



COVERSHEET

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| Minister | Hon Erica Stanford | Portfolio | Immigration |
| Title of Cabinet paper | Recognised Seasonal Employer Scheme – Increase to Worker Cap and Short-term Amendments | Date to be published | 6 September 2024 |

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Information redacted

YES / NO (please select)

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Some information has been withheld for the reasons of international relations and confidential advice to Government.

In Confidence

Office of the Minister of Immigration

Cabinet Economic Policy Committee

Recognised Seasonal Employer scheme: increase to worker cap and short-term amendments

Proposal

- 1 This paper seeks Cabinet's agreement to increase the Recognised Seasonal Employer (RSE) scheme's worker cap for 2024/25 and to a number of amendments to the operation of the scheme.

Relation to government priorities

- 2 The proposed amendments will support our commitment to rebuild the economy by strengthening connections to the world, by supporting trade and investment.
- 3 The labour force provided through the RSE scheme contributes to growth in the value of primary sector exports by enabling horticulture and viticulture businesses to meet their seasonal labour needs for planting, harvesting, packing and maintaining crops.
- 4 The scheme also supports the Government's focus on the Pacific as a strategic foreign relations priority. Labour mobility enables Pacific countries' development through remittances and the acquisition of skills which support families and communities.
- 5 The Coalition Agreement between the National and ACT parties includes a commitment to 'increase the cap on the number of workers under the Recognised Seasonal Employer scheme to increase the flexibility of the quota allocation system'.

Executive Summary

- 6 The RSE scheme enables employers in the horticulture and viticulture industries to recruit seasonal workers from overseas, primarily from Pacific countries, where no suitable New Zealand workers are available. The productivity of RSE workers provides significant benefits to the economy, supports businesses, generates export growth and creates additional jobs for New Zealanders.
- 7 I propose a number of amendments to the RSE scheme which can be delivered quickly to support the growth of New Zealand's horticulture and viticulture industries and reduce costs and compliance for employers. These amendments reflect coalition commitments, requests from industry groups and recommendations from a review of RSE policy carried out by the Ministry of Business, Innovation and Employment (MBIE) in 2023.
- 8 These changes also take into account the impacts on Pacific countries. RSE is a critical contributor to our relationship with the Pacific.

- 9 I recommend that the cap on the number of RSE workers who can participate in the scheme is increased by 1250 in 2024/25, bringing the cap to 20,750. This figure is based on a survey by the Ministry of Business, Innovation and Employment (MBIE) of RSE employers on the number of RSE workers they will need in 2024/25. Around 17,900 RSE workers arrived in 2023/24, well below the existing cap.
- 10 RSE workers must currently be paid a minimum of 30 hours per week. Employers are concerned that fluctuations in the availability of work from week to week, driven by factors like weather conditions, mean they may pay workers for hours which were not worked. To address these concerns, I propose that employers should be able to average the 30 hours per week over a four-week period.
- 11 Employers have expressed concern about the requirement to pay RSE workers ten percent above the New Zealand minimum wage, citing the financial impact and inequities between the wages for New Zealand and RSE workers. I wish to refocus this requirement to apply only to experienced and productive workers. I propose that only workers returning for their third or subsequent season will receive 10 percent above the minimum wage.
- 12 I also recommend Cabinet agrees the following amendments proposed in the RSE policy review:
 - 12.1 RSE limited visas should allow for multiple entry during a season;
 - 12.2 removal of the requirement for HIV screening of RSE workers; and
 - 12.3 the addition of Timor-Leste to the list of Pacific countries eligible to participate in the scheme.
- 13 I also intend to make the following further amendments to the RSE scheme, which do not require a decision from Cabinet:
 - 13.1 remove the accommodation cost freeze formally put in place in November 2022. I intend to provide for a temporary increase to the accommodation costs RSE employers can charge workers of 15 percent or \$15, whichever is the lesser for twelve months. During this time, a robust methodology for assessing accommodation costs will be developed consultation with key stakeholders including industry and Pacific representatives;
 - 13.2 clarify that RSE workers are able to undertake training and skills development not directly related to their role; and
 - 13.3 increase flexibility in the movement of workers between employers and regions by extending the grace period on either side of the nominated date in the employer's Agreement to Recruit from 14 to 21 days and confirming that this flexibility applies to individual employers with multiple worksites.
- 14 Immigration New Zealand will be able to implement the proposed changes relatively quickly. However, it may take more time to put infrastructure and processes on the ground in place to fully facilitate to the entry of Timor Leste to the scheme. I then intend to consider the wider system and worker welfare recommendations of the RSE

policy review and to develop a work programme for further amendments to the scheme over the succeeding 12-18 months.

