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## MEMO

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**DATE** 3 June 2022

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**TO** Alison McDonald, Deputy Secretary Immigration

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**FROM** Stephen Vaughan, Chief Operating Officer

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**PREPARED BY** Jeannie Melville, Head of Accredited Employer Work Visa implementation  
Alan Quinn – Project Director, Enablement, Immigration

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**SUBJECT** **AUTOMATING APPROVALS OF EMPLOYER JOB CHECK APPLICATIONS UNDER THE EMPLOYER ASSISTED WORK VISA POLICY**

### PURPOSE

This memo seeks approval for the Advanced Digital Employer-led application Processing and Targeting (ADEPT) system to fully automate approval of Employer Job Check applications where Immigration New Zealand (INZ) has no adverse holdings, no adverse declarations are made and where the occupation is on the Green List and requires occupational registration.

### RECOMMENDATIONS

It is recommended that you:

- a) **Note** that applications for Employer Job Check are scheduled to open on 20 June 2022. *Noted*
  
- b) **Note** that it is expected that employers may submit up to 42,493<sup>1</sup> applications for a job check in the first 12 months. *Noted*
  
- c) **Note** that there are three activities that can be generated during a job check application: general job check, employment is acceptable and employer has advertised. *Noted*

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<sup>1</sup> The forecast number of job check applications is from the Performance and Planning Team forecast for job checks from June 2022 to May 2023.



- d) **Agree** that the general job check activity will be fully automated unless there is an adverse declaration or where INZ holds or obtains adverse information about the employer;

*Agreed / Discuss*

- e) **Maintenance of the Law**

*Agreed / Discuss*

- f) **Maintenance of the Law**

*Agreed / Discuss*

- g) **Maintenance of the Law**

*Noted*

- h) **Note** that the Data Science Review Board was approached for advice and feedback on the approach to automation in the accreditation gateway, which has been used to inform the job check gateway (monitoring, communication and engagement) and future development of the enhanced immigration online platform.

*Noted*

- i) **Note** that the Data Science Review Board has been specifically approached for advice and feedback on the approach to automation in the job check gateway.

*Noted*

- j) **Note** that the Risk Monitoring and Review (RMR) approach for AEWV will test declarations made by employers and migrants at all three gates through post decision verification. It will be undertaken through a mix of desk and site based reviews which will allow INZ to test an employer's compliance with all accreditation requirements based on evidence and will commence from July 2022.

*Noted*



k) **Note** for the first 12 months of the AEWV, RMR will be conducted on 15.5 per cent of employers including 100 per cent of Franchise and Triangular businesses and a higher proportion of high volume employers over standard employers.

*Noted*

l) **Note** that there will be 100 per cent Quality Checks (QC) of staff new to the policy (ie not cleared as fully trained) done outside of ADEPT and no random sampling of manual decisions pre decision. This percentage will be re-evaluated within the first two weeks.

*Noted*

Privacy of natural persons



**Stephen Vaughan**  
Chief Operating Officer  
Immigration New Zealand  
3 June 2022

Privacy of natural persons



**Alison McDonald**  
Deputy Secretary Immigration  
3 June 2022



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## BACKGROUND

1. Under the new employer assisted work visa policy, six existing employer-assisted temporary work visa categories have been replaced with a new policy that introduces a new 'Gateway' system.
2. The three Gateways each have distinct steps where a range of validation checks are completed:
  - a) Employer Accreditation Gateway – This is where employers are accredited to enable them to hire a migrant.
  - b) Job Check Gateway – There are three different pathways whereby the job is checked to ensure that no New Zealander is able to fill the job being recruited.
  - c) The Migrant Gateway – This is where checks will be made that the migrant is of good character and health, and is suitably qualified to do the work offered.
3. The new Accredited Employer Work Visa (AEWV) and the three Gateway process will become compulsory from 4 July 2022. To support transition, employers can submit accreditation and job check applications from 23 May 2022 and 20 June 2022 respectively.

