

## **A new approach to employer-assisted work visas and regional workforce planning**

### **Submission to the Ministry of Business, Innovation and Employment (MBIE)**



18 March 2019

## About the NZACA

1. This submission is from the New Zealand Aged Care Association (NZACA or the Association), the peak private sector membership body for the aged residential care (ARC) industry in New Zealand. We represent 93% or approximately 36,000 beds of the country's rest home industry. Our members' services include four categories of care, rest home, hospital, dementia and psychogeriatric, as well as short-term care, such as respite.
2. Our members range from the very small stand-alone care homes from as little as six beds in more remote areas of the country right through to the larger care centres of more than 100 beds, some of which are co-located with retirement villages.
3. Advocating and lobbying to government to shape policies and create an environment that helps our members provide outstanding quality care for older New Zealanders is at the heart of what we do. We provide leadership on issues that impact on the success of our members, for example, the annual contract negotiation with District Health Boards (DHBs), the Pay Equity settlement and workforce recruitment and retention.
4. We produce valuable research, professional development opportunities, information and publications to help our members make informed business decisions, improve capability and keep them up-to-date with industry developments. We also run the annual industry conference, which is the showcase event for New Zealand's aged care sector.
5. Our submission steps through all the key areas traversed in the consultation discussion paper of December 2018 and titled "*A new approach to employer assisted work visas and regional workforce planning*" and looks at the advantages and disadvantages of each of the areas as they apply to the ARC industry.
6. The Ministry of Business, Innovation and Employment (MBIE), may also receive submissions from other aged care providers, all of whom are bringing their expertise to this work. We recommend these submissions be read and considered alongside those of the NZACA.
7. Any enquiries relating to this paper should in the first instance be referred to Simon Wallace, Chief Executive, NZACA at [simon@nzaca.org.nz](mailto:simon@nzaca.org.nz) or by phone 04 473 3159.

## Overview

8. At first glance, the NZACA welcomes the Minister of Immigration, Hon Iain Lees-Galloway's proposals to reform the visa system. The proposals, while still subject to a closer look, are a welcome response to the needs of not only the aged care sector, but also other industries which rely on migrant labour when there are no New Zealanders to fill the gaps in local labour supply. However, the success of any potential changes will be dependent on the concerns raised in this document being addressed.
9. In aged care, migrant workers make an incredible and increasingly vital contribution to the health and well-being of New Zealand's older and more vulnerable citizens who live in the country's 669 rest homes. Rather than focusing on reducing immigration, the NZACA has advocated for policies that help aged care providers recruit and retain this valued workforce and provide a continuity of care for residents.
10. The Minister's proposals are a step in the right direction by taking a pragmatic new regionalised and sector-specific approach. We cautiously welcome the shift to an employer-led system where "accredited" employers will have oversight on the visa applications and renewals of their migrant workers' visas, rather than the employees themselves. While there is more detail to come and a degree of uncertainty as to how the accredited employer system will work in practice, in theory it should simplify and speed up what is currently a cumbersome and time consuming process. Again though, success of is dependent on the concerns raised in this submission being addressed.
11. The proposed system will put greater onus on aged care providers to meet their obligations as good employers with Immigration New Zealand (INZ). While such obligations are right and good, in return employers will expect a system that is more flexible and nimble in responding to the needs of the labour market.
12. The Association welcomes a move to regional skills shortage lists so that migrants can work where there is a genuine skills shortage. If implemented correctly, such lists will deliver the flexibility needed along with greater certainty for employers. However, the success of these lists will depend entirely on which organisation/s is/are providing the data and insight to inform the development of the lists.
13. The NZACA is cautiously optimistic about sector agreements, which on the face of it, give so-called "accredited" employers' easier access to migrant workers in return for the sector committing to employ and train Kiwis and reduce reliance on temporary workers over time. Members of the NZACA are, and continue to be focused on working with both the Ministry of Social Development (MSD) and Work and Income to get Kiwis into work.
14. As with any proposal of this nature, the devil will be in the detail and the NZACA is working through this detail with its members and MBIE officials. On balance, the Association is optimistic these proposals will improve upon the status quo.

