



MEMO

DATE	19 August 2022
TO	Alison McDonald, Deputy Secretary Immigration
THROUGH	Stephen Dunstan, General Manager, Enablement, Immigration New Zealand Michael Carley, General Manager (Acting), Border and Visa Operations, Immigration New Zealand
FROM	Jeannie Melville, Chief Operating Officer (Acting), Immigration New Zealand
SUBJECT	OPERATIONAL LEVERS TO ENHANCE ACCREDITED EMPLOYER WORK VISA PROCESSING

PURPOSE

This memo seeks your approval to enact a temporary adjustment to the manner in which immigration officers assess applications against immigration instructions for Accredited Employer Work Visa 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 there is an urgent need to consider a solution to ensure the final gateway of the Accredited Employer Work Visa (AEWV) is as streamlined as possible.

Noted

- b) **Note** that a facilitative approach to work visa applications that accepts more risk for a limited period of time will help ensure that they are processed within a timeframe that reflects the urgent need for temporary migrants as a partial solution to current labour market shortages.

Noted

- c) **Note** that there are two components to AEWV application assessments: the job check validation and worker eligibility.

Noted



d) **Agree** that the following AEWV applications will be fully vetted for the job check validation component. Applications where the:

- employer is a triangular employer, including labour hire companies;
- employer is a franchisee;
- remuneration involves piece rates;
- applicant has made an adverse declaration (answered no to a question in the application form which indicates they do not meet the policy);
- INZ already holds adverse information.

Agreed / Not agreed / Discuss

e) **Note** that in the above context, fully vetted means that the declarations made by the migrant will be checked against the INZ generated job check approval letter, the offer letter, and the employment agreement to ensure consistency.

Noted

f) **Agree** to treat the following as low risk despite triaging when assessing against job check, worker eligibility or resolving a risk activity linked to work experience or qualifications:

- All health and education roles;
- All roles that require registration;
- All tier one Green List roles;
- All migrants paid at least 200 per cent of the median wage.

Agreed / Not agreed / Discuss

g) **Agree** that for all other applications, the job check approval letter should be used to ensure that:

- 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 for which the job check has been approved;
- The rate of pay is within the range declared by the employer in the job check;
- The hours of work are the same as declared by the employer in the job check.

Agreed / Not agreed / Discuss



- h) **Note** that the recommendation in (g) above will ultimately be reflected in the back end functionality in ADEPT, in that the job check validation activity will be automated for all migrants except those that are employed by a franchise or triangular business.

Noted

- i) **Agree** that for the worker eligibility component of the application, immigration officers will follow established SOPs for low, medium, high risk triage rules.

Agreed / Not agreed / Discuss

- j) **Agree** that the following roles will be deemed to be low risk despite triaging:
- Health and education roles;
 - All roles that require registration;
 - All tier 1 Green List roles;
 - All migrants paid at 200 per cent of the median wage.

Agreed / Not agreed / Discuss

- k) **Note** that Risk and Verification will conduct targeted risk monitoring and review activity across a sample of applications for the duration of this initiative and report high level findings back to Immigration Leadership team weekly.

Noted

- l) **Note** that if you agree to the above recommendations, a general instruction as to the manner of processing these applications under section 26(4) of the Immigration Act 2009 will be prepared for your signature.

Noted

- m) **Agree** that the approach will be implemented between 22 August and the end of September and a review will be completed before any request for an extension is made.

Agreed / Not agreed / Discuss

Jeannie Melville
Chief Operating Officer (Acting)

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



Immigration New Zealand
... August 2022

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.
3. As this is a new policy, INZ can initially take a facilitative, “educate over enforce,” 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.
4. There are three gateways for the AEWV: the employer gateway, the job gateway, and the migrant gateway (the work visa).
5. 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 rules, and they make commitments to ongoing compliance.
6. The second gateway of AEWV is the Job Check, where employers apply for approval to recruit – effectively a labour market test.
7. The third gateway of AEWV is the work visa where migrant workers are invited by their employers to apply for a work visa. While the number of work visa applications that have been submitted to date is relatively low (1,472 received as of 16 August 2022), it is clear that with the increase in the number of job checks approved (21,521 for 35,818 positions as of 16 August 2022), this number will increase dramatically towards the end of August and through September.
8. The policy intent and requirement of the third gateway is to:
 - Confirm the employment offer is within the parameters agreed in the job check (pay in range; role and location as approved);
 - Check that the migrant has the skills the employer specified as required in their advertising (to avoid appointing a lower skilled migrant than what they required of New Zealanders);
 - Check the migrant’s identity, health, and character.



