

Universal design in housing in Australia: an example of people power

Margaret WARD^{a,1} and Jane BRINGOLF^b

^a*Australian Network for Universal Housing Design*

^b*Centre for Universal Design Australia*

Abstract. This paper follows three previous ones which have reflected on the grass-roots campaign in Australia to mandate a basic access standard in all new housing. The original negotiations with government and the housing industry for this reform were at first disingenuous then reluctant despite human rights obligations. A tenacious campaign over two decades by user stakeholders, researchers, and principled housing providers finally convinced political leaders to mandate national access provisions for all new housing in the National Construction Code. The paper discusses what assisted and hampered this campaign. It then discusses why politicians eventually favoured the interests of ordinary people over the self-interests of the housing industry.

Keywords. access, standards housing, Australia, politics.

1. Introduction

Australia has recently mandated a minimum access standard for housing in its National Construction Code. Three previous papers have reflected on the campaign that led to this building reform and this paper gives the final chapter. The paper provides the background to the decision to regulate and outlines the process which left a legacy the advocates for regulation wanted to avoid. Regardless, the majority decision by Australia's state and territory Building Ministers was to amend the National Construction Code to include access provisions for all housing construction.

The paper then discusses the insights and lessons for the advocates who campaigned for this reform. It emphasises the value of tenacity, independent research, and the importance of unlikely alliances to influence the political process, regardless of the rightness of the message.

2. Background

Australia has recently mandated basic accessibility provisions for all new housing through its National Construction Code. This reform is the outcome of twenty years of advocacy from people negatively impacted by poor housing design; that is, people with mobility difficulties, and their allies. For twenty years, the Australian Network for

¹ Margaret Ward, Convenor, Australian Network for Universal Housing Design, C/- People with Disability Australia, PO Box 666 Strawberry Hills, NSW 2012, Australia. Email: anuhd@anuhd.org

Universal Housing Design (ANUHD) provided a coordinating function to organize the work of advocates. Without funding or formal organizational structure, ANUHD was sponsored by People with Disability Australia, a national disability rights and advocacy organisation.

Although initiated in 2002, the campaign began in earnest in 2010 when the Australian Government, as a signatory to the United Nations Convention on the Rights of Persons with Disabilities, identified the need to improve accessibility in residential environments. Industry, community and human rights leaders agreed to an industry-led transformation strategy with an aspirational target for all new housing to provide specified minimum access features by 2020. The agreement included a guideline called Livable Housing Design, with Silver (visitable), Gold (accessible) and Platinum (fully wheelchair accessible) performance levels and a 10-year plan with interim measurable targets of achievement.

Within three years, it became evident to ANUHD that, without government intervention, less than 5% of the 2020 target would be met. The first paper [1] identified the disjuncture between policy rhetoric and outcome was attributed to the force of housing industry lobbyists, an assumption that the private market can address issues of inequality, and the current government antipathy to regulatory enforcement. In short, the agreement was set to fail.

What surprised the advocates over the next decade was the unwillingness by the Australian Government to take responsibility for the agreement failure, let alone report it to the United Nations Committee on the Rights of Persons with Disabilities (UN Committee). After all, all levels of government had committed to support the targets as part of the 2010-2020 National Disability Strategy. Despite the misleading government reports, the UN Committee noted the failure of the Livable Housing Design agreement and recommended that Australia mandate an access standard for housing in the National Construction Code. The second paper noted a systemic disregard for Australia's obligations under the Convention and an apparent willingness by the Australian Government to misrepresent the facts to United Nations officials [2].

