Immigration New Zealand Instructions: Amendment Circular No. 2019/08

To: All Manual Holders

Amendments to the Immigration New Zealand Operational Manual

Introduction
This circular outlines changes to immigration instructions. A copy of the amended instructions is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions on and after 3 October 2019.

Note
The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.

Information about these changes will soon be available on our website: www.immigration.govt.nz/about-us/media-centre/news-notifications
Description of changes

Increased the Recognised Seasonal Employer (RSE) cap

The annual cap on temporary visas that can be granted under the RSE scheme has increased by 1,550 to 14,400.

Introduced new restrictions on RSE worker housing

RSE worker housing restrictions have also been introduced. Unless included in an Agreement to Recruit (ATR) that was approved before 26 September 2019, the following housing restrictions apply in the specified regions of housing pressure:

1. Hawkes Bay and Bay of Plenty: residential houses cannot be used for RSE workers, unless the houses are owned by the employer and purchased on or before 26 September 2019.
2. Auckland, Marlborough, Nelson/Tasman, Northland and Otago: residential houses cannot be used for RSE workers, unless the houses are owned by the employer.

Appendix 1 contains amended immigration instructions.
Appendix 1: Amendments to immigration instructions effective on and after 3 October 2019
**WH1.1 Objectives and overview – RSE Instructions**

**WH1.1.1 Objectives**

The objectives of the RSE Instructions are to:

a. allow horticulture and viticulture businesses to supplement their New Zealand workforce with non-New Zealand citizen or residence class visa holder workers when labour demand exceeds the available New Zealand workforce and employers have made reasonable attempts to train and recruit New Zealand citizens and residence class visa holders; and

b. promote best practice in the horticulture and viticulture industries to support economic growth and productivity of the industry as a whole, while ensuring that the employment conditions of both New Zealand and non-New Zealand citizen or residence class visa holder workers are protected and supported; and

c. encourage economic development, regional integration and good governance within the Pacific, by allowing preferential access under RSE Instructions to workers who are citizens of eligible Pacific countries; and

d. ensure workers recruited under these instructions are adequately paid and financially benefit from their time in New Zealand; and

e. ensure outcomes which promote the integrity, credibility and reputation of the New Zealand immigration and employment relations systems.

**WH1.1.5 Meeting the objectives of RSE Instructions**

To ensure these objectives are met:

a. RSE limited visas will only be granted under the RSE Instructions where:
   i. there are available places for employment in the horticulture and viticulture industries as determined by INZ in consultation with Ministry of Social Development (MSD); and
   ii. INZ is satisfied the RSE will:
      iii. continue to have direct responsibility for those workers and their work output (except where WH1.5.5(d) applies); and
      iv. comply strictly with the requirements for RSE status and Agreements to Recruit (ATRs) under the RSE instructions; and

b. a high standard of proof is required to satisfy INZ that requirements set out in instructions will be and are being met; and

c. INZ may consider the compliance history and particular employment or other arrangements (including recruitment practices) of the RSE and other organisations or individuals associated with the RSE; and

d. permission to use non-New Zealand citizen or resident workers will be withdrawn and further permission refused where there is any breach of requirements other than of a minor nature; and

e. RSE status will not be granted to employers whose core area of business activity is the facilitation of entry to New Zealand of non-New Zealand citizens and residence class visa holders or who are not engaged directly in the industries to which these instructions apply.

**WH1.1.10 Overview**

a. An employer who wishes to recruit non-New Zealand citizen or residence class visa holder workers to plant, maintain, harvest and pack crops in the horticulture and viticulture industries under these instructions must apply to become an RSE (see WH1.5).

b. An employer with RSE status may then apply for an ATR. An ATR allows the recruitment of a set number of non-New Zealand citizen or residence class visa holder workers for each period where demand requires it (see WH1.10). ATRs will be restricted to recruitment from specified Pacific countries, unless RSEs can satisfy INZ that they:
   i. have pre-established relationships with workers of other nationalities (see WH1.10.20); or
   ii. have made reasonable attempts to recruit from the specified Pacific countries, but were unsuccessful (see WH1.10.15); or
   iii. have reasonable grounds for why it is not feasible to recruit from the specified Pacific countries.

c. An employer with a current ATR may offer seasonal employment to non-New Zealand citizen or residence class visa holder workers.

