



## BRIEFING

### RSE Scheme and Pacific Quarantine Free Travel – policy changes and operationalisation

<b>Date:</b>	20 September 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-0587

Action sought		
	Action sought	Deadline
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	<b>Agree</b> new and updated RSE class border exceptions	23 September 2021
Hon Kris Faafoi <b>Minister Immigration</b>	<b>Agree</b> new and updated RSE class border exception; and  <b>Agree</b> to RSE policy changes to transition the scheme towards normal repatriation cycles enabled by QFT	23 September 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Andrew Craig	Manager, Immigration Policy (Skills and Residence)	s 9(2)(a)	s 9(2)(a)	✓
Privacy of natural persons	Senior Policy Advisor, Immigration Policy (Skills and Residence)	s 9(2)(a)		

The following departments/agencies have been consulted
The Ministries of Foreign Affairs and Trade, Social Development, Health, and Primary Industries.

**Minister's office to complete:**

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

**Comments**



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### Purpose

This briefing reports on the operationalisation of one-way Pacific quarantine free travel (QFT) for Recognised Seasonal Employer (RSE) workers. It seeks agreement to new and updated RSE critical worker class border exceptions, reflecting the QFT arrangements. It also seeks agreement to RSE policy changes to support a transition back to normal repatriation cycles, and provides information on how cap and worker allocation processes will work under the new arrangements.

### Executive summary

The RSE scheme has been significantly disrupted by COVID-19 border closures, with impacts on industry, employers, workers, and Pacific states. Multiple policy changes have been made to provide greater flexibility within the scheme, and two RSE border exceptions have been agreed. Changes to the scheme's 'normal' operation have been necessary to support workers who could not get home and industry which has faced significant worker shortages. This has, however, resulted in a departure from the intended 'seasonal' nature of the scheme, with some workers who have not been home for nearly two years. Employers have also endured significant pressures managing their RSE workforce and meeting additional obligations imposed through border exceptions. In short, the scheme has become significantly more complex.

One-way Pacific QFT, enabling greater flows of RSE workers, presents an opportunity to transition back towards more normal operation of the scheme, while also continuing to enable industry to maintain sustainable workforce levels. The proposals in this paper are intended to meet this objective and simplify requirements and processes where possible.

Your agreement is sought to a new border exception for QFT RSE workers, which is simpler than previous exceptions. Many of the conditions (e.g improved base wages) will now be embedded in the overall RSE scheme or become redundant if related to Managed Isolation and Quarantine (MIQ), removing the need for different versions of Agreements to Recruit (ATRs) and separate employer undertaking forms. The current exception will also be narrowed to only one further flight from the Solomon Islands, reflecting Ministers' decision to cancel all further space in MIQ for RSE workers.

To return to more normal repatriation cycles, we propose re-introducing maximum stay limits (of different durations for different cohorts) which will have the effect of enforcing the prioritised return home of RSE workers who have been here the longest. This will put a 'line in the sand' for workers who have repatriation pathways, while the different durations will ensure most workers can remain to cover the February/March 2022 peak harvest. The staged approach to maximum stay limits will also meet the need for staggered returns. We propose these limits be accompanied by the introduction of a three-month 'bridging' visa, available to those who are at the end of their contracts and want to go home but the flight is a few weeks away, and to those whose repatriation plans may have been disrupted (e.g. flight deferrals due to a COVID-19 outbreak). There are risks associated with re-imposing maximum stay limits. Visa expiry dates may not align with home country repatriation capacity, for example where a country closes its borders. The limits will also not apply to a large group of workers whose visas expire between August-September 2021, who are in the process of being granted new visas under the scheme. However, we do not consider that these outweigh the benefits of seeking to return to the seasonal cycles of the scheme.

A small number of other changes are also proposed to accommodate the features of QFT travel arrangements.

Work is underway across agencies and with industry to operationalise QFT decisions. This will require a combined effort to ensure workforce planning for arrivals, allocation and repatriation function as well as possible. Industry, with Immigration New Zealand (INZ) input, will lead on allocating workers across employers, crops and regions using a percentage based system applied to existing allocations. They will also work together to develop a workforce plan, incorporating the country arrival 'ceilings' agreed by Ministers to ensure alignment with Pacific country quarantine capacity. The additional health requirements will sit within the Air Border Order (not Immigration Instructions). Cross-agency work on the implementation of these requirements for the 'trial' period is underway and the self-isolation guidance has been drafted – a summary of industry's preparedness to meet requirements will be included in the RSE QFT Cabinet paper to be considered on 27 September 2021.

## Recommended action

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The Ministry of Business, Innovation and Employment recommends that you:

### [Minister for COVID-19 Response and Minister of Immigration]

- a **Note** that Cabinet has agreed to a staged approach to one-way quarantine-free travel from some Pacific countries, beginning with a trial of RSE workers from Samoa, Tonga and Vanuatu, and that this arrangement effectively replaces the current RSE border exception and group allocation for 150 workers every 16 days through MIQ [CBC-21-Min-0089].

*Noted*

Minister for COVID-19 Response

*Noted*

Minister of Immigration

- b **Agree** to a new critical workforce class exception in immigration instructions for RSE workers from countries with a one-way QFT arrangement in place with New Zealand, with the following arrival limits for the 2021/2022 season:

- a. 1,200 RSE workers from Samoa
- b. 1,300 RSE workers from Tonga
- c. 4,400 RSE workers from Vanuatu

*Agree / Disagree*

Minister for COVID-19 Response

*Agree / Disagree*

Minister of Immigration

- c **Agree** to amend the current RSE critical workforce class exception by narrowing its application to only one flight of up to 150 workers from the Solomon Islands arriving in November.

