



BRIEFING

Employer-assisted temporary work visa reforms – job and migrant worker check proposals

Date:	22 June 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2021-3160

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Minister of Immigration	Agree to policy detail needed to implement the job and migrant worker checks under the new Accredited Employer Work Visa system Agree to transitional arrangements for holders of discontinued visa types	5 July 2021
Hon Phil Twyford Associate Minister of Immigration	Copy for your information	NA

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Andrew Craig	Manager, Immigration Policy (Skills and Residence)	Privacy of natural persons	Privacy of natural persons	✓
Bronwyn Chapman	Senior Policy Advisor, Immigration Policy (Skills and Residence)	Privacy of natural persons		

The following departments/agencies have been consulted
Ministry of Social Development

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Title

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Purpose

To provide you with advice on the detailed design of the job and migrant worker checks under the new Accredited Employer Work Visa system, and transitional arrangements for holders of discontinued visa types after the new visa is implemented.

Executive summary

In August 2019, Cabinet agreed to implement a three-gateway system for employing temporary migrant workers, including the following steps:

- the employer check – where employers must become accredited before they can apply for approval to recruit a migrant worker
- the job check – where an accredited employer can apply for approval to recruit a migrant worker for a specific job by demonstrating that the role they want to fill pays at least the market rate, has suitable terms and conditions, and cannot be done by a New Zealander
- the migrant worker check – where a migrant worker can apply for an Accredited Employer Work Visa (AEWV) to work in a job approved at the job check [DEV-19-MIN-0228].

The new AEWV will be implemented from 1 November, with employers being able to apply for accreditation from late September and job checks from late September or early October.

Decisions have already been taken and announced about the detailed design of the employer accreditation standards and transitional arrangements for employers. This briefing seeks your agreement to the detailed design of the job and migrant worker checks and transitional arrangements for migrants.

Job check

The key changes in the job check relate to the labour market test, where employers demonstrate that they have tested the local labour market and no suitable New Zealanders are available to fill the job.

Cabinet agreed to make labour market test settings stricter for roles where there is generally a high supply of New Zealanders available to work or wanting more work. Employers will be required to advertise all jobs paid below the median wage, and some higher paid jobs in cities. Advertising is an existing requirement for most jobs, but the rules will be strengthened under the new system to ensure that the job's terms and conditions are transparent and suitable New Zealanders have the opportunity to apply. The advertising requirements will be strengthened by:

- specifying where and how long the job needs to be advertised for – we recommend a minimum of two weeks on a national job listing website where suitable New Zealanders are likely to apply, or another advertising channel that is more likely to attract suitable New Zealanders to the specific role

- requiring employers to include information about pay rate and key terms and conditions – we recommend requiring employers to include the minimum and maximum pay rate, the minimum guaranteed hours of work, the location of the job, and, where a significant portion of the pay is by piece rate, or other rates or bonuses that are not guaranteed, the estimated actual earnings
- requiring employers to include the minimum qualifications, work experience, skills or other specifications required for the job, which must be necessary to do the job.

INZ has limited capacity to check whether New Zealanders applied as a result of the employer's advertising, and, if so, whether they were suitable. Therefore INZ will only require a declaration from the employer that no suitable New Zealanders applied, and will take this at face value.

Jobs paid below the median wage will also be required to be listed with MSD, where the employer will be required to provide MSD with key information about the job, including pay rate and minimum job requirements. In order to pass the job check, the employer must obtain a Skills Match Report stating either that there are no suitable New Zealanders available, that they have adequately engaged with MSD's broader programme of Active Labour Market Policies, or that they have rejected the referrals for an acceptable reason.

Cabinet also agreed to more facilitative settings for jobs where there is a lower supply of New Zealanders available to work or wanting more work. All jobs that are paid at least the median wage in the regions, and some higher-paid jobs in cities (those paid at least 200 per cent of median wage, or those that are paid at least the median wage and are also on a skill shortage list) will not be subject to any labour market testing – this includes no requirement to advertise the job to New Zealanders.

Regardless of whether the labour market test applies, all jobs must pay at least the market rate, and have terms and conditions that are consistent with New Zealand employment standards and norms. As part of the reforms, we intend to develop a new methodology to determine market rates for key occupations, to ensure immigration officers can make consistent decisions. We anticipate the updated market rates will be in place in 2022.

There is an opportunity to review and strengthen some of the job check settings as part of work underway on the immigration rebalance that was recently announced. We will provide further advice on this in September, with changes to be phased in ahead of the border reopening.

Migrant worker check

The settings for the migrant worker check will be largely the same as existing settings for work visa applicants. The key areas of change are:

- Migrants will not be able to apply for a visa unless their employer has accreditation and a valid job check. This change will encourage employers to properly test the New Zealand labour market before considering migrant workers, and give migrant workers more certainty at the point of visa application, but will also increase the risk of migrants who want to renew their visa becoming unlawful if their employer has not completed the necessary steps in time. We therefore recommend establishing a bridging visa, without work rights, to allow migrants in this situation to remain lawful for a brief period.
- The assessment process will be streamlined by removing or reducing checks of a migrant's skills, qualifications and experience where they have already been demonstrated through New Zealand occupational registration or a previous visa application, or the position does not require any qualifications or previous experience.
- As signalled to Cabinet in 2019, the process for migrants to change their job will be streamlined, in order to reduce the risks of exploitation. This will primarily be achieved by moving the application process for a variation of conditions from a paper-based process to an online process, and being clearer about which visa conditions can be varied. The

associated fee will also remain significantly lower than the proposed fee for a full AEWV application.

