



MEMO

DATE 18 August 2023

TO Alison McDonald, Deputy Secretary Immigration

COPY TO Jeannie Melville, Acting Chief Operating Officer

PREPARED BY Privacy of natural persons, Senior Business Advisor, Operations Support
Sarah Clifford, Director Visa

APPROVED BY Simon Sanders, Deputy Chief Operating Officer, Immigration New Zealand

SUBJECT **GENERAL INSTRUCTION ON MANNER OF PROCESSING ACCREDITED EMPLOYER JOB CHECK AND WORK VISA APPLICATIONS – HIGH VOLUME EMPLOYERS AND CONSTRUCTION SECTOR ROLES**

PURPOSE

This memo seeks your approval to give a new general instruction on the manner of processing of Accredited Employer Job Check and work visa applications. This general instruction will replace the general instruction you gave on 30 June 2023 to exclude high volume employers and construction sector roles from face value checks when determining whether the positions requested in a Job Check application are for genuine vacancies.

RECOMMENDATIONS

It is recommended that you:

- a) **Note** that on 30 June 2023, you agreed to extend the general instruction on the manner of processing of Accredited Employer Job Check and work visa applications.

Noted

- b) **Note** that a general instruction was given to immigration officers regarding when to undertake further checks when determining whether the proposed employment was genuine.

Noted

- c) **Note** that a further general instruction was given by the Chief Operating Officer to clarify that the instruction applied to job tokens issued, rather than Job Checks.

Noted



- d) **Note** that the proposed general instruction seeks to:
- exclude high volume accredited employers and construction sector roles from the instruction to apply only face value checks when determining genuine employment; and
 - include advice from Risk and Verification as a criterion for conducting additional verification at the work visa gateway.
- Noted**
- e) **Note** that the proposed general instruction and supplementary work are expected to result in less immigration harm occurring in the short to medium term.
- Noted**
- f) **Note** that the proposed general instruction will likely result in a higher decline rate where additional checks are carried out.
- Noted**
- g) **Note** that the proposed general instruction will have operational impacts for both Visa Operations and Risk and Verification.
- Noted**
- h) **Note** that Risk Monitoring and Review activity is already in place and enhanced focus will inform further potential reviews of the general instruction.
- Noted**
- i) **Note** that the pre-screening component of the Risk Monitoring and Review will be pivoted toward work visa gateway applications, which will significantly reduce the volume of current pre-screening on the visitor visa product, potentially resulting in operational impacts for Visa Operations.
- Noted**
- j) **Note** further changes will be recommended as new information comes to light, especially through intel products being developed as part of Operation MAST.
- Noted**
- k) **Agree** to sign the amended general instruction attached as Appendix One.

Approved/Discuss

Privacy of natural persons

Simon Sanders

Deputy Chief Operating Officer, Immigration
New Zealand
Date: 18/08/2023

Alison McDonald

Deputy Secretary Immigration
Date: 18/08/2023



BACKGROUND

1. On 30 June 2023, you agreed to extend the general instruction as to the manner of processing Accredited Employer Job Check and work visa applications.
2. This general instruction made substantial amendments to the previous instruction, introducing further controls to the assessment of applications.
3. The new instruction included additional checks and evidence required to show genuine vacancies in certain instances.
4. On 11 August 2023, the Chief Operating Officer signed a further general instruction, which made minor changes to terminology to align with the intent of the original instruction.
5. Through MBIE investigations, it has come to light that there are potentially a large number of Job Checks that have been issued for roles that are not genuine and that visa holders may have paid a premium for. These investigations have identified opportunities to revise settings in the Job Check instruction in order to address emerging trends.

PROPOSED EXCLUSIONS

6. The use of a general instruction has been effective in improving the timeliness of Accredited Employer Job Check processing. However, it has also increased the likelihood of Immigration New Zealand (INZ) not identifying situations that may result in immigration harm, such as migrant exploitation. It was acknowledged at the time the instruction was given that a minority of employers would abuse this high-trust approach.
7. The intention has always been to discontinue general instructions that reduce application assessment tasks, and to return to a business-as-usual approach when circumstances allow.
8. The complete removal of these general instructions if done immediately would have major operational impacts for Visa Operations and would result in substantial delays in application processing. INZ will continue to assess the operational impacts of removing these general instructions entirely.
9. In the meantime, there is a need to reduce immigration harm outcomes. Early insights from investigations underway and intelligence reporting on allegations received indicate high volume accredited employers and construction sector roles are more likely to be associated with immigration harm outcomes.
10. It is therefore recommended that the existing general instruction should be amended to:
 - a. exclude high volume employers and construction sector roles from the general instruction directing only face value checks when determining whether the number of positions requested in a Job Check application are for genuine vacancies; and



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- b. add advice from Risk and Verification as a criterion for determining that verification is appropriate at the work visa gateway.

