MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

MEMO

DATE	27 January 2022
TO	Stephen Vaughan, Chair of Risk Control Group
PREPARED BY	Privacy of natural persons , Business Analytics and Targeting
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SUBJECT	**AEWV VISA RULES REVIEW**

PURPOSE

The recommendations in this report support planning to address processing of Accredited Employer Work Visas (AEWV).

RECOMMENDATIONS

It is recommended that RCG:

a) **Agree** to delete the six high risk rules listed in Appendix One.

Agree/Discuss

b) **Agree** to change one high risk rule to medium risk listed in Appendix Two.

Agree/Discuss

c) **Agree** to exclude occupations requiring registration from 18 rules listed in Appendix Three.

Agree/Discuss

d) **Note** that the Triage Stakeholder Group has not endorsed the recommendations listed in a, b and c.

Noted/Discuss

e) **Note** the ongoing impacts of data availability on the analysis that informs the Triage risk control.

Noted/Discuss

f) **Note** that a manual process will be required for Border and Visa Operations (BVO) to identify applications which no longer trigger the rules outlined in these recommendations.

Noted/Discuss

g) **Note** that rules relating to warnings, decline codes or previous periods of unlawfulness are not in scope of this review.

Noted/Discuss

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Stephen Vaughan
Chair Risk Control Group
Chief Operating Officer
Date: _____

BACKGROUND

1. The Risk Control Group (RCG) approved the implementation of risk rules on 7 July 2022 for the migrant gateway that aligned with the Risk Monitoring & Review Governance Group (RMRGG) approved memo 'Pre-Decision Immigration Risk Management Approach to the Migrant Gateway for the Accredited Employer Work Visa'

2. Currently, approximately 60% of AEWV applications are Triaging as high risk, which is a higher proportion than historic Triage proportions for work visa products pre-Border closure.

3. The change in proportions reflects the changed cohort applying for the AEWV visa product. This has been influenced by the changes in the labour market and the impacts of Residence Visa 2021 that gave residence pathways to applicants who would have been applying for work visas from onshore. INZ is seeing a higher proportion of first-time work visa applicants applying from offshore that meet profiles that historically were high risk.

4. This review was initiated to ensure that the work visa rules deployed in the Azure BRE are aligned with the AEWV policy intent. Policy have communicated that intent as follows:

    "Under Essential Skills policy and the original design of the AEWV framework, the main purpose of the skills and experience check was to ensure that employers were not appointing a migrant worker with lower skills and experience than they required from New Zealand applicants. This could be verified in cases where MSD had referred applicants, as employers needed to provide reasons why those referrals were unsuitable. Under the new AEWV settings, informed by the immigration rebalance, MSD does not refer applicants and employers are not required to provide any details about New Zealand applicants or why they were unsuitable - we take it on trust that no suitable New Zealanders applied, so skills and experience checks are no longer necessary for this purpose. We therefore think it is sensible to refocus skills and experience checks on areas where there are specific risks., e.g. non-genuine jobs or wage inflation (an unqualified candidate may be evidence of this), or inflation of skills and experience to access residence pathways (e.g. Green List work to residence)."

5. We note that AEWV is one of Immigration New Zealand's top three organisational priorities.

6. Analysis found that there were no rules that solely focused on the risk area of skills and experience. The review therefore was expanded to consider other rules where skills and experience was listed as key risk area and where occupation registration may be mitigators of risk. This means that there is likely to be residual risks that relate to other risk areas other than skills and experience that may not be managed as a result of the proposed changes.

7. BAT analysed the risk rules which have triggered from the go live of the Azure BRE on 21 September 2022.

CAVEATS

8. Data to inform risk targeting for AEWV in a post-border reopening environment is limited.

9. Triage has historically used decline decisions as a proxy for indicating the presence of risk. The low decline rate for AEWV means that using this to derive insights for targeting of individual rules is not possible.

10. A General Instruction has been in place for AEWV since 2 September 2022[1]. This includes advice on W2.10.1 of the Instructions, which incorporates an assessment on whether applicants are suitably qualified through training and / or experience. This is likely to have impacted the reliability of the decision data to indicate the presence of risk.

11. The presence of a General Instruction means that changes to rules may limit the operational benefits of changes due to applications have a streamlined assessment.

12. Maintenance of the law

   . At present there is insufficient data available to indicate what risk treatments have been undertaken by an IO which could further inform the rule review process. Further analysis is underway which aligns with previous analysis on Risk Area data capture to assess the extent to which this structured data is being completed.

13. BAT has used historic data for the work visa products in 2019. We note that this will not be representative of the three-gateway approach. In the absence of other reliable data, it is being used as a proxy when considering the proposals to delete rules.

14. Maintenance of the law
   However, this data has a time lag. Analysis previously found that the average time for an adverse outcome to become apparent after an approved work visa was 7.2 months[2]. As this time has not lapsed since this visa product was introduced, this data has not been considered for 2022 applications as it is unlikely to drive insight.

15. Risk area data was intended to help inform risk targeting, but it has not been collected consistently and cannot currently be used for analysis[3].

16. ADEPT cannot reinitiate applications to remove rule triggers. An ongoing manual process will be required to identify on-hand applications which no longer triage as high risk. This manual task will add an operational burden to BAT and the relevant BVO offices.

