

Suite of proposed changes to the Essential Skills visa: Discussion document

**Submission to the Labour, Science and Enterprise Group,
Ministry of Business Innovation & Employment**

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Contact

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 47,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse.*

INTRODUCTION

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the suite of proposed changes to the Essential Skills visa discussion document.
2. This submission draws on regular and substantial engagement with members and staff about immigration, including NZNO's Colleges and sections, board, te Rūnanga o Aotearoa, regional councils, and professional nursing, industrial, policy and research advisers. It also draws on with discussion with nursing leaders and educators, other health professions and other unions, as well as with government officials.
3. We would like to acknowledge the recent meeting with yourselves, led by Shane Kinley, and union representatives at the New Zealand Council of Trade Unions (CTU) office; the background and rationale for the proposals given and subsequent discussion was valuable and appreciated.
4. NZNO is an affiliate of the CTU and supports its submission.
5. As the principal delivery agent of healthcare in all settings throughout Aotearoa New Zealand, the nursing workforce has an important role in assuring the health and wellbeing of the nation. It is in the specific context of nursing workforce stability and self-sustainability that we have considered the essential skills visa proposals.

6. Internationally trained nurses (IQN) comprise a high proportion of both our membership and the registered nursing workforce in Aotearoa New Zealand and NZNO is aware of the complexity of immigration policy as it affects individuals, the profession, and the health system. NZNO's long-standing concerns with the overreliance on immigration on the stability and sustainability of the nursing workforce are well known (Head, 2017).
7. We take this opportunity to acknowledge Immigration New Zealand's response to our recommendation over the past few years, in moving towards the removal of nursing categories on the Essential Skills in demand lists.
8. We understand that this suite of proposed changes to the Essential Skills visa is the part of the first phase of intended changes to other immigration policy, for example, to the accredited employer scheme, and follows recent changes to the points system.
9. In this uncertain context, and before the second phase of changes has been discussed, it is difficult for us to "foresee the impact or implications of these proposals" on the nursing workforce with confidence.
10. However, NZNO warmly welcomes the recognition that:
 - immigration policy settings are not meeting long term labour objectives;
 - "the numbers of temporary migrants are increasing in industries with lower-skilled (sic) jobs, lower-wages and lower productivity"; and that
 - immigration policy settings should be better aligned eg with "education and welfare".
11. Similarly, we welcome the objectives of:
 - ensuring settlement expectations are clear;
 - having transition provisions for migrants already here;
 - making it easier for higher skilled migrants to stay;
 - prioritising the employment of New Zealanders; and
 - motivating employer investment in the workforce.
12. But the document is disappointingly limited in its 'business only' focus. Immigration is discussed purely in the context of "low skilled" and "low waged" (which are variously evoked and conflated throughout the document), and labour (and even education) is seen in terms only of

the skills “that firms need”. This one-sided viewpoint leads to some erroneous conclusions - for example that the number of Essential Skills visas holders with high ANZCO classifications who “receive low incomes” indicates a flaw in the classification scheme (“they may not in fact be highly skilled”, p8) rather than the far more likely explanation that skilled migrants are being underpaid.

13. Immigration settings should benefit the nation, not just business. There are many workforce skills – nursing among them – contributing to, and sustaining, national wellbeing, security, and productivity besides those that business may be interested in, and business interests do not always coincide with national interests.
14. Global developments/changes/crises have an increasingly significant impact on workforce mobility and labour conditions within and between countries; we suggest that narrowly focused ‘tweaks’ to immigration policy are unlikely to be effective without an integrated national workforce strategy that aligns with the endorsed and comprehensive objectives of the UN Sustainable Development Agenda 2030.
15. Accordingly, although there is some merit in the proposals and their objectives, **we are not convinced** that on their own they will contribute to a more sustainable workforce, able to meet Aotearoa New Zealand’s needs.
16. In particular, we note the need for:
 - more robust labour market testing;
 - a mechanism for assessing and assuring realistic and fair salary thresholds for each occupation eg comparison with a collective agreement;
 - strengthening the labour inspectorate; and
 - better protection against exploitation for migrant workers.
17. We appreciate that the proposals are not about “managing numbers”, and we would not advocate having immigration quota, for example. However, we do suggest there is a considerable policy gap in identifying and planning for future workforce needs and trends that would allow an integrated and proactive approach to immigration and other workforce strategies. Health workforce planning, for instance, is woefully inadequate and fragmented, despite the well-established link between health and economic prosperity which it underpins.
18. We take this opportunity to **recommend** that you refer to qualification levels to differentiate occupational levels rather than skills or remuneration level. “Low skilled” is pejorative, and does not reflect the vital importance of many occupations which don’t require a high

qualification level, but *do* require considerable skill and often experience - eg horticultural and hospitality workers. "Low paid" is, as the document suggests not necessarily reflective of skills or qualification level. Registered nurses (RNs), for example, who are classified as ANZSCO skill level 1, fall into *all* the proposed levels of remuneration - low, medium and high.