## Background

### *It's a perfect storm in the aged-care sector*

15. With unemployment nationally at or around the 4% mark, a fast growing ageing demographic, particularly in the over 85 cohort (see below) as people live longer and come into care later, and a hardening of immigration policy, we have a 'perfect storm' in the aged care sector. Given this situation and in spite of the best efforts of providers, they cannot find enough Kiwis to fill vital care roles.

The ageing demographic in numbers:

Age 65+	2018	741,800
Estimated	2039	1,303,400
Age 85+	2018	86,400
Estimated	2039	214,300

16. The workforce shortages apply across a range of occupations, including caregivers (also known as health care assistants or HCAs), activity co-ordinators and diversional therapists, and nurses. For this reason, the NZACA takes issue with the assertion made on page 8 of the discussion document which states that New Zealanders are being displaced in the labour market by migrants.
17. The ARC sector employs approximately 30,000 care workers, with around 70% (22,000) of these being caregivers, 16% (nearly 5,000) being registered nurses (RNs) and 6% being diversional therapists or activity co-ordinators. The remainder of care staff in rest homes are either clinical managers or enrolled nurses.
18. To caregivers first, workforce modelling completed for the ARC sector by Grant Thornton has projected that between 12,000 and 20,000 extra residents will need rest home care by 2028. This will require the recruitment of 1,000 extra caregivers each and every year until that time. While the Pay Equity Settlement in 2017 vastly improved pay rates and helped retention, it has not led to more Kiwis wanting to take up the job.
19. The nursing situation is worse, not helped in the past six months through an increase in DHB nurse wages. With pay rates as much as \$5.00 to \$6.00 an hour more, aged care nurses have been leaving in droves to work in public hospitals. The current situation is not sustainable with a national shortage of around 500 to 600 nurses in ARC. Again, immigration policy settings, especially with aged care nurses not on the Long Term Skills Shortage List (LTSSL), have made the problem worse. Rest home employers need policy settings that allow them to recruit and retain overseas trained nurses.

### *So what is the industry doing to help itself?*

20. The sector is strongly focused on working with both the Ministry of Social Development (MSD) and Work and Income to get Kiwis into work including current initiatives with health recruitment company MedCall. However, the difficulty in attracting Kiwis into roles can be

evidenced by a MedCall initiative in Auckland started in February 2018 with many NZACA members involved. From an initial 531 applicants, by September, just 25 were working as caregivers.

21. The NZACA has also been closely involved with its industry training organisation (ITO), Careerforce on a review of qualifications in the sector. The Association has supported an expanded Level 4 qualification for caregivers as a way of creating a pathway into nursing and so ease the desperate shortages of RNs. The New Zealand Qualifications Authority (NZQA) is still to approve this change.
22. The Association and some of its members are in ongoing discussions with Health Workforce New Zealand (HWNZ), and the Nursing Council to discuss ways in which we can collectively increase the nurse workforce. For example, such work includes a re-examination of the role of enrolled nurses and nurse practitioners and getting more new graduates to take up aged care roles.



## The gateway framework at a glance

23. The gateway framework appears to be characterised by three main elements:

- a transition to employer assisted visas with a system of accredited employers
- a regional focus with the introduction of regional skills shortage lists and
- development of sector agreements.

24. At a glance, the NZACA sees the following advantages and disadvantages:

### On employer assisted visas

#### Advantages

- The employer has more say in the visa approval process for its migrant workers creating longer term business continuity.
- The employer will become the customer, not the migrant, reducing operational processing times for visas.
- The costs are reasonable given the certainty of migrant employment tenure this would create for employers.
- The need to consider RNs differently when higher income thresholds are applied.

#### Concerns

- Higher paid thresholds which rule out caregivers from any recognisable pathway to residency, and do not take account of an employee's actual total salary including penal rates, allowances and regular overtime which is common in the industry.
- Lack of detail on how the gateways will work in practice.

### On regional skills shortage lists

#### Advantages

- Regional skills lists will help address serious shortages in particular areas, will be more timely and will dispense with the current onerous Immediate Skills Shortages Lists (ISSLs) and Long Term Skills Shortages Lists (LTSSLs).

