



Recognised Seasonal Employer Immigration Instructions

Inter-Agency Understanding: Nauru

March 2015



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI

[New Zealand Government](#)

INTER-AGENCY UNDERSTANDING & SCHEDULES

Letter of Exchange between the New Zealand Ministry of Business, Innovation and Employment and the Department of Foreign Affairs and Trade, Nauru.

February

■ Purpose

1. The purpose of this Letter of Exchange is to mark the conclusion and official agreement to the development of the Inter-Agency Understanding and the Facilitative Arrangements under New Zealand's Recognised Seasonal Employer Immigration Instructions between the New Zealand Ministry of Business, Innovation and Employment and the Department of Foreign Affairs and Trade, Nauru.

■ Parties

2. The Inter-Agency Understanding and the Facilitative Arrangements will come into effect upon this Letter of Exchange been signed by the Deputy Chief Executive – Immigration, Ministry of Business, Innovation and Employment and the Department of Foreign Affairs and Trade, Nauru

■ Communication

3. The text of the Inter-Agency Understanding will be made available on the Ministry of Business, Innovation and Employment website, in line with the current practice for other Inter-Agency Understandings between New Zealand and other countries.

■ Attachments

4. Copies of the Inter-Agency Understanding and the Facilitated Arrangements have been included with this Letter of Exchange as an attachment for reference purposes.



Nigel Bickle

Deputy Chief Executive Officer - Immigration

For the Ministry of Business, Innovation and
Employment of New Zealand

Date *3 March 2015*



Mr Michael Aroi

Secretary for Foreign Affairs and Trade

For the Department of Foreign Affairs and
Trade, Nauru

3 March 2015
Date

Inter-Agency Understanding 2015: Nauru

Inter-Agency Understanding between the Ministry of Business, Innovation and Employment of New Zealand, and the Department of Foreign Affairs and Trade of Nauru in support of New Zealand's Recognised Seasonal Employer Immigration Instructions (RSE).



1. Participants

- 1.1. This Inter-Agency Understanding (**'Understanding'**) is between:
- › The Sovereign in right of New Zealand acting by and through the **Chief Executive of the Ministry of Business, Innovation and Employment ('MBIE')** of New Zealand with responsibility for the administration of the Immigration Act 2009;
 - and
 - › **Department of Foreign Affairs and Trade of Nauru ('Department')** with responsibility for the administration of the Labour Mobility Policy including the RSE hereinafter jointly referred to as the (**'Participants'**).

2. Purpose

- 2.1. The purpose of this Understanding is to set out the arrangements to facilitate access of Nauru nationals to seasonal work in the horticulture and viticulture industries under New Zealand's Recognised Seasonal Employer Immigration Instructions.
- 2.2. Country specific facilitative arrangements are set out in **Schedule 1** of this Understanding.

3. Definitions

- 3.1. For the purposes of this Understanding, the following definitions apply:
- 3.2. Agreement to Recruit (**'ATR'**) means an approval for a Recognised Seasonal Employer to offer employment (in planting, maintaining, harvesting, and packing crops) to non-New Zealand national or resident workers;
- 3.3. Immigration New Zealand (**'INZ'**) means a group within MBIE that manages immigration;
- 3.4. Manager, Pacifica Labour and Skills Unit means Manager, Pacifica Labour and Skills Unit including the Recognised Seasonal Employer of the Immigration Group of MBIE;
- 3.5. Seasonal Employment Unit (**'LMU'**) means the Seasonal Employment Unit established to facilitated, manage and operate labour mobility including the Recognised Seasonal Employer Instructions of Immigration New Zealand; and
- 3.6. Recognised Seasonal Employer (**'RSE'**) means a New Zealand employer, whose core area of business is horticulture or viticulture, who has had an application for RSE status approved by INZ under the RSE Immigration Instructions.

4. Principles

- 4.1. The facilitative arrangements must be designed and implemented consistent with the following principles:
- › equity of access and opportunity;
 - › transparency of process and decision making;
 - › accountability;
 - › development focused;
 - › mitigation of risk; and
 - › inter-agency understanding.