*Agree / Disagree*

Minister for Covid-19 Response

*Agree / Disagree*

Minister of Immigration

- d **Note** that space in MIQ has been held for the 150 Solomon Island RSE workers arriving in November 2021 but no further spaces for RSE workers are available outside this allocation.

*Noted*

Minister for COVID-19 Response

*Noted*

Minister of Immigration

**[Minister of Immigration only]**

- e **Note** that Cabinet agreed to accompany the opening of QFT for RSE workers with a transition to a more 'normal' operation of the scheme, in which workers return home between seasons.

*Noted*

- f **Agree** to the following changes to the RSE policy to transition the scheme back to more normal repatriation cycles:

- a. Introduce a 25 month maximum stay limit for RSE workers from QFT countries who have been in New Zealand since the border closed in March 2020.

*Agree/Disagree*

- b. Introduce a 16 month maximum stay limit for RSE workers from QFT countries who entered New Zealand through the first RSE border exception between January and March 2021.

*Agree/Disagree*

- c. Re-instate normal RSE policy settings limiting workers' duration of stay to 7 months in any 11 month period for new QFT arrivals and for workers who entered through the second border exception between June and November 2021.

*Agree/Disagree*

- d. Re-instate the 'stand down' period, shortened to two months, for currently onshore workers from QFT countries who have been in New Zealand since the 2020 border closure or who entered in early 2021 through a border exception.

*Agree/Disagree*

- e. Grant by special direction a three month limited 'bridging' visa to RSE workers under section 61A whose repatriation plans are or will be disrupted due to COVID-19, or whose visa will expire before the next available repatriation flight, allowing them to continue working in the scheme while awaiting their flight.

*Agree/Disagree*

- g **Note** that Cabinet has agreed to change the RSE Policy's remuneration requirements so that RSE workers must be paid at least \$22.10 per hour (equivalent to approximately the minimum wage plus ten percent) for a minimum of 30 hours per week.

*Noted*

- h **Agree** to the following changes to the RSE Policy to ensure the 'trial' features of QFT travel do not impose additional costs on RSE workers:

- a. Where RSE workers are arriving by charter planes, flight cost deductions must not exceed what would have been charged for a commercial option.

*Agree/Disagree*

- b. Employers must pay RSE workers for the period spent in isolation on arrival, pending a day 5 COVID-19 test (whether working or not).

*Agree/Disagree*

- i **Agree** to extend the current waiver of the chest x-ray requirement for onshore RSE workers from Samoa, Tonga and Vanuatu who are applying for a further visa, by Special Direction with an expiry date of June 2022.

*Agree/Disagree*

j **Note** that the formal 'cap' on worker numbers is 14,400 (counting in those still onshore in November) but that numbers will be further constrained by country arrival 'ceilings', agreed by Cabinet to ensure manageable flows of workers given limited Pacific country repatriation capacity.

Noted

k **Note** that industry and Government agencies will work together to ensure workforce planning for arrivals, allocation and repatriation function as well as possible, including:

- a. Industry will lead on co-ordinating the fair distribution of workers across employers, crops and regions using a percentage based system applied to employers' existing allocations.
- b. Industry will lead on developing a workforce plan incorporating the country arrival ceilings as a key limiter.
- c. Industry, government agencies and Pacific governments will work together on repatriation planning, ensuring clear processes are in place to prioritise the return of workers who need to go home at the right time.

Noted



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Policy**  
Labour, Science and Enterprise, MBIE

20 September 2021



Hon Kris Faafoi  
**Minister of Immigration**

23 / September / 2021



Hon Chris Hipkins  
**Minister for COVID-19 Response**

27 / 9 / 21

## Background

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1. Cabinet has agreed to a staged approach to one-way quarantine-free travel from some Pacific countries, starting with a one month 'trial' of RSE workers from Samoa, Tonga and Vanuatu which will be reviewed at the end of the month. Under the trial, RSE workers will arrive in New Zealand on chartered flights, which will be exempt from the requirement for passengers to enter Managed Isolation and Quarantine (MIQ), and will be subject to a number of health measures including pre-departure vaccination, on-arrival COVID-19 testing and isolation pending a day 5 COVID-19 test.
2. Cabinet agreed several parameters for the RSE scheme over 2021/22, including that:
  - a. The cap of 14,400 will become available, counting in workers onshore as at November;
  - b. Industry will co-ordinate the allocation of workers in consultation with INZ, and lead a workforce plan to ensure this is consistent with Pacific countries' repatriation capacities;
  - c. Workers will be encouraged to return home between seasons where possible; and
  - d. Remuneration will be at least \$22.10 (equivalent to approximately the minimum wage plus ten percent) for a minimum of 30 hours a week.
3. Cabinet also agreed to initially apply ceilings on the number of arrivals from partner countries (Samoa 1,200, Tonga 1,300, Vanuatu 4,400), to ensure that workers can return home in a timely way. A review in December of the ceilings, based on repatriation of existing workers and any increases to partner countries' repatriation capacities, will determine whether the ceilings can be increased before peak harvest season in February/March 2022.
4. 'In principle' commencement dates for one-way QFT were also agreed - Vanuatu from 4 October 2021 and Samoa and Tonga from 12 October 2021, subject to a number of conditions being met. The Ministers for COVID-19 Response and Immigration were invited to make final decisions about new and amended border exceptions, and officials were directed to report to on further details of RSE operationalisation, including ways to return to normal repatriation cycles [CBC-21-MIN-0089].

