



**Aged Care
Association**
NEW ZEALAND

Aged Care Association submission to the Ministry of Business,
Innovation & Employment on the discussion document
'Promoting competition in New Zealand - A targeted review of
the Commerce Act 1986

February 2025

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About the Aged Care Association

This submission is from the Aged Care Association (ACA), the peak body for the aged residential care (ARC) sector in New Zealand.

Our members provide rest home, hospital, dementia, psychogeriatric, respite, and palliative care and care for around 700 younger people with disabilities.

Sixty six percent of beds are run by religious institutions, charitable trusts, family-owned, not-for-profits, and privately owned facilities. Most of the remaining beds are operated by listed companies (34 percent), with less than 1 percent provided by Te Whatu Ora.

Residents may be

- very frail and clinically unstable,
- well but disabled and have very high care needs,
- cognitively impaired or with mental health issues, with some requiring a secure environment,
- receiving end of life care.

Funding for aged residential care is a mix of means-tested user-pays and government subsidy.

Aged residential care providers are contracted by Te Whatu Ora to provide care services at a rate that is set annually.

The aged care workforce is under-resourced and overworked.

The ACA welcomes the opportunity to make a submission to the Ministry of Business, Innovation & Employment on the discussion document *‘Promoting competition in New Zealand - A targeted review of the Commerce Act 1986*. The Association is available for discussion at any time that suits MBIE.

Context

1. New Zealand has over 670 aged residential care facilities, with more than 40,000 beds and 35,000 residents. In comparison, Te Whatu Ora oversees 10,748 public hospital beds.
2. The ARC sector provides services across four care categories:
 - Rest home care: the resident is assessed as generally able to be independent (are mobile and can feed themselves) but needing assistance with personal care or supervision of activities of daily living. The residents are assessed as unable to safely live in their own homes (or other community settings) either due to their disability needs and/or lack of informal supports.
 - Hospital level care or continuing care: the resident is assessed as having significant disability, usually in combination with medical problems, which requires 24-hour supervision with registered nurse input for their care.
 - Dementia care: the resident is assessed as needing 24-hour supervision and care, in a secure environment due to risk of wandering or becoming lost due to memory loss or confusion.
 - Psychogeriatric care (also known as specialised hospital care): the resident is assessed as needing 24-hour supervision and care. This level of care is for people with major behavioural issues (including severe dementia or addictions). They need a high level of specialist nursing care.
3. People 65 years and older are assessed by Te Whatu Ora | Health NZ's Needs Assessment and Service Coordination (NASC) service and allocated to one of four ARC care categories. The NASC assessor typically uses interRAI assessment tool to assess the person's current abilities, resources, goals and needs before advising a care plan and the type of support services a person may require, of which admission into ARC is one of the support services advised.
4. The needs assessment process means that ARC funding is demand driven.
5. The Age-Related Residential Care Services Agreement is the sector agreement between Te Whatu Ora and ARC facilities. This agreement is set annually and negotiated by the Aged Care Association, which lays down the terms for the provision of services across the four levels of care in ARC. It is also the precursor for establishing a negotiated bed day rate nationally across all four levels, wherein the Association acts as the sector representative.
6. As we represent nearly 90 percent of the sector, the Association is able to collect sensitive commercial information which helps it understand the gap in government funding and actual cost of care. This helps the Association work with the sector funder, Te Whatu Ora, in attempting to ensure that the funding levels are kept at adequate levels to provide a reliable supply of aged residential care beds across the country. This is a critical healthcare service which prevents huge burdens on the public hospital system.
7. In preparing our submission, we have consulted with BusinessNZ's submission on the document.

Mergers

8. The Association is of the view that mergers and acquisitions in the aged residential care sector needs to be perceived differently. Mergers allow the supply of ARC beds to be retained in the market, which would have otherwise closed down due to financial issues. For residents of a residential care facility it is their home, to be required to move from their home due to its closure for financial failure is distressing and, with the level of acuity and cognitive decline of many residents, inappropriate. And alternative solution must be found to ensure the continuity of residence and care for these New Zealanders.
9. To illustrate the above point with an example – in 2022, an 87-bed rest home was facing imminent closure due to severe staffing shortages and financial challenges. But an acquisition by Heritage Lifecare prevented the loss of 87 beds in the sector.¹
10. Aged residential care sector is heavily regulated with the funding rates set annually. There's ample evidence that the sector has been underfunded for years by this point. A 2023 survey found that more than half (56 percent) of respondents' facilities made a net loss in the 2022/23 financial year (equating to a loss of \$4.24 per operating bed day).²
11. Preventing closure of aged residential care facilities is a key focus area for the government, as the number of new builds, especially for lower socio economic, rural and regional communities, is not enough to manage the forecasted demand. A study commissioned by Te Whatu Ora in 2024 noted that if historic build rates continue, there could be a shortage of almost 12,000 ARC beds by 2032.³
12. If MBIE is interested in the data on the number of mergers and acquisitions that the sector has seen, we'll be happy to provide it on request.
13. The Association recommends that the status quo regarding mergers and acquisitions is retained. However, should there be evidence to increase the number of regulations in this regard, we would strongly recommend that separate evidence be required for the aged residential care sector which is a public service provided with private capital investment.

Anti-competitive concerted practices

14. The Association has strong concerns over a possible prohibition of what the discussion document outlines as 'tacit collusion'. Collecting commercially sensitive information from our members is critical for us in informing the government about the financial realities of the sector, which significantly relies on government funding for its sustainability.
15. The Association also collects valuable commercial information including occupancy rates to map the demand and supply of services in the sector, which is central to our advocacy efforts.
16. All information collected by the Association is aggregated and anonymised to help mitigate the risks of misuse for our members.
17. Furthermore, as also stated in the BusinessNZ submission, the Association being a peak body for the aged residential care sector, has expertise and a broad understanding of the sector,

¹ NZ Herald (2022). [St Joseph's Home of Compassion to stay open thanks to deal](#)

² Ansell Strategic (2023). New Zealand Aged Residential Care Financial Performance Study – Summary of Findings

³ Sapere (2024). A review of aged care funding and service models

which allows us to manage and analyse data in a way that benefits the industry as a whole. Our role in fostering collaboration and addressing shared challenges enables us to handle sensitive information responsibly for purposes like benchmarking or policy advocacy, which are often key reasons why businesses become members in the first place.

18. The Association recommends that the Government maintains the generic prohibitions requiring evidence of a 'contract arrangement or understanding' to establish anticompetitive collusion.

Industry Codes or Rules

19. We endorse the points made by BusinessNZ's under this section in their submission on the Discussion Document.