



COVERSHEET

Minister	Hon Andrew Little	Portfolio	Immigration
Title of Cabinet paper	Outcomes of the Recognised Seasonal Employer policy review	Date to be published	24 October 2023

List of documents that have been proactively released

Date	Title	Author
14/09/23	Outcomes of the Recognised Seasonal Employer policy review	Office of the Minister of Immigration
18/09/23	CAB-23-MIN-0442 Minute	Cabinet Office
14/08/23	Recognised Seasonal Employer policy review, Summary of Submissions	MBIE
14/09/23	Diagram of proposed RSE system	MBIE

Information redacted

YES

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Information has been redacted on the following grounds:

Confidential advice to Government

International relations

Privacy of natural persons

In Confidence

Office of the Minister of Immigration

Cabinet

Outcomes of the Recognised Seasonal Employer policy review

Proposal

- 1 This paper asks Cabinet to note the outcomes of the Recognised Seasonal Employer (RSE) scheme policy review, and seeks agreement to the RSE worker cap for the 2023/24 season. I will report back to Cabinet in early 2024 seeking final policy decisions on the proposals outlined in this paper.

Relation to government priorities

- 2 The RSE scheme supports government priorities across the Primary Industries and Foreign Affairs Portfolios. The RSE scheme supports the Ministry of Primary Industry's Strategic Plan as a core part of the seasonal workforce in the horticulture and viticulture industries.
- 3 Labour mobility is a key driver of economic and social resilience in the Pacific region. Through access to New Zealand's labour market, Pacific countries obtain remittances and skills that directly support families and communities to improve outcomes. The *'Reset to Resilience'* Cabinet Paper [CAB-21-MIN-0401] positions labour mobility as an integral part of promoting prosperity and resilience, strengthening relationships, and sharing economic benefits across the Pacific region. The RSE scheme is New Zealand's primary labour mobility vehicle to achieve these gains.

Executive Summary

- 4 The RSE scheme began operation in 2007 and allows businesses in the horticulture and viticulture industries to recruit workers from Pacific Island countries for seasonal work. The scheme has been transformative for these industries, allowing significant growth, and making a direct contribution to the economic security of workers from the Pacific. Issues related to the significant and sustained growth of the RSE scheme have however compromised the effectiveness of its administrative systems, and updating and clarification is required for a range of standards, including accommodation, pastoral care, and employment practices. The social licence of the scheme to operate has been damaged by these issues and the related media and public interest, which has threatened the ongoing sustainability of the scheme. In 2022, the then-Minister of Immigration therefore instructed officials to resume the review of the scheme, which had been delayed due to COVID-19.
- 5 Officials carried out targeted stakeholder consultation over March and April 2023 on policy options, which were analysed against a set of policy criteria, with reference to

stakeholder feedback. The outcomes of the review are a set of preferred options designed to improve the performance of the scheme for all stakeholders, by addressing gaps in policy relating to worker wellbeing and introducing a new system designed to drive positive employment practices and more effective planning, and to secure the long-term sustainability of the RSE scheme.

- 6 Some of the review’s proposals, particularly improvements to worker wellbeing measures, are likely to add additional costs for employers (e.g., improvements to accommodation standards). Generally, changes that significantly increase costs for employers are strongly opposed by industry. The preferred options seek to balance these increased costs for employers against the significant streamlining of processes, improvements to the certainty of labour supply and increased flexibility in its use. The worker wellbeing proposals seek to prescribe in policy what is essential to protect the worker’s rights, dignity, and agency, through obligations on the RSE employer.
- 7 A detailed implementation plan, including phasing and financial implications for the Government and industry, will be developed over the latter half of 2023, and I will report back to Cabinet by the first quarter of 2024 seeking agreement to final policy proposals. Some proposals are complex and would require significant design work to be undertaken with stakeholders including industry.
- 8 I also seek Cabinet’s agreement to increase the RSE worker cap by 500 places, to 19,500 places for the 2023/24 season.

Background

The RSE scheme

- 9 The RSE scheme, which came into effect in April 2007, allows businesses in the horticulture and viticulture industries to recruit workers from Pacific countries for seasonal work when there are not enough New Zealand workers. Since its inception, the RSE scheme has grown from an annual worker cap of 5,000 per year in 2007, to 19,000 in 2022/23. The RSE Limited Visa allows workers to stay up to 7 months in New Zealand during any 11-month period (or up to 9 months in any 11-month period in the case of workers from Kiribati and Tuvalu).
- 10 The scheme has been transformative for both the horticulture and viticulture industries in New Zealand, allowing significant growth through the provision of a reliable, experienced labour force for ‘peak season’ labour demand. In simple monetary terms, horticulture and viticulture have grown from \$2.5 billion in annual export earnings in 2007, to close to \$7 billion and together they are now our fourth largest primary industry export earner¹.
- 11 The scheme has also been transformative for many Pacific workers and their communities, enabling significant remittances and skills development, and is highly valued by Pacific countries. The RSE scheme makes a direct contribution to the economic security of participating households and supports improvements in living standards. Insights from an anonymous survey of RSE workers, completed in 2023, indicated that 59 per cent of respondents thought they would take or send home more

¹ Situation and Outlook for Primary Industries (SOPI) December 2022 (mpi.govt.nz)

than NZD\$6,000, including 30 per cent of respondents who indicated this figure would be more than NZD\$10,000.²

- 12 The significant and sustained growth of the RSE scheme over the last 15 years alongside industry growth illustrates the core role it now plays in filling labour gaps unable to be addressed by New Zealand's domestic workforce. Workers are seen by RSE employers as highly motivated, productive, and essential peak season labour. Many employers choose to maintain close working relationships with specific villages, creating circular migration patterns that significantly raise living standards for Pacific communities.
- 13 Although the Government's 2021 Immigration Rebalance facilitated a shift in the immigration system towards high wage, high skill labour, retaining the RSE scheme remains a necessary intervention for horticulture and viticulture employers to overcome several structural limitations of New Zealand's labour market, including:
 - 13.1 very low unemployment rates, and therefore few job seekers available for seasonal work,
 - 13.2 the decline of rural populations (absolutely, and relative to urban ones), and an aging rural population, when the horticulture/viticulture work undertaken by RSE workers favours younger, fit people,
 - 13.3 the decline in desirability of seasonal employment for New Zealanders compared with other, more secure work, particularly given the sharp peaks and troughs within a working year.
- 14 Horticulture and viticulture production cycles are often labour-intensive, time-critical and mean labour is needed at scale. Cost-effective technological alternatives to seasonal labour (like robotic pickers) are not yet viable on a wide scale and the development of this technology is expensive, especially for smaller employers. Although labour saving technology is being used increasingly throughout the industry (e.g., picking platforms instead of ladders, fruit sorting/grading machines in packhouses), RSE workers are still an essential part of the horticulture and viticulture workforces and will remain so for the foreseeable future.
- 15 The Ministry for Primary Industries estimates that in the 2019/20 season, approximately 12 per cent of the peak workforce across the horticulture and viticulture value chain (including production and processing) were RSE workers.³ This is reflective of consistent feedback from industry and government, that RSE workers now make up an integral 'experienced core' of the horticulture and viticulture workforces.

