<sup>234</sup> Employment Act 2008, s 35(1) and 36 and Employment (Form For Workers Recruiting Licence) Regulations 2008

<sup>235</sup> See Nunns, Roorda, Bedford and Bedford (2013)

## Procedures for sending/receiving migrant workers

As a participating country in New Zealand's RSE Work Policy and Australia's SWP, Tuvalu's MFATTEL co-ordinates the selection and pre-departure training of workers for both schemes. The MFATTEL maintains a work-ready pool of prospective seasonal workers, and a cross-Departmental team is involved in both the selection and pre-departure training processes.

The Tuvalu Government also operates a fund to assist Tuvaluan workers with the costs of participating in the seasonal work schemes. These loans are recovered from the earnings obtained by the workers.

New Zealand's Ministry of Business, Innovation and Employment and Australia's Department of Employment both provide assistance with capacity building for staff in Pacific states who are participating in their seasonal work schemes. During the year ended July 2013, for example, the major provider of training under New Zealand's Strengthening Pacific Partnership (SPP) project, Brandheart, provided courses on conversations for results, planning and customer relationships management, marketing and branding, negotiating and influencing for strategic outcomes. These courses aim to assist in achieving better outcomes for states participating in the seasonal work schemes through negotiating, issues management and marketing skills.

## NATIONAL POLICIES ON LABOUR MIGRATION

### *Policy on inward migration*

In February 2014 an MOU was signed by the President of Fiji during his visit to Tuvalu to implement Fiji's Volunteer Scheme for retired civil servants, teachers and other professionals who had to step down from office once they reached the age of compulsory retirement. While the teachers come as volunteers, the Tuvalu government does pay some pocket money, and covers the cost of accommodation and utilities. The scheme was initiated by Tuvalu's Ministry of Education, Sport and Culture following some success with Fijian teachers in local schools

### *Policy on outward migration*

Tuvalu's Department of Planning and Budget in the Ministry of Finance and Economic Development released a national population policy in June 2011 (Hayes, 2011). This comprehensive report addresses the socio-economic context for population policy in Tuvalu (Chapter 1), the demographic situation in the country in 2010 and implications for development (including a section on international migration) (Chapter 2). With regard to Tuvalu's population situation the report observes:

The limited opportunities for local employment, particularly in the dispersed outer islands, encourage migration in search of employment in the regional and global economy. Tuvaluans have successfully found "niche" markets for their labour such as seafaring and temporary agricultural work. There is also a steady flow of permanent migrants to New Zealand through preferential access [the Pacific Access Category], subject to the availability of employment. Some Tuvaluans have also found opportunities in Australia and elsewhere. .... Migration is now the principal determinant of population change in Tuvalu as a whole and its constituent islands (Hayes, 2011, p.38).

# Republic of Vanuatu





# REPUBLIC OF VANUATU

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## SUMMARY OF INTERNATIONAL MIGRATION

During 2013 descendants of Melanesian migrants ('South Sea Islanders'), who had worked on Queensland's sugar plantations in the 19<sup>th</sup> century, marked the 150th anniversary of what became known as the 'blackbirding' era of labour migration in the Pacific.<sup>236</sup> This was the largest and most sustained period of overseas labour migration of ni-Vanuatu on record. Between 1863 and 1904 just under 40,000 ni-Vanuatu were recruited (sometimes kidnapped) for work in Queensland.<sup>237</sup> Most returned to Vanuatu either by choice or through compulsory repatriation soon after the formation of the Australian Federation in 1901. The small numbers who did get permission to stay are the ancestors of Australia's contemporary South Sea Islander population that was estimated to number as many as 40,000 at the time of the anniversary events.

Ni-Vanuatu labour migration to Australia in the 20<sup>st</sup> century was effectively terminated with the passing of the Pacific Islands Labourers Act of 1901, which banned recruitment from 1903 and gave authorities the power to deport Pacific workers from December 1906 (McLellan 2013). The Australian Census of Population and Housing in 2011 enumerated 702 usual residents with ni-Vanuatu ancestry, only 289 of whom had been born in Vanuatu. The total Vanuatu-born population in Australia in 2011 was 1,106, most of whom did not claim any Melanesian ancestry.<sup>238</sup> It was not until the introduction of the Pacific Seasonal Worker Pilot Scheme (PSWPS) in 2009, which included Vanuatu from the outset, and its successor, the Seasonal Worker Program (SWP) from July 2012, that Australia had any formal labour migration agreements with Pacific countries. The numbers of ni-Vanuatu seasonal workers recruited under the PSWPS and SWP have been very small – fewer than 250 in total since 2009.

