

**Proposal to Include Minimum Accessibility Standards for Housing  
in the National Construction Code (NCC)  
Australian Building Codes Board (ABCB) Consultation Regulatory  
Impact Statement (RIS) 2020**

*Strata Community Association Submission*

**14 August 2020**



## Introduction

Strata Community Association (SCA) is the peak industry body for Body Corporate and Community Title Management (also referred to as Strata Management, Strata Title or Owners Corporations Management) in Australia and New Zealand.

Our 5,000 individual and corporate members include strata/body corporate managers, support staff, owners' representatives and suppliers of products and services to the industry. SCA proudly fulfils the dual roles of a professional institute and consumer advocate.

Direct employment in specialist strata management companies is approaching 10,000 people. More significantly, they are pivotal in an estimated \$6.7 billion in annual economic activity.

Based on the 2020 Australasian Strata Insights Report, more than 2.2 million people live in flats and apartments, the vast majority being strata titled.<sup>1</sup> This figure does not include other forms of strata title such as townhouses and community titled developments. Nor does it include businesses operating in strata titled commercial buildings. The estimated value of property under strata title in 2020 exceeds \$1.3 trillion.<sup>2</sup>

As the growth of apartment and strata living has intensified over the last decade, the strata management strata services industry has grown in lock step to serve it. Strata managers navigate through a maze of Commonwealth, State and Territory legislation and regulation ranging from actual strata specific legislation, regulation, workplace, health and safety issues and building codes as well as measures applicable to the management of body corporate funds.

A strata manager is expected to be knowledgeable on a range of issues relating to the management of a strata scheme. This knowledge is crucial to SCA's feedback on the Proposal to Include Minimum Accessibility Standards in the National Construction Code (NCC) Consultation Regulatory Impact Statement (RIS). Our submission includes knowledge of, and interaction with trades, services, building, design and construction.

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<sup>1</sup> Hazel Easthope, Sian Thompson and Alistair Sisson, *Australasian Strata Insights 2020*, City Futures Research Centre, UNSW, Accessed at <https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/>

<sup>2</sup> Ibid, p6

## Background

### The current situation<sup>3</sup>

*For Class 2 buildings (apartment buildings), the NCC requires an accessible path of travel to the door of each individual apartment on at least one floor, as well as to and within at least one of each type of room or space provided as part of the common areas of the building. Also, where a ramp or passenger lift is installed, the accessible path of travel must reach the entrance door of each apartment and any common areas, served by the lift or ramp. However, there are no accessibility requirements applicable to the internal parts of individual apartments within a Class 2 building.*

*At a State and Territory level, regulations for accessible housing exist in four jurisdictions: the Australian Capital Territory (ACT), New South Wales (NSW), South Australia (SA) and Victoria (VIC).*

*NSW and VIC apply their requirements through state-specific measures, for example apartment design guidelines that are applied under planning laws.*

*The ACT's requirements are based on AS 42999 and are also applied through planning regulation, but to 'multi-unit developments' that may include Class 1a or Class 2 buildings.*

*SA mandates compliance with AS 1428.110 for houses and apartments, but this is also only to a proportion of houses (1 in 20) or apartments in any new development of 20 or more.*

*For public housing, NSW, Queensland (QLD), SA, Tasmania (TAS) and Western Australia (WA) specify accessibility features in a proportion of the housing they provide.*

*The ACT, Northern Territory (NT) and VIC apply accessibility requirements to all government-commissioned housing. Most housing authorities use the Liveable Housing Design Guidelines (LHDG) Silver or Gold level specifications, except for the ACT which also adopts AS 4299, SA which uses AS 1428.1 and WA, which has not adopted a specific standard. At a Commonwealth level, the National Disability Insurance Scheme (NDIS) provides housing support to its participants through funding modifications to their own home or private rental property, and on a case-by-case basis in social housing.*

### The NCC and minimum accessibility standards

The minimum accessibility standards for housing that are being considered are based on the specifications in the [Liveable Housing Design Guidelines \(LHDG\) 2017](#).

