



Proposal to include minimum standards for housing in the
National Construction Code

**Submission in response to the Consultation Regulation
Impact Statement prepared for the Australian Building
Codes Board**

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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people living with physical disability across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, from a wide range of socio-economic circumstances, living across metropolitan, rural and regional areas of NSW.

PDCN's core function is to influence and advocate for the achievement of systemic change to ensure the rights of all people with a physical disability are improved and upheld. Our objectives are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship.
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability) so that people with physical disability can achieve and maintain full participation, equality of opportunity and equality of citizenship within society.

Recommendations

Recommendation 1:

that the ABCB regulate minimum accessibility standards as prescribed in Option 2: Accessibility standard, broadly reflecting LHDG gold standard, in the NCC applying to all new Class 1a and Class 2 buildings across Australia

Or in the alternative:

Recommendation 2

that the ABCB regulate a two-tiered system mandating Option 2 across particular sites and Option 1 - Accessibility standard, broadly reflecting LHDG silver standard across all other areas, with a subsidy program to encourage building to LHDG Gold standard where it is not otherwise required.

Introduction

As the peak representative organisation for people with physical disability within NSW, PDCN appreciates the opportunity to comment on the Regulatory Impact Statement (the RIS).

PDCN considers that housing accessibility is a human right with benefits extending beyond persons with physical disability to society as a whole - accessible housing based on Liveable Housing Design Guidelines (LHDG) will become relevant to each and every one of us at some point in our lives.

Our submission draws on the experiences of our membership across various forms of housing, including private rental, social and community housing, Specialist Disability Accommodation (SDA) and home ownership.

PDCN has considered the experiences of people with physical disabilities and their families, living in housing that has been built to purpose, those who have modified their homes and those who live in premises where accessibility is limited. We have also sought input from experts, including academics and building assessors.

We are not economists and it is beyond the scope of our expertise to conduct a rigorous economic assessment of the RIS. Instead we will consider the recommendations of the RIS through a practical lens, focusing on what we know through the lived experience of our membership.

We hope to draw attention to various deficiencies we have observed, both in the basic premise guiding the RIS and in the methodology used. We hope to highlight the fact that the market is adapting to the needs of consumers and propose why we consider this is the case.

Concerns with the Regulatory Impact Statement

PDCN's concerns with the RIS fall across 4 main themes. These can be summarised as follows:

- We believe that the RIS has failed to appreciate the broad applicability of Liveable Housing Design Guidelines (LHDG) across society and has therefore defined cost savings too narrowly;
- We consider that the RIS has not examined the extent to which current policies offer the same benefits as LHDG, or whether current policies are effective, and has overstated the extent to which the needs of older persons and persons with physical disability are currently being met; and
- We are worried that the methodology guiding the research has some fundamental flaws, which raise concerns as to whether the RIS has accurately determined the market's interest in the proposed regulatory change.

The Universality of Liveable Housing Design (LHD)

"I lead a very social life, we have barbeques and such, but we [my wife and I] never get invited anywhere because our friend's houses aren't accessible for me. It's not just affecting me, it affects [my wife's] socialising too."

PDCN member & fulltime wheelchair user
(his wife does not have a physical disability).

Liveable Housing Design (LHD) incorporates design principles that enable a property to *'meet the changing needs of occupants across their lifetimes... enhancing the comfort, safety and liveability of the home'*.¹

LHD can be seen as having benefits across a range of contexts including:

- When there are young children in the property that may be at risk of trips and falls;
- During pregnancy where mobility may be restricted;
- When parents/caregivers need to manoeuvre prams;
- If an occupant experiences a temporary injury;
- When moving larger furniture in or out of the home
- As occupants become older and their physical mobility decreases;
- If a family member has a physical disability;
- If there are guests to the property who experience any of the above.²

At any one time, the benefits of LHD could be realised in different ways by different occupants in a household – indeed, it has been observed that in any one day, up to three generations pass through the typical Australian home.³

Likewise, the benefits of a property built to LHD guidelines are not tied to a single set of occupants but will be realised across multiple households over the life of the property – potentially providing benefits across a decade or even longer.

The RIS identifies the 'problem' driving the proposal to include minimum accessibility standards based on LHD as *'a shortage of accessible housing for persons with mobility limitations – specifically, older persons and persons with physical disabilities'*.⁴ We would

¹ National Dialogue on Universal Housing Design, *Strategic Plan*, July 2010
<https://www.dss.gov.au/sites/default/files/documents/05_2012/national_dialogue_strategic_plan.pdf> accessed 25 August 2020.

² Livable Housing Design, *Livable Housing Design Guidelines*, 4th ed., 2017
<http://livablehousingaustralia.org.au/library/SLLHA_GuidelinesJuly2017FINAL4.pdf> accessed 25 August 2020.

³ Amelia Star, quoted in S. McDonald, *Make your homes livable for longer – Livable Housing Australia's Amelia Starr*, Architecture and Design, 4 Feb 2014
<<https://www.architectureanddesign.com.au/features/features-articles/in-profile-livable-housing-australia-s-amelia-star#>> accessed 25 August 2020.

