



COVERSHEET

Minister	Hon Iain Lees-Galloway	Portfolio	Immigration
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Information redacted

YES

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Constitutional Conventions

In Confidence

Office of the Minister of Immigration

Chair, Cabinet

Increasing the cap for the Recognised Seasonal Employer scheme

Proposal

1. This paper seeks Cabinet's agreement to:
 - 1.1. increase the cap on temporary visas that can be granted under the Recognised Seasonal Employer (RSE) scheme by 1,550, to 14,400 in 2019/20;
 - 1.2. increase the cap again by 1,600 to 16,000 in 2020/21 (conditional on evidence of widespread industry action on the challenges I have set);
 - 1.3. mitigate the risks of increased housing pressures by excluding the use of additional non-RSE employer-owned residential housing.

Executive Summary

2. The RSE scheme enables employers in the horticulture and viticulture industry to recruit an annually-capped number of seasonal workers (mainly from the Pacific Islands), where New Zealanders are not available.
3. While industry has asked for an increase in the cap of around 3,150, in consultation with the Minister for Social Development, I propose to meet this request over a two-year period, and to restrict the use of residential rental accommodation in certain regions. Increasing the cap by 1,550 in 2019/20, and providing a strong signal of a cap increase of 1,600 for 2020/21 (if industry commitments are met), will provide more certainty for industry.
4. There is, however, a residual risk of labour shortages if industry does not actively develop its local workforce in time for the peak season. This approach, of putting the onus on employers to plan their workforce, aligns well with related work underway on employer-assisted temporary visas, which aims to ensure that:
 - 4.1. employers are placing more New Zealanders into jobs, which helps their businesses to grow and thrive, and results in better jobs for New Zealanders;
 - 4.2. temporary work visas are not being used to fill low-skill jobs on an ongoing basis; and
 - 4.3. foreign workers, when they are employed, are not exploited and have wages and conditions that are consistent with New Zealand norms.
5. This proposal best balances objectives to:
 - 5.1. in the context of strong economic conditions, support industry growth by alleviating labour shortages;

- 5.2. acknowledge that industry has made some progress on challenges I have set them, while incentivising the industry to keep working on the challenges (such as to build more purpose-built accommodation and to do more to employ New Zealanders);
 - 5.3. respond to calls for more certainty and transparency in the cap process;
 - 5.4. manage the risks of exacerbating local housing pressures; and
 - 5.5. increase opportunities for Pacific workers and nations to benefit.
6. The proposals in this paper are an interim approach, prior to a more comprehensive review of the RSE policy, which has been separately agreed by Cabinet as part of the Pacific immigration policy review. The RSE policy review will provide an opportunity to improve the effectiveness of the RSE scheme by reviewing the cap, how the cap is allocated, the requirements on employers (including in relation to employing New Zealanders and providing accommodation) as well as the compliance tools available, such as penalties on employers. The review will also be an opportunity to consider alignment between the RSE scheme and broader employer-assisted visa changes, where appropriate.

Background

7. The RSE scheme is a standalone employer-assisted visa category that enables employers in the horticulture and viticulture industry to recruit an annually capped number of seasonal workers (mainly from the Pacific Islands) to plant, maintain, harvest, or pack crops, where New Zealanders are not available. The RSE cap has doubled from its original 5,000 places in 2007 to 12,850 in 2018, due to growing employer demand for labour. This demand has been driven by persistently strong export prices and profitability across the horticultural sector, which is incentivising further investment and expansion.
8. However, I have concerns about the industry's increasing reliance on the RSE scheme as a source of lower-cost labour. Last year, I challenged the sector to take a more cohesive and planned approach to growth by:
- 8.1. automating, and considering paying workers more;
 - 8.2. doing more to employ New Zealanders;
 - 8.3. building accommodation when planting new crops; and
 - 8.4. taking responsibility for supply chains to stamp out worker exploitation.
9. Employers have collectively requested an increase to the cap of 3,150 workers in order to meet demand for the 2019/20 season. The regions asking for the highest increases are Hawke's Bay (996), Bay of Plenty (814), Nelson (534), and Auckland (322), accounting together for 85 percent of the total request.

I propose an increase of 1,550 places in 2019/20

10. The cap decision is important for ensuring that employers are able to access RSE workers where there is genuinely insufficient domestic supply, while maintaining pressure and incentives on industry to do more where progress is lagging.

11. In consultation with the Minister for Social Development, I consider an increase of 1,550 places in 2019/20 achieves the right balance between supporting industry growth and acknowledging the genuine efforts of some employers, while also maintaining incentives on employers and industry to make progress on the challenges. This is the third-largest increase in the cap in the history of the scheme.

