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Submission to Australian Building Codes Board

27 August 2020

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# Minimum accessibility standards for Australian housing

## The role of the Queensland Human Rights Commission

1. The Queensland Human Rights Commission (**the Commission**) has functions under the *Anti-Discrimination Act 1991* (**the AD Act**)and the *Human Rights Act 2019* (**the HR Act**) to promote an understanding, acceptance, and discussion of human rights in Queensland, and to provide information and education about human rights.
2. A key function of the Commission is to provide a free and impartial conciliation service for anti-discrimination and human rights complaints in Queensland.

## Background

1. The Queensland Human Rights Commission welcomes the opportunity to comment on the *Consultation Regulatory Impact Statement* (**the RIS**) that considers a proposal to include minimum accessibility standards for new housing in the *National Construction Code* (**NCC**).
2. The preliminary recommendation in the RIS is that:

The costs associated with including an accessible housing standard in the NCC are estimated to outweigh the benefits under the central estimates for all of the Options tested.[[1]](#footnote-1)

1. The Commission supports the inclusion of minimum accessibility standards in the NCC. **The Commission supports Option 2 and considers that of the options considered it best meets the objective of the RIS in ensuring that new housing is designed to meet the needs of the community.** An evaluation of the alternative options is contained in the Conclusion below.
2. This submission will firstly explain Australia’s human rights obligations relating to accessible housing. Secondly, this submission will comment on particular sections of the RIS. The Commission will not respond in detail to all of the consultation questions, but will provide information on two aspects:
* Statement of the problem (referring to Chapter 2)
* Estimating the benefits (referring to Chapter 6)
1. In order to assist the Australia Building Code Board (**ABCB**) to understand and quantify the problem, this submission will provide de-identified case studies that serve to demonstrate to the ABCB that the lack of accessible housing is a persistent and enduring problem.
2. Further, this submission will highlight the many social and economic benefits that would result from taking a new approach to accessible housing in Australia.

## Australia’s human rights obligations

1. The *International Covenant on Economic, Social and Cultural Rights*, to which Australia is a signatory, contains the right to an adequate standard of living.[[2]](#footnote-2) As this right is for every person to enjoy without discrimination,[[3]](#footnote-3) this requires state parties to give particular consideration to the living standards of disadvantaged groups including people with disabilities and older people.
2. The Committee on the Rights of Persons with a Disability (**the Committee**) has stated:

Accessibility is a pre-condition for persons with disabilities to live independently and participate fully and equally in society.[[4]](#footnote-4)

1. Under the *UN Convention on the Rights of Persons with Disabilities* (**the Convention**) Australia has an obligation to protect, promote, and uphold the rights of people with disabilities. In the Commission’s view, embedding minimum accessibility standards for housing in the *National Construction Code* is an important step towards meeting Australia’s obligations.
2. The *Convention* requires Australia to take appropriate measures to enable persons with disabilities to live independently and participate fully in all aspects of life. Australia must identify and eliminate obstacles and barriers to accessibility to achieve access ‘on an equal basis with others’.[[5]](#footnote-5)
3. In their recent *Concluding observations on the combined second and third periodic reports of Australia*, the Committee on the Rights of

Persons with Disabilities specifically recommend that Australia:

Amend the Federal law with mandatory rules on access for all new and extensively modified housing.[[6]](#footnote-6)

1. Housing is not equally available to everyone. People with disabilities and older people, in particular, find that they have a limited say in where and how they live. Ensuring minimum standards in the NCC will go some way towards removing barriers to accessibility and achieving a fairer and more equitable housing market.
2. In Queensland, public housing providers have obligations under the HR Act. The right to equality before the law includes protection from unequal treatment and discrimination.[[7]](#footnote-7) In addition to this right, the right to privacy under the HR Act protects a person from arbitrary interference with their home.[[8]](#footnote-8) The demand for accessible social housing is even greater than in other sectors, because significant numbers of tenants are older, have a disability, or have family members who require accessible features.
3. Overall, the approach that is consistent with Australia’s human rights obligations is to take strong and active steps to remove structural barriers to housing to ensure that no one gets left behind.

