

## ACTA Draft Response on Aged Care Bill Exposure Draft

### Who is Australian Community Transport Association (ACTA)?

ACTA is the national peak body for the community transport sector. We work together as a peak body for the benefit of community transport services across Australia. Founded in February 2011 and comprising representatives from QLD, NSW, TAS, SA, VIC, ACT, NT & WA, ACTA operates with a view to providing a national voice for the community transport sector. The company is a not-for-profit public company limited by guarantee which is established to be, and continue as, a charity.

### What is Community Transport?

Community Transport is a specific service model which provides supported transport for people who cannot access their own transport, family transport, public transport, taxi-rideshare transport and who require additional trained support to be able to get out and about in their community.

It has a workforce of paid and volunteer staff running the logistics and real time consumer call centres, a workforce of volunteer drivers who are trained and supervised and an intake/assessment team of paid staff.

It is not just any transport provided in a community. It is also not an individual aged care service buying a bus to take their consumers to their services. This is called client transport not Community Transport.

The Australian Government has funded Community Transport as a model since July 2016 under CHSP.

### Why is Community Transport important to people living in our community?

Community transport (CT) keeps people involved and connected in their community, it keeps people healthy, it keeps people safe, and it offers more to people than a ride.

CT providers also interact with other care providers: observing, monitoring and reporting on consumers' well-being and the possible need for other types of support. CT providers provide a "door to door" service and have established and developed risk management protocols, rather than the "kerb to kerb" service provided by most private transport operators. This means providers will walk to the door and assist the client to the vehicle. If the client is not ready at the door for the service, CT providers follow emergency risk management procedures to contact the client by phone, and if necessary, their next of kin. They then call emergency services if deemed appropriate and await their arrival. This level of care is typically limited to the community transport sector, who are driven by a culture of care for their clients rather than by revenues.

Community Transport meets a critical need in facilitating 're-ablement' – ensuring older people are active and independent for as long as possible. This means ensuring that they stay connected to community through shopping, social meetings, health appointments, community events and other activities.

The CT sector also fills a critical gap in areas where there is severely limited or no public transport or hospital patient transport. CT providers in these areas often transfer patients discharged from hospitals where state assets are limited in providing this service.

## What does our sector look like?

Collectively the sector has around 2,200 paid staff and 8,000 volunteers – most of them drivers – who provide 2.4 million hours of service. To replace this donated time with paid labour, would cost the Australian Government about \$86M3, equivalent to increasing the Commonwealth Home Support Programme (CHSP) transport funding for 2021/22 by 45%. Most of this effort is directed at eligible aged consumers, placing CT firmly into the category of Aged Care services.

ACTA supports the rights-based approach to the new Act and the placement of Community Transport in Category 1 where the aged care standards do not apply. This reflects the nature of services provided.

ACTA would like to make comment on the areas of concern it has identified in the current Exposure Draft of the Aged Care Act.

There are 9 main areas of concern:

1. Approach to volunteers
2. High Care Quality- timing clause
3. Location of Social Support under Category 4
4. Specification of definitions of Community Transport for the assessment and entry phases of aged care.
5. Role of Associate Provider
6. Implementation timing and the disconnect between current funding model and 2027 timeline for CHSP inclusion in new arrangements.
7. Blunt approach to governance
8. Lack of funding detail within the current exposure draft
9. Compliance costs under the obligations set out.

## Issue 1: Approach to Volunteers:

The Act specifies an aged care worker of a registered provider is:

- (a) an individual employed or otherwise engaged (including as a volunteer) by the registered provider; or
- (b) an individual who:

(i) is employed or otherwise engaged (including as a volunteer) by an associated provider of the registered provider; and

Obligations and regulation under the Act are specified for aged care workers therefore not differentiating the paid and unpaid workforce. Birchgrove Legal<sup>1</sup> provides a concise summary of the difference in a paid and unpaid workforce:

*Volunteering Australia provides the following non-legal definition of a volunteer:*

*A person whose ‘**time [is] willingly given** for the common good and **without [expectation of] financial gain.**’*

*More typically, a volunteer is defined as an individual who carries out work without the expectation or legal requirement of, payment or reward.*

*The Fair Work Ombudsman (FWO) has identified the following characteristics of a **genuine volunteering arrangement**:*

- *a volunteer is someone who does work for the main purpose of **benefiting someone else***
- *the organisation and individual did **not intend to create a legally binding employment relationship***
- *a volunteer is under **no obligation to** attend the workplace or **perform work**, and*
- *a volunteer **doesn’t expect to be paid** for their work*

#### **What makes an employee?**

- *The FWO has also determined an **employee’s ongoing working relationship**, by the following indicators:*
- ***performs ongoing work** under the control, direction and supervision of the employer and is paid for the time worked*
- *must **perform the duties of their position** and usually as an ongoing expectation of work*
- ***work hours set** by the employer, an enterprise agreement or modern award*
- ***paid regularly** (for example weekly, monthly or fortnightly)*

The ACNC recognises that a registered charity has different legal entitlements and obligations for paid and unpaid staff.