Background

- 15 The RSE scheme came into effect in April 2007. It enables employers in the horticulture and viticulture industries to recruit seasonal workers from overseas, primarily from Pacific countries, where no suitable New Zealand workers are available.
- 16 The scheme has been transformative for the horticulture and viticulture industries by enabling the provision of a reliable, productive and experienced labour force for 'peak season' labour demand which contributes significantly to the economy by supporting profitable businesses and growing exports. RSE employers advise that the employment of RSE workers enables the creation of other jobs, often at a higher skill level for New Zealanders.
- 17 In monetary terms, horticulture and viticulture have grown from NZD \$2.5 billion in annual export earnings in 2007 to over NZD \$7 billion. Together, the industries are our third largest primary industry export earner.
- 18 The scheme is designed to provide a 'triple win' with benefits for RSE employers, workers and Pacific countries. The scheme's key objectives include:
 - 18.1 providing employers in the horticulture and viticulture sectors with sufficient access to seasonal labour;
 - 18.2 'New Zealanders first' – ensuring New Zealanders have the first opportunity to access employment;
 - 18.3 'Pacific preference' – employers are recruiting from eligible Pacific countries as far as possible; and
 - 18.4 ensuring RSE workers benefit from the scheme with employment and pastoral care practices of a high standard.
- 19 The scheme's policy settings need to balance these multiple objectives and other related goals such as improving productivity. They must also mitigate any potential impacts on our infrastructure and services.
- 20 A policy review concluded in 2023 confirmed the scheme is delivering benefits for industry, RSE workers and is supporting New Zealand's development goals. However, there are areas where improvements can be made to its operation. In particular, its administrative systems have not kept pace with the scheme's significant growth over the past 17 years, standards need clarifying or updating, and compliance activity is under-resourced. Cabinet noted the review's recommendations for amendments to the scheme in September 2023 (CAB-23-MIN-0442 refers) but no decisions were made.
- 21 I have identified several potential short-term amendments to the Recognised Seasonal Employer (RSE) scheme. These are based on coalition commitments, concerns raised by RSE employers and recommendations from the policy review that can be rapidly delivered.

- 22 Once these proposed amendments have been addressed, I intend to consider longer-term and more substantive changes to the RSE scheme over a longer time frame, starting later in 2024. These will consider the RSE scheme as a whole, including the administrative system and worker welfare provisions. All of the proposed amendments to the RSE scheme need to balance the key objectives set out above as well as any possible impact on the Government's job seeker reduction target.

Cap on the number of RSE workers for 2024/25

- 23 The number of workers who can participate in the RSE scheme is capped each year to ensure that:
- 23.1 New Zealanders who are available for employment are not displaced by RSE workers and employers are making genuine efforts to employ New Zealanders;
 - 23.2 accommodation and other domestic infrastructure constraints are managed;
 - 23.3 employers are incentivised to invest in capital to increase productivity and innovate.
- 24 The RSE worker cap was set at 5,000 at its establishment in 2007 and has grown steadily. In 2022/23, the cap increased by 3,000 to 19,000 and by a further 500 to 19,500 in 2023/24. In 2023/24, around 17,900 RSE workers actually came to New Zealand. Over the last two years the cap has not been fully utilised by industry.
- 25 The Coalition Agreement between the National and ACT parties includes a commitment to 'increase the cap on the number of workers under the Recognised Seasonal Employer scheme to increase the flexibility of the quota allocation system'.
- 26 For 2024/25, rather than aiming to meet a specific target, I am proposing an increase in line with projected industry demand, the availability of suitable New Zealanders and the availability of accommodation for RSE workers. I will consider a longer-term approach to determining the cap as part of the work programme for the next stage of amendments to the RSE scheme. This may include a data-driven methodology for setting the cap over multiple years, as recommended in the RSE policy review.
- 27 I recommend that the cap is increased by 1,250 in 2024/25, bringing the cap to 20,750. This figure is informed by a survey of RSE employers by MBIE on the number of RSE workers they will need in 2024/25. The cap increase is intended to help meet industry projections, particularly for growth in wine and kiwifruit exports, and related plans to expand their operations. MBIE has reviewed the requested increase and confirmed it is sustainable.
- 28 Employers will need to ensure suitable accommodation is available for the extra workers. This will be assessed through the Agreement to Recruit (ATR) which employers must submit to Immigration New Zealand (INZ) before they receive approval to undertake recruitment. INZ must be satisfied that accommodation proposed for RSE workers will not exacerbate residential housing pressures. No additional residential housing may be used to accommodate RSE workers in regions subject to significant housing pressures.