Cabinet originally agreed that migrant workers who work for an accredited employer for two years and earn at least 200 per cent of the median wage would be able to apply for residence. Since then, you have decided to undertake a review of the Skilled Migrant Category (SMC) residence visa, which is planned to commence in late 2021. As it was intended that the new residence visa would supplement the SMC, we now recommend deferring consideration of the detailed residence criteria and the introduction of the new residence visa, so that they can be considered as part of the SMC review. This will not affect anyone's pathway to residence, as the earliest anyone would be eligible to apply for residence will be November 2023, however it will mean that migrants have less certainty about their eligibility in the meantime.

Transitional arrangements for migrants

It is intended that, in general, the visa types being replaced by the AEWV (e.g. Essential Skills visas) will be closed to new applications once the AEWV becomes compulsory on 1 November. However, some migrants who continue to hold older visa types may still need to apply for a variation of conditions after 1 November. If the variation is to change employer, we recommend requiring that the new employer hold accreditation under the new Accredited Employer Work Visa system. This will ensure that, once we have transitioned to the new system, there is a consistent standard for all employers sponsoring a new temporary work visa holder.

We also recommend keeping work to residence visa categories open for subsequent visa applications where the visa holder has already submitted a residence application – this will ensure that visa holders can apply for a further visa if their initial visa expires while they are awaiting the outcome of their residence application.

Recommended action

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

- a **Note** that the new Accredited Employer Work Visa (AEWV) will be implemented from 1 November 2021. *Noted*

- b **Note** that the new AEWV system has three gateways:
 - i. the employer check – where the employer applies for accreditation,
 - ii. the job check – where an accredited employer can apply for approval to recruit a migrant worker for a specific job,
 - iii. the migrant worker check – where a migrant worker can apply for a visa to work in a job approved at the job check. *Noted*

- c **Note** that you have agreed to the detailed design of the employer accreditation system (BR-2021-2254). *Noted*

Job check

- d **Note** that Cabinet has agreed there will be three pathways through the job check – the highly-paid pathway, the sector agreement pathway, and the regionalised labour market test pathway – but that the negotiation of sector agreements has been put on hold due to the effects of COVID-19, so the job check will go live with only the highly-paid pathway and regionalised labour market test pathway.

Noted

- e **Note** that the highly-paid pathway will make it easier for employers to recruit higher-skilled migrant workers by exempting jobs that are paid at least 200 per cent of the median wage from labour market testing, and allowing applicants three-year visas, regardless of occupation and region.

Noted

- f **Note** that the regionalised labour market test pathway will make it easier for the employers outside of the major cities to recruit higher-skilled migrant workers, while strengthening labour market testing requirements for lower-skilled jobs, by:
- i. not requiring employers to undertake a labour market test (including advertising) if the job is outside the major cities and pays at least the median wage
 - ii. requiring employers to publicly advertise jobs that are paid at or above the median wage (but less than twice the median wage) in cities only if they are not on a skill shortage list
 - iii. requiring all lower-paid jobs to pass a full labour market test, which includes a requirement for the employer to publicly advertise the job including the pay rate and to check with the Ministry of Social Development whether they have any clients who are available, and either suitable or trainable, that can be matched to the job.

Noted

- g **Agree** that, if an employer is required to advertise a job, they must advertise it for at least two weeks on a national job listing website where suitable New Zealanders are likely to apply, or another advertising channel that is more likely to attract suitable New Zealanders to the specific role.

Agree / Disagree

- h **Agree** that, where a job is required to be advertised, the job listing must include:
- i. the minimum and maximum pay rate
 - ii. where a significant portion of the pay is by piece rate, or other rates or bonuses that are not guaranteed, the estimated actual earnings
 - iii. the minimum guaranteed hours of work
 - iv. the location of the job
 - v. the minimum qualifications, work experience, skills or other specifications required for the job, which must be necessary to do the job.

Agree / Disagree

- i **Agree** that the requirement previously agreed by Cabinet that employers may not reject a New Zealand candidate for lacking training that can be facilitated by MSD within four weeks, and still hire a migrant, will only apply to registered job seekers referred by MSD.

Agree / Disagree

- j **Note** that the assessment of the job check will not take into account the views of third parties (e.g. unions) about whether the terms and conditions and the employer's efforts to train and upskill New Zealanders are sufficient, but that we will consider how feedback from unions and other third parties can be used to inform visa settings and job check decisions as part of work underway on the immigration rebalance and the future of sector agreements.

Noted

k **Agree** that, where a job is required to be advertised, INZ will not take any steps to verify whether any suitable New Zealanders applied, and will rely on a declaration by the employer to determine this.

Agree / Disagree

l **Agree** that, if an employer is not required to test the labour market for suitable New Zealanders (i.e. advertising, listing with MSD), they will be required to provide INZ with the minimum job requirements, but INZ will not assess whether the requirements are necessary to do the job, as there is no risk of the employer setting unnecessary job requirements to exclude New Zealand applicants.

Agree / Disagree

m **Agree** that multiple roles may be submitted in a single job check application if the job details are the same (i.e. same pay range, occupation, region/city and minimum job requirements), and are all covered by the same advertising and proposed employment agreement.

Agree / Disagree

n **Agree** that an approved job check can be used to recruit a migrant worker for up to six months from the date of approval, or until the employer's accreditation lapses – whichever is earlier.

Agree / Disagree

o **Agree** that, for the purposes of the regionalised labour market test, Porirua, Lower Hutt and Upper Hutt cities be classified as cities, and therefore subject to stricter labour market testing conditions.

Agree / Disagree

p **Agree** that, as an interim measure until we are able to complete the planned revising and restricting of regional skill shortage lists to city skill shortage lists (originally planned to be in place for implementation, but now planned for later in 2021 or 2022), jobs paid at least the median wage in a city will be able to bypass the labour market test if they are on any of the existing skill shortage lists of their region or occupation.

Agree / Disagree

q **Note** that it was intended that a new and improved methodology for determining market rates would be in place for the implementation of the new visa, but that we now anticipate implementing the methodology in 2022, and INZ will continue to use existing processes to determine market rates in the meantime.