*The Exposure Bill does not recognise the legal differences between a paid and volunteer aged care workforce. A registered provider cannot legally compel a volunteer workforce to comply in the same manner as a paid workforce.*

Whilst ACTA supports the proposition that individuals that make up the aged care workforce comply with the Aged Care Code of Conduct, it is in the penalties that the current Draft fails to accommodate

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<sup>1</sup> <https://birchgrovelegal.com.au/2020/09/25/what-are-the-differences-between-volunteers-and-employees/#:~:text=a%20volunteer%20is%20someone%20who,be%20paid%20for%20their%20work>

the differing legal relationships a provider has for its unpaid and paid workforce. Treating breaches of the code by volunteers the same as paid workers fails to recognise both the legal relationship a registered provider has with the individuals but more importantly:

- training obligations which volunteers have no legal obligation to participate in
- difficulties post COVID of attracting volunteer workforces and the changing nature of this workforce
- impact of the Acts' obligations on the motivation to volunteer in aged care
- current funding model for Community Transport

Section 91 specifies:

### **91 Workforce and aged care worker requirements**

It is a condition of registration that a registered provider must:

- (a) comply with the worker screening requirements prescribed by the rules; and
  - (b) ensure that aged care workers and responsible persons of the provider comply with the worker screening requirements prescribed by the rules; and
  - (c) ensure that aged care workers meet any qualifications and training requirements prescribed by the rules; and
  - (d) ensure that aged care workers meet any other requirements prescribed by the rules.
- preferences regarding the time when the service is delivered;

ACTA has no issue with screening requirements for volunteers as this is current practice. However, part (c) above is unclear as to the required qualifications that volunteers must possess. Volunteer drivers come from many different backgrounds and have a diverse range of qualifications and experience. To specify in rules aged care qualifications which they must have belies the nature of their involvement with service delivery and the requirements of community transport.

ACTA has grave concerns as to the implications this Act in its current form has for utilisation of volunteer workforces in aged care and more specifically the predicted impact of removing volunteer drivers as a viable service delivery model from Community Transport. The cost implications to the Commonwealth of a reduction in the volunteer workforce of Community Transport would be enormous.

**Effect:**

- 99% loss of the volunteer workforce involved in service delivery thus reduction in services or increase in cost to replace with paid positions.
- Limit older people's capacity to get out of their homes and increase loneliness and isolation with all of its health and wellbeing consequences.

**Solution:**

The Exposure Bill must differentiate the obligations and responsibilities of registered providers and responsible persons for volunteers from the paid aged care workforce and tailor obligations and regulation to be in line with the nature of volunteering and the legal relationship of this workforce.

## Issue 2: High Care Quality timing clause

Community Transport is not currently an on-demand transport service within the limits of its current funding model. Most services require lead times of between 1-3 days to provide service given the changing nature and availability of its volunteer driver workforces. Community transport is care in the car.

The high-quality care clause is not in keeping with the resourcing and practicalities of providing a Community Transport service and unfairly labels the service as not being of high quality care.

**19 Meaning of high quality care**

The delivery of a funded aged care service by a registered provider to an individual is **high quality care** if the service is delivered in a manner that:

- (a) puts the individual first; and
- (b) upholds the rights of the individual under the Statement of Rights; and
- (c) prioritises the following:
  - (i) kindness, compassion and respect for the life experiences, self-determination, dignity, quality of life, mental health and wellbeing of the individual;
  - (ii) the timely and responsive delivery of the service to the individual;
  - (iii) specific tailoring of care to the personal needs, aspirations and preferences of the individual, including

C (ii) – what is timely and responsive? We have some clients who expect a taxi like service- at the times they want and being individually transported. This clause presupposes an obligation for us to

provide that service. This is not possible under the current funded model of Community Transport and is not cost effective in the longer term.

