

Australian Human Rights Commission
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DRAFT DESIGN GUIDELINES FOR ACCESSIBILITY IN RESIDENTIAL DEVELOPMENT

To whom it may concern,

The Australian Institute of Architects (the Institute), has been the peak body for the architectural profession in Australia for more than ninety years. It is an independent, national member organisation, with more than 14,500 members across Australia and overseas.

- The Institute's vision is: Everyone benefits from good architecture.
- The Institute's purpose is: To demonstrate the value of architecture and support the profession.
- At the time of this submission the National President is Jane Cameron FRAIA and the Chief Executive Officer is Cameron Bruhn.

Representatives from our Institute's National Enabling Architecture Committee have worked with the Institute's National Policy and Advocacy Team to prepare this response to the Human Rights Commission (HRC) Draft Design Guidelines for Accessibility in Residential Development (the Guidelines).

The Institute supports improvements to regulations, standards, and guidelines amongst a range of measures to promote enabling architecture beyond more established design features focused on mobility access. Enabling architecture aims to achieve a built environment in both the public and private domain where all people can easily live, work, learn, recreate, connect and thrive.

INTRODUCTION

The Institute supports design guidelines that are clear, practical, evidence-based and authoritative. There are many parameters – conditions, constraints and unforeseen contingencies – in all projects. These include the site and existing structures, budget, broader requirements of planning schemes and building controls, the local community climate (including achieving zero carbon buildings), client brief and budget.

Architects innovate design solutions that navigate these many parameters while aiming to meet the intent or objectives of a given requirement – requirements established by regulations, code provisions, standards or guidance clauses. This applies to all requirements whether this pertains to structural integrity of buildings (and all built forms), environmental impacts, fire-safety, or accessibility.

OUR POSITION ON THE DRAFT GUIDELINES

Built environment professionals and practitioners should already be aware of the detailed requirements that pertain to their practice in respect of accessibility. This includes planners,

architects, building designers, access consultants, landscape architects, urban designers building surveyors, builders and developers.

The Guidelines state,

These draft Guidelines are intended to be simple, digestible, and recognise that design goals addressing access and inclusion are complex and evolving. (p.15)

Built environment professionals, by the very nature of their training and work, are themselves both dealing with and at the cutting edge of the '*complex and evolving*'.

However, the Guidelines would appear to be useful for development proponents who are not built environment professionals but are the clients of built environment professionals.

Development proponents are those individuals or organisations who commission projects to procure a building, structure or other built environment feature (e.g. an outdoor carpark). This may include,

- private owner/ occupiers including people living with disabilities (and their families in some circumstances)
- providers of Specialist Disability Accommodation (SDA)
- education, community and health care services providers who have associated accommodation
- commercial operators of tourist and hotel accommodation
- property developers, investors and asset portfolio holder including superannuation funds
- community housing providers and public housing agencies of government
- government and non-government providers of short-term accommodation in the context of homelessness, family violence and family support services
- state and local governments in the context of precinct and neighbourhood planning policies, regulated provisions and schemes.
- other non-government organisations including charities and trusts seeking to undertake projects to help alleviate

The guidelines, scoped in this way, could serve to educate and inform development proponents. Guidelines drafted for this purpose would empower proponents to engage better with built environment professionals, and other stakeholders in the procurement process including contractors (builders), subcontractors, and suppliers. One practical example is that the guidelines could assist proponents in expanding the brief for their project to design professionals.

Validation of the scoring and certification system.

Used in conjunction with the Self Certification Tool the guide is intended to be used to establish numerical scores. However, there is no explanation of the methodology that underpins how these scores have been determined and are weighted to compute a score, which then determines the certification level in each Design Category at the level of Silver, Gold, Platinum or Platinum Plus. As a result, the Design Principles and Guidelines are of little use.

We note by following our own research that this is based heavily on The Kelsey Inclusive Design Standards¹ which were developed in conjunction with Mikiten Architecture. While these standards

¹ <https://thekelsey.org/learn-center/design-standards/>

are very comprehensive – there is no explanation of the methodology or evidence base that was used to develop The Kelsey standards.

The proposed scoring system appears to be based upon subjectively appraised nominal data – text described features categorised as ratings from 1 to 4. There is no explanation of how these descriptions were appraised to determine the rating scores. Summed scores without apparent weighting are then used to certify the attainment of the Silver, Gold, Platinum or Platinum Plus for each Design Category.