The RSE Policy Review

- 16 In 2018, Cabinet directed the Ministry of Business, Innovation and Employment (MBIE) to review immigration policies affecting Pacific people [DEV-18-MIN-0101], to ensure the policies supported the Government's refreshed approach to the Pacific region. Decisions were made on the scope of this review, focusing first on a

² RSE Worker Survey 2023, *Ask Your Team*, 2023.

³ Food and fibre workforce: snapshot, *Ministry for Primary Industries*, 55.

review of the RSE policy. Initial work was undertaken on the review, but it was subsequently postponed so resources could focus on addressing the impacts of the COVID-19 pandemic.

- 17 In 2022, the then-Minister of Immigration directed officials to undertake a full review of the scheme, including significant engagement with stakeholders, and taking a first principles approach. The circular, temporary nature of the scheme was out of scope for review, as were the three fundamental principles of the scheme confirmed to Cabinet in 2017:
 - 17.1 New Zealanders first: employers should seek to employ local workers first; if they are unable to find New Zealanders, then migrant workers can be employed,
 - 17.2 “Recognition” of employers: employers must be able to demonstrate that their employment and pastoral care practices are sufficiently high quality for them to be permitted to access the scheme,
 - 17.3 Pacific preference: employers should employ migrant workers from the Pacific, unless they have an established relationship with workers outside the Pacific.
- 18 Concurrently, the then-Minister of Immigration convened a Tripartite Group, consisting of the horticulture/viticulture industries, government, and unions, to determine under what conditions all parties could agree to the industries’ requested increase of 3,000 places to the 2022/23 RSE worker cap. Pacific representatives were also brought into this group as it progressed. Under the direction of the then-Minister of Immigration, the Tripartite Group agreed to a sick leave provision from RSE workers’ first day in the scheme. It also considered mechanisms for increasing the voice of RSE workers, based on the principle that they should have a range of options for independent support.
- 19 This approach of bringing together the industry, unions, Pacific governments and New Zealand government agencies has been an important initiative for providing oversight of the scheme and making improvements to it. Given its valuable contribution, I intend to retain the partnership model established between the four key groups of stakeholders to provide guidance on the implementation of the RSE policy review.
- 20 The RSE policy review has established that the scheme is delivering positive benefits for participants and is generally achieving its intended ‘triple win’ financially to industry, RSE workers, and Pacific countries, as well as meeting our development outcomes. Stakeholders across government, industry, and Pacific countries have voiced strong support for the scheme and its benefits, both for New Zealand’s horticulture/viticulture sectors, and for Pacific communities and their development.
- 21 However, the review has also established that there are areas where significant fractures have developed, leading to substandard outcomes for worker wellbeing throughout the scheme. These substandard outcomes have generated considerable media and public concern about RSE working conditions, quality of accommodation and deductions from worker pay. This has led to sustained calls by media, advocates

(including the Equal Employment Opportunities Commissioner), agencies and the public to improve worker wellbeing within the RSE scheme. If not addressed, I consider that poor worker wellbeing risks severely damaging the scheme's social licence to operate, and will compromise its long-term sustainability.

- 22 Many of the issues identified with the scheme relate to its significant growth over the last 15 years. Several 'grey areas' have developed where standards need updating and clarifying, while compliance activity is under resourced or ineffective. Increasingly, these issues have compromised the effectiveness of the scheme's administrative systems (which have remained unchanged over this time) as it has not kept pace with the scheme's growth. Updates and clarification are needed across a range of standards including, among others, accommodation, pastoral care, and employment practices.
- 23 To address these issues, the RSE review was conducted across several workstreams, split into two groups: the first relating to the scheme's administrative system, and the second to measures to ensure worker wellbeing. An additional workstream on Pacific outcomes was added later in the review. This workstream aims to ensure that recommendations across the review contribute to positive outcomes for the Pacific, including potential policy mitigations in response to concerns from some Pacific countries about the effects of the scheme on Pacific labour markets.

Objectives and guiding principles of the review

- 24 In March 2023, after an initial round of stakeholder consultation, the objectives for the review were updated. These are: a set of 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 practices.
- 25 These objectives have been set alongside the following guiding principles that detail what the RSE scheme should aim to achieve, namely to:
 - 25.1 enable equitable sharing of benefits across employers, workers and communities,
 - 25.2 incorporate the views of Pacific countries and workers, and the effects on Pacific labour markets,
 - 25.3 contribute to the short, medium and long-term development outcomes that New Zealand seeks in the Pacific region,
 - 25.4 be accessible to prospective workers and employers,
 - 25.5 have settings that are flexible, enabling the system to respond to labour market changes over time; and
 - 25.6 ensure compliance frameworks are robust, fit-for-purpose, and adequately resourced.

Consultation approach

- 26 The first round of consultation with stakeholders was carried out in September 2022, to seek initial input on the RSE system and understand the range of issues present in different areas of the RSE ecosystem. This was followed up in March and April 2023, with extensive, targeted stakeholder consultation on the policy options developed.
- 27 Consultation took the form of town-hall style meetings in the regions, onsite visits and a series of online webinars. A dedicated consultation was also held with Pacific government officials. The opportunity for written submissions was provided via email, and the official close of submissions occurred at midday, 24 April 2023.
- 28 The stakeholders consulted included RSE employers, RSE workers, Pacific governments, Pacific communities in Aotearoa New Zealand, unions, academics, and additional agencies including the Human Rights Commission and the International Labour Organization. A summary of submissions is attached at **Appendix One**.
- 29 While developing policy options, it was clear that the RSE review and subsequent Ministerial decisions would need to balance the delivery of higher standards and better conditions for RSE workers with the increased cost to RSE employers and Government of delivering these improvements.
- 30 This is reflected in the three sets of policy assessment criteria used to evaluate options across all the workstreams:

Set One	Set Two	Set Three
<ul style="list-style-type: none"> Protects workers' rights and dignity Worker choice and agency 	<ul style="list-style-type: none"> Transparency Certainty Flexibility 	<ul style="list-style-type: none"> Efficiency and cost-effectiveness

A Māori name, 'Whānau Moana Nui' for RSE has been suggested

- 31 During Ministerial deployment on the Pacific Mission 2023, the topic of RSE and New Zealand's connection with the Pacific was discussed at length within the delegation, which included high-profile and respected Māori leaders. The objective of creating 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 practices resonated with members of the Pacific Mission 2023.
- 32 Ngahiwi Tomoana (National Iwi Chairs Forum representative and spokesperson) and Toa Faneva (Deputy Chair of Iwi, Te Runanga o Whaingaroa and Executive Director of NorthTec, Te Pukenga) proposed using the term Whānau Moana Nui (our Pacific family) to describe RSE workers, to reflect our shared links through whakapapa and whanaungatanga. They explained that this would better recognise our common ancestry and whakapapa links with the Pacific and that we are all people of the ocean.
- 33 This kaupapa korero of 'Whānau Moana Nui' - whānau of the Pacific holds special significance and acknowledges our accountability to their welfare and wellbeing as hosts.