9. The introduction of AEWV has seen the convergence of a new technology platform, new policy and processes, and new staff and an adjustment to a new 'employer led' work visa approach, which requires different behaviours from employers.
10. 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 solution to ensure that the final gateway of the AEWV is as streamlined as possible. It is intended that the proposed approach in this memo will provide employers the confidence and opportunity to offer roles to migrants, and focus effort on education of employers over time on their role in this new employer-led process.
11. INZ does 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 it is being embedded, such as the advertising requirements.
12. The setting of immigration instructions that reflect policy is the responsibility of the Minister of Immigration. INZ cannot waive policy requirements en masse (this includes deciding to educate rather than enforce when there are serious faults in an application), as this undermines the policy itself and risks the creation of de facto policy which is outside INZ's remit. However, we can calibrate how immigration officers are assessing applications and whether declarations are taken at face value based on an assessment of the risk involved.
13. System features such as further targeted risk rules that would generate different treatment at the work visa stage by sector or industry are not in place yet. However, risk rules have been implemented at this gateway based on historic data and insights gathered from prior work visa processing.
14. There are currently twenty-one occupation specific risk rules, eleven of which are solely focussed on work experience and qualification alone. These are a mix of high and medium risk rules. Historically, these rules resulted in decline rates from 6 per cent to over 40 per cent.
15. There are a further thirteen rules which are not occupation specific but deal with first time work visa applications. Decline rates for these rules varied from 10 per cent to almost 40 per cent. More targeted rules will be developed as INZ collects data and insights to support these, and as any adverse outcomes become apparent.

PROCESSING TO DATE

16. INZ has moved 20 staff from the job check gateway to the work visa processing week in the week of 15 August 2022. As of 16 August, the number of immigration officers processing work visas is now 54. This increase reflects the corresponding increase in the numbers of work visa applications being received.



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17. The number of immigration officers assigned to each gateway is being monitored daily to ensure that they can be moved efficiently and quickly to a different gateway when the need arises.

IMMEDIATE ADJUSTMENTS

18. There are 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. This cannot be achieved 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 immediate option.
20. Resourcing up is a possibility, but additional staff available who will be processing work visas are new and will take time to become productive. In addition, reassigning existing experienced staff to AEWV would have a flow on effect to other visa categories, particularly the 2021 Resident Visa.
21. For these reasons, the only immediate option for streamlining the processing of work visa applications is adjusting the risk tolerance to accept more risk in the short term, and focus efforts on further educating employers. Information from post decision verification activities will over time become available to inform the targeting of any problematic industries, occupations, employers, and developing additional risk rules or models which could be used to support automation in the future.
22. This means for some migrants, information provided in the application form will be accepted at face value (associated documentation provided as evidence will not be reviewed in all cases). Approval letters will outline that the decision is being made based on the declarations made with the application and that while they have been approved in this instance there may be post decision checks carried out.

PROPOSED APPROACH

23. INZ will take an facilitative approach to work visa applications in the short term. We will review this approach at the end of September and make appropriate adjustments at that point. During this period, INZ will take a pragmatic risk-based approach to decision making. This approach accepts more risk for a limited period to ensure that work visas are processed within a timeframe that reflects the current labour market shortages.
24. Officials have considered the following to implement a pragmatic, manual “educate over enforce” approach:



All applications must meet identity, health and character components of the work visa application.

Job check validation

For all applications, the INZ job check approval letter will be used to ensure that:

- 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 rate of pay is within the range declared by the employer in the job check;
- The hours of work are the same as declared by the employer in the job check.

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. 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:

- of triangular employers including labour hire companies;
- of franchise business models;
- whose remuneration includes a piece rate component;
- whose applications trigger an alert or warning or for whom INZ holds adverse information.

Worker eligibility

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.