⁴ Centre for International Economics, *Proposal to include minimum accessibility standards for housing in the National Construction Code – Consultation Regulation Impact Statement* prepared for the Australian Building Codes Board, July 2020, p.23.

suggest that this is because persons with physical disability and older persons' accessibility needs are immediately apparent.

Whilst we certainly advocate for minimum accessibility standards to address the needs of our members, we urge the ABCB to reframe the problem. It is not "how do we create more housing for older people and people with physical disabilities" but rather, "how do we create homes that are more liveable for everyone?"

What is being proposed is a regulatory change with universal applicability – and the costs and benefits should be assessed on this basis.

Are current mechanisms meeting need?

I have been disabled for approximately seven years now and during this whole time it has been near impossible to find and maintain secure, safe, affordable, and accessible properties in the private rental market. When I was first diagnosed I was homeless for the first four years and living on people's couches... the property was not accessible and I could not even use the shower so I only showered once every three months when it became absolutely necessary...

I finally (with the assistance of a housing subsidy) got a private rental approximately four years ago. It was more suitable than couch surfing, but I still could not access the shower. I was there about a year and a half and was evicted as the owner was selling. I found another rental, this one even less suitable than the previous one. I could not access the shower at all, nor most of the house. I was there for a year and a half and the owner again sold the property.

My current property is even worse. Again, no access to a shower, no access to the front door and a very steep driveway I am unable to navigate... In closing I have suffered terribly since becoming disabled and every system has failed me.

PDCN member, NSW Central Coast.

'In several weeks of searching [for a rental property] not one of the properties we saw was suitable for someone with a power chair and no walking ability at all, in that we didn't see any [properties] that were ground floor with flat access. In the price range we looked at, first floor with a lift and good stairs was the best we found. Only one listing mentioned disability access - to say there was none'.

PDCN member, Sydney.

As the peak body for persons with physical disability within NSW, we can speak to the experiences of our members in trying to find suitable homes within the housing market. We are also able to provide comment on the practical limitations that our members have faced when attempting to modify their housing to improve general accessibility.

We are concerned that the RIS suggests that the need for accessible housing is currently being met for older persons and people with physical disabilities via various Federal, State and Local mechanisms.

We do not support this assumption. While we agree that a proportion of persons with physical disability are satisfied with the level of accessibility they have achieved via various mechanisms such as the NDIS home modifications, Specialist Disability Accommodation, and the various Aged Care supports, many more face significant impediments in finding a decent, physically appropriate home to live in.

We would also point out that the level of accessibility that a person would realise under most current strategies, falls far short of accessibility benchmarks under LHD. It appears that the RIS has assumed that the definition of accessibility across current strategies and LHD is the same and we are disappointed that the drafters did not consult widely with persons with physical disability, or their representative peaks. Had they done so, we imagine the difference would have been clearly pointed out.

We also challenge the claim in the RIS that the 2018 Australian Bureau of Statistics Survey on Disability, Aging and Carers (the SDAC) provides evidence that peoples' housing accessibility needs are being met. We do not know how this could be the case, since the SDAC does not assess the accessibility of survey participants' housing.

Our observations in relation to the effectiveness of current strategies in meeting the accessibility needs of our membership are detailed below:

Funding of home modifications under the National Disability Insurance Scheme

There is nothing in the NDIS that guarantees that people will be provided with a home that is completely modified to LHD guidelines and this is neither the purpose of the NDIS, nor the standard to which it is held to account.

It is important to recognise that the NDIS focus is on the participant's specific needs as relating to their particular goals. The following case study is drawn from a Guidance Manual for Home Modification Assessors. It provides a clear example of what NDIS home modifications look like in practice:

An assessor recommends the NDIS fund automation of all windows and blinds of a house for a participant with a C5 spinal injury (participant can raise their arms and bend elbows and has total paralysis of wrists, hands, trunk and legs). Funding would generally be only approved for home modification to the participant's bedroom, the living room and dining room as these are the most likely rooms where the participant may be alone for periods of time undertaking independent goal related activities and may need to adjust the blinds.⁵

NDIS can provide resources to make a home suitable for an individual - tying the individual to that property, whereas the proposed changes to the NCC are aimed at achieving a baseline of accessibility throughout the housing market as a whole.

⁵ Australian Government, National Disability Insurance Agency, *Guidance for Home Modifications Assessors*, 1 March 2017, p. 5.

The two systems should not be considered as like for like, since the motivations and the outcomes are different. The NDIS is focused on giving an individual the modifications they need to do specific things, whereas LHD is focused on achieving a base level of overall accessibility to a premise.

Having said this, there is no reason why the two systems could not coexist successfully – applying LHD across the housing sector could significantly reduce the costs associated with NDIS home modifications as properties would be already designed with a view to future modifications, resulting savings across government expenditure on core funding.

