



## BRIEFING

### Advice on AEWV accreditation for triangular employers

<b>Date:</b>	8 September 2023	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-0719

Action sought		
	Action sought	Deadline
Hon Andrew Little <b>Minister of Immigration</b>	<b>Provide feedback on</b> the advice in this briefing	15 September 2023

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Jivan Grewal	General Manager, Employment, Skills and Immigration Policy	Privacy of natural persons	✓
Nita Sullivan	Senior Policy Advisor, Immigration (Skills and Residence) Policy	Privacy of natural persons	
Bronwyn Chapman	Senior Policy Advisor, Immigration (Skills and Residence) Policy	Privacy of natural persons	

The following departments/agencies have been consulted
N/A

**Minister's office to complete:**

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

**Comments**

# BRIEFING



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### Purpose

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To provide you with advice regarding the removal of triangular employers from the Accredited Employer Work Visa (AEWV) scheme.

### Executive summary

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In 2019, Cabinet agreed to replace six existing employer-assisted temporary work visa categories with a new, employer-led visa system – the Accredited Employer Work Visa. There have been recent reports of migrant exploitation linked to labour hire companies, who use triangular employment arrangements. On Tuesday, 5 September you requested advice from officials regarding the removal of triangular employers from the AEWV scheme.

The AEWV scheme requires all employers to hold accreditation before they can apply to hire migrant workers for a specific job. For employers using triangular employment structures there are additional accreditation standards and verification and assurance processes in place. These settings recognise the ongoing and legitimate need for triangular employment arrangements in a flexible and dynamic labour market, whilst attempting to manage the specific risks of migrant exploitation present due to the nature of triangular employment relationships.

Currently, triangular employment is being used mostly in the construction sector, but is also supporting a number of other sectors, including IT, clerical and medical. The Accredited Employer Risk Monitoring Review (AERMR) programme is not yet far advanced enough to draw strong conclusions about the level of non-compliance in triangular employment situations compared to standard employment types.

Removing the ability of triangular employers to use the AEWV could reduce the incidence of exploitation by reducing the number of migrants tied to labour hire companies in potentially precarious employment situations (particularly non-genuine employers). It would significantly reduce their future access to migrant labour. This change could also have the effect of encouraging more triangular employers to incorrectly categorise their business model under the AEWV in order to proceed through the system and continue hiring migrant workers. For this reason, it may reduce but not necessarily eliminate access to migrant workers for all high-risk employers across the system.

There may be alternative interventions available to mitigate the risk presented by triangular employers. This includes recent operational changes to increase AEWV checks and the AERMR programme. We can also provide advice shortly on additional policy options, such as requiring triangular employers to have a larger share of domestic workers. Giving further consideration to complete removal in 3-6 months would also allow for recent operational changes to take effect and reassessment of the landscape.

If you wish to proceed with removing triangular employment accreditation from the AEWV system as soon as possible, agreement can be sought from Cabinet. We have drafted text to include in your upcoming Cabinet paper, should you wish to proceed.

## Recommended action

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The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** you requested advice from officials regarding the removal of triangular employers from the AEWV scheme  
*Noted*
- b **Note** the AEWV system includes additional accreditation standards designed to manage the higher risk of migrant exploitation associated with triangular employers  
*Noted*
- c **Note** the biggest users of triangular employment under the AEWV appear to be the construction sector, but triangular employment arrangements are used across a wide variety of sectors  
*Noted*
- d **Note** that there may be alternative options to mitigate the risks posed by triangular employers, and operational changes underway are likely to increase scrutiny across the system  
*Noted*
- e **Either:**
- i. **Direct** officials to provide advice on alternative options, particularly the option to require triangular employers to have a larger share of domestic workers by the week of 18 September, noting that further advice on triangular employers will be provided in 3-6 months once recent operational changes have taken effect  
*Agree / Disagree / Discuss*
- OR
- ii. **Direct** officials to remove triangular employment arrangements from the AEWV scheme as soon as possible  
*Agree / Disagree / Discuss*
- f **Note** we have provided text to include in the related upcoming Cabinet paper in Annex One, depending on which option you proceed with  
*Noted*