19. We also recommend clear and consistent policy about expected hours of work for essential skills visa holders.
20. Discussion of the proposals, with the exception of Proposal 5 relating to seasonal work which does not apply to nurses, follows.

Using wage or salary information to help determine skill level and access to Essential Skills migrants

Proposal 1 What impacts or implications do you foresee from defining lower, mid and higher skilled Essential Skills migrants in this way and why?

21. There is a considerable difference between using wage and salary information to "*help* determine skill level" and using it as "*the main determinant* of the skill level of an essential skills visa holder" (emphasis added).
22. We agree that ANZSCO is an imperfect tool for defining occupational skill levels accurately, and in a timely fashion. However, we would argue that it is a standard, independent classification scheme, open to review, and infinitely preferable to the seriously outdated and misaligned labour classifications both countries used previously.
23. NZNO would support remuneration levels – if derived from robust and defensible labour market rates – being used to *complement*, but not to *replace* ANZSCO, as the main determinant of skill levels.
24. This proposal has already generated considerable confusion and anxiety, particularly from nurse educators and IQN students undertaking the three month \$6-7000 competence assessment programme (CAP) necessary for registration by Nursing Council New Zealand (NCNZ).
25. The thresholds are imperfectly understood, particularly as they apply to claiming points under the skilled migrant category, with some fearing that only nurses who meet the \$73,299 higher skilled threshold will ever qualify for residence. In addition, we are reliably informed that IQN who have 'upskilled' and gained New Zealand registration, are under the misapprehension that the only way they can improve their prospects for residence, is by working in aged care, as this category for nursing is on the ESID list. This highlights the need for exceptionally

clear and well targeted communication well in advance of any changes to immigration settings.

26. We are also somewhat concerned that the two annual rates of pay proposed in each band (for a 30 hour work week and a 40 hour work week), may blur understanding and expectations around fulltime work (which, in many cases, employers are required to offer) and respective salary thresholds. While we accept and welcome more flexible employment, and recognise changing employment patterns, we do not accept the redefinition of a work week as 30 hours, particularly when wage and salary levels have been set based on 1 FTE (fulltime equivalent) = a 40 hour work week.
27. Many of NZNO's members, both nurses and care support workers, are now routinely employed at less than 1 FTE, apparently for budgeting purposes. 0.8FTE is now fairly standard for RNs in DHBs, though in fact they are often required to pick up extra shifts and may work >1FTE. In other health services, hours of work can be highly variable and dependent on occupancy rates and patient acuity and income is thus precarious. In both situations, employees can be disadvantaged.
28. It is important to have clear parameters around expected hours of work and remuneration, to avoid any misunderstanding about actual work and income levels.
29. The remuneration levels suggested do not reflect the skill level of RNs (level 1). Currently, RN wage and salary rates fit in all three categories, so remuneration would not be an effective tool to determine skill level unless there was a mechanism to ensure that they could not be in the "lower-skilled" category.
30. *Replacing* ANZSCO skill levels with remuneration bands could further legitimise RNs being paid at levels below the reference DHB Multi Employer Collective Agreement (MECA).
31. The remuneration bands are unlikely to improve the employment disparities seen in pay and conditions prevalent in aged care (which is influenced by current immigration settings), Maori and iwi health services, and some NGOs. These poorer conditions also reflect wider inequity for vulnerable groups eg migrant nurses and patients in aged care.
32. Though some employers may be incentivised to increase pay levels to retain IQN, which is highly desirable, experience suggests that others would not, and may be content to continue with current high turnover rates. Eg Despite alleged skills shortages in aged care and nursing unemployment, the average RN salary is \$40,000, well within the "lower-skilled" remuneration band.

33. We understand that INZ is considering provisions that would limit this form of employer exploitation eg restrictions on the number of visa applications an employer may support, and/or renewal of employer accreditation. We would support such provisions.
34. Addressing the inherent power imbalance between employers and employees which is an acknowledged objective of the Employment Relations Act (Part 1, section 3(iii)) requires vigilant oversight of employment conditions. Migrants are particularly vulnerable to exploitation; it is disappointing, but not surprising, that there is a disproportionate number of IQN in areas of nursing where wages and conditions are significantly poorer than average.
35. NZNO is well aware of the significant resourcing required to ensure IQN are informed, supported and represented on employment and professional matters. We are also aware of how difficult it is to get employees to speak up about any form of exploitation. However most (around 80 percent) workers do not have the protection of collective agreements and union representation, so it is incumbent on the government to maintain an effective labour inspectorate. The current capacity of the labour inspectorate is inadequate.
36. NZNO is particularly concerned that replacing ANZSCO with remuneration bands as the main determinant of skill level, would open up the recruitment of migrant caregivers in aged care. We are aware that there has been considerable pressure from some quarters to allow this, both through Pace Plus, and from individual employers. We have opposed this as it is unnecessary in the current labour market, and would have had adverse population health and workforce implications.

Reinforcing the temporary nature of the Essential Skills visa and ensuring settlement expectations are clear for temporary migrants

Proposal 2a What impacts or implications do you foresee from the proposed maximum duration of three years for lower skilled Essential Skills visa holders? And why?