#### Concerns

- The effectiveness of regional skills shortage lists will depend entirely on which agency or organisation provides the information to inform the lists

### On sector agreements

#### Advantages

- The sector agreements give the industry the opportunity to negotiate specific inclusions and/or exemptions for their workforce in return for being good employers (however that is defined). The areas for discussion include ANZSCO listings, annual renewals, and ability of partners to come to New Zealand and income thresholds.

## Concerns

- A set of obligations around training, for example, that may be too onerous for small employers.
- Caps on the number of migrant workers, with no indication as to how these might be applied



## The gateway framework in more detail

### Gate 1 - The employer gateway

#### *Accreditation*

25. The accreditation requirements present three levels, standard, premium and labour hire companies. For larger employers in the ARC industry with care facilities located in multiple sites (some organisations have as many as 30 or 40 rest homes), single accreditation should apply, be based on one fee and graduated according to entity size. Already a number of larger aged care providers are accredited employers with Immigration New Zealand (INZ) and we believe transition to the new accreditation process should be 'grand-parented' for such organisations.
26. The small to medium size nature of New Zealand business applies equally to the ARC industry and consideration needs to be given to the thresholds that apply to smaller employers. Premium accreditation for a small rest home, but one that might still employ more than five migrants could attract an accreditation fee that is relatively high, outweighing the benefits that accrue from such accreditation. For example, a not-for-profit, stand-alone rest home (without a retirement village aspect to the site) which is typical of many in the sector may find a high (\$2,000 plus) fee prohibitive. A fee in the order of \$500 if employing less than five people and \$1,000 if employing between five and ten people may be more palatable.
27. The NZACA believes officials should revisit the duration periods for accreditation given the tremendous effort employers will need to make to achieve accreditation. For example, a standard accreditation might last for two years if the employer has met or exceeded its stated obligations and for a premium employer, this duration might be three years if it too has met obligations as a good employer.
28. Our members have expressed concern as to how INZ will operationalise the move to accreditation for employers and whether the Department is resourced to handle what will be a large number of employers seeking accreditation. In our sector alone, there are upwards of 400 employers who will need to be accredited.
29. Notwithstanding our comments above, the Association is broadly supportive of an accreditation system in the move to employer assisted visas. Through the introduction of the Pay Equity legislation in 2017, the ARC industry has legislated rates of pay for its care and support worker (a support worker is an activity co-ordinator or diversional therapist) staff that are well above statutory minimum levels and higher than many other so-called lower paid industries.
30. In line with the Pay Equity legislation of 2017, there are also compulsory training requirements. However, unless care and support workers are reclassified on the Australia, New Zealand Standard Classification of Occupations (ANZSCO) as Level 3, they have no pathway to residency even with the introduction of the premium accreditation employer led system (this is analysed further in our commentary on sector agreements).



31. The incentives for premium accredited employers if linked to the revised remuneration thresholds are problematic. They lift the current salary from \$55,000 to \$78,000 per annum, a salary that is 150% of the national median income. While completely ruling out caregivers on a pathway to residency, many RNs would also be excluded. It is acknowledged in the Cabinet paper: *A new approach to employer assisted work visas and regional workforce planning* (paragraph 42) that further consideration will be given to RNs and in view of the dire shortage of aged care nurses nationally, we believe such consideration should be viewed seriously.