- 29 **International relations**
- 30 The scheme's requirement that suitable New Zealanders should be employed first, before seasonal workers are recruited from the Pacific remains an important objective, particularly in the context of the government target to reduce Jobseeker Support Benefit numbers by 50,000. All RSE employers will continue to be required to undertake labour market testing to demonstrate that no suitable New Zealanders are available as part of their application for an Agreement to Recruit RSE workers.

Averaging the requirement for RSE workers to be paid a minimum of 30 hours per week

- 31 The RSE scheme is intended to provide full-time work while workers are in New Zealand, defined as at least 30 hours per week. The previous Cabinet agreed RSE workers should be paid a minimum of 30 hours per week regardless of whether 30 hours of work is available due, for example, to poor weather or fruit not being cleared to pick.
- 32 The minimum 30 hours a week requirement was intended to ensure a stable income for workers each week so they can meet the cost of deductions (accommodation, power, laundry, cleaning, half of return airfare) with sufficient funds left over for day-to-day living expenses and to send remittances home to support families.
- 33 Employers have expressed concern about the costs this policy has imposed on their businesses as they must pay workers for hours which were not worked in some weeks.
- 34 I agree there needs to be an averaging approach taken to address employer concerns around the variations in the amount of work that may be available from week to week. At the same time, **International relations** and workers need to have sufficient income each week to meet their deduction costs and weekly living expenses.
- 35 I consider that averaging the requirement to pay a minimum of 30 hours per week over a four-week period (120 hours each four-week period) strikes an appropriate balance between these objectives. It will enable employers to vary hours week to week to account for fluctuating availability of work. If an employer cannot provide the required 120 hours of work over the four-week period, then they will need to top up the worker's pay to this amount. There is a risk that in some weeks RSE workers may not receive enough pay to cover their deductions, food and living expenses. A four-week period will reduce the risk of this occurring compared to a longer period.
- 36 I note that this proposal is similar in approach to Australia's equivalent Pacific Australia Labour Mobility scheme which from 1 July has required employers to provide 120 hours in a four-week period or guarantee equivalent income. Aligning the averaging period with Australia will help to reduce the risk that New Zealand could be seen as a less attractive destination than Australia for seasonal work.

- 37 Industry representatives of RSE employers (National Labour Governance Group (NLGG), Horticulture NZ, New Zealand Ethical Employers and New Zealand Winegrowers) were consulted on this proposal and are supportive. They consider that averaging the 30 hours per week over four weeks is a fair and reasonable position and commented that it would be sensible to match the Australian scheme. [REDACTED]

International relations [REDACTED]

Paying RSE workers above the minimum wage

- 38 From 1 October 2023, RSE employers were required to pay all RSE workers at least 10 percent above the New Zealand minimum wage.
- 39 Industry bodies and employers have expressed concerns about this policy, including the disparity in wages between RSE and New Zealand workers and its impact on the financial viability of some RSE employers. Piece rates are already paid by many employers to reward productive workers and the industry has previously advised that experienced workers often earn more than 10 percent above the minimum wage.
- 40 However, the wage threshold has been highly valued by RSE workers and by Pacific governments due to the benefits it provides for families and communities in Pacific countries. International relations [REDACTED]
- 41 I propose that only workers returning for their third or subsequent seasons in New Zealand should receive 10 percent above the New Zealand minimum wage. This will shift the wage threshold from benefiting all RSE workers to become a mechanism for recognising the greater productivity of experienced workers. This will mean workers returning for their second season and all new workers will return to receiving the minimum wage as their minimum entitlement.
- 42 Research shows 54% of workers work for 2-3 seasons, and 22.8% for 4-5 seasons. The overall cost to employers would therefore reduce significantly and be based more closely on worker productivity. International relations [REDACTED]

