

Accredited Employer Work Visa Review

Final Report

Confidential

Prepared by Murray D Jack

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Accredited Employer Work Visa Review

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Accredited Employer Work Visa Review

1. PURPOSE AND APPROACH

Purpose

The Ministry of Business, Innovation and Employment (MBIE) requested this review of the design and implementation of the Accredited Employer Work Visa (AEWV) with a focus on whether the operational policy needed to deliver the underlying policy intent was appropriately set up, and to generate “lessons learned” for the design of future immigration policy changes.

The scope of the review does not include:

- Decisions on the AEWV policy itself, including the Government’s labour market objectives and the Immigration Re-balance
- The underlying policy rationale to move to a consolidated employer-accredited scheme
- Detailed examination of the implementation of the scheme including the ADEPT (technology) platform
- Specific decisions taken to enable processing of high priority visas.

The review may comment on the design of the policy in terms of its ability to be implemented in a way that maximises the policy’s effectiveness, efficiency of delivery, customer centricity and management of risk.

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1. PURPOSE AND APPROACH (Cont'd)

Approach

The review was conducted over a 10 day period commencing on 18 October 2022 and comprised:

- Interviews with MBIE and Immigration New Zealand staff, and Business New Zealand
- Review of relevant policy papers and documentation setting out the design and operation of the policy.

A draft report was to be submitted by 28 October 2022 with a final report submitted by 25 November 2022.

Given the timeframe for the review the conclusions and recommendations are in the nature of observations and sign-posts, some of which would necessarily require more detailed analysis for any implementation.

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2. OVERVIEW OF THE AEWV DESIGN

Objectives

In December 2018 Cabinet agreed to consultation on a new employer-assisted gateway system for temporary visas and extended regional workforce planning. Following this consultation Cabinet agreed in November 2019 to final proposals for the new system, which would be designed to support the Government's wider labour market objectives by ensuring that:

- Employers are placing more New Zealanders into jobs, which help businesses to grow and thrive and result in better jobs for New Zealanders
- Foreign workers, when they are employed, are not exploited and have wages and conditions that are consistent with New Zealand norms.

The proposal would also reduce complexity and make it easier for employers and migrants to navigate by combining the six existing visa pathways into one.

The May 2022 Cabinet paper outlining proposed fees further elaborates the objectives of the AEWV policy to:

- Encourage businesses and regions to train, upskill and hire New Zealand workers
- Make it easier for businesses and regions to fill genuine skills shortages
- Combat migrant exploitation and misuse of the Immigration System
- Reduce New Zealand's reliance on lower-paid temporary workers, better address our productivity, skills and infrastructure challenges and increase the skill levels of migrants.

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2. OVERVIEW OF THE AEWV DESIGN (Cont'd)

Scheme Framework

The employer-assisted approach comprises three gateways, each with their own settings or checks. Taken together the settings for these gates are designed to give effect to government policy.

The initial policy settings for the gates approved by Cabinet in November 2019 were subsequently amended by the Immigration Re-balance, which was a component of the Government's Reconnecting New Zealand initiative, launched in 2021 as part of the reopening of New Zealand's border. This Re-balance responded to the state of New Zealand's labour market and skills and staff shortages faced by employers.