Privacy of natural persons



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**General Manager, Employment, Skills and  
Immigration Policy**  
Labour, Science and Enterprise, MBIE

08 / 09 / 2023

Hon Andrew Little  
**Minister of Immigration**

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## Background

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1. In 2019, Cabinet agreed to replace six existing employer-assisted temporary work visa categories with a new, employer-led visa system – the Accredited Employer Work Visa (AEWV) [DEV-19-MIN-0228]. The ability to apply for an AEWV opened on 4 July 2022 and it is now the main temporary skilled work visa available to migrants wanting to work in New Zealand.
2. There have been recent reports of migrant exploitation linked to labour hire companies, who use triangular employment arrangements. On Monday, 4 September you took an oral item to Cabinet regarding the cohort of identified migrants and on Tuesday 5 September you requested advice from officials regarding the removal of triangular employers from the AEWV scheme, among other things.

## Policy and operational context

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3. The AEWV requires employers to hold accreditation before they can apply to hire migrant workers for a specific job. Employers using triangular employment structures have a separate accreditation category to recognise that this business model poses specific risks of exploitation due to the nature of the employment relationships [DEV-19-MIN0228].

## Definition of triangular employment

4. Triangular employment is a term used in the employment relations system to refer to situations where the direct employer contracts their employee's services out to a controlling third party.<sup>1</sup> The defining feature of this relationship is that the direct employer maintains all the key employment responsibilities (i.e. they are named on the employment agreement and responsible for meeting all the terms and conditions of the employment agreement, including paying wages), but the controlling third party is able to exercise day to day control and direction over the employee.
5. Triangular employment includes labour hire companies, but also includes other business arrangements, such as employers who send employees on secondments, or parent/umbrella companies which place employees with subsidiaries. This broader definition ensures that all high-risk employment arrangements are covered, regardless of whether the employer is a traditional labour hire company.
6. In the AEWV context, the accreditation must be held by the direct employer (i.e. the employer named on the employment agreement). The employer can offer either permanent or fixed term employment contracts, but they must guarantee at least 30 hours of work a week for the duration of the worker's employment.

## Additional accreditation standards and verification and assurance processes set up for triangular employment under the AEWV

7. Triangular employment arrangements carry a higher risk of migrant exploitation due to the reduced control that the direct employer has over their employee's day to day working conditions. In the past, there have been reports of widespread poor employment practices in construction-based labour hire companies, e.g. during the Canterbury earthquake rebuild, which led to the establishment of a dedicated labour hire accreditation regime (which has been superseded by the AEWV).
8. The AEWV category requires employers with triangular employment accreditation to meet additional accreditation standards designed to manage these risks. The requirements are:

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<sup>1</sup> Controlling third party is defined in section 5 of the *Employment Relations Act 2000*.

- a) **only placing AEWV holders with compliant third parties** – in practice, this means the third party must have an NZBN, not be on the stand-down list for breaching employment standards, have made a declaration to the direct employer that they have not breached immigration rules, and have agreed to provide records to the direct employer when requested, and to allow INZ to do site visits;
  - b) **have processes in place to monitor the employment conditions and safety of employees** working in triangular employment arrangements;
  - c) **responding appropriately to any issues raised by employees working in triangular employment arrangements;**
  - d) **a minimum of 15% of their placement workforce must be New Zealanders in full-time employment** – this is primarily based on accepting employer declarations at face value, unless there is other evidence available that shows they do not meet the requirement; and
  - e) **a 12-month history of employing staff** – this is also primarily based on employer declarations unless there is other evidence available.
9. Triangular employment accreditation must also be renewed every 12 months. This is in contrast to standard and high-volume accreditation, which are subject to renewal every 24 months, after an initial 12-month accreditation period.
10. Employers with triangular employment accreditation are also subject to additional verification and assurance activity, which includes: all accreditation applications being manually assessed by an immigration officer, job check and visa applications associated are also subject to increased scrutiny, and all employers with triangular employment accreditation will be subject to post-decision checking through the Accredited Employer Risk Monitoring and Review (AERMR) programme by the end of 2023.

