

**Submission
No 301**

**INQUIRY INTO IMPLEMENTATION OF THE NATIONAL
DISABILITY INSURANCE SCHEME AND THE PROVISION
OF DISABILITY SERVICES IN NEW SOUTH WALES**

Organisation: Community Transport Organisation

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Community Transport Organisation Ltd
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Introduction to the Community Transport Organisation

The Community Transport Organisation (CTO) is the peak body for the Community Transport sector in NSW and the ACT. We represent 95 percent of the State's Community Transport providers and through them, approximately 150,000 transport-disadvantaged individuals – many of whom are NDIS participants.

Community transport is a specialist service that is informed by a *human rights* understanding that all people are entitled to appropriate and accessible transport. It is an alternative to, and distinct from, other forms of public, mass and private transport options. Community Transport provides specialized transport services to those people for whom mainstream options are either inappropriate, unattainable, or otherwise inaccessible – '*reasonable and necessary*'. Provider capability is in building and maintaining ongoing relationships with service users that promote particular insights and backup support to customers' individual health, daily living and social needs, to facilitate a personalised and effective service in support of that person's goals.

We have a unique community foundation with many members of CTO being ACNC regulated charities and for-purpose based organisations that are champions for social impact outcomes. Our value proposition is positioned very high within the social return on investment spectrum, estimated at 15 to 20 times higher than other traditional services by the University of NSW Centre Of Social Impact.

Local communities around the State have developed trusted relationships with community transport services for over 30 years given our unique offerings and 'key enabler' status for access to community. The Commonwealth has similarly reinforced in various forums that it recognises that the provision of community services across the broad spectrum of services, intrinsically rely on our 'key enabler' services.

The community-based, person-centric nature of our members' services are critical points of difference over other private and commercial forms of accessible transport. Specialising in working with vulnerable people who may have a variety of disabilities and/or failing health and mobility issues, local booking infrastructure ensures community transport is a critical service option for vulnerable members of our community, and a valid stakeholder in the success of the National Disability Insurance Scheme (NDIS).

Transport is an essential enabler to achieving life goals

The CTO submits that the NDIA ought be compelled to recognise all forms of transport, including community transport, as 'key enablers' assisting NDIS participants to access appropriately funded core supports.

We acknowledge the enormity of the economic and social impact of such a significant reform and change agenda as the NDIS. While support is given to the principles and objectives of the NDIS and market opportunity is recognised, it has become increasingly evident that the NDIS has underestimated the important and distinct role of transport in the lives of vulnerable people attempting to live 'an ordinary (good) life'.

Inadequate transport allowance

Access to transport is a key enabler to social and economic participation for people with a disability. Transport is a determinate of health, a means to accessing the community, work, study and job-seeking and therapy appointments. Building independent travel capacity and complementing or enhancing informal networks is essential to a flexible and sustainable approach to transport under the NDIS. However, this approach is not always going to be achieved through demands and assumptions for in-kind support or by use of public modes of transport.

The transport allowance as described in the NDIS guidelines takes a narrow view of how transport impacts an individual's ability to participate in their community and as in many areas of life, one size does not fit all.

Transport & NDIS Funding for Access to Community Social and Recreation: The NDIS statute designates two distinct funded services. It creates a divergent paradigm of understanding which our members' experiences strongly suggest is not communicated and understood by NDIS practitioners, service providers, local and regional coordinators, plan approvers, participants and most importantly, participant carers, plan support coordinators and plan managers.

1. NDIS funding is available for *core supports Assistance to access community, social and rec activities - individual 04_105_0125_6_1*.
2. NDIS may also pay a cash allowance to a participant's bank accounts each fortnight for *Travel and Transport. (Transport 02_051_0108_1_1 or Specialised Transport to Community, Employment or Educational 02_051_0108_1_1)*

The term “transport” is narrow and its present use as noted in point 2 (but not openly stipulated in point 1 [core supports]) above, inherently misleads service practitioners to only include funding for support attached to point 2, in a participant’s plan. Self-evidently, transport support within a participant’s plan does not relate to the function and service of transport relating to core supports. The divergent paradigm creates; ‘Assistance to Access Community Social and Recreational Activities or Assistance to Access employment Study or vocational training or volunteering’, as the key enabler to access all other supports. This dichotomy is surely unintended, given episodic practice and declarations from NDIA as to use of core supports to enable transport funds, yet is not adequately defined, explained, nor well understood.