*Grandparent clause and review of the stand-down period*

32. We recommend there should be an option to grandparent current immigrant aged care workers so that a path to residency can be found. This will ensure the current skilled and experienced workforce is not lost. This could be done by providing the opportunity for accredited employers (potentially under a sector agreement) to sponsor a migrant's application for residency under specific criteria relating to tenure, a NZQA Level 3 qualification in Health and Wellbeing and an unblemished work history.
33. The three-year stand-down policy for essential skills visa holders introduced in August 2017 by the previous Government will see an exodus of caregivers in August 2020, if not before in anticipation of being sent home. Migrants in our workforce contribute positively to the required skill level to care for older people. While some migrants come here as caregivers, others are qualified in their country of origin as registered nurses and work as caregivers whilst gaining their New Zealand registration. Our migrant workers have settled into Kiwi culture and made our country their home. They have become an integral and valuable part of our workforce and are highly regarded by our residents, but also the communities in which they live.
34. An aged care provider invests approximately three years of training to build the skill level of a caregiver. The initial orientation and induction of a new employee to the role of caregiver generally takes 12 months. The caregiver should then commence the NZQA Level 3 qualification in Health and Wellbeing. The average timeframe to attain this qualification is 18 months which means a person new to the role of caregiving takes at least 2.5 to 3 years to become a skilled and trained caregiver.
35. To lose the migrant caregiver in the one year stand down period, not only critically disrupts continuity of care for residents, it nullifies the investment in training which our members make. It also restricts a provider's ability to build skill within the workforce. Then, to lose skilled and trained workers on a revolving three-year cycle - just when they are maximising their true skill level is extremely short-sighted. Even the Minister of Immigration himself said in December 2017 that such a policy was 'dumb'  
<https://www.newsroom.co.nz/2017/11/30/64436/immigration-nz-broke-new-minister-says>
36. The 2017 changes are already having a negative impact on the ARC sector in New Zealand. The door is closing on New Zealand and anecdotally we hear the Filipino and Indian communities are turning away from our country as a place that was once welcoming of migrant workers and looking to take their skills to countries like Canada and China.

## Recommendations

1. Reconsider fees and duration periods for accreditation.
2. Grandparent existing essential visa and/or temporary work permit holders.
3. Remove the stand-down period for caregivers (this could be addressed in an ARC sector agreement).

## **Gate 2 - The job gateway**

37. The consultation discussion paper (page 17) suggests four pathways open to employers who recruit migrant workers, which include:
- Highly paid threshold
  - Regional skills shortage list
  - Sector agreements
  - Regional labour market test

### Highly paid threshold

38. As canvassed in our analysis on Gate 1 - the employer gateway, an increase in the highly paid threshold (whether 150% or 200% of the median NZ income), makes this pathway unavailable to caregivers in the aged care sector, as well as for many nurses. A result of introducing this higher threshold could have the unintended consequence of migrant workers being paid more than Kiwis and actually result in less jobs being available due to the high wage costs accruing to overseas workers.
39. The NZACA believes an appropriate threshold should reflect previous labour market settings of 120% of the national median income - this could apply to premium accredited employers with a higher threshold applying to those employers with standard accreditation. Alternatively, INZ should consider a graduated scheme that phases the increased thresholds in over several years.

### Regional Skills Shortage Lists

40. Our understanding is that regional skills shortage lists will replace the current Essential Skills in Demand Lists (ESID) to better reflect skills shortages in regions. On balance, we are supportive of a regional approach to skills shortages because they send a signal to migrants of geographic areas where labour is most needed.
41. The Association's reservation on the regional lists is focused on what the process will involve in collecting data and insight to inform the lists and which organisations or bodies will be trusted to provide reliable information. The ARC sector is regulated and for that reason information on the sector is collected accurately and frequently. The NZACA, as a strong peak body with more than 90% penetration of beds, would itself be well placed to provide information that could be matched with Ministry of Health (MOH) and District Health Board (DHB) datasets.
42. The NZACA is involved in the Minister of Education Chris Hipkins' review of vocational education. This review is considering, among other things, industry and regional skills bodies and such bodies could be tasked with operating the regional skills shortages lists together with industry bodies.

## Sector Agreements

43. In principle, the Association supports the development of sector agreements. If the sector agreements are done well, this could be a positive change for the industry. While there is a lack of detail currently, we see these agreements as an opportunity to access migrant workers in return for the sector committing to employ and train New Zealanders and reduce reliance on temporary migrant workers over time. Our employers would accept the obligations placed upon them to be good employers in return for specific inclusions and/or exemptions to usual immigration policy settings.
44. It is noted that the aged care industry is earmarked as being one of the first sectors, along with tourism, for which a sector agreement intends to be negotiated. We welcome that opportunity and intend to support this negotiation with an Advisory Board to assist the NZACA in its deliberations.

