

Joint Select Committee on Loose-Fill Asbestos Insulation

Loose-fill asbestos insulation

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Terms of reference

1. That a joint select committee be appointed to inquire into and report on loose-fill asbestos insulation, also referred to as ‘Mr Fluffy’ insulation, in homes in New South Wales, and in particular:
 - (a) the number and location of homes affected by loose-fill asbestos insulation
 - (b) the actions taken by governments to deal with loose-fill asbestos insulation in other jurisdictions
 - (c) the role of state and local governments to advise and assist home owners and occupiers to reduce the risks posed by loose-fill asbestos insulation
 - (d) the requirements for property owners to notify potential buyers, renters, tradespeople and emergency service officers regarding the presence of loose-fill asbestos insulation in their property, and
 - (e) any other related matter.
2. That the committee report by 16 February 2015.

Committee membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chair</i>
The Hon Niall Blair MLC	The Nationals	<i>Deputy Chair</i>
Mr John Barilaro MP	The Nationals	
Mr Daryl Maguire MP	Liberal Party	
Mr David Shoebridge MLC *	The Greens	
The Hon Mick Veitch MLC	Australian Labor Party	
The Hon Steve Whan MLC	Australian Labor Party	

* Mr Shoebridge replaced Dr John Kaye on 16 September 2014.

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Chairman's foreword

It is imperative that the NSW Government address the negative health, financial and social risks associated with the presence of loose-fill asbestos insulation in homes as a matter of urgency. Although the precise number of affected premises has not yet been established, we do know that there are 59 homes that have been identified as being contaminated by loose-fill asbestos insulation state-wide, with the potential for there to be many hundreds more.

While I am pleased to present the unanimous report of the Joint Select Committee on Loose-Fill Asbestos Insulation, I must admit that I am also disappointed with the historic inaction of successive NSW governments in responding to this issue.

Relevant authorities in the Australian Capital Territory have actively grappled with the challenge of how to best deal with homes contaminated by loose-fill asbestos insulation. Unfortunately the same cannot be said for New South Wales. I am hopeful that this report can induce the current NSW Government to take action to achieve a viable and enduring solution to this issue.

The evidence received by this inquiry made it clear that if loose-fill asbestos fibres are present in a home then it is ultimately uninhabitable, posing continuing risks not only to residents and visitors but also to the general public. It is for this reason that the report recommends the adoption of a state-wide buy-back and demolition scheme for all affected residences, based on the model recently established in the Australian Capital Territory.

The report also responds to a number of issues concerning the health, emotional and financial uncertainty faced by those who own or have lived in a home contaminated by loose-fill asbestos. Here the committee has sought to make life a little easier for those affected by recommending the provision of financial assistance as well as free counselling and support.

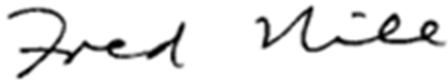
To protect tradespersons and emergency services workers from exposure to loose-fill asbestos the committee is recommending the tagging of known affected properties; the creation of a legal requirement for disclosure by homeowners; and the development of regular mandatory asbestos awareness training.

It was concerning to be advised of instances where people had unwittingly purchased or resided in homes containing loose-fill asbestos insulation. To prevent this from happening in future, the committee recommends that the government adopt a legal requirement for vendors, their agents and advisors, to disclose to prospective buyers the presence of loose-fill asbestos in a home. We also recommend that the Environmental Planning and Assessment Regulation 2000 be amended to ensure that the presence of loose-fill asbestos insulation in a home is disclosed on a section 149 planning certificate.

On behalf of the committee, I would like to acknowledge the valuable contribution all inquiry participants made through making submissions, attending hearings or hosting site visits.

I would especially like to thank those inquiry participants who shared their stories of having loose-fill asbestos insulation in their homes. Your evidence impressed upon the committee the importance of moving swiftly to release this report two months before it was due to be tabled.

I am also grateful to my committee colleagues for their thoughtful and engaged contributions to this inquiry. I am especially pleased that no dissenting statements were lodged. The committee's work has benefited greatly from our cooperative approach. I would also like to thank the secretariat staff: Angeline Chung, Beverly Duffy, Tina Higgins, Teresa McMichael, Alex Stedman, Shu-Fang Wei and John Young for their work in supporting the committee.

A handwritten signature in cursive script that reads "Fred Nile".