Much larger numbers of seasonal workers have been recruited for periods of up to seven months a year to work in New Zealand's horticulture and viticulture industries under the Recognised Seasonal Employer (RSE) Work Policy. In the year ended June 2013 just over 2,800 ni-Vanuatu had RSE seasonal work visas and over the period April 2007-June 2013 14,437 RSE visas had been issued to ni-Vanuatu for work in New Zealand.<sup>239</sup> The numbers of ni-Vanuatu resident in New Zealand at successive censuses have been very small, however, and the 2013 Census of Population and Dwellings recorded only 492 usual residents with ni-Vanuatu ancestry and a total of 569 residents born in Vanuatu. Until the RSE scheme there was very little migration between Vanuatu and New Zealand. The total number of residence applications by citizens of Vanuatu approved over the 15 years between July 1997 and June 2013 was only 109.<sup>240</sup> The total number of temporary work visas issued in the nine years between July 1997 and June 2006, before the RSE pilot commenced, was only 222 compared with over 15,000 issued in the seven years between July 2006 and June 2013.

The largest Vanuatu-born population concentration is in the neighbouring French colony of New Caledonia, a legacy of the former Anglo-French joint administration of the Condominium of the New Hebrides (Vanuatu since independence in 1980). The UN Population Division's International Migrant Stock database has just over 8,800 people born in Vanuatu living in other countries in 2013, with 6,000 of these living in French territories.<sup>241</sup> The Republic of Vanuatu, with a population approaching 265,000 in 2013 (SPC, 2013), thus has a very small diaspora in per capita terms, reflecting a history of limited opportunities for overseas migration, especially since independence in 1980.

Notwithstanding the reality of contained overseas migration, in the early 21<sup>st</sup> century Port Vila, the capital of Vanuatu, is becoming something of a hub for entities with a strong interest in migration issues. These include the University of the South Pacific's Law School, the Pacific Institute of Public Policy, the headquarters of the Melanesian Spearhead Group, and the Office of the Chief Trade Adviser to Pacific states in the negotiations over the PACER Plus Free Trade Agreement. Vanuatu will also host the Pacific Islands Labour Sending (PAILS) Forum in 2015.

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236 There is an extensive literature on labour migration between Melanesia and Australia in the late 19th century and the development of a community of South Seas Islanders in Queensland. Events associated with the commemoration of the 150th anniversary are discussed in McLellan(2013)

237 A useful summary of Pacific Islanders recruited for work in Australia in the second half of the 19th century can be found in Munro (1990).

238 Census data for Australia in 2011 come from unpublished tables generated by Margaret Young in the University of Adelaide's Australian Population and Migration Research Centre.

239 Data on numbers of visas issued for temporary work, residence and study in New Zealand are available from the New Zealand Immigration website.

240 Data on residence approvals, by year, can be obtained from annual Migration Trends and Outlook reports available from the New Zealand Ministry of Business, Innovation and Employment website.

241 The numbers of Vanuatu-born resident in French territories in 2013, by country, were estimated by the UN Population Division to be: New Caledonia, 4,840; France, 760; French Polynesia, 250; and Wallis and Futuna, 230 (UNDESA, 2013).

## LEGISLATIVE OVERVIEW

### Legislation and Regulations

#### *Employment of Migrant Workers*

- Immigration Act 2010
- Immigration Visa Regulation Order, Order No. 180 of 2011
- Immigration Visa Regulation (Amendment) Order, Order No. 169 of 2013
- Labour (Work Permits) Act (36/1986:2006 Consolidated Edition) CAP 187
- Declaration of Reserved Occupations, Gazette No. 25 of 1997

#### *Employment of Citizens Abroad*

- Seasonal Employment Act 2007

#### *General Employment*

- Employment Act, CAP 160

### Employment of Migrant Workers (inward migration)

#### *General Process and Conditions*

Entry of migrant workers into Vanuatu is regulated by the Immigration Act 2010 and associated Regulations. A migrant worker wishing to enter Vanuatu must obtain a visa to do so, unless exempted.<sup>242</sup> There is no work visa provided for under the Immigration Act, but a residence visa may be issued for a period of more than one, but less than ten years.<sup>243</sup>