## *Union involvement*

45. While MBIE officials have told us that sector agreements will be between the Government and industry, we are aware the New Zealand Nurses Organisation (NZNO) has written to INZ saying they do not support employer accreditation for reasons that are not evidenced. The NZNO, which has little membership amongst ARC nurses, also does not support the employment of internationally qualified nurses (IQNs) at a time when we have a dire shortage of New Zealand nurses to work in ARC.
46. The NZACA and its members want to work with the NZNO and other unions constructively to find solutions for the staffing issues in ARC, but what appears to be happening is a concerted campaign to discredit our valuable migrant staff and the important work they do in caring for our vulnerable older people.

## *ANZSCO*

47. Negotiation of the sector agreements must address the anomalous ANZSCO system that is outdated and not fit for purpose and in aged care fails to recognise the increasingly skilled job performed by our caregivers. The occupation descriptions do not correlate in any way to the role and skills performed by a caregiver. It is ironic that the Pay Equity Settlement has seen many caregivers achieve a Level 4 NZQA Certificate (and therefore ANZSCO Level 3), but the role is still regarded (under ANZSCO) as a 'low-skilled' position. At the same time, there are roles in other industries that are paid below that of caregivers but are ANZSCO Level 3.
48. The NZACA and its members have been at the heart of discussions with MBIE, Statistics New Zealand (SNZ), other government agencies and industry bodies to amend some of the ANZSCO settings. This work is useful and well intentioned, especially on the part of SNZ, but slow. The Association would like to see any sector agreement negotiated with aged care make a serious attempt at finally correcting the ANZSCO settings.
49. Aside from ANZSCO and as noted, we see the sector agreements as the place to negotiate and review annual labour market tests and stand down periods (as referenced in paragraphs 90 to 93 of the Cabinet paper), consider the re-instatement of family entitlements for lower-skilled workers (paragraphs 84-89 of Cabinet paper), and review income thresholds.

## Recommendations

1. Review levels for higher paid thresholds.
2. Define who and how regional skills shortage lists will be informed.
3. Clarify process for introduction and negotiation of sector agreements.
4. Reclassify ANZSCO codes (as part of sector agreements).

## **Gate 3 - The Migrant Gate**

50. The NZACA agrees that migrant checks should remain as they are. We believe that INZ is best placed to carry out the identity, health and character checks and it has the resources and systems already in place to continue the function.

## Recommendation

1. Retain the current migrant check process.

## **Other Matters**

51. It is proposed the remuneration threshold for mid-skilled workers at ANZSCO levels 1-3 be increased from 85% to 100% of the national median wage, or in hourly terms from \$21.25 to \$25.00 per hour. The NZACA is not supportive of this change as it would effectively move 10,000 migrant workers from the mid-skilled classification to the low-level classification with the result being employers potentially losing valuable staff after just one year's employment.

## *Change the discourse - they're semi-skilled workers not low-skilled*

52. The Consultation discussion paper continuously refers to temporary work permit holders as low-skilled. The testimony to the value of our caregiver workforce was demonstrated by the Government in 2017 with the Pay Equity Settlement that increased wages and conditions for these employees. So, one arm of government, the Ministry of Health (MOH) is valuing our caregivers and the work they do, but another, INZ, still doesn't. Meantime, as the acuity of our residents in ARC has grown, so too has the complexity of the task and the skills needed to care for these people - these proposals present an opportunity for INZ to recognise our workforce for what it now does.

## Recommendation

1. Retain the remuneration threshold for mid-skilled workers at ANZSCO 1-3 at 85%.

## **Conclusion**

53. There is much to applaud in these proposals, but there is also a lot of detail to be worked through over the next few months and prior to officials reporting back to interested Ministers with final recommendations.
54. The NZACA supports the framework based on a move to accredited employers, a regional focus and sector agreements. If sector agreements are done well this could be a win for Government, employers and workers, however, in order for any changes to be a success it is important the concerns outlined in this document are addressed and that the detail is refined with caution.

55. There are also some risks such as the move to an accreditation system which if implemented too rapidly could create unforeseen operational difficulties. Similarly, regional skills shortages, while in theory a logical initiative, will need more refined thinking as to how they are compiled.
56. As the peak body for the ARC industry in New Zealand, with our members, we look forward to being involved in this work as it proceeds throughout the rest of this year and we encourage officials to engage with us regularly over the next few months as the proposals are finalised.

**End**

Simon Wallace  
Chief Executive  
New Zealand Aged Care Association