## Statement of the problem: A growing demand, an unsustainable supply

1. The RIS recognises that ‘people with disability and older Australians have trouble finding housing that meets their needs.’ [[9]](#footnote-9) People affected by inaccessible housing are a large cohort whose numbers are rapidly increasing.
2. An estimated 2.9 million Australians have a mobility-related disability.[[10]](#footnote-10) In 2009, a report commissioned by the Australian Government urged immediate action because of the predicted rapid increase of the proportion of the population with disability.[[11]](#footnote-11) A three-fold increase in Australians with severe/profound core activity limitation has been projected by 2099.[[12]](#footnote-12)
3. The Australian population is ageing, with around 16% of people aged 65 years and over, in contrast with only 12% in this age bracket 20 years ago. This proportion will increase even more, as further cohorts of ‘baby boomers’ (those born 1946-64) turn 65 in the coming years.[[13]](#footnote-13)
4. The RIS predicts that only 5-10% of new housing stock meets the Liveable Housing Design silver standard.[[14]](#footnote-14) The Commission submits that this is not sufficient to sustain an equitable housing market either now or into the future.
5. As acknowledged in the RIS, there are growing economic and social costs relating to this issue.[[15]](#footnote-15) The Commission strongly supports the objective of the regulatory proposal in ensuring that housing is designed to meet the needs of the community, including older Australians and people with mobility-related disability.[[16]](#footnote-16)
6. The Commission notes that other beneficiaries of accessible housing include:
* people with disabilities other than mobility-related disabilities;
* carers and families of older people and people with disabilities;
* households with babies and young children; and
* people with temporary illnesses or injuries that affect their mobility.
1. The Consultation RIS suggests that there are already policies that ensure people with disability and older people have access to housing that meets their needs, citing the option of home modifications (including through NDIS support), funding for residential aged care, state government planning policies, and the provision of social and community housing.[[17]](#footnote-17)
2. While this may be so, in the Commission’s experience, those existing policies and programs are insufficient to address the needs of many people with disability and older Australians.

## Discrimination complaints about inaccessible housing

1. Between 2009 and the present, the Commission received approximately 140 discrimination complaints about housing accessibility either on the basis of older age or impairment.
2. Some of the key trends that emerge from these complaints include that:
* People with disability trying to rent through the private rental market are facing stigma and discrimination, which is a significant barrier to securing appropriate, stable housing.
* Older people or people with disabilities living in strata title schemes (as renters or owners) are having difficulty negotiating the process of making modifications to their property or the common property through complex body corporate processes.
* Both private and public housing tenants face difficulty making modifications to properties they are currently residing in.
1. It is important to note that the AD Act only captures a fraction of the issues arising from housing inaccessibility. A person with a protected attribute under the AD Act (most relevantly age or impairment) may only make a complaint to the Commission about discrimination if that complaint falls within an ‘area of activity’ under the AD Act.
2. The areas of ‘accommodation’ and ‘goods and services’ are the most relevant areas, but do not cover all situations. For example, the protection of the AD Act does not extend to purchasers of new properties that are not accessible.

### *Stigma and discrimination in the private rental market*

1. The Commission receives complaints from people facing discrimination in the private rental market. We often hear from people with disabilities who feel ‘shut out’ of the private rental market because of the application and approval process. While more flagrant examples are given below, in many cases discrimination is hard to prove because a property manager does not generally explain the reasons why a person has not been the successful applicant.

***Case Study 1:***

*Max says he was informed by the receptionist at a real estate agency that they have houses available for rent, but they are not suitable for wheelchairs. The receptionist said that ‘owners do not want wheelchairs in their houses as they cause damage to door frames or walls of the house.’ Although Max explained that the wheelchair folds down, the receptionist apologised and said that they don’t want wheelchairs and he’ll have to look elsewhere.*

***Case Study 2:***

*Jessie applied to rent a property. At the inspection the property manager said he was worried that Jessie’s wheelchair would cause damage to the carpet, doors, floors, and walls. Also, he questioned how Jessie could possibly go about cleaning the property if he is in a wheelchair. He said he would offer him the property, but only on the condition he sign a statutory declaration saying he would pay for any damage caused by the use of his wheelchair.*

### *The challenges of retrofitting for private and public housing tenants*

1. The following case studies demonstrate the challenges of trying to retrofit a person’s home to make it accessible. Modifications are complex, time consuming, and expensive. In the Commission’s experience, these issues can arise in both the public and private housing sectors.