Employers who wish to employ a migrant (non-citizen) worker must apply to the Commissioner of Labour for a work permit, which may be issued for a period of up to two years where the employment is not subject to a written contract, or up to three years where it is. Temporary work permits may be issued for employment for periods of less than four months and exemption can be requested if the employment is for less than one month.<sup>244</sup> Applications must include specified documentation including papers confirming the relevant qualifications and experience of the migrant worker, and a copy of any written contract of employment. The employer must specify the number of citizen and non-citizen workers currently employed, the reason for employment of the non-citizen worker, and set out details of training to be given to a citizen counterpart worker.<sup>245</sup>

When considering any application, the Commissioner must inquire as to whether the employer has adequately advertised the vacancy and whether any suitably qualified citizen worker has applied for the position or has sought similar employment. Other matters for consideration are the employer's employment record, the ability of the employer to provide training to the citizen counterpart worker, the relevant qualifications and experience of the migrant worker, the protection of both local and national interest, and whether the conditions of employment offered conform with Vanuatu's law including the terms of any relevant collective employment agreement.<sup>246</sup> In this regard, the Employment Act, also administered by the Commissioner of Labour, sets out the general employment conditions relating to matters such as hours of work, wages and health and care of workers.

Where a permit is issued, the employer must pay a tax. Also, it is a condition of every work permit that the employer train a citizen worker, unless no citizen counterpart worker is available. Variations, both of occupation and employment, are permitted on application to the Commissioner. Extensions must be applied for no later than 60 days prior to the expiry of the current permit.<sup>247</sup>

There are special provisions relating to employment of migrant workers by foreign investors who obtain an approval certificate from the Vanuatu Investment Promotion Authority for an investment proposal that contains provision for such employment. In such cases, the foreign investor is entitled, on application, to be issued with the work permits specified in the certificate.<sup>248</sup>

The 2013 Immigration Regulations allow for a person who possesses skills that are not in existence, or in short supply in Vanuatu, to apply to the Director of Vanuatu Immigration Services for a skills residence (permanent)

242 Immigration Act 2010 s 26

243 Immigration Act 2010, ss 27 and 30

244 Labour (Work Permits) Act 36/1986:2006, ss 5(h) and 5(i)

245 Labour (Work Permits) Act 36/1986:2006, ss 2(2), 4, 5 and Schedule 1

246 Labour (Work Permits) Act 36/1986:2006, s 7

247 Labour (Work Permits) Act 36/1986:2006, s 5

248 Labour (Work Permits) Act 36/1986:2006, ss 5(a)-5(g)

visa.<sup>249</sup> The applicant must score a minimum of 60 points in a test, and meet the health, character and language requirements.

### *Dependents*

The dependents of a migrant worker granted a residence visa may be issued a residence visa for the same duration as the migrant worker, subject to specified criteria relating to health and character. Dependents include the worker's spouse or de-facto partner, dependent child, and other persons who, in the opinion of the Principal Immigration Officer, should be treated as a member of the migrant worker's family.<sup>250</sup>

### *Reserved Occupations*

The Minister responsible for labour relations has power to issue an Order declaring that a particular occupation is a 'reserved' occupation. Any such order must specify the number of non-citizen workers that each employer may employ in such occupations, as a percentage of the employer's total workforce employed in that capacity. However, the Commissioner has, on application by the employer affected by such an Order, discretion to allow the employer to exceed this number.<sup>251</sup>

Prior to making amendments to the List of Reserved Occupations, the Minister must give six months' notice of the proposed changes through publication in the official Gazette and in a local newspaper, and invite comments thereon.<sup>252</sup> The list in March 2014 had 17 occupations, namely: typist, clerical supervisor, receptionist, hotel receptionist, waiter/waitress/bartender, housemaid/domestic worker, street vendor, dock worker, freight handler, earth moving and related machinery operator, driver, bus driver, lorry and van driver, boatswain, able seaman/ordinary seaman, carpenter and joiner.

In January 2014 a government scheme to raise revenue came into operation. The Capital Investment Immigration Programme (CIIP) targets investors with generous provisions relating to the acquisition of citizenship (the Vanuatu Government approved dual citizenship for Vanuatu citizens for the first time in 2013).<sup>253</sup> When the CIIP was launched in January 2014 it was reported in the *Vanuatu Daily Post* that ni-Vanuatu builders' labourers were finding it difficult to obtain work because Asian investors were importing containers of ready-made buildings to be installed and their own labourers were then needed to read the instructions (Makin, 2014). Labourers, carpenters and joiners are all on the list of Reserved Occupations.

