

16 February 2024

RE: Consultation Paper #2 Exposure draft Aged Care Legislation

The Community Transport Organisation (CTO) is a peak body representing providers of community transport services. We are committed to not only advocating for the needs of providers delivering community transport services, but also to ensure that communities, where we live and work, are able to maintain their community and civic connections by ensuring equitable access to safe, affordable and inclusive care-based transport services. Community transport is primarily delivered within the CHSP stream of services but is more increasingly becoming a brokered service through Home Care as well as diversified to deliver services across the disability sector, health, employment and education sectors.

Our vision is for a community completely connected by transport. This includes providing care-based transport to support independence across the whole aging journey— from early entry into the aged care system, through to residential care. Where a person lives does not preclude their need for access to the necessary supports of life, like family and loved ones, community, health, religion and culture. Transport is an enabler of connection, self-determination and independence and we hold an expansive and aspirational view for how access to supported transport can positively influence the health, wellbeing and quality of life for our communities.

The CTO is supportive of the need for reform within the aged care industry. We specifically support:

- a more modern and appropriate legislative response to the current and future needs of Australians, as we age.
- prioritising ease of navigation and a more streamlined access to supports for older Australians.
- a single aged care industry.
- risk based regulation.
- registration for all government subsidised providers.
- a provider network that is sustainable, successful and innovative.

Therefore, we are excited to see the progress and learn of the solutions being delivered across many of the above areas. We are thankful for the opportunity to contribute to this once in a lifetime consultation, to get aged care 'right' for older Australians.

The Exposure Draft outlines a new rights-based approach to delivering aged care in Australia. It promotes the rights of the person seeking supports and enhances the ability for the Regulator to investigate and impose sanctions for providers found wanting. Getting the balance correct is the lynch-pin to promoting vitality within the system.

While the Exposure Draft clearly shifts the focus from the providers funding arrangements to the participant, the two remain inextricably linked and the balance is more than semantics. This legislation explains a market place of service provision within which providers deliver service to participants and that service is subsidised,

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regulated and measured by the Commonwealth Government. However, there are very few rights attributed to the provider and this is disappointing. The provider's position within the aged care eco system sits diminished.

Older Australians receive care from their providers, and their experience of aged care is often linked to that relationship. Therefore, the whole system relies on providers being empowered and confident in service delivery, to know and understand the system, to feel supported and to be funded appropriately to implement the expectations outlined in the Act.

This paper has drawn upon the questions outlined in Consultation Paper #2, however we have focused on areas of specific interest for community transport. We are grateful for the opportunity to be a part of this important consultation to shape the future of aging in Australia.

High level concerns:

- Efficiency of the system from when an older person expresses a need through to first service delivered.
- That the system is viewed and measured as a wholistic system – not siloed into Government and provider.
- The punitive approach for 'responsible persons' and whether the balance is able to ensure safety while also not deterring people from being involved in the sector in a time of severe workforce shortage.
- The reform timeline.
- Understanding responsibilities and transparency of the yet to be drafted pieces of the exposure draft and subordinate legislation or the 'Rules'.
- What is the appropriate balance of responsibility and rights to ensure affordable, efficient and effective service delivery and sustainable systems that support continuity and availability of care.
- The cost of delivering care in a community setting where there are no boundaries on client choice.

The CTO is thankful for the opportunity to contribute to this once in a lifetime consultation, to get aged care 'right' for older Australians. We hope that you will find our thoughts and submissions useful in the overall and continued development of this large and systemic piece of work.

CHAPTER 2 – Definitions and Key Concepts

The definition of Quality Care includes reference to the 'specific tailoring of care', additionally the Statement of Rights references the individual's right to exercise choice in relation to their funded care: two other areas of focus for the CTO pertaining to the delivery of transport:

Part 2 Section 19. Meaning of high-quality care

(c) (iii) specific tailoring of care to the personal needs, aspirations and preferences of the individual, including preferences regarding the time when the service is delivered;

Part 3 Section 20. Statement of Rights:

(1) *Independence autonomy, empowerment and freedom of choice*

- (1) An individual has a right to: exercise choice and make decisions that affect the individual's life, including in relation to the following:
 - (i) the funded aged care services the individual has been approved to access.
 - (ii) how, when and by whom those services are delivered to the individual.
 - (iii) the individual's financial affairs and personal possessions.