Even if it can be argued that the NDIS model of offering housing modifications under core funding meets the accessibility needs of individuals in relation to their current home, the scheme is limited in its effectiveness - the most recent NDIS Participant Outcomes Report indicates that only 21% of participants aged 15-24 and 29% of persons aged 24+ consider that the NDIS has helped them to find a home that is good for them – these figures remain relatively consistent longitudinally over two years of being an NDIS participant.⁶

Likewise, a snapshot of capital funding usage for participants where we expect that they may have a physical disability of a high enough level to need modifications, reveals a concerning trend of underspending despite need for either home modifications or Specialist Disability Accommodation (SDA) being a precursor to receiving these funds:

NDIS figures regarding capital budget use as of 29 June 2020⁷:

Type of disability	Total number of participants	Average Capital Budget	Average percentage of plan utilised
Spinal Cord	4134	22,000	71%
Cerebral Palsy	11,677	17,000	65%
Multiple Sclerosis	5154	16,000	67%
Other physical disability	12,117	19,000	67%

Even assuming that every one of these participants have a disability of a level high enough to need modifications, and that the capital budget amount indicated was wholly spent on home modifications these figures highlight the low levels of people in the NDIS accessing home modifications – especially given the ABS estimate of 1,505,700 people with core activity limitations nationally.⁸

⁶ Australian Government, National Disability Insurance Agency, *NDIS Participant Outcomes 30 June 2019*, June 2019 < <https://data.ndis.gov.au/reports-and-analyses/participant-outcomes-report> > accessed 27 August 2020.

⁷ Australian Government, National Disability Insurance Agency, *Utilisation of Plan Budgets* < <https://data.ndis.gov.au/explore-data/utilisation-plan-budgets> > accessed 27 August 2020.

⁸ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia Summary of Findings*, Table 3.1 All persons, disability status, by age and sex–2018, estimate.

The NDIS figures relating to use of capital works funding does not provide the reason why funds have been underspent, however members have highlighted that the process of getting modifications can be extremely difficult and time consuming. Recipients must demonstrate:

- That they intend to permanently live in the property (it is their primary property);
- That the modifications directly relate to their particular goals;
- That there are no laws, regulations or planning restrictions which would prevent the modifications being done;
- That the modifications represent value for money;
- That the modifications will be, or can be expected to be beneficial to them, having regard to current good practice.⁹

Issues can arise if it can be expected that the participant will relocate to another home – for instance, in the situation where a young adult is living at home, where the participant is seeking a home modification but could gain a similar result via assistive technology (AT) or if it is determined that the anticipated frequency of use for a proposed modification does not justify the expenditure.

For people renting in NSW, a further hurdle comes from needing the consent of the landlord. Under the *Residential Tenancies Act 2010* (NSW) a landlord can refuse minor modifications with a valid excuse and can refuse major modifications without explanation. This means that landlords can “cherry pick” modifications they consider add value to the property and reject those that they consider negatively affect marketability. Tenants have spoken of modifications being refused on the basis that they will “damage the premises” or are “visually unattractive”:

“We asked the landlord to let us install a ramp to access the flats from the street and a ceiling hoist between rooms inside the unit... [the landlord] rejected the hoist but let us build the ramp. Then [the landlord] started advertising the block as accessible – no benefit to us as they put up the rent per week.” -PDCN Member, Sydney.

A lack of security in tenure is also a disincentive around seeking consent for modifications. Persons with physical disability may bypass asking landlords to approve modifications, purchasing assistive aids instead:

In terms of [modifications], I personally would not [ask for them] because you usually don't know your landlord and have no idea how they might respond but it depends. I bought a shower chair a while ago, so that I can sit down in the bathroom and lean on it if needed to step over the shower frame. It also fits in the shower space if needed. So the chair has given me the extra help I've needed for the past few months, without asking for mods.

⁹ Australian Government, National Disability Insurance Scheme, *Including Specific Types of Support in Plans Operational Guideline - Home modifications* <<https://www.ndis.gov.au/about-us/operational-guidelines/including-specific-types-supports-plans-operational-guideline/including-specific-types-support-plans-operational-guideline-home-modifications>> accessed 27 August 2020.

PDCN member, Sydney.

The experience of Jan*, highlights the conundrum faced by persons with physical disability in the rental market when considering whether to request modifications:

Jan rents a townhouse and uses a wheelchair full time. She had to search extensively to find the townhouse – it was the most accessible property she could find in her regional town, even so, half of the property is inaccessible to her. Jan now needs a ceiling hoist since she can no longer transfer herself (ie: from bed to wheelchair). She has been approved for NDIS funding for the hoist but needs approval from the landlord and body corporate as well.

Jan is reluctant to raise the issue because she knows that the landlord will most likely refuse to grant permission for the hoist. Jan is also aware that the landlord can refuse to renew her lease.

We consider that home modifications under the NDIS are not a substitute for mandatory accessibility based on LHD standards. NDIS modifications were never anticipated to provide universal home accessibility to participants. Therefore, the best that might be realised under the NDIS is that the accessibility of a property is increased to align with the goals of an individual, subject to budget restraints.