## **Current use of the AEWV by triangular employers**

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*There is an ongoing and legitimate need for triangular employment arrangements in a flexible and dynamic labour market*

11. Triangular employment was included in the design of the AEWV (as one of the four employer accreditation pathways), reflecting its necessary role in a dynamic and flexible labour market. Triangular employment is commonly used in the construction sector, but also supports many other sectors, including IT, clerical and medical.
12. The biggest users of triangular employment appear to be the construction sector – at least 17.2 per cent of all AEWV holders in the construction industry are employed by businesses that appear to use triangular employment practices. Labour hire is a standard part of the construction industry's labour supply chain. However, this model may become more critical when there is a sudden large-scale need for workers. For example, during the Canterbury earthquake rebuild, tens of thousands of construction workers were required and were placed with hundreds, if not thousands, of subcontractors, including smaller companies who do not traditionally have the skills or resources to recruit migrants directly.
13. Other industries with a significant proportion of AEWV holders employed by businesses that appear to use triangular employment practices are retail (15.23 per cent), tourism (8.65 per cent), and primary industries (6.82 per cent). Industries represented in the cohort of employers with triangular accreditation include:
- a) **Health** – nursing and aged care agencies, business supplying locum dentists, after hours medical centres;

- b) **Education** – agencies supplying reliever teachers, particularly in early childhood education;
- c) **Transport and logistics** – road freight transport, Airways New Zealand (providing air traffic control services); and
- d) **Professional consultancies** – e.g. Russell McVeagh.

*AEWV data may have gaps regarding the number of triangular accredited employers*

14. Currently 201 employers hold triangular employment accreditation, representing less than one per cent of all accredited employers. However, this cohort represents a larger proportion of job check positions (upwards of 17 per cent of all job check positions approved) and AEWVs issued (upwards of 10 per cent of all AEWVs approved). There is evidence to suggest a significant cohort of employers in the AEWV system are using triangular employment arrangements but are not accredited as such (they have selected standard or high-volume accreditation instead). Further work is needed to verify whether this cohort holds the correct accreditation type, and if not, why not. This means that our data about the use of triangular employment in the AEWV may have significant gaps at this stage.
15. The AERMR programme is not yet far advanced enough to draw strong conclusions about the level of non-compliance in triangular employment situations compared to standard employment types (after the first year of AERMR activity is completed at the end of 2023, more definitive insights will be available).
16. INZ holds significant concerns about 132 employers as a result of the insights and intelligence gathered on employers since they have brought migrants onshore, as well as through the post-accreditation (AERMR) checks which are underway. Of these 132 employers identified as being of concern, 7% have triangular employment accreditation. Of the 14 employers who have had their accreditation revoked, one held triangular employment accreditation. A further two employers with triangular employment accreditation are in the process of having their accreditation revoked currently (of a total group of 94 under assessment for revocation).

## **System changes to remove triangular employers from the AEWV**

17. From a system perspective, removing the ability for a business to apply for triangular accreditation on the front-end form would stop the flow of new submissions made by triangular employers. This would require changes to the customer facing forms in ADEPT, which have not yet been subject to detailed design or planning. Initial estimations for implementation timeframes are that changes to ADEPT could not be made this calendar year.
18. This change would require proactive communications to existing triangular employers, to update them about the changes and advise what this means for them, and to all accredited employers, so they can make informed decisions when approaching the AEWV scheme to fill labour gaps in the future.

## **Likely effect and risks of removal**

19. Removing the ability of triangular employers to use the AEWV could reduce the incidence of exploitation by reducing the number of migrants tied to labour hire companies in potentially precarious employment situations (particularly non-genuine employers). It would also strongly signal a zero-tolerance approach to migrant exploitation behaviours to employers across the system.