The classifications are only relative to each other, and do not appear to have been linked to a prediction of outcomes for building users in terms of the core impact areas expressed in the Guidelines of

- cognitive access
- mobility and height
- hearing and acoustics
- vision
- health and wellbeing
- support

In other words, the scores and certifications have no validated predictive power. This is because the *outcomes* for persons have not been given a specification nor considered in terms of established measure and tools. Examples of outcomes measures or tools include those for independence², health and wellbeing³, measures of social inclusion⁴ or quality of life⁵

The proposed scorecard system only reflects the ‘input’ requirements. Nor have any measures of the core impact areas, which then lead to better life outcomes, been considered, described, measured nor rated using validated measures. Instead, the Guideline relies solely upon the input variable – the design specification or description of a feature is given a notional rating.

The use of a program logic models⁶ can establish the relationship between the inputs (design specification and features) and the impacts and outcomes for people.

Applying a program logic model, a robust and valid scoring system for design specifications or features should score and aggregate the input variables (design specifications and features) which, according to research then has validated the link between the design specification or feature predicted to produce an intended impact or outcome.

In other words, relationship between design specification and attributes and the likelihood of increasing independence, wellbeing and inclusion for people living with a disability can be predicted. This would be the basis for a truly person-centred and rights-based approach.

² e.g. using the FIM score – a measure of dependence/independence. See: <https://movingahead.psy.unsw.edu.au/documents/research/outcome%20measures/adult/Global%20Outcome/Website%20FIM.pdf>

³ E.g. using the SF-36. See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5052926/>

⁴ See: <https://academic.oup.com/ije/article/43/2/354/677726?login=false>

⁵ E.g. Using the World Health Organisation Quality of Life Measure (WHOQOL) See: <https://www.who.int/tools/whoqol>

⁶ See: <https://logicmodel.extension.wisc.edu/introduction-overview/section-1-what-is-a-logic-model/1-5-a-simple-logic-model/>

For example, the recently released Residential Aged Care Design Principles and Guidelines⁷ is strongly evidence based. The evidence base for various design features is referenced throughout the document and further summarised in a separate design review document⁸. We note that the Residential Aged Care Design Principles and Guidelines are not attempting to promote any form of complex aggregated score, rating or certification system. We also observe that they arose as a result of the Aged Care Royal Commission. The Australian Government's desire to create much smaller scale and very homelike residential aged care accommodation suggests there could be considerable overlap between what some Specialist Disability Accommodation (SDA) and some Residential Aged Care homes will look like in the next few years.

A truly robust score system (as proposed for these AHRC Guidelines) should be based upon validation research which shows that achieving an input requirement (a measurable design specification or attribute) would enable measurable outcomes amongst a population of end-users. This is what is needed for an evidence-based tool. If this has already been performed, it is not made explicit in the Guidelines.

A more useful way to structure the guidelines.

A more useful option would be to adhere to descriptive categories only. This would be a far simpler approach. The scoring and certification system is cumbersome, neither apparently indicative nor predictive (and certainly could not be considered empirical).

There are only three compliance mechanisms in Australia that actually *mandate* certain design specifications or features for accessibility in residential form of residential development. These are:

1. Section 25 of the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020⁹. The National Disability Insurance Scheme (NDIS) Specialist Disability Accommodation (SDA) Design Standard (the Standard) is published by the National Disability Insurance Agency (NDIA). All SDA dwellings must be enrolled with the NDIA. The provision of SDA funding is conditional upon a property meeting the enrolment requirements set out in Section 25 of the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020. The NDIS SDA Design Standard is adjunctive to this.
2. The eight states' and territories' individual building legislation and regulations (sometimes referred to as "state building codes", together with provisions of ancillary or related regulations (e.g. fire safety). The National Construction Code (NCC) is only adopted into use and enforced through the states' and territories' legislated /regulated building codes. A salient example is that a number of states and territories either did not adopt or delayed the implementation of the NCC2022 Livable Housing Design Standard.

⁷ See: <https://www.health.gov.au/resources/publications/draft-national-aged-care-design-principles-and-guidelines>

⁸ See: <https://www.health.gov.au/sites/default/files/2023-10/final-report-on-the-development-of-the-draft-national-aged-care-design-principles-and-guidelines---evidence-review.pdf>

⁹ <https://www.legislation.gov.au/F2020L00769/latest/text>

3. State statutory planning provisions including apartment design guidelines in some jurisdictions. These are generally implemented and verified for compliance in ‘development’ or ‘planning’¹⁰ applications by statutory planners in local government.