## New and updated RSE border exceptions

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5. Entry to New Zealand under one-way QFT will be strictly controlled, with border exceptions remaining the mechanism allowing non-New Zealanders to enter the country. Cabinet has agreed that RSE workers will be the first eligible cohort for QFT with an intention to later consider expansion to those covered by other border exceptions, or those exempt from the border closure.
6. This decision effectively replaces the current RSE border exception, which enables entry of RSE workers from low-risk Pacific Island countries that have agreed to repatriate their workers (Samoa, Vanuatu, the Solomon Islands and now Tonga), and with an MIQ limit of 150 RSE workers every 16 days until March 2022.<sup>1</sup> This exception imposes conditions on RSE employers over and above standard RSE Policy requirements and is coupled with MIQ employer obligations. Because MIQ requirements are redundant under QFT, and given Cabinet's decision to embed enhanced terms and conditions in the general RSE Policy, it is no longer fit for purpose.

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<sup>1</sup> An earlier RSE border exception, which facilitated the entry of one cohort of 2013 RSE workers before 31 March 2021, is no longer active.

## New border exception for workers entering through Pacific QFT arrangements

### *Eligibility*

7. We recommend a new, simpler, critical workforce class exception be agreed for RSE workers from countries with a one-way QFT arrangement in place with New Zealand. Initially this will apply to Vanuatu, Tonga and Samoa, subject to the successful establishment of QFT with these countries. If further QFTs are established in future with other RSE-sending countries (e.g. the Solomon Islands), RSE workers from these countries would also be eligible for entry under this exception.

### *Numerical limit*

8. The number of visas available under this border exception for the 2021/22 season will be limited by the following Pacific country arrival 'ceilings' agreed by Cabinet to align with home country repatriation capacity:
  - a. 1,200 RSE workers from Samoa
  - b. 1,300 RSE workers from Tonga
  - c. 4,400 RSE workers from Vanuatu
9. As agreed by Cabinet, these ceilings will be reviewed in December 2021, with the possibility of increasing them to 2,000 workers from Samoa, 1,700 workers from Tonga and 5,100 workers from Vanuatu, or higher, if repatriation capacity allows before the February/March 2022 peak harvest. These ceilings will initially allow up to 6,900 new RSE arrivals (adding to onshore numbers), and up to 8,800 if agreed following the December review – if this eventuates, an amendment will be needed to this border exception. As with other class exceptions, this will be operationalised by industry providing INZ with lists of nominated individuals for whom visas are sought.

### *Requirements*

10. We recommend there be no associated requirements with this border exception as the parameters agreed by Cabinet for RSE entry under QFT will be reflected elsewhere, and several requirements associated with previous RSE exceptions are no longer required.
  - a. The **additional health requirements** (pre-departure vaccination, isolation period and COVID-19 testing) will all be contained in the Air Border Order exemption notice. This work is being led by the Ministry of Health. See from paragraph 35 for information on the operationalisation of these requirements.
  - b. The **enhanced employment conditions** (minimum wage of \$22.10 per hour, equivalent to approximately the minimum wage plus ten percent, for a minimum of 30 hours per week) will be incorporated in the RSE policy as ongoing requirements.
  - c. Changes to the main RSE policy are also recommended to ensure **additional costs associated with features of the QFT 'trial' period** (charter flights and isolation period) are not passed on to workers (see from paragraph 38 below).
11. Because there will be significantly increased flows of workers enabled by QFT and there is an intention to return to more 'normal' operation of the RSE scheme, we also do not consider it necessary to pull through the following requirements from previous exceptions:
  - a. Obligation on employers to share workers across crops and regions – this requirement was put in place when entry numbers were very low to maximise the RSE workforce across the horticulture and viticulture industry, and prevent individual employers from 'holding on' to workers who were needed more elsewhere. In the new context, normal RSE policy settings requiring guaranteed paid hours and allowing for Joint 'Agreements to Recruit' (where two or more employers share workers over the duration of the workers'

visas) will ensure workers are kept employed and deployed where they are needed. In addition, given industry will be responsible for allocation, they can ensure workers are moved to where they are needed most.

- b. Deductions for living costs must not be increased beyond last season's – this requirement for previous exceptions was in place to guard against potential employer attempts to offset additional costs associated with MIQ through increased living cost deductions. With no MIQ costs under QFT, we consider normal requirements for deductions to be 'reasonable and verifiable', as verified by the Labour Inspectorate, sufficient to mitigate this risk.