Noted

r **Note** that there is a risk that a few employers may avoid or undermine the labour market test by offering migrants considerably more than the market rate for the job, and that we will monitor the situation and report back to you after the first six months of operation of the new system on options to manage this.

Noted

s **Note** that there is an opportunity to review and strengthen some of the job check settings as part of work underway on the immigration rebalance, and that we will provide further advice on this in September, with changes to be phased in ahead of the border reopening.

Noted

Migrant worker check

t **Agree** to establish a bridging visa, without work rights, to allow AEWV holders and holders of employer assisted work visas under the current policies to remain lawful for a short period if their employer has not completed the accreditation and job check steps before their visa expires.

Agree / Disagree

- u **Note** that Cabinet has agreed that the visa application process will be streamlined by removing or reducing checks of a migrant's skills, qualifications and experience where:
- i. a migrant worker is applying for a further visa for the same or similar position, and skill and experience have already been assessed, or
 - ii. the position does not require any qualifications or previous experience, or
 - iii. the migrant worker already holds New Zealand occupational registration demonstrating the required skill and experience.

Noted

- v **Agree** that an AEWV holder may apply to vary any of the employment conditions of their visa, subject to the following constraints:
- i. if the variation is to work for another employer, the employer must be accredited
 - ii. the employer must have a valid job check that is consistent with the proposed visa conditions
 - iii. if the visa has more than 12 months' duration remaining, the change must not be to a job that is only eligible for a maximum of a 12-month visa.

Agree / Disagree

- w **Note** that we are considering whether migrants should be able to vary their visa conditions change from a job paid at or above the median wage, to a job paid below it, and will report back to you on our recommended approach when we provide you with amended immigration instructions to certify in July.

Noted

- x **Note** that the variation of conditions process will be streamlined by moving the application process from a paper-based process, to an online one and being clearer about which visa conditions can be varied.

Noted

- y **Agree** that, in order to maintain the objectives of the stand-down policy, until the stand-down deferral ends in July 2022, migrants who have already reached their maximum stay under the policy may be issued an AEWV for a job paid below the median wage for a maximum of 12 months, even if the job is in a low-supply region and would otherwise be eligible for a three-year visa.

Agree / Disagree

- z **Agree** to delay the introduction of a residence visa for AEWV holder paid at least 200 per cent of the median wage, which is intended to supplement the Skilled Migrant Category (SMC), so that the criteria can be considered as part of the SMC review, which is planned to commence in late 2021.

Agree / Disagree

Transitional arrangements for migrants

- aa **Agree** that holders of discontinued visa types after 1 November will continue to be able to apply for a variation of conditions under the existing rules, with the additional requirement that, if the variation is to change employer, the new employer must hold accreditation under the AEWV system.

Agree / Disagree

bb **Note** that two of the visa categories being discontinued from 1 November – the Long Term Skill Shortage List and Talent (Accredited Employer) work visas – allow the visa holder to apply for residence after at least 24 months employed in New Zealand, and that the applicant must hold a Long Term Skill Shortage List or Talent (Accredited Employer) work visa at the time the resident visa is granted.

Noted

cc **Agree** that the Long Term Skill Shortage List and Talent (Accredited) Employer work visa categories are kept open for subsequent visa applications for visa holders who have already submitted a residence application, to ensure that these visa holders are not disadvantaged if their initial visa expires while they are awaiting the outcome of their residence application, but that these categories will be closed to new applicants from 1 November.

Agree / Disagree

dd **Indicate** whether you would like further advice on options to keep a residence pathway open for work to residence visa holders who may not have been able to complete the required 24 months of employment in New Zealand before their visa expires, due to becoming stuck offshore as a result of the border closure, and may not be eligible for other residence pathways after 1 November.

Yes / No

Andrew Craig
Manager, Immigration Policy (Skills and Residence)
Labour, Science and Enterprise, MBIE

..... / /

Hon Kris Faafoi
Minister of Immigration

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Background

1. In August 2019, Cabinet agreed to implement a three-gateway system that employers will need to pass through in order to hire a migrant worker on an employer-assisted temporary work visa [DEV-19-MIN-0228]. The high-level design of the new system was announced publicly in late 2019.
2. The first step in the gateway system will be the employer check, where employers must become accredited before they can apply for approval to recruit a migrant worker. Once an employer has been granted accreditation, they will be able to apply for a job check to make sure the role they want to fill pays at least the market rate, has suitable terms and conditions, and cannot be done by a New Zealander. Following this, they will be able to invite a migrant worker to apply for an Accredited Employer Work Visa (AEWV) for the role at the migrant worker check.
3. We recently provided you with advice on the detailed employer accreditation standards and implementation timeframes for this new visa (BR-2021-2254), followed by advice on the transitional arrangements for employers (BR-2021-1519). You have agreed that the new visa settings will take effect from 1 November, with employers being able to apply for accreditation from late September and job checks from late September or early October.
4. We noted that we would provide you with a further briefing with detail on the definition of a franchisee employer for the purposes of employer accreditation, and advice on the detailed policy settings for the job check and migrant worker check. This briefing provides advice on the job and migrant worker checks. We are still testing options for a definition of a franchisee employer (including consultation with the Franchise Association of New Zealand), and will provide you with final advice on this in late June.