ADDITIONAL WORK

11. Supplementary to the amended general instruction, Risk and Verification has been implementing a Risk Monitoring and Review (RMR) programme that includes pre- and post-decision reviews at the work visa gateway. This RMR will enable analysis on patterns of concern through risk monitoring and review activity (RMR) at the work visa gateway.
12. This RMR activity will be enhanced to focus on applications associated with Job Checks processed under the previous general instruction considered to carry a greater risk. Data collection and analysis will primarily focus on identifying patterns of concern with employers or roles.
13. When established, pre-screening RMR will have an immediate impact on risk management at the work visa gateway by increasing risk identification and treatment in visa decision making. Guidance on the outcome of pre-screening of an application will be provided to visa decision makers to inform their assessment of the work visa.
14. In addition, RMR will enable collection and analysis to determine whether further changes are required to the general instruction, risk controls and standard operating procedures.
15. Support to identify cohorts for pre-screening will be sourced from Intelligence, the Insights team and Digital, Data and Insights (DDI).
16. In addition, the operational insights team are being tasked with an insights piece on what we are seeing with work visa holders who are Maintenance of the law
[REDACTED]
17. Further general instruction amendments may be introduced in future to allow for a transition away from the use of general instructions of this nature. Lessons learned from this proposed instruction and analysis from Risk and Verification would inform future decision-making.

EFFECTS OF THE CHANGE

18. Immigration risks best managed at the Job Check include non-genuine job offers, non-genuine advertising, non-compliance with immigration requirements, role and salary inflation and migrant exploitation.
19. Reverting to standard assessment practices for high volume employers and construction sector roles and enhancing pre-screening RMR at the work visa gateway would allow INZ to undertake more robust assessments to better identify instances of non-genuine job offers and reduce the risk of immigration harm outcomes.
20. There will be an operational impact resulting from the additional checks for both Visa Operations and Risk and Verification.



21. Christchurch 2 currently has 29 FTEs processing a combination of Job Check and Employer Accreditation applications and is currently meeting its ten-day service timeframe.
22. Under the current general instruction, the processing timeframe for a Job Check application is 15 to 45 minutes. It is anticipated that the proposed general instruction would increase the processing timeframe by 30 minutes to three hours, depending on the level of checks required.
23. To mitigate increased processing times, Christchurch 2 intends to pivot nine Accredited Employer Work Visa FTEs to the Job Check queue from Monday, 21 August 2023. The work visa product is sufficiently resourced to allow for this change.
24. Christchurch 2 is currently only processing Job Checks for standard accreditation employers, except where the employer is in the health or education sector. Since 16 August 2023, Job Checks for all other high volume, franchise and triangular accreditation employers have been placed on hold, in anticipation of changes to the general instruction.
25. The proposed general instruction would apply to both current on hand and future Job Check applications.
26. There are 756 standard accreditation, and 570 high volume, franchise and triangular accreditation Job Checks on hand.
27. High volume employers make up 43 per cent of Job Checks, and the construction sector makes up approximately 12 percent of standard accreditation Job Checks.
28. For Visa Operations, the first week or two of implementation will inform quantifying actual resource impacts and any prioritisation decisions required in this respect.
29. Guidance and training will also be required to help build capability across processing immigration officers.
30. Risk and Verification currently commits approximately 50 FTE to Risk Monitoring and Review activity across a range of visa products both pre and post decision.
31. The pre-screening component of RMR will be pivoted toward work visa gateway applications, subject to business prioritisation decisions. This will reduce the volume of existing pre-screening activity on the visitor visa product by approximately 2,000 applications per month, potentially resulting in operational impacts for Visa Operations in the visitor product.
32. While it is not expected this will result in pre-screening of all work visas, it is expected this will provide a sufficient sample (estimated at approximately one third of all work visas) to enable collection and analysis. Resource allocation will be revised if it is determined that the planned resource is not sufficient to achieve this purpose.
33. Enhanced pre-screening RMR of work visas will be stood up by 01 September and Risk and Verification will be reliant on support from Intelligence, DDI and the INZ Insights team to support establishment and reporting.