20. Triangular employers would retain access to the existing migrant workers they have employed to date (provided the other conditions of the visa remain valid) but moving forward, would only have access to people on open work visas or student visas, or domestic workers. Given the AEWV's role as the main temporary work visa, this would significantly reduce these employers' ability to access migrant labour.
21. This change would potentially have the unintended consequence of more triangular employers incorrectly categorising their business model under the AEWV (either under the standard or high-volume accreditation) in order to proceed through the system and continue hiring migrant workers. Further work is needed to identify the cohort of employers who are currently accredited under the standard or high-volume accreditations but are actually operating under triangular employment arrangements (in addition to those correctly categorised as triangular employers). Depending on actual numbers, removing the ability for those classified as triangular employers would not necessarily stop access to migrant workers for all high-risk employers across the system.

### **Effect on the labour market**

22. The removal of triangular employers from the AEWV will primarily affect labour hire companies in the construction sector. There are considerations related to significantly reducing access to labour under the AEWV for this sector of the economy. Under the Immigration Rebalance, the construction and infrastructure sector was selected for a sector agreement. This was in recognition of the need to ensure labour supply for New Zealand's key infrastructure projects, as well as the ongoing work to increase housing stock in New Zealand.

## **Alternative interventions to mitigate risk**

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### **Policy options to increase requirements on triangular employers**

23. There are alternative ways that increased requirements could be placed on triangular employers, within the existing policy design of the AEWV. The following policy changes could be considered in more detail:
  - a) Requiring triangular employers to employ a larger share of domestic workers (e.g. requiring them to have at least 50 percent of their workers sourced domestically). This is more likely to create barriers for non-genuine employer in the system;
  - b) Increasing the cost to gain accreditation for specified triangular employment arrangements under the AEWV (this would require a Cabinet level decision, and may encourage employers to seek accreditation under a different classification due to increased costs to their business); and
  - c) Consider the definition of triangular employment under the AEWV, and whether a more targeted approach would enable increased standards and scrutiny for this group.
24. Officials could provide further advice on these options, particularly the requirement to employ a larger share of domestic workers, by the week of 18 September.

### **Operational changes underway**

25. There is also work underway to make operational changes to respond to the current risks as well as to ensure the pre- and post-verification checks are focused on those employers where risk is more likely to present [2324-0722 refers]. Current workstreams and system changes that relate specifically to triangular employers include:

- a) Requiring all triangular employers to provide financial documentation upfront (current requirements for new businesses) – this would require online form and process changes, but an interim response will be implemented;
- b) Establishing where employers are identified as highly likely triangular or franchise (but accredited as standard or high volume) and referring them for post-decision AERMR;
- c) Exploration of ADEPT system rules to improve detection of ongoing incorrect accreditation type declaration;
- d) Preparation for a full review of the Risk Management Approach for Accreditation and Re-accreditation; and
- e) An increase in genuine and viable assessments of triangular business models.

## **On balance, we do not recommend removing triangular employment arrangements from the AEWV at this time**

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- 26. We consider that the benefits of including triangular employment arrangements in the AEWV system outweigh the present risks and potential benefits of removal, and therefore do not recommend removing them. There are well established and understood risks associated with triangular employment, which are best targeted through existing policy settings coupled with the operational changes set out in paragraph 25.
- 27. Preventing triangular employers from accessing migrant workers under the AEWV would strongly signal a zero-tolerance approach to migrant exploitation behaviours. However, the potential labour market risks of removing them could be significant. It is also possible that the removal of triangular employers may not have the desired effect in practice, creating increased incentives for employers to misclassify their business under the AEWV system. Considered together, the risks do not outweigh the potential benefits at this time.

## **Next steps**

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- 28. We recommend that we provide further advice on alternative policy options set out in paragraph 23 particularly the requirement to employ a larger share of domestic workers, by the week of 18 September. Giving further consideration to complete removal in 3-6 months would also allow for recent operational changes to take effect and reassessment of the landscape.
- 29. If your preferred option is to remove triangular employment accreditation from the AEWV system, this would need to be agreed by Cabinet. We have drafted two versions of text to include in your upcoming Cabinet paper *Short-term support for migrants on the MEPV* to be considered on 18 September, in Annex One, depending on whether you elect to proceed with the removal of triangular employers from the AEWV.

## **Annexes**

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Annex One: Suggested text for the Cabinet paper



## **Annex One: Suggested text for the Cabinet paper**

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Free and frank opinions



Free and frank opinions