Multi-entry visas for RSE workers

- 43 RSE limited visas are currently single entry only. If a worker needs to return home for a short time, such as for a bereavement, they must apply and pay for a new visa before they return to New Zealand.
- 44 I recommend that RSE limited visas should allow for multiple entry during a season so workers can return for bereavements or other reasons. This will enable workers to return home without having to pay for a new visa and remove the stress of dealing with administrative processes at a time of grieving or dealing with family/cultural matters. The cost of temporary departures from New Zealand, including flights, would be borne by the worker and they would not be paid while out of New Zealand.

Removing the requirement for HIV screening of RSE workers

- 45 Applicants for RSE limited visas must currently be screened for HIV/AIDS if they are from a country with a high prevalence of HIV/AIDS (estimated adult prevalence of 1% or more). HIV positive applicants are prohibited from participating in the RSE scheme.
- 46 I propose that this requirement should be removed. It is inconsistent with other temporary entry visas of less than 12 months duration, where no pre-arrival testing is required. HIV was removed from the list of high-cost health conditions likely to impose significant costs/demands on New Zealand's health services in 2021.
- 47 The only Pacific country participating in the RSE scheme which is on the list of countries with high prevalence of HIV/AIDS is Papua New Guinea. Screening is also required for workers from Thailand who participate in the RSE scheme as a legacy where employers have established relationships that precede the scheme.
- 48 The Ministry of Health has advised that a National HIV Action Plan was published in March 2023 which aims to eliminate the local transmission of HIV within New Zealand. Removing the requirement for RSE applicants from high HIV prevalence countries (Thailand and PNG) to be screened for HIV/AIDS may increase the risk of HIV positive people coming to New Zealand. If they were to engage in risky behaviours (such as unprotected sex), this may increase the risk of local transmission of HIV. The Ministry of Health assesses this risk to be low. The HIV Action Plan also includes initiatives to improve the prevention, testing and awareness of HIV and identifies migrants from high HIV prevalence countries as a priority group.
- 49 In 2023, the Ministry of Health recommended to MBIE that pastoral care requirements be updated to include a requirement to provide a 'Health Orientation' to RSE workers upon arrival in NZ. This orientation could include providing health education and prevention, including around sexual health. In considering these proposed changes to the HIV screening requirements, the Ministry of Health strongly recommends that health orientations are included in the pastoral care requirements when the broader RSE policy is reviewed in the second half of 2024.
- 50 The Ministry of Health has advised that the removal of the HIV/AIDS screening requirement for RSE workers would not impose substantive additional costs on the health system.

Inclusion of Timor-Leste in the list of eligible Pacific countries

- 51 I propose to include Timor-Leste as an eligible country for the recruitment of RSE workers on the same basis as the other Pacific countries in the scheme, with workers able to work in New Zealand for up to seven months in an eleven-month period. The Government is significantly increasing its focus on South-East Asia **International relations**
- 52 New Zealand and Timor-Leste share a warm relationship, **International relations** Access to labour mobility presents an opportunity to support Timor-Leste's development **International relations**

International relations [redacted]
[redacted]

53 International relations [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

54 I do not expect that Timor-Leste will supply many RSE workers in the short term [redacted]
International relations [redacted] It will take time to set up the systems and infrastructure required for Timor-Leste to participate in the scheme and it is likely to be at least a year before worker recruitment would commence.

55 I am not proposing any further expansion of the RSE scheme to other countries at this stage. It is important the scheme retains its Pacific focus given its role in supporting New Zealand's relationship with Pacific countries and contribution to our development objectives in the region. There are opportunities to meet the future labour needs of employers in Pacific countries with relatively large populations International relations [redacted]
[redacted]

Other changes to the RSE scheme

56 I also wish to note, for Cabinet's information, several other amendments I intend to make to the RSE scheme, which do not require a decision from Cabinet.

