



Action for More Independence & Dignity in Accommodation

1st Floor, Ross House, 247 Flinders Lane, Melbourne Vic
3000

Phone: 9650 2722 Fax: 9654 8575

Email: amida@amida.org.au Website: www.amida.org.au

Inc No: A001608SV ABN: 32 993 870 380

*Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a
Disability*

Submission

Australian Building Codes Board

Consultation on Minimum Accessibility Standards for Housing

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Introduction

AMIDA (Action for More Independence & Dignity in Accommodation) is an independent advocacy organisation which advocates for good housing for people with disability. Further, people with disability have a right to good quality housing which is accessible, affordable and non-institutional. We provide advocacy to individuals and advocate for change in systems which prevent people from achieving good housing.

AMIDA acknowledges that people with disability have a right to a choice of with whom they live and where they live. People with disability have a right to live in the community with access to support to participate and have a good quality of life.

AMIDA thanks the ABCB for undertaking the Regulatory Impact Statement (RIS) and continuing the process of evaluating regulation for accessible housing into the National Construction Code (NCC).

AMIDA continues to advocate for Gold level accessibility to be mandated by the NCC for all new buildings from 2020 as a matter of urgency. AMIDA supports option 2 – “Let’s do it right first time” in the Consultation RIS.

The ABCB’s CIE Proposal to include minimum accessibility standards in the NCC states “There are a significant number of policies in place to either subsidise, directly provide or encourage private provision of housing that meets the needs of people with disability and

older people. Key policies to ensure the people with disability and older people have access to housing that meets their needs include :-

- Funding home modifications and other support services (through the National Disability Insurance Scheme (NDIS) and various aged care policies) to support people with mobility limitations to stay in their own home.
- Funding for residential aged care places.
- Planning policies put in place by some state and local governments to encourage private provision of accessible housing.
- Provision of accessible social and community housing.”

Evidence from AMIDA casework has demonstrated enormous service gaps where only 10% of people with disability are eligible for the NDIS. 90% of people with disability are not able to access an NDIS plan or any kind of funding for Specialist Disability Accommodation (SDA) or modifications to the place they reside. Applications to access the NDIS can be lengthy, as is the NDIS Appeals process to either access the scheme or have a decision for modifications reconsidered. People with disability can be waiting years for a decision on funding where they can be left without adequate housing, left at risk of serious injury or death by remaining in a dwelling that does not support their mobility requirements.

Service gaps again can emerge when there is funding through the NDIS when the state government and the NDIS engage in cost-shifting. Lengthy wait times result.

Another service gap can emerge when applying for residential aged care which requires rigorous means testing and lengthy wait times. Young people being placed into aged care facilities is an inappropriate response to accessibility requirements where the young person wishes instead to live alone or live alongside people of a similar age. ¹Most recent figures show more than 5000 people under the age of 65 in all states of Australia.

AMIDA is also aware that not all local governments provide funding for modifications to properties. The majority of social and community housing stock, like public housing stock, do not have accessibility features. Many community housing providers do not have funding available for residents and do not include modifications in their policies or processes. Instead there is only the provision of maintenance services.

AMIDA is also aware of the ²Council of Australian Government (COAG) recognition that the viability of the NDIS can only exist if relying on complementary mainstream policy, services and amenity, including inclusive and accessible built environment.

A relevant case study is a case AMIDA has been working on for since Jul 2019, a gentleman who sustained an injury to his leg while service in the Australian Defence Force, was housed in a rooming house. Since being housed his injuries worsened and he had a diagnosis of nerve damage in his foot where he is unable to weight bear. He relies on a

¹ Australian Institute of Health and Welfare 2019. People with disability in Australia 2019: in brief. Cat. no. DIS 74. Canberra: AIHW

² COAG. (2011). 2010–2020 National Disability Strategy: An initiative of the Council of Australian Governments. Canberra: Australian Government, Retrieved from <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publicationsarticles/policy-research/national-disability-strategy-2010-2020>.

wheelchair for mobility however his residence has 3 flights of stairs from the entrance, there is no lift and no other way of accessing his rooms other than the stairs. His room is too small to allow for a wheelchair turning circle and he instead uses crutches. The crutches are problematic however due to his repeatedly knocking the injury and delaying healing. He has been hospitalized for surgery on his injuries and the hospital was hesitant to discharge him home to inaccessible housing. There was no alternative and since being discharged his injuries have worsened. He has reported to AMIDA that he may have to have an amputation of his foot if the condition deteriorates further. He has attempted to lower the wheelchair down flights of stairs with a rope in order to exit the building. There is a high risk of falling, incurring further injury or death. AMIDA has advocated on his behalf to the Office of Housing and the MP for Housing. This has resulted in his being prioritized for Transfer to an accessible property however there is a further delay in the transfer due to lack of accessible housing in Victoria.

