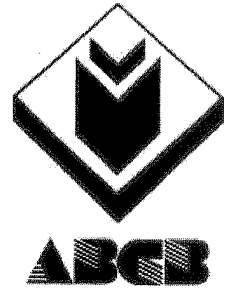




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BY: .....

## Australian Building Codes Board



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Dear Mr Dreyfus

I wish to respond to you on a matter that arose at the 12 March 2009 hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs' *Inquiry into the draft Disability (Access to Premises - Buildings) Standards*.

You asked if we could assess how usual it is for tenants or lessees to do major works on their premises. This was asked in the context of a provision in the draft proposal that differentiates certain owner and tenant responsibilities by exempting lessees from having to upgrade paths of travel to and from their tenancy. I took this on notice to establish if we could put some data around tenant and owner refurbishment.

In short, data was not available to us when we did our work on the exemption and we have been unable to obtain statistical information on it in response to your query.

The ABCB's Regulation Impact Statement on the draft Premises Standards assumed that 50% of upgrades in these categories are tenant upgrades. This assumption was considered reasonable for analytical purposes in the absence of available data.

I acknowledge that after undertaking further research on the topic, this assumption, while receiving some anecdotal support from stakeholders, cannot be substantiated. To our knowledge, no official data exists to differentiate between owner and tenant in initiating development applications. The initiation of building applications for major upgrades on commercial buildings can be difficult to pin down. Issues such as ownership by trust or shelf companies, tenant-delegated project management to building professionals for the application process, relationships between owner and tenant generally and the possibility that any 'change of use' of the tenant space may trigger further responsibilities.

I also note that the costs allocated to owners through this provision are overstated. The RIS assigned costs to the owner of all aspects relating to public areas. In reality, some areas such as accessible toilets, will have an element of public area cost in them, but are predominantly related to the individual tenancies.

It is also worth noting that sensitivity analysis conducted on a number of RIS parameters showed the results to be robust, with the benefit-cost ratio remaining greater than 1:1 in the majority of the scenarios tested. Sensitivity analysis was not carried out on the

"owner/tenant" parameter, but we concluded that any changes to the assumptions made on this exemption would not substantially alter the finding that the Premises Standard would provide a net benefit.

Additional information is provided in the attached report.

Yours sincerely

Ivan Donaldson  
General Manager

27 March 2009

## OWNER / TENANT EXEMPTION

### Background

In response to a question on 12 March 2009 from Mr Mark Dreyfus QC MP, Chair of the House of Representatives' Standing Committee on Legal and Constitutional Affairs' *Inquiry into the draft Disability (Access to Premises - Buildings) Standards*, the ABCB General Manager undertook to provide some further information to the Committee regarding the effect of the "owner/tenant" exemption, in particular, the proportion of major upgrades in commercial buildings where the work is undertaken by the tenant.

The RIS found that when compared to the 2004 proposal, this aspect of the Premises Standard may have a significant effect on reducing both costs and to a greater extent, benefits, predominantly relating to Class 5 buildings (multiple storey offices). However, these impacts are only considered to be 'delayed', given the assumption that under normal circumstances, the public areas of major commercial buildings will be upgraded over a 15 year cycle (in fact, current government building sustainability incentives may trigger more frequent upgrades in the short term). Thus, when considered over this period, there appears to be no net reduction in costs or benefits.

I also note that the costs allocated to owners through this provision are overstated. The RIS assigned costs to the owner of all aspects relating to public areas, whereas in reality, some areas such as accessible toilets, will have an element of public area cost in them, but are predominantly related to the individual tenancies.

It is also worth noting that sensitivity analysis conducted on a number of RIS parameters showed the results to be robust, with the benefit-cost ratio remaining greater than 1:1 in the majority of the scenarios tested. Though the sensitivity analysis was not carried out on the "owner/tenant" parameter, it can broadly be concluded that any changes to the assumptions made on this exemption would not substantially alter the RIS's finding that the Premises Standard would provide a net benefit.

The draft Premises Standard applies to new buildings and new work on existing buildings, which can include a renovation or extension to an existing building. In some situations this will also include an affected part of a building – that is the 'path of travel' from the principal public entrance of an existing building to the new work or renovated part of that existing building.