### **Update to current RSE exception, narrowing application to one additional specified flight only**

12. The current RSE border exception needs to also remain in place for one cohort of RSE workers entering through MIQ from the Solomon Islands in November. While Border Ministers agreed to end the RSE MIQ group allocation from 1 September 2021, they subsequently directed officials to retain MIQ capacity for the already-planned November flight from the Solomon Islands (with which New Zealand is not currently pursuing QFT)<sup>2</sup>. This flight is still scheduled to go ahead. To reflect this decision and further policy changes, we recommend you agree to update this exception by:
  - a. Clarifying that the exception is for a total of up to 150 RSE workers from the Solomon Islands.
  - b. Removing the requirements on employers to share these workers across crops and regions, for the reasons in paragraph 11(a) above.
  - c. Removing the requirements to pay workers a minimum of \$22.10 per hour and keep them fully employed, as these requirements will now be embedded in the overall RSE policy (CBC-21-MIN-0089)].
13. The exception will retain current requirements that RSE employers must cover the cost of MIQ in Government facilities for these workers; that they will not charge this cost to RSE workers, either directly or indirectly; that deductions for flight costs will not exceed that which would be charged for a commercial flight, and that they will pay RSE workers for 30 hours per week while they are in MIQ.
14. The specificity of this exception would reflect that Ministers agreed to end the allocation for RSE workers (except one flight from the Solomon Islands) and there is no further MIQ space for RSE workers this season. If circumstances changed (e.g. QFT was paused/stopped) and Ministers wanted to again bring in further RSE cohorts via MIQ, a new/amended RSE border exception would be required.

## **Policy changes in light of QFT arrangements**

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### **Transitioning to normal repatriation cycles**

15. QFT arrangements should enable flows of RSE workers in numbers approaching pre-COVID-19 levels. Cabinet has, therefore, agreed to accompany the opening of QFT travel for RSE workers with a transition to a more 'normal' operation of the scheme. This means moving away, where possible, from allowing large numbers of workers to remain onshore on successive visas, to enforcing greater flows of workers in and out of the country in line with the intended seasonal nature of the roles.

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<sup>2</sup> Ministers also requested MIQ space be retained for two flights in September from Vanuatu and Samoa in case QFT was not in place before their scheduled arrival. Due to New Zealand's current COVID-19 outbreak and the impending opening of QFT, these flights have been deferred.



*Over half of onshore workers have been here since pre-COVID-19 and negative impacts are showing*

16. Since the border closure, RSE workers (both those onshore pre-Covid-19 and those entering through border exceptions) have been given flexibility to stay beyond the normal seven month limit of their visas<sup>3</sup>. Of the approximately 7,000 RSE workers currently onshore, approx. 4500 workers have been in New Zealand over 17 months since before the borders closed.
17. Flexibility has been necessary and has benefitted both workers and employers. However, the long duration of stay runs contrary to the intent of the scheme and negative impacts are being felt by workers and their families at home. In addition, the ability to apply for further visas under the current settings has meant there is no way to compel workers to repatriate, even when flights home are available.

*Policy changes must balance competing objectives and factor in multiple constraints and changing variables in the COVID-19 environment*

18. The overall intent of a transition back to normal is to mitigate welfare risks to workers and their families at home from long-duration stays (especially for workers onshore since borders closed) while ensuring industry is supported with a supply of workers, particularly over the peak season. These objectives sit within a context of practical constraints on worker flows because of monthly repatriation capacity in home countries, and other factors such as existing visa expiry dates for onshore cohorts, demand peaks over the season, and industry repatriation and workforce planning.
19. Officials have considered several options, from soft levers like continued work with industry and Pacific counties to prioritise repatriation, to hard limits such as no further visas or re-introducing maximum stays periods. We have run scenarios for different RSE cohorts - pre-border closure workers, border exception workers and new QFT border exception arrivals - to test the effect of potential limits on the size of the onshore workforce over time (ensuring workers do not all have to leave right before peak season) and whether they 'work' within QFT arrangements (i.e. do not force home greater numbers of workers than can be accommodated within Pacific country repatriation capacity).

### **We recommend re-introducing maximum stay limits accompanied by flexibility to accommodate ongoing COVID-19 impacts**

20. To best meet objectives but also recognise ongoing uncertainty, we recommend a package comprising:

#### *Maximum stay limits*

- a. **A 25-month limit for pre-border closure workers from QFT countries:** Workers onshore since before 1 April 2020 are in most need of rest and reconnection with home, and we consider a 'line in the sand' is required to force their prioritised repatriation. INZ has confirmed that based on their modelling, Pacific country monthly repatriation capacity is sufficient to handle the numbers returning (given the bridging visa will create flexibility to deal with cancelled or delayed flights), and these workers will be eligible to return after a short 'stand down' (para 23 below). The exception to this rule will be workers in this cohort who have already been granted a visa extending beyond the 25 months. INZ will continue to work with employers to ensure long haul workers go home as soon as possible (but cannot cancel visas and force home people who are legally onshore). We note that the 25 month stay limit means that some workers who stay for the maximum period will become eligible for publicly funded health services.
- b. **16-month limit for early 2021 border exception workers from QFT countries:** 2013 RSE workers entered New Zealand through the first RSE border exception between January and March 2021, 1837 of whom were from QFT countries - Vanuatu (1145) and Samoa (692). Some of these workers have already obtained new visas and many have

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<sup>3</sup> Or 9 months, in the case of workers from Tuvalu and Kiribati.

visas due to expire over Sept - October. We recommend allowing this cohort to apply for an additional visa onshore but specifying that they cannot exceed a total stay of more than 16 months in New Zealand. This approach would enable these workers to stay working through the March/April 2022 peak harvest but repatriate soon after.