***Case Study 3:***

*Yash had a disability that restricted his mobility. He was approved for a rental property and was ready to move in. He requested to have adjustments to the bathroom for better access to the shower. In particular, he requested to remove the shower door on the proviso that he would reinstall it on leaving the property. The owner of the property denied this request resulting in the property being inaccessible for Yash.*

***Case Study 4:***

*Sophia had a disability which required her to use a wheelchair. She approached a housing association which offered her a unit for rent. The unit needed modifications to make it safe, which a consultant reported to the housing association. Sophia agreed to move in while the modifications were being carried out and started to sell her possessions in anticipation of moving to a smaller residence. The housing association then decided that the modifications were too expensive and rented the unit to a person who did not require them.*

*At conciliation, the housing association argued they could not make the modifications because it would cause them unjustifiable hardship, but conceded that they did not get quotes for the cost of the modifications. They apologised for not communicating with the complainant in a timely and effective way, and agreed to pay compensation and have their staff trained to better understand how to manage this situation in future.*

***Case Study 5:***

*Rochelle moved into social housing with her children. Rochelle has mobility issues and one of her children has autism. She had an OT assessment completed and was approved for modifications. Several months passed but no progress was made on implementing the modifications. Both the kitchen and bathroom had accessibility issues and the property needed better safety features to keep her child with autism safe. After Rochelle had multiple falls she started to shower at a friend’s house instead. During conciliation, the social housing provider apologised and agreed to pay her financial compensation.*

***Case Study 6:***

*After a spinal injury Clara moved in with her mother, who resided in a social housing property. Clara was told by the social housing provider that it might take several years to get her own place due to the long waiting list. Her mother’s unit only had access by stairs. Clara’s mother had to carry her wheelchair down the stairs and Clara crawled down the stairs to her wheelchair. Clara’s mother had arthritis in her hands and carrying the wheelchair caused her pain. Clara and her mother asked if they could install a ramp with a suitable gate and pathway. This request was denied. Clara says she was told that if she ‘pushed the matter’ her own housing application may be refused.*

***Case Study 7:***

*Olivia was over 60 and living in an independent living unit as part of a retirement and nursing home complex, managed as a residential tenancy lease through a real estate agent. Olivia had a chronic condition that she says the real estate was aware of when she moved in. Her health deteriorated over the course of four years at which point she asked that a ramp be installed. Olivia could access her property, but only by going through the nursing home. When doing this she was frequently rebuked by staff.*

*Olivia was prepared to pay for the modifications herself, but her request was refused on ‘health and safety’ grounds. After she escalated the matter to the head office, she was issued a Notice to Leave with the stated reason being that she was ‘no longer able to live independently’. Olivia disputed this notice saying that she was very independent but needed reasonable adjustments to access the premises. Through conciliation, the real estate agent agreed to let her temporarily access her home through the nursing home. She was eventually approved for social housing and moved out.*

## *Accessibility issues in strata title schemes*

1. The Commission has identified a troubling trend of decisions about the installation of accessibility features being made by body corporate committees, and lot owners, who often do not have the necessary experience or expertise.
2. From our recent discussions with Queensland Body Corporate and Community Management (BCCM), who provide a conciliation process for body corporate disputes, it is apparent that many accessibility complaints are also being conciliated by that service.
3. Modifications to common property on body corporate premises can be costly. As these decisions go to vote and decisions are largely based on the economic interests of the collective lot owners, the decisions often do not go in the favour of a person who needs adjustments because of their age or disability. Body corporate committees and managers are poorly educated on their obligations not to discriminate against a lot owner. This is despite there being a clear legal precedent in the case of *C v A* [2005] QADT 14, which found that the AD Act applies to bodies corporate and awarded $25,000 in compensation to a lot owner because of the adverse impact of not having access to common property.
4. With the traditional stand-alone home being out of reach for many Australians, an increasing number people are living in strata title schemes, and these issues are likely to become more prevalent over time.
5. The following case studies illustrate these issues in more detail.