d. Workers who hold such an offer of employment may then apply for an RSE limited visa (see WH1.15) consistent with the terms and conditions of the RSE's ATR.

e. All visas granted to plant, maintain, harvest and pack crops in the horticulture or viticulture industry for an RSE under the RSE instructions will be granted under the RSE Limited Visa instructions (see WH1.15).
WH1.1.15 Annual limit to number of visas available under RSE instructions

a. The number of visas that can be granted under these instructions is limited to **14,400** for each year ending 30 June.

b. Applications for ATRs or RSE limited visas submitted after this limit has been reached will not be approved for places within that year and the application fee and immigration levy will be refunded.

c. INZ will take into consideration the following matters when determining whether the annual limit has been reached:
   
i. the number of visas granted in the year ending 30 June; and
   
ii. the number of workers requested in ATRs approved for each year ending 30 June.
WH1.10 Agreement to Recruit (ATR)

a. An Agreement to Recruit (ATR) is an approval for a Recognised Seasonal Employer (RSE) to offer employment (in planting, maintaining, harvesting, and packing crops) to non-New Zealand citizen or residence class visa holder workers. This approval will only be given at times where demand for such workers in the horticulture and viticulture industries cannot be met from the available New Zealand workforce.

b. The availability of suitable New Zealand citizen or residence class visa holder workers will be assessed in consultation with the Ministry of Social Development.

WH1.10.1 Requirements for an ATR

a. An application for an ATR will only be approved where the employer holds RSE status (WH1.5).

b. INZ must be satisfied that the employer has taken all reasonable steps to recruit and train New Zealand citizens or residence class visa holders for available positions before seeking an ATR to recruit workers who are not New Zealand citizens or residence class visa holders. Evidence to support the employer’s case for requiring an ATR must be provided with each application for an ATR.

c. Each application must include the following information:
   i. the region(s) of seasonal demand; and
   ii. the number of workers required; and
   iii. the nature of each position (planting, maintaining, harvesting, or packing crops); and
   iv. the period for which each position is available (start and end date of employment); and
   v. the location where the non-New Zealand citizen or residence class visa holder workers will be working; and
   vi. the country or countries from which the employer intends to recruit their workers; and
   vii. a copy of the employment agreement that will be offered to the workers, and that meets the requirements set out in WH1.20.

Note: The employment agreement provided to workers must be the same as that which is provided to INZ at the ATR stage, unless the terms and conditions are more beneficial to the worker.

d. Where the RSE applying for an ATR intends to recruit workers to undertake work at the worksite of a third party, such as a grower or pack house operator, they must provide written evidence of that arrangement with the third party. Such arrangements between RSEs and third parties do not remove any of the RSEs’ obligations under these instructions (except where WH1.5.5(d) applies).

e. Where two or more RSEs have an arrangement to provide consecutive periods of employment to the same workers, they must submit their separate ATRs (covering each consecutive period) to INZ together. Where INZ approves those jointly submitted ATRs, INZ may grant a visa allowing work for each RSE (if requirements at WH1.10.1 (h) and (i) are met).

Note: In any case the maximum stay in New Zealand of seven months in any 11 month period (or nine months in any 11 month period for citizens of Tuvalu or Kiribati who are normally resident in Tuvalu or Kiribati) must be adhered to.

f. INZ must be satisfied that the employer will make available appropriate pastoral care to workers. Employers must provide full details of how they plan to address the following pastoral care, and health and safety requirements:
   i. transportation to and from the port of arrival and departure; and
   ii. an induction programme; and
   iii. suitable accommodation; and
   iv. transportation to and from the worksite(s); and
   v. access to personal banking; and
   vi. access to lawful and reputable remittance services; and
   vii. access to acceptable medical insurance (see WH1.25); and
   viii. provision of personal protective equipment; and
   ix. provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water); and
   x. necessary language translation, e.g. for health and safety purposes; and
   xi. opportunity for recreation and religious observance; and

g. An RSE who holds an ATR must:
   i. comply with the conditions of the ATR; and
   ii. provide all prospective non–New Zealand citizen or residence class visa holder workers to be employed under RSE instructions with a written employment agreement that meets the requirements set out in WH1.20; and
   iii. comply with the terms and conditions of the employment agreements; and
   iv. comply with the minimum requirements set out in WH1.20 in relation to:
      o. paying half the return airfare between New Zealand and the worker’s country of residence for each worker recruited under the RSE instructions, unless the worker is a citizen of Tuvalu or Kiribati who
is normally resident in Tuvalu or Kiribati (in which case the employer must pay for half the return airfare between Nadi (Fiji) and New Zealand), or WH1.15.5(a) applies; and

