



MEMO

DATE 30 September 2022

TO Richard Owen, IMT Controller

FROM Jeannie Melville, Head of AEWV and Acting IMT Process Lead

SUBJECT **REVIEW OF OPERATIONAL LEVERS TO ENHANCE ACCREDITED
EMPLOYER JOB CHECK AND WORK VISA PROCESSING**

PURPOSE

This memo seeks your approval to extend the temporary adjustments to the manner in which immigration officers assess Accredited Employer Job Check and Employer Accredited Work Visa applications against immigration instructions 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 on 27 July 2022 the Deputy Secretary Immigration (DS) signed a general instruction for the processing of job check applications and that on 23 August 2022 the DS signed a further general instruction for the processing of work visa applications.
- b) **Note** that in both memos for supporting each of these general instructions, there was a requirement to review the approach after a period of time. This period of time was 4 weeks in the case of job checks and before the end of September in the case of work visas. The Visa Processing Taskforce was due to undertake this work, but it was subsumed into the IMT.

Noted

Noted



- c) **Note** that the back end functionality in ADEPT went live on 19 September, 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

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

Noted

- e) **Agree** that the approach for both the job check and the work visa gateway will be extended to the end of February 2023 and a review will be completed before any request for any further extension is made.

Friday 2nd December 2022

Agreed / Not agreed / Discuss

Privacy of natural persons

Jennie Melville
Head of AEWV and Acting IMT Process
Lead
Immigration New Zealand

Richard Owen
IMT Controller
Immigration New Zealand

30 September 2022

~~..... September 2022~~

6th October 2022

The date of Friday 2nd December aligns with the completion of IMT as is commonly known.

Further extensions past this date will need to be submitted to the Deputy Secretary, Immigration.

6/10/2022

Note: It will be reported that Policy considerations are looked at alongside any other R+V findings so that a holistic view is taken as to any future decisions around General Entrances and any other settings around Accredited, Job Checks & Work Visas.



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 continues to be 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 is initially taking a facilitative, “educate over enforce,” approach to smooth the transition to the new policy. This time-bound approach is focusing 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 accreditation gateway, the job check 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 and demonstrate that there are no suitable New Zealanders available to fill the position.
7. The third gateway of AEWV is the work visa where migrant workers are invited by their employers to apply for a work visa.
8. 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.
9. Given the unprecedented labour market environment (very low unemployment and high skills shortages across most occupations), INZ has put in place pragmatic solutions to ensure that the second and third gateways of the AEWV are as streamlined as possible as the policy is bedding in and so that INZ can meet its expected processing times.
10. The intention of these solutions is to provide employers the confidence and opportunity to offer roles to migrants, and focus effort on education of employers 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 its being embedded, such as the advertising requirements.

KNOWN IMPACTS OF GENERAL INSTRUCTIONS

12. The purpose of issuing the general instructions on processing in the job check and work visa gateways was to ensure that immigration processing was not a barrier to the reopening of the border and migrants filling key positions in the labour market. It was a temporary measure to support the bedding in of the new system and processes and to ensure that INZ was able to meet processing expectations under the three AEWV gateways.
13. As at 27 July, the job check gateway had been available for just over 5 weeks. In that time, 2896 job check applications had been received, but only 329 (11%) had been completed. As at 17 September, 8816 job checks have been received with 7909 (90%) processed. Of those completed, 62% have been completed in 10 days.
14. As at 23 August, the work visa gateway had been open for just over 7 weeks. In that time, 2284 work visa applications had been received, but only 139 (6%) had been completed. As at 17 September, 7693 work visa applications have been received with 3434 (45%) of these processed. Of those completed, 91% have been completed in 20 days.
15. The general instructions for job check and work visas have allowed immigration officers to assess applications more quickly and give them the confidence to make decisions.
16. Given the variations in approach to Quality Checks (QCs) being undertaken for both the Job Check and Work Visa gateways, there is limited information available to draw on any data trends that have resulted following the implementation of the General Instructions. Anecdotally there was no obvious increase in the amount of re-work required as this was off-set by two main factors. These were new staff continuing to gain experience and not being required to have 100% of applications QCed and fewer QCs required as a result of the General Instructions.
17. The Risk Monitoring and Review process developed to support the Accredited Employer policy (AERMR) will ensure that monthly post decision reviews of employers are conducted to inform ongoing immigration risk analysis and findings reported through INZ governance groups to inform risk tolerance and controls. AERMR represents a key element of the implementation of the broader Immigration Risk Model approved to identify employer risk and inform automation over time, focusing INZ resources on gathering data, insights and intelligence on those employer groups that present risk.
18. The focus of AERMR is the collection of trends and data for analysis over time and is not focussed on reporting back on short-term changes. Therefore, in addition to the AERMR model, R&V undertook to conduct further targeted RMR activity to support the implementation of the changes approved through the two General instructions in September 2022 to inform any decision to extend the approach. Due to delays in the provision of the required data to R&V, reporting on the outcome of this activity is not yet available but will be provided on or before 29 September 2022.



