



# **Recognised Seasonal Employer policy review – options for consultation**

**March-April 2023**

Please direct all written feedback to: [rsepolicyreview@mbie.govt.nz](mailto:rsepolicyreview@mbie.govt.nz).

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## About this document

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This document outlines the options for consultation on the Recognised Seasonal Employer (RSE) policy review being carried out by the Ministry of Business, Innovation and Employment (MBIE). An overview of these policy options is contained in the separate summary document.

Options developed have been informed by the first round of stakeholder consultation carried out in November 2022 in the regions, at the RSE Conference in July 2022, feedback from the *Ola Manuia* Pacific RSE Health and Wellbeing Framework, and relevant research on the RSE scheme including the RSE Impact Study commissioned by MBIE and the Ministry of Foreign Affairs and Trade (MFAT) and published in 2019-20.

Options articulated in this paper are options only, for the purposes of stakeholder consultation. They are not Government policy, and are not being proposed as the Government's recommended solutions to identified issues. Some options are 'either/or', mutually exclusive with other options. Other options are potential 'both/and' options, which could be implemented alongside other options if agreed.

MBIE seeks your feedback on the options contained in this document, including on whether there are any other options we have not identified which may prove effective in solving issues. Feedback on how any options should be implemented, including appropriate implementation timeframes is welcome. Questions have been provided to aid discussion and provision of feedback, however all feedback on options is welcome.

## Consultation materials

The consultation materials for this review comprise:

- **RSE policy review: full consultation document March – April 2023 (*this document*)**
- **RSE policy review: summary consultation document March – April 2023**
- Diagram pack containing:
  - **System administration diagram**
  - **Worker wellbeing diagram**
  - **Worker wellbeing – possible approaches**
  - *Ola Manuia* Pacific RSE Health and Wellbeing Framework – background information which has informed the review.

## How to provide feedback

MBIE is carrying out targeted consultation with stakeholders over mid-March to mid-April 2023. You can provide feedback through in-person consultation events or webinars, and to [rsepolicyreview@mbie.govt.nz](mailto:rsepolicyreview@mbie.govt.nz). Feedback is requested by **12pm 24 April 2023**.

## Process and timeframes following consultation

Following feedback received through this targeted consultation, officials will analyse submissions and develop high-level policy recommendations in April-May 2023 for Ministerial consideration. Initial high-level policy decisions are currently scheduled for Cabinet in June 2023.



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Decisions on implementation will also need to be taken. It is likely that further policy work, following Cabinet's initial agreement to high-level policy proposals in June, will be needed to determine the best path forward for implementation, including appropriate timeframes.

## The RSE policy review

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### Introduction

1. In 2018, Cabinet agreed to a review of Pacific migration policies, beginning with a review of the RSE scheme. The RSE policy review began in 2019 but was delayed due to the COVID-19 pandemic.
2. In September 2022 the Minister of Immigration (MoI) agreed to the objective, scope, approach and timelines of the Recognised Seasonal Employer (RSE) policy review. The MoI indicated that the RSE policy review should be a full review of the scheme, including significant engagement with stakeholders and taking a first principles approach to the workstreams identified.
3. The sections below set out the objective, principles and scope of the review, consultation carried out to date, our process and timeframes, and the options for consultation.

### Objective, principles and scope and consultation carried out to date

#### *Objective*

4. The objectives of the RSE scheme are set out in immigration instructions, as below:

#### WH1.1.1 Objectives

The objectives of the RSE Instructions are to:

1. allow horticulture and viticulture businesses to supplement their New Zealand workforce with non-New Zealand citizen or residence class visa holder workers when labour demand exceeds the available New Zealand workforce and employers have made reasonable attempts to train and recruit New Zealand citizens and residence class visa holders; and
2. promote best practice in the horticulture and viticulture industries to support economic growth and productivity of the industry as a whole, while ensuring that the employment conditions of both New Zealand and non-New Zealand citizen or residence class visa holder workers are protected and supported; and
3. encourage economic development, regional integration and good governance within the Pacific, by allowing preferential access under RSE Instructions to workers who are citizens of eligible Pacific countries; and
4. ensure workers recruited under these instructions are adequately paid and financially benefit from their time in New Zealand; and
5. ensure outcomes which promote the integrity, credibility and reputation of the New Zealand immigration and employment relations systems.



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5. In developing policy options across all workstreams in the review, it has become clear that the outcomes sought for this review are twofold:
  - sustainable long-term administrative settings that work effectively for the government and employers, and
  - a scheme that respects RSE workers, and upholds their rights and dignity through an improved set of policies and guidelines, backed by consistent and ethical employment practice.

### *Guiding principles*

6. The following set of guiding principles for the review used during consultation in November 2022 remains the same. The RSE scheme should:
  - a. Enable equitable sharing of benefits across employers, workers and communities
  - b. Incorporate the views of Pacific Island countries and workers, and the impacts on Pacific labour markets
  - c. Contribute to our short, medium and long-term development outcomes we seek in the Pacific region
  - d. Be accessible to prospective workers and employers
  - e. Have settings that are flexible, enabling the system to respond to labour market changes over time
  - f. Ensure compliance frameworks are robust, fit-for-purpose and adequately resourced.
7. These principles reassert the original approach to the development of RSE – the sharing of benefits, mutual care and responsibility for outcomes and a purpose of lifting industry performance.

### *Scope*

8. The review encompasses workstreams that are system-focussed, worker-focussed and Pacific-focussed.
  - a. System-focussed: cap-setting process, allocation methodology, labour market test (LMT), compliance, and flexibility
  - b. Worker-focussed: accommodation, health, pastoral care, benefits and deductions, and worker rights and exploitation risks
  - c. Pacific-focussed: a strategic view across all workstreams to ensure policy proposals will meet the development goals we seek in the Pacific, with a particular focus on the impacts of the scheme on Pacific labour markets.

### *Stakeholder consultation carried out to date*

9. **Hort/vit industry:** In November 2022 we carried out a number of consultations in the regions with RSE employers, facilitated by the hort/vit industry bodies. The purpose of these consultations was to update the industry on the review, understand the issues with the scheme as identified by the industry and obtain high level input on each of the

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policy issues in scope of the review. We have also received written feedback following these visits to our consultation inbox.

10. **RSE workers:** Since the wellbeing of RSE workers was highlighted during the COVID-19 pandemic, Immigration New Zealand (INZ) and Te Whatu Ora have been co-designing a health and wellbeing framework for RSE workers, in collaboration with RSE workers, employers, New Zealand-based Pacific Liaison Officers and High Commission representatives, and Māori/iwi. More information on this is provided in the worker-focussed options for consultation below. RSE workers provided substantive input during these workshops on what health and wellbeing means to them while on the RSE scheme, and the changes they would like to see made.
11. **Pacific governments, Pacific Liaison Officers, other Pacific and international stakeholders:** In November 2022 MFAT, MBIE and NZQA officials attended the Pacific Labour Mobility Annual Meeting (PLMAM) in Samoa along with some industry representatives, and carried out initial consultation on the policy review with all stakeholders present. These included Pacific governments, business and community groups, and international stakeholders such as the International Labour Organisation (ILO), International Organization for Migration and the World Bank. MFAT is supporting an ongoing consultation process with Pacific stakeholders through their posts. Officials have also met with the Pacific Liaison Officers (PLOs).
12. **Human Rights Commission:** Following the Equal Employment Opportunities (EEO) Commissioner's allegations of exploitation in the scheme in 2022, the MoI and officials have met with the EEO Commissioner and the HRC to hear their concerns.
13. **Agencies:** The other key agencies involved in the RSE scheme including the Ministry of Foreign Affairs and Trade (MFAT), Ministry for Primary Industries (MPI), Ministry of Social Development (MSD), Housing and Urban Development (HUD), Ministry for Pacific Peoples (MPP) and Ministry of Health (MoH) are actively involved in our policy development across the various workstreams and have provided views on these options as set out below.

## Policy development of options

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### RSE has lifted the performance of the hort/vit sector and improved Pacific outcomes

14. The RSE scheme has been transformative for both the horticulture and viticulture (hort/vit) industries in New Zealand, and for many Pacific communities through remittances and skills development. In simple monetary terms for New Zealand, hort/vit has grown from \$2.5 billion in annual export earnings in 2007 to close to \$7 billion and is now our fourth largest primary sector export earner<sup>1</sup>. Similarly for the Pacific, in 2018/2019 (the most recent 'normal' RSE year) remittances from RSE workers to Pacific countries were estimated at between \$67-101 million (\$6,000 - 9,000 per worker).
15. The hort/vit industry requires significant numbers of workers at critical times of the year to ensure the most productive use of land. While some labour-saving technology is in use, there are no current cost-effective alternatives to seasonal labour (such as robotic pickers). Seasonal labour shortages are persistent, driven by a lack of job seekers available in New Zealand for seasonal work, the declining rural population, and the

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<sup>1</sup> [Situation and Outlook for Primary Industries \(SOPI\) December 2022 \(mpi.govt.nz\)](https://www.mpi.govt.nz/situation-and-outlook-for-primary-industries-sopi-december-2022/)

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lower desirability of seasonal employment compared to more secure work. This means that RSE is a key intervention to provide access to productive seasonal labour that the sector has relied on for its growth in profitability over recent years.

### **But overall we think changes are required to ensure it remains sustainable**

16. When the RSE scheme was established in 2006, it was done so to support a ‘triple win’: the sharing of labour mobility benefits across the hort/vit industry, RSE workers, and Pacific economies. Collective responsibility across stakeholders and the sharing of the benefits has eroded over time through industry and the RSE scheme’s growth, lack of accountability and compliance mechanisms, and change of personnel and organisational arrangements. This fragmentation and dilution of the original scheme design has led to inequitable distribution of costs and benefits (particularly for RSE workers and Pacific sending countries), and an inability for all parties to adapt to changed conditions brought about by growth of the scheme and industry. The current operation of the scheme is unsustainable, and the revision of policy settings to ensure they allow the scheme to continually adapt and evolve sustainably is required.

### **System settings could be improved and streamlined**

17. Since the inception of the RSE scheme in 2007, there has been no real change in the structure of its administrative system. Sustained growth from 5,000 to 19,000 workers in the intervening years has resulted in the system being placed under immense strain. This, in turn has reduced the effectiveness of each of the component parts and has contributed to many of the current issues, both public and within agencies. The result is an RSE scheme more fragmented and less sustainable today than when it was first created.
18. It is clear to us and reiterated through stakeholder consultation and relevant research that the administrative system of the RSE scheme is underperforming in its various intended functions. The effectiveness of RSE worker cap and allocation settings, administration of labour market testing, integrity of the compliance and enforcement framework, and the ability of visas to meet the flexibility demands of workers and employers are all dependant on the supporting administrative system and processes.
19. System-focussed options are discussed in further detail below, and visually represented in the “**System Administration diagram**”.

