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Australian Network for Universal Housing Design  
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## Executive Summary

Australian Network for Universal Housing Design (ANUHD) is a national network of people who believe that the homes we build today should be fit for all of tomorrow's Australians. ANUHD has been advocating for an access standard for all housing in the National Construction Code (NCC) since 2002.

ANUHD congratulates the Australian Human Rights Commission's (AHRC's) FREE AND EQUAL: an Australian Conversation on Human Rights—Discussion Paper (Discussion Paper).

Australia is signatory to several United Nations' treaties, which underpin the criticality of secure, affordable and accessible housing for everyone's health and wellbeing.

ANUHD considers this is justification for the AHRC to treat housing as a fundamental right, and to take an intense interest in the design of housing and in the progress of governments and the housing industry to provide accessible and inclusive residential communities.

ANUHD acknowledges the strong, clear statement by the current Disability Discrimination Commissioner in support of an access standard in the NCC for all housing. Given the commitment by COAG to provide access in all new housing in the 2010-2020 National Disability Strategy, and the early and widespread failure of the voluntary approach, this statement should have and could have been made earlier by his predecessors.

The demographic data alone should convince the AHRC to support accessibility in all housing as not just for people with disability, but as a universal need and right for everyone as part of a truly inclusive society.

Finally, if secure, affordable and accessible housing is pivotal to people's health and wellbeing, the AHRC should have the right to housing as front and centre of its work. It should lead the national debate on the right to housing and to challenge the legacy of expediency and neglect by governments and the self-interests of the housing industry regarding Australia's housing future. ANUHD will work constructively with the AHRC towards this goal.

## Introduction

Australian Network for Universal Housing Design (ANUHD) is a national network of people who believe that the homes we build today should be fit for all of tomorrow's Australians. ANUHD has been advocating for an access standard for all housing in the National Construction Code (NCC) since 2002. ANUHD congratulates the Australian Human Rights Commission's (AHRC) FREE AND EQUAL: an Australian Conversation on Human Rights—Discussion Paper (Discussion Paper). Since 2002, we have framed our advocacy through human rights, social and economic perspectives. Our response to your Discussion Paper focuses on the human rights perspective.

The United Nations Declaration of Human Rights<sup>1</sup> states:

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing . . . and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (Article 25)*

In 1991, the United Nations published principles for older persons<sup>2</sup> which sought that “*older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities*” and “*should be able to reside at home for as long as possible.*”

In 2007, The Convention on the Rights of People with Disabilities<sup>3</sup> (UNCRPD) brought a focus to the broadly accepted right to social inclusion, by promoting the right for people with disability to access all aspects of the physical and social environment on an equal basis with others. The cross-cutting nature of this Convention not only directs how housing assistance is offered; (that is, people have the right “*to choose their place of residence and where and with whom they live on an equal basis with others*” and so forth, but it also challenges how housing should be designed; (“*the design of . . . environments, . . . [should] be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design*”).

For Australia, the human rights obligations that affect housing supply are considered by advocacy groups<sup>4</sup> to be progressively realisable<sup>3</sup>; that is, the Australian Government does not have to immediately fully comply with these obligations but must work to fulfil these obligations over time. Further, any progressive action must match the level of resources a nation has available to it.

ANUHD considers this is justification for the Australian Human Rights Commission to have an interest in the design of housing, and in the progress by Australia to provide accessible and inclusive communities.

ANUHD gives some background on this progress in the next section.

## Background

Within the Council of Australian Governments' (COAG's) 2010-2020 National Disability Strategy<sup>5</sup> (Australia's response to the United Nations Convention on the Rights of Persons with Disabilities), the Policy Outcome of inclusive and accessible communities adopted an aspirational target *"that, by 2020, all new homes would be constructed to meet agreed universal design standards"* (p. 34). This was a voluntary initiative called Livable Housing Design (LHD)<sup>6</sup> agreed to by industry and community leaders and the then Disability Discrimination Commissioner<sup>7</sup> and favoured by the housing industry leaders over regulation through the NCC<sup>8,9</sup>.