The Australian Building Codes Board (ABCB) has conducted an Impact analysis on the possible inclusion of accessibility requirements for housing (Class1a building and Class 2 apartments) into the NCC. ABCB did this on behalf of the Building Ministers Forum (BMF) in 2017. ABCB released an [Options Paper](#) in 2018 and conducted consultations to come to the current Consultation RIS.

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<sup>3</sup> Australian Building Codes Board (ABCB), Accessible Housing Options Paper, p6, September 2018, Accessed at <https://www.abcb.gov.au/Resources/Publications/Consultation/Accessible-Housing-Options-Paper>

## SCA's Response to the Proposal to Include Minimum Accessibility Standards for Housing in the National Construction Code (NCC) – Consultation Regulation Impact Statement (RIS)

### Understanding strata – how the strata sector and accessibility intersect

The role of a body corporate or owners corporation (known by differing names across jurisdictions) is to administer common property and assets for the benefit of all of the owners, and to undertake functions required under applicable legislation. A body corporate or owners corporation is a legal entity which is created when land is subdivided and registered in a jurisdiction to establish titles or a strata scheme. All of the owners (of the apartment, townhouse etc.) in a scheme are automatically members of the body corporate or owners corporation when they buy their lot.

Each scheme usually has a privately owned component (most often the internal space of an apartment, townhouse or similar) and a common property component, owned and administered by the body corporate (most often property such as gardens, paths, courtyards, foyers and in large complexes, pools, gyms and lifts).

Due to the nature of our organisation and work, our submission does not concern houses (Class 1a buildings) and only relates to apartments (Class 2 buildings).

Legislation and codes relating to new buildings (such as those explored in this consultation) and older buildings are prescriptive about the types of changes required, but often do not consider the differences between common property and private property. Decision-making processes, budgets and the interaction between changes to private property and how that affects and might necessitate changes to common property are key factors that are often overlooked. Responsibility and liability are additional key concerns that have not been addressed.

### SCA's Position

The Consultation RIS explicitly considers how accessibility could be improved through the following options

- **Status quo: No changes to existing policy settings. This option is used as a baseline against which the costs and benefits of the other options are assessed.**
- Option 1: Accessibility standard, broadly reflecting LHDG silver standard, in the NCC applying to all new Class 1a and Class 2 buildings.
- Option 2: Accessibility standard, broadly reflecting LHDG gold standard, in the NCC applying to all new Class 1a and Class 2 buildings.
- Option 3: Accessibility standard, broadly reflecting LHDG gold standard (with some platinum features), in the NCC applying to all new Class 1a and Class 2 buildings.
- Option 4: Accessibility standard, broadly reflecting LHDG Gold standard, in the NCC applying to all new Class 2 buildings only.
- Option 5: A subsidy program to encourage additional availability of accessible rental properties.
- Option 6: An enhanced approach to voluntary guidance, which includes turning the current proposals into a non-regulatory ABCB handbook and other measures to encourage additional uptake of universal design principles, including: a search engine for dwellings certified as complying with the LHDGs and provision of information at the point of sale.

**SCA recommends that the status quo be retained with regard to minimum accessibility standards in new buildings in the NCC.**

In addition to our baseline recommendation, SCA recommends that:

- Tailored approaches such as grants, concessions and rental subsidies applicable to **Option 5** are pursued.
- In addition to retaining the status quo, SCA recommends conducting further research on, and pursuing voluntary and non-regulatory approaches, to increase accessibility, such as those outlined in **Option 6**.
- SCA supports development of **Option 1, 2 and 3** as part of a voluntary market / buyer-based purchase decision. Developers should be able to add design / purchase options where the market would deem them an advantage, for example in developments catered to over 55s where potential buyers or residents may value the loss of a third bedroom as a trade-off for an enlarged bathroom.