After this, there are the provisions of the National Construction Code (NCC) and then Australian Standards, such as the various parts of the AS1428 accessibility standard. Another important standard is the AS4299 adaptability standard, which prepare dwellings to be easily retrofitted or modified for enhanced accessibility, if later required. Most often referenced, as in the Guidelines are AS1428.1. It should be noted that the NCC does not fully adopt into use AS1428.1 and nor does it always refer to the current versions.

We make particular note here of the importance of AS4299. As the Guidelines indicate, population ageing is an important driver for improving accessibility in residential development. All dwellings being built today should incorporate structural features that are ready for modifications, if and when required, to be made more highly accessible in the future.

After the NCC and the Australian Standards as are other guidelines such as the Livable Housing Design Guidelines (LHDG) published by Livable Housing Australia¹¹ (LHA). The Silver level of performance of the LHDG was used to define the Livable Housing Design Standard in NCC 2022.

The draft Guidelines are somewhat confusing when overseas standards such as American standards are being referenced. Greater explanation should be provided as to whether this is being done because there is no Australian standard or the overseas standard is a superior standard.

A simpler and more useful approach for proponents of residential development would simply be to have set out the hierarchy of requirements in the Australian setting commencing with reference to mandatory requirements as described above and then the “non-mandatory” standards and other guidelines for proponents to adopt if desired.

We note the extensive use of The Kelsey Inclusive Design Standards (IDS) as the basis for the scoring and certification. Even The Kelsey IDS sets out an overview of relevant Accessibility Codes separately in the Appendix of their Design Standard.

Readers should be enabled the ability to read Guideline’s provisions in their original context in the source document. We note for example that the Description/requirements set out under *5.4.6 Details: Communication* are a verbatim quote from Clause 23.2 of the NDIS Specialist Disability Accommodation Design Standard without any referencing. In this way, for each of the Design Categories the reader could actually understand the most mandatory requirements and then broader and more aspirational requirements as they apply to the built form – site, building components, interior spaces and dwelling units.

¹⁰ Terms vary according to jurisdiction. The development or planning approval is separate to a building permit. The building permit which is about the conformance to the jurisdiction’s building code – based upon but not entirely adopting the provisions of the contemporaneous National Construction Code.

¹¹ See: https://livablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA_GuidelinesJuly2017FINAL4.pdf

All of this is underpinned by a frustration from existing building industry professionals such as architects and access consultants that there are already Australian Standards. However, these standards fail to be fully applied or mandated through mechanisms such as regulations, legislation or conditions of funding. In other words, existing Australian Standards already lack enforceability and a set of guidelines based largely on the work of another organisation in another country are even less likely to be enforced.

The use of The Kelsey IDS should have been limited to a publication as a “modified” Kelsey IDS with relevant changes to measurement (metrification), references to local codes (e.g. “ADA”) and indicating where a mandated state or territory, NCC or Australia Standard provision is superior to a provision in the Kelsey IDS. In fact, 3.1.1. of the Terms of Use shown in The Kelsey IDS appendix states,

*3.1.1. You Will Attribute The Kelsey for all Uses of The Inclusive Design Standards. If you use, distribute, replicate, or share The Inclusive Design Standards **(including in modified form)**, then you shall attribute The Kelsey by: (i) identifying The Kelsey and others designated to receive attribution; (ii) including The Kelsey’s copyright notice; (iii) including a URL or hyperlink to The Inclusive Design Standards website to the extent reasonable; and, **(iv) indicate if You modified The Inclusive Design Standards and retain records of such modifications***

Voice of people living with disability

We acknowledge that the draft guidelines were preceded in the long trajectory of this initiative by the Adaptable Housing Scoping Study which had involved more extensive consultation among people living with disabilities.

While based upon the guidelines published by The Kelsey, the draft Guidelines are understood to be published as a different guideline. Therefore, the draft Guideline needs to be explicit about the processes of consultation and co-design that has occurred with people living with disabilities that were used in the creation of this particular publication.

It is an Australian guideline and it should therefore include the “voice” – quotes and photos of Australians who live with a disability. This would give it much greater relevance, visibility and increase its chance of being used to create an impact. Quotes or photos could include the Aboriginal place names where the person lives (or may even be a traditional custodian).