### **RSE worker protections could be strengthened and benefits shared more equitably**

20. Over the years, a range of issues have arisen in the scheme in relation to worker wellbeing. There have been reports of exploitation, and growing concerns expressed about unfair distribution of the costs and benefits of the scheme for RSE workers as well as Pacific sending countries more widely. There is a need to review the scheme to ensure RSE workers’ rights and wellbeing are safeguarded and improved.

#### *Ola Manuia Pacific RSE Health and Wellbeing framework*

21. During the COVID-19 pandemic, a range of pastoral care issues were identified, highlighting that more needed to be done for Pacific workers so that they do not become vulnerable to exploitation. While community support for RSE workers has not been prevalent in the scheme in previous years, the impacts of lockdowns, workers being unable to repatriate back to their Pacific home countries and reconnect with their families, and lack of work in off-seasons necessitated additional need for support for these workers from the community. The pandemic also identified a lack of knowledge



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by RSE employers in understanding and dealing with RSE workers from an employment and cultural perspective. While RSE employers have certain pastoral care obligations (discussed further below), community and government agencies have grappled with the question regarding whose role it is to lead the overall health and wellbeing of RSE workers.

22. These factors have led to greater consideration of how to address the pastoral care of Pacific RSE workers more consistently, with an enhanced focus on health and wellbeing. In this context, the ***Ola Manuia Pacific RSE Health and Wellbeing Framework*** was developed by INZ and Te Whatu Ora to bring together research and learnings over the past few years and call for a collective response to pastoral care, with a broader focus on the health and wellbeing of workers. We are not consulting on this framework, but it has been provided as background material.
23. Development of *Ola Manuia* involved asking RSE workers in Hawke's Bay what health and wellbeing means to them, and what good pastoral care looks like. Similar questions were also put to some RSE employers. The *Ola Manuia* framework centres the health and wellbeing of the RSE worker on five *pou* (pillars): Sense of purpose, spiritual wellbeing, physical wellbeing, mental wellbeing and connectedness. Themes and an action plan have now been developed to accompany the framework and have been launched in Hawke's Bay. This framework was mentioned at PLMAM where it was well received by stakeholders, and has directly informed the worker-focussed policy review workstreams.
24. In the context of the need to ensure a fair balance of the benefits (and costs) of the scheme for to the worker, we note that there are a range of options, some of which could ultimately be progressed on the basis of how far the Government wishes to go to achieve this balance. Options are described in detail under each workstream, and visually represented in three overall worker-focussed options sets below.
25. The "**Worker wellbeing – possible approaches**" diagram shows a range of increasingly higher, more transparent standards which will result in improved conditions and wellbeing for RSE workers, and a fairer share of benefits from the scheme. Ultimately, the Ministerial and Cabinet decisions for this review will need to balance the benefits to the worker with resulting costs to employers. This trade-off will need to be considered alongside the set of administrative system options, which promote flexibility and certainty in the scheme, benefiting employers and addressing issues identified by them in consultation.
26. Worker-focussed options are discussed in further detail below.

### **Pacific impacts need to be better understood**

27. In response to concerns raised by the Pacific countries on the impact of labour mobility schemes on their domestic labour shortages, we are also in dialogue with the Pacific countries to obtain a clear view of these issues to identify what mitigations by New Zealand they would find useful. Potential mechanisms may include capping the number of years a worker can participate in the scheme, and/or requirements on employers to recruit from different villages and/or different Pacific countries.
28. There are no specific policy options included in this consultation document in this space. Any options in this space will need clear endorsement from Pacific countries.

### **The big picture**

29. The worker-focussed options for consultation promote higher, more transparent standards in order to achieve improved conditions and wellbeing for RSE workers. Some of these options may lead to higher costs for employers in some areas, but may be necessary to ensure the overall sustainability of the scheme and maintain social license for the scheme. If agreed, these changes will be implemented hand in hand with the administrative system options providing greater flexibility and certainty, which will be beneficial to employers.
  
30. We note that resolving the identified issues in the RSE scheme as part of the current policy review does not guarantee either a productive hort/vit sector, or our desired development outcomes in the Pacific long-term. Further work will be required following this review to cement the pathway forward with stakeholders for hort/vit as a whole. Similarly, RSE exists as a labour mobility scheme in partnership with the Pacific. The current review has reinforced the need for an agreed cross-government Pacific labour mobility strategy which articulate the goals and outcomes of our Pacific labour mobility initiatives. While RSE is not the single lever for a productive hort/vit sector or development outcomes in the Pacific, it provides a unique point of leverage in both contexts.

## Options for consultation: System-focussed

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### Cap

31. The RSE worker cap is a mechanism that restricts the total supply of RSE workers that employers in the RSE scheme can access each year.

*What these options are aiming to address*

32. There is currently no prescribed methodology for setting the cap. Ad-hoc processes have evolved over time, which are subjective, lack transparency and are subject to significant pressure from stakeholders. Industry growth estimates are difficult to verify. The current process for the annual review of the cap does not provide employers with certainty to encourage long term planning and investment. Pacific governments do not have clarity on the level of demand for workers that will be placed on their workforces.

*Considerations*

33. The primary intent of the cap when it was introduced was to mitigate at a national level the negative labour market effects of bringing RSE workers onshore, ensuring that New Zealanders are not widely displaced. It has also created several other second-order impacts including:
- Creating tension in the labour market that incentivises employers to invest in increased productivity or innovation,
  - Encouraging employers to seek labour from elsewhere in the wider labour pool e.g., working holiday makers, students, MSD clients or other groups,
  - Providing certainty to Pacific Island countries on the labour force impact that might occur each year because of New Zealand's RSE scheme.
34. If the cap were removed then there would be no need for an allocation process. The allocation process could be an effective tool to reward good performance.

*Options for your feedback*

35. Options for consultation are set out below:
- Multi-year cap.** This option could be applied to any of the cap setting options outlined below. It would provide greater certainty to employers and encourage them to make capital investments including in purpose-built worker accommodation. There is, however, a risk that the cap is less able to respond to changes in economic or labour market conditions in outyears. This risk could be mitigated by instituting a mechanism for review of the cap if circumstances changed but would reduce the value of instituting a multi-year cap.
  - Retain the current (status quo) approach.** The industry advises its annual needs and MBIE works with other government agencies to balance the various factors including labour market availability, housing availability, expansion of hectares/crop production, Pacific Island country interests to determine a cap number. This process does not have a clear methodology and is not transparent to industry, RSE workers or Pacific Island countries. It is difficult to know whether the number of workers sought by industry is a true reflection of need.



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- c. **Use a labour supply/demand model.** In 2015/16, government and industry jointly commissioned the New Zealand Institute of Economic Research (NZIER) to develop a model to assess the available supply of New Zealand labour for the hort/vit industry against the industry's demand for labour to determine the number of RSE workers who would be needed each year. The NZIER model was comprehensive and produced generally high quality data, however, there were gaps in data availability in some areas which could potentially reduce the confidence of stakeholders in the results. Further modelling could find ways to address the data limitations to further increase confidence in the reliability of the model. The base methodology for a supply/demand model, therefore, already exists although it would benefit from a review to ensure it is robust and fit-for-purpose. The model would provide an objective and transparent data-based approach to setting the cap.
- d. **Use available data as a base to inform engagement with stakeholders to balance the factors for consideration in setting a cap.** This would include the supply/demand model for the hort/vit industry set out above and other available data sources. The key stakeholder groups (unions, industry and government agencies) would use this data to inform discussions about the level of the cap to recommend to the Minister. This would enhance the current approach. Any data limitations could be moderated by the stakeholder review..
- e. **Government and industry agree a workforce plan which includes targets/performance measures for industry.** A decision matrix would be used to determine changes to the cap according to the proportion of industry targets met against labour supply changes. This approach would set targets for industry performance, balanced against labour market conditions but would require considerable resources to develop, report on and verify performance and may not account directly for the industry's actual labour requirements. Performance measures could include the percentage of seasonal jobs filled by New Zealanders or the number of worker accommodation units built. Industry would report on its achievements against the targets and this would be considered alongside labour market conditions.
- f. **Remove the cap and allow the number of RSE workers required each season to be determined by industry demand.** Use of a strong Labour Market Test (LMT) would provide assurance that employers are making genuine attempts to employ New Zealanders. This would remove the requirements on MBIE to administer a cap setting and allocation process and would enable employers to have unfettered access to RSE workers. It would, however, reduce incentives on the industry to ensure available New Zealanders were employed first and to innovate to increase productivity. If removal of the cap led to a significant increase in the number of RSE workers it may have significant negative effects on the local labour forces of some Pacific countries. Many Pacific countries support the cap as a protective measure against the stripping of their working age population from their workforces. There may also be environmental impacts (for example, increased pressure on water supply) from increased industry production. Removal of the cap could increase pressure on housing supply and would continue to be a limiting factor on the expansion of the scheme.

## Allocation

36. The function of the allocation process is to distribute the agreed-upon cap across employers in the RSE system. If there was no cap or the demand for RSE workers by employers is lower than the cap, an allocation process would not be required.
37. Once employers have received their allocation, they go through the recruitment process which includes seeking an 'Agreement to Recruit' (AtR) from INZ that allows employers to offer employment to RSE workers provided they meet certain requirements.

### *What these options are aiming to address*

38. The current approach to allocation has inadvertently benefitted large employers who have been in the scheme longest, compared to those who are relatively new to the scheme. The current approach may incentivise employers, in some cases, to inflate the number of workers they require to maximise their allocation, knowing they will get a pro-rated proportion of their request. As with the cap setting process, an annual allocation limits employers' confidence to plan investments beyond the current year.

### *Considerations*

39. Assuming the cap remains in place, allocation based on performance measures has the potential to greatly increase the effectiveness of other workstreams, like worker wellbeing, compliance and the labour market test and create a more robust and integrated RSE system.
40. Labour allocation under the RSE scheme is the core issue for employers as demand for labour is the reason for employer participation in the RSE scheme. Because of this, allocation is a vital lever to drive behavioural outcomes in the scheme and MBIE considers a performance-based allocation criteria as an essential linkage. Allocation based on performance measures has the potential to greatly increase the effectiveness of other workstreams, such as worker wellbeing, compliance and the labour market test and create a more robust and integrated RSE system.

### *Previous processes*

41. Prior to 2022, allocation was undertaken annually on a pro-rata allocation methodology based on reported employer demand. Any increase to the cap would be distributed to existing employers as a percentage of the number of additional workers requested by employers. New entrant employers received 10 workers in their first year.
42. In 2022, the National Labour Governance Group agreed to change the approach in response to the short timeframe in which a decision needed to be made. This involved a methodology where most employers received the allocation increase they requested, except for 'outliers' whose requests were considerably larger than those of most employers. The requests of those outliers were partially met, with smaller employers being prioritised and receiving a greater percentage of their requested increase.