The draft Standard requires that when a building owner submits an approval for new work in an existing building (e.g. an upgrade or renovation), then the Premises Standards apply to the area that is being upgraded (the 'new part'), and the path of travel from the principal entrance to the new work (the 'affected part'). Providing an accessible path of travel may involve upgrading the access features of the lift, removing a step into the building at the entrance, upgrading handrails on a ramp or a combination of such measures. A concession for lessees provides that a lessee will generally not need to provide a path of travel to the new work.

This part of the draft Standard is proposed to be reviewed in five years against set criteria e.g. that an audit be undertaken of the percentage of change that had occurred in that five year period in relation to upgraded buildings.

The 2004 draft proposal required that the entire building be made accessible if it underwent 'extensive' building work. Examples of 'extensive' work include where work carried out over the previous 3 years affected more than 50% of the volume of

the building, and where the extension is greater than the existing building (thus exceeding 50% of the total volume of the completed building).

### **Impacts identified in the RIS**

The ABCB's 2008 Regulation Impact Statement (RIS) *Proposal to Formulate Disability (Access to Premises - Buildings) Standards and Amend the Access Provisions of the Building Code of Australia* considered the impacts of the "owner/tenant" exemption. A key assumption in this analysis was that 50% of upgrades in these categories are tenant-driven (i.e. where the tenant is the applicant for the building approval). This assumption was considered reasonable for analytical purposes in the absence of available data.

The RIS found that this aspect of the draft Standard may have a significant effect on reducing both costs and to a greater extent, benefits, when compared to the 2004 proposal. The greater reduction in benefits relates to a floor being made accessible but not being able to be accessed by persons with a disability. The change to the Standard is estimated to reduce, or rather, delay, costs by \$7 million annually over the first eight years, with the only calculable effects occurring in the office sector. Impacts were identified only in relation to Class 5 (multiple storey offices) and to a far lesser degree, Class 6 (shops and restaurants) buildings.

As noted, these costs are not eliminated, but merely delayed. Given an assumption that the public areas of major commercial buildings will be upgraded over a 15 year cycle, the owners of these buildings will need to bring access ways and public areas into conformity with the standard once this condition has been met. This would be expected to commence halfway through the upgrade cycle (i.e. from year eight) and continue through to year 15 (i.e. the end of the upgrade cycle). Implicitly, the benefits arising from the tenant expenditures are also delayed, commencing in year eight and increasing progressively through to year 15.

Each cost item was analysed and allocated to the owner if it is predominantly related to public areas. This provides a slightly conservative estimate of owner costs (as some costs, such as accessible toilets, will have an element of public area cost in them, but are predominantly related to the individual tenancies).

Regarding Class 5 buildings under the draft Standard, costs are reduced by 90% in the case of partial upgrades and 51.3% in the case of full upgrades due to the public area elements not having to be completed. The difference in annual aggregate costs is \$7 million. This aspect of the impact of the proposed change is modeled by delaying these costs (i.e. the \$7 million per annum estimated above) being incurred by 50% of the assumed renovation cycle.

As noted, the impacts in relation to Class 6 buildings are far less significant. The vast majority of the costs relating to mall-type shopping centres relate to public spaces and, hence, become owner responsibilities. The only tenant responsibilities would appear to be borne by "anchor tenants", whose leased spaces are large enough to contain their own sanitary facilities. The two storey restaurant costs are also largely owner responsibilities, since the lift is the key item here. Thus, 80% of restaurant costs and virtually 100% of shopping centre costs are borne by owners.

In terms of reduced benefits, we note that the affected buildings are essentially workplaces. Consequently, reductions in effective access as a result of this proposed change will reduce that aspect of the benefits that relate to increased employment

opportunities and income earning potential. These benefits constitute only a relatively small minority (15.8%) of the total benefits identified in connection with the proposed standard, with the remainder of the benefits relating to expected reductions in the cost of living with disabilities.

However, the size of the expected reduction in benefits, considered within this category of increased income earning potential, could be quite substantial. Approximately 40% of building activity in the affected classes relates to building upgrades. Given the assumption made above that approximately half of upgrade activity in the affected building classes will be initiated by tenants, it can be speculated that up to one fifth of the total building activity in these classes will fail to deliver benefits for people with disabilities until landlords choose to upgrade common areas. As noted above, this is expected to occur between years eight and 15.