**SCA's submission will explore the recommendation that the status quo be retained in relation to the NCC through six themes:**

- An unbalanced cost-benefit analysis (CBA)
- Maintenance of the building and common areas
- Space, geography and affordability
- Standards
- Amenity
- NCC new-build applicability vs old-build retrofitting

**An unbalanced cost-benefit analysis (CBA)**

SCA believes that the CBA did not produce a compelling case to include minimum standards for accessibility in the NCC. Based on the modelling in the Consultation RIS, no scenario produced a net cost benefit, as described in the preliminary recommendation of the Consultation RIS:

*Based on the preliminary evidence gathered for the Consultation RIS, the costs associated with including an accessible housing standard in the NCC are estimated to outweigh the benefits under the central estimates for all of the Options tested.<sup>4</sup>*

In addition to be unable to provide a cost-benefit as a whole, the implementation of a minimum accessibility standard in the NCC was evaluated poorly in addressing the issues it set out to address, with the Consultation RIS saying:

*Including an accessibility standard in the NCC would address these issues relatively slowly<sup>5</sup>*

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<sup>4</sup> Australian Building Codes Board (ABCB), Consultation RIS: Proposal to Include Minimum Accessibility Standards for Housing in the NCC, 2020, Accessed at <https://consultation.abcb.gov.au/engagement/consult-ris-accessible-housing/>

<sup>5</sup> Ibid, p10.

The CBA was conducted using two methods: a ‘problem reduction’ approach and a ‘willingness to pay’ approach. There was a greater net benefit shown in the ‘willingness to pay’ approach than the ‘problem reduction’ approach (though only Option 1 – Silver, had a net benefit). The CBA actually showed that most of the benefit would flow to households who do not have specific disability or accessibility needs.<sup>6</sup>

The difference in the two cost-benefit analysis (CBA) approaches is largely derived by taking an approach that takes into account all future purchasers, irrespective of their needs for accessible housing, or one that focuses on accessibility as it directly relates to the target population to be served by the changes.

The outcome is that most of the benefits of the changes to the NCC will not be people with a disability or people requiring increased accessibility now or in the near future. The benefits will accrue to those who have stated that they may be useful or beneficial in the future.

The willingness to pay approach is aspirational and hypothetical in the context of this CBA, as participants are only stating preferences. It is not based on behaviour in the market. The Office of Best Practice Regulation notes that ‘...estimates of individuals’ valuations of goods and services derived from observing their behaviour in markets tend to be more credible than those from survey questionnaires.’<sup>7</sup>

The willingness to pay is also not reflected across the entire community, with older Australians much more willing to pay for potential accessibility features. The net costs of construction, however, will be spread evenly over anyone who buys or rents an apartment built with these design standards.

In conclusion the first ‘problem reduction’ CBA method shows costs that outweigh benefit and an only gradual impact to address the problem and the second ‘willingness to pay’ method highlights that benefits will not accrue to those who need it the most, and may be aspirational at best.

We recommend a targeted approach to improve accessibility and overcome the current problem, and do not agree with any of Options 1-4 outlined in the Consultation RIS.

### **Alternative policy and regulatory options to improve accessibility**

SCA recommends exploring in greater depth the impacts and outcomes of the following non-regulatory approaches:

- Rental subsidies for people with a disability to find appropriate, affordable accommodation
- Grants and concessions for people with a disability to undertake works to upgrade their existing apartments, as well as the common property, considering jurisdictional legislation and the capacity for works of the building they reside in
- Incentives for building and construction companies to build and market separate whole properties with Silver, Gold or Platinum accessibility standards
- Review of current legislation impacting the provision of accessibility features to clarify that works to be carried out to common property are not the responsibility of the collective owners of the common property and clarify the intersections of legislation and accessibility as they apply to common property.
- Register of accessible homes.
- Education at point of sale.

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<sup>6</sup> Ibid, p10.

<sup>7</sup> Department of the Prime Minister and Cabinet 2016, Cost-Benefit Analysis, Guidance Note, Office of Best Practice Regulation, February 2016, p. 11.