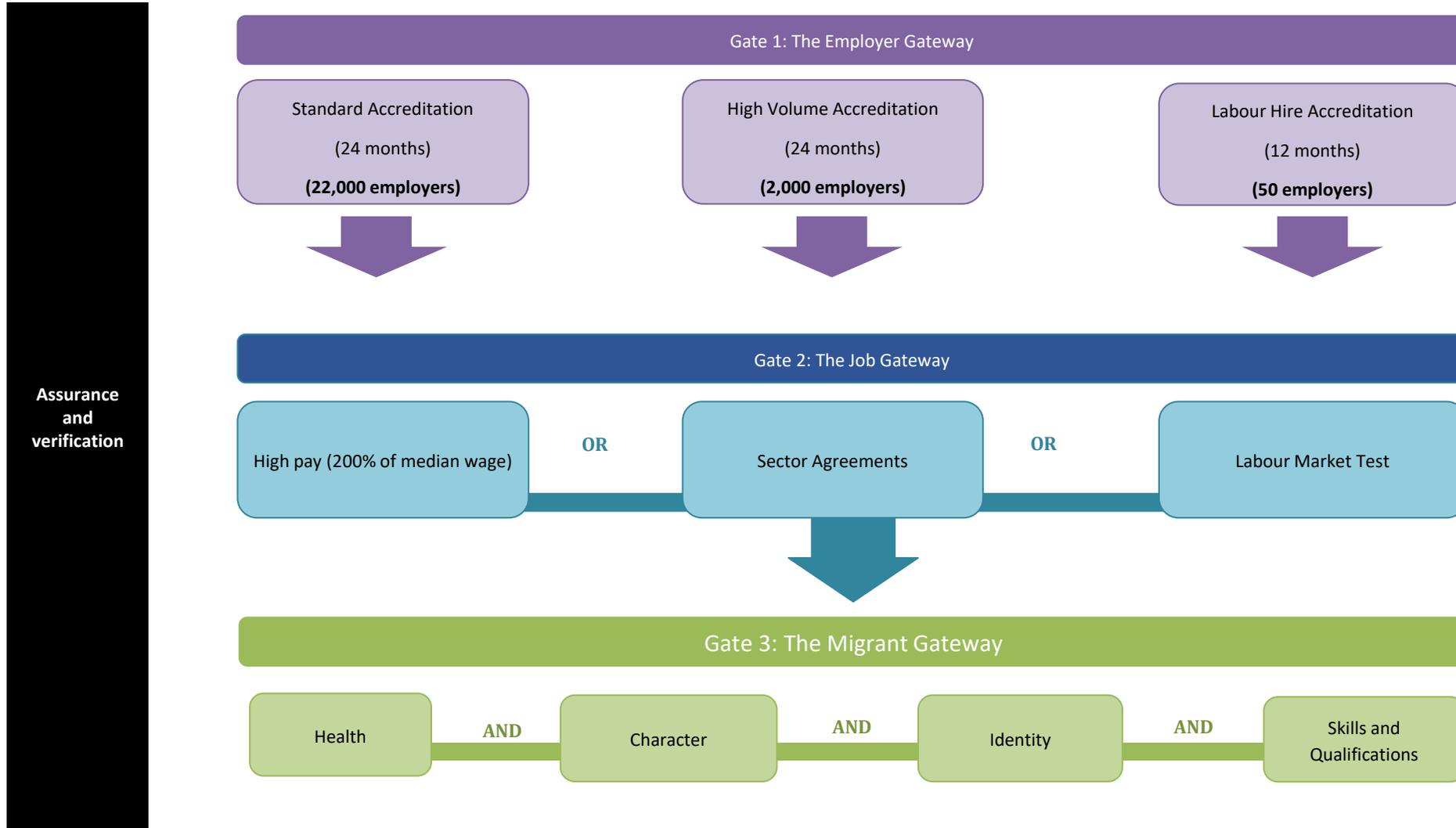
The principal changes made included the following:

- Removal of regional differentiation
- Removal of requirements for employers to check skills with MSD
- Removal of requirements for provision of training and improvement in terms and conditions for High-Volume employer accreditation
- Introduction of a Green List of jobs which would not require advertising

These changes removed some complexity from the scheme.

The framework as approved by Cabinet in 2019 is represented in Figure 2.1.

2. OVERVIEW OF THE AEWV DESIGN – Figure 2.1



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2. OVERVIEW OF AEWV DESIGN (Cont'd)

Current Performance

The AEWV scheme was introduced in phases as follows:

- Employer Accreditation 23 May 2022
- Job Applications on 20 June 2022
- Visa Applications on 4 July 2022

The current application statistics as at 25 October are:

		Employer	Job	Migrant
Applications Received		13,437	12,965	16,879
Applications Decided		13,023	11,860	7,358
Average Days to Process		5	5	12
Declines		1	10	27

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2. OVERVIEW OF THE AEWV DESIGN (Cont'd)