- c. **7 months in any 11 month period limit for mid-2021 border exception workers and new QFT arrivals:** We recommend the re-instatement of normal RSE policy settings for the smaller number of 447 RSE workers who arrived through the second border exception, 1 July to 20 August 2021 and for all new entries through QFT. That means these workers will not be eligible for further visas once they've been in New Zealand for seven months, and will need to repatriate thereafter. Normal settings limit RSE workers' stay in New Zealand to seven months in any 11 month period, requiring a stand down of four months between seasons. This will move a long way to return the scheme to more normal operation - protecting worker welfare and reflecting the intended seasonal nature of the roles<sup>4</sup>.

21. For workers from countries still offering no repatriation options (e.g. Kiribati and Tuvalu) the ability to remain onshore with no maximum stay limit will remain. MFAT continues to work with those countries to enable the return of their citizens. The ability for non-Pacific workers who cannot go home to work for any RSE employer will also remain to ensure they are kept fully employed<sup>5</sup>. We will continue to monitor this situation and consider options as repatriation pathways begin to open.

#### *Re-introduction of shortened "stand down" period*

22. We recommend you accompany the new maximum stay limits for onshore workers with the re-introduction of a "stand down" period – but shortened from the normal four months to two<sup>6</sup>. This represents a compromise position as we transition the scheme back to normal operation. Currently, with the stand-down waived, workers could theoretically return home but board a plane straight back to New Zealand upon completion of quarantine thereby defeating the purpose of going home to rest and re-connect with family. However the 'normal' policy settings, requiring a four month stay at home, would not allow some of those workers to return before the March/April peak harvest. The two month stand down period should encourage repatriation and enforce rest but enable a quick return. It would apply to RSE workers from QFT countries who were onshore when the borders closed and those who entered through the first border exception.

#### *Three-month repatriation "bridging" visa - special direction*

23. While hard maximum stay limits are desirable to force repatriation of workers who have been here the longest and firmly move towards more normal repatriation cycles, leeway is needed to recognise ongoing uncertainty around travel. Recent deferrals of scheduled repatriation flights due to New Zealand's COVID-19 outbreak has highlighted the need for such a solution as the short notice means RSE visas expire and workers go unlawful through no fault of their own.
24. We recommend you agree to grant limited (three month) visas by special direction to workers whose visas are due to expire and are unable to be repatriated due to a flight not being available. This would simply be a 'bridging' visa to keep workers lawful while they await a re-scheduled flight. While they will not formally remain in the RSE scheme on the bridging visa, they will continue working for an RSE who will provide an undertaking in respect of the workers' employment and pastoral care. It would also cover those workers whose visa expiry and planned repatriation dates do not quite align (e.g. the worker's contract is finishing and they do

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<sup>4</sup> The calculation will be forward-looking as opposed to retrospective.

<sup>5</sup> A temporary policy change in response to COVID-19 was made enabling this flexibility. Ordinarily non-Pacific workers can only work for employers where long-standing employment relationships are in place with workers from other countries.

<sup>6</sup> You waived the stand down for RSE workers who were onshore when the borders closed and for those who entered through an RSE border exception.

not wish to stay on but they are not able to get onto a repatriation flight for another three weeks).

25. We recommend the special direction is granted for the class of people who:
  - a. are in New Zealand
  - b. hold a RSE limited visa which will expire in 30 days or less
  - c. are unable to be repatriated to their home country before their visa expires because they have either booked a flight which has been cancelled, or are booked on the next available flight which is after the date of their visa expiry
  - d. have an employment agreement with an RSE, and
  - e. are named in a declaration/undertaking from an RSE.
26. We consider it too cumbersome to require employers to obtain a new ATR for these stranded workers and therefore recommend requiring only a declaration from the RSE employer that:
  - a. The worker is awaiting repatriation (either because there is a gap between the end of their contract and the next repatriation flight, or because a flight has been deferred or cancelled). This will provide confidence the visa is being sought only for the intended purpose, not simply to enable more work.
  - b. The employer has or will:
    - i. take all reasonable steps to provide full time work for the duration of the visa including by finding opportunities with other RSE employers if necessary
    - ii. arrange for the worker's medical insurance to be extended
    - iii. provide the worker with suitable pastoral care as would be required under ATR instructions
    - iv. only deploy workers to perform work under a contract for services with a third party where the third party is not on the stand down list of non-compliant employers, and
    - v. co-ordinate the repatriation of the named worker on the next available flight.
27. This approach will recognise the circumstances and encourage compliance by making the process to remain lawful easier for workers and RSE employers. It is anticipated that INZ will work with industry to identify groups of workers who have been impacted by flight cancellations and come within the special direction.
28. We note that there are risks associated with this approach. The principal risk is that the visa is not attached to an ATR, meaning that the obligations to provide pastoral care, medical insurance and certain employment conditions are not enforceable through immigration instructions. It is a high trust model which relies on the undertaking of the RSE. The rationale is that if there is no mechanism for an extension, it is probable that workers will become unlawful through no fault of their own and will have no protections at all.
29. In the event a worker becomes unlawful due to lack of an employer undertaking, INZ has the discretion to grant a visa under section 61 on a case by case basis.
30. In the event that the worker doesn't wish to continue working but has been granted a limited visa by this special direction, it would be up to the worker to arrange paid or unpaid leave from the RSE.

31. In the event that three months is not sufficient time for labour-sending countries to make flights available, and it becomes apparent that the workers need to remain in New Zealand, a further special direction would be required to bring them back in the RSE scheme.