Another example of AMIDA's casework involves a woman with a rare progressive and degenerative disability which had declined to the point where her housing was no longer accessible, she could not access all parts of her home due to her mobility and she was frequently having falls with serious injuries. The Office of Housing made an attempt to offer her an alternative house which they undertook modifications on. The Office of Housing and the NDIA took many months to negotiate which department would pay for the modifications. This resulted in further deterioration in health and she disclosed to AMIDA that there were days she was needing to rely on an automated wheelchair. The property on offer to her however was not wheelchair accessible and she was forced to decline the offer. This caused her immense distress while she was unable to access parts of her home and sustained further serious injuries, impacting on her health and ability to work. AMIDA advocated on her behalf to verify that she was still on the Priority to Transfer category and was still eligible for 2 offers of property.

Furthermore, another case study is that of a woman who had a diagnosis of terminal illness however had not yet developed mobility limitations. Her main reason for requesting advocacy from AMIDA was to Transfer to another property when she was subject to racial hatred from a neighbour with ongoing bullying and harassment. Within a month she was offered a transfer to a high density public housing block. She was not able to accept this offer as she was not able to live in a high density setting. Within another 3 months she was made another offer for low density housing which she was able to accept.

It is clear to AMIDA that we can only achieve success when systemic failings such as a lack of accessible housing stock, are not barriers.

At the present time the status quo does not cater for the number of people who have disability that require modifications to their everyday living space in order to live safely at home.

Human Rights Consideration Verses a Cost Benefit Analysis Regulatory Impact Statement

As stated in AMIDA's response to the ABCB Options Paper in Nov 2018, AMIDA strongly supports the ³United Nations Convention on the Rights of Persons with a Disability (CRPD) and works to assert these rights and community inclusion for people with a disability and supports people with disability as valued members of our community. AMIDA recognizes that people with disability contribute to and develop our community. Specifically relating to accessible housing under the CRPD:-

Article 9: Accessibility

1. *To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to all persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility.*

Article 28: Adequate standard of living and social protection

1. *States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.*

Since AMIDA's response to the ABCB Options Paper in 2018, Australia received feedback from the UN Committee regarding it's reporting on the CRPD as follows:

- Accessibility (art. 9) 17. The Committee is concerned about: a) The lack of a national framework for reporting compliance with the Disability Standards for Accessible Public Transport; the Disability (Access to Premises Buildings) Standards; and the National Standards for Disability Services; b) The significant proportion of existing inaccessible built environment and the lack of mandated national access requirements for housing in the National Construction Code; Page 6 of 17 c) The lack of comprehensive and effective measures to implement the full range of accessibility obligations under the Convention, including of information and communication technology and systems.
- 18. In the light of article 9 of the Convention and its general comment No. 2 (2014), the Committee recommends that the State party, taking into account goal 9 and targets 11.2 and 11.7 of the Sustainable Development Goals: a) Establish and enact a national framework for mandatory compliance reporting of the Disability Standards for Accessible Public Transport; the Disability (Access to Premises-Buildings) Standards; and the National Standards for Disability Services; b) Amend the Federal law with mandatory rules on access for all new and extensively modified housing; c)

³ United Nations. (2007). Convention on the rights of persons with disabilities and optional protocol. Retrieved from <http://www.un.org/disabilities/default.asp?navid=14&pid=150>

Take the necessary legislative and policy measures, such as public procurement criteria, to implement the full range of accessibility obligations under the Convention, including regarding information and communication technology and systems, and ensuring effective sanction measures for non-compliance.

From this AMIDA understands Australia has an obligation to implement the committee's recommendation to mandate national access requirements for housing in the National Construction Code.