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[1] Temporary General Instruction on manner of processing Accredited Employer Work Visa applications, Visa Pak, Issue 521, September 2022
[2] Adverse Outcomes and Risk Indicators for Triaged Temporary Entry Applications, 23 May 2019, Mako ID: 91967744.
[3] Risk Data Capture Impact on Risk Controls Memo, RCG, 1 December 2022.

17. Analysis has not considered rules relating to previous declines, alerts and warnings or previous unlawful periods. Those rules have all recently been reviewed and changes implemented in-line with RCG decisions.

RISKS AND RISK AREAS

18. The proposed changes in this paper will remove up to 15 percent of applications that present risk from the high-risk cohort. This reduced scrutiny will impact Immigration New Zealand's ability to monitor and address the risks presented and prevent harm to the immigration system.

19. The attribution of tolerance levels to risk areas is a new process for INZ and is not yet supported by robust data collection. Tolerance levels by risk area may not be accurate. The classification of risk areas to rules is retrospective to existing rules and relies on a qualitative review of risk advice and previous recommendation reports.

20. As the risk classifications introduced for ADEPT are new and how we apply risk areas needs to mature. For example, it may be indicated in previous reports or assessment notes that fraudulent documents have been supplied. This could be driven by the applicant not being bona fide (RA5). It may also denote that they have supplied false and misleading information and do not meet the character requirements (RA8). Fraudulent documents could have also been facilitated by third parties and as such organised fraud may be a factor (RA1). Where is it indicated that the documents of concern relate to qualifications, licenses, or employment references we have used RA15 Skills and/or Experience.

RECOMMENDATIONS AND PROPOSED CHANGES

21. BAT have reviewed all rules which have triggered on AEWV between 21 September 2022 and 18 December 2022. This wider approach was considered appropriate, as a focus solely on a selected number of rules, rather that considering their function and place within the wider cohort of work rules, could be seen to create bias in any decisions made.

22. Recommendations are based on decline, risk indicator and adverse outcome rates from 2019. Maintenance of the law

23. It is proposed that six rules are deleted, one rule is changed, and Maintenance of the law are excluded from eighteen rules. This will decrease operational impact.

24. The rules proposed for deletion focus on Maintenance of the law Instances of organised immigration fraud for these rules appear more likely to be historic than for other rules linked to this risk area.

25. Maintenance of the law This saw the deletion of the visa specific risk rule while retaining M1022 that covers the emergent risks in this market.

RESTRICTED

26. M0919 is proposed to move from high risk to medium risk. This rule was put in place in later 2019. It has not been reviewed because of the border closures. Maintenance of the law

27. The proposed registered occupations exclusions are based on the SM10.5 definition of the Operational Manual and would change if this is updated. The occupations that meet this definition include occupations that are both included and excluded on the Green List.

28. The proposed changes would reduce the on hand high risk triggers by approximately 15 percent.

ANALYSIS

29. Analysis of decline rates shows that decision making has significantly changed between 2019 and 2022. The overall decline rate for work visas in 2019 was 5.9 percent. The decline rate for AEWV in the period under analysis was 0.2 percent. Out of 14,936[4] decided AEWV applications, 35 were declined.[5]

30. Based on this preliminary analysis, the Triage risk rules for AEWV do not appear to be as effective as pre-Border closure risk management for the work visa products. Further review of rules and risk treatment is required and will be presented to RCG.

CONSULTATION

31. The Triage Stakeholder Group were provided with a draft of this memo and an out of cycle meeting was held on 19 January 2023. The TSG did not endorse the recommendations of this paper.

32. The TSG had concerns about the absence of data to inform the decision, with a particular reference to the absence of risk treatment data.

33. The Triage Stakeholder Group members also raised concerns about the degree to which risks in the migrant based AEWV product are being managed. It was noted that AERMR has a primary focus on the Employer and that there was no recommendation to monitor the impacts of the proposed changes.

34. Feedback was received from a TSG member about the long-term harm and costs that may be incurred in other parts of the immigration system due to failure to identify and manage risks in the initial work visa processing i.e. increased compliance costs, asylum claims, IPT claims, deportation costs and heightened risk of migrant exploitation.

35. Consultation was also undertaken across Onshore and Offshore Risk & Verification SMEs.

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[4] This figure is based on decided applications, from the period under analysis, excluding applications that were withdrawn.
[5] Based on the overall decline rate from 2019, we would expect more than 881 applications to have been declined in 2022.

36. Their feedback included a recommendation that the initial proposal to use the Green List[6] occupations as exclusions be changed to only exclude occupations that require registration. As such the proposal was adjusted.

37. Feedback from RVMs also noted concerns about the absence of data to inform the recommendations. The need for further intelligence products was noted for some risk rules.

38. They also provided feedback on the assessment of skills and experience providing insight into the wider bona fide assessment and helps mitigate the category from being misused by either the migrant or employer. It was indicated that these checks assist in maintaining the integrity of the system and protecting against migrant exploitation. It was noted that the provision of fraudulent skills and experience documents can be an indicator of organised Immigration Fraud.

39. Specific feedback on named rules was also supplied. With indications of isolated incidences of concerns from referrals, post decision checks and M5 Partners for rules proposed for deletion.

APPENDICES

Maintenance of the law

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[6] As per Appendix 13 of the Operations Manual.

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