12. I do not consider a zero increase scenario to be appropriate, as:

12.1. **strong economic conditions, including low unemployment, mean that industry is struggling to meet its labour demand.** There is evidence that labour shortage declarations are likely. The 2019 New Zealand Institute for Economic Research (NZIER) report commissioned by industry forecasts that in a mid-case scenario, the worker shortfall for the whole industry will be 4,191 workers in 2019/20 and 4,717 in 2020/21. In addition, the Ministry of Social Development declared seasonal labour shortages for fixed periods in Hawke's Bay and Bay of Plenty in early 2019.

12.2. **industry has made some progress on the challenges I have set them.** Maintaining the cap at its current level would not reward performance (see Annex One for an assessment of progress on challenges). There are some employers who are investing in high quality purpose-built accommodation. For example, an employer in Hawke's Bay has purchased a hotel and refurbished it to provide 300 beds, some of which have been used to accommodate "Ready to Release" prisoners, and to provide transitional public emergency housing during winter. There are also examples of employers offering New Zealanders flexible working hours, guaranteed minimum hours, second chances, and internships and practicums for the Bachelor of Horticulture at Massey University.

13. An increase in the cap would also provide more opportunities for Pacific Island governments and workers to benefit. At a macro level, Pacific Island countries benefit from remittances, which are an important source of foreign exchange. At a micro level, RSE workers benefit from opportunities to increase their incomes and to access training while in New Zealand. Pacific Island government representatives frequently request that the cap be increased in diplomatic exchanges.

The proposed cap increase will continue to maintain pressure on employers to do more on the challenges

14. I do not recommend meeting the amount requested by industry, on the basis that available evidence suggests there are pockets of progress, but that the industry as a whole has not fully met the challenges I set (see Annex One for areas for further progress on challenges).

15. I am particularly concerned by evidence that, despite strong profitability:

15.1. **purpose-built accommodation in the highest growing regions is struggling to keep up with demand.** There are pressures on accommodation at all points in the housing continuum (rental, public, transitional, and emergency) in regions where the RSE scheme operates. The deficit of purpose-built accommodation is likely contributing to pressures on the low-cost rental market for local residents and resulting in increased demand for public housing support. Without appropriate safeguards, a cap increase would likely exacerbate existing housing pressures and increase demand for public housing.

15.2. wages are low and barriers remain for New Zealanders in the industry, including training, transport and accommodation. In particular, accommodation shortages have been identified as barriers for more New Zealanders from outside the regions to be employed in Hawke's Bay, Bay of Plenty and Otago.

15.3. there is **underutilised local labour capacity** that could likely be activated if employers did more to attract and retain New Zealanders. Jobseeker-Work Ready numbers have increased in all regions in the last year and there is still significant underutilised labour in regions. This includes people looking for work, people looking for more hours of work, people who are available and want a job but are not actively looking, and people who are looking to start work within the next month.

16. There is evidence that employers who are progressing the challenges are having less trouble meeting their labour demand. For example, an employer in a region with labour shortages sent their RSE workers home early last season, as the employer had developed a local work force that could complete the harvest.

A conditional cap increase for 2020/21 would increase certainty and transparency while incentivising performance within existing settings

17. In consultation with the Minister for Social Development, I propose a further cap increase of 1,600 in 2020/21 to 16,000 to respond to employer calls for more certainty. Employers cite the lack of certainty of RSE numbers in out-years as a barrier to investment in accommodation. A two-year timeframe will also give time for the sector to plan a domestic workforce that they will need in advance.

18. To maintain incentives on industry to continue to work on the challenges, and to shift the RSE scheme towards an approach more consistent with sector agreements¹, I propose that the second year increase be conditional on concrete and verifiable evidence of the following:

18.1. making jobs more attractive to New Zealanders by improving conditions (such as increasing wages beyond minimum wage increases);

18.2. removing barriers for New Zealanders to participate (such as providing transport, accommodation and training for New Zealanders);

18.3. reducing the use of residential housing in key priority regions; and

18.4. increasing the number of purpose-built beds that add to housing stock.

19. To improve the clarity of expectations on employers, and the transparency of the cap process, I propose that the Ministry of Business, Innovation and Employment (MBIE) and MSD develop the lead indicators (in consultation with industry) to be used to determine whether the commitments have been met. Officials would report back to me before the end of 2019. In consultation with the Minister for Social Development, I would take the decision on whether commitments have been met.