#### *Flexibility around first entry dates*

32. We recommend providing additional flexibility around first entry dates for RSE Limited Visa holders entering through QFT, enabling entry to New Zealand up to one month after the start date in their employment agreement<sup>7</sup>. This recognises the current uncertain travel environment where flights may be deferred with short notice after visas have been issued if, for example, there is a COVID-19 outbreak in New Zealand. This additional flexibility would reduce the prospect of workers having to apply for further visas (with associated costs) if flights are deferred.

#### **There is some risk associated with the maximum stay limits**

33. It is not possible to guarantee that maximum stay limits will line up in a synchronised manner with repatriation plans, flight schedules, and visa expiries. There are constraints around INZ's ability to model visa expiry dates and in the current COVID-19 environment, travel and border settings could continue to be disrupted for some time with little notice. There is also a large group of RSE workers with visa expiry dates between August and September, for whom INZ has granted, or is the process of granting, further visas of various durations.<sup>8</sup> The proposals above seek to mitigate these risks somewhat by providing flexibility for events such as flight delays. However, there may be scenarios in which large numbers of workers cannot travel for long periods (e.g. total border closure by a particular Pacific country), that cannot be accommodated with the proposed settings. In this scenario, additional policy changes may be required to respond to the particular circumstance.
34. If you are not comfortable with this risk, the alternative would be to retain the status quo with no maximum stay limits. This would mean workers could continue to stay on successive visas, relying only on soft levels to encourage repatriations and with no policy mechanism to compel workers (even those who have been in New Zealand for more than 2 years) to return home. We do not recommend this approach as it is contrary to Cabinet's decision to transition to normal repatriation cycles whereby workers return home between seasons.

#### **Implementation of additional health/QFT requirements**

35. While recognising the COVID-19 risk from RSE workers entering via QFT travel is low, Cabinet has agreed to a number of additional health requirements to add more layers of assurance, including:
- a. Pre-departure vaccination: The Ministry of Foreign Affairs and Trade and the Ministry of Health (MoH) are currently working through the management of this.
  - b. PCR COVID-19 testing: MBIE and MoH will work with industry to co-ordinate with DHBs for on-site testing.
  - c. Isolation period pending day 5 COVID-19 test: Isolation guidance has been drafted by the Ministry of Health (see Annex Two), which will be communicated to industry by MBIE. No 'sign-off' or compliance checking will be undertaken.
36. These requirements will sit within the Air Border Order (not Immigration Instructions). Cross agency work, led by the Ministry of Health, on the implementation of these requirements is

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<sup>7</sup> RSE Limited Visa holders must currently arrive no earlier than 14 days before, and no later than 14 days after, the commencement of work.

<sup>8</sup> INZ is in the process of issuing new visas to a large group of RSE workers with visa expiry dates between 17 August and 06 September 2021, which is the time period when INZ offices were closed due to lockdown and repatriation flights to the Pacific were suspended. The duration of the visa granted will depend on the duration of the associated ATR.

underway and a summary of Industry's preparedness to meet requirements will be included in the RSE QFT Cabinet paper due to be considered on 27 September 2021.

37. In addition, the QFT requirement of 14 days in-country before travel will apply: Customs and MFAT are working with PICs to ensure a process has been implemented, which will be put in place by the PICs themselves.

### **Ensuring 'trial' period costs are not passed on to RSE workers**

38. We recommend two changes to RSE policy to ensure the features of the QFT 'trial' period (charter flights and isolation period) are not passed on to workers:
  - a. Where RSE workers are arriving by charter planes, flight cost deductions must not exceed what would have been charged for a commercial option - RSE workers must arrive by charter planes during the 'trial' period for QFT travel so we recommend limiting the extent to which the increased cost can be passed on to workers. We propose the comparator be 'a commercial option' rather than 'costs in a normal year' (as was specified in previous exceptions) to recognise the extended and ongoing disruption to international travel creating a "new normal". If the December review results in the expansion of eligible travellers beyond RSE workers, we anticipate travel by commercial flight becoming viable allowing a return to normal 50/50 flight cost sharing arrangements.
  - b. RSE employers must pay workers for the days in isolation on arrival – under previous exceptions employers were required to pay workers for their time in MIQ, and we recommend this principle be carried through. Although the Ministry of Health's isolation guidance does enable workers to work (in bubbles) during their isolation period, it is also possible for workers to arrive up to 14 days before their contracts start – in this event, we recommend payment is required, recognising workers often arrive with very little in the way of savings but will incur accommodation and food costs during this time.

### **Extension of chest x-ray waiver for some onshore RSE workers**

39. The standard RSE policy health requirements for a chest x-ray will apply to RSE workers entering through QFT arrangements. However, we recommend you agree to extend the current waiver of the chest x-ray requirement for onshore RSE workers from Samoa, Tonga and Vanuatu who are applying for a further visa. You put in place the current waiver for this cohort by Special Direction in April 2021 to streamline the visa application process, thereby facilitating the movement of workers between employers and regions. It is set to expire on 30 September.
40. Because the onshore cohorts will still be able to apply for new visas (within a maximum limit, if agreed), and difficulties with repatriation remain, extending the waiver is consistent with the original objectives. It will also reduce visa application costs and alleviate pressure on panel radiologists. The Ministry of Health supports this continued exemption for RSE workers from Samoa, Vanuatu and Tonga due to the lower incidence rate of TB in these countries. Giving effect to this decision will require a new special direction under section 57(3) of the Immigration Act 2009. We recommend a new expiry date of June 2022, to align with the proposed 14-month maximum stay limit on RSE workers who entered through the first border exception.
41. RSE workers still onshore from countries other than Samoa, Vanuatu and Tonga who are applying for further RSE visas will still be required to obtain a new chest x-ray if the chest x-ray submitted with a previous application is more than 36 months old. This aligns with MoH advice, given the higher incidence of TB in these countries.