### *Options for your feedback*

43. Options for consultation include:
  - a. **Multi-year allocation process.** A multi-year allocation would require a multi-year cap to ensure that the allocation does not oversubscribe the cap should the cap change. This is not true in the other direction (i.e. you can enact a multi-year



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cap alongside an annual allocation). A multi-year allocation could be applied to any of the allocation process options set out below. As with the cap, multiyear allocation would provide greater certainty for employers and encourage them to make capital investments. However, multi-year allocation would not be conducive to using the allocation as a sanction against poor performance/breaches of the scheme and to reward good behaviour.

- b. **Retaining the pre-2022 process.** The cap increase is allocated by asking all employers to advise the number of workers they will need each month for the coming season. The overall total is compared to the total cap increase and each employer is granted an equal percentage of their additional request. This is a relatively simple, clear and cost-effective process to administer. It would, however, maintain the current problems identified with the largest employers who have been in the scheme longest being favoured and rewarding those who inflate their requests the most.
- c. **Industry led allocation.** Industry bodies would work together to recommend allocations to MBIE of RSE workers to individual employers. Allocations would be made within a regionally based distribution of the cap determined by government, based on labour market needs and the availability of New Zealand workers. If employers challenged the industry's proposed allocations, the relevant industry body would attempt to resolve it. If challenges were not able to be resolved, they would be referred to MBIE for decision. MBIE would make final decisions, confirming compliance with the process and approve the allocation, or request changes to be made.

This process is consistent with that adopted for the meat and seafood processing sector agreements.

- d. **2022 National Labour Governance Group agreed process.** All employers who seek an increase within a reasonable range would receive the full amount of their request. 'Outliers' whose request was significantly larger than most employers would receive greater scrutiny and be less likely to receive their full request. In order to provide a more equitable approach to allocation, smaller employers and more recent entrants to the scheme would receive a more generous proportion of their request than large long-standing employers with significant requests. This option would be clear and simple to administer. The range within which requests are deemed to be reasonable and are fully met would change with each allocation process and would be subject to a degree of subjectivity. Large and long-standing employers with significant requests based on genuine need may be dissatisfied.
- e. **Performance-based allocation criteria to determine the increase in allocation.** Employers would be asked to advise the number of workers they seek for the coming season. The allocation of the overall cap agreed for the year would then be determined by simple performance measures, e.g.:
  - i. RSE employers with a higher percentage of New Zealand workers would receive a greater allocation, taking into account regional variations of the availability of New Zealanders to undertake seasonal work
  - ii. Employers responsible for relatively minor breaches of the scheme's requirements (discussed in more detail in the Compliance section below) would not be eligible for any increase or their allocation would be reduced



- iii. Employers providing quality, purpose-built accommodation would be prioritised
- iv. Employers recruiting RSE workers from Pacific countries (or specific areas within countries) where there is a higher level of labour, and limiting their recruitment where there are concerns about labour shortage impacts.

This approach would incentivise desired behaviours and penalise minor breaches of the scheme. Measures would need to be limited to those where it was possible to get accurate information on whether employers were achieving them or not. A performance-based allocation process would, however, increase administrative complexity and additional resources would be required.

### **Labour Market Test**

- 44. The Labour Market Test (LMT) aims to prevent the displacement of New Zealanders that might otherwise gain employment in the hort/vit sector, through employers demonstrating that they have attempted to recruit New Zealanders in line with the 'New Zealanders first' principle of the scheme, before recruiting RSE workers. Currently, the LMT takes place annually when an employer submits an AtR request and at the RSE accreditation stage (every 2/3 years).

*What these options are aiming to address*

- 45. The current LMT is inefficient, time consuming and not fit for the purpose of ensuring employers are making genuine attempts to employ New Zealanders before RSE workers are sought. As well as the policy options outlined below, some operational improvements also have been identified to address issues experienced by both employers and government agencies in the LMT process.

*Considerations*

- 46. Although the cap is also used to mitigate national-level labour market impacts of RSE by maintaining tension between the amount of RSE labour available and the number requested by employers, there are significant differences in labour availability across (and within) regions. Therefore, MBIE considers there is still value in requiring employers to demonstrate efforts to recruit New Zealanders.
- 47. The LMT process should provide a transparent, understandable, and effective mechanism to ensure the 'New Zealanders first' principle, that works within the broader RSE system and integrate effectively into other system changes agreed through the policy review. To retain the ability to deal with structural change in the scheme, the options MBIE has considered are not necessarily mutually exclusive and could form part of a hybrid solution.

*The current process is time consuming and has multiple points of failure*

- 48. The LMT currently involves MSD and MBIE, and takes place at two stages - during RSE accreditation<sup>2</sup> and when the employer is seeking approval to recruit from offshore, through an AtR.
- 49. As the delegated decision maker, MBIE holds the responsibility to assess if an employer has made genuine attempts to recruit New Zealanders. However, employers

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<sup>2</sup> Currently RSE accreditation is required to be reassessed 2 years after initial granting, and every 3 years subsequently if an employer wishes to continue recruiting RSE workers.

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are required to engage with MSD to establish if there are local jobseekers available before their AtR is approved. To confirm this engagement, MBIE Immigration Officers contact MSD with the details of the AtR request, and MSD is asked to provide a recommendation to MSD in 10 days.

50. MSD makes the decision to support or not support the AtR request based on the level of employer engagement with MSD and their general circumstances. In rare cases, Immigration Officers may approve AtR applications and RSE accreditation without MSD's support, however, this is generally only done if an employer provides significant supplementary evidence of engaging with the broader New Zealand job market.

*MSD also develops a labour market plan with employers as part of their engagement*

51. As part of their engagement with employers, MSD may develop a labour market plan with employers, to ensure their labour needs are genuine. The MSD labour market plan is a relatively new process. In many cases the plan is followed up with a visit to the employer to understand more about their genuine attempts to recruit New Zealanders. The plan and visit to the employer also provide an opportunity for MSD to discuss barriers to New Zealanders undertaking seasonal work and how MSD can work in partnership with the employer to address such barriers.

*Stakeholders have expressed concern about the process, relating to the following:*

- a. Inefficiency of information collection and sharing, with re-collection and redundant assessment at different parts of the LMT process. This includes consultation delays between MSD, INZ and employers, slowing the response to labour force needs within tight seasonal timeframes.
- b. Difficulties with MSD referring suitable candidates within their labour pools, citing issues including:
  - i. A mismatch between location of work and MSD clients (e.g. who often do not have access to reliable transport)
  - ii. The physically demanding nature of the work
  - iii. The temporary nature of work and limited long-term opportunities in the hort/vit industries.
- c. Wide variability in labour force availability across, and within regions. Labour force data is not trusted by employers and difficulties exist in tracking MSD client referrals.
- d. Employers have raised difficulties in retention of New Zealand staff due to the seasonal nature of the work. This is particularly difficult for rural areas, where transport options for workers are limited and difficult to facilitate.
- e. Concern from employers about the different standards of LMT assessment across regions, especially when standards are not clearly communicated prior to assessment. This is particularly relevant in regions where the threshold for the LMT is perceived to be higher by employers.



*Operational improvements may solve many of these issues*

52. After consulting with INZ and MSD, MBIE regards the following efficiency improvements could be pursued irrespective of any new policy approach chosen (except for LMT removal):
- a. Integrate the INZ AtR documentation with the MSD labour market plan to decrease duplication.
  - b. Pre-submission of AtR documentation to MSD, to speed up the consultation and AtR approval process.
  - c. Privacy waivers to facilitate the transfer of information and documentation across INZ and MSD to increase transparency.
  - d. Facilitate communication between Immigration Officers and MSD staff in local offices to reflect the specific circumstances of each employer and strengthen interagency communication.
  - e. Increased transparency and communications to the industry on the standards required to meet the LMT, including suggested measures to recruit New Zealand staff.
53. The development of an online portal for the submission of AtR documents has also been suggested. As the AtR process is currently paper-based and generally time-consuming, the shift from a paper-based application to an online platform would present advantages. These advantages include the opportunity to digitise documentation and streamline the process. However, significant resources are likely required to set up such a system and this option would need to be pursued through INZ's ongoing operational review.

*Options for your feedback*

54. Options for consultation include:
- a. **Maintaining the Status Quo.**
  - b. **LMT Removal.** Complete removal of the LMT would reduce significant time and resource costs for employers/Government and would address employer concerns of bias across regions. However, it does not address the labour market effects of RSE at the local level and places no requirement on employers to make genuine efforts to employ New Zealanders.
  - c. **Standards-based approach.** A universal standard would clarify the expectations on employers and make obligations easier to meet. This option also presents the opportunity to add specific regional standards in consultation with MSD to be more reflective of different labour markets.

This option would offer more consistency and uniformity across the system, providing easier assessment while maintaining much of the current process. It also allows MBIE and MSD to align their views prior to an upcoming season, should regional standards be added. However, this option is not necessarily as adaptive to individual employers and would require robust clarification on the roles and responsibilities of the agencies involved. If regionally based standards were adopted, this would require good communication with industry.



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- d. **Accreditation only approach.** Removal of the LMT at the annual AtR Stage, with retention of the LMT as a part of the 2/3-year accreditation process with a view to streamline the AtR process. A function for spot-checks at any point could be incorporated if concerns were raised (e.g. by MSD) about an employer's attempts to employ New Zealanders first. We note that an inverse approach could be taken (removal of LMT at the accreditation stage and maintaining the annual AtR LMT). However, this is a change that stakeholders are unlikely to perceive as significant, as the current annual process would remain in place with the same issues as currently described – therefore this has not been raised as a discrete option.

The 'accreditation only' option would reduce the time and resource costs for Government/employers annually and can be considered as a higher trust model that provides more autonomy to employers. However, this option is reactive as opposed to proactive, and would only be able to assess past behaviour. It is also not reactive to short-term changes in labour market conditions (e.g. a sudden rise in unemployment).

- e. **RSE standard of employment.** Employers could be required to advertise roles for New Zealanders with the identical pay and conditions to those offered for RSE workers, to satisfy the LMT. This option would likely make use of many of the established processes already in place.

This option guarantees New Zealanders greater parity of benefits closer to that of RSE workers, for example transport costs, minimum guaranteed hours and pay rates. It may result in hort/vit jobs being more attractive to New Zealanders. The benefits provided to RSE workers are provided for specific reasons (e.g. duty of care, exploitation risks, benefits to Pacific nations).

