

Universal design in housing: Reporting on Australia's obligations to the UNCRPD

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Abstract The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) obliges Australia, as a State Party, to embrace the concept of universal design as a guide for its activities. The UNCRPD triggered significant changes in the last decade directed by the 2010-2020 National Disability Strategy (the Strategy), with its vision for an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.

This paper reviews Australia's national and international reports on these obligations over the last decade focusing on Australia's response to the Strategy's commitment in 2011 to support the 'National Dialogue agreement', a self-regulatory approach to incorporate universal design in housing. It argues that both the Australian government and the housing industry largely disregarded the National Dialogue agreement, and misrepresented to the United Nations the progress made in achieving accessibility within the housing stock. It evidences the importance of advocacy and a direct line of communication to the United Nations from people with lived experience, something the United Nations relied on to discover that the National Dialogue agreement had failed.

Given this past disregard and willingness to misrepresent the facts, the Australian governments will need to be monitored closely in the consideration of a minimum access standard for all housing in the National Construction Code. The question remains whether a net benefit to society will be found to be of greater priority than the self-interests of the private housing sector and the political vagaries of government. Again, it will take the voice of people with lived experience and those who represent them to make the argument.

Keywords: UNCRPD, universal design, accessible housing, Australia, regulation

Introduction

The United Nations Convention on the Rights of Persons with Disabilities (2007) (UNCRPD) obliges State Parties to embrace the concept of universal design as a guide for its activities (Article 4). This paper focuses on how Australia, as a signatory, responded to this obligation about universal design in housing over the last decade.

The UNCRPD (2007) brought a focus to the broadly accepted right to social inclusion by promoting the right of people with disability to access all aspects of the physical and social environment on an equal basis with others (Article 9). The cross-cutting nature of the UNCRPD not only directs how housing assistance is offered; (that is, people have the right "*to choose their place of residence and where and with whom they live on an equal basis with others*" and so forth (Article 19)), but it also challenges how housing should be designed; ("*the design of . . . environments, . . . [should] be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design*" (Article 4f)).

In 2009, the Australian federal government called together housing industry, community and human rights leaders to address the fact that “*most homes in Australia have not been designed or built in a way that can easily accommodate the changing needs of households over their lifetime*” (NDUHD 2010:2). Called the National Dialogue on Universal Housing Design, the group agreed to a national guideline and a strategic plan (National Dialogue agreement) with the aspirational goal that “*all new homes will be of an agreed Universal Housing Design standard by 2020 with interim targets to be set within that 10-year period*” (NDUHD, 2010:2). The Australian Network for Universal Housing Design (ANUHD) was a signatory.

The then Council of Australian Governments (COAG) endorsed the National Dialogue agreement as a key commitment in their 2010-2020 National Disability Strategy (the Strategy) (COAG 2011). The Australian federal government granted one million dollars seeding grant in 2012 to Livable Housing Australia (LHA), a not-for-profit company established to implement the agreement. LHA was expected to attract private funding thereafter from the housing industry. The National Dialogue agreement was to be monitored by a series of ongoing reviews at two to three-year intervals across the 10-year period from 2010-2020.

The first of these reviews was planned for 2013 “*at which time areas of successful application, any barriers to uptake, and the need for other incentives or measures to stimulate adoption of universal design could be identified*” (NDUHD 2010:6). No review was done in 2013 and by 2014, due to a lack of reliable financial support, the LHA board dismissed its staff and effectively closed operations. By 2017, the LHA board had diverted its attention from mainstream housing to the marginal, yet lucrative, NDIS Specialist Disability Accommodation program, which targeted people under 65 years old with severe and complex disability.

These were clear indicators that COAG and the housing industry leaders had little interest in following through with the National Dialogue agreement, including meeting the targets. The paper now turns to how the Australian federal government reported on the progress, or lack of, of the National Dialogue agreement to the United Nations.

Reporting

On becoming a signatory to the UNCRPD, Australia is obliged to report on its implementation. At the international level, the UN Committee on the Rights of Persons with Disabilities (UN Committee) monitors Australia’s implementation through agreed reporting, communication and inquiry procedures. The Commonwealth Attorney General’s Department (AGD) is responsible for the government reports. Two reports were submitted in ten years.

As part of the reporting requirements to the UN Committee, Australia is obliged to ensure that people with disability and their representative organisations are involved and participate fully in the monitoring process. These alternative reports to the UN Committee are known as *Civil Society Shadow Reports* (Australian Civil Society 2019, 2012).

At the national level, The Commonwealth Department of Social Services (DSS) is required to establish and maintain the Strategy, including one or more independent mechanisms, to promote, protect and monitor implementation of the UNCRPD. The Strategy committed to

reports on its progress to COAG every two years. Two implementation and two progress reports were submitted in ten years. (See Table 1 below.)

