



MEMO

DATE	27 February 2023
TO	Stephen Vaughan, Chief Operating Officer
FROM	Jeannie Melville, Director Online Services
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 continued pressures in the labour market environment and the ongoing 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 signed a general instruction for the processing of job check applications and that on 23 August 2022 the Deputy Secretary signed a further general instruction for the processing of work visa applications.

Noted

- b) **Note** that in both memos supporting these general instructions, there was a requirement to review the approach after a period of time (four weeks for job checks and before the end of September for work visas). The Visa Processing Taskforce was due to undertake this work, but this was subsumed into the IMT.

Noted

- c) **Note** that the back-end functionality in ADEPT went live on 19 September, in that the job check validation activity was automated for all migrants except those that are employed by a franchise or triangular business.

Noted



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

Noted

- e) **Note** that the IMT Controller signed a memo extending the general instructions for job check and work visa to the end of February with review required before any request for extension is made.

Noted

- f) **Note** that there is limited quality data to draw upon, however, there has been no notable increase in rework required to meet quality standards as a result of the general instruction.

Noted

- g) **Note** that Risk Monitoring and Review activity undertaken by Risk & Verification on a sample of applications between August and December found that overall the presence of untreated immigration risk as a result of the approach to employment agreements (job checks) appears low (i.e. within INZs risk appetite).

Noted

- h) **Note** that Risk Monitoring and Review activity also found that overall the presence of 'Risk Not Managed' at the work visa gateway was 6.8 per cent

Noted

- i) **Agree** that the approach for both the job check and the work visa gateway will be extended to the end of June 2023.

Agreed / Not agreed / Discuss

- j) **Agree** to direct Risk and Verification to carry out further, more comprehensive review activity by mid-June 2023.

Agreed / Not agreed / Discuss

Jeannie Melville
Director Online Services, INZ
27 February 2023

Stephen Vaughan
Chief Operating Officer, INZ
28 February 2023



BACKGROUND

1. The Accredited Employer Work Visa (AEWV) is the 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 AEWV that was launched in July 2022.
3. INZ is taking a facilitative, “educate over enforce,” approach to smooth the transition to the AEWV policy. This 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 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. 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.



PROCESSING IMPACT OF GENERAL INSTRUCTIONS

11. 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.
12. As at 27 July, the job check gateway had been available for just over five weeks. In that time, 2896 job check applications had been received, but only 329 (11 per cent) had been completed. As at 22 February 2023, 25,247 job checks have been received with 24,072 (95 per cent) processed. Of those completed, 73 per cent have been completed in 10 days
13. As at 23 August, the work visa gateway had been open for just over seven weeks. In that time, 2,284 work visa applications had been received, but only 139 (six per cent) had been completed. As at 22 February 2023, 47,477 work visa applications have been received with 36,040 (76 per cent) of these processed. Of those completed, 52 per cent have been completed in 20 days.
14. 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.

REVIEW OF QUALITY IMPACT OF GENERAL INSTRUCTIONS

15. 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 implementation of the general instructions.
16. 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 per cent of applications QC'ed and fewer QCs required as a result of the general instructions.

REVIEW OF IMMIGRATION RISK OF GENERAL INSTRUCTIONS

Job check gateway

17. Targeted Risk Monitoring and Review (RMR) activity was undertaken by Risk and Verification on a sample¹ of applications to monitor the presence of immigration risk as an outcome of the changes approved through the two general instructions.
18. Checks were conducted weekly from August 2022 – November 2022. Targeted RMR focused on any disparity between the terms of employment (rate of pay) between job check and work visa, the occurrence of risk in employment agreements which might

¹ From 22 August to 18 September, a 95 per cent confidence level with a five per cent margin of error split by accreditation type and split by risk level was used. From 18 September to 7 November a 95 per cent confidence level with a 10 per cent margin of error split by accreditation type was used.



result in migrant exploitation or breaches of employment law and any immigration risk present in the evidence of advertising.

19. Overall, the presence of untreated immigration risk as a result of the approach to employment agreements appears low i.e. within acceptable risk tolerance. While the rate of concerns with employment agreements was increasing during the period and reached 24 per cent in the final week, when analysed in more detail only a small proportion (less than five per cent in the final month) were cases which appeared likely to justify referral to the Labour Inspectorate².
20. Disparity between the rate of pay declared at the job check and work visa gateways was detected in the sample but the frequency at which this was detected dropped in September and remained below five per cent every week for the remainder of the monitoring period. As the practices implemented through the job check general instruction aligned with the risk management approach originally approved for the EAWV policy by RMRGG, the findings are as expected.
21. The presence of immigration risk in the advertising ranged between 3 per cent and 14 per cent of the sample and sat at approximately 10 per cent over the last six weeks of the RMR period. However, RMR reporting did not differentiate between those risks which would result in a PPI under the general instruction versus those which would result in an education approach and further analysis would be required to more fully explore the extent of the risk present.