Home modifications under Home Care Packages and the Commonwealth Home Support Program

The RIS also provides home modifications under the Commonwealth Home Support Program (CHSP) and the Home Care Packages (HCPs) programs as examples of systems that work to improve the accessibility of older persons with physical disability.

Of the estimated 1,505,700 people with core activity limitations within Australia, the vast majority are aged 65 years and over.¹⁰ They are a significant demographic of our membership, and we know that, for this demographic, 'aging in place' is highly desirable.¹¹

The programs aimed at increasing accessibility under Aged Care services are, similar to the NDIS, focused on improving specific aspects of the recipient's home on an 'as needed basis', with additional modifications being undertaken as the individual's accessibility requirements increase. This reactive system requires a continuity of investment in modifications while the recipient lives at home, and we note the financial inefficiencies – each modification incurs its own transaction and administrative costs, savings are unable to be made through wholesale purchases of materials and there is no view to an individual's future accessibility needs.

¹⁰ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia – Summary of Findings 2018*, Table 2.1 – Persons with profound or severe core activity limitation, by age and sex, 2003, 2009, 2012, 2015 and 2018, estimate.

¹¹ Australian Government, Australian Institute of Health and Welfare, *The desire to age in place among older Australians*, 17 April 2013 <<https://www.aihw.gov.au/reports/older-people/the-desire-to-age-in-place-among-older-australians/contents/table-of-contents>> accessed 27 August 2020.

Both the Home Care Package and Commonwealth Home Support Program have caps in regards to the total amount that can be provided for modifications– the CHSP, which covers simple modifications, is capped at 10K a year, whereas the HCP program, which provides a lump sum to cover all independent living requirements, varies between 12K-50K per annum.

There is significant demand these services, and we can only expect this need to increase with predicted rapid increases in persons aged 65 years and over.¹²

As of 31 March 2020, there were 136,909 people accessing Home Care Packages¹³ and 59,071 people approved and waiting to receive the Home Care Package they have been assessed as needing.¹⁴

Expected wait times can be 3-6 months for the lowest level of support, up to 12+ months for the highest level.¹⁵ There have been recent criticisms that people have died or transitioned into aged care before they are able to receive the modifications they need to live at home¹⁶. The extensive wait times were vigorously called out recently in the Interim Report of the Royal Commission into Aged Care Quality and Safety.¹⁷

Even when an individual receives their package, obtaining modifications in a real-world context can be difficult – the process for even simple modifications is convoluted and labour intensive for recipients, since modifications are, again, subject to meeting various criteria.

We anticipate that mandating minimum accessibility standards in the NCC would give older people who wish to age at home the capacity to downsize into homes that already have a pre-built level of accessibility, allowing them to remain independent for as long as possible, and likely reduce the cost on governments to otherwise meet their modification needs.

Subsidised Aged Care Places

'People do not usually enter residential aged care willingly. They often do so with great trepidation. They fear loss of autonomy, of individuality, of control over their own lives. They fear ceasing to be a person with distinct needs and preferences, with an emotional and intellectual life and freedom to do what they want, when they want to do it.'

¹² Australian Bureau of Statistics, 3222.0 - Population Projections, Australia, 2017 (base) – 2066, 22 November 2018 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/3222.0>> accessed 27 August 2020.

¹³ Australian Government, Department of Health, Home Care Packages Program Data Report 3rd Quarter 2019-20 - 1 January – 31 March 2020, July 2020 <https://gen-agedcaredata.gov.au/www.aihwgen/media/Home_care_report/Home-Care-Data-Report-3rd-qtr-2019-20-PDF.pdf> accessed 27 August 2020, p. 3.

¹⁴ Ibid., p 10.

¹⁵ Ibid., p 13 – also we note that people are usually offered assistance at a lower level in the interim.

¹⁶ Commonwealth Government, Royal Commission into Aged Care Quality and Safety, Interim Report: Neglect, Vol 1, 2019 <<https://agedcare.royalcommission.gov.au/sites/default/files/2020-02/interim-report-volume-1.pdf>> accessed 27 August 2020, p.3.

¹⁷ Ibid.

- Interim Report of the Royal Commission into Aged Care, Quality and Safety¹⁸

PDCN does not consider that the Residential Aged Care sector should be considered as a strategy to provide accessible housing. Whilst we acknowledge that Aged Care places can vary in terms of the types of accommodation offered, they are – as the name indicates, facilities for people who can no longer live at home because they require assistance with everyday tasks or health care.¹⁹

For many, the transition to the residential aged care sector is a consequence of the lack of accessible accommodation across the general housing sector – it is seldom, if ever, considered preferable to aging in place. We are concerned that many people make the transition to residential aged care prematurely due to the inefficiencies of the Aged Care system to facilitate people to live independently in their homes.

Whilst the retirement village subsector assumes that residents will be able to live more independently, the models presented, similar to Residential Aged Care, appear focused on increasing support services for residents rather than allowing residents to maintain independence for as long as possible through accessible design.

