

Immigration Act 2009

Special direction – Grant of limited visa to stranded RSE workers to manage effects and deal with consequences of measures taken to contain or mitigate the outbreak of COVID-19 or its effects

Pursuant to section 61A(2)(b) of the Immigration Act 2009 (the Act) of my own volition, by special direction, I grant a limited visa to a class of onshore temporary entry class visa holder, as classified in this direction.

Pursuant to section 61A(5) of the Act, the class of persons granted a limited visa are those persons who:

- 1) are in New Zealand and hold a Limited Visa for the express purpose of undertaking seasonal work in the horticulture or viticulture industry (which is planting, maintaining, harvesting or packing crops) under the Recognised Seasonal Employer immigration instructions (a RSE limited visa)
- 2) do not have a current Agreement to Recruit (ATR) associated with the RSE limited visa that they hold
- 3) have a valid employment agreement:
 - a) with a Recognised Seasonal Employer (RSE)
 - b) with guaranteed hours of work of (at least) 15 hours per week
- 4) are named by the RSE in an undertaking that has been provided by the RSE to Immigration New Zealand (the relevant business unit of the Ministry of Business, Innovation, and Employment) (INZ), in the form set out in the Schedule to this special direction and with any documentation required to be provided by the undertaking

I am satisfied that the making of this special direction is reasonably necessary to manage the effects, or deal with the consequences of, the outbreak of COVID-19. The class of persons to whom this special direction applies are in New Zealand under the RSE Scheme (features of which include restricting industry/type of work) and on limited visas for RSE purposes (limiting their ability to lawfully remain in New Zealand outside of the RSE Scheme). The nature of the RSE scheme means visa holders' ability to continue to earn at this time is significantly impacted (as there is little or no seasonal work available for the number of RSE limited visa holders still in New Zealand), while COVID-19 has created significant difficulty for these visa holders to return to home countries as expected due to travel disruption and measures to combat COVID-19 in home countries.

I am satisfied that the new visa does not materially disadvantage the class of persons involved.

Pursuant to sections 49 and 52, and in accordance with sections 84 and 85 of the Act, each limited visa granted in accordance with this special direction is for the following express purpose, currency and conditions:

- a) for the express purpose of the visa holder being able to undertake work and earn an income until flights are available for them to depart New Zealand
- b) has the expiry date of 30 October 2020
- c) is subject to the conditions that the limited visa holder:
 - i. remains in the employment of the employer with whom they have entered into an employment agreement (refer para 3 of this Special Direction)
 - ii. only undertake work that has been approved in accordance with the undertaking provided to INZ by the specified employer (including any work to be undertaken under a contract for services between the employer and a third party)
 - iii. holds “acceptable medical insurance” (defined as medical insurance that meets the same criteria as under the immigration instructions at WH1.25 of the *Immigration New Zealand Operational Manual* (effective 08/05/2017))

For the avoidance of doubt, limited visas granted to the class of persons identified above are not subject to:

- a) a location requirement
- b) other than any restrictions arising from the conditions above, any restrictions on the nature or industry of work (other than any restrictions under any New Zealand enactment)

This special direction expires 9 October 2020 unless revoked earlier.

Dated this day of July 2020

Hon IAIN LEES-GALLOWAY, Minister of Immigration

Explanatory note: *The effect of this special direction is to grant limited visas to the class of persons described in this direction (all being persons in New Zealand on limited visas for the purpose of working under the RSE Scheme, who face difficulty departing New Zealand in accordance with those visas and that Scheme, and unable to seek another visa and otherwise earn adequate income to support themselves while they are unable to depart).*

Schedule

Undertaking in regards to the employment, work and care of specified persons

The commitments in this undertaking are given to Immigration New Zealand (INZ) (a business unit of the Ministry of Business, Innovation and Employment, the responsible department for the administration of the Immigration Act 2009) by

(being the employer of the persons named in this undertaking, and a Recognised Seasonal Employer (RSE) under the Recognised Seasonal Employer immigration instructions, as published in the *Immigration New Zealand Operational Manual*) (the employer).

This undertaking is given on the date that it is provided to INZ.