Removing the freeze on RSE accommodation cost increases

57 A formal freeze on increases to accommodation costs was agreed by the Minister of Immigration in November 2022 until a standard methodology was developed to assess reasonable accommodation costs in consultation with stakeholders. The freeze was implemented in response to concern from the Labour Inspectorate about significant increases to accommodation costs being proposed by some employers, and rents exceeding the cost of the property to the employer being charged to workers. In the absence of an assessment methodology, the Labour Inspectorate had difficulty determining reasonable rental costs.

58 I intend to remove the accommodation cost freeze and provide that employers may increase accommodation costs for RSE workers by 15 percent or \$15 per week, whichever is the lesser, for a period of twelve months. During this period a robust methodology will be developed in consultation with key stakeholders including industry and Pacific representatives. The methodology will need to account for all of the different types of accommodation for RSE workers (ranging from residential houses, campgrounds and backpackers to purpose-built accommodation) and provide a sound basis for the Labour Inspectorate to assess reasonable costs.

Clarification of training opportunities for RSE workers

- 59 Training and upskilling of RSE workers are a priority for Pacific governments and RSE workers. It is supported by the New Zealand government through the RSE Worker Training Programme ‘Vakameasina’ operated by MFAT which provides training and skills development opportunities for workers to take back to the Pacific.
- 60 Immigration instructions, as currently drafted, have been interpreted to mean that RSE workers may only undertake training directly relevant to their role and that training may only take place through industry training organisations. This is not consistent with the wider skills development aims of the RSE scheme, including Vakameasina.
- 61 I propose to amend immigration instructions to clarify that RSE workers are able to undertake training and skills development that is not directly relevant to their role so long as they still meet the requirements of their employment agreement, and that it should not be limited to training provided by an industry training organisation.

Increasing flexibility of movement for RSE workers between regions

- 62 I have directed Immigration New Zealand to introduce greater flexibility in their approach to enabling the movement of RSE workers between employers in different regions. The length of the current grace period around the date identified for the movement of workers at the beginning of the season will be extended from 14 to 21 days either side of the worker move date.
- 63 In addition, I will clarify that the grace period may also apply to individual employers seeking to move workers within their own business to sites they control in other regions. Costs associated with the transfer of workers between employers and sites are covered by the employer.
- 64 I intend to consider further opportunities to increase flexibility in the longer-term. This will enable any changes to be addressed in the context of the wider RSE system, including the approach to labour market testing to ensure that the New Zealanders first principle of the RSE scheme is not undermined, and worker welfare is protected.

Implementation

- 65 Changes to immigration instructions will be required to give effect the changes proposed in this paper. I anticipate being able to certify the changes to immigration instructions within two months of Cabinet’s decisions.
- 66 Employers who have submitted their Agreement to Recruit under existing policy settings, in advance of these changes, will be able to have them updated to reflect the amendments prior to the employment agreements being offered to the RSE workers. There is a process to support this. However, once employment agreements are signed by RSE workers, they cannot be changed unless the terms are more favourable to the workers and they agree in writing.
- 67 Most of the proposed changes will be able to be implemented within three months after Cabinet decisions . However, it may require further time to enable the necessary

support infrastructure and processes on the ground needed to enable Timor-Leste to fully participate in the RSE Scheme to be set up.

Cost of living Implications

- 68 The proposals in this paper will not have a negative impact on the cost of living. The changes are likely to reduce costs for RSE employers. If employers pass these reduced costs on to consumers through reduced prices the changes could make a small improvement to New Zealanders' standard of living.

Financial Implications

- 69 No additional Crown funding is required to support the proposals in this paper. The changes will not impose additional costs on employers.
- 70 Raising the cap on the number of RSE workers may result in increased third-party revenue through additional RSE limited visas being sought. This will, however, be offset against the cost of processing these additional visas. Third party revenue will fall due to the introduction of multi-entry visas as fees for new visas will no longer be required for workers to return home for short visits during a season. This will be cost-neutral, however, as the cost of processing such visas will no longer be incurred.

Legislative Implications

- 71 No legislative changes are required to implement the recommendations in this paper.