CUSTOMER

34. While this change would mean more requests for information to certain employers and therefore longer processing times, straight forward Job Checks will still be processed within the communicated timeframe.

LEGAL AND POLICY IMPLEMENTATION

35. The policy intent for the Job Check and the work visa is a relatively light touch check of the role and pay rate and in the case of the Job Check, the advertising.
36. MBIE Immigration Policy supports an informed risk tolerance approach that will be recalibrated over time to allow for appropriately timely processing as informed by revealed risks of misleading or mistaken declarations.

COMMUNICATIONS AND IMPLEMENTATION

37. If approved, the general instruction will be implemented as soon as practicable.
38. Training and guidance material is being developed to support frontline staff, and staff will be advised of the change to the general instruction via a Visa Pak. Implementation will be led by the Operations Director (Central/Southern) and Acting Head of Operations, Christchurch 2.
39. Changes of this nature are generally only communicated internally to avoid any potential exploitation of the changes by those who seek to cause immigration harm.

NEW GENERAL INSTRUCTION

40. A new general instruction has been prepared for your signature in the Appendix, which excludes high volume and construction sector employers from the existing instruction requiring only face value checks when determining whether the number of positions requested in a Job Check application are for genuine vacancies.

CONSULTATION

41. The following staff have been consulted on the proposals outlined in this paper:
 - Dominic Forde, Operations Director (Central/Southern), Chief Operating Officer.
 - Privacy of natural persons, Special Counsel (Immigration), Legal Services.
 - Privacy of natural persons, Manager Onshore Risk and Verification.
 - Privacy of natural persons, Manager Offshore Risk and Verification.
 - Privacy of natural persons, Risk and Verification Manager, Onshore Risk and Verification.
 - Privacy of natural persons, Acting Head of Operations, Christchurch 2.
 - Privacy of natural persons, Visa Operations Manager, Christchurch 2.



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- **Privacy of natural persons**, Senior Technical Advisor, Christchurch 2.
 - Andrew Craig, Policy Director, Employment, Skills and Immigration Policy.
 - **Privacy of natural persons** Principal Policy Advisor, Immigration Policy.
 - **Privacy of natural persons**, Visa Operations Manager, Operations Support.
 - **Privacy of natural persons**, Practice Lead, Christchurch 2.
 - Jason Austin, Manager Operational Policy.
 - **Privacy of natural persons**, Principal Business Analyst, Operational Policy.
 - **Privacy of natural persons** Team Leader, Operational Policy.
 - Marc Piercey, Manager Communications – Immigration New Zealand.
 - **Privacy of natural persons**, Principal Communications Advisor, Communications – Immigration New Zealand.



APPENDIX

**GENERAL INSTRUCTION ON MANNER OF PROCESSING JOB CHECK AND ACCREDITED
EMPLOYER WORK VISA APPLICATIONS – EXCLUDING HIGH VOLUME AND CONSTRUCTION
SECTOR EMPLOYERS**



General instruction on manner of processing Job Check and Accredited Employer Work Visa applications

Under section 26(4) of the Immigration Act 2009 and acting under delegated authority from the Chief Executive of the Ministry of the Business, Innovation, and Employment, I give the following general instruction as to the manner of processing of Job Check applications and Accredited Employer Work Visa applications made under WA2, 3 and 4 of the immigration instructions, where the enhanced Immigration Online system has created an activity for an immigration officer to complete.

Requirement under Job Check immigration instructions (WA3)	General instruction on manner of processing
Determining the employer meets the requirements for labour market testing set out at (WA3.20)	Base the assessment on the declarations made in the application form, but for all assessments check: <ul style="list-style-type: none">• that the advertisement is for the role that the Job Check has been applied for;• the key terms of the employment are consistent with the employment agreement and other information included in the Job Check application, including:<ul style="list-style-type: none">• The minimum and maximum rate of pay or salary; and• That position has not been advertised as casual or part time; and• The location of the job.
Determining whether the employer meets the requirements for acceptable employment set out at WA3.15 related to the proposed employment agreement	For all assessments, check: <ul style="list-style-type: none">• the location on the declaration matches the location on the employment agreement and the advertising;• the legal entity declared in the Job Check application matches that on the employment agreement;• the employment type (permanent or fixed term/seasonal) declared matches that on the employment agreement;• where the proposed employment is for an occupation that is exempt from the median wage threshold (Appendix 14), the job description provided matches the description of the work for the declared ANZSCO code.