Important role for the HRC

A more important role for the Human Rights Commission would be to act as advocate and even enforcer. Particular initiatives undertaken in this role could include:

- amending the Disability Discrimination Act 1992 Access to Premises Standards 2010 to apply to all residential buildings used for long term residential tenancy accommodation, not just short term accommodation
- directly advocating to individual state and territory governments to adopt the Australian the Livable Housing Design Standard in the NCC as well as the full adoption of all Australian Standards pertaining to accessibility and adaptability.
- advocating to Standards Australia for the timely revision of Australian Standards and requiring Standards Australia to make all of these Australian Standards pertaining to

accessibility and adaptability freely available so that people living with disabilities can hold relevant parties accountable. Almost all standards are only currently available via purchase.

Presently, as Australian states and territories governments grapple with the vast challenge of addressing housing supply, there is a very real risk that their responses will be to further delay or reduce standards such as the Livable Housing Design Standard. The Institute has similar concerns about other standards in relation to zero carbon buildings and building quality.

Under these conditions, more stringent accessibility guidelines for the vast majority of residential development will not be mandated by state and territories governments – except for some social housing projects. As noted in the Guidelines, an ageing population is a very significant driver to deliver more accessible housing across Australia’s new and existing dwelling stock in the private market, not just government, community or philanthropically sponsored social housing¹² projects. According to the OECD, social housing in Australia accounted for only 3.1% of all dwelling stock in 2021 compared to the OECD average of 7.1%¹³

There have been strong industry opponents in the states and territories to the Livable Housing Design Standards. Since 2023 the Australian Institute of Architects was a joined party in advocacy led by South Australia Social Profit Organisation, “Purple Orange” to ensure the South Australian (SA) Government implemented the Livable Housing Design Standard contained in NCC2022. In their submission¹⁴ to the SA Government, Master Builders South Australia, who wanted to delay the implementation of the LHDS stated,

As with Energy and Condensation, the Livable Housing provisions are set to increase construction costs to cater for a very small portion of the population, while providing buildings that will cost all consumers, without justification. We note that the disability lobby will argue that all buildings should adopt these requirements in case of someone with a disability “visiting” a building (p.7)

We note these views may not reflect those held by other Master Builder Associations in other jurisdictions or nationally. It is this type of stakeholder perspective that has a powerful influence on building and housing ministers alike.

Right now, delivering a complex guideline will not increase the accessibility of residential development in Australia. The Australian community needs the HRC to devote its limited resources to ensuring existing NCC provisions and Australian Standards are properly maintained and mandated.

This will have far greater population benefit (especially when an ageing population is considered) for many. Specific residential developments such as Specialist Disability Accommodation is already required to achieve a much higher bar. What is needed is a general improvement in accessibility across a much larger percentage of dwellings (including retrofitting of existing dwellings) to give many people greater choice in their housing.

¹² Social Housing in Australia is the sum total of public housing, state owned and managed indigenous housing and community housing.

¹³ See: <https://www.oecd.org/els/family/PH4-2-Social-rental-housing-stock.xlsx> and click the XLS link for PH4.2 Social rental dwellings stock.

¹⁴ Master Builders Association of South Australia. 2023. Advice regarding transition to NCC 2022 & Building Regulatory System in South Australia- Submission 22 June 2023.

Separate Guidelines and avoiding confusion.

Our final comment is that the Guidelines are not just design guidelines but also operational guidelines for organisations. It would be better to separate the design guidelines for built-form from the operational guidelines for placemaking and provision of support which are undertaken by service delivery and community development organisations. Service delivery and community development can be considered and benchmarked against other relevant standards such as National Standards for Disability Services¹⁵ and the associated evidence guide used for services' accreditation.

We also note the nomenclature of the certification levels (silver, gold etc). This risks confusion with the Australian LHDG. The Australian LHDG should take precedence over The Kelsey in terms of using these labels which have already been established into use by Livable Housing Australia (LHA). For further noting is that, in this context, "Livable" is spelt by LHA, but the spelling "Liveable" has been used in the Guidelines when referring to LHA and their guidelines.

Thank-you for considering this submission. Please feel free to contact the Institute via the contact details below or policy@architecture.com.au for further information or opportunities where the Institute and its members may be able to participate or provide assistance to these important endeavours.

Yours sincerely,

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¹⁵ <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services>