The practical ramifications of this has been extremely harsh with members describing many raw, emotionally charged exchanges with parents, carers’, and people with a disability alike, all decrying the pervasive effects of having no enabling transport means within their plans as their core support allocations were entirely inadequate in terms of extracting transport funds via the fungibility of core supports. This denial of enablement also causes immense anxiety for plan support coordinators, service providers and carers alike as they seek to deliver appropriate outcomes to the participant, in perplexing, inadequate and confounding circumstances.

Our members remain concerned about the withdrawal of various transport options, including community transport support options, from the market. The legislative ambiguity referred to above regarding *Transport and Assistance to Access Core Supports*, and the lack of reference to market pricing within any participant funding award, sees service providers, including community transport services, regarding specialised transport as **not** appropriately funded to ensure a robust market and the sustainable offering of this service.

The evidence of market failure is being observed by CTO members and community transport service providers throughout Australia, with service providers electing to withdraw their assistance to access services. We need only refer to the recent withdrawal from the provider market of a large corporate taxi service as evidence that this assessment extends beyond the traditional service provider. It seems clear that many of the concerns and pain points relating to ‘inadequate pricing and inadequate funding’ raised by individuals, providers and peak bodies during the trial and earlier transitional phases of the NDIS, remain today.

The outcome of this market rationalisation, is that under-resourced Community Transport services, to varying degrees, are attempting to take up the unmet excess demand, often at subsidised rates without any recourse. This migration of unmet demand is devoid of any corresponding capital or equity injection to fund expanded capacity needs. Our members report that they have not been able to plan new capital expenditure, in an environment of such ambiguity and uncertainty. Our members have exhausted excess capacity with a fiscal inability to respond further to market demand given the inadequate treatment of transport within participant plans.

The CTO draws your attention to Submission 47ⁱ to the Joint Standing Committee on the NDIS, where TDSA (Transport Development and Solution Alliance) provides in part, a response from the Australian Governments Assistant Minister for Social Services and Disability Services in January 2018 regarding their draft submission. While the response confirms the Australian Government's position regarding transport and the NDIS, there are two statements that are telling and contribute to the challenges that are being presented for community transport providers and NDIS participants:

The inclusion of transport in NDIS participant's plans is proving to be a complex issue. The NDIA is currently considering this matter including the need for a transparent and robust pricing framework for transport supportⁱⁱ.

All NDIS participants can seek a review of transport supports in their plans at any time. If a review finds that a participants transport supports are inadequate, their NDIS plan will be adjusted accordingly to what is considered to be reasonable and necessaryⁱⁱⁱ..."

As to the first point; transport for vulnerable people, of all ages who live with a disability, is indeed a complex issue. This statement is a welcome acknowledgement, but it requires further consideration and input from subject matter experts. We therefore implore government to appoint a sector expert, or experienced operator, to the NDIS Independent Advisory Board to bring practical insights and application to the diligence it espouses.

To the second point; the ability to undertake an unplanned review is acknowledged but like many of the systemic processes of the NDIS, a review comes with inappropriate and inconsistent time delays, a lack of transparency in the outcomes, and of course near-inevitable disappointment. A considered and flexible approach to understanding an individual's true transport needs at the beginning of the planning process will avoid unnecessary and lengthy delays that are experienced when a 'review' is undertaken due to inadequate funding outcomes. So too the perverse effects of unreasonable repeated failure and the resultant helplessness our stakeholders express to our members, is avoided.

A clearer framework is now required after the Federal Court ruling that laws governing the NDIS do not allow the government to only *partially fund* the supports that people with a disability need to help them lead ordinary lives. In the Liam McGarrigle case the Federal Court determined the interpretation of some key provisions of the National Disability Insurance Scheme Act. This is a key example of legislative opaqueness in NDIS drafting and consequent uncertainty about the intent and application for accessing supports. It recognised that *Transport or Assistance to Access* is a key enabler to accessing supports.

The CTO's membership consistently advises that there remains a lack of understanding by participants and providers that transport funding can be considered within the NDIS funding of core supports. The level of understanding remains low and the right questions are not being asked or explored by planners that would inform appropriate funding, and reflect actual transport needs to achieve life goals.