### 3 Estimated net benefit/cost – “problem reduction” approach

Benefits/Costs/Net Benefit	Option 1 (\$ million)	Option 2 (\$ million)	Option 3 (\$ million)	Option 4 (\$ million)	Option 5 (\$ million)
Reduced falls	45.68	51.69	54.52	15.13	154.27
Reduced time in hospital/transition care	186.88	211.45	223.04	61.89	631.05
Reduced costs associated with loneliness	154.76	175.11	184.71	51.26	522.59
Reduced home modifications costs	477.67	540.49	570.10	158.20	1 613.01
Reduced carer-related costs	557.17	630.43	664.98	184.53	1 881.44
Reduced incidence of moving	22.88	25.89	27.31	7.58	77.27
Reduced premature/inappropriate entry into aged care	209.54	237.09	250.09	69.40	707.58
Societal benefits	1 031.33	1 106.60	1 106.60	326.25	1 900.96
<b>Total benefits</b>	<b>2 685.92</b>	<b>2 978.76</b>	<b>3 081.34</b>	<b>874.24</b>	<b>7 488.17</b>
Construction costs	-1 866.72	-12 384.81	-15 904.40	-3 602.32	0.00
Opportunity cost of space	-1 571.81	-8 831.55	-11 162.57	-6 541.11	0.00
Industry re-training costs	- 28.47	- 28.47	- 28.47	- 28.47	0.00
Subsidy	0.00	0.00	0.00	0.00	-7 455.55
<b>Total costs</b>	<b>-3 467.00</b>	<b>-21 244.83</b>	<b>-27 095.43</b>	<b>-10 171.90</b>	<b>-7 455.55</b>
<b>Net benefit/costs</b>	<b>- 781.09</b>	<b>-18 266.07</b>	<b>-24 014.09</b>	<b>-9 297.66</b>	<b>32.62</b>

a During targeted consultations, most stakeholders agreed that Gold standard dwellings (under Option 2) would be suitable for most disabilities. Although the Gold + standard (Option 3) provides additional accessibility features (which may provide some benefits), it does not address any additional problem that is not addressed by a Gold standard dwelling. As this approach focuses on addressing identified problems, the estimated benefits of Option 3 are the same as Option 2.

Note: Costs and benefits are presented in net present value terms covering a 10-year regulatory period from 2022 to 2031, using a discount rate of 7 per cent. Benefits are extended out an additional 30 years, reflecting the flow of benefits over the life of dwellings constructed during the regulatory period.

### 4 Estimated net benefits/costs – ‘willingness to pay’ approach

Benefits/Costs/Net Benefit	Option 1 (\$ million)	Option 2 (\$ million)	Option 3 (\$ million)	Option 4 (\$ million)	Option 5 (\$ million)
Getting in and out	0.00	0.00	0.00	0.00	0.00
Moving around indoors	5 354.20	7 335.76	7 335.76	2 191.92	2 462.30
Living with limited mobility on same level as an entrance	330.27	1 558.63	1 558.63	0.00	605.54
Minimal modification required for ageing in place	0.00	6 423.79	6 423.79	1 919.42	1 685.88
Societal benefits	1 031.33	1 106.60	1 106.60	326.25	1 900.96
<b>Total benefits</b>	<b>6 715.81</b>	<b>16 424.79</b>	<b>16 424.79</b>	<b>4 437.60</b>	<b>6 654.68</b>
Construction costs	-1 866.72	-12 384.81	-15 904.40	-3 602.32	0.00
Opportunity cost of space	-1 571.81	-8 831.55	-11 162.57	-6 541.11	0.00
Industry re-training costs	- 28.47	- 28.47	- 28.47	- 28.47	0.00
Subsidy	0.00	0.00	0.00	0.00	-7 455.55
<b>Total costs</b>	<b>-3 467.00</b>	<b>-21 244.83</b>	<b>-27 095.43</b>	<b>-10 171.90</b>	<b>-7 455.55</b>
<b>Net benefit/costs</b>	<b>3 248.81</b>	<b>-4 820.04</b>	<b>-10 670.65</b>	<b>-5 734.30</b>	<b>- 800.87</b>

Note: Costs and benefits are presented in net present value terms covering a 10-year regulatory period from 2022 to 2031, using a discount rate of 7 per cent. Benefits are extended out an additional 30 years, reflecting the flow of benefits over the life of dwellings constructed during the regulatory period. Where benefits reflect zero values, this reflects the element is currently assumed to be provided under that Option.

