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## MEMO

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<b>DATE</b>	25 July 2022
<b>TO</b>	Alison McDonald, Deputy Secretary Immigration
<b>FROM</b>	Stephen Vaughan, Chief Operating Officer, Immigration
<b>SUBJECT</b>	<b>OPERATIONAL LEVERS TO CLEAR CURRENT JOB CHECK QUEUE</b>

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### PURPOSE

This memo seeks your approval to a temporary adjustment to the manner in which immigration officers assess applications against immigration instructions for Job Check applications to recognise the pressures in the labour market environment and the effort required to support the reopening of New Zealand to migrant workers.

### RECOMMENDATIONS

It is recommended that you:

- a) **Note** that a general instruction as to the manner of processing these applications under section 26(4) of the Immigration Act will be prepared for your signature

*Noted*

- b) **Agree** that for all roles immigration officers will check the advertising for the salary requirement and that if this is not met, the employer will either be (please indicate which):

*Declined / Require PPI / Discuss*

- c) **Agree** that for any other issues with the advertising (e.g. not advertised for full period) immigration officers should educate rather than enforce, accepting declarations at face value to approve

*Agreed / Not agreed / Discuss*

- d) **Agree** to accept all claims in application form regarding the employment agreement at face value except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the employer

*Agreed / Not agreed / Discuss*

- e) **Agree** that for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the



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employer immigration officers will check the employment agreement only for hours, pay and deductions and location

***Agreed / Not agreed / Discuss***

- f) **Agree** that the number of roles requested in a Job Check application from employers in the health and education sectors will be accepted at face value except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the employer

***Agreed / Not agreed / Discuss***

- g) **Agree** that for the construction sector, all Job Check applications for up to 50 roles will be accepted at face value except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the employer

***Agreed / Not agreed / Discuss***

- h) **Agree** that for other sectors, all Job Check applications for up to 30 roles will be accepted at face value, unless it is an industry that is unlikely to need that many roles i.e. chef except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the employer

***Agreed / Not agreed / Discuss***

- i) **Agree** that for other sectors (including construction), where the number of roles exceeds the advice above (i.e. 50 for construction and 30 for all others) all Job Check applications will follow the guidance already in place (i.e. phone call script)

***Agreed / Not agreed / Discuss***

- j) **Agree** that all declarations of salary in the application form will be accepted at face value except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the employer

***Agreed / Not agreed / Discuss***

- k) **Note** that targeted post decision risk monitoring and review will be developed to identify any unintended consequences of these changes and that R&V will need to determine the FTE impacts of this, what it will mean for existing work and agree priorities with BVO

***Noted***



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- l) **Note** that a risk rule will be created to identify applications which do not meet the parameters for accepting at face value (based on declarations in the application form) regarding the number of roles in a Job Checks

*Noted*

- m) **Agree** that this interim approach will be reassessed four weeks from when it is implemented and adjusted as appropriate

*Agreed / Not agreed / Discuss*

- n) **Agree** that while the interim approach is in place there will be no quality checks (QCs) carried out for the applications being accepted at face value (for applications being processed against instructions normal QC will apply)

*Agreed / Not agreed / Discuss*

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**Stephen Vaughan**  
Chief Operating Officer  
Immigration New Zealand  
....August 2022

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**Alison McDonald**  
Deputy Secretary Immigration  
..... August 2022



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## **BACKGROUND**

1. The Accredited Employer Work Visa (AEWV) is the new temporary work visa policy designed to ensure New Zealanders are first in line for jobs and reduce the risk of migrant exploitation. Where genuine skill or labour shortages exist, accredited employers can hire skilled migrant workers.
2. There is currently an unprecedented tight labour market, with skill shortages in most sectors. This will be alleviated to some extent through the reopening of the borders to skilled migrant workers under the recently launched AEWV. As this is a new policy INZ can initially take a facilitative approach to smooth the transition to the new policy. This time-bound approach would focus on educating employers on the requirements, and provides some risk-based leniency in advance of a stronger enforcement approach as the policy is bedded in.
3. There are three gateways for the AEWV: the employer gateway, the job gateway, and the migrant gateway (the work visa). Any employer who wishes to employ a temporary migrant under the AEWV policy must first become accredited at which point they are vetted for previous compliance with immigration and employment compliance, and they make commitments to ongoing compliance.
4. The second gateway of AEWV is the Job Check where employers apply for approval to recruit – effectively a labour market test. The introduction of AEWV has seen the convergence of new technology platform, new policy and processes and new staff.
5. This, in addition to unanticipated market behaviour, where employers are asking for higher numbers than anticipated under the policy, has led to Job Check applications progressing to decision much slower than anticipated. These factors reinforce the need to take an educative approach for employers as they adjust to an ‘employer led’ work visa approach, which is new and requires different behaviours from employers. In addition, the full anticipated system features such as further targeted risk rules that would different treatment to the job check by sector or industry are not in place yet. Risk rules have been implemented at this gateway however more targeted rules will be developed as INZ collects data and insights to support these, and as any adverse outcomes become apparent.
6. We have informed Ministers that extra attention would be taken for occupations such as cooks, retail managers, hotel managers etc and roles close to the median wage.
7. As part of a Job Check application, employers provide information about the role, the terms and conditions, and where necessary the advertising by answering questions in the online form, as well as providing evidence of this by way of uploading job ads and sample employment agreements.