Observations on the framework

1. Underlying the objectives of the AEWV approved by Cabinet sits a focus on responsible employers hiring suitable migrants for suitable jobs that are unable to be filled by qualified and available New Zealanders. The gate concept provides a framework for decision-making that enables implementation of the policy, both in terms of entry and on-going compliance. The settings for each gate can be calibrated in response to policy and operational decisions, for example looser or tighter requirements for employers, jobs and migrants. As a result, the framework can be an enduring construct for managing work visas.
2. The initial settings envisaged in the policy were subsequently varied as a result of the Immigration Re-balance in response to labour market challenges. Employer and job settings were relaxed significantly, in part because further work indicated they would be difficult to implement. Migrant settings did not materially change.
3. Whilst the framework is fit-for-purpose for the policy, it did take time to establish (employer accreditation processes, technology support etc). This could have affected the speed with which the Immigration Re-balance was implemented.
4. Employers, migrants and other stakeholders were consulted as part of the initial policy development, but this was less structured as the changes from the Immigration Re-balance were developed. Maintenance of the integrity of decisioning, verification and compliance seemed more prominent than ease of use by employers and applicants.

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3. REVIEW OF THE GATE SETTINGS

In this section the current settings for each gate are reviewed against the intent of the policy as adjusted through the Re-balancing initiative.

The Employer Gate

The purpose of the Employer Gate is to ensure non-compliant employers are not able to hire foreign workers.

The Employer Gate is segmented into three categories; Standard, High-Volume and Franchise, with Standard and High-Volume further segmented into normal and Triangular employment relationships. The Standard segment is for employers with demand for five or fewer foreign workers. All other employers who are not Franchise organisations are High-Volume. The accreditation requirements are the same for Standard and High-Volume employers (other than those with Triangular arrangements), with Franchise organisations subject to more stringent requirements. Standard and High-Volume employers must be operating a genuine business, have no recent history of non-compliance, and take steps to minimise exploitation.

Business operation is verified through the Companies Office (NZBN), and non-compliance through reference to the Labour Inspectorate's Stand Down List. This process is automated with any manual review limited to ensuring applications are properly completed. There is no check of steps taken to minimise exploitation at the accreditation stage.

Employers must complete an initial application with a re-application in 2023, and then subsequent reapplication every two years. It is noted the requirements for re-application are under review.

It was anticipated that around 22,000 employers would be Standard, 2,000 High Volume and 50 Labour Hire. Currently 13023 applications have been received.

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3. REVIEW OF THE GATE SETTINGS (Cont'd)

Observations on the Employer Gate

1. The removal of any differentiation of standards between the Standard and High-Volume segments reduces the justification for retaining them. A reason given for retention is that the Standard segment has a lower per employer cost of verification, calculated at 55% of the cost for High Volume. Verification costs (driven by site visits) will vary by employer but using the Standard and High-Volume segmentation to determine fees is arbitrary, and arguably not the appropriate basis for fees.
2. The requirement for re-accreditation in 2023, and then every two years, is excessive given the light-handed requirements for accreditation. It is noted that only one employer has so far been declined accreditation. Accredited employers who are found to be in breach of the terms and conditions of hiring foreign workers can have their accreditation rescinded at that time.

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3. REVIEW OF THE GATE SETTINGS (Cont'd)

The Job Gate

The purpose of the Job Gate is to ensure there is a genuine need for foreign workers and they will be provided a minimum set of terms and conditions for their employment.

There are three pathways within the Job Gate; one allows for a pathway to residence for high paid migrants (200% of the median wage), a second allows hiring below the median wage through sector agreements, with the final pathway being hiring at the median wage through a labour market test (unless on the Green List).

Sector Agreements have been implemented as carve outs from the standard pathway. They provide for migrant employment below the median wage and may be subject to caps and other sector specific terms. There is no path to residency and there is a stand down after two years.