***Case Study 8:***

*Mandy had been living in a large apartment complex with her husband for some time. After having a stroke, she returned from hospital in a wheelchair. As the front entrance to the building had steps, she found that she was no longer able to independently enter or exit her home. This left her feeling socially isolated and depressed. Although the body corporate committee initially agreed in writing to make the foyer entrance and pool accessible, after a year had passed no changes had been made. Once the quotes for the work were put to the lot owners they were voted down. Through the body corporate voting process, lot owners are entitled to vote without giving reasons for their decisions. Without being able to secure a majority vote, the body corporate committee had their hands tied. This matter has proceeded to the Tribunal awaiting a determination.*

***Case Study 9:***

*Alvaro was an older man who used a walker or a wheelchair, depending on his mobility on any particular day. After a fall he went into hospital, but made a good recovery. He wanted to return to his own home in a unit complex. To make it accessible he needed to change the outward appearance of his unit (contrary to the by-laws) and so he made an application to the body corporate manager. The body corporate manager suggested he raise a motion with the lot owners. He did not propose that the body corporate take on any part of the costs. Unfortunately, the majority of the lot owners voted against his proposal and he was unable to proceed to modify his home to meet his needs.*

***Case Study 10:***

*John was an older man who purchased a unit off the plan in a four tower residential complex. The developer boasted access to the waterfront, gym, and pool facilities as key attractions of the residences. However, once John and his wife moved in it became clear that those facilities were not accessible to everyone. There was no ramp provided for residents who use motorised scooters or wheelchairs to access the common boardwalk, despite many residents being older people.*

*John also found that he could not access the front gate in his motorised scooter, or the pool area. His condition deteriorated and he became more dependent on his scooter, but the body corporate and developer delayed dealing with the issue for many months. After making a complaint to the Commission, and in response to the conciliation process, the body corporate brought in an access consultant who helped to resolve the gate access issues, and the developer committed to the installation of a ramp to the boardwalk.*