Current administrative systems have not kept pace with the scale of the scheme

The annual RSE worker cap does not support long-term planning and investment

- 34 The RSE system currently uses an annually agreed cap to limit the number of RSE workers that can work for RSE employers. There is no prescribed methodology for setting the cap. The ad-hoc processes which have evolved over time are subjective and lack transparency and are subject to significant pressure from stakeholders. There is an incentive for industry to inflate projected growth figures to influence the size of the cap, and industry growth estimates are difficult to verify.
- 35 The annual review of the cap does not provide employers with enough certainty to encourage long term planning and investment. Pacific governments also do not have clarity on the level of demand for workers that will be placed on their workforces.

Worker allocation settings limit confidence and generate perverse incentives

- 36 The worker allocation process has previously used an employer's past allocation as a basis for the allocation of additional labour. This has inadvertently benefitted those large employers who have been in the scheme longest against newer entrants to the scheme. It has also incentivised employers to inflate the number of workers they will require in order 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 invest in outyears.

Labour market testing is currently inefficient and duplicative, and does not match skills with demand

- 37 The current labour market testing process is a paper-based assessment completed as part of an employer's 'Agreement to Recruit', before an employer is allowed to seek workers from the Pacific. It is conducted by Immigration New Zealand with advice provided on each employer's application from the Ministry of Social Development (MSD). However, a range of issues have been identified, including inefficiencies in the process, duplication of information, and variability in the application of standards, and mismatches between the suitability of MSD clients and the nature of the labour force required for seasonal roles in particular areas.

The compliance system is under-resourced and ineffective, which increases the likelihood of poor outcomes

- 38 An effective compliance framework is not currently present, due to a lack of clarity in standards, under-resourcing of enforcement functions, and process failures. This is evidenced by the low number of employers either losing their RSE status or being declined an 'Agreement to Recruit', even where clear evidence of breaches is present. The lack of clarity in standards means the range of potential breaches specified in the RSE immigration instructions is too broad, and the wording is often normative (e.g., 'reasonable' or 'adequate'). Inadequate compliance and sanctions increase the possibility and likelihood of negative outcomes in the scheme, including exploitation

and mistreatment of RSE workers in the scheme. These issues are exacerbated by RSE workers having limited independent representation and voice.

Current policy settings limit flexibility for workers, employers, and government

- 39 Existing processes currently have limited flexibility to provide for the movement of RSE workers to and from or within Aotearoa New Zealand without a considerable administrative burden for employers, workers, and government. RSE visas provide for a single-entry only, which creates a barrier for workers needing to return to their homes for short periods, for example to attend funerals/tangi. The visa also restricts the ability of RSE workers to move between employers or to different roles; this also 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 by the Human Rights Commission and other organisations about the RSE visa's direct linking of workers to a particular employer and whether this increases the risk of exploitation of workers.

A new administrative system design is proposed

- 40 The review proposes a new administrative system to address the administrative issues outlined above, and to increase certainty, transparency, and flexibility for all stakeholders.
- 41 The settings proposed would significantly reduce annual administrative burdens for employers, which would increase efficiency while encouraging better business and workforce planning in the medium to long-term. They would also lay a solid foundation to better protect worker rights, dignity, and agency, by delivering a system that would ensure effective compliance of the updated RSE standards. These changes, in conjunction with improved worker wellbeing measures, would ensure the RSE scheme's social licence remains intact, and its long-term viability is preserved.
- 42 The design of the proposed administrative system is built around a three-year labour force planning cycle, supported using a supply and demand model that obliges more planning at national, regional, and enterprise level. A visual representation of the proposed administrative system settings is attached at **Appendix Two**.
- 43 The system aims to align the current cap, allocation, labour market testing, and employer accreditation into one cohesive process, with a reduced burden for employers and the New Zealand and Pacific governments:
- 43.1 At the start of the cycle, employers would be required to achieve a new RSE accreditation, which includes the creation of a three-year labour market plan, pastoral care plan, and the approval of their accommodation.
- 43.2 A labour supply/demand model would be run, and each region's labour gap would be determined. This would inform a worker cap for each region, that would be collated into a nationwide cap on the scheme.
- 43.3 The process by which employers would receive their share of the determined regional allocation requires co-design with industry. It would ensure that new

entrants to the scheme, and smaller employers, are not disadvantaged when compared to existing or larger employers.

- 43.4 During years two and three, employers would be required to complete an annual declaration confirming their approved documentation is still up to date and in use, or if required, they may choose to resubmit these documents with alterations should circumstances require it.
- 43.5 An improved compliance framework is proposed, including clarification of what constitutes a breach and a scale of breaches and sanctions, enabling greater overall transparency. Access to accreditation under the RSE scheme will consider whether employers are on the stand-down lists maintained by Immigration New Zealand or Employment New Zealand. For the additional requirements set out in the RSE scheme, a risk-based audit regime would be included to assess employers' performance, including against the updated accommodation standards and their stated pastoral care and labour market planning documents. These changes would be complemented with increased RSE worker voice and support, including consideration of a pilot of independent worker representation (based on the work undertaken by the Tripartite working group).
- 43.6 The development of an incentives and sanctions regime is also proposed. This would use a small proportion of the regional allocation and other potential tools, such as a reduced compliance burden as an incentive for positive employer performance. Conversely, an employer's worker allocations may be reduced, or compliance requirements increased if an employer requires sanction, but does not meet the threshold for removal from the scheme. Like the worker allocation process, this regime requires co-design with industry.
- 44 The settings proposed would create a robust and integrated system that would ensure the long-term viability of the RSE scheme and facilitate longer-term planning. The various components are designed to work together more cohesively and maximise the effects of the proposed worker wellbeing measures, particularly through the instalment of the new compliance and incentives/sanctions regimes.
- 45 The shift to a three-year timeframe is accompanied using risk-based audits throughout the cycle. Audits would assess accommodation, pastoral care practices, and labour market plan compliance to ensure employers are following their stated intent, and those that deviate from their planning are identified.

Flexibility for workers and employers is part of the new system design

- 46 There are several proposals that enhance the flexibility of the RSE scheme with respect to both employers and workers. These changes would contribute to worker wellbeing outcomes by enabling workers to transfer employers should they desire to, and similarly would support employers to transfer workers more effectively and efficiently between regions and locations.
- 47 These proposals include:

- 47.1 allowing multi-entry visas for RSE workers, so they can attend events at home like tangi and other significant events,
- 47.2 enabling the transfer of workers more easily between regions, employers, and roles, provided the regionally calculated labour gap is not exceeded, by:
 - 47.2.1 enabling workers to move between employers through a Variation of Conditions (VoC) on their visa,
 - 47.2.2 removing the requirement for a new Agreement to Recruit (AtR) when a worker changes roles or location with the same employer.
- 48 I will also progress further work in consultation with Pacific governments on moving from a standard limited visa, to a general work visa with fewer restrictions. Further, I will consider instituting visa settings for RSE workers which allow them to return for more than one consecutive season on the same visa.