This experience raised for advocates the question who should and who would take responsibility for Australia's human rights obligations to make housing accessible. When it comes to social responsibility and who is likely to take action, ANUHD used Arendt's [3] theory on guilt and social responsibility to focus their action. Arendt argues that people fall into four groups: people who are in positions of power and do nothing (in this case, government and industry leaders); people who are unaware that their decisions and actions contribute to social injustice (the many designers and builders who omit to make homes accessible); those who are aware and take individual responsibility for their actions in their daily lives (individuals who make their homes accessible or educate and raise awareness about accessible housing design); and lastly, those who take political and collective action to intervene and to call to account those who have the power to make positive change (this was the natural role for ANUHD) [4]. ANUHD took political action over raising awareness about universal design within housing. They focused their efforts on a single goal: mandated access provisions for housing in the National Construction Code.

A decision by Australia's Federal, State and Territory Building Ministers shaped the next chapter. The Building Ministers meet regularly to oversee policy and regulatory issues affecting Australia's building and construction industries. Their operational arm, the Australian Building Codes Board (ABCB), consists of government representative

officers and construction industry appointees, which oversees the National Construction Code.

The National Construction Code has no legal standing. Rather, the Building Ministers have agreed to reference the NCC in their State and Territory building legislation with minimal variation to provide national consistency [5].

In 2017, the Building Ministers' Meeting directed their operative arm, the ABCB, to perform a cost-benefit analysis, called a Regulatory Impact Statement (RIS), on access provisions for housing in the National Construction Code. The decision to investigate the possibility of regulation was in part a response to the housing industry's failure to follow through with the Livable Housing Design agreement and in part to appease the growing pressure from social advocates. The RIS was to examine both voluntary and mandated options, including the Livable Housing Design Silver and Gold levels of accessibility as a minimum standard.

The paper now describes the RIS process and how it favoured the voice of the housing industry over user-stakeholders' interests. The RIS process took five years from October 2017 to September 2022 in four stages:

1. An options paper developed by the ABCB and released for public comment
2. A summary by the ABCB of the comments, also released to the public
3. Development of a Consultation (or draft) RIS by external consultants and released for consultation
4. Decision (or final) RIS sent to Building Ministers to inform their decision.

3. The process of the Regulatory Impact Statement

3.1. Options Paper released for public comment

The ABCB released an Options Paper [6] in 2018, which provided a menu of options and notional costings on the possible inclusion of a minimum accessibility standard for housing in the NCC. The ABCB ran face-to-face consultations across Australia, which were instrumental in bringing the issue to the attention of the building industry and the broader community. It allowed for debate at a policy level, and a wide range of user-stakeholders participated. The industry stakeholders contributed little at this stage, preferring to wait for more tangible information on how an access standard might affect their individual building practice.

3.2. Consultation Outcomes Report

The ABCB's summary of the consultation, the Consultation Outcomes report [7], in 2019 identified considerations for the RIS. Three points, which became important later in the process, were:

1. Qualitative, or intangible, benefits should be identified and given due consideration as well as ensuring that it goes beyond consideration of people with a disability
2. It is important that costs are accurately quantified and the distribution of costs and regulatory burdens between industry and consumers is clearly identified.

3. There is a need to consider aligning the project objectives to the concepts of equity and independence (pp. 8,9).

3.3. Consultation (or draft) RIS

External consultants developed a Consultation (or draft) RIS [8] and concluded that a mandated standard in the NCC would impose a net-cost on the community. The consultation that followed attracted over 200 responses, with approximately 2:1 challenging the finding and taking a position in favour of a mandated standard in the NCC. ANUHD raised immediate concerns that the Consultation RIS was inaccessible for user-stakeholders who were unlikely to have read such a technical document before.

3.4. Decision (or final) RIS sent to Building Ministers NCC 2022 to inform their decision

The Decision (or final) RIS was not released to the public for further comment. It maintained its original finding; that is, to amend the NCC to mandate an access standard for all new houses and apartments would impose costs that outweigh the benefits to Australian society [9].

Contrary to the Decision RIS's recommendations, the majority of Building Ministers agreed to mandate access provisions for housing in the NCC in September 2022. They further specified that the standard of access would reflect as close as possible the Livable Housing Design Silver performance level. They also agreed publish a voluntary provision based on the Gold performance level. Mindful of the resistance by the housing industry, the Ministers allowed each state and territory to determine whether and how the new provisions would be applied in their jurisdiction. In theory, ANUHD had reached their goal.