Risk rules

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:

- Health and education roles;
- All roles that require registration;
- All tier 1 Green List roles;
- All migrants paid at 200 per cent of the median wage.

Medium risk applications do not require any verification unless a specific risk is identified though a risk rule triggering.



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.

PROCESSING IMPACTS

25. BVO advise there are challenges in quantifying what shift in productivity these changes might mean until it has actually been trialled.
26. There are a range of new staff working on AEWV and this lack of experience did manifest itself through the job check process as the team continue to build competency and confidence with both system, policy and process (irrespective of how streamlined the process is).
27. As of 14 August, 66 work visas have been approved through the hybrid ADEPT/AMS approach noting AEWV applications cannot be processed end to end in ADEPT at this time.
28. As seen with the implementation of the General instruction for job check, it has taken at least two weeks for the team to find a rhythm and see benefits start to realise. It is expected that it will take at least this amount of time for the work visa gateway approach noting that there is a greater cultural shift to effect in some respects including ensuring the Risk and Verification approach aligns with the adjusted settings.
29. The current processing time assumed for work visas based on the fees work done (in 2021) and excluding time to competency considerations is 34.5 minutes per application.
30. Workforce planning had factored in time to competency across the first three months and productivity rates assumed progressively increase from 2.2 per day month one, 7.0 per day month two, 9 per day month three and onwards.
31. At a high level, the General instruction changes need to enable a significantly faster progression to the average of seven-nine decisions per day.
32. Work is being initiated to revisit the volume forecasts for each gateway to help inform AEWV resource requirements moving forward on the basis of actuals received to date and sense checking assumptions applied including job check ratios as well as current productivity levels. This will include factoring in the the agreed timeliness standards across the three gateways of 10/10/20 working days.
33. The above will inform a more granular plan and scenario modelling being completed on progress expected over coming weeks in the work visa gateway as a result of the changes to be implemented through the general instruction.



IMPLEMENTATION PRE ADEPT BACK END FUNCTIONALITY

34. If agreed, work will progress on Monday 22 August 2022 to put these decisions into effect in the hybrid model that is being used for work visa processing prior to the full back end functionality for work visas being deployed in ADEPT.
35. 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 2009. Immigration officers are then legally bound to follow this instruction.
36. 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. A team will also visit Christchurch in the week of 22 August 2022 in order to assist with implementation.
37. 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.
38. To ensure there are no unintended consequences of the approach and that the Immigration Leadership Team is regularly updates on the immigration risks this presents, targeted post-decision risk monitoring and review (RMR) activity will be conducted across a sample of the decisions made during this period. Risk and Verification will commit three FTE to conducting this work and anticipate this will allow for 5 per cent of the total roles approved at job check to be samples. Risk and Verification will provide weekly high-level updates on the findings to Immigration Leadership team. A more fulsome report on the outcome of the RMR activity will be presented in the final week of September.

IMPLEMENTATION OF ADEPT BACK END FUNCTIONALITY

39. The full back end functionality in ADEPT is expected to be deployed on the weekend of 17 September. INZ has had the opportunity to review the Immigration Officer activities that will be generated in the work visa application and refine them to reflect some of the recommendations made in this memo.
40. In the memo entitled 'Automating approvals of work visa applications under the employer assisted work visa policy', you agreed to the recommendation that the job check validation and the worker eligibility activities will have manual assessments for each work visa application.
41. As a result of the recommendations in this memo concerning the job check validation, it is proposed that the manual assessment of this activity in ADEPT is automated for all



applicants except for those who are employed by an accredited employer who is in a triangular or franchise business model.

42. Where there is a specific risk associated with a particular industry, it is intended that this will be addressed through the Azure BRE rules which will generate a risk activity if further scrutiny is required.
43. This means that the job check validation will be automated for all applicants except those employed in a triangular or franchise model or where the applicant declares that the terms and conditions under which they are employed are not consistent with those that were approved in the job check approval letter.

POTENTIAL RISKS AND IMPLICATIONS

44. There are potential reputational and political risks for MBIE to consider if INZ is not consistently checking the evidence provided by migrants. On balance, these risks are offset by the benefits of enabling quicker processing of these visa applications to New Zealand employers and migrant applicants, the fact that higher risk applicants will still be subject to verification activity, and that AEWV places greater onus on an employer to ensure they are meeting the instructions. This will be supported by RMR activities.

