



Recognised Seasonal Employer policy review – options for consultation

March-April 2023

Summary document

Please direct all written feedback to: rsepolicyreview@mbie.govt.nz

About this document

- This document provides an overview of the Recognised Seasonal Employer (RSE) policy review options that we are seeking your views on through this consultation process. More detail on the relevant policy considerations is contained in the full options document.
- The Ministry of Business, Innovation and Employment (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.

Background

- The outcomes sought for the RSE policy 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 practices.
- The RSE policy review aims to develop a sustainable, long-term direction for the administrative system settings, and an improved set of policies and guidelines which protect the rights and wellbeing of RSE workers and enable them to have a positive experience on the scheme.
- The guiding principles of the review are that the RSE scheme should:
 - Enable equitable sharing of benefits across employers, workers and communities
 - Incorporate the views of Pacific countries and workers, and the impacts on Pacific labour markets
 - Contribute to the short, medium and long-term development outcomes New Zealand seeks in the Pacific region
 - Be accessible to prospective workers and employers
 - Have settings that are flexible, enabling the system to respond to labour market changes over time; and
 - Ensure compliance frameworks are robust, fit-for-purpose and adequately resourced.
- The review encompasses system-focussed, worker-focussed and Pacific-focussed workstreams. The system-focussed workstreams include the cap (p4), allocation (p5), labour market test (p6), compliance (p7), and flexibility (p8). The worker-focussed workstreams include accommodation (p9), health (p10), pastoral care (p11), deductions (p12), worker rights and exploitation risks (p13), and benefits (p14).

Options contained in this 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.

Process and timeframes

- Following initial consultation in Nov-Dec 2022, MBIE has now developed a set of policy options for consultation with stakeholders. Ultimately, Government decisions on these options will need to balance the need for higher standards and conditions for RSE workers with resulting costs to employers. This trade-off will need to be considered alongside the set of administrative system options, and how flexibility and certainty in the scheme can be promoted to the benefit of all parties in the scheme.
- Following this current round of consultation, MBIE will analyse the feedback received and develop final, high-level policy recommendations for Cabinet to decide in June 2023. Implementation will commence following Cabinet’s decisions. Cabinet decisions may result in further policy work to be continued post-June.

Stage	Timing
Policy development and consultation	October 2022 – March 2023
Consultation round 1	November 2022
Policy development	Dec 2022 – Feb 2023
Briefing to Minister on policy options for consultation	Early March 2023
Consultation round 2	Mid-March 2023 – Mid-April 2023
Analysis of submissions and development of policy recommendations	April-May 2023
Cabinet	June 2023
Implementation of operational changes and further policy development	From June 2023 - TBC

Workstream: Cap

What these options are aiming to address

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.

Options for your feedback

- **Setting a multi-year cap** to provide greater certainty for employers to make capital investments including in purpose-built worker accommodation, and to support Pacific partners' oversight over demand for their labour force. **This option could be applied to any of the cap setting options below.**
- **Retain the current (status quo) approach** where 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 country interests to determine a cap number.
- Use a **labour supply/demand model**
- Use **data to inform discussion between key stakeholders** (industry, unions and government agencies) on the cap level to recommend to the Minister
- **Government and industry agree a workforce plan with targets/performance measures for industry**, e.g. the percentage of seasonal jobs filled by New Zealanders or the number of worker accommodation units built. Industry would report against the targets and this would be considered alongside labour market conditions.
- **Remove the cap** and allow the number of RSE workers required each season to be determined by industry demand.

Questions

- What are your views on the options outlined above, including on how the status quo is currently working?
- If a decision was made that there should continue to be a cap, what are your views on the option of a multi-year cap, and how long should it be?
- What is the best way to set any cap?
- Would a data driven approach using a labour supply/demand model be effective, and how do you see this working?
- Is there another way to ensure the scheme incentivises both the employment of New Zealanders and improvements to productivity?

Workstream: Allocation

What these options are aiming to address

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.

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.

Options for your feedback

- **Multi-year allocation** to provide greater certainty for employers and encourage them to make capital investments. A multi-year allocation could be applied to any of the allocation process options set out below.
- **Retaining the pre-2022 process** where the cap increase is allocated by asking all employers to advise the number of workers they will need for the coming season, and granting each employer an equal percentage of their additional request.
- **Industry-led allocation** where the industry bodies would work together to decide how the cap is allocated between individual employers, and make a recommendation to MBIE for a final decision.
- **2022 National Labour Governance Group agreed process** where 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.
- **Performance-based allocation criteria to determine the increase in allocation.** The allocation of the overall cap agreed for the year would be determined by simple performance measures. For example, RSE employers with a greater percentage of New Zealand workers or providing quality, purpose-built accommodation would receive increased allocation while those responsible for minor breaches would be penalised with reduced allocation.

Questions

- What are your views on how the cap is currently allocated?
- If there is an allocation process, what are your views on the options?
- What are your views on using allocation as an incentive for a performance-based system?