4. Implementation of the NCC access provisions for housing in State and Territory legislation

The five supportive States and Territories (Victoria, Queensland, Tasmania, Australian Capital Territory and Northern Territory) have worked together to align their implementation of the new provisions. At the time of writing, the details of this alignment were not available.

South Australia and New South Wales did not support the provisions in the NCC, and Western Australia supported the provisions in the NCC but chose not to implement them in line with the other supportive jurisdictions. In effect, the achievement of including access provisions for housing in the NCC has been tempered by the varied response across Australia.

The next section identifies three lessons for user-stakeholders when making change in the construction industry: the disregard for user-stakeholders within the established authorities governing the built environment; the importance of independent academic research; and government-sanctioned processes are not enough to identify the right outcome.

5. Three lessons

5.1. Disregard for user-stakeholders

The consultants who developed the RIS failed to address the three key points identified by user stakeholders during the initial consultation of the Options Paper [7].

The first key point was that “*qualitative, or intangible, benefits should be identified and given due consideration ... , as well as ensuring that it goes beyond consideration of people with a disability*” [7](p. 9). Instead, the RIS focused on individuals with disability, rather than households of a wide range of people with mobility-related issues.

The second key point was that “*costs should be accurately quantified and the distribution of costs and regulatory burdens between industry and consumers is clearly identified*” [7](p. 9). ANUHD raised concerns of perceived bias towards costs over benefits early in the development of the RIS. An independent academic review [10] of the economic analysis in the RIS confirmed ANUHD’s concerns. It found that:

- there was a problematic understanding of the principle of symmetry, which requires that benefits and costs are reported in a way that avoids bias;
- the consultants’ “willingness to pay approach” undercounted the benefit side;
- the cost-benefit analysis should have reflected the fact that the entire population derives benefit from the improved design and functionality of accessibility; and
- the discount rate used by the consultants (7%) should have been more reflective of the ‘present value’, say 3%, to be in closer alignment with current practice.

The third key point advised the consultants “*to consider aligning the project objectives to the concepts of equity and independence*” [7](p. 8). The consultants argued instead that issues of social inclusion, equity, and human rights obligations were beyond the purview of the RIS. Although the relation between social and economic participation and suitable housing is well documented, the consultants found no direct quantifiable evidence to support the qualitative evidence. Concepts of equity and independence were not taken into account.

It should be noted here that the government guidelines for best practice in regulation[11, 12] advise that the analysis of benefits should include “*health, environmental and other social benefits, which are often not marketed or are characterized by prices which reflect less than the full value of the benefits*” (p. 26) and “*where quantitative data about such costs are unavailable, a qualitative assessment should be provided*” [11](p. 26).

At the release of the Consultation RIS, ANUHD raised this issue with the Office of Best Practice Regulation (OBPR), whose task is to ensure Government policy and decisions are supported by the best possible evidence and analysis. Their response [13] was to shift the responsibility for the quality of the RIS to the public and ultimately the Building Ministers:

The matters [ANUHD] have raised go to the heart of why consultation is undertaken – to test the assumptions and data put forward in the preliminary analysis, and to propose alternative approaches, methodologies, or data, should it be available.

In summary, the OBPR appeared to disregard ANUHD's concerns that the Consultation RIS was biased, incomplete and inaccessible by most user-stakeholders. Further, the OPBR appeared to rely on the consultation process to identify and rectify these issues.

5.2. The importance of independent academic research

The user-stakeholders realised that the responsibility for rigour and thoroughness in the Consultation RIS was left to the community consultation process, rather than with the consultants themselves. The Melbourne Disability Institute (MDI) at University of Melbourne with the Summer Foundation took leadership by commissioning three independent studies to inform user-stakeholders' response to the RIS.