Job check

Background

There will be three pathways through the job check

5. In 2019, Cabinet agreed to the overall design of the job check [DEV-19-MIN-0229]. It was agreed there would be three pathways, reflecting regional and sectoral variations:
 - a. **The highly-paid pathway** – if an employer indicates that a job will be paid at least 200 per cent of the median wage, it will be exempt from labour market testing, regardless of occupation and region. This recognises that high remuneration rates generally reflect highly-skilled work and genuine skills shortages and is intended to make it easier for employers to recruit higher-skilled migrant workers. Visas issued under the highly-paid pathway will be valid for three years.
 - b. **The sector agreement pathway** – specific terms and conditions for labour market testing and visa conditions may be negotiated with a sector. Sector agreements recognise that some sectors have long-term reliance on migrant workers, and will provide facilitated access to migrant workers in exchange for the sector making commitments and progress towards reducing their reliance on migrant workers in the medium and longer terms. Employers recruiting for jobs covered by a sector agreement will be required to use this pathway, unless they meet the wage threshold in the highly-paid pathway. The negotiation of sector agreements has been put on hold, to allow sectors to focus on the immediate challenges of responding to COVID-19, but the future of sector agreements is being considered as part of the immigration rebalance work.
 - c. **The regionalised labour market test pathway** – all roles that do not qualify for the highly-paid pathway or the sector agreement pathway will be assessed through the

regionalised labour market test pathway – a tailored framework that allows labour market testing and visa conditions to be varied depending on the nature of the regional labour market and wages of the job.

6. Regardless of the pathway, Cabinet agreed that employers must ensure that the job pays at least the current market rate, and the job requirements are necessary to do the job being recruited for.

The regionalised labour market test pathway will determine labour market testing requirements and visa conditions based on a job's location and pay rate

7. The regionalised labour market test pathway will make it easier for the employers outside of the major cities to recruit higher-skilled migrant workers, while strengthening labour market testing requirements for lower-skilled jobs, by:
 - a. not requiring employers to undertake a labour market test (including advertising) if the job is outside the major cities and pays at least the median wage
 - b. requiring employers to publicly advertise jobs that are paid at or above the median wage (but less than twice the median wage) in cities only if they are not on a skill shortage list
 - c. requiring all lower-paid jobs to pass a full labour market test, which includes a requirement for the employer to publicly advertise the job, including the pay rate, and to check with the Ministry of Social Development whether they have any clients who are available, and considered suitable or trainable, that can be matched to the job.
8. Visa settings for jobs paid below the median wage will take into account the differences in regional labour markets. Jobs in parts of the country with fewer New Zealanders available to work, or wanting more work, will enable the migrant worker to get a visa of up to three years' duration because an annual retest is likely to be a waste of time. Jobs in cities and regions with a higher supply of New Zealanders available to work, or wanting more work, will enable the migrant workers to be granted a one-year visa.
9. These settings are summarised in the table below. They will be flexible and will be reviewed regularly to respond to changes in market conditions.

	Cities <i>Auckland, Christchurch, Wellington, Lower Hutt, Upper Hutt, Porirua, Hamilton and Dunedin</i>	Higher-supply regions <i>Currently: Northland, Manawatū-Whanganui, Bay of Plenty, Gisborne / Hawke's Bay, Taranaki, Tasman / Nelson / Marlborough / West Coast, and regional Wellington</i>	Lower-supply regions <i>Currently: Waikato, Canterbury, Otago, Southland</i>
At or above median wage	Job must either be on a skill shortage list (INZ's existing regional skill shortage lists to be revised and restricted to cities), or pass a streamlined labour market test (advertising only) Up to 3-year visa, renewable	No labour market test required (including no requirement to advertise) Up to 3-year visa, renewable	No labour market test required (including no requirement to advertise) Up to 3-year visa, renewable

Below median wage	Job must pass a strengthened labour market test Up to 12-month visa, with ability to reapply providing for a maximum stay of 36 months, followed by 12-month stand down*	Job must pass a strengthened labour market test Up to 12-month visa, with ability to reapply providing for a maximum stay of 36 months, followed by 12-month stand down*	Job must pass a strengthened labour market test Up to 3-year visa followed by 12-month stand down*
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* Note: the stand-down is not currently being enforced due to the ongoing border closure. You have agreed that enforcement of the stand-down period will be delayed until 1 July 2022 (BR-2021-3370).

10. Cabinet agreed that the strengthened labour market test that applies to jobs paid below the median wage will involve:
 - a. requiring employers to include the pay rate (which must be at least the market rate) in advertising
 - b. removing employers' ability to reject an applicant for not having their own vehicle or driver's licence, unless operating a vehicle is a requirement for doing the job
 - c. requiring employers to document and provide the requirements for the role to the Ministry of Social Development (MSD), including any qualifications, skills and experience requirements
 - d. removing employers' ability to reject candidates because they lack training, if MSD is able to provide or facilitate that training within four weeks
 - e. requiring employers to obtain a Skills Match Report (SMR) from MSD indicating that:
 - i. there are no New Zealander jobseekers available, or
 - ii. the employer has adequately engaged with MSD's broader programme of Active Labour Market Policies, or
 - iii. the employer has rejected the referral for a limited number of specified reasons.
11. You recently received a joint briefing from MBIE and MSD setting out what constitutes adequate engagement with MSD's broader programme of Active Labour Market Policies, and the limited number of specified reasons that an employer may reject an MSD referral and still hire a migrant (BR-2021-2857).
12. Since the original Cabinet decisions, MSD has begun publishing lists of occupations and regions where there is a clear over or undersupply of registered jobseekers, so that employers can find out more easily if New Zealanders are available for jobs. If a role is oversupplied, MSD will not issue a SMR and an employer will not be able to get a job check approved to hire a migrant worker for that job if it is paid below the median wage. If a role is undersupplied, employers can apply for a job check without a SMR, even if the job is paid less than the median wage (this does not necessarily mean that the job check will be approved – it still needs to meet the other requirements, e.g. paying the market rate). Further work is planned to consider the ongoing suitability and purpose of the over and undersupply lists, and we will report back to you later this year on what role the lists will play in the new system.

Proposed job check process

13. The proposed job check process is outlined in detail below. Most of the process has either been agreed explicitly by Cabinet, or is carried over from existing settings, however we are seeking your agreement to policy detail to fill some gaps.