Workstream: Labour Market Test

What these options are aiming to address

The labour market test (LMT) process is an assessment employers must meet, to demonstrate that they have attempted to recruit New Zealanders in line with the 'New Zealanders first' principle of the scheme, before recruiting RSE workers.

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.

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.

Options for your feedback

- **Maintaining the status quo** – no changes to processes or administration.
- **LMT removal** – remove the LMT, and rely instead on the RSE cap and allocation processes to mitigate the labour market impacts at a national level.
- **Standards-based approach** – basic universal standards for the minimum requirements to meet the labour market test (similar to the current approach, but clarifies the expectations on employers).
- **Accreditation only approach** – removal of the labour market test at the (annual) Agreement to Recruit Stage, with retention of the labour market test as a part of (once every 2-3 years) RSE accreditation, with a view to streamline the Agreement to Recruit process.
- **RSE standard of employment** – employers would be required to advertise roles for New Zealanders with identical pay and conditions to those offered for RSE workers to satisfy the LMT.

Questions

- Do you have any views on the labour market test and how it is working?
- What are your views on the options outlined above?
- Are there alternative ways to ensure New Zealanders are considered for opportunities to undertake seasonal work?

Workstream: Compliance

What these options are aiming to address

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.

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.

Options for your feedback

- Establish more **clearly what constitutes a breach of RSE requirements 'other than of a minor nature'** including misleading or false information
- Establish a **scale of breaches** of RSE requirements i.e. breaches that attract a warning, restriction on numbers, or suspension of or expulsion from RSE status
- Establish **clear process for how complaints** and how issues are to be addressed
- Increase **RSE worker voice and agency** in understanding rights, raising concerns, and getting resolution of them
- **Enhanced inspection regime** – increase the resources available for inspection
- **Incentives for good performance** to be developed with stakeholders.

Questions

- Do you have any views on how issues or problems within the RSE scheme are managed or resolved?
- What role should there be for industry, Pacific states, unions and workers in resolving problems?
- What incentives would work best for good performance, for instance more flexibility in deployment of workers, increased allocation?
- Could measures of a 'good employer' beyond the direct requirements of RSE (such as efforts to attract and retain New Zealand workers in full-time roles, or environmentally sustainable practices) also be incentivised?

Workstream: Flexibility

What these options are aiming to address

The current scheme settings have limited flexibility for RSE workers without 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.

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.

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.

Options for your feedback

- **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
- **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
- **Visas not tied to one employer** to enable RSE workers to move between RSE employers
- **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
- **Allowing workers to be moved between regions without a new Agreement to Recruit**, reducing the administrative burden for employers and INZ
- **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.

Questions

- In which areas of the RSE scheme do you see that more or less flexibility is required?
- What are your views on RSE workers being able to move around RSE employers more easily?
- What might be the impact of multi-year visas, and or multi-entry visas? What would be an appropriate length for a multi-year visa and why?
- If a multi-year visa were implemented, should annual AtRs and annual contracts still be required?
- In situations of extreme weather events, what options would be particularly helpful to assist employers?

Workstream: Accommodation

What these options are aiming to address

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.

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.

Options for your feedback

- **Update the RSE accommodation standards** (example provided in full options document) to provide greater specificity where the standards currently use wording such as “adequate” or “sufficient” (e.g. minimum dimensions for personal storage space and indoor recreation space, minimum number of hand basins per person).
- **Update the RSE accommodation standards** to set a maximum number of workers per bedroom, and/or ban the use of bunk beds, and/or increase bedroom size requirements in order to prevent overcrowding and give workers greater privacy.
- **Require employers to provide affordable or free Wi-Fi access** in RSE accommodation
- **Require employers to provide workers with recent photos and details of accommodation** (such as room-sharing arrangements) at the point of recruitment
- **Introduce a methodology** to assess proposed accommodation costs/cost increases.
- Start to **regularly collect and collate a wider range of data from RSE employers on their accommodation** to improve monitoring of accommodation supply and demand, as well as informing further improvements to the standards.
- Put 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.
- **Set 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.

Questions

- Where could the accommodation standards be clearer?
- What changes to the accommodation standards would be difficult or easy to adopt? What would the flow-on impacts be?
- What are the key barriers to constructing purpose-built accommodation for seasonal workers? What kind of measures would help with constructing more purpose-built accommodation (where it makes sense to use this type of accommodation)?
- Are there any other options to improve accommodation settings not listed that we should consider?

Workstream: Health

What these options are aiming to address

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.

RSE workers are not currently eligible for publicly funded healthcare. The current health insurance offered by providers is considered by all stakeholders to be inadequate. Both the standard for health insurance and the provision of this insurance needs to be explored; a higher standard will incur higher costs, which RSE workers may not be able to cover or would reduce their earnings.

Applicants who test positive for HIV are not eligible for an RSE limited visa. The ban of HIV positive applicants in RSE policy is 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.