By January 2015, it was evident to ANUHD and others that both the private and social housing sectors had failed to reach any of the agreed interim targets and, without government regulation, less than 5% of the 2020 target was expected to be met<sup>10</sup>. In short, the voluntary approach was a system failure.

It is worth noting that, if COAG had agreed to regulation in 2010, an estimated two million accessible homes would be in Australia's housing stock by 2020; if the voluntary approach had worked, the figure would be more than one million.

In September 2017, the UNCRPD Committee asked Australia to report on the progress towards the 2020 targets<sup>11</sup>.

In October 2017, COAG directed its Building Ministers' Forum to undertake a national Regulatory Impact Assessment (RIA) regarding an access standard for housing in the NCC<sup>12</sup>. Now called The ABCB Accessible Housing project, the RIA is well underway and any proposed changes to the NCC will not occur until 1 May 2022<sup>13</sup>.

In September 2018, the Attorney General who is responsible for reporting under the UNCRPD omitted to report that:

- using the voluntary approach favoured by the housing industry, no interim targets had been met and the 2020 target would not be met, and
- government intervention, if any, would not occur until 2022<sup>14</sup>.

In July 2019, a coalition of public interest groups, including ANUHD, submitted a shadow report to the UNCRPD<sup>15</sup> with the recommendation that the NCC be amended to mandate minimum access features for all new and extensively modified housing.

In September 2019, the UNCRPD Committee considered the shadow report over the formal report from the Attorney General and recommended that Australia amend the NCC to adopt a mandated access standard for all new and extensively modified housing<sup>16</sup>.

## Key messages for the AHRC

### The right to accessible housing must be on the human rights agenda

The AHRC acknowledges the “right of everyone to an adequate standard of living for himself and his family, including . . . housing”<sup>17</sup> and that the right to housing is more than simply a right to shelter. It is a basic human right to have somewhere to live that is secure, affordable and accessible.

The Disability Discrimination Commissioners have varied in their responses to accessibility in housing over the past decade. Commissioner Innes became a director of Livable Housing Australia, which advocated against mandating a minimum access in housing in preference for the failed voluntary approach favoured by the housing industry. Commissioner Ryan<sup>18</sup> and Commissioner McEwin<sup>19</sup> cautiously encouraged the government to consider regulation, as the failure of the voluntary approach became apparent. It was not until 2019, that the current Disability Discrimination Commissioner finally made a clear statement on behalf of people with disability<sup>35</sup>:

*The Commission remains concerned that the 2020 targets for universal housing design will not be met. The use of voluntary measures to increase the supply of accessible private housing have been ineffective.*

*53. A regulatory intervention is needed to introduce a mandatory minimum standard of accessibility for all private dwellings in Australia. An amendment of the National Construction Code (NCC) is the most viable way to introduce this standard.*

*54. The Australian Building Codes Board (ABCB) is undertaking a Regulatory Impact Assessment of options to introduce a minimum accessibility standard for housing in the NCC. The Commission has recommended that the ABCB be guided by Australia’s commitments under the CRPD in considering the minimum standard of accessibility for housing. Ongoing consultations should also be held with people with disability and their representative organisations.*

*Recommendation 23: The Australian Government introduce a mandatory minimum standard of accessibility in the National Construction Code for all private dwellings in Australia.*

ANUHD acknowledges the strong, clear statement by the current Disability Discrimination Commissioner. Given the commitment to the 2020 targets by COAG in the 2010-2020 National Disability Strategy, and the early and widespread failure of the voluntary approach, this statement should have and could have been made earlier by his predecessors.



## Housing accessibility is for everyone

Most people live in households in the community. Of the nearly 23 million people in Australia, 4.1 million people (or 18.5% of the population) identify they have a disability<sup>4</sup> with forty per cent over 65 years<sup>5</sup>. Most people live in regular housing in the community with only 0.8% of the population living in some form of alternative accommodation<sup>14</sup>. Pregnant women, parent with prams, toddlers, and people with illness or injuries also need accessibility for a more limited time. Illness and injuries are usually not anticipated, so most people do not plan for their need for accessibility.