Pre-submission – testing the labour market

14. Where an employer is required to do a labour market test (i.e. list the job with MSD and/or publicly advertise it), they must do this before submitting an application at the job gateway.
15. The advertising requirements for employers will be more prescriptive than they are currently. This will ensure that New Zealanders will have the opportunity to apply, that pay and conditions are transparent to potential applicants, and that New Zealanders are offered the same pay and conditions as migrants. Specifically, we propose that:
 - a. the job must be advertised for at least two weeks
 - b. the job must be advertised on a national job listing website where suitable New Zealanders are likely to apply (e.g. Seek, Trademe), or another advertising channel that is more likely to attract suitable New Zealanders to that specific role (e.g. teaching jobs advertised in the Education Gazette). An advertising guide will be published to give employers further information about which specific websites and other advertising channels meet the requirements
 - c. the job listing must include the following information:
 - i. the **minimum and maximum pay rate** for the job (which could be the same if the employer is only offering a flat rate). If the job check is approved, the minimum guaranteed pay rate offered to a migrant worker must be within this range. Cabinet's original decision only specified that employers must include the salary in advertising if the job pays less than the median wage, however we recommend clarifying that this requirement should apply to all jobs that need to be advertised (i.e. including jobs that pay at or above the median wage in cities and are not on a skill shortage list), to ensure remuneration is transparent to potential applicants
 - ii. where a significant portion of the pay is by piece rates, or other rates or bonuses that are not guaranteed, the **estimated actual earnings**. Note: these rates will not be included when INZ calculates the migrant's pay rate, as they are not guaranteed, but are important to include in advertising to provide transparency about remuneration to potential applicants
 - iii. the **minimum guaranteed hours of work** (must be at least 30 per week)
 - iv. the **location of the job**
 - v. the **minimum qualifications, work experience, skills** or other specifications required for the job. Cabinet's original decision only specified that employers must provide this information when they list a job with MSD, however we recommend clarifying that the minimum requirements must also be included in wider advertising, to ensure transparency for potential applicants. The minimum requirements must also be necessary to do the job – this includes not requiring an applicant to have their own vehicle or driver's licence, unless operating a vehicle is a requirement for doing the job.
16. For jobs that must be listed with MSD (i.e. those paid below the median wage), the employer must provide MSD with key information about the job, including pay rate and minimum job requirements. In order to pass the job check, the employer must obtain a SMR stating either that there are no suitable New Zealanders available, that they have adequately engaged with

MSD's broader programme of Active Labour Market Policies, or that they have rejected the referrals for an acceptable reason.

17. Cabinet originally agreed that, for jobs paid below the median wage, employers would not be able to reject a New Zealand candidate for lacking training, and still hire a migrant, if MSD is able to provide or facilitate the training within four weeks. We recommend clarifying that this requirement only applies to registered job seekers referred by MSD.
18. For applicants who apply through wider advertising, there will be no restrictions on the reasons an employer may determine that they are not suitable, other than that any minimum qualifications, work experience or skills required for the job must be specified in the advertising. This means that third parties (including unions) will not be able to challenge an employer's assessment that no suitable New Zealanders were available. We considered whether the definition of suitable and available New Zealanders used for MSD referrals should also be applied to applicants who apply through an employer's wider advertising, however it was seen as difficult for INZ to verify in most cases.
19. The SMR issued by MSD, and the last day the wider advertising was listed, must be within 90 days of the job check being submitted. If more than 90 days has passed, the employer will be required to complete these steps again to ensure that no suitable New Zealanders have become available.

Application and assessment

20. When an employer applies for a job check, they will need to provide key information about the job, for example:
 - a. the minimum and maximum pay rate for the job
 - b. the proposed employment agreement
 - c. evidence of advertising, and a declaration that no/not enough suitable New Zealanders applied as a result of the advertising (if the job is subject to a labour market test)
 - d. MSD vacancy number (if the minimum pay rate for the job is below the median wage).
21. INZ will use this information to verify that the job pays at least the market rate, the proposed terms and conditions are consistent with New Zealand employment standards and norms, and that the labour market test requirements have been met (if a labour market test is required).
22. INZ will also use the information provided at the job check to verify that employers with high-volume accreditation (which allows employers to employ six or more AEWV holders at one time) are meeting the condition of their accreditation to improve pay and conditions over time. To meet this condition, a high-volume employer must demonstrate at the job check that the role they are recruiting either has a collective agreement in place, or pays at least 10 per cent above minimum wage. If an employer holds high-volume accreditation, and the job check does not meet this requirement, it will be declined.
23. The assessment of the job check will not take into account the views of third parties (e.g. unions) about whether the terms and conditions and the employer's efforts to train and upskill New Zealanders are sufficient. This is in line with the job check design agreed by Cabinet in 2019, but is a change from the current system, which does allow unions to comment on terms and conditions and training of New Zealanders in some cases (generally only as part of an application for an Approval in Principle). We will consider how feedback from unions and other third parties can be used to inform visa settings and job check decisions as part of work underway on the immigration rebalance and the future of sector agreements.
24. While MSD will inform INZ via the SMR whether any suitable jobseekers were available for the job, INZ will not take any steps to verify whether suitable New Zealanders applied as a

result of the employer's wider advertising, and will rely on a declaration from the employer to determine this element of the labour market test. This is because privacy constraints prevent INZ from requesting personal information from employers about New Zealand applicants. Relying on a declaration is looser than current settings, which require employers to record the number of New Zealand applicants, and reasons they were declined, which may then be reviewed by an immigration officer to determine whether there were suitable New Zealand candidates. However, given INZ's limited ability to verify information about New Zealand applicants, we do not believe it is worthwhile to require employers to record and provide this information to INZ.