Options for your feedback

- **Consider whether partial or full access to publicly funded healthcare is possible; or**
- **Make improvements to health insurance (not mutually exclusive):**
 - Define “acceptable” health insurance in policy according to a **higher standard**
 - **Mass procure the best deal for health insurance**, either through MBIE or with individual Pacific countries
 - **Require employers to cover part or all of the health insurance**
 - **Mandating health insurance information** as part of pre-departure training for RSE workers, and as part of employer induction upon arrival; and
- **Remove the blanket ban on HIV positive applicants**

Questions

- What are the current barriers to positive health outcomes for RSE workers?
- How could the standard for health insurance be improved?
- Who should be responsible for paying for workers' health insurance, and why?

Workstream: Pastoral care

What these options are aiming to address

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.

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.

Options for your feedback

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

Questions

- In what areas do you consider current pastoral care lacking? Where could further improvements be made?
- What areas are reasonable for employers to take responsibility for?
- Should employers be required to complete pastoral care plans?
- Should employers be required to appoint pastoral care workers? If so, how do you see this role working?
- Could a dedicated advice mechanism assist employers in navigating their pastoral care obligations?
- Which of the options above may be effective in improving the pastoral care provided?
- Which stakeholders do you see having a role in supporting pastoral care?
- Are there any other options you can think of not outlined above, which could improve the pastoral care outcomes for RSE workers?

Workstream: Deductions

What these options are aiming to address

The amount deducted from workers' wages is substantial. The types of expenses for which deductions are being made are increasing. Deductions are often made in workers' first few weeks on the scheme, limiting their remittances during that period. Deductions should be actual, reasonable and verifiable, and the approach clear and transparent for workers, employers and the government. There is also a lack of clarity on permissible deductions under the RSE policy. "Reasonable" deductions are not defined. Inconsistency of practice leads to confusion for all stakeholders. RSE workers may not fully understand or be in a position to question or negotiate their deductions, particularly as their consent is requested at the time the offer of employment is presented.

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.

Options for your feedback

- A **standardised template deductions form** for INZ and the Labour Inspectorate to provide to employers, to ensure consistency and transparency
- Specifying in policy a **restricted set of allowable deductions** (e.g. only transport, medical insurance, accommodation)
- Specifying a **time period for deductions to be recovered**, spread more evenly over the worker's time on the scheme
- 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.
- **Clarifying cost-sharing arrangements in policy**, particularly for who covers each type and leg of transport
- **Status quo in policy but provide operational guidance to the LI on assessing "actual, reasonable and verifiable" expenses**
- **Further prescription for areas of particular issue, such as flights**, e.g. for flexible option, refundable flights booked a certain number of months in advance.

Questions

- What is the best way to ensure a 'fair return' for both RSE workers and employers in respect to deductions?
- What should the employer be responsible for covering, and what should the worker be responsible for covering?
- What do you consider reasonable items to be deducted from workers' wages?
- Which, if any of the options above do you think would mitigate concerns around deductions?
- Are there any other options not identified which may be effective?

Workstream: Worker rights and exploitation risks

What these options are aiming to address

Concerns about RSE workers' experience in the scheme have been particularly prominent in the latter half of 2022. RSE workers carry a particular vulnerability as a workforce, due to the combination of several high risk factors for migrant exploitation. There is inconsistent understanding among stakeholders as to the rights of RSE workers, and insufficient protection against exploitation.

Some Pacific sending countries have their own codes of conduct for RSE workers. Some of the requirements within these codes are not easily applied to New Zealand human rights and employment law.

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.

Options for your feedback

- **Guidance to employers** clarifying Pacific countries' expectations and the obligations on the employer
- **Streamlined processes for INZ** to transfer workers to another RSE employer in cases of exploitation
- Increase **RSE worker voice and agency** in understanding rights, raising concerns, and getting resolution of them, including access to independent support and advice
- **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.

Questions

- Do you have any concerns about the treatment of RSE workers in New Zealand?
- What is your understanding of Pacific countries' codes of conduct for RSE workers, and employers' role in these? Would guidance to employers in this area be useful?
- What is the best way to prevent exploitation of RSE workers?
- What is the best way of ensuring 'worker voice' can raise and investigate concerns about employment practices and exploitation?

Workstream: Benefits

What these options are aiming to address

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 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.

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, 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.

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.

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).

Options for your feedback

- Requiring **an increase in minimum pay rates over time** e.g. a shift towards the median wage to align with other immigration settings
- Training:
 - **Facilitative:** Rewarding good behaviour through incentives, **or**
 - **Mandatory:** Requiring employers to facilitate training and upskilling for workers
- Requiring the employer to **facilitate access to workers' Pacific superannuation** schemes.
- **Require employers to directly pay for more of the costs of recruitment of RSE workers**, 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

Questions

- Do you think options being consulted on in the other workstreams are sufficient to ensure the benefits shared between employers and workers are balanced appropriately?
- What is the best way to enable upskilling of RSE workers?
- What kind of incentives would facilitate employers providing this training?
- Should employers be required to facilitate access to workers' Pacific superannuation schemes?