Currently, 36% of households have a person with disability or older person<sup>20</sup>, yet accessibility is needed by a much broader cohort. Lack of access impacts on the household, especially primary carers, who are mainly women and children. Currently only twenty per cent of older people and people with disability receive formal home-based support<sup>21,22</sup>. This leaves the rest to rely on informal support from family, friends and neighbours to remain in their homes and communities.

Nearly one in three households are in rental properties<sup>23</sup>. Most low to middle income households in private tenancies are in housing stress<sup>24</sup>. When renters need access features, they have three issues to overcome. The first is that most rental housing is inaccessible, the second is that most landlords are reluctant to have their properties modified<sup>25</sup>, even though, by law, they must allow for reasonable modifications<sup>26</sup>; and the third is that the tenant must pay for these modifications and then pay again to have them removed when vacating the property<sup>26</sup>.

Social rental housing goes some way to respond to housing need; however, social housing stock is less than 4% of our housing stock<sup>23</sup>. Thus, many of Australia's most vulnerable and poor households are being forced to live in dwellings that are not only inaccessible, but also unaffordable for them with resultant negative impacts on wellbeing, health and independence<sup>27</sup>.

Research undertaken in the USA suggests that there is a 60% probability that a newly built single-family detached unit will house at least one person with a disability (defined as mobility impairments) within the household during its expected lifetime. If the needs of visitors are considered, the figure rises to 91%<sup>28</sup>. Although there is no equivalent research specific to Australia, our demographic data match those of the USA<sup>29</sup> and suggest these findings are relevant to Australia's policy makers.

The AHRC should consider accessibility in housing, with affordability and security as a universal need for everyone.

## Need for leadership on housing matters

Housing policy in Australia has not been influenced by a rights agenda. Social housing has never been considered a real alternative to private ownership and, from the beginning, was considered as a welfare response<sup>30-32</sup>. Consistent policy failure is blamed on a mix of poor leadership, missed opportunities, and lack of vision about the long-term benefits of secure, affordable and accessible housing. An additional factor has been a negative, unco-operative attitude from within the housing industry. Patrick Troy, one of Australia's eminent housing theorists, summarises Australia's predicament<sup>30</sup>:

*We have been unable, as a society, to develop a shared understanding or commitment to the development of a system of housing that meets the needs of all in an equitable manner. The pursuit of short-term private benefits, including the chimera of reduced public involvement and obligation, has led to the dominance of the "market". This, in turn, has meant that those who saw the provision of a wide range of what were once seen as public goods and were important components of the notion of a just and fair society have simply lost out. (p. 285)*

If housing is pivotal to people's health and well-being, the AHRC should have the issue of accessibility in housing front and centre of its work. It must lead a national debate on the right to housing and challenge the legacy of expediency and neglect by governments and the self-interests of the housing industry regarding Australia's housing future.

## Who is responsible for action?

On the issue of accessibility in housing, ANUHD's main task over the last decade has been calling government and the housing industry to account on agreements and commitments they had made. The recommendation by the UNCRPD Committee that Australia amend the NCC to adopt a mandated access standard for all new and extensively modified housing<sup>16</sup> was on the advice of the shadow report<sup>15</sup>, ANUHD's consistent call for regulation<sup>34</sup> and Commissioner Gauntlett's report<sup>35</sup>, rather than the official government response from the Attorney General<sup>14</sup>.

When it comes to action for social injustice, ANUHD uses the framework of philosopher Iris Marion Young<sup>33</sup>, where people fall into four broad groups:

1. Those people are in power, understand the impacts of social exclusion and do nothing.
2. This group is responsible by association who consider they have little impetus, individual power or opportunity to change the status quo.
3. These are individuals who take individual action.
4. These people take public and collective action to call to account those people in power who do nothing. They align themselves with those who are most affected.

To date, it has been those people most affected that have ultimately taken action on the commitments of COAG towards the 2020 target. It is time for those in power to lead, to take responsibility and to take positive action.

## Conclusion

ANUHD acknowledges the recent principled stand by the current Disability Discrimination Commissioner on the need for an access standard for all housing. We encourage the AHRC will broaden this interest beyond disability to advocate for a mandated access standard in the NCC towards secure, affordable and accessible housing for all people. ANUHD will continue to work constructively with the Australian Human Rights Commission towards this goal.

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