25. Cabinet originally agreed that, for all jobs checks, employers would be required to document the minimum qualifications, work experience, skills or other specifications required for the job, and that the minimum requirements must be necessary to do the job being recruited for. The purpose of this requirement was to ensure that the employer cannot exclude New Zealand candidates by setting unnecessary job requirements. Given that, in some cases, employers are not required to test the labour market to see whether New Zealanders are available, assessing whether the minimum requirements are necessary to do the job being recruited for would not make sense in these cases. We therefore recommend clarifying that, in these cases, the employer be required to provide INZ with the minimum job requirements, but INZ will not assess whether the requirements are necessary to do the job.
26. We recommend that employers be able to include multiple roles on the same job check application if the job details are the same (i.e. same pay range, occupation, region/city and minimum job requirements), and are all covered by the same advertising and proposed employment agreement. This is narrower than the existing Approval in Principle system (which is the current mechanism for employers to do bulk recruitment, and allows jobs with different occupations, regions and pay rates to be submitted on a single application). However, we believe this is a more equitable approach, as it more accurately reflects INZ's processing costs (which are primarily driven by the time spent reviewing advertising and proposed employment agreements). The briefing we recently provided you on fee levels for the new AEWV system contains further information on the impact of this change on employers who currently use the Approval in Principle system (see BR-2021-3756).
27. If an employer holds standard accreditation (allowing them to employ up to five workers on an AEWV at one time), a "job quota" will apply. A quota space will be taken up when a job check is approved, and will only become available again when the migrant working in the role has their visa expire or cancelled, or is granted a variation of conditions to work for another employer; or the job check expires or is cancelled without a visa being issued. If an employer has a full quota, they will not be able to apply for any further job checks unless they get high-volume accreditation.

After approval – recruiting migrant workers

28. We recommend that an approved job check be valid for six months, or until the employer's accreditation lapses – whichever is earlier. The six-month duration is a reasonable timeframe for most employers to re-advertise the role and complete the recruitment process after determining that no New Zealanders are available, while ensuring that the availability of New Zealanders has not changed significantly since any advertising took place. It is also in line with the duration of approvals issued under the current Approval in Principle system (which allows employers to go through the labour market test and get pre-approved to hire migrants for a certain number of roles).

We intend to implement the regionalised labour market test framework as agreed by Cabinet, with some clarifications for the Wellington region

29. The regionalised labour market test framework is intended to be flexible with regional settings reviewed regularly and updated to reflect and significant changes in the labour supply. We do not consider that there have been significant enough changes to the

indicators of regional labour supply to warrant any changes to the settings originally agreed by Cabinet at this stage.

30. However, we recommend clarifying the status of the Wellington region in the framework. Cabinet originally agreed that Wellington would be classified as a city (and therefore subject to stricter labour market testing requirements), and regional Wellington would be classified as a high-supply region (and therefore subject to looser labour market testing requirements). It was unclear whether Porirua, Lower Hutt and Upper Hutt cities were intended to be classified as cities, or part of regional Wellington. We recommend clarifying that these cities are cities for the purposes of the regionalised labour market test, as they form part of the same labour market as Wellington city, and have a relatively high job churn.

Some planned elements of the job check will not be live by the 1 November implementation

31. As the negotiation of sector agreements is currently still on hold, this pathway through the job check will not be available to employers when the new system launches on 1 November. The negotiation of the first two sector agreements (with the red meat processing and aged care sectors) was intended to be completed in 2020. Employers in these sectors will be required to use either the highly paid pathway or the regionalised labour market test pathway until an agreement is negotiated. We will report back to you on options for restarting sector agreements as part of advice on a possible rebalance of key immigration settings in September.
32. We have also been unable to revise and restrict regional skill shortage lists to city skill shortage lists as planned, due to COVID-19-related reprioritisation of resources. We plan to undertake this work later in 2021 or 2022. As an interim measure, we propose that jobs paid at least the median wage in a city will be able to bypass the labour market test if they are on any of the existing skill shortage lists for their region or occupation (Long term skill shortage list, regional skill shortage list, or construction and Infrastructure skill shortage list). We note that these lists have not been updated since May 2019, and the labour market may have changed since then, particularly in light of COVID-19. However, we think it would be more worthwhile to focus on establishing the new cities skill shortage lists, rather than updating the existing skill shortage lists at this stage.
33. As part of the reforms, we intend to develop a new methodology to determine market rates for key occupations (all jobs must pay at least the market rate to be approved at the job check). The existing process for an immigration officer to determine the market rate for a job relies on information from a range of sources (e.g. TradeMe job advertisements, Careers New Zealand), which leads to a number of problems, including inconsistent information from different sources and incorrect or out of date information (e.g. some sources suggest a market rate below minimum wage). This can make it difficult for immigration officers to make consistent decisions, and decisions are often challenged by employers. It is intended that the new methodology will create a single "source of truth" for market rates for key occupations. The updated market rates were originally planned to be in place in time for the implementation of the new visa, but developing the new methodology has been delayed due to COVID-19 resource reprioritisation. We now anticipate rolling out the updated market rates in 2022. In the meantime, INZ will continue to use existing processes to determine market rates.

We will monitor the risk of wage inflation and report back to you on whether measures are needed to prevent this

34. The job and migrant checks will be supported by post-decision verification and assurance to ensure employers are complying with their migrant workers' visa conditions. This includes checking that the pay rate approved as part of the visa application is genuinely being paid to the migrant worker. If an employer is found to have breached a migrant worker's visa

conditions, including by underpaying, wage recycling, or charging a premium for employment, they will lose their accreditation.

35. However, there is a risk that some employers may genuinely pay the migrant worker a rate that is considerably higher than the market rate for the role, in order to avoid having to do a labour market test, or in order to provide a pathway to residence for a friend or family member. The current approach only requires that a role does not pay *less* than the market rate – there are no restrictions on an employer paying more than the market rate.
36. This is an existing issue, but we do not have good information about how widespread it is. We have identified some options for addressing this issue (including declining a job check if the job is paid considerably above the market rate), however they are potentially quite complex to implement, particularly without a robust methodology for determining market rates, and may have unintended consequences. We therefore propose to monitor the situation and report back to you with recommendations after the first six months of operation of the new system, to ensure that any response is proportionate to the problem, and supported by the improved methodology for determining market rates.