Impact Analysis

Regulatory Impact Statement

- 72 As no legislative changes are required to deliver these amendments to the RSE scheme, the regulatory impact requirements do not apply to these proposals.

Climate Implications of Policy Assessment

- 73 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

- 74 While there will be limited benefits for New Zealand's resident Pacific population, an increase to the cap on the number of RSE workers will benefit workers from the Pacific by permitting more of them to enter New Zealand for seasonal work. This will enable them to remit income their families and communities in the Pacific and acquire new skills, supporting New Zealand's development objectives in the Pacific.
- 75 The proposal to apply the requirement to pay RSE workers 10 percent above the minimum wage only to experienced workers returning for three or more seasons will reduce the income of future first and second season RSE workers. It will also reduce the disparity in income between New Zealand seasonal workers and RSE workers.

- 76 The proposed increase to the RSE cap could potentially risk the displacement of New Zealand seasonal workers. Displacement from immigration can have a disproportionate effect on lower-skilled and Māori workers. This risk is mitigated by the continued requirement for RSE employers to undertake labour market testing to demonstrate that there are no suitable New Zealanders available before they recruit RSE workers.

Human Rights

- 77 The proposals in this paper are unlikely to raise issues of consistency under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

- 78 The following agencies were consulted on this Cabinet paper: Ministry of Social Development, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, Ministry for Pacific Peoples, Ministry of Health, Ministry of Housing and Urban Development, Ministry for the Environment, Te Puni Kōkiri, Treasury. The Department of Prime Minister and Cabinet was informed.
- 79 Horticulture and viticulture representatives were consulted on the proposals to increase the cap, average the requirement to pay RSE workers 30 hours per week over a four-week period and to pay experienced and productive RSE workers above the minimum wage.

Communications

- 80 A communications plan has been developed to ensure that all key stakeholders are advised of the amendments. I intend to make public announcements at the forthcoming RSE Conference to be held 28-30 August 2024 in Tauranga.

Proactive Release

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

Recommendations

- 82 The Minister of Immigration recommends that the Committee:
- 1 **agree** that the cap on the number of RSE workers should increase by 1,250 in 2024/25, bringing the total cap to 20,750;
 - 2 **agree** that the requirement for RSE workers to be paid for a minimum of 30 hours each week, at the 'per hour rate' specified in their employment agreement, will be averaged over a four-week period to take into account fluctuations in the availability of work due, for example, to weather conditions;
 - 3 **note** that since 1 October 2023, all RSE workers must be paid at least 10 percent above the minimum wage;

- 4 **agree** that in future, the requirement to pay RSE workers at least 10 percent above the minimum wage should be restricted to experienced workers returning for their third or subsequent seasons;
- 5 **agree** that RSE limited visas should allow for multiple entry to enable RSE workers to leave and re-enter New Zealand for short periods within a season;
- 6 **agree** the requirement for HIV screening of RSE workers from high HIV prevalence countries should be removed to align with other temporary visas where the length of stay is less than twelve months;
- 7 **agree** Timor-Leste should be added to the list of Pacific countries eligible to participate in the RSE scheme, with workers able to work in New Zealand for up to seven months in an eleven-month period;
- 8 **note** I will remove the accommodation cost freeze that has been in place since November 2022 and enable RSE employers to increase accommodation costs by 15 percent or \$15, whichever is the lesser for a period of twelve months while a robust methodology for assessing these costs is developed;
- 9 **note** I intend to clarify in immigration instructions that RSE workers may undertake training not directly relevant to their role provided they meet the requirements of their employment agreement and that training opportunities should not be limited to industry training organisations;
- 10 **note** I have instructed Immigration New Zealand to increase the length of the grace period on either side of the ‘worker move date’ specified in an Agreement to Recruit RSE workers from 14 days to 21 days to increase flexibility in the movement of workers between employers and regions;
- 11 **note** that I will clarify that the grace period may also apply to a single employer seeking to move workers between regions, in addition to ‘joint ATR’ arrangements between employers; and
- 12 **note** that following the recommendations in this paper being agreed, I intend to consider further amendments to the RSE scheme on a longer timeframe, with decisions being sought in 2025.

Authorised for lodgement

Hon Erica Stanford

Minister of Immigration