Source: CIE estimates.

## Maintenance

The Consultation RIS and cost-modelling explores the additional construction costs, but does not undertake sufficient modelling work, or give attention to, the costs associated with maintaining the potentially higher standards of accessibility discussed.

Generally, building costs are somewhat relative to the maintenance costs that follow once the building is finished and has been sold to consumers who now own the apartments. A more expensive building will generally be more expensive to maintain. This is expected to be the case if any of Options 1-4 are incorporated into the NCC.

The included CBA, although extended over a 40-year timeframe, does not include the increased costs of maintenance and compliance that each building would certainly have if fitted with Silver, Gold or Platinum accessibility features. This consideration would add additional net cost to the CBA included, and should be considered in any final recommendations. Any future CBA exploration of Options 1-4 should try to quantify increased costs of maintenance over the 40-year lifecycle of the building.

The results for the consumer are that apartments will be more expensive to buy and more expensive to maintain in their private areas as well as in common areas maintained under strata schemes. As discussed in the CBA and our position above, although these costs will be borne by each person who owns or lives in an apartment, the results of the blanket introduction of Options 1-4 in the NCC will mean:

- Potential benefits will be unevenly applied across the community
- They will be slow to address the problem at hand
- They will provide most benefit to people who have aspirational willingness to pay for accessibility features but are not affected by accessibility issues in the present.

## Future proofing

If the status quo is retained, a study into future proofing should be undertaken. New buildings, if not required to include minimum accessibility standards, should be built, or have guidance for how to be built, to ensure that a person wishing to undertake future accessibility upgrades can do so as easily and as cost-effectively as possible.

This should include provisions to make the decision-making process and works carried out to common areas to improve accessibility as simple as possible and with as little potential cost to the strata scheme members as possible.

Point of sale education is critical so that people purchasing new apartments can understand what may be possible for future renovations with regards to accessibility. An increased emphasis on buyer education at the point of sale will mean that the market for new buildings is more reactive to the demands of consumers.

## Space, amenity and geography considerations

Australia is a geographically diverse country with different parts of the country exposed to land constraints, heat, cold or a greater chance of natural disaster.

Applying a standardised set of accessibility rules in the NCC presents unique challenges for builders and apartment owners, some of which would create greater barriers and disadvantages than others. Consider building in Darwin or Cairns, where buildings must be constructed to withstand cyclones and flooding. Or in Tasmania, for example, where the climate is much cooler and there is more provision for buildings incorporating more efficient heating or energy efficiency.

The impact of new accessibility rules will disproportionately affect geographical areas of Australia that already have a high burden of regulatory or code-related compliance. These are often smaller markets, and the price for specialist installation or maintenance once installed is likely to be higher within these markets than, for example, in one of Australia's east coast capital cities.

Geographical impacts, especially within the larger, capital city markets, are also space or capacity related.

Apartments are created with achieving amenity in mind, both within the apartment complex in the common areas and by providing proximity to amenities such as shopping, transport, entertainment and recreation.

Space is critical to providing amenity. Space spent on corridors, pathways, larger bathroom facilities cannot be used on other amenities within the complex. Each consideration is a trade-off, so by necessity, an apartment complex of the same size with more accessibility features for all residents, will also have fewer amenities for all residents.

Space is also at a premium where developers and builders are choosing sites for development and working through potential designs. As developers try to provide the access to transport and work that people who choose apartment living crave, they need to be creative with design and use of space. Especially within our biggest cities, small distances count and could remove the viability of future developments.