AMIDA is concerned about the number of additional fall-related deaths due to inaccessible housing, listed in the CIE report as 15 – 27 per year. AMIDA considers each of these deaths preventable if the cause is inaccessible housing. The falls could in some instances be reduced by minor modifications to existing properties however could be ultimately completely reduced if accessible housing is built into the NCC from this year on. AMIDA then questions the argument of economic benefit to Australia when lives are being lost unnecessarily.

AMIDA also agrees with the Equal Opportunity Act 2010 where it is against the law to discriminate against people with disability and these people should have the same access to housing as other members of the community. The law requires adjustments be made to help support and include people with disability. Under the Equal Opportunity Act, Victorian organisations have a Positive Duty to prevent discrimination. This means that positive action must be taken. Indeed, a regulation for Gold Level Accessibility in all new buildings would meet that obligation.

AMIDA endorses the ⁴Dalton Carter report which discusses the economic component of regulation while also discussing societal welfare and poses the question "What kind of society do we want to live in?" This report also discusses pain and anxiety experienced by people with mobility limits who do not have access to accessible housing. AMIDA's casework has involved many instances of people with disability who are repeatedly injured while waiting for accessible housing. Quality of life is an important consideration not to be overlooked.

As mentioned in AMIDA's response to the Options Paper AMIDA is aware over the most recent decade, Australia settled for a voluntary approach to accessible housing and adopted an "*aspirational target that all new homes will be of an agreed Universal Housing Design standard by 2020 with interim targets to be set within that 10 –year period.*" The aspirational goal was endorsed by the Council of Australian Governments (COAG) as a key commitment in the 2010 – 2020 National Disability Strategy (NDS).

In relation to housing, the NDS in 2010 included the following commitments:

⁴ Andrew Dalton & Rob Carter, *Economic advice prepared to assist with responses to the Consultation Regulation Impact Statement on minimum accessibility standards for housing in the National Construction Code*, Prepared for The Melbourne Disability Institute, University of Melbourne and the Summer Foundation, 18 August 2020

“Improved accessibility in social housing is being achieved through the incorporation of universal design elements in more than 15,000 new public and community housing dwellings which are being built under the social housing component of the Nation Building – Economic Stimulus Plan. Funding provided through the Social Housing Initiative will support the inclusion of six specified universal design features in these dwellings that will provide improved access to people who have limited mobility. Of these, more than 5,000 dwellings will also achieve an even higher level of adaptability through compliance with the Australian Standard for Adaptable Housing Class C.

The Australian Government is working with representatives from all levels of government, key stakeholders from the disability, ageing and community support sectors and the residential building and property industry on the National Dialogue on Universal Housing Design to ensure that housing is designed and developed to be more accessible and adaptable. An aspirational target that all new homes will be of agreed universal design standards by 2020 has been set, with interim targets and earlier completion dates to be determined.”

The voluntary approach didn't achieve the targets or goal to any extent at all. In fact, by any measure, the voluntary approach has failed conclusively to increase the supply of accessible housing. This failure clearly demonstrates the need for a mandated code. Over 10 years has been spent waiting for the voluntary approach to achieve desperately needed outcomes. This is a lost 10 years of development of accessible stock the loss of which is keenly felt by people; people who are being disabled by a lack of regulation. This failure shows housing developers and the housing construction industry count accessibility for people as a very low priority. If Australia does have a commitment to fairness and accessibility for people to the built environment including residential properties, it will have to mandate meaningful accessibility standards. And if it does not, it is responsible for disabling people.

AMIDA has noted also in the CIE Proposal there is a suggestion of a non-regulatory handbook at low cost. This suggestion if implemented rather than accessibility regulation there would most likely be the same result as the previous decade and could see the Australian government neglect the duty of care to its most vulnerable citizens.

AMIDA also understands estimates provided by the LHA within the last decade, indicate that less than 5% of housing is being built to LHDG silver specifications or above. This indicates the **ABCB is not meeting the IGA** regarding amenity and accessibility.

AMIDA is in support of the agreed Universal Design Standard now known as the Livable Housing Design (LHD) at Gold Level to create:

- A step-free entrance to the home
- Wider internal corridor and doors
- An accessible toilet or bathroom on the ground floor or entrance level
- A bathroom and shower that is easier to access
- Grab rails installed in bathroom and toilet (or capacity to do so)
- A ramp or safe pathway to the front door or other entrance
- Safer internal stairways and paths
- More space in and around the kitchen, capable of being adapted

- Ground (or entry) level bedroom
- Easy to reach light switches
- Doors that are easier to open and close

A meaningful level of accessibility is required as it will meet current needs and greatly reduce the need for further modification, and avoid the greater cost that modification brings. Gold level will better meet current and future demand. Current demand for accessible housing from people with a disability is significant. If the level mandated in the code is too low it will not meet this current demand let alone future needs.