5. Critical Success Outcomes

- 5.1. MBIE enters into this Understanding with a view to achieving the following outcomes, notably:
- › Achieving the objectives of the RSE Immigration Instructions;
 - › Avoiding:
 - overstaying and exploitation of workers;
 - displacement of New Zealand's workforce; and
 - suppression of wage growth in the horticulture and viticulture industries.
 - › Ensuring a Pacific preference for available places. To help achieve this goal specific Forum Island Countries will be assisted to establish facilitated arrangements;
 - › If funding is available, MBIE will work in collaboration with other stakeholders to provide skills training for RSE workers in horticulture and viticulture, and explore other relevant sectors that may be complementary to the RSE Immigration Instructions; and
 - › Contributing to the development objectives in the Pacific by fostering economic growth and regional integration under the RSE Immigration Instructions.
- 5.2. The Department enters into this Understanding with a view to achieving the following outcomes, notably that:
- › Nauru secures a fair portion of seasonal work opportunities under the RSE Immigration Instructions;
 - › Nauru workers are able to generate savings and relevant experience which may contribute to the development of Nauru;
 - › If funding is available, the Department in collaboration with other stakeholders (including MBIE) will identify, scope and implement targeted training for Nauru RSE workers;
 - › Nauru cooperates effectively with New Zealand to maintain the integrity of the arrangements implemented; and
 - › The cost does not act as a barrier for Nauru nationals to access opportunities under the RSE Immigration Instructions.

6. Critical Success Factors

- 6.1. Facilitative arrangements for the RSE Policy will be effective if:
- › RSEs establish productive relationships with Nauru and obtain a supplementary workforce to sustain their industries;
 - › Objectives are achieved and principles are adhered to;
 - › Both Participants have specific and timely information to enable Nauru to effectively participate under the RSE Immigration Instructions, and actively participate in monitoring and evaluating measures of success and outcomes resulting, and
 - › Nauru nationals enjoy fair access to the RSE Immigration Instructions, fair and reasonable treatment by RSEs, adjust to New Zealand conditions, derive income and skills, have successful re-entry into their home community and heighten the prospect of return employment in New Zealand.

7. Facilitative Arrangements

- 7.1. The Facilitative Arrangements appended as Schedule 1 of this Understanding are expected to be implemented consistently with the Principles and Critical Outcomes outlined in Sections 4 and 5 above, mutually by the Participants of this Understanding and reviewed bi-annually.
- 7.2. The Facilitative Arrangements will assist RSEs to recruit from Nauru, enable Nauru nationals to access opportunities under RSE, allocate responsibilities and actions to the Participants for mitigating risks and ensure compliance and outline cooperation between the Participants for information sharing, marketing and other matters important to the success of the RSE Immigration Instructions.
- 7.3. The facilitative arrangements must be consistent with current RSE Immigration Instructions which is appended as Schedule 2 of this Understanding.

8. Immigration Decisions

- 8.1. The decision to grant a work visa under the RSE Policy remains the prerogative of MBIE with decisions being made on a case by case basis in accordance with requirements laid down in New Zealand immigration legislation, and any applicable Government immigration instructions.

9. Marketing

- 9.1 The need for Nauru to market itself to RSEs as a source of reliable seasonal labour is recognised. Where possible, MBIE will assist marketing initiatives proposed by the Department.

10. Information Collection

- 10.1. The Participants will cooperate in the collection and sharing of information in a manner consistent with their respective legislative frameworks and policies.
- 10.2. The Participants will cooperate to monitor and evaluate the RSE Immigration Instructions and Facilitative Arrangements under this Understanding. Monitoring and evaluation mechanisms will enable the Participants to assess progress against the Participants' Critical Success Outcomes (Section 5) and Critical Success Factors (Section 6) and inform areas for improvement in arrangements that the Participants are responsible for. The Participants will in particular, cooperate to conduct random surveys of stakeholders to assess efficiency and transparency of recruitment procedures.
- 10.3. For the purposes of evaluation, any information collected from Nauru RSE workers about their participation under the RSE Immigration Instructions will be voluntary. The Participants will only use information for statistical or research purposes and will not publish information in a form that could reasonably be expected to identify any individuals.