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8. Given the unprecedented labour market environment (very low unemployment and high skills shortages across most occupations), there is an urgent need to consider a pragmatic solutions to clear the current queue of job checks to provide employers the opportunity to offer roles to migrants, and importantly focus effort on education of employers.
  9. We do not want immigration processing to be an unnecessary hold up to international recruitment, but this must be balanced with the need not to undermine the core settings of the new policy as its being embedded such as the advertising requirements. The Minister has agreed not to relax core settings, but acknowledged taking a pragmatic approach on the number of roles requested in a Job Check, and has already been informed that immigration officers will only check employment agreements by exception.
  10. At the moment processing is taking longer than anticipated due to a new system, staff and policy as well as some challenges arising with applicant behaviour and the ADEPT system. Currently processing time is being mainly spent on review of employment agreements and advertising requirements.
  11. INZ does not have the authority to waive policy requirements en masse (this includes deciding to educate rather than enforce when there are serious faults in an application). However, we can calibrate how immigration officers are assessing applications and what is taken at face value through declarations based on an assessment of the risk involved.

#### **PROCESSING TO DATE**

12. There are currently 56 immigration officers processing Job Check applications. In addition, 25 new staff began processing on Monday 25 July. It will take some time for them to reach full productivity.
13. Unfortunately, the ADEPT dashboards cannot be relied on to provide accurate information and visa processing staff are attempting to manually compile data. It appears immigration officers were pulling on average four applications per day at the beginning of last week which was converting to two decisions per officer per day. They have now received five extra days of clarification and extra training so this number may have increased.
14. As at 9 August 2022, 4,463 Job Check applications have been received covering 30,471 positions. Of those, 1,934 Job Check applications have been approved and one has been declined.
15. The way the work is being released from the system is sporadic and creates challenges in understanding volumes and productivity rates. One day last week 800 applications were released (i.e. became available for staff to 'pull' on one day.)



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## PROPOSED APPROACH

16. INZ will take an 'Educate, rather than Enforce' approach to Job Check applications in the short term. We will review the educative approach after four weeks and make appropriate adjustments at that point. During this period INZ will educate customers and take a pragmatic risk-based approach to decision making. This approach accepts more risk for a limited period of time to reduce the current queue.
17. This means for some employers information provided in the application form will be accepted at face value (associated documentation provided as evidence will not be reviewed in all cases), instead relying on the information provided in the job check application form. Approval letters will outline that the decision is being made based on the information declared by the employer and that while they have been approved in this instance, in future, applications and evidence will be given more scrutiny and there may be post decision checks carried out. It will also remind them that they must ensure they meet their obligations as an employer, and that the employment agreement must be lawful and may be checked at the work visa stage.

## IMMEDIATE ADJUSTMENTS

18. There are generally three fundamental options available to the Deputy Secretary to deal with application volumes:
  - automation
  - additional resource; and
  - risk tolerance.
19. Automation requires more specific risk rules as a foundation. As a more complete set of risk rules that specifically address advertising and employment agreements cannot be developed until INZ has a greater set of data and intelligence to draw from, and given the urgency of the current environment, automation is not an option. Resourcing up is a possibility, but additional staff who will be processing Job Check are new and will take time to become productive.
20. For these reasons, the only real option for progressing the current Job Check queue is adjusting the risk tolerance to accept more risk, and focus effort on educating employers. Information from post decision verification activities will overtime become available to enable targeting towards problematic job checks, and developing additional risk rules which could be used to support automation.
21. Officials have considered the following to implement a pragmatic, manual educate over enforce approach:

The following applications for Job Checks will be fully vetted:

- Triangular
- Labour Hire



<ul style="list-style-type: none"><li>• High volume requests for more than 50 roles (unless in the health sector)</li><li>• Any employer who has made an adverse declaration (answered no to a question in the application form which indicates they do not meet the policy) or where INZ already holds adverse information.</li><li>• Any applications where INZ holds adverse information (such as an alert or warning or where an application triggers a risk rule).</li></ul>	
For all other applications the following approach should be taken:	
Advertising (as per Policy advice to Minister)	<p>For all roles immigration officers will check the advertising for the salary requirement.</p> <p>Noting that the employer will have declared in the application form that they have included salary, if it is found that they have not there is an option to decline the application. This will lead to faster decisions.</p> <p>Alternatively, given the educative approach intended, you can choose to PPI. This process will take time and is unlikely to achieve the efficiencies desired, but will result in a better outcome for the customer who will be given three (tbc) additional weeks to meet the requirements.</p> <p>For any other issues with the advertising (e.g. not advertised for full period, advert being closed) immigration officers should educate rather than enforce.</p> <p>(Guidance is already in place for staff that Green list and highly paid roles that earn twice the median salary should not be checked)</p>
Advertising (alternative that goes further than currently agree with Minister)	<p>Accept all claims in application form at face value based on declarations in the application form for health and education roles<sup>1</sup>, given the widely acknowledged shortages, and the regulatory environment around these occupations.</p> <p>For all other roles consider educating employer over enforcement where a job advert may have some deficiencies (e.g. not advertised for full period).</p>

<sup>1</sup> these are sectors with collective employment agreements, occupational registration and in general relatively straightforward applications.



	<p>(Guidance is already in place for staff that Green list and highly paid roles that earn twice the median salary should not be checked)</p> <p>This option will provide the processing benefits sought.</p>
Employment agreements	<p>Accept all claims in application form at face value except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of concern, or where INZ holds adverse information on the employer.</p> <p>For those employers the check of the employment agreement will be limited to immigration related aspects:</p> <ul style="list-style-type: none"><li>• Hours</li><li>• Pay and deductions</li><li>• Location</li><li>• Job description.</li></ul>
Number of roles in a Job Check	<p>The number of roles requested in a Job Check application from employers in the health and education sectors will be accepted at face value based on declarations in the application form.</p> <p>For the construction sector, all Job Check applications for up to 50 roles will be accepted at face value based on declarations in the application form.</p> <p>For other sectors, all Job Check applications for up to 30 roles will be accepted at face value based on declarations in the application form, unless it is an industry or business that is unlikely to need that many roles e.g. chef.</p> <p>For other sectors (including construction), where the number of roles exceeds the advice above all Job Check applications will follow the guidance attached which is already in place (which is being adjusted to align with these new thresholds).</p>
Salary	<p>All declarations of salary in the application form will be accepted at face value except for triangular or franchises business models, roles that are paid by piece rates, or any other roles of</p>



	concern, or where INZ holds adverse information on the employer.
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- 22. Immigration Policy recommends immigration officers continue to check that a salary was include in the advertising for all employers, while taking a face value approach to most employment agreement and number of vacancy declarations. This was a fundamental change in the introduction of AEWV and a core setting of the current policy and part of the behaviour change that needs to be embedded early. This has been discussed with the Minister and he has agreed not to relax the advertising requirement in any transitional phase.
  
- 23. Noting that the employer will have declared in the application form that they have included salary in their advertising, if it is found that they have not – the application will be declined. This will lead to some efficiency in processing. If you choose to PPI (on salary in adverts), this leads down a path that creates complexity for INZ and the employer. This process will take time and is unlikely to achieve the efficiencies desired. For example, from the 37 proposed declined applications referred to the steering group, 34 did not accurately include the salary in the advertisement.
  
- 24. Immigration Policy considers it would be appropriate to not check the advertising in some cases (e.g. for high salary roles above \$80k, professional occupations, or from trusted employers where adverts have already been checked on other job checks) if:
  - Checking the advertisement takes a significant amount of time that will have a material impact on recovering to target service levels.
  - There is a low rate of untrue declarations that advertising has been carried out correctly based on analysis to date.
  
- 25. Challenges remain with ADEPT data reporting, as well as our general understanding of timeliness in ADEPT. Manual sampling is occurring to try and answer some of these questions.