Similarly c (iii) implies that older people can specify how they want their transport delivered. Where Community Transport services cannot comply ie after hour and weekend transport, single person transport- does this mean they are of low quality? No, it does not.

*The definition of high-quality care lacks clarity on the limitations that funding, cost effective service provision and accessibility of a volunteer and paid workforce place on Community Transport.*

### Effect:

- Timeliness of a Community Transport response and its flexibility to meet provision c(iii) relies on adequate resourcing. Without that limits will be placed on service delivery which do not reflect low quality services.
- The current definition in the Act gives consumers an unfair expectation of what high quality is. This may create expectations of the aged care system which cannot be met in reasonable funding parameters and impact complaints and political and public perception.

### Solution:

- Mix paid and volunteer drivers be factored into a Community Transport funding model and tested in the Variable Pricing Matrix trial currently underway , led by ACTA.
- Funding model for an on-demand Community Transport service be scoped and funded if this is what government seeks in the aged care system for those who need additional care and support.

## Issue 3: Location of Social Support under Category 4

Many Community Transport Services offer Social Support Individual services taking older people out for the day- not to PAG groups or organised activities in health or other services but to the beach, to the theatre, to shopping whether this is supported by volunteers or solely. ACTA believes it is overkill to locate this type of service under Category 4 accountable for aged care standards.

These services are delivered to assist people to stay connected to community in a safe manner but their location under Category 4 risks Community Transport Providers assessing that the risks and costs to them of aged care standards compliance for a few days a year where they transport for excursions. Many local governments have assessed this risk as too high and relinquished these

services for older members of their communities. The current wording of the Act risks Community transport services doing the same. We believe that community transport should exist under level one to take account of the different support needs and complexities of those use these services.

The provisions in the Act for Associate Providers also begs the question:

- Where registered providers subcontract a Community Transport provider to transport for social support services are they obligated under the Act to insist that these providers comply with the aged care standards? What if they use taxi's or private bus companies do they have the same obligations?

### Effect:

Bluntly locating Social Support under Category 4 will have adverse service consequences for older people by restricting the delivery of " day out" excursion style services currently provided by Community Transport services.

### Solution:

ACTA recommends that these type of services be factored into the definition of Community Transport service under Category 1.

## Issue 4: Specification of definitions of Community Transport for the assessment and entry phases of aged care.

Community Transport is not just transport in the community. It is a specialised model of service which is poorly understood in many areas. It is not taxi vouchers or clinical or aged care staff transporting a client in their own car. It is not a service deciding to purchase a bus to transport its clients to its own services. It is care in the car.

If Home Support packages are to pay for Community Transport then the specification of what constitutes a Community Transport service is considered essential so that consumers can receive the quality supported transport services they require.

Government also needs to specify what Community Transport is in its registration process so that the limited funding available for legitimate Community Transport Services can be provided and we do not see the watering down of this to " client' transport that simply benefits the service provider and not the consumer that needs to access to their community.

**Effect:**

- Lack of specification of Community Transport in assessment definitions will lead to funding for transport being allocated to less than supported and inadequate care models of transport for the consumer group who require supported transport eg taxis, ubers, caseworker transport.
- The necessity for a comprehensive assessment will deter clients from wanting to access short term support due to the complexity of the process. This will impact reablement goals and consumer access to reablement services.

**Solution:**

That within the regulations associated with the Act ,Community Transport is specifically defined as a service type for assessors and that mobility questions are included in the standard assessment tool. Short term reablement provisions are incorporated so as not to deter consumers only requiring limited access to the aged care system.

**Issue 5: Role of Associate Provider**

Many Community Transport services are subcontracted by current Home Care providers to provide the supported type of transport for their clients who require this additional support and flexibility. In regional areas Community transport services are the only option for many. Since the Quality audits of recent times have reinforced the need for registered providers to “ own” the clients of sub-contractors we have seen a reduction in the number of providers who accept volunteer drivers. This has led to highly inefficient and costly alternatives such as taxi’s being used instead for older people who need a more supportive transport option.



**Effect:**

- the current provisions for Associate Providers will preclude Home Support providers from sub-contracting Community Transport in their regions and reducing the utilisation of this transport for older people that want to remain active in their community and attend non service based opportunities such as shopping, theatre, meeting friends.

Several of our members have already seen this trend happening and being exacerbated by the withdrawal of Councils from aged care transport contracts. Consumers of the CHSP provided Community Transport when transferring to Home Care packages are told they can no longer use the Community Transport and are often restricted to “client” transport to specified services. This is a perverse consequence which would act against the rights-based approach of this Act and denies older people choice in what they can access in their community.