Consequently, the RIS reduced the expected benefits due to increased income earning potential by 20% over the first seven years of the implementation of the proposed standard. These benefits will, nonetheless, eventually be attained. Consequently, these delayed benefits are added to the anticipated benefits in years 8 to 15.

The table at Attachment A represents the assumed impact of the "owner/tenant" exemption on each class of building.

### **Consultation**

The ABCB has sought evidence to substantiate the 50% tenant-driven upgrade assumption made in the RIS, but our research has been inconclusive. The ABCB is not aware of any official source of data collection that distinguishes between owner and tenant in terms of building applications, so some informal stakeholder consultation was undertaken. While one major City Council supported the 50% figure, another asserted that owners would make up the greater proportion of applicants. A further major Council could offer no definitive advice as they were simply not exposed to this information due to the deregulated nature of building certification in their State. Additional consultation with industry stakeholders yielded no usable information.

We understand that the initiation of building applications for major upgrades on commercial buildings is a complex process, and includes the prevalence of ownership by trust/shelf companies with little or no day-to-day involvement in tenant activities, tenant-appointed architect/project manager with varying degrees of fluency in the application process, the relationship between owner and tenant and the possibility that any 'change of use' of the tenant space may trigger further responsibilities. Hence, no clear picture emerged on the issue.

### **Conclusion**

A key assumption in the RIS analysis is that 50% of major upgrades on commercial buildings are tenant upgrades, however, this was unable to be substantiated as no official data exists and anecdotal evidence was inconclusive. In terms of the impact of this uncertainty on the RIS's positive benefit cost ratio, while a reduction to costs and benefits has been identified, these are only considered to be 'delayed', given the assumption that the public areas of major commercial buildings will be upgraded over a 15 year cycle. Thus, when considered over this period, there is no net reduction in costs or benefits.

We also note that the costs allocated to owners through this provision are somewhat overstated. The RIS allocated costs to the owner of all aspects relating to public areas, whereas in reality, some such as accessible toilets, will have an element of public area cost in them, but are predominantly related to the individual tenancies.

It is also worth noting that sensitivity analysis conducted on a number of parameters showed the results to be robust, with the benefit-cost ratio remaining greater than 1:1 in the majority of the scenarios tested. Though the sensitivity analysis was not carried out on the "owner/tenant" parameter, it can broadly be concluded that any changes to the assumptions made on this exemption would not substantially alter the RIS's finding that the Premises Standard will provide a net benefit.

## ATTACHMENT A

Class/Type	Impact on owner	Impact on tenant	Discussion
Class 1b: B&Bs and small accommodation facilities	None	None	It is assumed there are no "tenants".
Class 3: Hotels (medium and large)	None	None	While a small proportion of these have strata-titled rooms with lease-backs from owners, none of these "small-investor owners" will be conducting upgrade activity.
Class 5: Offices	For 2 storey offices – None. For 7 & 20 storey offices: some costs (refer Discussion)	None (for 2 storey offices)	For the two "partial" upgrade case studies, the proportions of the costs that become "owner costs" are 84.5% and 95.5%. For the two "full" upgrade case studies, the proportions of the costs that become "owner costs" are 46.2% and 56.5%. Refer footnote <sup>1</sup>
Class 6: Shops and restaurants	80% of restaurant and virtually 100% of shopping centre costs	Borne only by "anchor tenants" whose leased space is large enough to contain sanitary facilities.	The vast majority of costs relating to mall-type shopping centres relate to public spaces and, hence, become owner responsibilities. 2 storey restaurant costs are largely owner responsibilities, since the lift is the key item here.
Class 8: Factories	None.	None.	These buildings do not appear to be affected by the change.
Class 9: Hospitals/theatres/schools/stadiums/community halls	None	None	These buildings do not appear to be affected by the change
Class 10: Swimming pools	None	None	These buildings do not appear to be affected by the change.

<sup>1</sup> This implies there will be significant cost reductions in this regard if owners are not required to undertake these upgrades of public areas when a tenant upgrades.

The RIS assumed that 50% of upgrades in these categories are tenant upgrades and that costs are reduced by 90% in the case of partial upgrades and 51.3% in the case of full upgrades due to the public area elements not having to be completed. The difference in annual aggregate costs is \$7 million. This aspect of the impact of the proposed change is modeled by delaying these costs (i.e. the \$7 million per annum estimated above) being incurred by 50% of the assumed renovation cycle.