### *Special Provision for Citizens of Melanesian Spearhead Group (MSG) Countries*

Under the MSG Skills Movement Scheme, Vanuatu has made provision for up to 400 people from the member countries<sup>254</sup> to work in scheduled occupations. These are mostly of a technical or managerial nature. In December 2013 it was reported that Vanuatu had become the first MSG country to sign a volunteer service agreement that will see the engagement of experienced teachers from Fiji to work in Vanuatu (East-West Center, 2013).

## **Employment of ni-Vanuatu Abroad (outward migration)**

The Employment Act does not contain any specific provisions relating to the recruitment of ni-Vanuatu for employment abroad. However, the Vanuatu Government introduced specific legislation to deal with seasonal employment of ni-Vanuatu overseas in 2007. It is the only country participating in Australia's and New Zealand's seasonal work schemes to pass such legislation.

The Seasonal Employment Act 2007 defines seasonal employment as employment which is:

performed outside of Vanuatu and is the kind of employment that can be performed only during certain periods of the year, and does not include any employment that can be performed throughout the entire year.<sup>255</sup>

Part 2 of the Act establishes a system of licences and permits for seasonal employment agents "who act, or holds [themselves] out to the public as ready to act, for reward for the provision of services relating to the engagement of persons for seasonal employment outside of Vanuatu". A person who directly recruits other persons for seasonal

249 Immigration Visa Regulation (Amendment) Order, Regulation 12(e)

250 Immigration Act 2010, ss 1 and 30(2)

251 Labour (Work Permits) Act 36/1986:2006, ss 9 and 10.

252 Labour (Work Permits) Act 36/1986:2006, s 9(a)

253 In August 2013 the Minister of Internal Affairs amended the Immigration Visa Regulation Order of 2011 in preparation for the introduction of the CIIP. The amendment was gazetted on 14 August 2013 as the Immigration Visa Regulation (Amendment) Order No. 115 of 2013 under the Immigration Act No. 17 of 2010. It removed the 10 year residence requirement for foreign investors before they could become Vanuatu citizens by allowing purchase of citizenship on gaining residence approval for US\$10,000 (Cullwick, 2013).

254 The Melanesian Spearhead Group comprises the four independent countries of the western Pacific (Papua New Guinea, Solomon Islands, Vanuatu and Fiji) and New Caledonia's pro-independence political party, the FLNKS (Le Front de Liberation Nationale Kanak et Socialiste). In March 2012 the Governments of Papua New Guinea, Solomon Islands, Vanuatu and Fiji signed a Memorandum of Understanding to facilitate the temporary movement of skilled nationals between their countries for the purposes of taking up employment without compromising national laws and policies on health, safety, minimum working conditions and border requirements. The MSG Skills Movement Scheme, which became operational in September 2012, is the first significant intra-regional labour mobility agreement in the western Pacific since the four countries transitioned to independence between 1970 (Fiji) and 1980 (Vanuatu).

255 Seasonal Employment Act 2007, s 3

employment is not included in this definition.<sup>256</sup> A person wishing to act as a seasonal employment agent must apply to the Commissioner of Labour for a licence to carry on business as such.<sup>257</sup> A person wishing to recruit directly for seasonal employment must apply to the Commissioner for a permit to do so.<sup>258</sup> Both a licence and a permit are generally valid for one year.

Part 3 of the Act sets out the general duties of licence and permit holders. There is a general prohibition on registering or directly recruiting a person for seasonal employment who has obtained a qualification from a recognised tertiary institution unless that person is not employed, or has his or her employer's approval in writing to be employed in seasonal employment.<sup>259</sup> The process of selection for registration or recruitment must be fair and transparent. The Act specifies some criteria that must be met.<sup>260</sup> These include the following: the person must be at least 21 years of age and they must provide a medical certificate and a police clearance report. The person must provide information on any previous overstay in another country, or any deportation or removal and, if the person is married, provide the written consent of his or her spouse to the proposed seasonal employment. The person must also provide a character reference from someone who is perceived to be of high standing in his or her community, church or employment and their record on any previous seasonal employment. Other criteria may be prescribed by regulations.