Standards designed to ensure worker wellbeing need to be clarified and lifted across a range of areas to improve outcomes

- 49 Considerable work was undertaken during and after the COVID-19 pandemic to identify the desired health and wellbeing outcomes of RSE workers and how to achieve these. The RSE review has confirmed that, despite delivering significant financial benefits, the scheme is failing to deliver the expected wellbeing outcomes across several areas, including pastoral care, accommodation, and health.
- 50 Contributions from a range of stakeholders, including New Zealand's Pacific communities, churches, health providers, RSE employers, local government, local iwi and other government agencies, would be required to enable these outcomes to be met, but within that I consider that there are several areas of the worker's wellbeing which should be met by the employer. The proposals would prescribe the essential obligations of the employer in policy, enabling meaningful protection of the worker's rights, dignity, and agency.
- 51 Other areas of worker wellbeing, such as training and upskilling, would be dealt with through encouraging good employer behaviour without mandating it in policy settings. These areas could form part of the incentives referred to in the new system proposed.

Pastoral care

- 52 Pastoral care as a general concept is widely understood to extend beyond the physical needs of the worker to include social, cultural, spiritual, and mental needs. While employers already have a range of obligations, several gaps that need addressing have been identified. Many of these could be improved by lifting and clarifying pastoral care standards and requiring employers to complete a pastoral care plan.

Additional items should be included in pastoral care standards

- 53 Section 11B of the *Minimum Wage Act 1983* provides that no more than 40 hours and a five-day working week can be included in an employment agreement, although

parties can agree to longer hours. However, concerns have been raised regarding the effects on RSE workers' wellbeing from the demanding shifts they are often asked to work in peak times. Prescribing one day off at the worker's choice in policy could ensure the necessary rest, recreation and opportunity for religious observance, balanced against RSE workers' desire to maximise their earnings. The specific day of the week would be agreed between the employer and the worker as part of the employment agreement, with any subsequent changes to be agreed by both parties.

- 54 The employer should provide access to nutritious food at reasonable cost and the worker should be given a choice between the employer's food and providing their own. Access to community and support services and information on employment rights are also essential, but employers are not currently required to provide this access. Finally, employers should facilitate, and not prevent, the maintenance of the worker's connection with their home country.
- 55 Training and upskilling for RSE workers is a priority for Pacific countries and RSE workers, to maximise the benefits for workers' home communities from participation in the scheme. The review has found that opportunities to upskill should be provided, but not necessarily paid for, by the employer. Immigration instructions could be clarified to provide that RSE workers can undertake any training, including to gain formal qualifications, so long as they still meet the terms of their employment contract.
- 56 Employers should be required to facilitate workers' access to Pacific superannuation schemes⁴. There is an existing mechanism, the Seasonal Workers Superannuation Administration System, which allows workers to make voluntary contributions to their home superannuation scheme while they are working in New Zealand at no financial cost to the employer for the transfer.

Employers should be required to provide pastoral care plans and pastoral care workers

- 57 Pastoral care plans would provide a useful touchpoint for MBIE, the employer and the worker. The template for these plans would be developed in collaboration with industry bodies, Pacific representatives and RSE workers. It is envisaged that the content of these plans should include demonstration as to how the employer is meeting each of the pastoral care requirements, as well as further elements such as cultural competency.
- 58 Employers should also be required to hire dedicated pastoral care workers, given the needs and vulnerability of RSE workers. This should be done at a certain ratio of pastoral care workers per RSE worker, which would enable cost-sharing arrangements between smaller employers. Further work would be carried out to determine the appropriate ratio and what this role should entail.
- 59 I also recognise that employers need support in navigating their pastoral care obligations. Officials would therefore undertake further work to consider how best to meet this need.

⁴ As temporary migrants, RSE workers are not eligible for KiwiSaver.

Rates of pay should be higher for experienced workers and those with responsibility

- 60 Workers often retain the same payrates for many years in the scheme, including when carrying out increased responsibility (e.g., through designation as a driver or team leader). Immigration instructions could specify that more experienced workers, or those with additional duties, should be recognised through higher rates of pay or other benefits.
- 61 Various options exist for the implementation of this requirement. This could be as detailed as specific pay thresholds negotiated between industry, unions, and Pacific stakeholders, or could remain high level through a general requirement on employers. This would be worked through in more detail with stakeholders.

Health

- 62 It is axiomatic that RSE workers should not be returning to the Pacific in a worse health condition than when they first arrived. The review found however that some workers experience a range of health issues⁵ while on the scheme, which also leads to potential public health risk to Pacific countries. RSE workers have limited access to culturally appropriate healthcare services that meets their needs while in for New Zealand for a range of reasons, including geographical isolation, limited insurance coverage and understanding of their insurance, and health promotion and education services not being provided in tailored and meaningful ways. They are also not eligible for publicly funded healthcare (although they are eligible for ACC if injured through an accident).

Conversations on publicly funded healthcare are ongoing

- 63 Access to publicly funded healthcare could be enabled by changes to visa settings,⁶ however the effects of such access on the public health system would need to be considered and worked through with the Ministry of Health and Treasury.⁷
- 64 The Minister of Health has confirmed that the Health Eligibility Direction Review for 2023 will not consider eligibility of other temporary visa holders, such as RSE workers. MoH and MBIE officials agree that, while this could be revisited in future years, the current priority should be enabling better health insurance cover for RSE workers.

⁵ Examples include poor general health arising from poor accommodation and poor nutrition, sexual and reproductive health, exposure to vaccine-preventable diseases and non-communicable diseases/chronic conditions.

⁶ Under the current Health Eligibility Direction settings, anyone who can work for at least 24 months in New Zealand (which can be interpreted to be non-consecutive months) is likely to be eligible for publicly funded healthcare. If a visa allowing workers to return for 3 consecutive seasons were implemented, RSE workers from Kiribati and Tuvalu might qualify for access to publicly funded healthcare, due to their 9-month season. Other RSE workers with seven-month seasons may qualify under a visa that allows return for 4 consecutive seasons.

⁷ In particular, the limited screening requirements for RSE workers may need to be reviewed, noting that screening requirements and costs should in principle not be a barrier to RSE workers accessing the scheme.

Health insurance standards should be lifted, and further work carried out on cost implications

- 65 I consider that the standard of health insurance should be lifted, at minimal cost to the worker. Officials have begun conversations with the health insurance providers and will work closely with RSE workers and Pacific governments to agree on a standard, including the best way to implement this at reasonable cost to the worker. Options include mass procurement to bring down costs, and offsetting of costs by either the government or RSE employers.
- 66 Health insurance information should be provided with the employment agreement and deductions schedule, to ensure workers are supported to understand their insurance before coming to New Zealand.

Employers should facilitate health days for workers

- 67 Employers should have a clear obligation to promote good health outcomes for their workers. Employers should hold health days, facilitate onsite immunisations and provide healthcare information to workers. This could be done in partnership with community health professionals.

The HIV screening requirement should be removed

- 68 On 18 October 2006 Cabinet agreed to manage health risks via mandatory HIV AIDS testing for RSE limited visa applicants [POL Min (06) 22/18]. Subsequently, the Minister of Immigration instituted a blanket ban on RSE limited visa applicants who tested positive for HIV.
- 69 MBIE removed HIV infection from the list of high-cost health conditions likely to impose significant costs/demands on New Zealand's health services in 2021. The blanket ban on HIV-positive applicants is discriminatory and has given rise to international criticism, and is inconsistent with other temporary entry policies. The HIV screening requirement should therefore be removed.