Revd Hon Fred Nile MLC
Committee Chairman

Summary of recommendations

- Recommendation 1** **24**
 That the NSW Government publish the final report of the PricewaterhouseCoopers forensic investigation concerning the number of New South Wales properties that may contain loose-fill asbestos insulation, when it is completed in April 2015.
- Recommendation 2** **43**
 That the NSW Government provide emergency financial assistance to the owners and residents of homes affected by loose-fill asbestos insulation to cover immediate expenses such as crisis accommodation, replacement of personal goods, rates and utility bills and short-term maintenance or remediation work.
- Recommendation 3** **45**
 That the NSW Government implement a mandatory testing program for homes built before 1980 in areas in which there are known to be, or it is likely that there are, a number of homes affected by loose-fill asbestos insulation.
- Recommendation 4** **49**
 That the NSW Government amend Schedule 4 of the Environmental Planning and Assessment Regulation 2000 to ensure that the presence of loose-fill asbestos insulation in a home is included on a section 149 planning certificate.
- Recommendation 5** **49**
 That the NSW Government take a leadership role with local government and governments across Australia, through the Council of Australian Governments process, to undertake an urgent study into the costs and benefits of establishing a comprehensive asbestos register or reporting system to apply to all residential properties at time of sale.
- Recommendation 6** **51**
 That the NSW Government impose a specific legal requirement on vendors, their agents and advisors, to disclose to prospective buyers the current or past presence of loose-fill asbestos insulation in a home.
- Recommendation 7** **56**
 That the NSW Government implement measures to protect tradespeople and emergency service workers from being exposed to loose-fill asbestos insulation, including:
- tagging of all properties known to be affected, with penalties for non-compliance
 - imposing a legal requirement on homeowners to disclose that their home is affected by loose-fill asbestos
 - developing a regular, mandatory asbestos awareness training program for relevant industries and trades
 - ensuring that all reasonable steps are being taken to effectively advise the emergency services authorities of the location of contaminated homes.

Recommendation 8

58

That the NSW Government examine reducing the costs levied for the disposal of asbestos waste, in order to encourage its safe disposal.

Recommendation 9

60

That the NSW Government make provision for free counselling and mental health support to individuals and families affected by loose-fill asbestos insulation.

Recommendation 10

76

That the NSW Government urgently establish a taskforce to develop and implement a buy-back scheme to demolish homes identified as being contaminated by loose-fill asbestos insulation in New South Wales, modelled on the approach adopted by the ACT Government.

Chapter 1 Introduction

This chapter provides background to the inquiry, an overview of the inquiry process and an outline of the report structure.

Establishment of the select committee

- 1.1 On 18 September 2014 both Houses of the NSW Parliament resolved to establish a Joint Select Committee on Loose-Fill Asbestos Insulation, also referred to as ‘Mr Fluffy’ insulation, in homes in New South Wales.
- 1.2 The committee comprised five members of the Legislative Council and two members of the Legislative Assembly. The resolution establishing the committee named Revd the Hon Fred Nile MLC as committee Chairman.¹ The Hon Niall Blair MLC was elected Deputy Chair at the committee’s first meeting.²

Terms of reference

- 1.3 The inquiry terms of reference required the committee to consider a number of issues pertaining to loose-fill asbestos insulation including: the number and location of Mr Fluffy homes; actions taken by governments to deal with loose-fill asbestos insulation in other jurisdictions; the role of state and local governments to advise and assist home owners and occupiers; and the requirements for property owners to notify people potentially affected by the presence of loose-fill asbestos insulation in their property.
- 1.4 The full terms of reference are set out on page iv.

Conduct of the inquiry

Submissions

- 1.5 The committee invited submissions by advertising in the *Sydney Morning Herald*, the *Daily Telegraph*, the *Queanbeyan Age*, the *Chronicle*, the *Daily Advertiser* and the *Canberra Times*. A media release announcing the inquiry was also sent to all New South Wales media outlets. The closing date for submissions was 31 October 2014.
- 1.6 The committee received 36 submissions to this inquiry. The full list of submissions is set out in Appendix 1.
- 1.7 The committee is grateful to all who made submissions, in particular those directly affected by loose-fill asbestos

¹ *Minutes*, Legislative Council, 18 September 2014, p 105; and *Votes of Proceedings*, Legislative Assembly, 18 September 2014, p 86.

² Joint Select Committee on Loose Fill Asbestos Insulation, NSW Parliament, *Minutes No 1*, 18 September 2014, Item 4.