A seasonal employment agreement must be in writing and the licence or permit holder must ensure that the seasonal worker understands the content of the agreement before he or she signs.<sup>261</sup> The licence or permit holder must also provide a comprehensive pre-departure orientation briefing covering specified matters including the kind of work to be undertaken, the payment of wages and arrangements for savings, taxation information, the management of travel, accommodation and food, medical services in case of illness, the worker's obligations while outside Vanuatu, and other matters the Commissioner determines.<sup>262</sup> The licence or permit holder must also explain the requirement to obtain a work visa and, if the holder assists in obtaining the work visa, to ensure that all required documentation is provided to the relevant authorities in the country where the seasonal employment is to take place.<sup>263</sup> Finally, the licence or permit holder must ensure that the seasonal worker understands his or her obligation to return to Vanuatu, the relevant immigration requirements, the need for savings to be remitted, and that poor work performance or unacceptable behaviour may result in the termination of the seasonal employment.<sup>264</sup> A worker who does not comply with his or her obligations under the seasonal employment programme may not be allowed to participate again in the programme for a period of five years.<sup>265</sup>

### *Seasonal workers*

Vanuatu has been involved in New Zealand's RSE scheme since it was piloted during the 2006/07 harvesting season. It was the country that provided around 100 workers for employment on vineyards in Central Otago in a pilot programme which was supported by the World Bank.<sup>266</sup> From the outset of the RSE policy, Vanuatu has been by far the largest provider of seasonal labour for New Zealand, with numbers recruited reaching over 2,000 by the 2008/09 season. The response by ni-Vanuatu to seasonal work opportunities in New Zealand, and the demand for their services by employers, is interesting given that there is no tradition of major migration flows between the two countries. Seasonal work in New Zealand has become Vanuatu's major source of employment offshore since 2006/7 and there is a strong link between the officials in Vanuatu's Employment Services Unit (ESU) within the Department of Labour and Employment Services and the equivalent unit within New Zealand's Ministry of Business, Innovation and Employment.

Participation by ni-Vanuatu in the RSE scheme is regulated by Vanuatu's Seasonal Employment Act 2007 and an Inter-Agency Understanding between the Department of Labour in Vanuatu and New Zealand's Ministry of Business, Innovation and Employment.<sup>267</sup> A similar set of legal and administrative arrangements governs participation by ni-Vanuatu in Australia's Seasonal Worker Program. As noted in the introduction to this report, Vanuatu has been part of Australia's seasonal work scheme to assist the horticulture industry since the inception of the PSWPS in 2009 but numbers recruited for work in Australia have been very small by comparison with New Zealand. In the year ended June 2013 119 ni-Vanuatu were employed on seasonal work visas and while this was the largest number recruited for Australia in any year since 2009, it was only 4 percent of the number of ni-Vanuatu employed under the RSE scheme in 2012/13. Notwithstanding this limited success to date in obtaining contracts for seasonal work in Australia, Vanuatu's Commissioner of Labour is regularly seeking opportunities for work for ni-Vanuatu overseas.<sup>268</sup>

256 Seasonal Employment Act 2007, s 2

257 Seasonal Employment Act 2007, s 7

258 Seasonal Employment Act 2007, s 9

259 Seasonal Employment Act 2007, ss 19(3) and (4)

260 Seasonal Employment Act 2007, s 20(3)

261 Seasonal Employment Act 2007, s 21

262 Seasonal Employment Act 2007, s 22

263 Seasonal Employment Act 2007, s 23

264 Seasonal Employment Act 2007, s 24(1)

265 Seasonal Employment Act 2007, s 24(1)

266 The origins of the RSE scheme are reviewed briefly in Ramasamy, Krishnan, Bedford and Bedford (2008). More detailed analyses can be found in Bedford, C.E. (2013); and, with specific reference to Vanuatu, Hammond and Connell (2009) and McKenzie, Martinez and Winters (2008).

267 The Inter-Agency Understanding (IAU) for Vanuatu (2009 version) can be found at the New Zealand Ministry of Business, Innovation and Employment website.

268 Vanuatu has been an active participant in all of the conferences and meetings organised in Australia and New Zealand that are linked with the seasonal work schemes. The Commissioner of Labour will also host the next meeting of the Pacific Islands Labour Sending (PAILS) Forum in Port Vila in 2015. The PAILS Forum is actively seeking to access labour markets beyond Australia and New Zealand, especially in labour importing countries like Japan and Korea ('Outcomes and Recommendations', PAILS Forum 2013: Cooperating to Compete, Apia, 22-24 October, 2013, p. 2).