## Estimating the benefits: Housing for all

1. The RIS acknowledges some of the benefits of universal housing including that the stock of accessible housing would increase over time, giving buyers greater choice of dwellings to meet their needs in future,[[18]](#footnote-18) and this benefit may also flow to renters.[[19]](#footnote-19)
2. The Commission submits that the societal and economic benefits of embedding minimum standards for accessibility in the NCC for new housing are vast, and would include:
	* improved quality of life, wellbeing, and mental health of individuals, and in particular older Australians, people with disability, their families and carers;
	* better community inclusion, work opportunities, and full participation for individuals;
	* improved dignity, personal autonomy, and empowerment for individuals;
	* cost savings to individuals and families by avoiding the expense of home modifications;
	* reduced pressure on social housing (for which there are currently long waiting lists) and reduced costs for housing modifications for the government-funded social housing sector;
	* reduced costs to federal and state governments through not having to fund costly modifications through the National Disability Insurance Scheme (**NDIS**) or aged care packages;
	* reduced costs to the federal government through fewer people entering residential aged care.
3. The Consultation RIS considers that a change in the NCC would add limited value for first owners of newly constructed housing,[[20]](#footnote-20) however the Commission respectfully disagrees. It may not be correct to assume that the first owner has control over the features of their home, particularly if they have purchased ‘off the plan’, and it is not possible for builders to deviate from the plan set out in the development approval. In many cases buyers do not anticipate that they will need an accessible property in the future. Many of these first owners may find themselves or a family member benefiting from accessible features at a later stage.
4. As illustrated in Case Study 8, a person may have an accident or a stroke at any time in their lives resulting in immediate needs that cannot be met in their own home. In many cases the person cannot afford to retrofit their home, and this may lead to an extended stay in hospital or rehabilitation, causing strain on the health system.
5. Inadequate housing options for people with disability and older people also result in people moving into group homes, residential aged care, or other shared housing arrangements, which increase their vulnerability to abuse, neglect, and social isolation. The Disability Royal Commission is currently considering some of the issues arising in institutional settings.[[21]](#footnote-21)
6. As demonstrated by the real life case studies already provided, if a person lives in a rental property or a community title scheme, they may be faced with insurmountable barriers to getting their home modified. In many cases, the high cost of modifying a property may fall to the federal government through the NDIS[[22]](#footnote-22) or aged care packages.[[23]](#footnote-23)
7. Physical environments that are age-friendly can make the difference for an older person between independence and dependence on others. An inaccessible home means that an older person is less likely to get out in the community and more likely to become socially-isolated, depressed and unfit.[[24]](#footnote-24) For older Australians, around 80% of people would prefer to ‘age in place’ rather than move into residential aged care.[[25]](#footnote-25) An important aspect of ageing with dignity is having the choice of where to live. Ageing in place aligns with the preferences of older Australians and has benefits for health and wellbeing, while reducing the cost of funding residential aged care for the government. Home care is currently provided by the government at approximately one-third of the cost of residential aged care.[[26]](#footnote-26) These costs would be further reduced if home modifications were not required as part of the home care package.
8. Another factor to consider is the protracted length of time taken to approve and complete home modifications through the NDIS or a home care package. The person may feel they have no choice but to enter a care facility. Some older people or people with disability, particularly those who are socially isolated, may also have difficulty navigating the systems under the NDIS or My Aged Care.
9. A further group that would greatly benefit from creating minimum standards are the carers, families, and broader networks of older people and people with a disability. In particular, carers and family members may miss out on work opportunities when caring for a person in a home that is not accessible.
10. People who temporarily or intermittently require accessible housing features will also benefit from inclusive housing. This includes people with short-term illness, injuries or illnesses affecting mobility, and people who have young babies and children who require stroller access. Most households in Australia will need accessible features in their home at some stage.
11. In summary, the health, social, and economic outcomes for people with disabilities, older Australians, and the broader community would be significantly improved by implementing minimum accessibility standards for new buildings.

