



4 November 2016

Committee Secretary
Senate Community Affairs Legislation Committee
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Parliament House
Canberra ACT 2600
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Dear Committee Secretary

Inquiry into the Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016

Thank you for the opportunity to make a submission to the inquiry into the *Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016 (the Bill)*.

The National Welfare Rights Network (**NWRN**) is the peak community organisation in the area of social security and family assistance law, policy and administration. Our members and associate members are community legal centres and organisations across the country which provide free and independent legal assistance to current and former social security and family assistance recipients. The NWRN draws on the experience and expertise of its members in developing its submissions and policy positions.

Overview

The Bill amends social security legislation to:

- tighten the eligibility criteria for mobility allowance for new claims from 1 January 2017 and reduce the period during which a person remains eligible for it after ceasing to undertake a qualifying activity;
- provide that mobility allowance will no longer be payable to individuals who transition to the National Disability Insurance Scheme (NDIS), even if they later cease to be a participant in it; and
- close the mobility allowance program from 1 July 2020.

This implements a policy that the main support provided by the Commonwealth for the transport needs of people with a disability will be the NDIS, once it is fully implemented in 2020. The existing support provided through the mobility allowance program is to be phased out at this time.

This submission considers,

1. the proposed amendments, including cessation of the program in 2020, and potential impacts on current and future recipients and applicants for mobility allowance
2. ways to assess the intersections between the mobility allowance program and the NDIS to ensure no NDIS participants are disadvantaged by their transition to the NDIA.

Mobility Allowance

Mobility allowance is a non-means tested payment which provides financial support to people with a disability to help with the costs of transport in certain circumstances. It is normally paid fortnightly, although an advance of up to 6 months is available. Payment is administered by the Department of Human Services/Centrelink (DHS).

Although mobility allowance can be paid by itself, most recipients receive a primary income support payment, mainly the disability support pension (DSP). During 2015-16 about 60,000 people received mobility allowance.¹

Currently, to be eligible for mobility allowance, a person must be:

- an Australian resident aged 16 or over with a physical or mental disability (for which the legislation still uses the language of “handicapped person”)
- unable to use public transport without substantial assistance² permanently or for at least one year due to their disability, and
- required to travel to and from their home in order to undertake work, volunteer work, study, training or job search.

The person does not in fact have to use public transport (e.g. it may not be available in their area).

There are two rates of mobility allowance, a standard rate and a higher rate. Publicly available figures suggest most recipients, around 90%, receive the lower standard rate.³ Recipients are also eligible for a health care card, although most recipients would already receive a concession card with their primary income support payment.

To be eligible for the lower (“standard”) rate (currently \$93.20 per fortnight), a person must be:

- undertaking gainful employment, voluntary work, vocational training and/or independent living/life skills training for at least 32 hours every four weeks on a continuing basis
- undertaking job search in accordance with a Job Plan or Participation Plan agreed with DHS or an employment service provider

¹ Department of Social Services, Annual Report 2015-16, at 49, accessible at <https://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/annual-reports/dss-annual-report-2015-16-0>.

² This means more assistance than could normally be expected from a transport officer or other member of the travelling public, and is assessed on the basis of a treating doctor’s report.

³ Senate Community Affairs Committee, Answers to Estimates Questions on Notice, Social Services Portfolio, 2014-15 Budget Estimates Hearings, Question No. 644 (figures as at March 2014), accessible at http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/claccte/estimates/bud1415/DSS/index.

- receiving Newstart allowance, youth allowance or Austudy and meeting the activity test requirements for these payments, or
- participating in a disability employment services – disability management service.

To be eligible for the higher rate (currently \$130.30 per fortnight), a person must be receiving newstart allowance, youth allowance (as a job seeker), disability support pension or parenting payment and:

- working 15 hours or more per week at or above the minimum wage
- looking for work of 15 hours per week or more at or above the minimum wage in accordance with a Job Plan or a voluntary agreement with an employment service provider or DHS,⁴ or
- working 15 hours or more per week in the open labour market for productivity based wages under the Supported Wages System.⁵

Mobility Allowance is not payable to a person who:

- has a car provided under the Department of Veterans' Vehicle Assistance Scheme, or
- is a participant in the NDIS and has an NDIS plan in place specifying their funded reasonable and necessary supports.⁶

It has been the case since 2013 that a person cannot receive a funded package under the NDIS and mobility allowance at the same time.

Generally, a person who ceases to meet these criteria (e.g. ceasing to undertake vocational training or voluntary work) is no longer eligible for mobility allowance. However, under current rules, they continue to be eligible for a certain period, known as the "period of grace". Generally the period of grace is 12 weeks, although it is 2 weeks only in some cases.⁷

The Bill

The Bill discontinues the mobility allowance program from 1 July 2020, the currently planned date for the full national roll out of the NDIS.

The rationale for this is that the NDIS will become the main form of support for transport costs for people with a disability. The Government has also presented this as part of its agenda for simplifying the social security system.

The Bill also makes changes to existing mobility allowance rules in the proposed transition period of 1 January 2017 to 1 July 2020. These rules narrow the eligibility requirements for new claimants. However, they also affect existing recipients in some cases and will result in some recipients ceasing

⁴ The nature of the activities varies depending on whether the person is in receipt of an activity tested payment or non-activity tested payment such as the disability support pension or parenting payment.

⁵ This excludes work done in the course of supported employment, ie Australian Disability Enterprises.