## Compliance

*What these options are aiming to address*

55. There is a need for a stronger, more comprehensive compliance framework to oversee the RSE scheme. Without this, there is greater possibility of negative outcomes in the scheme, including the prevalence of exploitation and mistreatment of workers. A stronger framework includes having sufficient resources to be able to implement it effectively.
56. The delivery of the RSE scheme could be lifted with a clearer and more robust compliance system, when associated with clearer, higher standards, greater clarity as to those standards, a stronger worker voice and incentives for good performance.

*Considerations*

57. RSE status and the scheme's associated compliance framework is meant to provide recognition for employers who meet the high standards intended of the scheme. This includes things like good labour market performance, including in the employment of New Zealanders (hence the name "Recognised"), and pastoral care provision to RSE workers. Without robust compliance, the purposes of RSE will be undermined.
58. Because the range of potential breaches specified in the RSE immigration instructions is very broad, and sometimes normative (e.g. 'reasonable' or 'adequate'), decision-making on whether a breach which is more than minor has occurred can be difficult.



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59. All the options for improved compliance will require additional resources to create the systems and definitions needed. It will require an ongoing commitment to tending to the scheme, observing what is working and what is not, and adjusting as needed. It will also require a much closer involvement of stakeholders in development and ensuring delivery of compliance, both to ensure acceptance of the compliance approach and inform, with very practical knowledge, what will work on the ground.
60. As previously described with respect to the allocation process, the loss of access to RSE labour is a vital component of an effective compliance system. Labour is the primary driver for employer participation in RSE, and the ability to reduce access to this would be an effective deterrent.
61. Complexity does exist when determining why and how this access to labour should be restricted, as often it is not just the employment conditions of an RSE worker at issue, but also the whole picture of an RSE employer's overall practice (including New Zealand workers and workforce development generally).
62. Pacific representatives like the Pacific liaisons in New Zealand and the Labour Sending Units in some Pacific countries are interested in how they might feed into a more effective compliance system. These stakeholders have advised that they often hear of issues when workers return to the Pacific or workers are offered contracts, making them a valuable source of information.
63. A clearer and more robust compliance system, when associated with higher standards, greater clarity on those standards, enablement of worker voice and incentives for good performance will provide a progressive direction of travel for the hort/vit sector.
64. Additionally, agencies have suggested there may be a role for an independent party (e.g. an Ombudsman-type function) to raise issues occurring within the scheme.

### *Options for your feedback:*

65. These options are not mutually exclusive, and will be most effective if implemented as a unified system:
  - a. **Establish more clearly what constitutes a breach of RSE requirements 'other than of a minor nature'.** Provide clearly that some breaches *will* attract a sanction, such as providing inaccurate information (including incomplete, false or misleading information), breaching statutory employment minima, breach of employment agreement that results in penalty being applied by the Employment Relations Authority or court – or findings of unjustifiable dismissal or action, Health and Safety infringement/improvement/ prohibition notices, failure to meet pastoral care as determined by responsible authority. Repeated minor breaches, whether of the same type or not, are to be sanctionable as well.
  - b. **Establish a scale of breaches of RSE requirements.** A breach leading to a sanction to be classified based on: level of harm/impact on individuals; whether breach was intentional / negligent/ inadvertent; type of behaviour/ seriousness of breach; who made gains or losses and if any mitigation occurs. Part of a 'graduated' response could be geographic or work-unit specific responses for lesser or first breaches, to send a signal.
  - c. **Establish clear process for how complaints and how issues are to be addressed.** This includes clear allocation of responsibilities for gathering evidence, recommendations on action and decision-making (included in this are



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how judgements concerning removal or constraints on access to labour should be made).

- d. **Increase RSE worker voice and agency in understanding rights, raising concerns and getting resolution.** Improving the information and channels for RSE workers (and employers) to understand what their rights are under RSE and ensuring there are routes for them to raise issues themselves or through representatives (including unions). Where those concerns are not resolved, INZ is to be alerted and these can be considered in the RSE or AtR decisions.
- e. **Enhanced inspection regime.** Increase the resources available for inspection activity, with clarity on what inspection covers (in particular clarity on specific requirements, such as pastoral care including accommodation) and the consequences of breaches being identified. This would be included in a compliance strategy and would be aimed at improving the performance of the sector and the other objectives of RSE. It would most likely require increased training for inspectors and a specific RSE inspectorate to cover all potential breaches.
- f. **Incentives for good performance to be developed with stakeholders.** There are sector schemes for meeting compliance requirements, like New Zealand Good Agricultural Practice (NZGAP) and New Zealand Ethical Employers (NZEE) that are audited. There is an opportunity to consider whether INZ decision making could be streamlined for those employers who are part of these schemes.

There are other areas which could form part of a criteria for access to greater allocations under AtRs. These include demonstrated development of RSE and New Zealand workers through training or career progression, or, working with Pacific Island states to provide employment or enhanced development outcomes in the Pacific. A possible step would be to introduce a 'gold' standard for RSE (although further work is required to determine the exact standard), where reaching that standard could reduce compliance requirements (leading to increased self-regulation), increase flexibility available and/or increase allocation of RSE workers. Identifying the most incentivising combination of benefits and standards will require work with the sector and other stakeholders.

## Flexibility

*What these options are aiming to address*

66. The current scheme settings have limited flexibility for RSE workers with considerable administrative burden for workers, employers and INZ. RSE visas are single-entry only, which creates a barrier for workers needing to return to their homes for short periods. The visa restricts the ability of RSE workers once they are in New Zealand to move between employers, or to different roles or regions and often requires a degree of pre-planning that is not conducive to responding to rapidly evolving circumstances (i.e. weather events). Concerns have also been raised about the RSE visa being directly linked to a particular employer and whether this increases the risk of exploitation of workers.

*Considerations*

67. The RSE scheme was established within very confined policy settings, without much flexibility, to protect the purpose of the scheme and mitigate potential risks. The



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administrative system of the scheme reflects this, and as a result many of the options for change with respect to flexibility will require adjustments in both the administration and potentially other policy options for change to the scheme. The section below outlines several different options for both employers and RSE workers.

68. A multi-year visa would need to be linked to a multi-year cap setting process to be effective. Further issues include whether annual AtRs and updated contracts annually should be required, and whether a single-season visa should be retained regardless.
69. The option to remove the link between RSE workers and a specific employer may reduce the risk of exploitation, but would significantly complicate the administration of the scheme in terms of monitoring the location of workers and ensuring their well-being. Currently, migrant exploitation risks are mitigated through the scheme's requirements for pastoral care, worker wellbeing and accommodation standards.

### *Multi-entry visas*

70. The single-entry restriction on the RSE limited visa limits workers from returning home for family emergencies, funerals/tangi or other significant events. Currently RSE workers who leave on a short-term basis, with intentions of returning to complete the season, are required to reapply and cover costs for a second visa.
71. Multi-entry visas would be reasonably straightforward to implement for RSE workers, without requiring fundamental, structural changes to the administrative system settings. Guidance for employers and workers could be offered on the number of entries and/or allowable reasons for leaving and re-entering. Unlike the cost of the return flight of a RSE worker at the beginning and end of their visa, which is shared between 50% each by the worker and employer, returns for family reasons within the visa period would most likely fall on the worker. Guidance would be required to clarify the allocation of these costs.

### *Multi-year visas*

72. The current RSE visa limits workers to working for a seven-month season of work in New Zealand (nine months for workers from Tuvalu and Kiribati). This restricts certainty for both RSE workers and employers in the scheme. It does not allow workers an assurance that they can participate in the scheme for longer than one season, nor employers with certainty in their medium-term workforce planning.
73. RSE employers and workers have both indicated that one visa valid for multiple consecutive (e.g. three) seasons would improve certainty for all parties, enabling greater forward planning. A multi-year visa would also reduce visa and administration costs for all parties. It has also been suggested that this greater certainty may facilitate more opportunities for the RSE worker to upskill.
74. Issues to be worked through include:
  - a. How to manage employment agreements and AtRs
  - b. Appropriate length of a multi-year visa, and
  - c. A multi-year visa would need to be linked to a multi-year cap setting process to be workable.

*Visas not tied to one employer*

75. The current settings tie RSE worker visas to one RSE employer, limiting the worker's ability to move employers while in the scheme. RSE workers can move employers but require a new visa to do so, or employers need to have previously agreed to a joint AtR. Should workers have concerns about their employer or their working conditions, there is potential for this restriction to have a negative impact on workers' wellbeing.
76. Concern has been raised by the ILO and, more recently, the Human Rights Commission (HRC) about this element of the scheme, who assert that this creates a risk of migrant exploitation. This is discussed further below in worker-focussed options on rights and risk of exploitation.
77. Currently, these migrant exploitation risks are mitigated through the scheme's requirements for pastoral care, worker wellbeing and accommodation standards. It should be noted that these will be further strengthened through the worker-focussed options which are set out in following sections of this paper. In circumstances where there have been cases of poor treatment of RSE workers or significant disagreements, INZ has been able to make provision for the workers involved to be moved to a new employer.
78. Changing this aspect of the scheme to allow RSE workers to move between employers would be a fundamental change to the way the scheme operates. If this setting were to change, it would need to be restricted to other RSE employers to maintain the intent and purpose of the scheme.

The following factors would need to be considered:

- a. If a worker decided to move employers, who would be responsible for the current obligation to pay half of the cost of return fares would need to be clarified. This could either be the initial employer, an apportionment between a worker's RSE employers or shifting the cost to the worker
- b. Which party would be responsible for notifying INZ of the employer an RSE worker is working for at any one time
- c. It may be difficult to ensure that RSE workers are only moving between RSE employers and are not moving outside the scheme or overstaying.

*Other options for flexibility*

79. In the case that the fundamental settings of tying a RSE worker's visas to one employer remains, further flexibility options include:
  - a. Removing the requirement for a new AtR when a worker changes roles or locations within a region but remains with the same employer. Care would need to be taken to ensure that pastoral requirements were maintained across each location.
  - b. Allowing workers to be moved between regions without a new AtR.
  - c. Removing the requirement for a new visa application and fee when a worker changes employers; amending the existing visa with the new employer's name instead. This would reduce visa costs for workers and administrative costs for INZ.



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- d. Flexibility for extreme events could be considered, such as the ability for workers to move locations without needing a new AtR or to shift between employers through a variation in conditions of the existing RSE visa, rather than requiring a new visa. This was enabled through Special Direction during the COVID-19 pandemic. Temporary flexibility has also been put in place in response to the impacts of Cyclone Gabrielle.