The following checks are applied:

- A labour market test: this involves ensuring that the roles sought have been advertised. There are requirements to specify the wages or salary offered and requirements of the role, as well as requirements as to timing. Roles that are included on the Green List are not required to be advertised but there are minimum qualification or skill requirements.
- That the average hourly wages/salary on offer matches (or exceeds) the median hourly wage (as published by Statistics New Zealand).
- That the terms of the proposed employment agreement comply with New Zealand law (this check has since been relaxed)

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3. REVIEW OF THE GATE SETTINGS (Cont'd)

Observations on the Job Gate

1. The different terms attaching to Sector Agreements (carve outs) effectively creates boutique gateways. This will inevitably lead to increased costs to serve, which will be passed on to employers through the fees policy. The intent is to phase out Sector Agreements over time as employers are incentivised to improve terms and conditions. As such there is uncertainty about the future of such agreements which may affect the extent to which they are utilised.
2. Very high-volume employers will face significant costs for the job checks, even if they batch jobs within roles, as they have needs across the whole country.
3. The policy requirement that requires Immigration Officers to review employment agreements for proposed job roles is not required. All employers must comply with New Zealand law for all their employees and this is subject to oversight by the Labour Inspectorate. The review of employment agreements is itself a specialist task typically requiring legal expertise. There have been instances where early reviews resulted in employers having to prepare specific agreements for foreign workers. It is understood the review requirement has now been relaxed, however, it still appears in system functionality and Immigration Instructions.
4. The policy proposed removing the requirement to utilise ANSCO data as part of the Job Check process as it is materially out of date and does not reflect the current labour market. The job check process still utilises ANSCO data to categorise jobs, although employers effectively set the job specifications for the roles required. Statistics New Zealand is developing a replacement categorisation system but until that is deployed ANSCOs use is sub-optimal.

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3. REVIEW OF THE GATE SETTINGS (Cont'd)

The Migrant Gate

The purpose of the Migrant Gate is to verify that the applicant meets the requirements for issuance of a work visa. These requirements were largely a lift and shift from the requirements under previous work visa schemes.

There are four checks undertaken:

- Identity: verification that the applicant is who they say they are
- Character: verification that the applicant is of good character, including security checks
- Health: verification that the applicant will not pose an unreasonable risk of burdening the health system
- Skills and qualifications: verification that the applicant has the requisite skills and qualifications for the role offered by the accredited employer.

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3. REVIEW OF GATE SETTINGS (Cont'd)

Observations on the Migrant Gate

1. The requirement to review skills and qualifications should be reviewed . With the use of the median wage as the principal setting for employment of foreign workers it effectively acts as a proxy for skills and qualifications. Employers are incentivised to ensure they are getting the skills they are paying for. Additionally, the job being advertised has already been reviewed. It is noted that experience to date indicates that most job rejections (of which there are currently only 45 out of 70,982 approved job positions) are for proposing to pay below the median wage. The qualification check process is also challenging for Immigration Officers particularly when an experience assessment is required. There would appear little risk to leaving the job match process to be reviewed as part of the on-going site visit and compliance programme.

Compliance and verification

It is a feature of visa design that a significant amount of verification is built into front-end processes and systems and ex-post review. The AEWV policy also envisaged a compliance and verification framework that involves site visits to employers. How this is to be implemented is still under development. It is noted that the Labour Inspectorate also has an employer visit programme and covers a similar scope of work targeted at compliance with labour laws more generally. Establishing a site visit inspection regime within INZ would duplicate existing capabilities within the Labour Inspectorate.

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4. IMPLEMENTATION

Background

Policy development in response to the Government's objectives for a re-set of immigration settings for temporary workers began in 2017 with consultation with stakeholders on proposals conducted in 2018. These proposals envisaged reducing the then six different temporary worker pathways to a single employer-led scheme. Changes were made following feedback from the consultation process and the final proposals were approved by Cabinet in November 2019.

Work continued on policy design through COVID 19, however, timelines and focus were affected by the closure of New Zealand's border and the work required to develop policy to manage arrivals during the period of closure.

As New Zealand's border opening neared the Reconnecting New Zealand initiative resulted in a review of immigration settings and the Immigration Re-balance resulted in a number of changes to the 2019 proposals approved by Cabinet. Changes continued to be made up until the new AEWV scheme was implemented in June 2022. The border opening and Immigration Re-balance affected timelines as initial settings were revisited to reflect changed labour market conditions.

The policy development and implementation for AEWV was a significant undertaking and the policy, although modelled on elements of pre-existing pathways, represented a significant shift in approach.

