



Australian Network for
Universal Housing Design

Second review of the Premises Standards 2010: survey

What do you think the Premises Standards Review should focus on?

Housing

ANUHD advises the Review to include housing design where it is implicated in the *Disability Discrimination Act 1992* (DDA) with its 2010 amendment¹ and 2020 amendment² and United Nations Convention of the Rights of Persons with Disabilities³.

Disability (access to premises -buildings) standards 2010 and 2020: *Disability Discrimination Act 1992*

While the scope of the current *Disability Discrimination Act 1992* Section 24 Access to Premises is limited to premises to which the public is allowed to enter or use, there are a number of circumstances where the internal design and accessibility of Class 1 and Class 2 buildings containing sole occupancy units (SOU) could be subject to the DDA.

Implications under Section 24, 27 and 29 of the DDA

Under Section 24 (Goods, services, and facilities) a community housing support agency, or state/territory government housing supplier might face a successful complaint if the services (housing) supplied does not provide for access. Similarly, Section 27 (Clubs and associations) might mean that a housing body corporate may be subject to successful complaint for failing to respond to the needs of one of its resident members. Finally, under Section 29 (Administration of Commonwealth laws and programs) any Commonwealth program providing funds or having regulatory authority in relation to housing is obliged to not discriminate against people with disability.

Some state and territory jurisdictions, such as Tasmania and the ACT, also have a broader scope for potential successful complaints in relation to accommodation. In addition, almost

all levels of government currently require some level of accessibility in all or a percentage of social housing projects. Further, the 2010-2020 National Disability Strategy committed to support the adoption of Livable Housing Design Gold level in all new social housing dwellings by 2019.

The Disability (access to premises -buildings) standards 2010: *Disability Discrimination Act 1992* has two key long-standing issues regarding Class 2 buildings that have not been addressed.

1. Class 2 doorway circulation and access features at entry to SOUs

The circulation space in common areas around entrance doors of Sole Occupancy Units (SOUs) in Class 2 buildings are not required to be accessible. The Guideline on the application of the Premises Standards⁴ on page 67 states the (then) Australian Human Rights Commission's view that access requirements apply up to the plane of the door including doorway circulation, clear door openings and features such as door hardware and luminous contrast, whereas the ABCB considered these access requirements did not apply as the common areas of Class 2 buildings ended at the plane of the doorway.

If the intent of the provisions for access in common areas to Class 2 buildings aimed at ensuring minimum levels of visitability the Australian Human Rights Commission's view must prevail.

2. Extent of Class 2 dwellings

The Access to Premises Standard has the access requirement covering common areas in Class 2 buildings where one or more SOUs are made available for short-term rent. The NCC, however, states that the access requirement covers all Class 2 buildings.

Given that the scope of the Premises Standards and DDA remain the same in relation to accommodation and housing, there are sufficient areas of potential coverage in relation to the provision of accessible housing to warrant at least a regulatory approach (currently being considered by the ABCB) to the accessibility of Class 1a buildings and SOUs in Class 2 buildings.

UN Convention on the Rights of Persons with Disabilities

Accessibility in Class 1a buildings and SOUs in Class 2 buildings

With the Disability Discrimination Act 1992, the Convention on the Rights of People with Disabilities brought a particular 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 Convention, to which Australia is a signatory, identifies the importance of accessibility beyond simply public places and spaces to the design of housing and home.

The 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 promotes 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”).

In their Concluding Observations in 2019⁵, the UN Committee on the Rights of Persons with Disabilities noted the significant proportion of the existing built environment in Australia that is inaccessible and the lack of mandated national access requirements for housing in the National Construction Code. ANUHD considers that the obligations for Australia, as a signatory of the Convention on the Rights of Persons with Disabilities, and the demonstrated failure of the housing industry⁶⁻⁸ to respond voluntarily leaves Australian governments with no alternative but to intervene.

The recent Consultation Regulatory Impact Statement (RIS)⁹ commissioned by the Building Ministers Forum¹⁰ sought to measure the impact of accessibility in housing for the Australian society. The Consultation RIS noted the human rights argument for regulation by some stakeholders, yet considered it to be beyond the purview of the task.

This received fierce criticism from the human rights, disability and aged sectors for ignoring what they considered to be the human rights obligations for housing design.

In summary, the current instruments safeguard the right of access to only part of the built environment. No matter how well they work, they are useless to people with disability when the end result is their exclusion, isolation and marginalization in family, community and work life. If Australia is committed to the inclusion and participation of all its citizens then all of the built environment, both public and private, should be made accessible and non-discriminatory, and the instruments safeguarding accessibility should work seamlessly together.

Where do you see opportunities for improvements?

Better coordination among disability commitments and obligations across government (including built environment, transport, information, and education)

ANUHD commends the Department’s interest in the lived experience of people with disability, whose lives are most impacted by these reviews. Accessible paths of travel to inaccessible sole occupancy units, transport, schools, and services (and vice versa) frustrate people’s lives and makes a mockery of the instruments that lead to these anomalies. Australia can do better by meeting their obligations through the UNCRPD, implementing legislation, coordinating efforts and being accountable for their commitments.

The UN Committee on the Rights of Persons with Disabilities⁵ recommends the following:

In the light of article 9 of the Convention and its general comment No. 2 (2014) on accessibility, 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 reporting compliance with the Disability Standards for Accessible Public Transport 2002, the Disability (Access to Premises – Buildings) Standards 2010 and the National Standards for Disability Services;

(b) Amend the federal law by including mandatory rules on access for all new and extensively modified housing;

(c) Take the necessary legislative and policy measures, such as the development of public procurement criteria, to implement the full range of accessibility obligations under the Convention, including regarding information and communications technologies and systems, and ensure effective sanctions measures for non-compliance.

Implications for Premises Standards from the Disability and Aged Care Royal Commissions

A likely recommendation from the Royal Commission into Aged Care Quality and Safety and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability will be for Australians to have a real choice about remaining and being supported in the home of their choice, regardless of their age, ability or circumstance¹¹. Remaining and being supported at home requires a built form that allows this to happen reliably, safely, and economically. An access standard for all new and extensively modified housing to be included in the National Construction Code is the first step for this to occur.

References

1. Disability (access to premises -buildings) standards 2010: *Disability Discrimination Act 1992*, (2010).
2. Disability (access to premises -buildings) standards 2020: *Disability Discrimination Act 1992*, (2020).
3. United Nations. Convention on the rights of persons with disabilities and optional protocol. 2007; <http://www.un.org/disabilities/default.asp?navid=14&pid=150>. Accessed 22 July 2010.
4. Australian Human Rights Commission. Guideline on the Application of the Access to Premises Standard. In. Sydney: Australian Government; 2011.
5. Committee on the Rights of Persons with Disabilities. *Concluding observations on the combined second and third periodic reports of Australia*. United Nations;2019.
6. The Senate Community Affairs References Committee. *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities*. Canberra2017.
7. Davy L, Fisher K, Wehbe A, et al. *Review of implementation of the National Disability Strategy 2010-2020: Final report*. . Sydney: Social Policy Research Centre;2019.
8. ANUHD, RI Australia. Report on the progress of the National Dialogue on Universal Housing Design 2010-2014. In. Sydney2015.
9. Centre for International Economics. *Proposal to include minimum accessibility standards for housing in the National Construction Code: Consultation Regulation Impact Statement*. Sydney: Australian Building Codes Board;2020.
10. Building Ministers Forum. Communique, October 2017. In: Department of Industry, ed. Canberra: Australian Government; 2017.
11. Royal Commission into Aged Care Quality and Safety. *Interim Report: Neglect - Volume 1*. 2020.