The first study [10] challenged the economic analysis in the RIS. Using the original data collected for the RIS, an opposing result was found—that an access standard should be mandated because the benefits clearly outweighed the costs, and that the Gold performance level “*has particular merit as the most cost-effective of the options that achieve functionality for those elderly and/or disabled people in wheelchairs*” (p. 10).

The second study [14] aimed to provide the lacking important quantitative (but not monetized) and qualitative (not quantified or monetized) evidence linking social and economic participation and suitable housing. This study found that:

- Existing strategies such as a voluntary building code, reliance on home modifications or provision of accessible social housing have failed to deliver accessible housing for most people with mobility restrictions. Building all new homes to an accessible standard will be the most effective way to address the shortage in accessible housing.
- The impact of inaccessible housing on dignity, freedom, social inclusion, health, and workforce participation is profound, and the report presents robust quantitative and qualitative evidence of these.
- Notwithstanding the above, the data indicated that the RIS underestimated the economic costs of inaccessible housing, by ignoring impacts on workforce participation and productivity of people with mobility restrictions; underestimating the impact on paid and unpaid support needs; underestimating adverse impacts on mental health and wellbeing; and, underestimating the extent to which a shortage in accessible housing limits housing choice and mobility.
- The range of domestic activities for which paid support is provided, and which can be reduced by accessible housing is broader and more significant than estimated in the RIS. The RIS only focused on paid and unpaid assistance with mobility tasks, whereas inaccessible housing also significantly increases need for assistance with self-care and home care.

The third study [15] was an audit of accessible features in 20 new-build, high volume house plans. The study found that many accessibility features are already incorporated into the most popular house designs being built in Australia, but not in a systematic way. It demonstrated that accessible features are now accepted as good house design for the general population; and indicated the cost of the proposed access provisions is likely to be less than estimated in the RIS.

5.3. A government-sanctioned process is not enough

Despite the community feedback on the RIS, the consultants maintained their position that “*that regulatory options to amend the NCC for all new houses and apartments . . . impose costs that outweigh the benefits*” (p. 20). In effect, the assumption by the OPBR that community consultation “*would test the assumptions and data put forward in the preliminary analysis, and to propose alternative approaches, methodologies, or data*” was misplaced. It relied on the consultants respecting user-stakeholder feedback and including it in their final analysis.

ANUHD had no option but to cut across the government-sanctioned process and to take their concerns directly to the Building Ministers. The Summer Foundation through their campaign, Building Better Homes [16], garnered the support of user-stakeholders with a political message of broad community support for regulation. What influenced the majority of Building Ministers to vote for access provisions for housing in the NCC against the express advice of the RIS, we will never know. Their rationale was that, despite the findings of the RIS, “*a regulatory solution will result in significant and lasting benefit to Australians who need access to homes with accessible features*” [17].

6. Conclusion

ANUHD made it clear to the Building Ministers and the ABCB the RIS process was perceived as untrustworthy and lacking in transparency and rigour. In January 2022, an independent review of the RIS process was called by the ABCB “*to establish the lessons that can be applied to similar exercises conducted by the ABCB in the future*”. ANUHD’s advocacy could be dismissed as the partisan view of social activists, but not so the independent research by prominent academic institutions. The credibility of the ABCB will remain in question until an independent review of both the consultants [9] and the University of Melbourne’s [10] cost-benefit analyses is done.

This last paper, with its three predecessors [1, 2, 4], have reflected on different aspects and stages of a complex, lengthy and difficult campaign. Together they revealed undue influence of the housing industry, disregard for the voice of user-stakeholders, and the entrenched flaws in the government processes to improve our built environment. It also has demonstrated the power of ordinary people to call those responsible to account.

With every success, there is more work to do. Now that the Livable Housing Design standard is a provision of the NCC, improvements are likely to favour industry productivity over concerns for social inclusion and equitable access. The advocacy of user-stakeholders will continue to be needed.

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