Our review of 20 random advertisements of Retirement Villages and Independent Living Units (ILUs) across Sydney²⁰ failed to find any reference to accessible design features as a selling point for properties, however services such as “24 hour staff on site”, “help with a range of daily care needs including meals, apartment cleaning, laundry and personal care” and “aged care on site” featured as benefits repeatedly.

PDCN also shares the concerns of other stakeholders noted in the RIS²¹ that Retirement Villages do not offer consistency in terms of meeting accessibility requirements, particularly residences that have been re-purposed from other buildings.

¹⁸ Ibid., p. 4.

¹⁹ Australian Government, My Aged Care, *What aged care homes provide* <<https://www.myagedcare.gov.au/aged-care-homes/what-do-aged-care-homes-provide>> accessed 27 August 2020.

²⁰ Aged Care Guide <<https://www.agedcareguide.com.au/retirement-villages/availabilities/sydney-nsw>> accessed 27 August 2020.

²¹ Centre for International Economics, op cit., p. 37.

Social and community housing

I have been disabled for approximately seven years now and during this whole time it has been near impossible to find and maintain secure, safe, affordable and accessible properties in the private rental market. I got on the NSW housing register from day one (7 years ago) and am classified as high priority and on the top of the list. Housing employees have told me that it will be highly unlikely to ever receive an offer of a property. I am still waiting seven years on.

PDCN Member, NSW Central Coast.

Social and community housing provides low cost accommodation to those on limited incomes and fills an important niche in a housing market that is inaccessible to those who rely on Government support as their primary household income.²²

The most recent statistics indicate that 41% of households in public housing and 29% of those in community Housing have at least one member with disability²³ and residents aged 55 and older make up 35% and 30% respectively,²⁴

In NSW, there is extremely high demand for social and community housing properties. As of 30 June 2019, there were 46,530 applicants on the NSW Housing Register - 4484 of these people are identified as high priority.²⁵ The main social housing provider is the NSW Government, operating under the Department of Communities and Justice (DCJ) as the Land and Housing Corporation (LAHC). This housing is commonly known as "Housing NSW" or "Housing Commission."

LAHC definitively states in its housing modifications policy that publicly owned social housing is not disability accommodation.²⁶ It interprets the NSW Government's statutory obligations regarding accessibility as only including "minor disability modifications or relocation":

²² See here for instance, Anglicare Australia, *Rental Affordability Snapshot, 2020*, <<https://www.anglicare.asn.au/docs/default-source/default-document-library/rental-affordability-snapshot-2020.pdf?sfvrsn=4>> accessed 27 August 2020.

²³ Australian Institute of Health and Welfare, *National Social Housing Survey 2018 Key results, 2019* As <<https://www.aihw.gov.au/getmedia/46555204-b4ca-4429-9d1a-a1797e6a06cd/aihw-hou-311.pdf.aspx?inline=true>> accessed 27 August 2020, p. 4.

²⁴ Australian Institute of Health and Welfare, *Housing Assistance in Australia – 2019*, <<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019/contents/summary>> accessed 27 August 2020.

²⁵ NSW Government, Department of Communities and Justice, *Expected Waiting Times* <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>> accessed 27 August 2020.

²⁶ NSW Government, Department of Communities and Justice, NSW Land and Housing Corporation, *Home Modification Guidelines – August 2018* <<https://www.facs.nsw.gov.au/data/assets/file/0016/420244/Home-Modification-Guidelines.pdf>> accessed 25 August 2020, p. 2.

The NDIS Principles affirm that social housing providers have obligations under the Disability Discrimination Act 1992 (DDA) to provide 'reasonable adjustments' (minor disability modifications or relocation) to support a tenant with a disability.²⁷

As such, the limits the LAHC sets on modifications are extremely modest, for instance, ground levelling and profiling is capped at >\$2000 and bathroom modifications are capped at >\$3000, inclusive of the cost of design, labour, materials and the contractor's mark up.²⁸

LAHC will permit more extensive modification work if any additional costs are met by an external provider, (i.e. the NDIS or the schemes under Aged Care), however these schemes have their own issues, as already discussed. We are concerned that this creates a scenario where State and Federal government can both deflect responsibility for the cost of meeting the responsibility of ensuring that people have homes that reflect their accessibility requirements. Whilst we are yet to see such a scenario play out, we would be concerned that the current scenario might result in unreasonable delays in getting modifications approved.

The alternative to modifying a property is to relocate a tenant to a property that better suits their needs. Although this is the prescribed remedy, the capacity for LAHC to relocate a tenant to more accessible housing stock or retrofitting properties to budget is extremely limited.

Most of the State's housing portfolio was acquired or built across the 50's-80's, consisting of low-rise complexes with staircases, duplexes and free-standing homes. These properties are difficult and expensive to retrofit.²⁹ Limited properties that do have a level of accessibility, for example, ground floor properties and those without baths, are allocated to tenants with the highest accessibility needs.

Given that the majority of people stay within the social housing system until they transition into an aged care facility, the limited properties that are 'accessible' remain "tied up" – meaning people can wait months or even years to either be offered a property that suits their needs or to be transferred to more suitable housing within the portfolio.