- Capacity to get out and access the things you need is a social justice right. People who are transport vulnerable can only use Community Transport to achieve this. Many aspects of the Act will jeopardise this right.
- The administrative impost and significantly increased legal fees to comply with this are concerning.
- Reduction of sub-contracting by registered providers which will reduce consumer choice.

**Solution:**

- Do not define Community Transport as an Associate provider in this relationship with package providers or
- If an organisation is a registered provider then their compliance with the aged care standards should apply automatically to the Community Transport provider as an associate provider.

**Issue 6: Implementation timing and the disconnect between current funding model and 2027 timeline for CHSP inclusion in new arrangements.**

Currently Community Transport is funded per trip. This unit of funding measure is recognised by the Commonwealth as inadequate and ACTA is currently undertaking a funded trial of a new variable

funding model with Commonwealth funding and support. The current funding does not take into consideration:

- Intake and assessment service required to comply with MAC
- Compliance costs with aged care standards
- Volunteer workforce recruitment and retention demands
- Training requirements for paid and volunteer workforce
- Fixed costs of running fleets and increasing fuel costs.

### Effect:

It is proposed the Act and its significantly complex compliance requirements come into force in 2024 however the current funding model for Community Transport will remain in place until 2027 leading to:

- Lack of resourcing both in funding and workforce to comply with obligations
- Potential withdrawal of providers from the sector

### Solution:

- that Community Transport compliance is either aligned with the 2027 date for CHSP integration into the aged care system or Community Transport is funded as of 2024 for significantly increased compliance costs and a fully paid driver workforce.
- Funding of a supplementary piece of work once the Act is known, to be integrated into the variable funding model for Community Transport.

## Issue 7: Blunt approach to governance

Whilst ACTA fully supports the approach to improved governance in aged care it considers the current Act does not align governance responsibilities with the service categories approach taken and it risks services that are less complex than residential aged care from attracting people to their Boards .

Governance should be appropriate to the size, type, complexity and risk of an organisation and treating Community Transport as having the same risks, complexity and service type as residential aged care is inappropriate.

#### Effect:

- Reduction of people willing to join Boards
- Key skills gaps especially in rural, regional and remote areas which will make it hard to form Boards of good governance.
- Large providers will have ability to attract upper echelon Directors at expense of diversity of service providers and small providers who do not have same financial capability to attract skilled and qualified Directors.
- Exacerbate thin markets

#### Solution:

- a scaled governance process aligned with the Categories of Services where core governance responsibilities are well defined for all Boards but complexity of governance requirements are increased as the complexity and risk profile of services increases.
- Explore payment of 2 independent Board Directors with experience in governance for all registered providers.

### Issue 8: Lack of funding detail within the current exposure draft

ACTA is concerned that the Exposure Draft lacks any detail on funding models and approaches and acknowledges that until such is provided that sector commentary to government is compromised.

ACTA recommends that Chapter 4 be completed and the sector consulted before any approach is taken to place the Act in front of Parliament.

### Issue 9: Compliance costs under the obligations set out.

The Act places significantly greater compliance costs on CHSP providers and this will need to be factored into the 2027 funding model. Points 1, 2 and 6 above highlight the challenges this Act poses

for Community Transport and its compliance with the obligations and responsibilities as they are currently drawn.

The sector will also need significant support and resourcing to understand the changes to their compliance and this cannot occur without significant funded resourcing of the national peak for its members.

The complexity of these new obligations and requirements and the proposed very short timeline to implement them will place undue pressure on the sector let alone the entire aged care sector.

A system which just relies on high levels of compliance and penalties is unlikely to deliver the quality services Australians want. Consideration should be given to how we create a high-quality culture within aged care service delivery systems. ACTA would like to see a quality and learning culture approach to aged care, alongside a compliance framework. This system needs adequate funding for delivery.

### Effect:

- ACTA will need to take these into consideration in a funded supplementary piece of work to ensure the variable funding model factors in the cost of compliance.
- Government will need to fund the significantly increased funding from 2024 to assist Community transport providers to comply immediately with the provisions of the Act especially the legal liabilities at all levels of service delivery.

### Solution:

ACTA supports a considered and staged implementation of the Act which recognises the continuum of service provision and risk profiles that exist within the sector and avoids the risk of losing even more Community Transport services in communities.