Public and in camera hearings

- 1.8** The committee held two public hearings. The first at Parliament House on 14 November 2014 and the second at the Jim Snow Room, R B Smith Community Centre in Queanbeyan on 17 November 2014.
- 1.9** At the first hearing the committee took evidence from the Federal Asbestos Safety and Eradication Agency; the ACT Government; the NSW Heads of Asbestos Coordination Authorities on behalf of the NSW Government; Local Government NSW; Unions NSW; the Housing Industry Association and the Real Estate Institute of NSW.
- 1.10** On the second day the committee heard from the Queanbeyan City Council, the state's local government area understood to be worst affected by loose-fill asbestos insulation. The committee also took evidence from the Fluffy Owners and Residents' Action Group as well as a number of individuals and families who shared their often harrowing stories of living in properties contaminated by loose-fill asbestos.
- 1.11** A list of witnesses who appeared at the hearings is included at Appendix 2. Transcripts of the public hearings are available on the committee's website www.parliament.nsw.gov.au/asbestosinsulation. In addition, a list of all tabled documents from the hearings is listed in Appendix 4. A list of witnesses who provided answers to questions on notice during the hearings and/or supplementary questions is provided in Appendix 5.
- 1.12** The committee would like to thank those individuals who shared their experiences of living in or owning a Mr Fluffy home.

Site visit

- 1.13** On 17 November 2014, the committee undertook a site visit to Robson Environmental, a company that provides asbestos management services such as air monitoring and property remediation. The committee appreciates the time taken by Robson Environmental staff to meet with members and to explain the work that they do in trying to mitigate the risks posed by asbestos.

Report structure

- 1.14** Chapter 2 reproduces the personal accounts of six inquiry participants who have directly experienced the consequences of living in or owning a Mr Fluffy home. Their evidence, along with that of other similarly affected inquiry participants, played a key role in alerting the committee to the critical importance of developing an effective resolution of the problems encountered by people who live in or own a Mr Fluffy home in New South Wales.
- 1.15** Chapter 3 provides background information about loose-fill asbestos in New South Wales including the use of this material by the 'Mr Fluffy' company; the number of identified and estimated Mr Fluffy homes across the state and the NSW Government's response to this issue to date.

- 1.16** Chapter 4 explores the significant health, financial, legal, and emotional impacts that may stem from owning or having lived in a property with loose-fill asbestos insulation. It includes several recommendations designed to address these issues for affected homeowners or residents.
- 1.17** Chapter 5 examines the experience of the ACT in dealing with homes contaminated by loose-fill asbestos insulation. The chapter concludes by arguing that the only viable and enduring solution to address the problem of loose-fill asbestos in New South Wales is the eradication of all contaminated homes via a buy-back scheme based on that now operating in the ACT.

Chapter 2 The personal toll on individuals and families

People directly affected by loose-fill asbestos insulation have been exposed to or have suffered negative health, financial, emotional and social consequences. Through no fault of their own, they have had their lives turned upside down and many have expressed feelings of guilt, shame and fear. This is the human side to the tragedy of homes being contaminated by loose-fill asbestos insulation.

This chapter presents the stories of six inquiry participants, as told by them either through submissions or evidence to the inquiry. These people agreed for their stories to be made public, to inform others and to serve as a warning. The committee notes that in these stories while they have unwittingly found themselves in this predicament, these people have made the moral decision not to seek to pass the problem on to someone else.

Their stories, along with the evidence of other similarly affected inquiry participants, were key in impressing upon the committee the need to develop a viable and enduring solution to address the ongoing negative impacts of loose-fill asbestos insulation in New South Wales.

Matthew's first property purchase

After I graduated from university, I thought that the best thing I could do early in life would be having a property where I could call home. I worked tirelessly for two years and in July 2010 I finally saved up enough money to purchase a unit in Queanbeyan.

At the time of the purchase, I paid a local company to complete a building inspection. The inspection report came back fine apart from the roof which was not inspected due to the presence of asbestos. I followed this up with the real estate agent from whom I was buying the unit and he said that all houses of that age had asbestos. I then read advice from NSW Health which appeared to me to also suggest that asbestos was safe. After doing those two things, I thought it was okay to buy this place.

In June 2014, I received a letter from the Queanbeyan City Council re-issuing advice that I have got a Mr Fluffy unit. Suddenly I felt my stomach turning up in knots and starting to cramp – I just realised that the asbestos in my roof was not bonded asbestos but the friable one that was dangerous and deadly. It was not the first time I had heard about Mr Fluffy, but I never thought about connecting the dots between the asbestos in my roof and the asbestos of Mr Fluffy.