¹ Sector agreements would be negotiated between Government and sectors that have a high reliance on temporary foreign workers. Agreements would provide employers covered by the agreement with certainty of access to employer-assisted visas for specific occupations, in exchange for demonstrating commitments to place more New Zealanders into jobs and, as a consequence, reduce reliance on lower-skilled foreign workers over time.

20. While industry would likely prefer a higher number without conditionality and over a longer period of time, I consider existing policy settings do not have enough safeguards in place to mitigate risks. I intend to more broadly consider the optimal features and process for the cap and worker allocation, and the requirements on employers under the RSE scheme, through the more comprehensive RSE policy review.

I propose interim restrictions on the use of residential rental housing to manage risks to housing pressures during 2019/20 and 2020/21

21. The availability of accommodation, and the impact of the RSE scheme on housing pressures, has been an increasingly pressing issue. While industry have said they have obtained a large number of consents for purpose-built accommodation², I have very little certainty as to the status of these consents, the extent to which construction has begun, and whether beds will be available for the upcoming season.

22. I therefore propose to introduce an interim accommodation requirement to prevent the further use of residential rental housing to accommodate RSE workers. Any non-employer owned residential house would not be able to be approved, unless it has been previously included in an approved Agreement to Recruit. The policy intent is to ensure that any further growth of the RSE scheme does not reduce the amount of lower-cost residential rental housing that would otherwise be available to local residents.

23. While employer-owned purpose-built accommodation is preferred, short-term options for employers who do not own accommodation would include commercial guest accommodation, such as hotels, motels, backpackers, camping grounds, and boarding houses. Other arrangements that do not put pressure on housing availability for local residents, such as home-stays (ie billeting workers), farm-stays, and purpose-built seasonal worker accommodation would also be eligible. The existing quality guidelines would continue to apply and be enforced by the Labour Inspectorate.

24. I will exempt regions from this requirement where my officials, in consultation with the Ministry of Housing and Urban Development, advise me that a region has low housing pressure and that the requirement is therefore an unnecessary barrier.

Consultation

25. The following agencies were consulted in the development of the proposals in this paper and their views have been reflected: the Ministry of Social Development; the Ministry of Foreign Affairs and Trade, the Ministry of Housing and Urban Development, the Ministry for Primary Industries, the Treasury and the Department of the Prime Minister and Cabinet.

Financial Implications

26. The growing number of employers and workers participating in the RSE scheme is putting pressure on existing resources allocated by the Labour Inspectorate to assess and monitor accommodation and employment requirements. As part of the RSE policy review, I will consider current compliance and monitoring arrangements and whether changes are required, including to funding arrangements.

² An NZIER employer survey suggests there are consents for 1,759 beds for 2019 and 3,588 for 2020. Additional information received suggests these numbers could be much higher (around 4,000 in 2019 and 8,000 in 2020)

27. Constitutional conventions

Implications

28. There are no legislative, human rights, gender or disability implications associated with this paper.

Impact Analysis

29. This paper does not require a Regulatory Impact Assessment as the proposals do not result in legislative or regulatory amendments.

Publicity

30. Following Cabinet's consideration of this paper, I will issue a press release conveying the key messages. Industry and employers will be proactively informed through existing operational channels.

Proactive Release

31. I propose to release this paper proactively subject to any relevant redactions as appropriate, consistent with the Official Information Act 1982.

Recommendations

32. The Minister of Immigration recommends that Cabinet:

1. **note** that employers have made some progress in responding to the challenges I laid out to them, including construction of purpose-built accommodation in regions where there is housing pressure and improved engagement with the Ministry of Social Development to employ New Zealanders;
2. **agree**, in light of the tight labour market and progress towards meeting the challenges, to increase the cap on temporary visas that can be granted under the Recognised Seasonal Employer (RSE) scheme by 1,550 places, to 14,400 in 2019/20, noting that this will be the third-largest increase in the cap in the history of the scheme;
3. **agree** to increase the cap again in 2020/21 by a further 1,600 places to 16,000, conditional on evidence of widespread industry action to:
 - 3.1. reduce the use of residential housing in key priority regions;
 - 3.2. increase the number of purpose-built beds that add to housing stock;
 - 3.3. make jobs more attractive to New Zealanders by improving conditions (such as increasing wages beyond minimum wage increases);
 - 3.4. remove barriers for New Zealanders to participate (such as providing transport, accommodation and training for New Zealanders);

4. **note** that officials will develop lead indicators (in consultation with industry) to be used to determine whether the commitments in recommendation 3 above have been met, and report back to the Minister of Immigration before the end of the year;
5. **invite** the Minister of Immigration, in consultation with the Minister for Social Development, to determine whether conditions in recommendation 3 have been met in order to release the additional cap places for 2020/21;
6. **agree** to mitigate housing pressures by excluding the use of any additional non-employer owned residential house that has not previously been included in an approved Agreement to Recruit; and
7. **agree** that the Minister of Immigration will determine whether any exemptions to recommendation 6 are necessary, based on advice from officials.