Deductions

- 70 RSE employers often cover a range of upfront costs for the RSE worker to join the scheme, which they then recover through deductions from the worker's wages. There has been considerable concern over both the types of expenses being recovered through deductions, and the amounts. Deductions are often made in workers' first few weeks on the scheme, limiting their remittances during that period. It is questionable whether all RSE workers fully understand, or are in a position to negotiate, the cost of their deductions, particularly as their consent is requested at the time the offer of employment is presented.

A standardised deductions form should be introduced

- 71 The following set of allowable deductions should be set out on the standardised deductions form:
- 71.1 Accommodation (broken down by rent, power and food)

- 71.2 Travel (50 per cent of the international flight costs, and travel to and from a RSE worker's home to the international port of departure)
- 71.3 Health insurance
- 71.4 Visa
- 71.5 Food
- 71.6 Cash advance
- 71.7 Pacific superannuation
- 71.8 Worker's savings account.

72 The following should be covered by the employer and should not be deducted for: Personal Protective Equipment, tools, training and Wi-Fi. Workers should also be given options as to how their deductions will be spread, at either six weeks, 12 weeks or another period to be specified by the worker, up to the duration of their employment.

A protected earnings threshold would benefit workers

73 A protected earnings threshold for RSE workers should be instituted, to ensure they receive a base level of net income each week from their first week in the scheme. This proposal is in line with the 30 hours per week minimum requirement introduced by Cabinet in September 2021 [CBC-21-MIN-0089]. The method and level of this threshold would require consideration; one possibility is indexing it to the RSE minimum wage.

A cost sharing policy should be provided

74 To promote clarity, officials propose a cost sharing policy for use by all stakeholders. Along with the areas outlined above, this should specify:

- 74.1 Employers should continue to cover half of the international flights from the Pacific international airport to New Zealand.
- 74.2 RSE workers should pay for all travel from their home to the Pacific international airport.
- 74.3 Employers should pay for all travel from the worker's arrival in the New Zealand international airport all the way to their accommodation.

75 Furthermore, flexible fares should be booked where possible, and any change to the flight should be covered by the employer. This also aligns with the proposal for a multi-entry visa.

Accommodation

76 RSE employers are required to make available "suitable" accommodation at a reasonable cost, however the quality of accommodation provided, as well as the cost of this accommodation, varies widely. The minimum Accommodation Standards are open to interpretation in some areas, which has led to a range of issues, including overcrowding, unhealthy bedding, limited cooking facilities and equipment, insecure and limited storage space, and poor or no internet connectivity. Many regions expect to have high ongoing demand for RSE workers but have limited accommodation available.

A methodology for calculating accommodation costs should be implemented, and Wi-Fi should be provided free to the worker

- 77 In November 2022, the previous Minister of Immigration agreed to a temporary pause on increases to accommodation costs by employers until a standard methodology for assessing proposed accommodation costs has been developed. I will investigate implementation of an interim methodology to assess proposed accommodation costs based on:
- 77.1 actual and verifiable costs, broken into different components (e.g., separating rent from power, cleaning, consumables, etc.)
 - 77.2 median rent per bedroom for the area, using tenancy bond data, divided by the number of people sharing a bedroom.
- 78 This responds to concerns from workers about crowding in some accommodation, as well as ensuring that rent should be cheaper the more people are sharing a room. Implementation of this interim methodology will enable me to lift the pause on accommodation cost increases, with a more permanent methodology to be developed with stakeholder input following this.
- 79 I also consider that Wi-Fi should be provided free to the worker as a further benefit to enhance their wellbeing on the scheme, particularly in recognition of the need to remain connected with family in their home country.

The Accommodation Standards should be lifted

- 80 The RSE Accommodation Standards should be updated to require compliance with the Healthy Homes Standards⁸, as well as align with the minimum bedroom size requirements for shared rooms in the *Housing Improvement Regulations 1947*⁹. Additional consultation should be undertaken on further updates to the Accommodation Standards, such as clear rules on the ratio of workers to bedroom and living space, on indoor recreational space, and provision would be made for grandfathering and transitional arrangements.
- 81 Officials do not propose banning the use of bunk beds or setting a maximum number of workers per bedroom, which may go too far in departing from existing standards. These measures have the potential to significantly increase costs for employers, which would ultimately be passed on to workers. Some workers are content with more basic accommodation if it keeps their costs down. In any event, under the potential cost methodology the rent charged would be required to be reduced according to the number of people per room.
- 82 employers should also provide detailed pre-arrival information to workers about the accommodation, including photos, to improve transparency and provide workers with an early opportunity to highlight any concerns.

⁸ This would be in line with the *Residential Tenancies Act 1986*, which already applies to some, but not all, RSE worker accommodation.

⁹ These regulations specify a minimum of five metres squared per person in 'shared' bedrooms (more than one person in a room).

Data on accommodation should be monitored over time to inform further improvements

- 83 Further work should be undertaken to improve collation of existing data on RSE accommodation, to enable better monitoring of trends and any emerging areas of risk. This may include use of holiday accommodation such as motels and backpackers, whether the government should facilitate the construction of more purpose-built accommodation, and the potential to transition the industry away from some types of temporary accommodation to purpose-built accommodation.

Rights and exploitation

- 84 Concerns about RSE workers' experience in the scheme have been particularly prominent in the latter half of 2022 from several stakeholders, notably including the Human Rights Commission. RSE workers carry a particular vulnerability as a workforce, due to the combination of high-risk factors for migrant exploitation. The previous Minister of Immigration directed officials to progress several solutions in this space, described below, which do not require Cabinet agreement. Further to these actions, I note that enablement of the RSE worker voice is also essential to safeguarding their rights and dignity.

Guidance to RSE employers on employment law and human rights obligations should be developed

- 85 Guidance to employers on human rights and employment law would assist them in navigating their obligations in areas which can be subject to ambiguity. Notably, some Pacific sending countries have their own codes of conduct for RSE workers, which in some areas are inconsistent with New Zealand human rights or employment law. Officials would develop this guidance in collaboration with key stakeholders. This guidance would include clear prohibition on curfews (for entering and exiting accommodation, as well as other items such as internet use), clarity on allowable rules around alcohol and kava use, and best practice for misconduct.

RSE workers should have a clear, fee-waived process accessible to them to transfer to other RSE employers in cases of exploitation

- 86 As detailed in the new system proposed, several improvements to worker flexibility that would enable workers to change employers more easily.
- 87 RSE workers are not eligible for the Migrant Exploitation Protection Visa (MEPV), which allows migrant workers to transition easily to another employer in cases of exploitation, by granting them open work rights. The improvements propose would incorporate the principles of the MEPV, including a low threshold for triggering investigation into alleged breaches of the RSE scheme and consideration of transfer to another employer via a streamlined, fee-waived process.