## PROCESSING APPROACH

4. There are different categories of Employer Accreditation depending on the number of temporary work visa holders the employer has or intends to recruit, and depending on the business model under operation.
5. Employers can be categorised as *Standard* (employing five or less migrants in a year), *High volume* (employing six or more migrants in a year), working in a *Triangular employment* situation (where the migrant is placed to work for a different employer, such as in a Labour Hire scenario) and *Franchisee*.
6. Unlike the Employer Accreditation, the Job Check has not been neatly categorised depending on the number of migrants that might be employed or the business model used by the employer. Therefore criteria for automation cannot necessarily be based on such categorisation.
7. The ADEPT system has been configured to provide the option of automation of decisions to approve applications where INZ determines that a manual assessment is not required.
8. INZ must set the criteria for which job check applications meet the threshold for automation of an approval. In principle, the lower the immigration risk, and the lower the level of manual assessment and judgement required in decision-making (if any), the greater the potential for automating approvals.



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9. Under the policy settings for the job check, the employer must include evidence including a detailed job description, a proposed employment agreement and advertising for the role (if this is required under the labour market test instructions).
  10. The ADEPT configuration has allowed for three activities within the job check gateway. These three activities are: general job check, employment is acceptable and employer has advertised.

11. Maintenance of the Law

12. Maintenance of the Law

13. Maintenance of the Law

14. Maintenance of the law

15.

16. All other jobs would require at least one, if not two manual activities, in addition to any assessment concerns that would drop out as a result of an adverse declaration or where INZ obtains any adverse information about the employer.



17. If these job check applications were auto-approved it is estimated they could proceed through the automation flows within 45 minutes, with notification being issued to employers within 24 hours.
18. Automation as described above is based on the AEWV settings and work-flow, rather than business rules or algorithms. A paper has been prepared for the Data Science Review Board (DSRB) to seek feedback which can be factored in to future iterations.

19. **Maintenance of the Law**

20. **Maintenance of the Law**

**RESOURCE IMPACT**

21. The potential bringing forward of Step 5 of Reconnecting New Zealand to the middle of 2022, at the same time as AEWV is being implemented is placing significant pressure on the immigration system. While there will also be a increase in the number of Immigration Officers as the new Christchurch office recruits, approximately 25 per cent of INZ's visa processing workforce will be new to their roles and relatively inexperienced; resulting in reduced efficiency.
22. Analysis has been undertaken as part of developing the AEWV and also to determine the level of fees for the job check gateway. The number of job checks expected to be submitted in the first 12 months of the job check being available are 42,493<sup>2</sup>.
23. Current workforce planning has assumed the processing time for a Job Check that requires manual assessment will be approximately 69 minutes per application. This estimate was arrived at through the work that was done for the fees modelling for the accredited employer gateways. This number will be revalidated as we receive more information from the actual processing of job check applications.
24. Based on the numbers in paragraph 21 above, there is the potential for up to 2677 job check applications to be automated every year<sup>3</sup>. Assuming an average of 69 minutes manual work per application, 3079 processing hours can be saved or approximately 2 FTE. It is difficult to predict the exact number of applications that will be automated as there is not yet any indication of how many businesses

<sup>2</sup> The forecast number of job check applications is from the Performance and Reporting forecast for job checks from June 2022 to May 2023.

**Maintenance of the law**



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applying will be seeking a job check for occupations that require occupational registration or how many employers have a warning attached to their record in AMS or make an adverse declaration on the form.<sup>4</sup>

25. This assumption will need to be validated as we go live, in order to baseline the resourcing benefits for INZ. This will enable that processing capacity to be redeployed to other products and allow the 10 working day processing commitment for routine job check applications to be exceeded.

#### **IMMIGRATION RISK MANAGEMENT IN AEWV**

26. INZ currently holds limited data on employers which can be used to inform employer risk identification and analysis. Information held in AMS is captured as free text and currently immigration risk controls are heavily reliant on alerts and warnings for individual employers, and historic verification and decision data to inform risk rules.
27. The move to ADEPT will allow INZ to capture more structured immigration risk data over time to inform immigration risk identification and treatments, improving the ability for INZ to ensure immigration risk is better managed and enable a focus on targeting risk management to the employers who present the greatest risk.
28. As AEWV will utilise the ADEPT platform, the immigration risk management approach will include a strong focus on collecting data and intelligence in the first year to build the data INZ holds on employers. This will include a heavy focus on post-decision risk monitoring and review which will gather employer specific data through verification of claims made at the Employer Accreditation, Job Check and Migrant Gates.
29. It is expected that as the understanding of immigration risk presented by employers increases, there will be a greater level of verification activity by INZ required for the higher risk employers at the Employer Job Check Gate pre-decision.
30. The RMR model has been developed to ensure that monthly post decision reviews of employers are conducted by Risk and Verification, data is captured to inform ongoing immigration risk analysis and findings reported through INZ's Risk Governance Groups (RMRGG & RCG) to inform risk tolerance and controls. The benefit of this approach is to ensure a circular risk management model is embedded that feeds intelligence and insights into the development and maintenance of risk controls to ensure appropriate risk and automation settings within the ADEPT system and AEWV gates.
31. RMR will test declarations made by employers and migrants at all three gates through post decision verification. It will be undertaken through a mix of desk and site based reviews which will allow INZ to test an employer's compliance with all