It is clear from these inclusions that the provider must deliver a service that is tailored to the individual and that the individual's preferences in how, when and by whom the services are delivered must be adhered to otherwise the provider risks a complaint and the follow on implications of that complaint, including regulatory intervention.

When this level of choice and control is overlayed on a service like transport there are service delivery implications, specifically when it comes to whether a person chooses individual transport and at a time, or with a driver that is otherwise rostered or busy. While providers do their best to meet the individual needs of a client, by prioritising medical and specialist appointments and allocating vehicles based upon assessment of need. This 'Right' as it is written would override a provider's process of prioritisation and ensure that client choice and preference is the priority.

Additionally, one of the areas that many would like to see improved in community transport is the 'on average' two day booking requirement. For many this feels antiquated in a commercially driven on-demand transport industry. However, the two-day booking system is one mechanism that allows providers to schedule and deliver pre-booked trips in alignment with an individual needs, while also being within operational capacity. The closer to on-demand a person wants their transport, the less control a provider has in who and how that transport can be delivered. Yet in many cases that person can still be transported, with care and consideration, reliability and safely to their destination and home.

It is clear that this Right is written to right the wrongs identified in the Royal Commission into Aging that saw older Australians being subjected to quite intimate services that, at times were inconvenient, intrusive and uncomfortable.

Choice and control over service provision, is a concept that the CTO supports. The rights of an older person to have control over their lives, is imperative to living a life of dignity. But the balance needs to be right. A Government subsidised service must be able to be delivered to as many people as possible for the least amount of money possible, it must be able to be employed in an equitable way using a set of procedures and processes that are transparent and deliver fairness across the board for all clients. Equity in access across the community is important. As is aligning with Section 23 (12)b "the Commonwealth's investment in the system represents value for money, including by ensuring that public resources are used in the most efficient, effective, ethical and economic manner." How to ensure both choice and control to the extent described in the exposure draft, while seeking a sustainably funded system needs to be carefully considered.

Accessible and affordable transport regardless of where they live:

The definition of High Quality Care includes prioritising **‘supporting the individual to participate in meaningful and respectful activities and remain connected to the community, where the individual chooses to’** For some time the CTO has been concerned with anecdotal stories of older Australians being denied access to subsidised and supported transport once they enter residential care. Many care homes do not provide transport ‘as a necessity of life’ yet people still have a desire to be self-determined in how they live their lives and certainly, in many cases, need to continue to visit their

doctor, dentist, specialist or attend ongoing medical treatments. It is also important for carers to be able to access transport to visit their loved ones who reside in care, or for those who reside in care to be able to attend social events or programs with their loved ones/partners or carers.

Transport is a foundational service for people wanting to maintain independence and access to vital services. It is unreasonable that an older Australian can access subsidised transport through Home Care and then be denied access to transport in residential care.

CHAPTER 2 – Entry to the Commonwealth aged care system:

Access to commonwealth funded aged care in the existing system has been limited by siloed decision making leading to coordination and communication challenges, under funding, and service gaps. The Royal Commission into Aged Care found compelling evidence that older Australians were not able to access the care and supports they needed in a timely manner. We know that being able to access care in a timely and responsive manner can stem the negative effects of aging and in some cases prevent or slow the rate of decline.

It is imperative that the whole system operates as one, and that the older person is not only at the centre of service provision, but is also considered in the assessment, navigation and decision making processes. This will ensure that providers can get the information that they need to be able to deliver service in compliance with the definition of High Quality Care and the Statement of Rights.

The definition of High Quality Care outlines to a commitment to **‘timely and responsive delivery of funded aged care services’**. Within the home support service group, the delegate holds the decision making powers for eligibility, approving recommendations from the needs assessor about service types and classification allocation, as well as approving re-assessment outcomes. This is all outside of the providers control and must be considered within the measurable definition of ‘timely and responsive’.