AMIDA endorses the ⁵Australian Network for Universal Housing Design (ANUHD) submission which indicates it does not support the interpretation of Livable Housing Design (LHD) in the draft changes to the NCC. The LHD guidelines were agreed to 10 years ago by housing industry, community and human rights leaders. AMIDA also endorses the suggestion of a qualitative analysis of data and keeping to the LHD guidelines as they were first established.

The Victorian Council of Social Services ⁶(VCOSS) has also requested a qualitative analysis by meaningfully engaging with people who will benefit most and stating only Gold standard will ensure accessible housing. AMIDA is in agreement with this and VCOSS statement Non regulatory mechanisms do not deliver accessible housing at the scale required.

Law and Policy to make modifications

Obtaining permission for modifications in private rental properties has been a significant barrier for people with a disability. As stated in previous AMIDA submission to the Victorian Government on Fairer Safer Housing (Feb 2017) :-

“There is an inability to make property modifications for a diverse array of purposes, including supporting tenants with a disability.”

“Presently we observe that landlords, even in social housing, are refusing to make even minor modifications, which is causing people to be living in housing that is not suitable for them, or having to search for other accommodation.”

Some positive changes have recently been made to the Residential Tenancies Act 2018 (RTA), specifically Clause 49 amends section 64 of the Act. These changes will allow

⁵ Australian Network for Universal Housing Design, *Response to the Consultation Regulatory Impact Statement, Proposal to Include minimum accessibility standards for housing in the National Construction Code*, 14 August 2020

⁶ Keep Going for Gold, *VCOSS Response to the Australian Building Codes Board Regulatory Impact Statement on the Proposal to Include Minimum Accessibility Standards in the National Construction Code*, Victorian Council of Social Services, 31 August 2020

modification without landlord consent but only if the modifications do not penetrate or permanently modify structures. This is a limitation that will prevent many needed modifications. The implementation of changes to the RTA have been delayed due to COVID- 19 until Jan 2021.

These limitations will prevent many needed modifications from being approved in existing rental stock and is another reason the growth of modified stock must come primarily from new built accommodation through a mandated code.

AMIDA notes the process of the RIS has not been accessible to some people with disability. AMIDA suggests an “Easy Read” version of the documents and also the survey to make this fully accessible. The results relied upon from the survey that inform the RIS will be lacking the input from people who can only respond to “Easy Read” information. Any further consultation AMIDA strongly encourages the ABCB to engage with people with disability in order to glean an accurate and full picture of the needs of Australian people with disability. In line with the much used turn of phrase “Nothing About Us, Without Us”.

COVID- 19 Pandemic

2020 has seen COVID- 19 spread within Australian communities, now more than ever there is an importance for housing in order to quarantine and/or isolate, following public health recommendations.

Victorian in particular saw multiple public housing blocks locked down while residents were tested for virus and were required to isolate while being tested or on receiving positive results. Some of the most vulnerable members of Victoria’s communities were affected by the lock down. The public housing towers built to accommodate high density, congregate living, often overcrowded offered little protection from a deadly virus that was known to be circulating the buildings. Amongst the residents of these dwellings were people with disability requiring accessible housing, requiring support workers to deliver care and were even more disadvantaged by the lock down and certainly more at risk living in this type of environment.

Victorian Hospitals, especially in Melbourne are under strain, caring for patients infected by COVID- 19. The hospital system currently does not have capacity to deal with demand for healthcare other than the pandemic, as elective surgery is placed on hold and only emergency procedures being carried out. Any extra injuries or hospitalization for preventable falls from inaccessible housing may not be high priority. It is unknown how long the pandemic will continue. It would be a sustainable investment into prevention to spend more on accessible housing than to continue to pay more for treating injuries or deaths from accidents.

The ABCB and the Australian government have a responsibility to the people of Australia to safeguard their Human Rights in line with the ratification of the UN CRPD in 2008 and the uphold the commitments made in the NDS during 2010 and Positive Duty under the Equal Opportunity Act 2010 by taking positive action to prevent discrimination.