Authorised for lodgement

Hon Iain Lees-Galloway

Minister of Immigration

Annex One – Assessment of challenges

Challenge	Assessment
1. Automate and consider paying workers more	<p>Automation</p> <p>Evidence of progress</p> <ul style="list-style-type: none"> • Mechanisation is already a feature of the wine industry with machine harvesting, thinning and canopy management during the summer season and less frequently used in winter (grapes). • Anecdotal evidence that some employers are making investments in: automation of packing facilities (kiwifruit); and automated picking platforms, trialling harvesting machines sourced from the northern hemisphere, and new orchards are being planted with automation in mind (apples and pears). <p>Areas to progress</p> <ul style="list-style-type: none"> • Progress appears ad hoc. The industry does not appear to have a long-term plan for investment into research and development on automation. <p>Wages</p> <p>Evidence of progress</p> <ul style="list-style-type: none"> • Some anecdotal evidence that kiwifruit employers have increased their rates to be closer to rates offered by wine and apples and pears. • Some evidence that some high-performing RSE workers are getting high returns for their productivity (\$20-\$26). <p>Areas for further progress</p> <ul style="list-style-type: none"> • Many New Zealanders and local residents are getting paid close to minimum wage. • Other fruit and vegetables still largely pay very close to the minimum across the board.
2. Do more to employ New Zealanders	<p>Evidence of progress</p> <ul style="list-style-type: none"> • 85 percent of employers have good working relationships with MSD. • New Zealand Apples and Pears, Wine Marlborough and NZ Kiwifruit Growers have labour coordinators in place, jointly funded between the Provincial Growth Fund, MSD and industry. Career progression coordinators are being established. • NZ Kiwifruit invested significantly in a labour attraction advertising campaign. • There are examples of employers doing some of the following: flexible working hours, guaranteed minimum hours, accommodation and transport for released prisoners or locals from other regions, second chances, employing people with disabilities, internships and practicums for the Bachelor of Horticulture at Massey University. <p>Areas for further progress</p> <ul style="list-style-type: none"> • Only Apples and Pears have provided a draft Workforce Development Strategy and it still needs work. Other sectors of the industry are working

Challenge	Assessment
	<p>to develop Workforce Development strategies.</p> <ul style="list-style-type: none"> • MSD engagement is often limited to seasonal opportunities and not sustainable employment. • Barriers remain for New Zealanders, including training, transport and accommodation. Unclear how widespread positive examples are across industry. • MSD would like industry to provide better pastoral care for New Zealanders, similar to that provided to RSE workers. • Most initiatives are fully or partly government-funded or initiated. • Indicators suggest there is untapped labour to be activated.
<p>3. Build accommodation when planting new crops</p>	<p>Evidence of progress</p> <ul style="list-style-type: none"> • The total amount of purpose-built accommodation in the RSE scheme has increased. There are some examples of best practice: <ul style="list-style-type: none"> ○ Marlborough: the region is responding to community backlash to expansion of the industry by building custom-built complexes. An employer has involved workers in the design. ○ Hawke's Bay: an employer has purchased a hotel and re-furnished it to provide 300 beds, some of which have been used to accommodate "Ready to Release" prisoners, and to provide transitional public emergency housing during winter. • Labour Inspectors on the ground are aware of around 1,600 beds underway for the next two years, including around 320 in Hawke's Bay, 320 in Bay of Plenty, 700 in Marlborough, and 200 in Nelson. <p>Areas for further progress</p> <ul style="list-style-type: none"> • Building is not keeping up with demand in fastest growing regions. The number of upcoming beds Labour Inspectors are aware of over the next two years cover only around 60% of the increase requested this year. • Employers have said they have a high number of consented beds for 2019/20 (estimates range from 1,759-4818). However, we have less certainty as to whether these beds are under construction or will materialise in time.
<p>4. Take responsibility for supply chains to stamp out exploitation</p>	<p>Evidence of progress</p> <ul style="list-style-type: none"> • RSE employers are broadly compliant with minimum standards. • Some uptake of global labour and social practice standards accreditation <p>Areas for further progress</p> <ul style="list-style-type: none"> • Unclear how widespread adoption of global labour and social practices standards accreditation is within the RSE scheme

Key: Red =no progress; Amber =some progress; Green =met challenge