<p>Calculating the remuneration as set out in WA3.30</p>	<p>For all other assessment activities, proceed to base the assessment on the declarations made in the application form, only, unless any of the below criteria is met:</p> <ul style="list-style-type: none">• all or part of the payment for the proposed employment is calculated by piece rates;• the employer holds accreditation as a franchisee employer or an employer who places Accredited Employer Work Visa holders in triangular employment arrangements;• the employer has made an adverse declaration in the application form;• INZ holds any relevant adverse information about the employer (such as a warning of where an application triggers a risk rule);• the role is of concern. <p>Where the above applies, also check:</p> <ul style="list-style-type: none">• the remuneration of the employment, including the hours of work, details of pay and any deductions; and• the job description.
<p>Determining whether the number of positions requested in a Job Check application are for genuine vacancies as required by WA3.15(I)</p>	<p>Determine that this requirement is met without assessing or requesting additional evidence, where the proposed employment is EITHER:</p> <ul style="list-style-type: none">• in the health or education sectors, unless:<ul style="list-style-type: none">○ the employer holds accreditation as a franchisee employer or an employer who places Accredited Employer work visa holders in triangular employment arrangements; or○ INZ holds adverse information about the employer; <p>OR</p> <ul style="list-style-type: none">• offered by an employer who holds Standard Accreditation, unless:<ul style="list-style-type: none">○ INZ holds adverse information about the employer; or○ the remuneration is calculated by piece rates; or○ the role is in an industry that is unlikely to require the number of positions requested; or



	<ul style="list-style-type: none"> ○ the role is in the construction industry; or ○ the role is of concern. <p>For all other Job Checks, use standard processes to consider whether the positions requested in a Job Check application are for genuine vacancies.</p>
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Requirement under work visa immigration instructions (WA4)	General instruction on manner of processing
<p>Determining whether an applicant holds an offer of employment that meets the requirements of WA4.10.1</p>	<p>For all applications, check that the remuneration on the employment agreement offered is the same as that included in the AEWV meta data. If a range was approved in the Job Check application, the remuneration stated in the IEA must fall within the approved range.</p> <p>Ensure that the hourly rate entered in ADEPT matches what is stated in the IEA and approved Job Check application.</p> <p>For all applications if there is a Job Check validation activity, the Job Check validation powerBI will be used to ensure that:</p> <ul style="list-style-type: none"> ● The location and job title of the role are the same as what was approved in the Job Check; ● The job description matches the job title of the role; ● The hours of work are the same as or more favourable than that declared by the employer in the Job Check ● The direct employer is the same as in the Job Check. <p>For applications in the following categories, the key points above should be checked against the same details in the provided employment agreement signed by the applicant.</p> <p>Further verification should only be carried out if there are other risks that are evident as a result of this check. This applies to employees:</p> <ul style="list-style-type: none"> ● Of triangular employees including labour hire companies;



	<ul style="list-style-type: none">• Of franchise business models;• Whose remuneration includes a piece rate component;• Whose applications trigger an alert of warning or for whom INZ holds adverse information;• Where guidance provided by Risk and Verification as a result of pre-screening advises that verification is appropriate.
<p>Determining whether the applicant meets the requirements for applicants as set out in W.2.10.1(b)</p>	<p>For the worker eligibility component of the application, immigration officers will refer to the triage rating (low, medium, high) and the relevant SOP under “Assess Temporary Visas” to determine next steps for an application with that triage rating.</p> <p>Low risk applications do not require any verification unless a specific risk is identified. The following applications will be treated as low risk despite triaging:</p> <ul style="list-style-type: none">• Health and education roles• All roles that require registration• All Tier 1 Green List roles• All migrants paid at 200 percent of the median wage. <p>Medium risk applications do not require any verification unless a specific risk is identified through a risk rule triggering.</p> <p>High risk applications (unless part of the exception above) should begin with quick verification and only proceed to intermediate verification after consultation with a technical advisor.</p>

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Alison McDonald
Deputy Secretary Immigration
Date: 18/08/2023