Note that the ‘review of decisions’ has not yet been drafted.

As yet the Exposure Draft does not specify the processing timeframes within which the decision will be made.

Despite the need to ensure that the provider is delivering services appropriately, it is also interesting and valuable to understand the total time it takes for a person to move through the system. It is valuable to understand bottle necks, areas of the process when either the Department role, the older persons role or the provider role is not seamless. So that there can be an approach of continuous improvement.

This also goes to the point of reassessment and the communication framework envisaged between assessor and provider when building a circle of care around a consumer. Where the process continues to maintain silos of decision making and communication, we can expect to see inefficiencies and confusion.

The design and implementation of the system should actively work to break down silos and see the process flow as a single experience. As it is inevitably experienced from the perspective of the older person.

Chapter 3: Registered providers, aged care workers and digital platform operators.

The CTO supports universal registration for all organisations seeking to provide Government subsidised aged care.

The CTO also supports the harmonisation of registration and worker screening with the NDIS. (Recognising that this is still under development)

The Act's treatment of digital platforms is more robust than was initially proposed, but it is not clear why there would be a second tier Standard for these providers. In asserting a different role and level of responsibility, the Regulator must be certain to have the resources and capability to effectively regulate that section of the sector.

The CTO also identifies the Registration Categories as problematic and are concerned that transport is classified within Category 1. We recognise that there are commercial options for people accessing supported transport, but we disagree that those options are robust in organisation, governance or accountability to the aged care model of care. We continue to work toward a model where community transport providers hold the regulatory responsibility for associated providers who can support the delivery of transport for older Australians whose needs are aligned with low care transport options.

We hold concerns for the idea that providers, once registered into a category, will be able to deliver all service types within that category, particularly in the case of home support service group.

This removes or fails to recognise any speciality from the service type, effectively opening the service type up to be delivered in any manner of ways that may not fall within the regulatory purview of State Government. This would substantially disadvantage the current community transport industry, placing safety at risk. This approach also does not align to the assessment process determining eligibility for home support services. Where the delegate must approve the person for specific service types and services. This in effect recognising the difference between services delivered under this registration category, where the provider registration process does not.

The community transport industry within NSW, in many cases, stands apart from the national industry in its contracted relationship through the State Government body. Currently under this model, those providers would take on an associate provider status, delivering services under contract to the registered provider that is Transport for New South Wales. This situation requires some serious consideration. Especially as it pertains to maintaining supported transport for the most vulnerable and those using mobility supports like a wheel chair.

Chapter 4: Fees, payments and subsidies

As noted, the focus of the new Act is on the safety, health and well being of older people, and places their needs and preferences at the centre of service provision, removing the focus from provider funding. However, the two are inextricably linked and when designing for desired outcomes, the funding model must be used to drive provider behaviour.

The Act is very clear about the Departments view on what constitutes appropriate care and the important role that individual choice plays within that definition. The funding mechanism needs to support or incentivise providers to deliver services that meet the definition of *High Quality Care* and is consistent with the *Statement of Rights*.

The CTO has advocated consistently for a funding mechanism that recognised the need for a person-centred subsidy (related to the activity of a specific person and their individual needs) as well as a provider-based subsidy (a grant like element to support infrastructure and thin markets). The two elements provide for older people to be able to move through their aging journey, funded appropriately for their changing care needs.

It is unfortunate that this chapter is not further developed or included in the Exposure draft because it underpins service provision. As the aged care marketplace continues to shift from a community services sector to a more commercial cost driven industry, funding must drive quality. Within the community transport industry, the funding mechanism and the unit price is extremely important because of the rising cost of delivering service, the diminishing number of volunteers, and the changing nature of our clients. The CTO supports a funding mechanism that links price and cost, is independent, and can be tested regularly to align with the changing nature of the transport industry.

We are enthusiastic to see the outcome of the Department's pilot program currently underway to test funding and cost. We are hopeful that it will result in a thoughtful approach to funding the community transport sector that supports sector vitality and incentivises the industry to deliver consistent High-Quality Care in line with the Statement of Rights outlined within the Act.