**PROCESSING IMPACTS**

- 26. BVO advise there are challenges in quantifying what shift in productivity these changes might mean until it has actually been trialled it. But at a high level, Christchurch 2 have indicated that these changes should lead to at least a doubling in productivity and therefore we should clear the current onhand out by week 15 August with the 74 FTE assigned.
  
- 27. BVO have assumed slightly higher incoming than we are actually seeing on the basis that as more employers get accreditation they'll be progressing to the Job Check stage. They have assumed lower outputs for this week given it won't be a full week, and there are 25 new staff starting and time for staff to absorb this further change in process. BVO also advise they have some staff involved in offshore training



across the network as this relates to preparation for assessing work visa applications. That needs to continue noting that we need to carefully balance the work visa volumes as they start to increase. There are 500 applications in progress at PPI stage that we will need to review and determine approach for in line with what is agreed.

28. There are a lot of new staff working on AEWV, they are still building competency and confidence with both system, policy and process (irrespective of how streamlined the process is) and workforce planning had factored this in across the first three months. Even if we were to pivot TAs (subject to what the quality check process might be), they would need to build familiarity with the assessment part of the system (as their training and activities are focused around the quality check component).
29. With current onhand volumes BVO have indicated they expect to be back to almost all applications being processed within 10 days (when not waiting on employer information/responses) by 15 August. They are working on “flow” being three days worth of work on hand – so within 300-500 subject to how incoming volumes track.

	On hand	Plus incoming	Less output	On hand
Week 25 July	2247	750	750*	2247
Week 1 August	2247	750	1250**	1747
Week 8 August	1747	750	1500***	997
Week 15 August	997	750	1500	247

\*75 staff (28 CHCH2, 25 CHCH 1, 22 MNK) an average of two decisions per day. There will be a transitional period as the new approach will be implemented from the 27 July

\*\*75 staff – a decision rate of an average of three decisions per day. There will be a continuation of the transition period. Starting to receive responses from PPis.

\*\*\*75 staff – an average of 4 decisions per day. In flow with new changes.

## IMPLEMENTATION

30. If agreed, work will progress on Monday 25 July and Tuesday 26 July to put these decisions into effect.
31. The best way to implement this, and give it binding force over immigration officers, is for the Deputy Secretary to give a general instruction as to the manner of processing these applications under section 26(4) of the Immigration Act. Immigration officers are then legally bound to follow this instruction.



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32. If the instruction is made, guidance will be provided to processing staff via team meetings, VisaPak and comms from the Deputy Secretary – both written and a Teams session. The Chief Operating Officer and General Manager Border and Visa Operations will also visit processing staff this week.
  33. During the initial period this interim approach is in place, further work will be progressed to confirm policy intent, refine immigration instructions and update online forms to simplify assessment questions and develop and implement the intended risk rules for ongoing triaging. The Visa Processing Taskforce will progress this work.

#### **POTENTIAL RISKS AND IMPLICATIONS**

34. There are potential reputational and political risks for MBIE to consider if INZ is not consistently checking the evidence provided by employers, and ensuring that employment agreements meet the minimum required standards of employment law.
35. In many instances, INZ will be the only Government agency that has any line of sight over employment agreements and therefore the only agency that has the ability to influence employer behaviour and ensure that minimum standards of employment law are met. If employment agreements are not being routinely checked and non-compliant agreements are approved by INZ, this creates reputational and political risks for INZ and MBIE, particular as MBIE is also responsible for regulating employment law, and the Minister of Immigration, Hon Michael Wood, is also the Minister responsible for Workplace Relations and Safety.
36. In addition, by taking applications at face value, INZ may approve agreements that contain oppressive or unfair terms and conditions which increase risks that migrants will be subject to exploitative behaviour by employers, which is contrary to the policy intent of AEWV. These risks could be mitigated to some extent (if the business chooses) by the checking that will take place at the migrant gateway (the work visa stage), although efficiencies in the design to pre-check employment agreements at Job Check will be lost and this may impact timeliness expectations. We are cognisant of this potential exploitation and it will be part of our ongoing risk and verification approach. In addition, by using the targeted Risk Monitoring and Review approach as recommended, if we identify risk as this approach is implemented, we can adjust the approach to account for any risks that present.
37. Additionally this approach may create confusion for employers who believe their employment conditions have been “pre-approved”. Employer communications in Job Check approval letters may go some way towards mitigating this, and focusing strongly on educating employers supported by post-decision verification, noting that all high risk employers will still be fully checked (e.g. franchise and labour hire) and adverse information on specific employers which is held by INZ will be treated.