⁶ Section 1038, *Social Security Act 1991* (Cth). This was introduced by the *National Disability Insurance Legislation Amendment Act 2013* (Act No. 44 of 2013).

⁷ Guide to Social Security Law, 3.6.6.100 ("Termination of MOB"), at <http://guides.dss.gov.au/guide-social-security-law/3/6/6/100>.

to be eligible or having to reclaim and meet the new, narrower eligibility rules. These changes are planned to come into effect from 1 January 2017.

For new claims from 1 January 2017, the main proposed changes are:

- replacement of the current definition of “handicapped person” with a requirement that a person have a mental or physical disability that is permanent or likely to last for at least a year
- introduction of an upper age limit of 65, and
- restriction of qualifying activities to gainful employment or vocational training.

The new eligibility criteria referring to mental or physical disability, instead of “handicapped person”, is a welcome replacement of outdated and, to some, offensive language. The requirement that the disability be permanent or likely to last for at least a year mirrors the current policy interpretation of the existing requirement that the disability prevents use of public transport for an “extended period”.

The other changes are a tightening of eligibility requirements.

There is currently no upper age limit meaning that retirees who otherwise meet the requirements of mobility allowance receive this payment to support their transport costs. The proposed restriction to under 65s is to align it with access rules for the NDIS, which require a person to be under 65.

The proposed changes also exclude a range of activities which qualify a person for mobility allowance, including voluntary work with community organisations. These appear to reflect the Government’s view that the mobility allowance program is untargeted.

There are also a number of changes that affect both existing recipients and new claimants:

- The Bill removes the possibility of a 6 month advance of mobility allowance
- The period of grace is shortened from 12 weeks to 4 weeks, and
- A person who loses eligibility for mobility allowance because they transition to the NDIS remains ineligible for the mobility allowance even if they later exit the NDIS.

The NDIS and transport support

There are three levels of support for transport assistance under the NDIS:

- Level 1 – The NDIS will provide up to \$1,750 per year for participants who are not working, studying or attending day programs but are seeking to enhance their community access.
- Level 2 – The NDIS will provide up to \$2,625 per year for participants who are currently working or studying part-time (up to 15 hours a week), participating in day programs and for other social, recreational or leisure activities.

- Level 3 – The NDIS will provide up to \$3,456 per year for participants who are currently working, looking for work, or studying, at least 15 hours a week, and are unable to use public transport because of their disability.⁸

Level 2 support under the NDIS is equivalent to the standard rate of mobility allowance. But it is important to note that the NDIS transport support levels are amounts ‘up to’ certain maximums, rather than flat rate payments. It is therefore difficult to compare level of support between the two programs in purely dollar terms.

Comment

Transport support is a key aspect of adequate and appropriate disability services. How the NDIS supports people with a disability in this area will be a key issue for many participants and a key measure of the program’s success.

Our main concerns about the Bill and response are as follows.

First, from 1 July 2020 the primary form of Commonwealth support for transport for people with a disability will be the NDIS, once the mobility allowance program ceases. This means that there will be no additional income support to help with the costs of transport for people who are ineligible for the NDIS either because they are over 65 at the time of applying or do not meet the access requirements for the NDIS to do with disability. In his second reading speech, the Minister indicated about 18,000 or close to 30% of current recipients would not transition to the NDIS, about 4000 because of age and another 14,000 because of level of disability.

For people aged 65 and over, the Government has indicated that they will continue to receive support through “continuity of support” arrangements. We are concerned, however, that nothing is yet known about the specifics of these arrangements or the level of support they will provide, and specifically for transport. In his second reading speech the Minister has indicated only that the Government is currently giving consideration to this.

The NWRN believes there is a place for additional support with transport costs for people with a disability available through the social security system, at least for income support recipients. This is because transport is critical to the social inclusion and community participation of people with a disability, many of whom are not eligible for the NDIS. We think that mobility allowance should continue for people who do not transition to the NDIS. Qualification should continue to be based on the current relatively broad range of activities including voluntary work, recognising the value to both individual and community of these activities, and be available to retirees as well. Its purposes should not be reduced to the more narrowly economical ones reflected in the Bill.

Second, there should be careful and transparent monitoring and evaluation of transport support provided through the NDIS. This is especially so because of the principle of “no disadvantage” for people transitioning to the NDIS.⁹ It is clear that there is potential for some mobility allowance participants to receive less financial support through the NDIS than they currently receive from the mobility allowance, as level 1 transport support is significantly less than the standard rate of mobility

⁸ NDIS, “Participant transport funding information”, accessible at <https://www.ndis.gov.au/document/participant-transport-funding-informati.html>.

⁹ NDIS, “Principle of “no disadvantage” and the NDIS”, accessible at <https://www.ndis.gov.au/html/sites/default/files/documents/Fact%20sheet%20-%20Principle%20of%20No%20Disadvantage.pdf>.

allowance. Although the “no disadvantage” principle may mean that some people are able to achieve similar outcomes, despite receiving less financial support, this is a key measure of the NDIS’ performance and needs careful evaluation, with results made publicly available.

Finally, we believe that the flexibility of a 6 month mobility allowance advance is valuable for people with a disability and should be retained. In fact, we believe there is merit in exploring this as an option for the NDIS scheme, if not available. The ability to access funding in advance may help achieve the NDIS’ wider goals, including individual choice and control, by giving the individual more ability to bargain with providers to meet their transport needs at the lowest cost.