Further support will be developed for RSE workers

- 88 The need for extra support for RSE workers has been reiterated throughout this review. To this end, officials have been directed to develop a dedicated support

package for RSE workers, which will include clear, transparent information in their own language on support available and how to raise issues, and additional worker representation.

Pacific outcomes

- 89 The Pacific outcomes workstream sought to consider proposals of the review and how these would enable good outcomes for Pacific workers and countries. It also sought to consider potential mitigations to respond to concerns from some Pacific countries about the effects of the scheme on their domestic labour markets.
- 90 Pacific countries agreed that different approaches to managing the effects of the scheme are required, due to differences in demographic challenges and stages of development. They did not recommend any Pacific-wide policy approach for the New Zealand Government, but noted a general desire to be more involved in the oversight of the scheme and requested that concerns be addressed in the bilateral Inter-Agency Understandings (IAUs) in place with MBIE and each Pacific country. The Minister of Foreign Affairs and I have asked officials to progress these bilateral conversations, with a view to updating the IAUs.
- 91 Other priorities of Pacific sending countries have been addressed in policy proposals across this review, or are being considered as part of the Ministry of Foreign Affairs and Trade's redesign of the Strengthening Pacific Labour Mobility International Development Cooperation programme.

92 International relations



Increasing the cap for 2023/24

- 93 The horticulture and viticulture industries have requested an increase of 1,600 places to the RSE worker cap for the 2023/24 season, from the current 19,000 places to 20,600 places. In 2022/23, under delegated authority from Cabinet the previous Minister of Immigration significantly increased the cap by 3,000 places via negotiation through the Tripartite Group.
- 94 Having considered the industries' request, I recommend increasing the cap by 500 places to a total of 19,500 places for 2023/24. I consider that this is unlikely to have significant negative impacts on the New Zealand labour market or on available accommodation.

Implementation

- 95 Further advice including a detailed plan setting out the phasing of implementation will be developed by officials for my consideration over the latter half of 2023. I intend to report back to Cabinet seeking agreement to policy proposals and funding options Confidential advice to Government in the first quarter of 2024. If agreed, I anticipate that all the proposed amendments to the scheme could be implemented by the commencement of the 2025/26 season.
- 96 Ongoing consultation and considerable development work would be required to give effect to the new system. There are dependencies across the range of changes proposed to the system. For example, features like the new labour market planning regime are unlikely to be able to be implemented without core features like the cap and allocation model in place.
- 97 Some items stand alone and could be implemented more quickly. However, the bulk of the proposed changes would need to be implemented over two years.
- 98 The phasing would depend on the complexity of the changes, the additional policy work required, stakeholder engagement and whether ICT changes are required. Some proposals would require a simple change to immigration instructions and no further policy decisions, though may be subject to an appropriate transitional period. Development of the compliance framework as well as improvements to accommodation, health and deductions standards would require more detailed policy work.
- 99 Some proposals like the proposed cap and allocation system would require significant design work to be undertaken with stakeholders, including industry. Some, such as pastoral care workers and higher pay rates may impose higher costs on employers. The complexity and costs involved means these elements would need to be implemented on a longer timeframe.
- 100 Stakeholders have consistently requested the ability to submit applications online rather than the current paper-based system. An online system to manage RSE is preferable. However, this is likely to be a long-term goal due to MBIE's current funding and resourcing limitations and the need to better bed-in the Advanced Digital Employer-led Processing and Targeting (ADEPT) platform.

Cost-of-Living Implications

- 101 The implications of these proposals on the cost-of-living are currently unclear. Several of the proposals are likely to increase costs for businesses participating in the RSE scheme. However, these would be offset by substantial efficiency gains through changes to the administrative system.
- 102 Increased costs for employers are likely to be driven by the cost of complying with strengthened worker wellbeing measures (e.g., raised accommodation standards and the provision of better pastoral care). Because the RSE scheme provides a significant proportion of the labour force for many of New Zealand's horticulture and viticulture businesses, increased costs may indirectly affect food prices for New Zealand consumers.

103 The cost increases for employers would be mitigated by administrative changes designed to streamline the RSE experience for businesses and allow for increased productivity. For example, shifting to a three-year planning and accreditation model is likely to significantly reduce administrative burden and its associated resource costs for employers. More information on the cost of living implications will be provided with the final policy decisions in early 2024.

Financial Implications

104 The review's proposals would have financial implications for both government and industry. There would be ongoing operational costs to manage the new system. There are also likely to be implementation costs for the first two years as the new system is established. Officials will provide me with more detailed advice on financial implications of the changes in the latter half of 2023, alongside the implementation plan.

105 Significant additional funding is likely to be needed for compliance activity. Funding for Immigration New Zealand to undertake its compliance role has not increased since the RSE scheme's inception in 2007 at \$1.2 million per year, while the cap on RSE workers has increased from an initial 5,000 to 19,000 in 2022/23. Similarly, funding for the Labour Inspectorate to provide advice to Immigration New Zealand on their decisions under the scheme has remained static since 2006, at \$576,000 per year. This is insufficient to meet current scheme needs. Confidential advice to Government

106 RSE compliance functions are currently Crown-funded. However, the remainder of the RSE scheme is third party-funded and third party-funded activities by Immigration New Zealand have risen over the years. Confidential advice to Government

The immigration system is generally funded on a cost recovery basis, meaning that the ongoing operation costs of the changes would need to be appropriately charged based on best practice cost recovery principles. These principles are outlined in public sector guidance on setting fees and charges.^{10 11}

107 The RSE employer fees are currently \$1,080 for RSE status (initially valid for two years, then can be renewed for three years) and \$290 for the annual Agreement to Recruit. RSE workers in the Pacific pay \$270 for a limited visa application. Confidential advice to Government

I note, though, that fees for the Accredited Employer Work Visa (AEWV) system are higher and more differentiated than those for RSE. Employer accreditation fees range from \$740 to \$3,870. AEWV employer fees include some of the costs associated with enforcement and compliance.

¹⁰ The Treasury (New Zealand). (2017). *Guidelines for Setting Charges in the Public Sector: April 2017*

¹¹ The Office of the Auditor General (New Zealand). (2021). *Setting and administering fees and levies for cost recovery: Good practice guide*

108 The process for changing fees and levies requires Cabinet policy approval to amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010*.
Confidential advice to Government

109 Confidential advice to Government

Legislative Implications

110 There are no immediate legislative implications for these proposals. However, the proposal in this paper to increase the cap for 2023/24 will require amendments to immigration instructions. Some of the policy proposals will also require instructions amendments, if agreed by Cabinet in 2024. Immigration instructions are the rules and criteria for the grant of visas and entry permission to New Zealand, and the conditions of visas. Immigration instructions are set out in the Immigration New Zealand Operational Manual. Section 22 of the *Immigration Act 2009* authorises the Minister of Immigration to certify immigration instructions.

111 Following consideration of this paper, I will certify new immigration instructions to implement the cap increase.

112 Amendments to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* would be required for any changes to fees and levies.

Impact Analysis

Regulatory Impact Statement

113 As no changes to legislation would be required for these potential policy changes, the regulatory impact requirements do not apply to these proposals.

Climate Implications of Policy Assessment

114 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met.