### *Other labour migration programmes*

Outside of the reciprocal agreements relating to migration of small numbers of skilled workers between countries that are part of the Melanesian Spearhead Group and the seasonal work schemes in Australia and New Zealand, there are no formal labour migration programmes for ni-Vanuatu citizens. Ni-Vanuatu seafarers work on inter-island shipping vessels that operate between Vanuatu, Fiji and the Solomon Islands but there is no seafarer training programme similar to the ones found in Kiribati and Tuvalu. There was quite considerable labour migration to New Caledonia during the colonial era, but this movement has slowed in recent years at least in terms of formal labour recruiting arrangements.

## **INSTITUTIONAL REVIEW**

### **Government Ministries/Departments**

Two Government Departments, which are both located in the Ministry of Internal Affairs, have responsibilities for dealing with labour in 2014:

1. The Department of Immigration (immigration policy, issuing of visas)
2. The Department of Labour and Employment Services (labour relations, labour recruiting, overseas seasonal worker programmes)

The Immigration Act 2010 is administered by Vanuatu Immigration Services within the Department of Immigration. The issuing of work permits is performed by the Department of Labour and Employment Services, which administers the Labour (Work Permits) Act and the Seasonal Employment Act.

Part 4 of the Seasonal Employment Act sets out the functions and responsibilities of the Commissioner of Labour in respect of seasonal employment. The Commissioner must advise licensees and permit holders of the names and addresses of likely employers outside of Vanuatu, inform them of any relevant changes to the work policies of other countries, and make available copies of guidelines. The Commissioner must also prepare and disseminate information throughout Vanuatu on the seasonal employment programmes. Other functions include the establishment of a central database and providing the Minister and the Director General responsible for labour with any information on the seasonal employment programmes that he or she requests.<sup>269</sup> The Commissioner also has monitoring and compliance functions.<sup>270</sup>

### **Procedures for sending/receiving migrant workers**

In terms of New Zealand's RSE scheme and the Australian SWP, the Employment Services Unit within the Department of Labour facilitates recruitment through private recruitment agents and direct employment by participating employers by maintaining a 'work-ready' pool of ni-Vanuatu workers. The ESU files the applications for visas with the relevant agencies for New Zealand (the Visa Application Centre in Vila on behalf of Immigration New Zealand since 2013) and Australia (the Australian High Commission).

New Zealand's Ministry of Business, Innovation and Employment and Australia's Department of Employment both provide assistance with capacity building for staff in Pacific states who are participating in their seasonal work schemes. During the year ended July 2013, for example, the major provider of training under New Zealand's Strengthening Pacific Partnership (SPP) project, Brandheart, provided courses in Vanuatu on marketing and branding (twice) as well as on conversations for results.<sup>271</sup> These courses, plus additional leadership training in New Zealand for senior officials, aim to assist in achieving better outcomes for states participating in the seasonal work schemes through negotiating, issues management and marketing skills.

## **NATIONAL POLICIES ON LABOUR MIGRATION**

Assistance with the development of policies and institutions to govern labour migration and to increase Vanuatu's competitiveness in the international market for labour was provided through 2013 by a World Bank-funded consultant from New Zealand. A national policy statement had not been released at the time of writing this country profile in March 2014.

269 Seasonal Employment Act 2007, s 27

270 Seasonal Employment Act 2007, s 27

271 RSE SPP 2012/2013 Training Report, Ken Mitchell from Brandheart

# GLOSSARY

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**RSE (Recognised Seasonal Employer)** – is a scheme which allows New Zealand employers in the horticulture and viticulture sectors to hire workers, especially those from the PICs, on a temporary basis during peak times. Following a pilot, the fully-established RSE Work Policy was established in 2007 and admits a maximum of 8,000 foreign workers per year.

**SWP (Seasonal Worker Program)** – is a scheme which allows Australian employers primarily in the horticulture industry to hire Pacific Island workers from Tonga, Vanuatu, Kiribati, Nauru, Samoa, Solomon Islands and Tuvalu, as well as workers from Timor Leste. Workers can be recruited for between 14 weeks and six months and must be provided with a minimum average of 30 hours' work per week. Up to 12,000 places have been made available over the four years to 30 June 2016, with 10,450 allocated to the horticulture program and 1,550 to a four-sector trial (in cotton, aquaculture, accommodation and sugar sectors).

**CFA (Compact of Free Association)** – CFAs have been signed between the United States and Palau (1994), Republic of Marshall Islands (1986) and the Federated States of Micronesia (1986) respectively. Broadly, citizens of these countries by birth (but not non-citizen spouses and children), and certain categories of citizens by naturalisation, enjoy privileged rights of entry into US.

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