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<sup>4</sup> Based on 1 FTE delivering 1600 productive hours work per annum – as per current workforce planning assumptions.



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accreditation requirements based on evidence. To ensure RMR activities are informed by declarations made across all AEWV gates and evidence of compliance can be collected and verified, RMR will commence from July 2022.

32. RMR represents a key element of the implementation of the broader Immigration Risk Model approved to identify employer risk and inform automation over time, focusing INZ resources on gathering data, insights and intelligence on those employer groups that present risk.

33. **Maintenance of the law**

34. The RMR Governance Group has agreed that for the first 12 months RMR will be conducted on 15.5 per cent of employers (based on anticipated annual volumes described in paragraph 6) including 100 per cent of Franchise and Triangular businesses and a higher proportion of high volume employers over standard employers. 22 FTE Verification Officers have been committed to conduct RMR annually.
35. The RMR model anticipates that in most instances immigration risk identification and management will occur after information has been collated from all three gateways and immigration risk will be managed primarily at the re-accreditation stage as part of the full immigration risk management cycle. However, there are still some immigration risks that will managed pre-decision.
36. In addition to post-decision RMR, INZ will conduct pre-decision immigration risk management activities on Employer Job Check applications which pose a greater risk or where INZ holds adverse information relating to that employer. Where INZ holds adverse information on an employer (such as an employer alert or wanting or presence on a standdown list) or an employer makes an adverse declaration in the applications this will result in a manual assessment activity.

#### **QUALITY OF DECISION MAKING & ASSURANCE**

37. As this is a new Policy and new approach to processing, decisions about how we ensure the quality of decisions under the three gateways need to be made. The ADEPT system enables activity based and random sampling QC (RSQC) to be conducted pre-decision. However, how we use these functions should be considered in relation to each of the three AEWV gateways taking into account the new RMR function.
38. Assurance is a critical component of the automated visa processing system. It is necessary to ensure system settings are right, that immigration decisions are being made in accordance with immigration instructions and for feeding into the wider system learning ecosystem.





39. Currently, for visa decisions, INZ undertake Quality checks (QC) prior to the finalisation and communication of the visa decision. This is a preventative control, undertaken by BVO, designed to ensure the quality of the decision i.e that is in line with instructions and standard operating procedures. The proportion of decisions checked varies from two per Immigration Officer per month to 100 per cent.<sup>5</sup>
40. Further, on a quarterly basis the Quality & Assurance team (within the Assurance Branch) review a sample of visa decisions made in the previous quarter to independently assure the quality of decisions (QA). While Employer Job Check is not a visa decision, it is the second gate in the AEWV process. Therefore, a logical starting point would be to potentially replicate the QC and QA steps for decisions on job check applications where appropriate.

## 41. Maintenance of the Law

42. As noted above, if we proceed with automated approvals for certain applications, the Employer Job Check process is reliant on rules within the system to determine which applications meet all the criteria for automation and which don't and thus require manual assessment. While these rules would have been tested prior to go-live of the system, good practice requires ongoing review to provide assurance that the system continues to operate as expected (System Assurance – SA).<sup>6</sup>
43. The proposed approach to automating some decisions, with others requiring manual assessment – enables INZ to adopt different approaches to controls testing and assurance depending on how the decision was made. For example:

		Control testing / Assurance type <sup>7</sup>			
		QC	PDV	QA	SA
Decision type	Automated	X	✓	X	✓
	Manual	✓	✓	✓	✓

*Decision finalised and communicated*

<sup>5</sup> As prescribed by SOPs.

<sup>6</sup> Note – a system assurance framework still needs to be developed.

<sup>7</sup> It should be noted that the control testing and assurance types are organised in the table according to “proximity” to the decision.