The reality of the significance of space is reflected in the CBA explored above, with 'Opportunity Cost of Space' being the second most significant cost of Option 1 – Silver (\$1.57 billion) and Option 2 - Gold (\$8.83 billion).

It is easy to see that space requirements mean that creating a situation where apartment amenity decreases, and apartment prices increase at the same time should be avoided.

In keeping with earlier SCA recommendations, considering these geographically specific requirements in a tailored approach that brings together design and accessibility based on location is preferable to a blanket approach of mandating changes in the NCC.

## Standards

Defects and non-conforming products in buildings present a significant cost, both in financial terms and in safety terms to people who live in buildings once they are constructed. The cost of defects and non-conforming products is most often borne by the consumer, where defects emerge months or years after the original building or construction work is carried out. Strata managers are often the first to be alerted to defects and non-conforming products.

Any introduction of mandatory new obligations under the NCC would need to be accompanied by regulatory changes and guarantees to meet standard to ensure that builders use products that meet Australian Building Standards. This would apply also to works that were carried out to improve accessibility that were not part of the NCC (voluntary works, or work carried out through grants programs, for example).

In turn, this would need to be accompanied by an appropriate amount of oversight and then an equally appropriate compliance regime.

In keeping with SCA's observation that maintenance costs had not been included for the lifecycle of the building, oversight and compliance costs are an additional expense for apartment owners and an additional concern for strata management professionals.

In addition to these costs, it could be expected that, if technical building and maintenance requirements increase for hired professionals, that prices may increase as a result, either due to:

- Greater skills sets attracting greater remuneration for those meeting requirements
- Less competition from operators who have not achieved registration levels necessary to carry out works
- Larger organisations dominating the market for contractors or tradespeople in a specific discipline.

Including minimum standards in the NCC for new buildings will necessitate a large number of compliance and maintenance changes which will require additional time and monetary investments.

## New build applicability

As SCA noted in its submission to the Options Paper, applying minimum accessibility standards to pre-existing buildings should not be considered, and any potential inclusion of the options in this Consultation RIS should only apply to new builds, and not be applied to pre-existing buildings.

The reasons for our position to not apply minimum standards to pre-existing buildings are numerous. Funding is an ongoing issue in strata schemes. Amending individual lots is naturally presumed to be funded by the lot owner requiring this change.

Often, however, common property is directly adjacent to the lot that needs amending and requires strata scheme approval. Some costs may be attributed to changing the common property infrastructure and it is our view that this imposes an unfair and unreasonable onus on all lot owners having to share the cost. The owner seeking to receive strata scheme approval for changing their lot and adjacent common property should be responsible to obtain and pay for the relevant engineering reports.

There should be a number of principles that are agreed on for pre-existing buildings:

- Schemes do not have to retrofit, but can undertake retrofitting if they desire
- Grants and concessions should be made available for lot owners who would like to undertake minimum accessibility upgrades which cover the cost of the upgrades to the personal space and the common space.
- Review of current legislation impacting the provision of accessibility features to clarify that works to be carried out to common property are not the responsibility of the collective owners of the common property.
- Strata schemes are not required to retrofit but if someone's circumstances change, there are provisions and a streamlined decision-making process to make it easier for strata schemes to make decisions.

## Conclusion

**SCA recommends that the status quo be retained with regard to minimum accessibility standards in new buildings in the NCC.**

In addition to our baseline recommendation, SCA recommends that:

- Tailored approaches such as grants, concessions and rental subsidies applicable to **Option 5** should be pursued.
- In addition to retaining the status quo, SCA recommends conducting further research on, and pursuing voluntary and non-regulatory approaches, to increase accessibility, such as those outlined in **Option 6**.

**SCA's submission has explored six themes to show that the status quo should be retained with regards to minimum standards of accessibility, which were:**

- An unbalanced cost-benefit analysis (CBA)
- Maintenance of the building and common areas
- Space, geography and affordability
- Standards
- Amenity
- NCC new-build applicability vs old-build retrofitting.



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