11. Publicity

- 11.1. The Participants will make efforts to increase awareness and understanding of the RSE instructions in Nauru.
- 11.2. The Participants will act promptly to correct any false or misleading information about the RSE scheme.
- 11.3. The Participants will notify each other on the public release of this Understanding, in part or in whole. Information contained in this Understanding can be shared with RSEs

12. Review

- 12.1. The Participants will review this Understanding bi-annually at a time mutually agreed upon by the Participants.
- 12.2. The review will provide an opportunity to discuss issues and consider changes to this Understanding. The review will consider the degree to which the Facilitative Arrangements are being implemented with respect to Principles mutually determined by the Participants and outlined in Section 4 of this Understanding.
- 12.3. The Participants acknowledge that the Facilitative Arrangements outlined in this Understanding are likely to evolve with experience. The Participants will consult as necessary to promptly address and endeavour to resolve any issues arising out of this Understanding or the operation of the Facilitative Arrangements. Such issues may include any identified needs for capacity building through institutional strengthening, and improvement in coordination among government agencies.

13. Variations/Amendments/Additions

- 13.1. This Understanding may be amended at any time by mutual determination in writing by the Participants. Schedule One of this Understanding may be amended with the written consent of any persons to whom the Participants have duly delegated authority. The duly delegated authority for Nauru is the Secretary of the Department.

14. Commencement and Termination

- 14.1.** This Understanding will come into effect upon signature by both Participants and may be terminated by either Participant upon written notice to the other Participant, refer to section 13 as the preferred methodology for notification.
- 14.2.** Any evidence of corruption or unethical practice that is not dealt with effectively and immediately will jeopardise participation in the RSE Policy and potentially result in the termination of this Understanding.

15. Notices

- 15.1.** The address for notices to MBIE for matters related to this Understanding is:

Manager, Pacifica Labour and Skills Unit
Minsitry of Business, Innovation and Employment
15 Stout Street
PO Box 1473
Wellington
New Zealand

- 15.2.** The address for notices to the Department for matters related to this Understanding is:

Director, Labour Mobility Unit
Department of Foreign Affairs and Trade
Government Building
NAURU

Inter-Agency Understanding between the Department of Business, Innovation and Employment ('MBIE') of New Zealand and the Department of Foreign Affairs and Trade ('Department') of Nauru in support of New Zealand's Recognised Seasonal Employer ('RSE') Immigration Instructions ('RSE Immigration Instructions').

SCHEDULE 1: FACILITATIVE ARRANGEMENTS

1. Recruitment

The Participants recognise that there is one recruitment path for Nauru citizens. RSEs may recruit from only the Labour Mobility Unit ('LMU') through a Work Ready Pool of workers facilitated by the Department. This arrangement will be in place for the first two years of Nauru's participation under the RSE Immigration Instructions, and will be reviewed in the bi-annual review of this Understanding by the Participants. (Refer to section 7 – Facilitative Arrangements and section 9 – Review of this Understanding).

1.1 The Work Ready Pool

a) Preselection

The Department will work through the LMU Work Ready Pool of Nauru citizens which RSEs can recruit from. The Work Ready Pool will comprise of prospective RSE workers that have been through the LMU mandatory processes. The Department will maintain an up to date database of Nauru citizens who are recruited.

b) Screening

The LMU will be responsible for screening all nominees and nominees who pass the screening process will be placed in the Work Ready Pool.

Factors that will be taken into account by LMU will include:

- › previous immigration history,
- › Police history, regional balance,
- › equity,
- › fairness,
- › character and health,
- › age criteria as outlined within the RSE Immigration Instructions, and
- › additional consideration of evidence of a work ethic (paid, subsistence or otherwise).

Nominees who are successfully placed in the Work Ready Pool will have their information renewed annually.

c) Recruiting From the Work Ready Pool

The Department will provide a list of the Work Ready Pool and any relevant documents including prospective worker profile and bio data for RSEs to make their selection.

At the RSE's request, the Department can select workers from the Work Ready Pool for the RSEs to offer employment to. The RSE will specify to the Department, the number and type of workers needed, details of named workers, and any relevant details such as dates by which workers should arrive in New Zealand.

RSEs may wish to re-employ workers from Nauru who have worked satisfactorily in previous seasons. In cases where workers are not in the Work Ready Pool, the Department will contact them directly to confirm their availability. RSEs wanting to conduct interviews in Nauru are to make arrangements with the Department through the LMU to travel to Nauru to conduct interviews, and then select RSE workers. It may be more practical that the RSE work with a representative from the Department to do this.