The role of the client contribution, however, is not dealt with nor is there specificity on means testing and whether that will be extended to include home care. The role that the client contribution plays is important in supporting community transport service provision. Transport, especially across distance, in rural and remote landscapes can be extremely expensive. If community transport service provision continues to operate under a single unit price for a standard deliverable, the client contribution will need to vary to meet the cost of service. Therefore, the client contribution cannot be controlled by Government.

Chapter 5: Governance of the aged care system

The Governance of the aged care system encompasses several players (The System Governor, The Aged Care Quality and Safety Commissioner, the Complaints Commissioner, and the Aged Care Quality and Safety Advisory Council), with overlapping roles dealing in the delivery, quality and assurance area of the system. Providers, operating at the transactional coal face of the system must be able to operate with certitude. There must be clarity in how the varying Governance functions work together and this clarity must be communicated and implemented in communications and process deliverables through to the provider industry. Layering systems that produce bottlenecks is not appropriate, adds expense to the system, and inefficiencies for older Australians accessing the system.

The inclusion of the Commissioners right to delegate authorities to consultants must be viewed with caution to ensure no perceived or real commercial or conflict of interest exists.

In relation to the question of whether the liquidity and capital adequacy test should be extended to home services is important. Assuming the standard listed in Chapter 5 Division 6 is the Standard in question, and that by extending this to the Home Care sector the Commission might aspire to better understand the financial adequacy and therefore test the viability of a provider, is fair. However, unlike residential aged care, Home Care providers have substantially greater and more diversified portfolios within their business operations.

Consultation must be undertaken to further explore the legitimacy of this line of enquiry within the Home care industry. Certainly many providers delivering Community Transport services, also deliver supported transport services under several funded and non-funded programs across various State and Federal Government Departments, as well as commercial transport. The CTO has questions about how this Standard would be tested within the Home Care industry, and whether that standard could be effectively implemented and tested across the entirety of the industry, including sole providers.

Chapter 6: Regulatory mechanisms

The regulatory mechanisms bestowed on the Regulator in this part of the Act are extensive and while 'risk-proportionate' is the term used for implementation, it is unclear how these powers will overlay the regulatory framework or be implemented throughout the variety and diversity of service provision within the sector.

Again, it is clear that the Act is written to support action against the worst of the experiences heard through the Royal Commission into Aging, and in that context, it is hard to argue against this level of regulation. However, the whole aged care industry will fall under this Act and it is difficult to support such a stringent and punitive approach to a community organisation, many governed by a community Board. Aged care is delivered by many and varied organisations across Australia and in many cases that diversity represents the community and the people living within that community.

Community members have a choice in how and where they dedicate their time to Board positions. Especially those people, living in our communities, who want to 'give back' to their community by taking on a Board position. The CTO understands and supports a mechanism that highlights a threshold for a persons appropriateness, but is concerned that the system in its entirety is not so cumbersome that it deters people who would be valuable contributors, from serving as volunteers on Boards or as a volunteer in another capacity.

The obligation, responsibility and punitive nature of the regulatory powers may be intimidating for volunteers. In small communities, where willing volunteers for Board responsibilities or community transport drivers are scarce, organisations may be left unable to fill valuable positions, leading to service gaps or failure. Potential volunteers seeking to 'give back' to community might be more prepared to choose to support an organisation outside of the aged care sector.

Chapter 7: Information Management

The CTO accepts the need for good information management practises that protect the privacy of older Australians and support their continuous care goals. The Whistle blower policy is appropriate; however, the CTO is concerned about the lack of a 'good faith' requirement.

Chapter 8: Miscellaneous

The CTO supports the Departments decision to legislate review. Five years is an appropriate amount of time for the Act to be implanted, in a way that shows a measurable outcome that can be compared to the goals of the Act and what the Nation is hoping to achieve through this piece of work.