*Options for your feedback*

80. Options for consultation include:

- a. **Multi-entry visas** to enable RSE workers to return home and re-enter New Zealand during the season without needing to reapply and cover costs for a second visa
- b. **Multi-year visas** enabling workers to return for successive seven month seasons (or nine months for those from Tuvalu and Kiribati) – not increasing the length of their season but reducing the number of visa applications they need to make
- c. **Visas not tied to one employer** to enable RSE workers to move between RSE employers
- d. **Removing the requirement for a new Agreement to Recruit when a worker changes roles or locations within a region but remains with the same employer** to reduce administrative burden for employers and INZ
- e. **Allowing workers to be moved between regions without a new Agreement to Recruit**, reducing the administrative burden for employers and INZ
- f. **Enabling the conditions of a RSE visa to be varied when a worker changes employers**, removing the cost associated with applying for a new visa and reducing administrative costs for INZ.

## Options for consultation: Worker-focussed

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### Accommodation

*What these options are aiming to address*

81. RSE employers are required to make available suitable accommodation at a reasonable cost. However, accommodation provided is of varying quality, and some facilities do not meet the standard expected by RSE workers or the New Zealand public. The impact of RSE accommodation on housing supply for New Zealanders needs to be minimised. Further work could also be done to support employers to construct purpose-built RSE accommodation, particularly given that the use of residential housing for RSE accommodation is not permitted in many regions.
82. The accommodation standards are not sufficiently clear and specific in some areas. Standards rely on wording such as “adequate” and “sufficient”. This leaves the standards open to interpretation and has allowed for overcrowding, unhealthy bedding, limited cooking facilities and equipment, insecure and limited storage space, and no or poor internet connectivity.

*Overview of the RSE accommodation status quo*

83. Immigration instructions require RSE employers to make available “suitable” accommodation at a reasonable cost. Employers must provide full details of how they plan to address pastoral care and health and safety requirements, including accommodation [WH1.10.1(f) refers].
84. The standards elaborating on what is meant by “suitable” accommodation sit outside of instructions. The standards (summarised in **Table 1** below) were last updated in 2017 and are based on the WorkSafe standards for worker accommodation. The RSE standards are presented as the minimum requirements, and state that employers must also:
  - a. Comply with all legislative requirements, including the Residential Tenancies Act 1986 (for relevant accommodation types) and the Housing Improvement Regulations 1947.
  - b. Meet any additional Territorial Authority requirements (which may go above and beyond the RSE standards), for example covenants restricting use of RSE accommodation for other purposes, or different minimum dimensions for room sizes.
85. A range of accommodation types are used for the RSE scheme, including purpose-built accommodation, residential housing, and short-term accommodation such as motels. The application of the standards to worker accommodation is complex as the rules vary depending on the accommodation type.

*Considerations*

86. Updates to the RSE accommodation standards outlined reflect feedback from consultation and recent reports on issues with RSE accommodation. These updates would clarify requirements through greater specificity, for instance by replacing the requirement for “adequate personal storage space” and “sufficient” recreation space with dimensions to indicate the minimum expectations. The detailed requirements (such as minimum dimensions) would be worked through in consultation with stakeholders.



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87. INZ is proposing a new approach to assessing accommodation costs. This new approach will require that actual accommodation costs (i.e. rent) are separated from other related costs that are frequently bundled with rent costs (such as food and transport). This proposal is intended to make it easier to compare rent costs to the market, and to ensure that costs related to accommodation are “actual and verifiable” expenses as the existing settings require.
88. Currently, the lack of comprehensive data on RSE accommodation makes it difficult to assess whether more fundamental changes to the standards are necessary to make a difference in the quality of accommodation provision across the board. This is why more systematic data collection on accommodation types, occupancy (e.g. number of workers per bedroom/building), and ownership arrangements is recommended as a starting point to inform regular monitoring of whether the accommodation settings remain fit-for-purpose.
89. More systematic collection of data on the current stock of RSE accommodation could also inform measures to improve the management of supply, including whether any further intervention from central government is necessary to incentivise more purpose-built accommodation. This data could also assist in monitoring the impact of the RSE scheme on accommodation in areas where housing pressures may be changing over time.
90. Changes to the compliance framework for the overall RSE scheme will be crucial to realising improvements in the provision of accommodation. While the Residential Tenancies Act does offer protections for RSE workers in some accommodation types, this should not be viewed as the main compliance pathway to enforce the accommodation standards. This is because the employment relationship exacerbates the power imbalance between the workers and the employer as landlord. This means that mechanisms such as the Tenancy Tribunal<sup>3</sup> are less likely to be useful to RSE workers than bespoke mechanisms built into the RSE system.

### *Options for your feedback*

91. The RSE accommodation standards are the key lever for changing the minimum standards of accommodation expected of employers participating in the RSE scheme.
92. The following options set out a pathway to tighten and clarify the existing RSE accommodation standards, and for more fundamental changes:
  - a. **Updating the RSE accommodation standards** to provide greater specificity, require employers to provide affordable or free Wi-Fi access, set a maximum number of workers per bedroom, ban the use of bunk beds, and increase bedroom size requirements (proposals outlined in Annex One)
  - b. **Requiring employers to provide workers with recent photos and details of accommodation** (such as room-sharing arrangements) at the point of recruitment, to ensure workers know what to expect prior to their arrival in New Zealand, as well as a clear pathway for raising any concerns they may have about their accommodation
  - c. Introducing a **methodology to assess the reasonableness of proposed accommodation costs/cost increases**

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<sup>3</sup> However, it should still be made clear to workers and employers that where the Residential Tenancies Act applies, it provides options for workers to enforce their rights as tenants.



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- d. Starting to **regularly collect and collate a wider range of data from RSE employers on their accommodation**<sup>4</sup> to improve monitoring of accommodation supply and demand, as well as informing further improvements to the standards. This could also include monitoring complaints and surveying workers regularly on their satisfaction with the accommodation.
  - e. Putting in place requirements and/or incentives (such as linking to increases in allocation) to **minimise/transition away from the use of temporary/holiday accommodation** for RSE workers
  - f. Setting up more **dedicated resources to provide more hands-on assistance with the process of constructing purpose-built accommodation**, including help with applications for finance/government grants and working with councils
93. Some of the options proposed for consultation, such as setting a maximum number of workers per bedroom, would be more costly and could require transitional arrangements where existing RSE accommodation does not meet the new requirements.

*Table one - overview of current RSE accommodation standards and proposed initial changes*

<b>Current standards (summary)</b>	<b>Comment</b>	<b>Proposed changes</b>
<i>Section A: Buildings</i>		
<ul style="list-style-type: none"> <li>• Caravans and tents cannot be used</li> <li>• Must be built from permanent and weatherproof materials</li> <li>• Suitable thermal insulation</li> <li>• Must be kept clean and hygienic, in good order and condition</li> <li>• Adequate window coverings</li> <li>• Garages or other non-habitable structures should not be used</li> </ul>	<p>“Suitable thermal insulation” not as specific as the healthy homes standards</p>	<ul style="list-style-type: none"> <li>• Clarify that if the Residential Tenancies Act applies to the RSE accommodation (depends on its type), then the applicable insulation standards in the Healthy Homes regulations apply</li> </ul>
<i>Section B: Bedrooms</i>		
<ul style="list-style-type: none"> <li>• Minimum dimension requirements depending on the number of people (as well as meeting local authority requirements – noting these may apply boarding house guidelines for bedrooms with over 6 people)</li> <li>• Furnished with suitable beds, mattresses and bedding</li> <li>• Separate bed per person</li> <li>• Those sharing a bedroom should be same gender (unless otherwise agreed)</li> <li>• Furnished with cupboards/wardrobes for clothes/personal effects</li> </ul>	<p>The minimum space requirements for the number of people per bedroom are less than the requirements outlined in the Housing Improvement Regulations 1947. It would make sense to update the RSE standards to reflect these minimums since this legislation applies to RSE accommodation</p>	<ul style="list-style-type: none"> <li>• Update minimum space requirements to align with those in the Housing Improvement Regulations 1947</li> <li>• Specify the minimum space amount of storage space per person for clothes and personal effects must be [dimensions TBC].</li> <li>• Specify that bedding (including mattresses) must be hygienic and designed for adult use</li> </ul>

<sup>4</sup> While INZ and the Labour Inspectorate do hold some data, this is not yet systematically collated nor does it cover all the areas that would be desirable to inform further changes, such as the proportion of purpose-built accommodation.



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Current standards (summary)	Comment	Proposed changes
<ul style="list-style-type: none"> <li>Secure location for valuables must be provided</li> <li>Appropriate bedding based on regional/seasonal conditions</li> <li>Capacity of beds should be appropriate for several months of occupancy</li> </ul>		
<i>Section C: Cooking Facilities</i>		
<ul style="list-style-type: none"> <li>Facilities should be big enough to prepare food in and be of sufficient capacity for the number of residents</li> <li>At least 1.5m clear floor space on the working side of the stove and sink bench</li> <li>Suitable and adequate cooking equipment, utensils and appliances sufficient for the number of residents</li> <li>Hot water at the sink, sufficient for the number of residents</li> <li>Adequate ventilation (window space at least 1/10 of floor area with half of windows able to open)</li> <li>Enough cupboard space for storing non-perishable food, utensils and equipment, sufficient for the number of residents</li> <li>Cooking facilities should not be used as a bedroom</li> </ul>	<p>No guidance as to “big enough”, “sufficient capacity”, “suitable and adequate”, or “enough” in this context.</p>	<ul style="list-style-type: none"> <li>Specify minimum size requirements for kitchen facilities [dimensions TBC per number of residents], noting this can overlap with dining facilities if there is a shared kitchen/dining space</li> <li>Specify that adequate cooking equipment and utensils means enough for all cooking facilities (i.e. stoves/ovens) to be in use for meal preparation at the same time</li> <li>Specify minimum dimensions [TBC] for cupboard space per person, and that this should be lockable if the premises are not exclusively occupied by the RSE workers</li> </ul>
<i>Section D: Refrigeration</i>		
<ul style="list-style-type: none"> <li>Adequate fridge and freezer space for the food storage needs of the number of residents</li> </ul>	<p>No guidance as to what is “adequate”</p>	<ul style="list-style-type: none"> <li>Specify minimum dimensions for fridge and freezer space per person</li> </ul>
<i>Section E: Dining Facilities</i>		
<ul style="list-style-type: none"> <li>At least 1.1m<sup>2</sup> per person</li> <li>Tables and enough seating for all workers at one sitting</li> <li>Benches with backs fine, but should not be attached to the floor as this makes cleaning harder</li> <li>Adequate and sufficient equipment, utensils and appliances for dining of all residents</li> <li>Dining room should not be used as a bedroom</li> </ul>	<p>In this context it appears “adequate and sufficient” means enough utensils etc. for all residents to dine at the same time</p>	<ul style="list-style-type: none"> <li>Specify that adequate equipment and utensils means enough for all workers at one sitting</li> </ul>
<i>Section F: Casual Recreational Open Space (e.g. lounge room)</i>		
<ul style="list-style-type: none"> <li>The accommodation building should provide sufficient open</li> </ul>	<p>Unclear what “sufficient” means in this context, and</p>	<ul style="list-style-type: none"> <li>Specify minimum size per person for indoor</li> </ul>