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4. IMPLEMENTATION (Cont'd)

COVID 19 Impacts

COVID 19 and the associated border closing had a number of impacts, some of them significant. In common with other agencies there was clearly disruption from the impact of lockdowns and working from home requirements. While inconvenient these were manageable.

A more material impact on policy and implementation was the changes to the labour market that resulted from COVID 19 and the border closure. This tight closure effectively shut down migration for all but the most essential workers. It also resulted in many foreign workers already in the country leaving, either voluntarily or if their visas expired and were unable to be renewed. Early predictions of significant unemployment did not prove accurate as the wage subsidies protected jobs (as intended). Consequently, as the economy recovered from the hard lockdowns and the global economy rebounded the labour market tightened materially and unemployment fell to below pre-COVID 19 levels. Employers now faced pervasive and persistent skills shortages. It also became apparent that New Zealand would be competing in a global market that was facing similar challenges. The Immigration Re-balance was the necessary response to this problem with the impact that the initial policy settings for AEWV were reviewed and aligned to the realities of the labour market. At the same time implementation needed to be accelerated.

With the reopening of the border Immigration New Zealand faced a surge in demand for visa processing more generally. Staffing resources were stretched (and continue to be). New staff were hired for the operation of AEWV resulting in an inexperienced workforce at the Immigration Officer level.

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4. IMPLEMENTATION (Cont'd)

Client Centricity

There was a comprehensive stakeholder engagement and communication strategy which was largely implemented. The consultation process as part of the development of the initial proposals in 2018 was comprehensive and some, but not all, of the feedback was incorporated in the final proposals.

Reference groups and forums were utilised as part of the detailed design process, including to the level of form design. There was little interaction with external stakeholders as part of the technology platform development and implementation. The general sense is that internal efficiency and protecting the integrity of the immigration system were prioritized over client centricity.

There was little consultation through the design changes (including none on the Green List) resulting from the Immigration Re-balance.

The approach is best described as one traditionally used for policy development and implementation.

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4. IMPLEMENTATION (Cont'd)

Implementation process

There was good collaboration between the MBIE LSE policy team and Immigration New Zealand's operational policy team in the early stages of development, but it became more ad hoc in the later stages as the Immigration Re-balance and tight time-frames combined to place pressure on delivery.

The approach was compartmentalised and not set up to integrate policy, technology and operational delivery with an end-to-end process design. As a result, there were some instances of policy intent not being implemented as envisaged, either in Immigration Instructions and/or the automated workflow designed into the platform. An example of this was employment agreement checking.

Whilst risk was a consideration in the development of policy there is not a Risk Management Framework that can guide settings and the operationalisation of policy into rules and Immigration Instructions. Such a framework can help ensure that policy intent is consistently embedded and calibrate the effort required in conducting specific tasks.

The accelerated timing for implementation and lack of an end-to-end approach likely contributed to the number of post 'go-live' issues that were experienced. It is noted that a number of these have been addressed by Immigration New Zealand, and that tweaks are continuing to be made in the light of experience.

The changes for service delivery at the process level were significant. Detailed analysis of the impacts of design was done later in the programme timeline resulting in the effort committed to the change management activities to support effective implementation at the service delivery level being less than required given the nature of the changes and the experience of the workforce.

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5. CONCLUSIONS

The AEWV policy and implementation was a significant undertaking in a challenging environment. Whilst the gateway framework developed in the initial policy agreed by Cabinet in 2019 remains in place there were several changes as part of the Immigration Re-balance work that were challenging to implement given the accelerated timing that resulted from the condition of the labour market and the reopening of the border. These changes, which have made the scheme less complex and easier to navigate for employers, continued up to the scheme's introduction.

The overall framework of the Employer, Job and Migrant gateways, each with their own settings in terms of requirements or standards, should be a robust and enduring construct, capable of responding to different policy objectives of governments. Whilst each gate can be viewed in isolation the overall alignment of the AEWV scheme to objectives requires that the three gates work together to achieve those objectives.

The policy development process had good levels of collaboration in the early stages. This became more difficult to sustain as changes evolved and timeframes shifted. As a consequence, there were some areas where alignment of operations with policy was not achieved. Changes have been made, more are under review, and others are recommended in by this review.