- minimum remuneration; and
- pay deduction requirements; and

v. comply with any request from the Ministry of Business, Innovation and Employment (the Ministry) to audit the RSE against RSE instructions and the conditions of the RSEs ATR and employment agreements; and

vi. pay to the Ministry any costs reasonably incurred by the Ministry, to a maximum of NZ$3000 per worker, in relation to the repatriation (including any maintenance and accommodation) of any non–New Zealand citizen or resident worker who requires repatriation as a result of a breach of the terms and conditions of their RSE limited visa; and

vii. inform the Ministry of the expected departure date of non–New Zealand citizen or resident class visa holder workers employed under RSE instructions once bookings for outward flights have been made; and

viii. arrange, but not necessarily pay for, acceptable medical insurance (see WH1.25) for workers recruited under RSE instructions for the duration of their stay in New Zealand.

h. In cases where two or more employers apply for ATRs to provide consecutive periods of employment to the same workers, each employer must provide:

  i. full details of how the pastoral care and health and safety requirements set out at (f) above will be arranged by the employers (including accommodation arrangements for both or all periods of employment); and

  ii. the start and end dates in which RSE workers will work for each employer during their visa.

i. If the requirements at (h) above are met and INZ is satisfied that appropriate pastoral care will available to workers for the duration of their visa, immigration officers may grant an RSE limited visa valid for any or all periods of employment within the term of the visa.

Note: For the purposes of these instructions, the return airfare is defined as the total cost of travel from the worker’s country of residence (or from Nadi (Fiji) for a worker who is a citizen of Tuvalu or Kiribati) to New Zealand and back, including all associated taxes and fees.

**WH1.10.5 Determining an application for an ATR**

a. An ATR will be approved only where:

  i. the appropriate regional Work and Income office(s) has been advised of the RSEs vacancies; and

  ii. INZ, in consultation with MSD, is satisfied that there are no suitable New Zealand citizen or residence class visa holder workers available to undertake the work; and

  iii. there are sufficient places remaining within the annual limit (see WH1.1.15), for the grant of visas under these instructions; and

  iv. INZ is satisfied that the requirements set out in WH1.10.1 and WH1.10.10 and WH1.10.35 are met.

b. Where INZ is not satisfied that the number of workers requested in the ATR is appropriate for the work required, or this number of people exceeds the forecast labour shortage for the region and period requested, INZ may approve the recruitment of a lesser number of workers, or for a lesser period of work than requested.

c. INZ will take into consideration the needs of the horticulture industry and viticulture industry as a whole when determining an ATR application and the number of workers that may be approved, to ensure that no particular region, crop or season is disadvantaged.

d. Any supporting documentation to verify a regional labour shortage will be considered.

e. INZ will decline an application where the employer or any relevant third party (see WH1.10.1(d) and (e)) has a history of non-compliance with immigration or employment law, including if they fail to meet the requirements set out at W2.10.15 or are currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

**WH1.10.10 Pacific countries eligible for the recruitment of workers**

a. ATRs will only be granted for recruitment of citizens from the following eligible Pacific countries who are also normally resident in one of those countries, unless (b) below applies:

  o Federated States of Micronesia
  o Fiji
  o Kiribati
  o Nauru
  o Palau
  o Papua New Guinea
  o Republic of Marshall Islands
  o Samoa
  o Solomon Islands
  o Tonga
Tuvalu
Vanuatu.

b. ATRs will only be granted for recruitment of citizens other than those listed above where INZ is satisfied that:
   i. reasonable attempts to recruit from the eligible Pacific countries have not been successful (see WH1.10.15); or
   ii. the RSE has pre-established relationships with workers from countries other than the eligible Pacific countries (see WH1.10.20); or
   iii. the RSE has reasonable grounds for why it is not feasible to recruit from the eligible Pacific countries.

c. Any request to recruit from outside the eligible Pacific countries must state the country or countries the RSE wishes to recruit from, and must be accompanied by evidence that supports this request.