1.2 Direct Recruitment

Nauruan Government policy for RSE recruitment prohibits recruitment by agents; hence, all recruitments of RSE workers shall be through the LMU.

General

MBIE will inform the Department, in a timely manner, of approved Agreement to Recruit (ATRs) involving Nauru RSE workers representatives engaged by RSEs to represent their interest in the recruitment of Nauru RSE workers in partnership with LMU, are prohibited from seeking compensation from workers in exchange for securing an employment agreement under the RSE Immigration Instructions. In order to guard against exploitation of Nauru citizens, only such costs as medical and police certificates and other reasonable costs relating to the work visa application should be charged to the Nauru RSE worker. The Nauru RSE worker must be made aware that a representative of LMU can assist them in the completion of visa application as part of the LMU process.

The decision to offer employment and to enter into an employment agreement remains with the RSE. A written employment agreement negotiated by the RSE and the Nauru RSE worker (with the assistance of LMU) will specify the terms and conditions of employment and must be in accordance with the RSE Immigration Instructions and New Zealand's legislation, including the opportunity for the Nauru RSE workers to seek independent advice. The RSE and Nauru RSE worker must sign the employment agreement before the Nauru RSE worker can submit an application to work under the RSE Immigration Instructions.

2. Work Visa Processing

An application for a work visa to work (**'Visa Applications'**) for an RSE must be made in accordance with the RSE Immigration Instructions. Application requirements are set out in the "Application to Work in New Zealand for a Recognised Seasonal Employer" form. The application fee will be published in the INZ Guide to Fees (NZIS 1028) and on INZ's website www.immigration.govt.nz/fees.

The Visa Applications to work for an RSE must be submitted by LMU to the Immigration NZ in Suva. The Visa Applications will be expected to be decided within five working days from submission to Immigration NZ in Suva.

MBIE in consultation with the Department will develop information sheets outlining the requirements for the Visa Applications to work in New Zealand for an RSE. The Department will cooperate with MBIE on translation of information sheets.

Visa Application forms and RSE Policy information sheets will be made available through Immigration NZ office in Suva, and through INZ's website www.immigration.govt.nz.

The RSE Immigration Instructions are available through the INZ website. MBIE will inform the Department of any updates and changes to the RSE Immigration Instructions.

The Immigration NZ office in Suva will work with the Department to ensure that notification of the receipt of all Visa Applications under the RSE Immigration Instructions, is communicated to the Department for the purposes of record keeping.

3. Pre-Departure Orientation

MBIE will make available to the Department information kits and seminar tools that may be drawn on for purposes of pre-departure orientation and will liaise with the Department regarding the translation of relevant parts, where appropriate.

The Department with input, where possible, from MBIE and associates will provide comprehensive briefings to all Nauru RSE workers selected before their departure to New Zealand. Such briefings will cover matters such as:

- › different types of pay rates (hourly versus contract rate);
- › deductions from pay including signing consent forms for deduction;
- › climate and working environment;

- › clothing and footwear requirements;
- › taxation;
- › insurance (Nauru supports compulsory medical insurance for all Nauru RSE workers going to New Zealand);
- › health and wellbeing;
- › accident compensation;
- › banking and remitting;
- › budget advice;
- › travel arrangements;
- › personal viability;
- › effective time management tools;
- › physical training;
- › reintegration programme; and
- › emergency contact details of key RSE personnel.

These pre-departure orientation sessions will stress the importance of adherence to the rules and conditions of RSE work visas granted and in particular the briefings will impress upon workers the importance of complying with immigration legislation and the public consequences of any overstaying, displaying a good work ethic and protecting the reputation of Nauru as a source of reliable and high quality seasonal labour for New Zealand's horticulture and viticulture industries. In addition the Department will identify each group's leader and pass their names onto the employer. The Department will stress to the Nauru RSE workers at the Pre-Departure Orientation sessions, the importance of supporting their group leaders.