37. As indicated, 'lower-skilled' should not apply to nurses, but some IQN are within the lower skilled remuneration band and IQN yet to gain New Zealand registration, would initially be in this category. The latter often work as caregivers and include a number of Pacific nurses.
38. A positive aspect is that the period would allow IQN to complete the CAP course for registration, which should lift them into the "mid-skilled" category and increase the chances of retention.
39. In addition, employers may be encouraged to invest in education and increase wages to keep experienced employees. We are reasonably confident that employers would invest in the education of "lower skilled"

and lower waged employees, but we are not confident that salaries would or could be raised.

40. A three year maximum for migrants may encourage preferential employment of, and investment in, New Zealand workers, for whom no maximum period applies. However, turnover rates in low paid jobs involving heavy and insecure work, and long hours are often high, and some employers perceive migrants as more compliant and hardworking than New Zealanders, so having a maximum period may have little effect on the employment of New Zealanders other than keeping wages in the sector low.
41. For various reasons, primarily to do with the International English Language Testing System (IELTS) used for assessing English language competence, there are many Pacific nurses, and other highly skilled and experienced IQN, who fail to gain registration. These nurses could be adversely affected by the three year period, effectively being in a worse position than when they arrived, ie losing their qualified status and also their job and livelihood and home in Aotearoa New Zealand.
42. For Pacific nurses, it would be particularly regrettable if Aotearoa New Zealand lost the skills and cultural competence of Pacific have in enhancing the well-being of often vulnerable Pacific communities.
43. A maximum period clarifies expectations for both employers and migrants and may encourage more careful preparation for migration and long term workforce planning.

Proposal 2b What impacts or implications do you foresee from the proposal to introduce a stand down period for lower-skilled Essential Skills migrants? And why?

44. As above. This could be particularly disruptive for Pacific communities, who have extensive and long term ties to Aotearoa New Zealand.
45. A positive aspect is that it provides for a more balanced employment environment in that it removes the control that employers have over visa renewals.

Proposals to align the ability of Essential Skills visa holders to bring their children and partners with them, with the new skill levels

Proposals 3 & 4 What impacts of implications do you foresee from the proposal to remove the ability for lower-skilled Essential Skills visa holders

to bring their partners/children to New Zealand for the length of their Essential Skills visa? And why?

46. As indicated "low skilled" is not an accurate descriptor of the many migrants who contribute to our workforce through providing essential and needed skills. NZNO **does not support** any form of discrimination against migrants, particularly as children may be involved.
47. We refer you to the CTU's submission which points out that these proposals are in breach of New Zealand's obligations under Articles 9, 10, and 18 of the International Convention on the Rights of the Child:

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

...

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

...

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

48. Further, if children accompanying migrant workers are unable to enrol in New Zealand schools as a result of Proposal 4, this would be a breach of Article 28 of the Convention on the Rights of the Child:

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

49. Our experience is that IQN who have the ability to have their families with them, and migrants who have trained here having arrived as children, spouses or parents of other migrants, are much more likely to settle and stay, than those who are on their own.
50. As global migration expert Professor Lesleyanne Hawthorne of the University of Melbourne has pointed out, Aotearoa New Zealand has a particularly dismal record of retaining migrants, the net population gain over the last half of the twentieth century being just 208,000 people from 2.3 million migrants (Hawthorne, 2014).
51. It has been clear for some time that IQN use Aotearoa New Zealand as stepping stone to Australia and to avoid their immigration barriers. NCNZ is concerned at the number of IQN registrants who go straight to Australia without practising here, and we know that a significant proportion of IQN are undecided about where they will settle in the future (Walker & Clendon, 2015).
52. Retaining IQN a primary objective in ensuring a stable and sustainable nursing workforce; these proposals undermine that.
53. NZNO supports the CTU's recommendation that once appropriate immigration settings have been established for Essential Skills visas, including through more robust labour market testing and other matters to be discussed in Phase Two consultations, all migrant workers accepted under these provisions should have the right to be accompanied by their families.

CONCLUSION

54. In conclusion, NZNO welcomes the discussion and intent of this suite of proposals, to enhance the alignment, fairness and transparency of immigration settings.
55. As we have indicated, although we are not confident that these proposals will achieve the intended results, we are relieved that discussion at this level is taking place.
56. Moreover, we are confident that our concerns are being heard, and ever hopeful that immigration settings will be developed as part of comprehensive national workforce strategy.
57. In terms of the proposals, NZNO supports remuneration bands being used to complement but not replace ANZSCO as the main determinant of skill (qualification) level and notes that more robust labour market testing, including comparison with collective agreements is needed in order to set realistic thresholds.
58. NZNO does not support proposals 3 and 4; all migrant workers should have the ability to be accompanied by family.
59. We recommend that you note that the ability of family to accompany skilled migrants is one of the most important factors in determining their decision to stay. Retaining migrants optimises the benefits of immigration and is crucial to ensuring workforce stability and sustainability.
60. Finally, we recommend strengthening the labour inspectorate to ensure fair employment practice.

s 9(2)(g)(i)

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