There is an opportunity to strengthen job check settings in future as part of an immigration rebalance

37. There is an opportunity to review and strengthen some of the job check settings as part of work underway on the immigration rebalance that was recently announced.

38. Confidential advice to Government



39. We will provide further advice on this in September, with changes to be phased in ahead of the border reopening.

Migrant worker check

Background

40. The settings for the migrant worker check will be largely the same as existing settings for work visa applicants, however Cabinet agreed to streamline some elements [DEV-19-MIN-0229]:
 - a. Removing or reducing checks of a migrant's skills, qualifications and experience where:
 - i. a migrant worker is applying for a further visa for the same or similar position, and skill and experience have already been assessed, or
 - ii. the position does not require any qualifications or previous experience, or
 - iii. the migrant worker already holds New Zealand occupational registration demonstrating the required skill and experience.¹
 - b. The rules for varying the conditions of a visa (e.g. employer, job location) will also be streamlined to reduce the risks of exploitation.

¹ If there are additional requirements for the job beyond occupational registration (e.g. specific requirements for an occupation on a skill shortage list), INZ will still require the migrant to provide evidence that they meet these requirements.

41. Cabinet also agreed that migrant workers who work for an accredited employer for two years and earn at least 200 per cent of the national median wage (highly-paid pathway) would be able to apply for residence and bypass the normal Skilled Migrant Category (SMC) requirements [DEV-19-MIN-0228].

Proposed migrant worker check process

Pre-submission – employer must be accredited and have a valid job check

42. One of the key changes underpinning the new system is the shift from a migrant-led process to an employer-led process. An employer must be accredited and have an approved job check before a migrant worker is able to submit a visa application. This change will encourage employers to properly test the New Zealand labour market before considering migrant workers, and give migrant workers more certainty at the point of visa application.
43. INZ's communications on the AEWV project include a focus on helping employers to understand that they will need to be proactive and apply for accreditation and job checks before they need the migrant worker to start working. The staged introduction of the new system, with employer accreditation and job check applications opening ahead of the new AEWV becoming compulsory on 1 November, will help to ensure that employers can employ migrants on an AEWV from 1 November if they need to. INZ will also grant interim accreditation to employers who have applied to renew their accreditation before it expires, allowing them to continue to submit and use job checks for a limited period if there are delays processing their renewal application.
44. However there is an ongoing risk that migrants wanting to renew their visas may become unlawful if the employer has not completed accreditation and/or the job check before the migrant's visa expires. We therefore recommend establishing a bridging visa, which would be issued for a limited time to allow AEWV holders and holders of employer assisted work visas under the current policies to remain lawful for a brief period while they wait for their employer to complete the accreditation and job check steps. Migrants would need to apply for the bridging visa and pay a fee, and they would not be able to continue to work while holding it.
45. If an employer has completed the accreditation and job check steps, allowing the migrant to lodge a new AEWV application before their existing visa expires, the migrant will still be issued with an interim visa, as per existing policy settings, to ensure that they remain legal while they await the outcome of their visa application. If the migrant is continuing to work for the same employer, in the same position and same location, the migrant will be able to keep working while holding the interim visa.

Application and assessment

46. The assessment at the migrant worker check is focused on confirming the migrant worker's identity, checking that they are of good character and have an acceptable level of health, ensuring that they have the skills, qualifications and experience required to do the job, and that the job they have been offered matches the job that was approved at the job check (e.g. pay, location, hours of work). The process for checking identity, character and health will be the same as they are currently for employer-assisted temporary work visa applications.
47. The process for checking a migrant worker's skills, qualifications and experience will be streamlined as described in paragraph 40. For jobs where the employer was required to do a labour market test, the skills, qualifications and experience check will include checking that the migrant meets the specific skills or experience that the employer specified at the job check and in the advertising as a minimum requirement to do the job.

After approval – changing visa conditions

48. After a migrant worker's visa is approved, they may need to change one or more of the conditions of their visa. Migrants can either do this by applying for a new visa, or by applying for a variation of conditions. Unlike a new visa, a variation of conditions maintains the original

visa duration, and does not require new checks of a migrant's identity, health and character. A variation of conditions also has a lower fee than a new visa application.

49. We recommend allowing migrants to apply to vary any of the employment conditions of an AEWV, subject to the following constraints:
 - a. if the variation is to work for another employer, the employer must be accredited
 - b. the employer must have a valid job check that is consistent with the proposed visa conditions
 - c. if the visa has more than 12 months' duration remaining, the change must not be to a job that is only eligible for a maximum of a 12-month visa.
50. We are also considering whether migrants should be able to change from a job paid at or above the median wage, to a job paid below it. Our preference is to allow this, however it would require some changes to immigration instructions and IT systems to ensure that, once the migrant has moved to the job paying below the median wage, the remaining visa duration can be taken into consideration when calculating whether the migrant is subject to the stand-down period. We are currently investigating whether these changes are feasible, and whether they would have any wider implications, and will report back to you on our recommended approach when we provide you with amended immigration instructions to certify in July.
51. While a variation of conditions does not require any checks of a migrant's identity, health and character, if the migrant is changing to a new job, they will generally be required to demonstrate that they have the skills and experience required to do the job, including any skills and experience specified by the employer as minimum requirements in the job check application. This is necessary to ensure that migrants are only working in jobs where there are genuinely no New Zealanders available, i.e. that employers cannot lower the job requirements after the job check is approved without retesting the labour market.
52. As signalled to Cabinet in 2019, the process for a migrant to vary the conditions of a visa will be streamlined to reduce the risks of exploitation. This will primarily be achieved by moving the application process from a paper-based process, to an online process and being clearer about which visa conditions can be varied. The fee for a variation of conditions will remain at \$190 (we are not proposing a review at this stage, as the fee is currently standardised across all temporary visa types, i.e. student, work and visitor), which is significantly lower than the proposed fee for a full AEWV application (\$515 plus \$55 immigration levy).