Independent Pricing Review

The Independent Pricing Review (IPR) undertaken by McKinsey & Company highlights elements of the embedded components of transport for 'travel' as it relates to care support such as; the removal of travel caps for therapy supports and an increase to the travel allowance from 20 to 45 minutes for service providers in regional and remote areas of Australia.

The IPR Recommendation 4 provides some understanding as to the level of complexity accessing travel and transport related services in rural/remote areas of Australia. Support worker travel is one aspect of accessing support services and as such, CTO welcomes the acknowledgement to rural and regional market concerns along with the NDIA's response to reflect support worker travel improvements in the 2018-19 Pricing Guide.

Recommendation 4 states;Service provision in rural areas can also be affected by restrictions on the ability of participants to transport themselves to and from supports services. [This restriction is not solely a rural/remote access issue and is experienced elsewhere in metropolitan and urban areas]. This was an issue highlighted by providers during the IPR team's consultation process. However, this issue is beyond the remit of the IPR. The NDIA could work with LAC's planners as well as the states and other local authorities to understand if a participant has public transports available to them and the capability to utilise the service. The IPR team recognises that solutions to transport will have implications for the adequacy of supply and support access in remote and rural areas^{iv}.

The NDIA needs to recognise that transport is integral to core supports and fund it accordingly. Travel allowances ought to be able to be used for ad-hoc purposes associated with 'living an ordinary life' ensuring participant choice and control, proper planning and full and adequate funding. Without this the NDIS will fail in its aim to enhance the independence, social and economic participation of people with disability and their carers.

Poor transport funding outcomes is due largely to the continued shifting variability in NDIA planners' knowledge and interpretation of the NDIS and all associated legislations, policy and guidelines in order to make fair and equitable decisions on transport as an enabler of core supports. This requires immediate consolidation into one clear fact sheet, openly available for distribution to all NDIS participants, planners, assessors and service providers. The lack of clear information around transport and access in core supports is causing widespread confusion and ignorance, resulting in the massive shortfall within the transport component of participant plans.

Outcome and Reform:

Current deficiencies in the drafting of NDIS legislation isolates NDIS participants and service providers by its lack of transparency and obtuseness. CTO advocates for the removal of this complication by either:

1. Large scale communication and education for all participants and/or their carers, and a clear practice guideline or directive for Local Area Coordinators and Supports Coordinators to understand; or
2. Clearer legislative design where the NDIA legislation uses language that is patently clear; e.g. "NDIS Fundable Travel and Transport for Core Supports"

The current guides complicate and mislead participants, their representatives, and NDIS operatives alike, leaving participants worse off when compared to accessing readily available transport services relevant to their needs prior to the implementation of the NDIS.

The transport sector seeks clear understanding as to how the real level of travel and transport assistance will be included in a participants Core Supports, with the reassurance that other fundamental core supports are not compromised in doing so – any plan where '*reasonable and necessary*' can then be traded against, is by definition not reflective of all that is reasonable and necessary.

Summary of Shortcomings

1. Drafting creates a divergent transport paradigm that is not consistent and clearly understood.
2. There is no education and training about the 'Assistance to access Community' as the key enabler to accessing core supports.
3. Participants are not planning appropriately and are being denied access to appropriate core supports causing extreme anxiety to participants and carers.
4. Market mechanism is failing in 'Assistance to Access Supports'. Service providers are leaving service to community providers as the local experts in the field creating severe capacity constraints.
5. No capacity building is possible to meet excess demand. Pricing mechanism does not provide sufficiently for service providers to adequately plan and apply capital.

Summary of Recommendations

1. NDIS Legislation and/or policy implementation is amended to ensure that the reasonable and necessary transport support needs of NDIS participants are clearly and transparently provided for within participant plans as of right. By way of example, we suggest replacing the transport component of 'Assistance to Access Community, Social and Recreational Activities' with 'NDIS Fundable Travel and Transport for Core Supports'.
2. NDIS Advisory Board includes a transport services industry representative - best positioned to meet the requirements of this role is a peak body representing Community Transport members registered as open market service providers to the scheme.

For further information please contact:

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Or

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Acknowledgment is given to the Australian Community Transport Association for its work on this position paper.

ⁱ TDSA (Transport Development and Solutions Alliance) QLD

ⁱⁱ TDSA Submission 47: Australian Government's current position on NDIS transport; page 47

ⁱⁱⁱ As above

^{iv} McKinsey & Company Independent Pricing Review. Recommendations: 4, page 45