REVIEW OF JOB CHECK DESIGN

19. Following the General Instruction on job check processing, the Visa Processing Taskforce was asked to put together a plan for reviewing the job check design. This plan was to encompass the instructions, the decision diagram used to design the automation flows in ADEPT, the assessment concerns that dropped out for immigration officers to assess and the risk settings. 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. Provided that the instruction is consistent with immigration instructions, immigration officers are legally bound to follow the general instruction.
20. This programme of work has now fallen to the IMT to direct. A workshop will be held on 7 October to review the job check design and suggest improvements to the policy, instructions and design of the category in the ADEPT system.

IMPLEMENTATION OF ADEPT BACK END FUNCTIONALITY IN WORK VISA GATEWAY

21. The full back end functionality for work visa processing in ADEPT was 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.
22. It should be noted that the back end functionality moves from a case based model (where an immigration officer has end to end control of the progress of application) to an activity based model (where the Immigration officer will complete "activities" which will relate to a specific component of the application. In line with the ADEPT design, where activities are able to be automated (based on declaration and no adverse history or warnings), they will be.
23. The job check validation activity will be automated for all applicants except for those who are 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.
24. 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.
25. The worker eligibility activity will continue to require a manual assessment by Immigration officers. However the manner in which this is done will be informed by the General Instruction signed by the DCE on 23 August 2022.



POTENTIAL RISKS AND IMPLICATIONS

26. There are potential reputational and political risks for MBIE to consider if INZ is not consistently checking the evidence provided by employers and 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

27. 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. However, the form for both of these gateways collects extensive structured data so that in the absence of clear guidance, it is not conducive to a light touch assessment.

28. 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.

29. 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.

30. 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.

31. Policy considered the streamlining steps for both the job check and work visa as appropriate for the initial opening of the visa while new systems were being bedded in and visa processing was in flow. However, the initial risk tolerance rules were based on quick discussions about previously known risk areas and were not intended to be extended for 6 months without review given for some products very limited assessment is taking place. Given the focus remains on getting visa processing in flow and there is a commitment to a full review of the risk tolerances before a further extension is granted in February policy considers a further extension is appropriate.

32. Policy recommends a fully articulated plan with clear milestones and accountabilities is developed through the IMT for collecting the relevant information on visa processing, reviewing the streamlining rules in place, and identifying a new set of general



instructions or guidelines. This should draw on information from processing (how often are issues being detected and where), info from post decision assessment, analysis of critical risk points, and insights from experience with other work visa products. It should also include options analysis of impacts on processing productivity and staffing level requirements so informed trade-offs that balance efficiency and appropriate maintenance of the policy goals and relative risk.

COMMUNICATION APPROACH

33. 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.
34. 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.

CONSULTATION

35. 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
 - Karen Bishop, Acting General Manager Verification and Compliance
 - Alejandra Mercado, Manager Operational Policy
 - Sarah Clifford, National Manager Border and Visa Operations
 - Privacy of natural persons Head of Operations Christchurch 2
 - Privacy of natural persons Principal Advisor to the General Manager Border and Visa Operations
 - Andrew Craig, Manager Immigration Policy
 - Privacy of natural persons Special Counsel - Immigration, MBIE Legal
 - Dan Smidt, National Manager Risk and Verification (Acting)
 - Privacy of natural persons, Manager Onshore Risk and Verification
 - Privacy of natural persons, Manager Quality and Assurance.

NEXT STEPS

36. If agreed, communication on the extension of these two general instructions will be carried out in the week beginning 26 September 2022.



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37. The IMT Controller will advise the DS who will advise the Chief Executive and the Minister of Immigration of her intentions.
38. Targeted post decision risk monitoring and review will need to be completed to identify any unintended consequences and could be used for referral to other agencies e.g. Labour Inspectorate. R&V have noted that additional resourcing could be required to maintain this approach fo the extended period that is proposed.