The information provided in this document is for the purpose of an undertaking given to INZ, committing the employer to certain requirements in respect of named employees.

The employer, in giving this undertaking, warrants that they have the full knowledge and informed consent of each person named. Each named person will, on the giving of this undertaking and verification by INZ that they otherwise are a person within a class of persons granted a visa by special direction of the Minister of Immigration under section 61A of the Immigration Act 2009, be granted a limited visa on the terms set out by the Minister.

Information provided by the employer will be managed within the requirements of the Privacy Act 1993 (where personal information), the Official Information Act 1982 and the Public Records Act 2005. This undertaking (and verification of meeting the commitments within) will be relevant to the employer's future status as a RSE.

Details of the person/persons/entity giving the undertaking

Person(s) giving the undertaking on behalf of the employer: _____

Nominated person (point of contact for INZ communications): _____

Phone number and email address for INZ communication:

Commitments given

The employer acknowledges and agrees that they will abide by the following terms:

- 1) They will work cooperatively with any and all relevant parties and authorities (as determined by INZ in its sole discretion) to coordinate the repatriation of each named person that is granted a limited visa following the giving of this undertaking, at the earliest practicable opportunity.
- 2) For the duration of any limited visa granted by special direction of the Minister of Immigration to a person named in this undertaking (and any further limited visa granted by an immigration officer in order to provide further time to fulfil the same express purpose), they will guarantee (at least) 15 hours work per week, provide pastoral care (the elements of which are set out at WH1.10(f)) and honour commitments (modified as necessary) as required of a RSE in respect of an RSE limited visa holder under the under the Recognised Seasonal Employer immigration instructions at WH1.5.5(d), in a manner appropriate to the circumstances, except for
 - a. the requirement under WH1.5.5(d)(iv) that employment agreements (as set out in WH1.20 instructions) comply with minimum remuneration and RSE work restrictions, which do not apply, and
 - b. the requirement under WH15.5.5(d)(ix) to have direct responsibility for the daily work output and supervision, which does not apply if workers are contacted to a third party.
- 3) They will ensure that their employees only undertake work (whether directly for the employer or not) that has been pre-approved in writing by the Ministry of Social Development (MSD). Approval requires MSD to be reasonably satisfied the work will not impact on work opportunities for suitable New Zealanders.
- 4) That if they have entered, or if they enter into any contract for service with a third party under which the employer will deploy a person named below to fulfil any such contract(s), the contracts are, and will be, conditional on prior written confirmation that:
 - a) MSD does not consider the work that would be undertaken by a named employee will impact on work opportunities for suitable New Zealanders
 - b) the third party is not on the [stand down list of non-compliant employers maintained by the Labour Inspectorate](#)
 - c) the Labour Inspectorate is satisfied that appropriate pastoral care will continue to be provided by the employer or another party, in the same terms as (2) above.
- 5) That they have engaged with MSD and the Labour Inspectorate prior to giving this undertaking in respect of the immediate work they have planned for the persons named and the pre-approval records will be provided to INZ along with this undertaking.

Acknowledgements

The employer acknowledges that:

- they commit to meeting the obligations of this undertaking as it relates to the named persons in order to facilitate and establish that they are members of a class of persons granted limited visas by special direction under section 61A of the Immigration Act 2009 by the Minister of Immigration. If any of the named persons are not, in fact, in the class of persons the employer is not bound to fulfil this undertaking in respect of that individual.
- they may be required to provide information (including documents) to INZ to demonstrate that they have met the commitments above and/or have otherwise complied with their obligations in this undertaking.
- failure to meet the commitments given, or to provide information (including documents) to demonstrate they have met their commitments, may negatively impact future applications by the employer's obtain or renew RSE accreditation or Agreement to Recruit under the RSE Scheme.
- that they enter this undertaking with the full knowledge and informed consent of each person named.

Named persons

Include the following identifying details of each named person in a spreadsheet attached to this undertaking:

- Full name with family name in CAPITALS
- Date of birth

The undersigned declares that they have the full authority of the employer to make this undertaking

SIGNED for and on behalf of the employer, _____,

[name]_____,

[role]_____.

[DATE]_____