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38. Legal professional privilege

[REDACTED]

#### **LEGAL AND POLICY IMPLICATIONS**

39. The policy intent was for the Job Check to be a relatively light touch check of the role and pay rate, and the advertising. However, the form developed for the assessment is extremely detailed and is not conducive to a light touch assessment.
40. Immigration officers could focus on the parts of the employment agreement that are relevant to the job check (pay, hours) on an exceptions basis. It also recognises that immigration officers are not employment law experts, notwithstanding consideration of the risks noted. Arguably immigration officers should not be checking and 'approving' employment agreements, although this is an activity that has previously been part of work visa assessments and while steps have been made to move away from this, the current design of the AEWV processes did not give this effect. If this approach is to be adopted, the INZ communication of any successful Job Checks will be clear that it does not constitute certification that the employment agreement is legal – this remains the employers' obligation. To support this approach, systems should be put in place to refer identified significant issues with employment agreements to the Labour Inspectorate.

#### **COMMUNICATION APPROACH**

41. The Operations Support team in BVO will follow their standard process for communicating changes such as this to processing staff. This will include meetings with Christchurch office leadership to talk through the changes, a VisaPak to staff processing AEWV. Risk & Verification leadership will also communicate to staff as the approach is implemented.
42. To acknowledge the significant adjustment this will be for staff, the Chief Operating Officer and General Manager Border and Visa Operations will travel to Christchurch this week. A Teams session with the Deputy Secretary will be arranged for Tuesday and follow up written comms from the Deputy Secretary will be prepared.
43. INZ Comms & INZ Engagement teams are currently considering the approach for/if communicating with Licensed Immigration Advisers and also preparing reactive lines for media and use by our Relationship Managers if necessary.

#### **QUALITY CHECK APPROACH**

44. Advice from the Manager Quality and Assurance notes that the drivers are clear enough here around processing difficulties versus the acceptance of (as yet unquantified) risk. He notes that there is minimal QC being carried out at the employer accreditation gateway, and the proposal here is to do the same at the Job



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Check gateway – accept at face value in many cases – with a minimal QC question set.

45. Given the ‘cut outs’ intended for many Job Checks, the advice is that it would be very difficult for Technical Advisors to know which applications need to be quality checked. It would also likely not be able to give effect in ADEPT to the idea of only quality checking those job checks that did not meet the criteria for accepting “at face value” without resorting to using a glitch in ADEPT that allows TAs to resolve quality checks without answering any questions – they just press a button. This is what occurs now with the settled stream of 2021 Resident Visa applications.
46. Given it appears that the quality check process will be ineffective as a real control over the job check process, then it may be sensible to conduct no quality checks and accept the risk that some specified level of scrutiny of job checks by immigration officers may not have occurred.
47. The advice notes that this does raise some concern about what degree of scrutiny via quality check will be required at the work visa application stage. This will likely require a more robust quality check model to be in place than which has TA resource implications. This is because it will be the last opportunity to check that AEWV settings have been met/been complied with.

## CONSULTATION

48. The following staff have been consulted on the proposals outlined in this paper:

- Stephen Dunstan, General Manager Enablement
- Nicola Hogg, General Manager Border and Visa Operations
- Richard Owen, General Manager Verification and Compliance
- Alejandra Mercado, Manager Operational Policy
- Sarah Clifford, National Manager Border and Visa Operations
- [Redacted] Head of Operations Christchurch 2
- [Redacted] Privacy of natural persons Principal Advisor to the General Manager Border and Visa Operations
- Andrew Craig, Manager Immigration Policy
- [Redacted] Privacy of natural persons Special Counsel - Immigration, MBIE Legal
- [Redacted] Privacy of natural persons Head of AEWV implementation (Acting)
- Geoff Scott, National Manager Risk and Verification
- [Redacted] Privacy of natural persons Manager Onshore Risk and Verification
- Zoe Goodall, General Manager Assurance
- [Redacted] Privacy of natural persons Manager Quality and Assurance

## NEXT STEPS

49. If agreed, work to implement these changes will be carried out across Monday and Tuesday this week.



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50. The Deputy Secretary will advise the Chief Executive and the Minister of Immigration of her intentions.
  51. Targeted post decision risk monitoring and review will need to be developed to identify any unintended consequences and could be used for referral to other agencies e.g. Labour Inspectorate.
  52. Risk & Verification will create a risk rule to identify number of roles in Job Checks which do not meet the parameters for accepting at face value (based on declarations in the application form).