We recommend some changes to visa duration to maintain the objectives of the stand-down policy

53. You recently agreed to further delay the enforcement of the stand-down period for jobs paid below the median wage until July 2022, as employers are unable to replace stood-down workers while the border remains closed (BR-2021-3370 refers). The stand-down policy is intended to prevent migrants without a realistic pathway to residence becoming well settled in New Zealand.
54. Delaying enforcement until July 2022 creates an incentive for migrants who have already reached their maximum stay under the stand-down policy to apply for a new visa shortly before the policy is implemented, in order to maximise the length of their stay in New Zealand. This could result in some people (if they are eligible for a three-year visa under the new AEWV system) staying for up to seven years and ten months continuously since the introduction of the stand-down policy in August 2017, which would undermine the objective of the policy.
55. We therefore recommend that, until the stand-down deferral ends in July 2022, if a migrant has already reached their maximum stay under the stand-down policy, they may be issued

an AEWV for a job paid below the median wage for a maximum of 12 months, even if the job is in a low-supply region and would otherwise be eligible for a three-year visa.

We recommend deferring the residence visa for people paid at least 200 per cent of the median wage

56. We signalled to Cabinet in 2019 that we would do further work on the detailed criteria for the residence visa for migrants who have worked for an accredited employer for two years and earn at least 200 per cent of the median wage. Since Cabinet agree to this residence visa, you have decided to undertake a review of the SMC residence visa, which is planned to commence in late 2021. As it was intended that the residence visa for AEWV holders paid at least 200 per cent of the median wage would supplement the SMC, we now recommend deferring the introduction of this residence visa and consideration of the detailed criteria, so that they can be considered as part of the SMC review.
57. This will not affect anyone's pathway to residence, as the earliest anyone would be eligible to apply for residence will be November 2023. However it will mean that migrants have less certainty about their eligibility in the meantime, and this may reduce the attractiveness of working in New Zealand for higher paid workers.

Transitional arrangements for migrants

Variation of conditions for migrants on old visa types after 1 November

58. It is intended that, in general, the visa types being replaced by the AEWV (e.g. Essential Skills visas) will be closed to new applications once the AEWV becomes compulsory on 1 November. However, some migrants will continue to hold older visa types (e.g. Essential Skills visas) that were issued prior to the changes. These migrants may need to apply for a variation of conditions for their visas after 1 November.
59. We recommend that, in these cases, a variation of conditions may be granted according to the existing variation rules for those visa types, with the added requirement that, if the variation is to change employer, the new employer must hold accreditation under the AEWV system.² This will ensure that, once we have transitioned to the new system, there is a consistent standard for all employers sponsoring a new temporary work visa holder.
60. We considered whether employers should also be required to hold a valid job check, but do not recommend this, as system constraints prevent visas other than the new AEWV from being linked to an employer via a job check. The labour market risks associated with variation of conditions will still be managed through existing rules for variation of conditions (e.g. Essential Skills visa holders may not change place of employment or occupation unless the occupation is on an Essential Skills in Demand list and they meet the requirements on the list).

Maintaining residence pathways for Long Term Skill Shortage List and Talent (Accredited Employer) visa holders

61. Two of the visa types being replaced by the new AEWV – the Long Term Skill Shortage List and Talent (Accredited Employer) work visas – are work to residence visas. In order to be granted residence, the visa holder must have spent at least 24 months employed in New Zealand while holding a Long Term Skill Shortage List or Talent (Accredited Employer) work visa, and hold a Long Term Skill Shortage List or Talent (Accredited Employer) work visa at the time the resident visa is granted.

² This means that, if a Talent (Accredited Employer) visa holder wants to change employer from 1 November, their new employer must hold accreditation under both the old Talent system (unless they are changing employer for reasons beyond their control) and the new AEWV system.

62. In order to retain the residence pathway for people who were granted a Long Term Skill Shortage List or Talent (Accredited Employer) work visa before 1 November, we recommend keeping these visa categories open for subsequent visa applications where the visa holder has already submitted a residence application. This will ensure that work to residence visa holders can apply for a further visa if their initial visa expires while they are awaiting the outcome of their residence application, so that their eligibility for residence is not impacted.
63. We also considered the option of fully closing these visa categories, and allowing migrants to hold an AEWV, instead of a Long Term Skill Shortage List or Talent (Accredited Employer) work visa, at the time residence their visa is granted. However, we do not recommend this, as some work to residence visa holders may no longer meet the labour market testing requirements under the AEWV system.
64. We are also aware that some work to residence visa holders may not have been able to complete the required 24 months of employment in New Zealand before their visa expires, due to becoming stuck offshore as a result of the border closure, and may not be eligible for other residence visas after 1 November. If you would like to consider options for keeping a residence pathway open for this group when the border reopens to them, we will provide you with further advice on how this could be operationalised and how many people may be affected.

Next steps

65. The recommendations in this paper will be implemented through immigration instructions. We will provide you with instructions to certify in July.
66. We will provide you with advice on the definition of a franchisee employer for the purposes of employer accreditation in late June.
67. The proposed fees for the new AEWV system are scheduled to be considered by the Cabinet Economic Development Committee on 23 June.
68. We will communicate the information in this paper widely through an integrated communications campaign that will both raise awareness of the policy changes and educate and inform affected stakeholders. The policy decisions in this paper will be communicated to affected stakeholders in mid to late July 2021, before wider communications activity (including a marketing campaign and regional engagement events) begins in August 2021, ahead of the 1 November 2021 policy introduction date. Note that communications about the three-gateway system, employer accreditation standards, implementation timelines and transitional arrangements for employers were communicated externally in May 2021.