This shortage in accessible properties within social and community housing creates an inefficient system in which scarce resources can only be allocated to those in immediate need of them. Long wait times to either be appropriately housed often means that a person's accessibility needs increase before they are processed – requiring the individual to then update their requirements and be placed back on the list, waiting for an increasingly smaller pool of appropriate properties.

This reactive response to accessibility also requires significant investment in terms of retrofitting and administration, from obtaining building quotes, ordering materials, arranging access for work and temporarily rehousing the tenant, through to processing applications for

²⁷ Ibid.

²⁸ Ibid.

²⁹ Martin, C, *Public Housing in New South Wales – A Brief History*, Inner Sydney Voice, 2016 <<https://innersydneyvoice.org.au/magazine/public-housing-new-south-wales-brief-history/>> accessed 27 August 2020.

transfers, organising property inspections and transferring the tenants' rent ledger over on LAHC's database.

Where a property cannot be found within the state housing portfolio, LAHC will sometimes turn to the private market – in this scenario the tenant is only obligated to pay rent as a proportion of their household income whilst the Government covers the shortfall on the market rent of the property.

Mandatory accessibility standards across all new social housing builds would create a "one size fits all" eliminating the need to relocate people between properties on accessibility grounds. Any minor modifications needed to make a property specific to an individual's needs could be done at minimal effort and cost, reducing the need to cover budget shortfalls via alternative schemes such as the NDIS.

We note that the strategic plan set by the National Dialogue on Universal Design Standards included a target that 100% of all new social housing was to meet Gold Level by 2019.³⁰ Our research was not able to determine whether this goal had been met within NSW, however we consider that the target reflects an acknowledgement that LHD reflects both best practice in terms of accommodating the housing needs of the highest possible number of persons, whilst at the same time representing value for money.³¹

Specialist Disability Accommodation (SDA)

Specialist Disability Accommodation (SDA) refers to accommodation for NDIS recipients who require specialised housing to meet their specific accessibility needs.³² SDA properties can vary in terms of their design features, taking a range of forms -from apartments, to houses, to group homes and are built for overall accessibility set at various levels- .³³

SDA accommodation is extremely limited – this form of housing is only offered to people with extreme functional impairment or very high needs - in 2018 there were 5730 residents in SDA, with demand for another 3290 properties. ³⁴

³⁰ Australian Government, Department of Social Services, *National Dialogue on Universal Housing Design - Strategic Plan*, 2011 <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-initiatives/livable-housing-design/national-dialogue-on-universal-housing-design-strategic-plan?HTML>> accessed 27 August 2020.

³¹ NSW Government, Department of Communities and Justice, NSW Land and Housing Corporation, *Design Standards 2014 – Revision 1*, 2014, p. 22.

³² Australian Government, National Disability Insurance Scheme, *Specialist Disability Accommodation* <<https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/specialist-disability-accommodation>> accessed 27 August 2020.

³³ The Housing Hub <<https://www.thehousinghub.org.au/resources/housing-types/specialist-disability-accommodation/>> accessed 27 August 2020.

³⁴ SGS Economics and Planning on behalf of Summer Foundation, *Specialist Disability Accommodation – Market Insights*, 2018 <<https://www.summerfoundation.org.au/wp-content/uploads/2018/03/sda-market-insights-web-2.pdf>> accessed 27 August 2020.

SDA, which operates on a model that is not dissimilar to LHD, by focusing on the overall functionality of the home, demonstrates the benefits that mandatory accessibility standards may have, both for people with physical disabilities and the broader community. Individuals do not need to demonstrate “goals” to acquire adaptations or modifications to premises and are generally very happy with their housing.

PDCN anticipates that the SDA system would integrate well with a broader level of accessibility across the housing market. SDA could retain its role in providing housing that is built to a higher level, catering for the increased accessibility needs of persons with extreme functional impairment or specialised needs.

In the meantime, a broader pool of accessible accommodation within the general market would reduce pressure on the SDA market – people would have the capacity to maintain independence for longer within the broader market and could modify their homes easily at less cost.

Most current strategies do not achieve overall accessibility – accessibility is piecemeal at best and involves significant ‘red tape’

The RIS cannot compare current models around the provision of accessible housing with the proposed changes to the NCC relating to LHD.

The reality is, currently many people struggle to find or modify properties that meet their accessibility requirements. Many people, like our case study Jan*, settle for properties which only partially meet their needs because there are no alternatives, apart from SDA, which most people cannot access.

Where people can access supports to increase housing accessibility, the supports are responsive to the particular limitations of an individual – and the individual must justify their need for any modifications, via Occupational Therapist reports, goal setting, medical documentation and more.

The result is costly accessibility of a piecemeal fashion, built on gradually over the years until the individual transitions into Residential Aged Care. A reactive response to accessibility is not efficient – piecemeal modifications equate to a never-ending merry-go-round of ‘red tape’ and additional costs—and we know that a proportion of people simply give up and “make do”.

At the same time, PDCN is uncomfortable with the notion that accessibility should have to be ‘justified’ and related to specific “goals”.