Table 1 Reporting on the 2010-2020 National Disability Strategy

Year	What was planned	What occurred
First round of reports		
2012	Publish plan for first implementation phase 2011–2014	First implementation strategy: ‘Laying the Groundwork 2011-2014 (Department of Families 2012) First Australian Report to UN Committee (AGD 2012a)
2013	First Australian Report to UN Committee	Concluding Observations (UN Committee 2013)
2014	First two-yearly progress report Scheduled year for the second Australian report under the UN Committee	First progress report (DSS 2014)
Second round of reports		
2015	Publish plan for second implementation phase 2015–2018	
2016	Second two-yearly progress report	Second Implementation Plan: Driving Action 2015–2018 (DSS 2016)
2017	Commence review of second implementation period 2015–2018	List of Issues from the UN Committee delivered to AGD (UN Committee 2017)
2018	Third two-yearly progress report Scheduled year for the third Australian report to the UN Committee	Australia's combined second and third report under the UNCRPD (AGD 2018) Second progress report (DSS 2018)
2019	Publish plan for third implementation phase 2019–2020	Independent review of the implementation of the Strategy (Davy et al. 2019) Concluding Observations on Australia's combined second and third report under the CRPD (UN Committee 2019) Consultation report to help shape the next national disability strategy (DSS 2019b)

First round of reports

The first international report to the UN Committee omitted to mention the National Dialogue agreement at all (AGD 2012b). The first shadow report (Australian Civil Society 2012), on the other hand, noted that the poor design of housing were key barriers to people’s social inclusion (2012:127) and recommended that Australia makes “*a significant investment in enhancing universal design standards and regulations governing accessibility and affordability of all private and public housing*” (2012:137).

The first national report to COAG was vague about the commitment to the National Dialogue agreement, stating that “*states and territories continue to undertake work to support the inclusion of liveable [sic] design features*” (2014:87) and made reference to the 2020 target. It

reported on achievements in social housing, omitting to acknowledge that it made up less than 5% of Australia's total housing stock (AIHW 2014).

The UN Committee (2013) made no comment; however, researchers (Franz et al. 2015; Ward 2013; Kelly et al. 2012) and activists (ANUHD & RI Australia 2015) began to question the ability of the National Dialogue agreement to drive any systemic change.

The Strategy's implementation plan in 2016 omitted any mention of the National Dialogue agreement, and focused on the DSS's priorities at the time; that being indigenous inequality, access to employment and the roll-out of the National Disability Insurance Scheme (NDIS). Disability activists raised concerns at the time that the Strategy had lost sight of the mainstream response, including housing and transport, which would ultimately affect the viability of specialist disability programs (The Senate Community Affairs References Committee 2017).

Second round of reports

In 2017, the UN Committee forwarded to the AGD a list of issues prior to the submission of the combined second and third periodic reports of Australia. Their request regarding the National Dialogue agreement was specific: *"Please provide information on efforts to ensure an adequate supply of accessible housing and on whether the 2020 targets for universal housing design are being met"* (2017:3).

The AGD's draft response omitted to report on the National Dialogue agreement. ANUHD (2018) contested the draft report, and claimed that the housing industry had not met any of the interim targets, and government intervention was not only necessary, but was currently being considered by COAG. The Australian Building Codes Board (ABCB) was developing a Regulatory Impact Statement (RIS) for an access standard for all housing in the National Construction Code.

The AGD's final report to the UN Committee (2018) acknowledged that government intervention was being considered. The report failed to answer the UN Committee's specific question or acknowledge that intervention, if any, would not occur until 2022. The second shadow report (Australian Civil Society, 2019: 29), answered the UN Committee's request. It estimated that less than 5% of new housing would be to the agreed standard by 2020 and recommended that the National Construction Code mandate minimum access features for all new and extensively modified housing. The UN Committee's response supported this recommendation (UN Committee 2019:5).

The Commonwealth Attorney General's Department and DSS failed to make this report publicly available on their websites, and DSS failed to reference it in their consultation process for the new National Disability Strategy. Consequently, ANUHD took the initiative to contact the two relevant Ministers directly to ask for the report to be published online in Australia.

Seven years after the Strategy was launched, the second progress report to COAG finally acknowledged that the National Dialogue agreement had failed and that people with disability wanted government intervention:

Affordable, accessible housing for people with disability was identified as a key area where improvements have not been achieved. People with disability believe that regulatory intervention through the National Construction Code is required to achieve change. (DSS 2018:27)

Preparing for the new national disability strategy

To prepare for the new national disability strategy, the DSS commissioned an independent review (Davy et al. 2019) and a consultation report. The review identified the shortage of accessible and affordable housing, among other issues, as needing attention. The consultation report (DSS 2019b:33) considered accessible housing to be a priority and that the new strategy should “*enable more to be done to strengthen building codes, standards and requirements to ensure housing is accessible into the future*” (DSS 2019b:37).

Discussion

The reports on Australia’s obligations under the UNCRPD regarding universal design in housing reveal three troubling indicators: the first is COAG’s intentional abrogation of responsibility for universal design in housing to the housing industry and ongoing denial that the housing industry had failed to act, and the third is the scant regard Australian governments hold for accurate reporting to the UN Committee. These are now discussed.