### **Managing the cap and allocation of workers**

42. The formal cap in RSE Policy for 2021/22 is 14,400 workers and Cabinet has agreed this will comprise both new entries and RSE workers onshore as at 30 November 2021. In order to manage inward flows of workers in line with individual country repatriation capacities, Cabinet

has separately agreed to 'ceilings' on the maximum number of arrivals for the 2021/2022 season by country (Samoa 1,200, Tonga 1,300, and Vanuatu 4,400). These ceilings will be reflected as arrival limits in the new RSE border exception and will be a key feature for industry workforce planning. The ceilings will be reviewed in December with the possibility of increasing the numbers, contingent on repatriation of onshore workers progressing as expected and Pacific country isolation capacity increasing.

43. While it is impossible to predict exactly how the numbers will play out, the total RSE workforce could be around 13,300 (if all onshore workers stay plus the combined QFT ceiling limit of 6,900 arrive), which is approaching numbers in a 'normal' year. If, however, onshore RSE workers leave fairly rapidly, the number could be closer to 9,000, (however, if this occurred the Minister would likely raise the ceiling limits).
44. The worker allocation approach used for allocating border exception workers since the borders closed will be maintained. This involves industry taking the lead, with INZ input, to coordinate the fair distribution of workers across employers, crops and regions. Discussions between INZ and industry indicate industry will be using an equal percentage-based methodology to allocate workers to employers. They will use INZ's data modelling on country caps and both arrival and repatriation capacity for the QFT countries to build up the onshore workforce over time. As each new cohort of workers arrive, employers will get a certain percent, building their workforce up over time.
45. Immigration officials will have oversight of the allocation process and will adhere to standard processes of approving or not approving employers' Agreements to Recruit (ATRs), based on their current number of workers and ability to provide all adequate pastoral care.

*Close industry-Government collaboration will be required*

46. The QFT RSE arrangements will require industry, Pacific governments and New Zealand government agencies (particularly MBIE, MFAT and MPI) working closely together to ensure workforce planning and repatriations function as smoothly as possible. In particular, reaching agreement on clearly laid-out processes for managing who gets put on which repatriation flights is key, to ensure workers who have been here the longest (and will be subject to new maximum stay limits) are given first priority.

## **MIQ spaces for RSE workers is strictly limited**

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47. On 12 July 2021, Border Ministers agreed to end the MIQ group allocation for RSE workers on 1 September 2021 [briefing 2122-0065] based on the establishment of one-way QFT entry. On 3 August, Ministers Robertson, Hipkins, Mahuta, O'Connor and Faafoi agreed that space would continue to be set aside for the Solomon Islands flight with 150 RSE workers scheduled for 4 November 2021 (along with space for the two RSE flights in September).
48. Following the community outbreak of COVID-19 in New Zealand, the RSE industry agreed to defer the three planned August and September flights until one-way QFT is established. MIQ is now only holding space for one flight of workers in November. The RSE Group Allocation has been closed and Border Ministers have already made decisions about Group Allocations for the November 2021 – March 2022 period. The Minister for COVID-19 Response has agreed that he will not consider any out-of-cycle request given the significant demands on MIQ [briefing 2022-0300]. It is therefore unlikely any additional rooms can be allocated to RSE workers over this period.
49. Providing rooms is just one part of accommodating RSE workers in MIQ. MIQ hosts RSE workers in specific facilities in Hamilton, and engages the use of external stakeholders to ensure that essential wrap-around services are provided for this group (interpreters, health support and Pasifika pastoral support). MIQ requires at least two weeks' notice if there are any changes to these RSE arrangements, or if the rooms are not required, to ensure that MIQ

rooms are not unnecessarily wasted and that planning and logistics can be rearranged accordingly.

## **Next steps**

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50. A briefing with immigration instructions and special directions which give effect to these decisions will be provided to the Minister of Immigration for certification. A communications plan will also be sent to the Minister's office next week.

## Annex One: Data modelling of arrivals and departures under QFT

Month/Year	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19
Pre-COVID Labour Supply	4677	1716	3104	5390	5089	7096	8139	10069	9081	7436	6428
Arrivals through QFT	0	0	450	1000	850	900	850	900	0	0	0
Repatriations to QFT Countries		99	500	395	395	725	400	0	725	725	725
Month/Year	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22
COVID Labour Supply	≈7000	6943	6893	7498	7953	8128	8578	9036	8111	7386	6661

Note: The labour supply pre-COVID-19 does not include the additional workforce of Working Holiday Visa Holders and students. The arrivals through QFT is assuming the country ceiling does not increase after December's review.