We know, for example, that many people struggle to identify “goals” within their NDIS plans which enable them to get the supports that they need – often a person’s funding is determined not on what they need, but on how well they can negotiate the system and “speak the right language” to be approved for particular expenditures.

Whilst we know that changes to the NCC will not remove the current policies we consider that there is great societal value in the adoption of a model that takes the focus away from

an individual's physical limitations and instead operates on the principle that all homes should be equally accessible.

Methodology Concerns with the RIS

We are aware that the Melbourne Disability Institute, has sought independent economic advice to assist in developing a response to the RIS (the Dalton/Carter Report). We have had the opportunity to review this report, and hope that the ABCB takes its recommendations into account since it speaks to many of PDCN's concerns.

We will also make a number of specific comments and observations.

Significant potential benefits were not considered

CIE noted limitations in the capacity to calculate all anticipated benefits where they saw them. For instance, they were not able to assess potential savings from increased employment opportunities for people with physical disability.

Given that people with physical disability who cannot work rely on income support, we are concerned the inability to take these benefits into account represents a significant gap in terms of assessing the economic viability of these regulatory changes.

Similarly, CIE notes that costs of moving to a more accessible home, such as search costs and stress were not able to be taken into account.³⁵ Anecdotal information from our members about how hard it is to find accessible accommodation, and how long people spend looking, indicates to us that the savings could again be quite significant and again, it is disappointing that they were not able to be evaluated.

Benefits were calculated conservatively, and costs were overemphasised

We are concerned that a very conservative approach has been taken to cost benefits that do not accord to our practical experience.

One such underestimation in our view is that the "life" of a home is 40 years.³⁶ We see this as a substantial underestimate and consider that it is more realistic to expect that a home would have a life span closer to a decade, this would mean that the benefits and savings associated with LHD could be realised over generations. We also consider that the cost of informal care has been underestimated and that a carer's opportunity cost should be determined at the same rate as an employed carer, that is, \$35 per hour.³⁷

At the same time, the RIS does not factor in the decreased costs associated with LHD should this become mainstream, due to greater rates of production for materials and products as well as greater overall supply of homes. At the same time, we consider that the transitional costs for the building and construction sector have been potentially oversold– the reality is

³⁵ Centre for International Economics, op. cit., p 48.

³⁶ Ibid., p. 6

³⁷ Deloitte Economics, *The value of informal care in 2020 – Carers Australia*, 2020 <<https://apo.org.au/sites/default/files/resource-files/2020-07/apo-nid307225.pdf>> accessed 25 August 2020, p. iii.

that LHD is not a new concept – it was developed in partnership with the industry and resources are already in circulation across the sector.³⁸ Given this, we imagine that the industry costs associated with retraining and design would be minimal.

The focus was exclusively on meeting the needs of persons with physical disability

We are concerned that CIE has interpreted the potential cost benefits very narrowly – limited to saving across improvements in the lives of those who have physical disabilities or are older – whereas LHD has benefits across the broader population.

Taking a more holistic approach, PDCN considers that other benefits should have featured in assessing the economic viability of mandatory accessibility standards within the NCC, including:

- The benefit of decreased general trips and falls in the home across all population demographics;
- The benefit of childcare being able to be provided by older relatives in the home;
- Benefits in terms of savings across the NDIS, Aged Care system and individuals' personal funds for modifications to homes;
- Benefits stemming from a reduced need for mobility aids;
- Benefits from reduced need for respite services;
- Better health outcomes for carers, particularly mental health costs;
- Less time and resources spent looking for suitable accommodation, both for the individual and their carers/advocates;
- Benefits in terms of cost saving relating to homelessness for persons with physical disability who cannot secure affordable/accessible accommodation;
- Benefits accruing from individuals being able to remain in the workforce for longer and delay retirement;
- Benefits associated with delayed physical decline from existing medical conditions;
- Benefits of increased capacity for formal and informal volunteer work

International and domestic reputational gains should be considered as a benefit

The RIS also fails to acknowledge that the Government's reputation would be enhanced at both international and domestic levels.

The United Nations Committee on the Rights of Persons with Disability in its Concluding Observations on the combined second and third periodic reports of Australia in 2019³⁹, explicitly raised the lack of minimum accessibility requirements in the NCC, and called for an amendment to the federal law to include mandatory rules on access for all new and extensively modified housing.

³⁸ Livable Housing Australia webpage, <<http://livablehousingaustralia.org.au/>> accessed 25 August 2020.

³⁹ United Nations Committee on the Rights of Persons with Disability, *Concluding Observations: UN Report on Australia's Review of the Convention on the Rights of Persons with Disability (CRPD)*, 24 September 2019 <<https://www.afdo.org.au/wp-content/uploads/2019/09/UN-Outcomes-Report-on-Australia.pdf>> accessed 27 August 2020, p. 5.

We consider that the RIS does not place sufficient emphasis on reputational gains within the broader international community that the proposed changes would generate as evidence of Australia's commitment to the UNCPRD.