# Conclusion

1. The Commission strongly supports the inclusion of minimum accessibility standards in the NCC and is of the view that Option 2 is the best option.
2. The options presented in the RIS are as follows:
* ***Status quo***
* ***Option 1:****Accessibility standard, broadly reflecting LHDG silver standard, in the NCC applying to all new Class 1a and Class 2 buildings.*
* ***Option 2:****Accessibility standard, broadly reflecting LHDG gold standard, in the NCC applying to all new Class 1a and Class 2 buildings.*
* ***Option 3:****Accessibility standard, broadly reflecting LHDG gold standard (plus some platinum features), in the NCC applying to all new Class 1a and Class 2 buildings.*
* ***Option 4:****Accessibility standard, broadly reflecting LHDG gold standard, in the NCC applying to all new Class 2 buildings.*
* ***Option 5:****A subsidy program to encourage additional availability of accessible rental properties to LHDG Gold standard.*
* ***Option 6:****An enhanced approach to voluntary guidance, including:*
	+ - a non-regulatory ABCB handbook
		- information provision at the point of sale
		- better matching services.
1. The Commission does not support maintaining the status quo. This position will not result in an equitable housing market as required by Australia’s human rights laws and obligations. Demand for accessible housing will increase due to Australia’s ageing population and the situation will only become more acute over time.
2. The Commission considers that the best option is Option 2, as it is most likely to meet the objective of ensuring that housing is designed to meet the needs of the community.
3. Option 1 is the Commission’s second preference, as it is also a feasible option and would achieve a significant improvement to housing accessibility in Australia. However, it is not a universal housing option with the wider benefits of Option 2, particularly because silver standard properties will require retrofitting for wheelchair use.
4. Option 3 does not provide any significant benefits beyond Option 2. Platinum features need not be a requirement as a *minimum* standard.
5. Option 4 is not feasible because it only applies to Class 2 buildings (apartments). The minimum standards must also apply to Class 1a buildings (houses) to ensure that a range of options is available for people who need accessible homes. Houses are a preferred option for many people, including people with assistance animals who require yard space, as well as young families. Regional areas also have fewer Class 2 buildings and this approach may create inequity based on geographic location.
6. Options 5 and 6, if implemented on their own, are not feasible and are highly unlikely to meet the stated objective. Incentives and guidance for the industry to develop accessible housing have failed in the last 20 years, and the Commission is of the view that these Options alone will not create an equitable housing market. However, the Commission would support these options if implemented in addition to Option 2.
1. The Centre for International Economics, ‘Proposal to include minimum accessibility standards for housing in the National Construction Code’ (Consultation Regulation Impact Statement, July 2020) 11. [↑](#footnote-ref-1)
2. *International Covenant on Economic, Social and Cultural Rights*, A/RES/2200(XXI) (16 December 1966) Article 11. [↑](#footnote-ref-2)
3. Ibid, Article 2. [↑](#footnote-ref-3)
4. Committee on the Rights of Persons with Disabilities, *General Comment No 2 (2014): Article 9: Accessibility, UN Doc* CRPD/C/GC/2, [1]. [↑](#footnote-ref-4)
5. Ibid [13]. [↑](#footnote-ref-5)
6. Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, UN CRPD, UN Doc C/AUS/CO/2-3 (15 October 2019) 18.(b). [↑](#footnote-ref-6)
7. *Human Rights Act 2019* s 15. [↑](#footnote-ref-7)
8. *Human Rights Act 2019* s 25. [↑](#footnote-ref-8)
9. The Centre for International Economics (n 1) 121. . [↑](#footnote-ref-9)
10. Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2018* (Catalogue No 4430.0, 24 October 2019). [↑](#footnote-ref-10)
11. Disability Investment Group, *The Way Forward: A New Disability Policy Framework for Australia* (Report, 2009). [↑](#footnote-ref-11)
12. PwC, *Disability Expectations: Investing in a better life, a stronger Australia* (November 2011) 9. [↑](#footnote-ref-12)
13. Australian Bureau of Statistics, *Australian Demographic Statistics, Jun 2019* (Catalogue No 3101.0, 19 December 2019.) [↑](#footnote-ref-13)
14. The Centre for International Economics (n 1) 94. [↑](#footnote-ref-14)
15. Ibid 2–3. [↑](#footnote-ref-15)
16. Ibid 3. [↑](#footnote-ref-16)
17. Ibid 2. [↑](#footnote-ref-17)
18. The Centre for International Economics (n 1) 90. [↑](#footnote-ref-18)
19. The Centre for International Economics (n 1) 93. [↑](#footnote-ref-19)
20. The Centre for International Economics (n 1) 90. [↑](#footnote-ref-20)
21. *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, (First Progress Report, 20 December 2019). [↑](#footnote-ref-21)
22. ‘Home modifications explained’, *ndis* (Web Page, 11 February 2020) <<https://www.ndis.gov.au/participants/home-equipment-and-supports/home-modifications-explained>>. [↑](#footnote-ref-22)
23. ‘Home Care Packages’, *myagedcare* (Web Page) <<https://www.myagedcare.gov.au/help-at-home/home-care-packages>>. [↑](#footnote-ref-23)
24. World Health Organization, *Active Ageing: A Policy Framework* (Web Page, 2002) at page 27.

<<https://apps.who.int/iris/bitstream/handle/10665/67215/WHO_NMH_NPH_02.8.pdf;jsessionid=78A3639F168F95BBFAC379F9B40EB3E3?sequence=1>> [↑](#footnote-ref-24)
25. ‘What’s needed to make “ageing in place” work for older Australians’, *Australian Housing and Urban Research Institute* (Web Page, 10 December 2019) <<https://www.ahuri.edu.au/research/ahuri-briefs/whats-needed-to-make-ageing-in-place-work-for-older-australians>>. [↑](#footnote-ref-25)
26. Productivity Commission (Cth), *Housing Decisions of Older Australians* (Productivity Commission Research Paper, December 2015) 16. [↑](#footnote-ref-26)