4. Pastoral Care

Nauru RSE Workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates will apply. Nauru RSE Workers are eligible to join unions in accordance with those laws. RSEs will be required to address pastoral care as set out in the RSE Immigration Instructions, this includes:

- › transportation to and from the port of arrival and departure;
- › an induction programme;
- › suitable accommodation;
- › transportation to and from the worksite(s);
- › access to personal banking;
- › provision of personal protective equipment;
- › provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water);
- › necessary language translation e.g. for health and safety purposes;
- › the opportunity for recreation and religious observance; and
- › collaborating with MBIE and other stakeholders to identify, scope and implement targeted training programmes for Nauru RSE workers.

Nauru RSE Workers will be responsible for their reasonable costs of accommodation. If RSEs pay the full travel cost, Nauru RSE workers have to freely give informed and written consent to deductions that may be made by RSEs to recover up to half of their travel costs from wages during the term of employment. Pay deductions (apart from tax and ACC levy) must be made as set out in the RSE Immigration Instructions.

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Nauru RSE Workers will be covered by Accident Compensation legislation in New Zealand but will not be eligible for free medical services. Where Nauru RSE workers require medical services (other than ACC) they are liable to pay the costs incurred. Medical insurance is compulsory for all Nauru RSE workers going to NZ. Nauru RSE Workers may bring any concerns arising from the conduct of their RSE to the attention of their team leader (where one exists), employer, union representative, Honorary Consul, and/or MBIE staff. The Manager, Pacifica Labour and Skills Unit may investigate any issues unable to be resolved by other parties. MBIE should inform, in a timely manner, the Department of any complaints received or issues raised.

5. Compliance

The New Zealand Government has a zero tolerance for overstaying under the RSE Immigration Instructions. To ensure the sustainability of the RSE Immigration Instructions, Nauru RSE workers need to comply with the work visas issued. RSEs are responsible for the payment of costs associated with the repatriation of any of their workers who are found in breach of the terms and conditions of their visa. RSEs are unlikely to seek to recruit further workers from Nauru if they experience negative consequences for non-compliance relating to Nauru RSE Workers.

The Participants will cooperate in matters relating to the return of Nauru RSE workers. MBIE will assign a representative with the task of liaising with the Nauru RSE Workers and the Department on Pastoral Care and Compliance matters.

MBIE will monitor compliance with employment and workplace legislation, the RSE Immigration Instructions and general immigration requirements. MBIE will investigate as appropriate, any complaints or issues of non-compliance that are brought to its attention. MBIE will operate a programme of random visits to RSEs to monitor compliance with the RSE Immigration Instructions.

6. Nauru Government's Re-integration Programme

The Nauru Government represented by LMU will work with MBIE and RSEs to identify productivity capacity of Nauru RSE workers' to access support programmes under Nauru Government's LMU.

Nauru RSE Workers, upon returning to Nauru will have access to support information, capacity building training and financial assistance to start up small micro-business under the Nauru Government's LMU.

7. RSE Immigration Instructions updates

MBIE will advise the Department of any changes or amendments to the RSE Immigration Instructions at the earliest opportunity before the changes or amendments are made public. RSE Immigration Instructions will remain available and updated on the Immigration NZ website www.immigration.govt.nz.

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SCHEDULE 2: RSE IMMIGRATION INSTRUCTIONS

1. 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).

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- 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 acceptable medical insurance (see WH1.25); and
 - vii. provision of personal protective equipment; and
 - viii. provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water); and
 - ix. necessary language translation, e.g. for health and safety purposes; and
 - x. opportunity for recreation and religious observance.
- 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:
 - v. 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 (Nauru) and New Zealand), or WH1.15.5(a) applies; and
 - vi. minimum remuneration; and
 - vii. pay deduction requirements; and
 - viii. 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
 - ix. 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
 - x. inform the Ministry of the expected departure date of non–New Zealand citizen or residence class visa holder workers employed under RSE instructions once bookings for outward flights have been made; and
 - xi. 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 be 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 (Nauru) 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 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.

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:
- › Federated States of Micronesia
 - › Fiji
 - › Kiribati
 - › Nauru
 - › Palau
 - › Papua New Guinea
 - › Republic of Marshall Islands
 - › Samoa
 - › Solomon Islands
 - › 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 Recognised Seasonal Employer (RSE) Instructions, along with all the other RSE instructions are available on the INZ website at:

www.immigration.govt.nz/opsmanual/34412.htm