LEGAL AND POLICY IMPLICATIONS

45. The policy intent was for the migrant assessment to be a relatively light touch check of the role and pay rate, and the advertising. However, the form collects extensive structured data so that in the absence of clear guidance, it is not conducive to a light touch assessment. The current set up for the work visa assessment prompts immigration officers to review the employment agreement in detail rather than just confirm the agreement meets the job check parameters.
46. It is not intended that immigration officers should be checking and 'approving' employment agreements as meeting employment law as part of the assessment of the AEWV application, 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 full effect.
47. If agreements are not vetted, then INZ communication of any successful AEWV application will be clear that it does not constitute certification that the employment agreement is compliant with the employment law of New Zealand – this remains the employers' obligation and employees should seek their own independent advice on the agreement. To support this approach, systems should be put in place to refer identified significant issues with employment agreements to the Labour Inspectorate.
48. As with the job check, MBIE Immigration Policy supports an informed risk tolerance approach to processing the work visa step that will be recalibrated over time to allow for appropriately timely processing as informed by revealed risks of misleading or mistaken declarations.



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49. At the work visa stage the test shifts from the job to the migrant filling the role. This puts more onus on checking the migrant has the skills that were advertised for so lower skilled migrants are not being appointed to roles they are not qualified for, or have the experience to perform (which undermines the Rebalance goals).
50. The proposed streamlining will accept more documentation regarding skills, qualification and experience at face value. The Christchurch site visit indicated a high risk of immigration officers spending long periods trying to confirm skills for low risk applicants so streamlining is appropriate. The skill test was also more important for below median wage roles that are no longer available to migrants, but it remains important for detecting migrant inflation and justifying the collection of evidence in the first instance. However, the interim proposals are acceptable.
51. Policy has suggested considering whether the productivity gains that are needed to be made to get the product in flow would accommodate a quick 'face value assessment' check of the evidence provided for required skills/qualifications for dairy farm managers and chefs. These roles have specific Government skillset/ qualification requirements, known sectoral issues (stakeholders have admitted they have inflated dairy roles in the past for example), and there may be downstream expectation management issues for residence applications in the case of dairy managers. Policy suggested that this could be a face value assessment of the evidence of skills provided (e.g. commercial farm experience noted), without requiring immigration officers to attempt to validate work experience or qualifications were genuine unless something was obviously dubious. Policy understands that INZ is unable to quantify the impact this would have on processing timeliness, so understands the INZ preference not to include these additional tests at this time.
52. Policy has also noted that plans need to be started soon to identify the initial steady state risk tolerance settings and put in place appropriate training arrangements for immigration officers and system tools. The way the policy had been initially implemented on the job check and work visas was more onerous than intended. The interim settings are much lighter touch, and some more thorough spot checking is needed to inform whether this is too light or an appropriate ongoing standard.

COMMUNICATION APPROACH

53. The Operations Support team in BVO will follow their standard process for communicating changes to processing staff. This will include meetings with Christchurch office leadership to talk through the changes, and a VisaPak to staff processing AEWV applications. Risk and Verification leadership will also communicate to staff as the approach is implemented and refresh the guidance in the risk SOP.
54. To acknowledge the significant adjustment this will be for staff, an Implementation Team will travel to Christchurch to support staff and managers.



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55. INZ Comms and 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 relationship managers if necessary.

QUALITY CONTROL CHECK APPROACH

56. There will be no change to the quality control check for work visa applications.

CONSULTATION

57. 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
- **Privacy of natural persons** Christchurch 2
- Michael Carley, Principal Advisor to the General Manager Border and Visa Operations
- Andrew Craig, Manager Immigration Policy
- **Privacy of natural persons** Immigration, MBIE Legal
- Dan Smidt, Head of 2021 Resident Visa
- Geoff Scott, National Manager Risk and Verification
- **Privacy of natural persons**
- Steve Cantlon, Manager Quality and Assurance.

NEXT STEPS

58. If agreed, work to implement these changes will be carried out in the week beginning 22 August 2022.
59. The Deputy Secretary will advise the Chief Executive and the Minister of Immigration of her intentions.
60. 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.