Whilst the programme responded to stakeholder feedback the approach was a traditional one of providing designs and seeking feedback, rather than an 'outside in' co-design approach involving stakeholders in design development.

The accelerated timing for implementation meant the programme was rushed and carried a higher level of risk into 'go-live', resulting in a number of issues post introduction. Immigration New Zealand responses have stabilised operations and the dashboard reporting indicates that processing times are currently within standards set. There are lessons to learn about the implementation approach that will be useful for future programmes.

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6. LESSONS LEARNED AND RECOMMENDATIONS (Cont'd)

Lessons Learned

These lessons learned are specific to the AEWV programme but some may have broader application.

1. Programmes with significant policy changes that have material impacts on operations and service delivery should be designed as an end-to-end process with a single business owner and governance sustained over the length of the programme and the complete end-to-end process. The single business owner should be accountable for the development and implementation of an effective and efficient design that reflects the policy intent.
2. Programme teams should integrate all of the relevant functions including policy, operations, technology and delivery and be sustained over the period of design and implementation.
3. Ensure there is sufficient investment in change management, training and post go-live support that is aligned to an assessment of the needs of staff.
4. The stakeholder engagement strategy for AEWV was a traditional consultative model. Given the AEWV design involved an ecosystem of employers, migrants and immigration advisors there is an opportunity to deploy a co-design approach that has the potential to provide greater innovation in solutions. This has been successfully applied in other agencies such as Inland Revenue and LINZ.

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6. LESSONS LEARNED AND RECOMMENDATIONS (Cont'd)

Recommendations

These recommendations should be seen potential efficiencies in the AEWV process. In some cases further work is likely to be needed to determine whether implementation is feasible as they may involve risk trade-offs that this review has not had time to consider fully.

1. Consider a full post-implementation review after 12 months of operations. The scope should review if the gate settings are operating effectively to produce the outcomes as intended by the policy design and conduct a risk-based assessment of opportunities for efficiencies from a customer (employer and migrant) perspective.
2. Review the employer segmentation used in the Employer Gate, including moving away from a Standard and High-Volume approach to one based on risk assessment. This may take some experience with employers (as part of the verification process). In the interim review the reasonableness of the fee settings for different volumes of workers.
3. Remove the requirement for re-accreditation of employers. This can be reintroduced if there is a shift to rely more heavily on accreditation and an associated relaxation of Job Check settings.
4. Review the basis of charging for high volume national employers.
5. Remove the need to review Employment Agreements and streamline advertising requirements as part of the Job Check.
6. Remove the requirement for a qualification and skills check in the Migrant Gate.
7. Consolidate relevant AEWV compliance activities into the Labour Inspectorate. The Labour Inspectorate site visits can be expanded to review compliance with foreign worker requirements and work together with Immigration New Zealand to investigate specific matters. Immigration New Zealand could refer issues to the Labour Inspectorate. This reorganisation would require appropriate resourcing and MoUs to be in place.

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6. LESSONS LEARNED AND RECOMMENDATIONS (Cont'd)

Recommendations

8. Build out data analytics to drive employer segmentation, triage application reviews, focus compliance and verification activities, and provide more comprehensive reporting.
9. Develop a strategy for the on-going review of Gate settings leveraging data from existing experience. Consider formalising a continuous improvement plan that balances internal efficiency, customer experience, achievement of policy objectives and risk.
10. Develop a risk management framework for AEWV policy that can be used to guide decision-making on gate settings, compliance and verification activities and rule setting. This will likely improve alignment of policy and operations and drive operational efficiencies.
11. Promote the robustness of the overall design framework for managing employer-assisted immigration with stakeholders to focus debate on settings within the framework that support policy objectives in an effective, efficient and client-centric way.
12. Consider an operating model for policy development with significant operational impacts that has the following features:
 - an overall end-to-end process design from policy through to delivery, incorporating systems and technology
 - Integrated teams including policy, operational policy, operations and technology
 - a single business owner with the responsibility for the end-to-end process, including leading resolution of trade-offs between efficiency, effectiveness and risk relative to policy objectives.