WH1.10.15 Reasonable attempts to recruit from eligible Pacific countries

INZ may consider an RSE to have made reasonable attempts to recruit from eligible Pacific countries if:

a. the RSE has failed, having made genuine and reasonable attempts, to recruit suitable potential workers from the eligible Pacific countries within six weeks of commencing recruitment; and

b. evidence can be provided of genuine and reasonable attempts to recruit workers in the eligible Pacific countries, such as a written communication from a National RSE Officer stating that they have been consulted and agree that employing people from these nations is not feasible in the circumstances.

Note: If any employment offers provided to workers from the eligible Pacific countries do not meet the criteria set out in WH1.20, the employer will not be considered to have made a reasonable attempt to recruit from eligible Pacific countries.

WH1.10.20 Pre-established employment relationships with workers of other nationalities

a. When determining whether an employer has a pre-established employment relationship with workers who are not citizens of eligible Pacific countries, INZ will take into account factors such as (but not limited to):
   i. the number of workers employed from each country, relative to the total number of workers employed by the employer; and
   ii. the number of previous occasions on which workers have been recruited from these countries; and
   iii. the length of time for which these workers were employed; and
   iv. whether the employer has made a substantial investment in establishing formal training opportunities or recruitment processes with workers or communities within these countries.

b. When determining whether an employer has a pre-established employment relationship with workers who are not citizens of eligible Pacific countries, INZ will not take into account employment relationships with workers holding visas granted:
   i. under the Seasonal Work Permit instructions; or
   ii. under a Working Holiday Scheme; or
   iii. under the Transitioning to Recognised Seasonal Employer instructions; or
   iv. under the Supplementary Seasonal Employment instructions; or
   v. on the basis of a Variation of Conditions to a visitor visa.

c. Where INZ is satisfied that an employer has a pre-established relationship with workers from a country not listed in WH1.10.10(a) and the employer has applied to recruit a greater number of workers from that country than the number of workers from that country previously employed by the employer, INZ will then determine whether the number of workers requested is appropriate in the circumstances.

d. When making a determination under (c) above, INZ may take into account such factors as:
   i. the nature of the pre-established relationship, such as whether the employer has made a substantial investment in establishing formal training opportunities or recruitment processes with workers or communities within that country; and
   ii. whether the employer has made any attempts to develop relationships with countries listed in WH1.10.10(a) above.

WH1.10.25 Reconsideration process for applications for ATRs which are declined

There is no statutory right of appeal against the decision to decline an application for an ATR. However, INZ may reconsider a declined application for an ATR where new information is promptly provided.

WH1.10.30 Applying for an ATR

An application for an ATR must be:

a. made in New Zealand; and

b. made on the Application for an Agreement to Recruit (INZ 1141) form; and

c. accompanied by the prescribed fee; and
d. supported by evidence that demonstrates the employer meets the requirements set out at WH1.10.1 and WH1.10.10.

**WH1.10.35 Worker accommodation must not exacerbate housing pressures**

a. INZ must be satisfied that the accommodation proposed for RSE workers will not exacerbate residential housing pressures.

b. RSE worker accommodation is considered to exacerbate residential housing pressure if it is a residential house which was not included in an ATR approved before 26 September 2019 and the accommodation meets the following region and restriction conditions:

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<thead>
<tr>
<th>Region</th>
<th>Restriction</th>
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<tbody>
<tr>
<td>Bay of Plenty</td>
<td>Accommodation in any residential house, excluding employer-owned houses.</td>
</tr>
<tr>
<td>Hawke’s Bay</td>
<td>purchased on or before 26 September 2019.</td>
</tr>
<tr>
<td>Auckland (including Upper Auckland)</td>
<td>Accommodation in any residential house, excluding employer-owned houses.</td>
</tr>
<tr>
<td>Marlborough</td>
<td></td>
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<tr>
<td>Nelson/Tasman</td>
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<td>Northland</td>
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<td>Otago</td>
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**Note:** For the purposes of these instructions, “residential house” does not include boarding houses or guest accommodation such as home-stays (or similar arrangements), nor houses built specifically to provide seasonal worker accommodation.