The proposed process and responsibility for reviewing decisions has yet to be drafted, therefore it is unclear how consistent, streamlined, efficient, fair or equitable that process might be. Therefore, it is unclear the impact this review process will have upon service provision. Noting that the review of decisions will have a measurable impact on how service provision is able to be delivered. However, regarding the delegation provisions, some caution must be shown in how broadly the delegation functions and powers can be disseminated and extreme caution displayed where there might be a perceived or real, commercial or conflict of interest.

The Act speaks to the right for the System Governor to "be able to make grants of financial assistance to registered providers or organisations that work to support the rights of older persons and some other individuals with specialised complex needs" however, it is silent on the role or need for the role of **Sector Support** for the provider network.

Grants (Part 6 of Chapter 8) – intended that the System Governor will (not for funding aged care). This section does not include language that would support the current sector support and development function. The CTO supports the work that is currently undertaken by the Sector Support and Development industry.

This work substantially adds to the Departments ability to uplift and capability build providers to continuously improve, including supporting seamless communications and awareness building across the sector.

The Act speaks to the need to fund via a grant support for individuals accessing care but is silent on funding to support capability building, professional networks, collaborations, innovations and forums for the growth and betterment of the provider network.

Chapter 9: The reform timeline and readiness support

There are several questions posed within Consultation Paper #2 regarding sector readiness, the reform timeline and what support is required. The CTO believes that a rush to implement a Legislative Bill that is not complete, at this point, is untenable and setting the whole system for failure.

The New Aged Care Act is complex and is seeking to reform all areas of Government subsidised aged and community care for older Australians. Prioritising a date for completion, over thorough completion of the legislation, consultation, subordinate legislation and guiding documents is not appropriate. As with all things involved in this process, there must be a balance and deadlines are important, but the Act and the passage and implementation of the Act should be the cornerstone piece of work that all other pieces emanate. As at the date that the Consultation Paper was released, there remain several unknowns. Including areas where providers will need to implement substantial educational and cultural change frameworks, for example the Aged Care Standards are very newly released, there are sections of the Exposure draft still to be completed, the Final Report from the Aged Care Taskforce has not been publicly released and the pricing of Home Care services is not known.

To educate a workforce before all of the details are known, is unrealistic and highly inefficient. The workforce remains under pressure from shortages and COVID and to overlay reform frameworks in a 'hap hazard' way would be irresponsible.

The CTO would advocate for a timeline that is driven by the successful passage of the Act including the subordinate legislation. Until that time there remains doubt and uncertainty. Perhaps a timeline that recognised the passage of legislation as the launch of a transition to full implementation, to be outlined in the Transition Arrangements document. Following the passage of the Act and subordinate legislation, the Regulator must release guidance for implementation, including educational materials that should guide effective and thorough implementation of the Act and regulatory framework – time must be allocated for this work to be undertaken and released to the sector.

A suggested timeframe might look like: Passage of the Act, 3-6 months later the Regulator release guidance information, a further 6 months later the sector is ready for implementation under the new Act and subordinate legislation, fully supported by guidance materials developed and disseminated by the Regulator.

In Summation

The CTO is very appreciative of the opportunity to provide feedback into this consultation. The magnitude of this work is expansive, and we recognise the challenge of building a new aged care Act to encompass all areas of aged care service provision. Our overall perspective of the Exposure draft is that it is heavy on provider responsibility and fails to recognise the responsibility that an older person has in taking up a subsidised service.

It is our experience that community transport providers pride themselves on delivering a door to door, individualised transport solution, however they do that by balancing the subsidy, with client needs and the demand for the service. With a goal of trying to deliver the best service they can for the most amount of people. Striking the right balance in delivering subsidised service is important for equity of access.

It is clear that this work closely follows the recommendations of the Royal Commission into Aged Care, and in doing so is very targeted to answer for the many issues that were highlighted through that process. From a very specific community transport perspective, it is very difficult to see how our industry realistically interacts with this Act. It is so clearly written to right the wrongs identified in residential care and home care, where CHSP was not found wanting through the Royal Commission therefore it is hard not to feel that our industry has been caught up in a major overhaul that may change the nature of CHSP supported transport as a community service.

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