Population Implications

115 These proposals would result in a range of benefits for RSE workers who come to New Zealand from higher standards, increased compliance and further support while they are on the scheme.

116 The proposals seek to reduce the risk of displacing New Zealand workers, through retention of the cap, improvement of the labour market planning process, and

potential incentives for RSE employers to recruit New Zealanders. These proposals are therefore likely to benefit New Zealand workers generally.

- 117 The risk of displacement from immigration tends to have a disproportionate effect on lower-skilled workers and Māori workers. I anticipate that the new cap setting, and labour market processes would help to minimise the risk of displacement of Māori in the horticulture / viticulture labour market by encouraging better labour market planning and more accurately reflecting the labour needs of each region.
- 118 As part of the interim response in April 2023 to the Productivity Commission report on the immigration system, the previous Minister of Immigration noted that MBIE is committed to greater engagement with Māori to better reflect Te Tiriti o Waitangi in immigration settings and consider the effects and opportunities of immigration inflows for Māori [CAB-23-MIN-0025]. MBIE has started the process to bring immigration into the existing regular policy dialogue on labour market issues with the Skills and Employment Iwi Leaders Group, using the Pou Tangata (Iwi Leaders Forum). MBIE is also seeking to build relationships with Māori stakeholders on immigration matters more generally to better understand the opportunities and effects that immigration has on Māori. As part of informing the final response to the Productivity Commission, MBIE undertook targeted engagement with key stakeholders, including Māori representatives, on an illustrative prototype Government Policy Statement for the immigration system.
- 119 Furthermore, the principle of manaakitanga, in ensuring the wellbeing of RSE workers who come to our shores, has been highlighted. I consider it important that the review proposals prioritise the wellbeing of RSE workers while they are here.

Human Rights

- 120 I acknowledge that measures to ensure the following human rights were raised as areas of concern by the Human Rights Commission in the December 2022 report *The RSE Scheme in Aotearoa New Zealand: A Human Rights Review*¹²:
- 120.1 Right to equality and freedom from discrimination
 - 120.2 Right to just and favourable conditions of work
 - 120.3 Right to privacy
 - 120.4 Right to culture
 - 120.5 Right to freedom of association
 - 120.6 Right to an adequate standard of living
 - 120.7 Right to health
 - 120.8 Right to freedom of movement.
- 121 I anticipate that the significant improvements to worker wellbeing proposed in this paper, that aim to improve health, accommodation, pastoral care, and exploitation prevention mechanisms, would mitigate these concerns. The more robust and effective administrative system sought would reinforce these improvements and provide a solid foundation to uphold human rights in the scheme.

¹² New Zealand Human Rights Commission (2022). *The RSE Scheme in Aotearoa New Zealand: A Human Rights Review*. Wellington, Human Rights Commission.

- 122 I acknowledge the Human Rights Commission’s concern that linking a worker’s visa to their employer has the potential to increase the risk of migrant exploitation. However, visas that link a worker to a specific employer (such as the AEWV) exist within the wider immigration system. Mitigations of this risk, including improvements to flexibility mechanisms that facilitate easier movement of workers between employers, a proactive compliance framework to monitor conditions and treatment of workers, and ongoing discussions with Pacific governments about replacement of the RSE limited visa with a work visa that is more permissive of worker movement, are being pursued.

Use of External Resources

- 123 One contractor was engaged for six months from January – July 2023 as essential surge support for the broader team in the policy development and consultation process. Privacy of natural persons [REDACTED] The additional resource was necessary due to the compressed timeframe for the review and existing pressures on the wider immigration policy work programme.
- 124 The implementation of these proposals following Cabinet agreement to them in 2024 may use some external resources where expertise such as IT needs to be outsourced. The scale of this will be confirmed as this work is planned.

Consultation

- 125 The following agencies were consulted on this Cabinet paper: Ministry of Social Development; Ministry for Pacific Peoples; Ministry for Primary Industries; Ministry of Foreign Affairs and Trade; Ministry of Health; Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development; the Treasury; and New Zealand Qualifications Authority.
- 126 Consultation on the review included a wide range of stakeholders, including RSE employers, RSE workers, Pacific governments, Pacific communities in Aotearoa New Zealand, unions, academics, the Human Rights Commission and the International Labour Organisation.
- 127 The following stakeholders were consulted during the policy development process, and in the development of final proposals:
- 127.1 Te Kahui Tika Tangata - Human Rights Commission
 - 127.2 New Zealand Kiwifruit Growers Incorporated
 - 127.3 New Zealand Ethical Employers
 - 127.4 New Zealand Apples and Pears
 - 127.5 New Zealand Wine Growers Association
 - 127.6 Summerfruit New Zealand
 - 127.7 Horticulture New Zealand
 - 127.8 Pacific Island Governments.
- 128 Additionally, the following stakeholders and interest groups were consulted during the policy development process:

- 128.1 RSE Employers
- 128.2 Council of Trade Unions New Zealand
- 128.3 Amalgamated Workers Union New Zealand
- 128.4 First Union New Zealand
- 128.5 International Labour Organisation
- 128.6 Muka Tangata – Workforce Development Council
- 128.7 Pacific Island Community Trust Bay of Plenty
- 128.8 Leading academics.

129 A summary of submissions is attached at **Appendix One**.

Communications

- 130 Following Cabinet’s decisions, I will communicate the outcomes of the review and proposed approach for the next phase to all relevant parties. Communications and stakeholder engagement plans will be developed and will form the basis of the communications. MBIE communications advisors will work with my office to support this announcement.
- 131 Key stakeholder groups include industry bodies, employers, RSE workers, unions, local Pacific communities and Pacific Liaison Officers. Further communications products will be developed, tailored to the needs of key groups. My officials will work with the Ministry of Foreign Affairs and Trade to ensure Pacific governments are informed of the approach.

Proactive Release

- 132 This paper will be proactively released in line with the Cabinet Office circular Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4].

Recommendations

The Minister of Immigration recommends that Cabinet:

- 1 **Note** that in 2018, Cabinet agreed to a review of Pacific migration policies [DEV-18-MIN-0101];
- 2 **Note** that the Recognised Seasonal Employer (RSE) policy review has been completed, and that the outcomes of the review include the following proposals;

Cap

- 3 **Note** the proposal for the Recognised Seasonal Employer (RSE) cap to be set on a three-yearly basis;
- 4 **Note** the proposal for the cap to be set on a regional basis according to the unmet demand for labour identified by a data-driven supply/demand model, and that a process be established to develop the model and ensure its output is robust before recommendations are submitted to the Minister of Immigration for approval;

Allocation

- 5 **Note** the proposal for the allocation process to employers to be done regionally and to incorporate performance-based criteria to enable positive employer behaviour to be encouraged and for certain breaches of the scheme to be penalised;
- 6 **Note** the proposal for the number of RSE workers allocated to individual employers to be set on a three-yearly basis as far as possible, while providing for performance-based criteria and allowances for new entrants;
- 7 **Note** the proposal for the employer accreditation process to be aligned to the three-year cap setting and allocation process, to create a single touch point for employers and realise administrative efficiencies;
- 8 **Note** that a framework for the allocation process, including performance-based criteria, should be designed with key stakeholders, incorporating the design elements regarding regional allocation and provision for new entrants;