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44. Automated decision – as there is no human intervention / discretionary effort, then this would not require QC pre decision as there is nothing to check; similarly you would not expect QA of the decision. Rather, INZ would look to rely on PDV – to confirm the validity of the assertions made by the applicant, and SA - to confirm that the system responded to the assertions made by the applicant as we expected.
45. Manual decisions – as there is human intervention then this would, ordinarily, be subject to:
- QC – to review the quality of the proposed decision, prior to finalisation
  - PDV – to confirm the validity of the information / assertions on which the decision was made
  - QA – to independently assure the quality of the manual decision.
  - Additionally, these decisions would also rely on periodic system assurance that the system rules are operating effectively i.e. that all those things that require manual assessment were included in the assessment.
46. In the future, consideration could be given to whether all of the above are required for all manual decisions, or whether there is the potential to take different approaches across the different application types based on RMR information. However, they each ‘check’ different elements of the decision at different stages of the process and as such, are not readily interchangeable.
47. From the 20 June, it is proposed that the QC is done on all employer job check applications where there is manual intervention and the staff member is new to the accreditation instructions and not yet been cleared as fully trained. This will be recorded outside of ADEPT and be conducted by Technical Advisors on site. This will ensure that this is immediate oversight of the decisions that are being made. There will be no further random sampling for QC purposes. This initial approach will be reconsidered within the first two weeks.
48. Although the ADEPT systems allows for QC sampling of visa decisions, the configuration within the system does not efficiently support QC in the accreditation and job check space (i.e. non visa decisions).

#### **MONITORING**

49. Following consultation with the DSRB on the accreditation gateway, a recommendation was made to monitor decisions made by the system and to compare these to predefined success measures.
50. It is difficult to predict the numbers of job checks that will be submitted for Maintenance of the Law



51. Out of 42,493 forecasted job check applications during the next 12 months, there is the potential for up to 2677 job check applications to be automated every year under the proposal in this memo. This figure is based on 2019 Essential Skills numbers. Maintenance of the law
52. It should be noted that we are assuming that 2019 was the most recent example of “normal” immigration flows and immigration system behaviours. There are many uncertainties. The number is based on Essential Skills numbers, the immigration flows from other categories such as Talent (Accredited Employer) Work to Residence are unclear, however, most are unlikely to be in green list occupations.
53. It is also unclear whether post re-opening of the border, immigration flows will return to 2019 level or if global immigration dynamics will be higher or lower (due to pent up demand or hesitancy). Changes to economic conditions as a result of COVID, may lead to greater or fewer employers hiring migrants.

#### **COMMUNICATION AND ENGAGEMENT**

54. The DSRB also recommended that INZ develop an approach for communicating information to the public and NZ businesses about the processing approach and constructively engage with the public and relevant stakeholders such as Maori businesses to ensure their needs are being met and trust is built.
55. MBIE undertook open public consultation on the proposed changes to the employer-assisted temporary work visa system and regional workforce planning. The consultation period ran from 18 December 2018 to 18 March 2019 and informed final policy decisions.
56. 642 submissions were received through the online survey tool Survey Monkey or in writing. There was a wide range of respondents including migrants, employers, industry groups, unions, immigration advisers and local government. In addition, the New Zealand Migrant Network included with their submission the views of over 300 of their members. This information provided a rich set of observations regarding the operation and design of the New Zealand immigration system from migrants currently in New Zealand.
57. As part of the consultation process, officials also met in person with industry organisations and individual businesses from key sectors (including aged care, construction, dairy, fisheries, horticulture and viticulture, road freight, tourism and hospitality and training) as well unions, local and regional bodies, economic development agencies, migrant organisations and immigration advisers.
58. A submissions analysis document is available on the MBIE website here: [Summary of submissions: Consultation on employer-assisted work visas and regional workforce planning \(mbie.govt.nz\)](https://www.mbie.govt.nz/submissions-analysis)



**RISKS**

59. **Maintenance of the Law**

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61. The proposed removal of the preventative control of random QC sampling (and only doing a manual QC sample on new staff), does not in and of itself create risk, rather it has the potential to exacerbate (an) existing risk(s). As above, the most significant reputational risk for INZ is that there is a chance that employers whose practices do not align with the intent of the policy may pass a job check due to core processes not being effective, coordinated or fit for purpose and that our decision-making lacks transparency, fairness, natural justice and independence.