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Current standards (summary)	Comment	Proposed changes
<p>space where the residents can relax, appropriate for the number of residents</p>	<p>whether the space should be indoors</p>	<p>recreational space OR that sufficient space should be provided for all workers to be seated in the indoor recreational space at one time</p>
<b>Section G: Washing facilities</b>		
<ul style="list-style-type: none"> <li>• Sufficient hand basins with sufficient hot and cold water capacity given the number of residents</li> <li>• Sufficient baths or showers given the number of residents (1 per 7 persons, though may differ depending on Territorial Authority requirements)</li> <li>• Each shower should have an attached dressing area, with a total floor area of at least 1 m<sup>2</sup></li> <li>• Washing facility should be a fully enclosed compartment (walls from floor to ceiling and lockable door) unless there are separate female facilities</li> </ul>	<p>No guidance as to “sufficient” hand basins or hot and cold water capacity</p>	<ul style="list-style-type: none"> <li>• Specify the number of hand basins per person</li> </ul>
<b>Section H: Laundry facilities</b>		
<ul style="list-style-type: none"> <li>• Sufficient laundry facilities, including a washing machine and laundry tub, with capacity for the number of residents</li> <li>• Sufficient space available to dry clothes adequately, given the number of residents</li> </ul>	<p>Lacking guidance on what “sufficient” means</p>	<ul style="list-style-type: none"> <li>• Specify the number of washing machines per person</li> </ul>
<b>Section I: Sanitary conveniences</b>		
<ul style="list-style-type: none"> <li>• Minimum of flushing toilet provided, capable of being locked, meeting building standards</li> <li>• Toilet facilities should be a fully enclosed compartment (walls from floor to ceiling and lockable door) unless there are separate female facilities</li> <li>• One bathroom and one toilet per 7 people (nothing Territorial Authority requirements may be more stringent)</li> <li>• Occupancy of the dwelling should not exceed capacity of the on-site wastewater system</li> </ul>	<p>N/A</p>	<p>N/A</p>
<b>Section J: Water</b>		
<ul style="list-style-type: none"> <li>• Clean, safe and wholesome drinking water that meets NZ drinking water standards, of sufficient capacity for the number of residents</li> <li>• Enough hot water for showers, baths, hand-basins, washing</li> </ul>	<p>While “sufficient” and “enough” are vague, the reference to the building code requirements gives guidance as to the minimum amount</p>	<p>N/A</p>

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<b>Current standards (summary)</b>	<b>Comment</b>	<b>Proposed changes</b>
<ul style="list-style-type: none"> <li>clothes, and cooking for the number of residents</li> <li>Amount of water per person per day is required to meet the NZ building code</li> </ul>		
<i>Section K: Lighting and ventilation</i>		
<ul style="list-style-type: none"> <li>All rooms adequately lit by natural and artificial lighting (latter minimum of 75 lux)</li> <li>Window areas should be at least equal to 1/10 of floor area</li> <li>Half the windows should be able to open</li> <li>Smoking not permitted indoors (with clear signage to indicate)</li> </ul>	N/A	N/A
<i>Section L: Heating</i>		
<ul style="list-style-type: none"> <li>Heating in at least one room – electric, gas, open fire, coal range, or space heater (and fuel) – excluding portable gas appliances without flues</li> <li>Appropriate heating provided based on regional and seasonal conditions</li> </ul>	<p>Do not reflect the Healthy Homes standards (qualifying heater) as these came into effect after the RSE standards were last updated</p> <p>Question about whether the Healthy Homes standards should be reflected in the heating standards here (which would extend them to RSE accommodation exempt from the RTA, i.e. purpose-built accommodation)</p>	<ul style="list-style-type: none"> <li>Clarify that if the Residential Tenancies Act applies to the RSE accommodation (depends on its type), then the applicable heating standards in the Healthy Homes regulations apply</li> </ul>
<i>Section M: Rubbish disposal</i>		
<ul style="list-style-type: none"> <li>Bins with tight-fitting lids</li> <li>Rubbish shouldn't be stored near accommodation, and should be disposed of to avoid health hazard/nuisance</li> <li>Sufficient rubbish bins for the number of residents</li> </ul>	Unclear what is "sufficient" but this probably depends on the size of bins, frequency of disposal, and worker behaviour (how much rubbish is generated per person)	N/A
<i>Section N: Fire Safety</i>		
<ul style="list-style-type: none"> <li>Complying smoke alarms in bedrooms and living areas</li> <li>Fire protection must meet local fire code and comply with all local fire safety by-laws</li> </ul>	N/A	N/A

## Health

*What these options are aiming to address*

94. RSE workers experience a range of health issues while on the scheme. This can lead to potential public health risks to Pacific countries. The lack of appropriate access to health services can also result in extra pressure on the New Zealand health system.

RSE workers tend to have a limited understanding of what their health insurance covers.

### *Considerations*

95. Equity means that people's needs rather than their social privileges guide the distribution of opportunities for wellbeing. The concept of equity in health is an ethical principle, closely related to human rights, in particular, the right of all humans to experience good health<sup>5</sup>.
96. Inequities in healthcare result in some of the following health issues being experienced by RSE workers while in New Zealand, including:
  - a. Poor general health arising from poor accommodation. Overcrowding can lead to issues with hygiene, contaminated food, and the inability to engage in physical activity, all of which can result in poor health outcomes
  - b. Poor general health arising from poor nutrition and care, as supplied by employers. Issues arising from diets that are both foreign to Pacific people and that are limited by financial resources
  - c. Sexual and reproductive health (contraception, testing and treatment of STIs, etc.)
  - d. Exposure to vaccine preventable diseases that RSE workers may have not received immunisations for such as: such as measles, Hep B, COVID-19, influenza
  - e. Non-communicable diseases/chronic conditions (cardiovascular disease (CVD), diabetes, mental health).
97. RSE workers should not be returning to the Pacific in a worse condition than when they first arrived. This includes accounting for potential public health risks to the Pacific Islands. RSE workers are at risk of bringing back vaccine preventable diseases to their home countries, where low immunisations and lack of appropriate health infrastructure could have catastrophic repercussions. Similarly, workers who may suffer issues as a result of work-related injuries may not be accessing ACC in New Zealand before they return home at the end of their seven or nine-month visa.
98. The lack of appropriate access to health services while on the scheme can result in extra pressure on the New Zealand health system, such as in outbreak management. There are a wide range of health conditions which are relatively inexpensive to treat and prevent, which furthermore prevent more serious health complications.

### *Access to healthcare*

99. RSE workers are not eligible for publicly funded healthcare. The health eligibility direction for publicly funded healthcare provides that migrant workers must be on a "work visa" for two years in order to qualify.

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<sup>5</sup> New Zealand recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health under article 12.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).



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100. There is the possibility that if a multi-year visa was implemented for RSE workers which allowed them to be in the country for at least 24 months in total (either on one visa or on two consecutive visas), they may qualify for publicly funded healthcare. For the majority of RSE workers on 7-month visas, this would need to be a four-year visa to bring them over 24 months in total. This may, however, not be practical for all RSE workers.
101. Consideration could be given to making RSE workers directly eligible for publicly funded healthcare through an upcoming review of the health eligibility directive being undertaken by the Ministry of Health.
102. The impact on the public health system of providing access to publicly funded healthcare for RSE workers would need to be considered, especially in the context of the currently limited screening requirements for RSE workers, discussed further below. If access to publicly funded healthcare is enabled, higher upfront healthcare screening requirements may be needed.

### *Health insurance*

103. Health insurance for RSE workers was originally required in the context that they are not eligible for publicly funded healthcare. RSE employers must, consequently, provide their workers access to “acceptable medical insurance”. This is not further defined in policy, however, possible exclusions such as pre-existing conditions, HIV, childbirth and pregnancy apply. Employers, workers and MoH representatives have indicated that the cover provided by current providers is insufficient and requested the standard be lifted. However, this is likely to increase the cost of the insurance. If access to publicly funded healthcare is obtained for RSE workers, the need for health insurance and resulting cost impacts would be significantly lessened.
104. Furthermore, common practice by employers is to choose the medical insurance cover they consider acceptable and offer a singular option to the worker, the cost of which is covered by the worker (usually through deductions). Workers and Pacific Island countries commonly report low understanding as to what health insurance is, what it covers, the costs involved, how to access it and how to purchase extra insurance if desired.
105. Further discussions are needed with the health insurance providers to assess the various options and provide costed proposals. Consideration will then need to be given to what is reasonable to charge, which will in turn be influenced by who covers the cost of insurance. Access to immunisations and screening will be particularly important to explore as part of this cover.

### *Removal of ban on HIV+ applicants*

106. Health screening requirements for RSE were originally set at a very low threshold for RSE workers by Cabinet, in order to not introduce cost and access barriers for Pacific workers. Consequently, in lieu of full medical screening, RSE limited visa applicants must undergo a chest X-Ray certificate (if the worker is from a country with a high incidence of TB) as well as a supplementary HIV test (if the worker is from a country with a high incidence of HIV). At the time, there was a high prevalence of TB in the Pacific region and a higher prevalence of HIV in Papua New Guinea than in other Pacific countries. Applicants who test positive for HIV are not eligible.
107. The ban on HIV+ applicants is inconsistent with other temporary entry policies, where the deciding factor is the potential to impose costs rather than a blanket ban for a

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specific condition. The ban in RSE policy has given rise to international criticism; and is furthermore difficult to justify as INZ removed HIV infection from the list of high cost health conditions likely to impose significant costs/demands on NZ's health services in 2021.

108. The main factor to consider in potential removal of this ban is the gap likely to be created in provision of health information and education more widely, which are currently provided at these screenings. Notably, as Samoa, Tonga and Vanuatu are on the low incidence TB list, no screening is currently undertaken in those countries as those countries are also not on the high incidence HIV list. MoH and MBIE are discussing alternative, onshore interventions to address this gap, such as RSE employer facilitation of health days for RSE workers. These interventions will be influenced by the decisions on publicly funded healthcare and insurance.