Labour Market Planning

- 9 **Note** the proposal to give effect to regional labour market conditions by using data-driven RSE cap and allocation process to ensure New Zealanders are not displaced by incoming RSE workers within specific regions;
- 10 **Note** the proposal for the development of a labour market testing system that is aligned with the proposed cap, allocation, and compliance three-year cycle, and that clarifies an employer's obligations to three features:
 - 10.1 a three-yearly labour market plan, with employer declarations in years two and three to verify the plan is being followed;
 - 10.2 an ongoing obligation for employers to advertise to the public when roles are available, and to engage with the Ministry of Social Development on available New Zealanders;
 - 10.3 the integration of labour market plan compliance audits into the wider compliance regime, using a risk-based audit regime;
- 11 **Note** the proposal for the proposed performance-based incentives regime, to be worked on with stakeholders, include employment practices that improve the employment outcomes of New Zealanders, for example, provision of training, the creation of high-value permanent roles, and pay and conditions that match RSE workers, as well as potentially other areas that raise the performance of the sector;

Compliance

- 12 **Note** the proposal to establish more clearly what constitutes a breach of RSE requirements 'other than of a minor nature', including that accreditation under the RSE scheme will consider whether employers are on the stand-down lists maintained by Immigration New Zealand or Employment New Zealand, and provide clearly that some breaches such as providing inaccurate information would result in a sanction being applied;

- 13 **Note** the proposal to establish a scale of breaches of RSE requirements not already covered by employment of immigration legislation leading to a sanction to be developed 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;
- 14 **Note** the proposal to establish clear process for how potential breaches are addressed to develop a clear allocation of responsibilities for gathering evidence, recommendations on action and decision-making;
- 15 **Note** the proposal to increase RSE worker voice and agency in understanding rights, raising concerns and getting resolution, for example, through the following:
- 15.1 Ensuring that RSE workers are aware that they are entitled to join a union;
- 15.2 If RSE scheme issues arise and cannot be resolved, RSE employers must alert MBIE and any other relevant agency; any failure to do so would be considered in the RSE accreditation or allocation decisions;
- 15.3 Investigate the provision of a pilot of independent representation for RSE workers (based on the work undertaken by the Tripartite working group);
- 16 **Note** the proposal (subject to funding through fees or other sources) to develop an enhanced compliance, enforcement and monitoring regime with more resources for MBIE to monitor adherence to RSE scheme rules and identify and address potential breaches;

Flexibility

- 17 **Note** the proposal for RSE visas to provide for multiple entry each season to enable RSE workers to leave New Zealand for a short period for family emergencies, bereavements and other significant events;
- 18 **Note** the proposal for workers to be enabled to move between RSE employers through a Variation of Conditions rather than the current requirement that a new visa must be issued;
- 19 **Note** the proposal to remove requirements for a new Agreement to Recruit when a worker either changes roles with the same employer, or moves location with the same employer;

Pastoral care

- 20 **Note** the proposal to update the pastoral care rules to include:
- 20.1 Maximum of six days to be worked in any seven-day period, with at least one day off at the worker's choice;
- 20.2 Opportunity for rest;
- 20.3 Facilitate promotion of good health outcomes, through health days, onsite immunisations and provision of healthcare information;
- 20.4 Access to nutritious food at reasonable cost;
- 20.5 Opportunities to upskill;

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- 20.6 Access to community and support services;
 - 20.7 Clear, transparent information for RSE workers on support available in their own language;
 - 20.8 Support to facilitate connection with home country;
 - 20.9 Information on employment rights;
 - 20.10 Facilitation of Pacific superannuation;
- 21 **Note** the proposal to introduce a requirement for employers to complete pastoral care plans and provide these to MBIE at accreditation with the details of this template to be worked through in discussion with industry bodies, Pacific representatives and RSE workers;
- 22 **Note** the proposal to introduce an in-principle requirement for employers to employ pastoral care workers at a certain number of FTE per worker, with the details to be worked through and agreed by the Minister of Immigration later;
- 23 **Note** the proposal for the inclusion of a requirement for higher pay rates or other incentives for experienced workers and particular roles such as team leaders, supervisors, drivers and pastoral care workers in immigration instructions;

Health

- 24 **Note** the proposal for the standard for health insurance to be lifted at minimal cost to the worker, with further details to be worked through with stakeholders;
- 25 **Note** the proposal to require employers to provide health insurance information at the time of the employment offer for RSE workers prior to their leaving the Pacific and as part of employer induction upon arrival;
- 26 **Note** the proposal to remove the HIV screening requirement for applicants;

Deductions

- 27 **Note** the proposal for a standardised template deductions form which specifies:
- 27.1 The following set of allowable deductions: accommodation (broken down by rent, power and food), 50 per cent of the international flight, travel to and from a RSE worker's home to the international port of departure, health insurance, visa, food, cash advance, Pacific superannuation, worker's savings account;
 - 27.2 A protected earnings threshold per week which deductions cannot take net weekly income below;
- 28 **Note** the proposal for a cost sharing policy which, along with the above, also specifies:
- 28.1 Workers to be given options as to how their deductions will be spread: either over six weeks, over 12 weeks or over another period to be specified by the worker, up until the duration of their employment;
 - 28.2 The RSE employer to cover the domestic leg of travel in New Zealand on arrival and return;

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- 28.3 The RSE worker to cover the travel from their home in the Pacific to the international port of departure from the Pacific to New Zealand, on arrival and return;
- 28.4 The RSE employers to cover the cost of travel from one employer to the next in the case of a transfer, with the cost sharing arrangement to be determined between them;
- 28.5 Flexible fares to be booked where possible, with any change to the flights at the employer's request (eg. should they wish to alter the contract of employment) to be made at the employer's expense;
- 28.6 Only items included in the standardised deductions form can be deducted for, with the following items to be covered by the employer and not deducted from the worker's pay: personal protective equipment, tools, training, Wi-Fi;

Accommodation

- 29 **Note** the proposal to update the accommodation standards to incorporate the Healthy Homes Standards as per the *Residential Tenancies Act 1986*, align with the minimum bedroom size requirements in the *Housing Improvement Regulations 1947* and require Wi-Fi access to be provided to workers free of charge in their accommodation;
- 30 **Note** the proposal to require that workers be provided with a minimum set of details about their accommodation pre-departure, including photos;

Pacific Outcomes

- 31 **Note** that officials will progress bilateral conversations with Pacific countries with a view to updating the existing Interagency Understandings governing their engagement with RSE and report back to the Ministers of Foreign Affairs and Immigration;

32 International relations

Implementation

- 33 **Invite** the Minister of Immigration to report back to Cabinet seeking agreement to final policy decisions on the RSE review, including phasing of implementation and financial implications for Government and the industry by the first quarter of 2024;

Cap for 2023/24

- 34 **Agree** to increase the RSE worker cap to 19,500 places for the 2023/24 season.

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Authorised for lodgement

Hon Andrew Little

Minister of Immigration

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Appendices

Appendix One: Summary of submissions

Appendix Two: Diagram of proposed RSE system