62. This risk would be mitigated by:

- All staff, irrespective of tenure / past experience subject to 100 per cent checking of all decisions and manual oversight of processing until deemed competent in this product.
- Post decision verification activities – which may pick up the decision as part of the system health sample, or there is potential for the employer to be referred or identified as part of the targeted approach.



- Periodic Quality Assurance of decision making undertaken on a sample basis.
- System testing (pre go live) and ongoing system assurance to confirm that system rules are operating and operating effectively.

63. Conversely, if we do not automate and cannot meet the processing timeframes we have committed to for AEWV, this has the potential to significantly impact on the trust and confidence of our stakeholders. The post decision monitoring will ensure risk factors over time are established and built in to the ADEPT platform.

#### CONSULTATION

64. There are differing views across INZ about the proposed automation.

65. **Maintenance of the Law**

66. **Maintenance of the Law**

While the need for RSQC is negated at go-live due to 100 per cent QC outside of ADEPT, INZ Assurance recommend it be implemented as a 'fast follower' to ensure ongoing quality once staff reach competence.

67. **Legal professional privilege**

68. The following people have been consulted on the proposal to automate:

- Stephen Dunstan, General Manager Enablement
- Nicola Hogg, General Manager Border and Visa Operations
- Zoe Goodall, General Manager, Assurance
- Geoff Scott, Acting General Manager, Verification and Compliance
- Fraser Richards, INZ Special Counsel
- Jacqui Martin, ADEPT Change and Capability Director
- Nick Aldous, Director, Policy Integration - Immigration
- **Privacy of natural persons** Onshore Risk and Verification Manager
- Jade Reid, National Manager, Risk and Verification



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- Sarah Clifford, National Manager Visa Operations
  - Dom Forde, Head of Operations, Christchurch
  - Jason Austin, Team Leader Operational Policy

#### **NEXT STEPS**

69. Subject to agreement to the recommendations in this paper the Head of AEWV will engage with the ADEPT Programme team to ensure the necessary technology adjustments can be made for AEWV.
70. The system assurance model will be developed/extended to ensure it covers the three stage gates of AEWV.
71. The Assurance branch will be formally tasked with developing an appropriate Quality Assurance process for AEWV decisions. In addition the Assurance Branch will work with the Head of AEWV to determine what the QC regime will be for new staff within the job check gateway.
72. Any advice or recommendations that are received from the DSRB will be considered to inform future developments of the enhanced Immigration Online platform.
73. An aide memoire will be prepared for the Minister to update him on AEWV implementation progress and automation decisions.



## Appendix One – MBIE Legal advice

[LEGALLY PRIVILEGED]

# Legal professional privilege

### *Automated decision making and biometric information*

#### **28 Automated decision making in relation to visas, etc**

- (1) An automated electronic system that applies criteria predetermined in accordance with immigration instructions may be used by the Department to—
  - (a) rank an expression of interest;
  - (b) process, grant, or refuse to grant an invitation to apply for a visa;
  - (c) process an application for, grant (with or without conditions), or refuse to grant a visa;
  - (d) process an application for, grant, or refuse to grant entry permission.
- (2) An automated electronic system may be used by the Department to process an application for, grant (with or without conditions), or refuse to grant an interim visa.
- (3) Conditions imposed on visas granted by an automated electronic system may only be conditions that are specified in immigration instructions for a visa of the relevant class or type.
- (4) However, nothing in this section prevents an immigration officer or the Minister from imposing further conditions, or varying or cancelling conditions under any of sections 50 to 55, on or in relation to a visa granted by way of an automated electronic system.
- (5) Where a decision to grant or refuse to grant a visa or entry permission, or to issue or refuse to issue an invitation to apply for a visa, is made by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under this Act.
- (6) An automated electronic system may be used by the Department to process, accept, or refuse a request by a person seeking to rely on a visa waiver.
- (7) Where a decision to accept or refuse a request is made under subsection (6) by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under this Act.

Section 29 of the Act provides for automated decision in advanced passenger processing. Section 28(6) covers the ETA system.

# Legal professional privilege





Legal professional privilege

Legal professional privilege

**Fraser Richards** SPECIAL COUNSEL (IMMIGRATION) (he/him)

Corporate & Registries Team | Legal, Ethics and Privacy Branch

Ministry of Business, Innovation, & Employment