### *Options for your feedback*

109. Options for consultation include:

- a. **Consider whether partial or full access to publicly funded healthcare is possible;** or
- b. Make improvements to health insurance (not mutually exclusive):
  - i. **Define “acceptable” health insurance in policy according to a higher standard** (noting the higher cost implications). Potential items for inclusion could be pre-existing conditions, immunisations, screening, contraception, testing and treatment for sexually transmitted infections, and maternity care.
  - ii. **Mass procure the best deal for health insurance**, either through MBIE or with individual Pacific countries
  - iii. **Require employers to cover part or all of the health insurance**
  - iv. **Mandating health insurance information** as part of pre-departure training for RSE workers, and as part of employer induction upon arrival; and
- c. **Remove the blanket ban on HIV positive applicants.**

## Worker rights and exploitation risks

### *What these options are aiming to address*

110. RSE workers notably carry a particular vulnerability as a workforce, due to the combination of a number of high risk factors for migrant exploitation. These include language and cultural barriers, isolation from the wider community due to their housing usually being on their employer's site in a rural area, their visa being tied to one employer, and strong behavioural expectations sometimes placed on workers by their home country. There is inconsistent understanding among stakeholders as to the rights of RSE workers, and insufficient protection against exploitation.

### *Considerations*

111. Concerns about RSE workers' experience in the scheme have been particularly prominent in the latter half of 2022. The HRC published a report in December 2022 reiterating their concerns in the RSE scheme, including on the level of deductions, standard of living, and freedoms of association, movement, privacy and culture. We

have discussed these concerns with the EEO Commissioner and HRC representatives.

112. Options to enable RSE workers to transfer to another RSE employer are being considered under the flexibility workstream. INZ is currently able to transfer workers to another RSE employer in cases of exploitation.
113. The ILO, while recognising the RSE scheme as an example of best practice in labour mobility internationally, made a number of recommendations for RSE in their 2021 review: “Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards”. Further work including discussion with the ILO and MBIE Legal will be required to understand implications of this work and develop appropriate recommendations.

#### *Agency and basic rights*

114. Additional to the RSE rules in the scheme, some of the Pacific sending countries have their own codes of conduct which they require their RSE workers to agree to in order to participate in the scheme. In some cases, employers’ rules for their workers may be originating with these codes of conduct, aspects of which may be inconsistent with New Zealand human rights or employment law and societal norms. Some of these issues have been profiled by the HRC in their report.
115. We intend to discuss the Pacific codes of conduct with Pacific governments and to identify areas where clarification is required. This work is likely to lead to guidance for RSE employers on the scope of their obligations in these contexts, and will be progressed in discussion with Pacific sending countries.

#### *Visa options to protect against exploitation*

116. As discussed above as part of the flexibility workstream, the ILO and HRC have both recommended that visas should not be tied to one employer. The criticism is that this visa setting may be likely to lead to fear of repercussions from either or both of the employer and the worker’s home country, if they report exploitation or raise concerns. Further work is required to understand the human rights and labour law context of the current RSE scheme settings. We are consulting on the option of removing the visa from being tied to one employer under the flexibility workstream.
117. At the time the Migrant Exploitation Protection Visa (MEPV) was developed, RSE workers were excluded from eligibility given that the RSE policy review was to progress a bespoke solution which achieves the same outcomes. The RSE policy review was subsequently delayed due to the COVID-19 pandemic.
118. The MEPV allows migrant workers to transition easily to another employer in cases of exploitation, granting open work rights to the visa holder. A similar solution for RSE would be likely to enable RSE workers to transfer easily to another RSE employer (only), as opposed to being granted open work rights in NZ. Key concerns with this option are the potential loss or erosion of pastoral care obligations, loss of awareness as to where the workers are and impact on the labour market including regionally, and how this would work and be managed operationally. It has been suggested that INZ may be better able to monitor and enforce compliance through a strengthened compliance framework as discussed above under the current visa settings than under a change in this area.

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119. Initial feedback from RSE employers is divided on this option. Some employers expressed concern over the loss or erosion of pastoral care obligations, while others were confident that enabling worker agency in this way would effectively cancel any exploitative behaviour in the scheme.
120. INZ is currently able to transfer workers in cases of exploitation. One option may be to focus efforts on improving and streamlining these processes, and communicating them to RSE workers, rather than exploring changes to visa settings.

### *Better package of support for RSE workers*

121. As discussed under compliance options, it is noted that a better package of support more generally for RSE workers would greatly improve outcomes under the current scheme settings, and that implementing such a package would be more effective and appropriate in combating risk of exploitation than changing fundamental settings in the scheme.
122. In particular, this support package should comprise clear, transparent information to RSE workers on support available and how to access it, transparency of process for how to raise concerns and how they will be dealt with. Enablement of the RSE worker voice across the system is essential, and under consideration in the compliance workstream. We note that work is already underway to improve predeparture information given to RSE workers, and to provide clear, transparent information to RSE workers in their accommodation on support available and how to access it, in their own languages.

### *Options for your feedback*

123. Options for your feedback include:
- a. **Guidance to employers** clarifying Pacific countries' expectations and the obligations on the employer
  - b. **Streamlined processes for INZ to transfer workers to another RSE employer** in cases of exploitation
  - c. **Increase RSE worker voice and agency** in understanding rights, raising concerns, and getting resolution of them, including access to independent support and advice
  - d. **Support package for RSE workers** including requirements for pre-departure information, induction, clear information on support available in their own language including access to unions, and how to raise issues.

## Pastoral care

### *What these options are aiming to address*

124. The current pastoral care rules lack clarity and do not sufficiently enable the support required to meet the holistic needs of RSE workers. While the general concept of pastoral care is multi-faceted, widely understood to extend beyond the physical needs of the worker to include social, cultural, spiritual, and mental needs, the current requirements are heavily weighted toward physical and some mental needs.

*Considerations*

125. We have identified gaps in the pastoral care currently provided, from the *Ola Manuia* framework, research and stakeholder feedback. While some of these gaps could be met by the community, some could be met by policy changes or updates as described below.
126. While it may not be reasonable or appropriate for RSE employers to be required to meet all the needs of their workers, there is clear evidence that the current standard should be lifted and clarified, and further support put in place for RSE workers. While there are several channels of support available to RSE workers, there is no clear single point of contact for the worker. Considerations involve who could carry out such a role, the definition and accountability of their role and how that individual would be supported to meet their responsibilities.

*Lifting and clarifying the pastoral care standard, through further requirements and guidance*

127. Some of the identified gaps which could be met by policy change may be appropriate for inclusion in the immigration instructions. A potential update to the pastoral care rules for consultation, categorised into the five pou of *Ola Manuia* is proposed below (potential new items in **bold**):
- Physical wellbeing
    - **Suitable** food (to be elaborated on in guidance)
    - Clothing
    - **Opportunity for rest (may include: weekly or daily limit for working hours, gap between one shift ending and the next starting)**
    - Provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water)
    - Provision of personal protective equipment
    - Access to health services
    - Access to acceptable medical insurance
    - Transportation to and from worksite(s)
    - Transportation to and from the port of arrival and departure
    - Suitable accommodation
  - Mental wellbeing
    - **Information on employment rights**
    - **Clear, transparent information for RSE workers on support available in their own language**
    - **Opportunities to upskill**
    - Necessary language translation (e.g. for health and safety purposes, **and on support available**)
    - Access to lawful and reputable remittance services
    - Access to personal banking
  - Spiritual wellbeing
    - **A five or six day working week (one or two days off a week at the worker's choice, days to be specified by the worker, and/or specified for religious purposes)**
    - Opportunity for recreation and religious observance
  - Connectedness
    - **Access to community services**
    - **Access to support services**
  - Sense of purpose



- An induction programme (**with specific items to be required**)
- **Exit plan.**

128. Pastoral care guidance elaborating on each of the current rules was provided to the industry in 2017 but is considerably out of date, and no longer in use. Regardless of how the rules are updated, updating this guidance to elaborate on these rules once they have been agreed will greatly assist employers in navigating their pastoral care obligations.

#### *Pastoral care plans*

129. Requiring employers to complete pastoral care plans, at AtR and/or accreditation stage, demonstrating how they will meet each of the pastoral care requirements. Minimal written evidence is provided currently, and the Labour Inspectorate tend to confirm each employers' understanding of their obligations verbally. The input of Pacific stakeholders into a template should be considered as part of this option, if it is agreed. A written plan would serve as a touchpoint for INZ, LI, the employer and their workers, aiding transparency and a record of progress over time. INZ and the Labour Inspectorate support this proposal.

#### *Pastoral care workers*

130. Requirements for pastoral care workers, e.g. at a certain FTE per number of workers. It has been noted that while there are several channels of support available to RSE workers, there is no clear single point of contact for the worker. The role of a pastoral care worker would need to be clearly defined, including reporting lines and accountabilities, and appropriate support for them accounted for. It is envisaged that the pastoral care worker could support their cohort of RSE workers to access resources available which meet the wide range of pastoral care needs, ranging from simply providing relevant information to arranging or accompanying them on travels to other community or professional services. This model has proven effective in other contexts, such as for international students.

131. The question of who should carry out these pastoral care worker roles also needs to be carefully considered. Pacific countries have requested that RSE workers be allowed to work in these roles. Immigration instructions would need to be amended to allow this if this option were agreed.

132. MoH have also recommended that a Health and Wellbeing Authority overseeing the pastoral care, health and welfare of RSE workers be scoped and considered in the pastoral care requirements.

#### *Establishing a dedicated advice and support mechanism for RSE employers*

133. Employers have expressed a desire for further support in navigating their pastoral care obligations. There is potential for a dedicated support mechanism to be established, which could be carried out by a government agency such as INZ, MPP or MPI, the industry bodies such as NZ Ethical Employers, or a non-governmental organisation who has expertise in pastoral care. Appropriate resourcing and training would be required to implement this option.

134. Careful consideration of what should be required of employers at a policy level will be needed, to ensure employers are not being inappropriately asked to carry out roles that may not be needed in every circumstance.

*Options for your feedback:*

135. Options for your feedback include:

- a. **Lifting and clarifying the pastoral care standard**, through further requirements and guidance (suggestion above)
- b. **Requiring employers to complete pastoral care plans** demonstrating how they will meet each of the pastoral care requirements
- c. **Requirements for pastoral care workers**, e.g. at a certain FTE per number of workers
- d. **Establishing a dedicated advice and support mechanism for RSE employers**, e.g. by INZ, another government agency.

## **Deductions**

*What these options are aiming to address*

136. The amount deducted from workers' wages is substantial, and of concern to the Government, RSE workers and the Pacific sending countries. The types of expenses for which deductions are being made seem to be increasing. Deductions are often made in workers' first few weeks on the scheme, limiting their remittances during that period.
137. Furthermore, there are areas lacking clarity on permissible deductions under the RSE policy. "Reasonable" deductions are not defined, and inconsistency of practice leads to confusion for all stakeholders. RSE workers may not fully understand or be able to question or negotiate their deductions, particularly as their consent is requested at the time the offer of employment is presented.
138. There is lack of consistency of practice in terms of what deductions are allowed, leading to confusion for MBIE, employers and Pacific stakeholders. The RSE policy requires that deductions only be made for 'actual, reasonable and verifiable' expenses. There are no guidelines to assist the LI to determine what is "reasonable". Decisions are, therefore, based on precedent and decision-maker judgement, leaving the Labour Inspectorate without a solid basis from which to base decisions.
139. Furthermore, RSE workers have expressed confusion over the amounts being deducted from their wages and the reasons for this, as well as concern over these amounts. It is questionable whether all RSE workers fully understand or are in a position to question/ negotiate the amount of deductions, particularly as their consent is requested at the time the offer of employment is presented.