The modelling takes into account the following parameters:

### **QFT Country's ability to recruit workers per week/month**

Vanuatu capacity to process 100 workers a week – 400 a month (suggested country cap 5100)

Tonga capacity to process 350 workers a week – 1400 a month (suggested country cap 1300)

Samoa capacity to process 300 workers a week – 1200 a month (suggested country cap 1200)

### **QFT Country's capacity to repatriate workers per month**

Vanuatu capacity to repatriate 330 workers a month (with indication this could be expended to 600)

Tonga capacity to repatriate 200 workers a month (also have indicated this could be increased)

Samoa capacity to repatriate 195 workers a month (have indicated possible reduced time in MIQ in Samoa may increase rates of returnees)

### **Repatriation will be prioritised by those workers that have been in New Zealand the longest.**

#### **Repatriation in September/October based on country capacity:**

Tonga could repatriate 357 workers who have been in NZ 24 to 22 months

Samoa could repatriate 378 workers who have been here 23 to 19 months

Vanuatu could repatriate 660 workers who have been here 24 to 18 months

#### **Repatriation in November/December based on country capacity:**

Tonga could repatriate 400 workers who have been in NZ 22 to 19 months

Samoa could repatriate 390 workers who have been here 18 months

Vanuatu could repatriate 311 workers who have been here 18 to 17 months



*Repatriation in January/February based on country capacity:*

Tonga could repatriate 119 workers who have been in NZ 19 and 18 months

Samoa could repatriate 130 workers who have been here 18 and 17 months

Vanuatu would have no long term workers left pre-COVID to repatriate.

By prioritising repatriation of workers based on length of time in New Zealand, starting with those that have been onshore for 25 months the following numbers indicate the total length of time workers who have been onshore for shorter length of times (16 months) will have spent here by the time they are prioritised for repatriation.

- Tongan workers who have been onshore for 20 months as at August 2021 will become 25 months onshore by repatriation.
- Samoan workers that have been onshore 17 months as at August 2021 will have been onshore 23 months by repatriation.
- Vanuatu workers that have been onshore for 17 months as at August 2021 will be onshore 20 months by repatriation.
- By January and February those that were onshore in August 2021 for 17 months will have been onshore for 22 to 23 months.

## Annex Two: MoH Isolation guidance for Recognised Seasonal Employer (RSE) Workers

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Upon arrival in New Zealand, RSE workers arriving under quarantine-free arrangements from Samoa, Tonga and Vanuatu are required to isolate in accommodation managed by or contracted to a Recognised Seasonal Employer at or near their place of employment, pending negative COVID-19 tests on day 0/1 and day five.

**For RSE workers, self-isolation** involves isolating away from those outside of their bubble (for example, have no physical contact, minimise time in shared spaces and do not share items such as cutlery and linen), whilst you remain in your place of isolation.

- RSE workers, from the point of landing in New Zealand, remain in their arrival 'bubble'. This means that the flight must be adequately 'slotted' to ensure no mixing of other arrivals in the 'green' arrivals pathway.
- Once processed through the airport, public transport (including domestic air travel) is not permitted. Transfer to place of isolation must be undertaken by private transport to ensure isolation requirements are maintained. Transfer guidelines are noted below at Annex 1.
- RSE workers must remain in their isolation 'bubbles'<sup>9</sup> until a negative COVID-19 result is received from their day 5 swab.
- RSE workers may work in their bubbles if general COVID-19 guidelines can be followed, ensuring that physical distancing, basic hygiene, PPE use and any cleaning protocols are implemented. These can be found <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-information-specific-audiences>.
- However, RSE workers should not leave their place of isolation for any other reasons, such as to go to the pharmacy, supermarket or make any other excursions into the public.
- Vaccination whilst isolating is permitted only if the vaccination is undertaken at the place of isolation.
- Those self-isolating must maintain a 2-metre distance from anyone not in their bubble. This includes other bubbles, and supervisors. This includes not sharing sleeping quarters or bedrooms.
- Use of public transport, taxis or similar transport methods is not allowed.
- There should not be visitors to the place of isolation, such as tradespeople or friends.
- Food and other supplies will need to be provided. Make sure any deliveries are left outside of the isolation place to collect.
- Avoid sharing spaces such as bathrooms, kitchens and sitting rooms with those outside of their bubble.
- If medical assistance is needed, call ahead to your health provider and tell them you are a isolating. Clean your hands with hand sanitiser and put on a face mask before you enter any healthcare facility.

### Note for those people who test positive for COVID-19

Individuals who have tested positive for COVID-19 are known as cases and will be directly managed by a local public health unit (who are part of our District Health Boards). Please note if a case will receive instructions and advice directly from a public health official which is specific to the individual's situation and according to your needs.

The following should be considered when considering a place of isolation is suitable:

- nature of the premises – private home, hotel, motel, etc.

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<sup>9</sup> Suggested maximum 'bubble' size of 10.

- distance of premises from airport of arrival
- whether the bubble can travel directly to the premises without increased risk to the community (e.g. private/personal car)
- where there are potential transport risks, whether these be mitigated to an acceptably low level for the duration of transport, for example by using PPE
- whether the bubble can stay in those premises for the entire duration of their isolation
- whether the bubble can remain separated from other people in that location, including whether they will have their own bathroom facilities. A room in a hostel is not appropriate unless the bubble are the only occupants and it has a private bathroom
- whether the bubble will have access to necessary services (e.g., food and medical care) while in isolation
- whether the bubble feel they can successfully isolate in those premises for the length of time required.