Work visa gateway

22. Offshore RMR was also conducted across a sample of 1,225 application under the work visa gateway decided between August and December 2022. The overall occurrence of 'Risk Not Managed' rate over this period was 6.8 per cent. This means that in those applications risk was identified, but it is unknown if the risk could be mitigated or not.
23. Applications where the risk was 'not managed', were a 50/50 split between documents being accepted at face value (and therefore potentially a result of the general instruction) and inadequate verification (not necessarily due to the general instruction). Given AEWV is a new policy there is no point of comparison to a period before the general instruction was in place.
24. Examples of risk identified at RMR and not managed in processing included role inflation in work experience claimed false and misleading information provided in previous visa applications and discrepancies between work experience claimed at the work visa and previous declarations.

In addition...

25. RMR activity is designed to monitor the presence of immigration risk and is not designed to act or function as a Quality Assurance tool. However, examples were identified of untreated immigration risk which should have been treated under the parameters of the general instruction and examples where the AFV (accepted at face

² Targeted RMR did not include analysis of the extent to which concerns were presenting multiple times by the same employer. Analysis of patterns of this nature may have increased the likelihood of referral to the Labour Inspectorate.



value) approach had been applied to some applications not covered by the general instruction. RMR checks are unable to determine whether these examples represent a change in quality of assessment in AEWV or represent a result which would be within quality assurance tolerance.

26. R&V will continue to monitor and adjust risk rules to ensure they are fit for purpose as more data becomes available and in response to any broader policy changes. However, capturing relevant data at the visa processing stage is vital to inform potential changes to risk rules. Data associated with risk identified, how these are treated and treatment outcomes are not currently mandatory in ADEPT and the general instructions in place create challenges with data being captured in a structured manner. While general instructions remain in place, opportunities for adjustments to risk rules are inhibited and a more fulsome review of rules is delayed.

REVIEW OF JOB CHECK DESIGN

27. 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.
28. When IMT was established the Visa Processing Taskforce was disbanded and its responsibilities subsumed by IMT. A workshop was 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.
29. There are clear recommendations that will streamline the job check gateway. However, this work is prioritised below ADEPT stabilisation and automation activity.

IMPLEMENTATION OF ADEPT BACK-END FUNCTIONALITY IN WORK VISA GATEWAY

30. The full back-end functionality for work visa processing in ADEPT was deployed on the weekend of 17 September. INZ reviewed the immigration officer activities that are generated in the work visa application and refined them to reflect some of the recommendations made in the original memo.
31. 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.
32. 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.



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33. Where there is a specific risk associated with a particular industry or group, it is intended that this will be addressed through the Azure BRE rules which will generate a risk activity if further scrutiny is required. The Risk & Verification team has refined these rules to ensure that the right rules are in place for this gateway, including rule changes which reduce the volume of applications triggering risk rules. Additional potential refinements to rules to achieve further operational efficiency were also identified. However, as these rules also support detection of other types of immigration risk such as identity and organised crime, and with limited data available at this time to inform decisions, risk governance groups have not approved those proposed changes.
34. 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 Deputy Secretary on 23 August 2022.

POTENTIAL RISKS AND IMPLICATIONS

35. 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 visa 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.

LEGAL AND POLICY IMPLICATIONS

36. 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.
37. 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.
38. 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.
39. 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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40. 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 six months without review given for some products very limited assessment is taking place.
41. Policy recommends a fully articulated plan with clear milestones and accountabilities is developed 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

42. The Operations Support team in BVO will follow their standard process for communicating changes to processing staff i.e. discussion with processing leadership and a VisaPak to staff processing AEWV applications. Risk and Verification leadership will also communicate to staff as the approach is implemented.
43. 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

44. The following staff have been consulted on the proposals outlined in this paper:
- Nicola Hogg, General Manager Border and Visa Operations
 - Karen Bishop, Acting General Manager Enablement
 - Jason Austin, Acting 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
 - Privacy of natural persons Manager Immigration Policy
 - Privacy of natural persons Special Counsel - Immigration, MBIE Legal
 - Privacy of natural persons, Manager Onshore Risk and Verification
 - Privacy of natural persons, Manager Quality and Assurance.
 - Richard Owen, General Manager, Verification and Compliance



NEXT STEPS

45. If agreed, communication on the extension of these two general instructions will be carried out in the week beginning 27 February 2023.
46. The Chief Operating Officer will advise the Deputy Secretary and a the weekly report to the Minister will include mention of the extended general instruction.