*Considerations*

140. RSE workers' take-home wages should be maximised by limiting deductions for expenses. Deductions should be actual, reasonable and verifiable, and the approach to deductions clear and transparent to the worker, the employer, and to the government.
141. Access to temporary migrants is a privilege and it is justified for some of their costs to be subsidised by employers. Cost-sharing arrangements should be fair, incorporating affordability for the worker and the objective of maximising their benefits through



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participation in the scheme. Deductions should allow employers to re-coup some actual costs, but employers should not be making a profit.

142. A clear approach to the responsibility of the employer and the worker in relation to each expense incurred in the scheme is needed, and assessment of deductions should be consistent and straightforward for INZ and LI staff.
143. There are a range of options for a policy approach to deductions. In the context of looking to shift the balance of costs away from the worker and onto the industry, options range from requiring the employer to cover in full items such as flights, medical insurance, food and accommodation, to requiring the employer to cover some of these items in part.
144. This is discussed further below in terms of the overall benefits to the RSE worker.

### *Options for your feedback*

145. Options to address this include (not mutually exclusive):
  - a. **A standardised template deductions form** for INZ and the LI to provide to employers, to ensure consistency and transparency
  - b. **Specifying in policy a restricted set of allowable deductions** (e.g. only transport, medical insurance, accommodation)
  - c. **Specifying a time period for deductions to be recovered**, spread more evenly over the worker's time on the scheme. The Australian schemes specify that this should be done over the worker's first 12 weeks. The worker could be given the option as to how they would like their deductions to be spread across their time on the scheme
  - d. **Specifying in policy a maximum limit as a percentage of a worker's wage**, e.g. that deductions cannot exceed 15% of a worker's weekly/total wage. The Labour Inspectorate is supportive of this option
  - e. **Clarifying cost-sharing arrangements in policy**. Analysis has been carried out with the Labour Inspectorate and INZ on deductions currently made from workers' wages, where the issues are and recommendations for an updated policy. In particular, a clearer policy on who covers each part of the travel is recommended so that the worker covers the Pacific domestic travel (i.e. from the worker's home in the Pacific to the international airport in the Pacific), the employer covers the domestic NZ travel (from the international NZ airport to the worker's NZ accommodation), and the employer and worker each pay half of the international flight
  - f. **Further prescription for areas of particular issue, such as flights**. This could include requiring that all flights booked by employers for their workers must be at a flexible option for necessary changes of flight dates; currently, flights tend to be booked at the cheapest rate available which is non-flexible and non-refundable, leading to considerable operational difficulties for the employer, workers and INZ when flights are changed. It could also include a requirement to book return flights at a certain number of months in advance, to enhance certainty for the worker and for INZ, and enable favourable rates for the worker. Notably, if the multi-year visa is implemented, this may enable flights to be booked further in advance for workers on those visas, resulting in even more favourable rates.



- g. **Status quo in policy but provide operational guidance to the LI on assessing “actual, reasonable and verifiable” expenses.** This option may increase transparency to a degree, but is unlikely to be effective in resolving the fundamental issues with deductions throughout the sector and lack of understanding from RSE workers over their payslips.

## Benefits

*What these options are aiming to address*

146. Other workstreams, including accommodation, deductions, pastoral care, health and worker rights and exploitation address many specific issues identified within the scheme. However, there is a broader question about whether the overall level of benefits in the scheme are appropriate, or whether features like increases to wages over time, training and upskilling, and the facilitation of superannuation contributions are required to further support RSE workers.

*Considerations*

147. While current minimum RSE requirements do provide for higher employment standards and pastoral care to RSE workers than is required under minimum New Zealand employment law (including payrates above the minimum wage and for a minimum of 30 hours per week, accommodation, and pastoral care standards), and allow for a reasonable level of remittances in a Pacific context, in a New Zealand context the wages received by workers are comparatively low.
148. Training and skill development within the scheme could increase worker wellbeing and capability and lift economic resilience in Pacific countries when workers return. Employers could be required to facilitate access to workers' Pacific superannuation schemes.
149. We note any required increase in benefits to workers over time may increase the effective cost of RSE workers, leading to reduced demand for workers. Options like an increase to wages will likely be considered as a trade-off against the provision of other benefits (e.g. paying for the full costs of flights).

*Training and skills development*

150. There are opportunities already being provided within the scheme, however, support of training and skills development opportunities for RSE workers is currently not mandated within the RSE scheme (though MBIE employers are currently required to provide evidence of training and education of New Zealand employees at the accreditation stage of the scheme). The nature of the RSE limited visa, limits the training and upskilling that workers can undertake while on the scheme. Pacific sending countries and RSE workers have identified that they would like to see training and upskilling opportunities become a more prominent and accessible part of the scheme.
151. MFAT runs the Vakameasina program for RSE workers, which is an education and development program for seasonal horticultural workers, funded under New Zealand's International Development Cooperation (aid) programme. This program focuses on a range of skills, from basic life skills such as financial capabilities, health and human rights, through to small business development, leadership, building, small engines, composting toilets, solar power, NZ Road Code and more.

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152. MBIE also understands that there are several employers that are already effective in providing training and personal development to their workers as part of pastoral care arrangements. This is not restricted to qualifications-based training, and includes informal training on financial management, on-the-job training, and other forms of basic skills development.
153. Access to existing forms of training and skills development including the Vakameasina program and employer-led training is varied depending on several factors. These can include the location of the employer, the size and capability of the employer to deliver or facilitate such training, work scheduling (e.g. long work weeks are not permissive) and the willingness of the employer to release workers for training opportunities.
154. A mandatory or requirement-based approach to training would be another cost in addition to the suite of benefits already mandated in the RSE scheme. It also risks significantly disadvantaging smaller employers.
155. It is questionable whether a mandatory approach would ensure even provision of these benefits to both RSE workers and New Zealanders. Although employers are already required to provide evidence of training for New Zealanders, it is unclear what outcomes are being gained through this requirement and this does not indicate provision for an entire employer's broader workforce. Should training be mandated for RSE workers and New Zealanders as a function of the RSE scheme, it is likely that significant operational challenges would be encountered. These would include the creation of a monitoring and enforcement regime that would need to sit within the wider RSE compliance framework.
156. MPI is already working on strategies to increase skill development and transition to a higher skill, higher wage workforce that aligns with the goals of the Immigration Rebalance. The pathways for upskilling the hort/vit industries, including the food and fiber workforce strategy, are likely to be more effective of ensuring a general increase in industry skill and training level, for both RSE workers and New Zealanders.

### *Pacific superannuation*

157. RSE workers are not eligible for NZ superannuation (Kiwisaver). Employers can facilitate access to Pacific superannuation funds for their workers, however there is no mandatory requirement for them to do so. Under the Australian scheme, workers do get Australian superannuation.
158. As competition for Pacific workers continues, access to superannuation schemes may become a significant drawcard for labour, notwithstanding differences between employment conditions in Australia and NZ. A requirement to facilitate access to Pacific based superannuation schemes is something that could be explored to ensure that workers are able to realise the benefits of the RSE scheme over the longer term.

### *Options for your feedback*

159. Options for further benefits for workers include:
  - a. Requiring **an increase in minimum pay rates over time** e.g. a shift towards the median wage to align with other immigration settings
  - b. **Training and skills development** opportunities using one of two models:
    - i. **Facilitative:** Rewarding the provision of training through incentives, **or**



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- ii. **Mandatory:** Requiring employers to facilitate training and upskilling for workers
- c. Requiring the employer to **facilitate access to workers' Pacific superannuation** schemes.
- d. **Require employers to directly pay for more of the upfront costs to the RSE worker**, such as covering 100 per cent of flight costs instead of 50 per cent, covering the full cost of worker health insurance, subsidising accommodation, and food

## Consultation approach

### Process

160. We are seeking your views on the options for consultation set out below. For a summary of the options, you can refer to the summary document.
161. All written feedback should be submitted to [rsepolicyreview@mbie.govt.nz](mailto:rsepolicyreview@mbie.govt.nz), by **12pm 24 April 2023**.
162. After this date, we will analyse feedback received from these engagements and develop policy recommendations for the Mol's agreement in May 2023, to take to Cabinet in June 2023.
163. While some options may be ready for immediate implementation from June 2023, we anticipate that many Cabinet decisions in June 2023 are likely to be on the high-level policy approach. Implementation will commence from June 2023, and may extend to 12 months or more, depending on the nature of the policy decisions taken at Cabinet.

### Stakeholders we are consulting with in March-April 2023

164. **Hort/vit industry:** Round two of regional visits in March-April 2023, facilitated by the industry leaders, including in person and virtual meetings
165. **RSE workers and Pacific communities:** In person engagements while in the regions, as well as the Ethical Voice survey delivered to all RSE workers in April.
166. **Pacific Governments:** A dedicated talanoa with Pacific representatives, and an ongoing consultation process facilitated by MFAT through their posts
167. **Tripartite working group, Regional Sector Labour Groups, International Labour Organisation, Human Rights Commission, academics:** Dedicated consultation sessions with these stakeholders

### *Impacts of Cyclone Gabrielle*

168. We are sensitive to the current challenges to industry following the impacts of the Cyclone Gabrielle, which will factor into our analysis as well as our consultation approach. We have been in frequent communication with hort/vit industry leaders, RSE employers, other government agencies and with RSE workers and Pacific Liaison Officers during cyclone response, and are working closely with industry leaders to determine the most appropriate avenues and approaches in cyclone-affected areas. This includes timing of consultation events in affected regions, and virtual or in person engagements.

### Timelines

Stage	Timing
<b>Policy development and consultation</b>	<b>October 2022 – March 2023</b>
Consultation round 1	November 2022
Policy development	Dec 2022 – Feb 2023

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Briefing to Minister on policy options for consultation	Early March 2023
Consultation round 2	Mid-March 2023 – Mid-April 2023
<b>Analysis</b>	<b>April 2023</b>
Analysis of submissions	April 2023
Develop recommendations	Late April/early May 2023
Briefing to Minister on feedback received and recommendations	May 2023
<b>Cabinet</b>	<b>June 2023</b>
<b>Implementation</b>	<b>From June 2023</b>