In the same sense, a theme that can be drawn from the RIS is that housing accessibility is recognised by the Australian community as a "social good". This is reflected in the various legislative commitments made across all levels of government regarding the inclusion of persons with physical disability. We would have hoped to see an assessment of the cost benefits to be gained through Government being seen to meeting its commitments towards greater inclusion of persons with disability in regards to meeting their housing needs, especially given that access to housing is a key focus area under the National Disability Strategy.

We note that similar concerns have been raised within the Dalton/Carter report, which states:

We conclude that the method [CIE] applied, focused on individual altruism, was unlikely to have captured the societal benefit from a government perspective in meeting its policy commitments in the housing and social welfare area. To the extent the CIE estimate under-estimates the true societal benefit, it further under-estimates the economic credentials of the regulation.⁴⁰

Concerns about bounded rationality regarding stakeholder survey results

We are concerned that the methodology behind the stakeholder surveys did not accurately represent the universality of LHD.

Whilst the survey highlighted some of the benefits of LHD not specifically related to physical disability, such as the ability to manoeuvre a pram, bring in the groceries or move furniture, it was implied that mobility limitation specifically relates to older persons or persons with physical disability.

LHD is equally relevant for young children and pregnant women but the connection is not necessarily obvious. Had the benefits in terms of greater accessibility for those with young families been expressed within the survey, we anticipate that this may have influenced the appeal of LHD across a broader and younger demographic, particularly since such advantages would be realised across years, as opposed to occasionally, such as when someone moves their furniture.

Where to from here?

Finding suitable accommodation is important to all Australians. It is a prerequisite for a happy and stable life. There is evidence that people with disability experience substantial barriers in finding a place to live, especially in the private market. Barriers are often presented by designs which do not allow the building structure of the home to change without significant expense, to meet the needs of a person who is ageing or who has a disability. The greater the take up of universal design features, the more open the community is to people with disability, including those

⁴⁰ Dalton, A., & Carter, R., prepared for The Melbourne Disability Institute, University of Melbourne and the Summer Foundation, *Economic advice prepared to assist with responses to the Consultation Regulation Impact Statement on minimum accessibility standards for housing in the National Construction Code*, 18 August 2020, p. 4.

with age-related disability. This provides greater choice about where to live, but also more social opportunities for visiting friends and family.

National Disability Strategy 2010-2020

It is generally agreed that regulation should be avoided unless a market is unable to provide a desired outcome without intervention.⁴¹

While housing accessibility is generally seen as something of value to our society, there is insufficient motivation in the industry to motivate broadscale investment in LHD as a concept and we cannot see any reason why the building and construction industry would promote housing design which decreases retrofitting costs. Particularly when any initial cost increases in materials and design will be mitigated as LHD becomes mainstream.

At the same time, housing consumers' decisions are made with bounded rationality. As a society we have learnt to accept a reduced standard of accessibility for our homes, particularly as we age, which is simply not acceptable within other nations. There is also tacit acceptance that persons with disability will be forced to justify basic accessibility and will have scarce options across the housing market.

For more than a decade, the market has been given the opportunity to meet the need for accessible design through voluntary uptake of LHD. The fact that LHD has not been taken up over this time, is a failure in our minds. Given this, PDCN considers that it is now appropriate, indeed necessary, to regulate accessible design within the NCC both to address the current market shortfall and as a way to pre-emptively plan for the rapid increase in need we will see across the next few decades.

The question then becomes - what minimum standard of accessibility do we regulate to?

LHDG Gold Standard as the minimum level of mandated accessibility.

PDCN advocates for Option 2: Accessibility standard, broadly reflecting LHDG gold standard, in the NCC applying to all new Class 1a and Class 2 buildings.

Our rationale is that LHDG Gold Standard is the lowest level under the LHD Guidelines which sufficiently meets the housing needs of a person who uses a wheelchair – LHDG Silver Standard, as a comparison, lacks features such as a ground floor bedroom, accessible light switches, accessible door handles and power points - 'visitable' but not useful as a residence.
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Gold Standard is therefore the most equitable approach moving forward. Anything less would fall short of the level of inclusion expected both under the UNCPRD and the National Disability Strategy.

⁴¹ Australian Government, Department of Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, 2014 < https://www.pmc.gov.au/sites/default/files/publications/Australian_Government_Guide_to_Regulation.pdf > accessed 27 August 2020, p 4.

⁴² Liveable Housing Design, op cit.

Our second preference would be to regulate a two-tiered system incorporating LHDG Gold Standard specific to particular sites, and LHDG silver level (Option 1) mandated across all other areas, with a subsidy program applied to encourage uptake of LHDG Gold Standard where it is not otherwise mandated.

In relation to the latter option, we note that the *NSW State Environmental Planning Policy (Housing for Seniors or Persons with a Disability)* 2004 has site related requirements for building specialist aged or disability accommodation. PDCN would advocate for the adoption of similar criteria as a sensible way of moving forward.⁴³

⁴³ NSW Government, *State Environmental Planning Policy (Housing for Seniors or people with a disability)* 2004, s. 26.