COAG’s intentional abrogation of responsibility

COAG’s abrogation of responsibility for universal design in housing was first evidenced by transferring the key activities in the Strategy to the housing industry (Ward & Jacobs 2016). With the benefit of hindsight, the purpose of the National Dialogue agreement was to placate the resistance within the housing industry to regulation (HIA 2018) and to manage the growing disquiet about inaction at the same time (Shorten 2010a). The National Dialogue agreement also resolved two issues for COAG: it was seen to take tangible action within its commitment to the UNCRPD; and it convinced key economic policy advisors, such as the Productivity Commission (2011a:277-281; 2011b:213) that universal design in housing could be done with little cost or political fallout.

The National Dialogue agreement affectively jettisoned the problem into the next decade, and the lack of review or reporting assisted the National Dialogue members to overlook their commitment to the targets. ANUHD was unable to call its fellow signatories to account. The support for regulation came, not from any obligation to the UNCRPD, but rather from a mounting indignation from a broader constituency, including, local government leaders, older people, women, and home-based support services, who had their expectations raised and then let down.

Ward and Jacobs (2016) argue that the National Dialogue agreement was destined to fail. The housing industry appeared to be supportive, but was not; there was ample evidence that a voluntary approach had little chance of success in Australia’s current market (Dalton et al. 2011; Bringolf 2011; Crabtree & Hes 2009). Government leaders successfully avoided political fallout at the time and had other challenges (such as the roll out of the NDIS) that took their attention. Community and human rights leaders acceded at the time because they were promised a transparent, accountable process and were convinced this was the best deal they could reasonably expect.

The National Dialogue's ten-year timeline was also supported because the UNCRPD obligation affecting housing design was progressively realisable; that is, Australia could work to meet it over time. Any progressive action, however, should match the capacity a nation has at its disposal to make the change (PWDA 2010:16).

While the instigator of the National Dialogue, the Hon Bill Shorten MP, saw the agreement as “*a great example of collaboration*” (2010b), Bill Moss (2010), a renowned disability activist, saw the agreement as an unholy alliance. He wrote: “*This is... another example of a powerful industry lobby dragging its feet and of a spineless government and craven disability rights advocates letting them get away with it*”. Moss has since been proven correct in his prediction that the National Dialogue agreement would do little more than “*fuel the anger of grass roots lobby groups*”.

Perhaps, the members of the BMF would have come to realise through formal reporting channels that government intervention was necessary (BMF 2017). This is unlikely, given the absence of any reporting on the National Dialogue agreement. Certainly, the Australian Building Codes Board (ABCB), did not consider it their role to advise their political leaders that a policy change was necessary (Savery 2016). The failure of the National Dialogue agreement was brought to the attention of the BMF by ordinary citizens who were most impacted by inaction, and who had little to lose (Ward & Bringolf 2018).

Scant regard by the Australian Government for the UNCRPD processes

This paper reveals a history of indifference by governments and the housing industry to the progress of the Strategy with regard to universal design in housing and serves to question their regard for Australia's UNCRPD obligations in this area. Advocacy from the community sector has been necessary to ensure the UN Committee's Concluding Observations (2019) were, first, properly informed, second, made publicly available, and third, considered in the development of the new national disability strategy (DSS 2019a).

The most telling example of this lack of regard is found in the consultation documents for government intervention. The cost benefit analysis (CIE 2020) informing the RIS situates human-rights considerations as distinct and separate from any quantifiable analysis. The report explains:

Satisfying these RIS requirements may to some extent seem at odds with a human-rights focused view of the problem advanced by some advocates. Nevertheless, as a RIS was requested by the BMF and is required for changes to the NCC under ABCB's Intergovernmental Agreement, we are obliged to follow the approach set out in the COAG RIS Guidelines. (p. 20)

One could excuse this dualistic approach as a form of disciplined economic thinking. A review of the cost benefit analysis by Dalton & Carter (2020) takes the opposite viewpoint. Dalton & Carter (2020) argue that a human-rights framework is central to economic thinking if the principle of solidarity, that is, looking after those less able to care for themselves, is to be applied. A cost benefit analysis should be guided by what kind of society we want to live in rather than be at odds with it.

Within a human-rights framework, a cost benefit analysis can recognise what is market failure, and what intervention will maximise human welfare within a capitalist society. The existing policy commitments to ensuring that people with limited mobility will not be excluded from participating in family and social life and work might be based on principles of equity and fairness, but there are also tangible economic benefits when everyone is included and contributing.

Conclusion

The Australian government's abrogation of responsibility for universal design in housing and their scant regard for the UNCRPD processes has a legacy of reductionism. Most debate about universal design in housing has affectively been limited to what will or will not be in an access standard for housing in the National Construction Code. The ABCB have redacted the terms 'visitable', 'adaptable', 'livable' and 'universal' in favour of 'accessible' to "simplify matters for its stakeholders" (ABCB 2018:4).

When the high-order concepts within the UNCRPD, such as universal design, are lost in translation, the obligations they bring are also lost. Given that the RIS is now well underway, the debate is whether an access standard for housing has a net benefit to society and what will be the immediate financial impact to the housing industry and political fallout to governments. It will come down to who matters and who does not. Any deliberations on best practice in universal design in housing are likely to be advanced, not by Australian governments and housing industry leaders, but again by ordinary citizens fighting for and safeguarding their human rights.

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