I rang my mum and she told me to sell the unit, but I did not feel that I could sell my problem to another person. I told my girlfriend and she asked me to never move back in. I now have a property that is totally worthless but I still have to pay for rates and other expenses. It makes me feel sick. I wake up at nights thinking about it. It has left me feeling that I can never recharge, like I cannot rest at all.

“I am also angry with the NSW Government's inaction”.
Matthew Rigter.

I think that the lawyers and real estate agents should and could have done more to assist me with my purchase of a property. Most people like myself do not understand the risks involved in living in an asbestos house and they do not understand the scientific jargon of ‘non-friable asbestos’.

Now I know what it means after days and days of research on it but at the time even if there was a notice placed on my place, I probably would not have picked up that it was Mr Fluffy. People involved in buying and selling properties like lawyers and real estate agents should be trained or at least informed of this issue and decode this information for home buyers so that no one else gets into my situation, where they buy a place not knowing what they are really getting.

I am angry with the advice of the NSW Government on this issue. When I read NSW Health advice in July, it said that the house you live in would be safe as long as you did not breathe in asbestos and you contain it. In my opinion, this carefully worded advice is basically designed to reduce the fears of residents and make people think that the house they live in or are about to purchase is safe, when clearly it is not the case. I am also angry with the NSW Government’s inaction.

“It makes me feel sick. I wake up at nights thinking about it. It has left me feeling that I can never recharge, like I cannot rest at all”.

Matthew Rigter.

When I request information from the ACT Government I am provided with information, which outlines the basis for their decision-making. Conversely, when I request information from the New South Wales government I get nothing. I think that the NSW Government’s response to this issue shows no empathy or thought for the people living in a fluffy house and that their response is totally inadequate considering the risks involved with loose-fill asbestos.³

Kieran and Petra’s feelings of dread, anger and guilt

Petra and I purchased our house in Queanbeyan in mid-2008. In June 2014, six years after the purchase, the Queanbeyan City council informed us that our house was known to contain loose-fill asbestos.

This was the first time we were made aware that we could have a ‘Mr Fluffy’ home, and as the weeks unfolded and the testing came back, the realisation kicked in that not only did we have an asset that was worth less than the mortgage we had on it, but that we and our friends could have been unknowingly affected by a class 1 carcinogen.

Since we moved into the house, we had renovated extensively and, with assistance from friends, entered the roof space on multiple occasions to install downlights, ceiling speakers, exhaust vents, skylights and a solar air-conditioner. In doing so bundles of very visible fibres (fibres so small that you can fit thousands of them on the head of a pin) floated down into the living areas.

We swept up what we could see and popped it in the bin, thinking no more of it than annoying renovation mess to be cleaned up. Similar bundles of fibres were often floating around the house either

³ Submission 30, Mr Matthew Rigter; Evidence, Mr Matthew Rigter, 14 November 2014, pp 81-88.

coming through the broken manhole in the laundry, the vents in the double brick wall or from the top of the closet which had a small hole in it to the ceiling and these are what we could see.

Now when we think back to when the light filtered in through the front room and lit up the small ‘dust’ particles floating in the air, our memories of these times turn from quiet solace to feelings of dread.

As time went on we investigated what living with and being exposed to Mr Fluffy asbestos actually meant what we are left with today is a combined feeling of fear, anger and guilt.

We feel guilty because there are so many people who could have been affected by the asbestos in our house. There were our friends who came to help us renovate out of the kindness of their hearts, and they, like us, crawled through our asbestos-filled roof space entirely unprotected, totally exposed.

Then there is the guilt for those who visited after these renovations, as they may also have been exposed due to us not being aware that the ceiling space should have been sealed and never accessed.

Our thoughts are also for the tenants who stayed at the house when we moved out two years ago, as well as the tradespersons who visited over the years. Guilt is a funny thing – despite the fact that we didn’t know, and couldn’t know, a guilt remains like a strong acidic feeling in the stomach whenever we think about it.

Then there is the anger, towards previous owners, the council, the NSW government – any of those individuals or organisations that knew our house was toxic and did nothing to help us minimise our risk of exposure.

“What we are left with today is a combined feeling of fear,
anger and guilt”.

Kieran Ferris.

Anger towards the NSW government, as the lack of requirement to notify homeowners as part of sale meant that we had no idea that we were purchasing a toxic property, nor how we could safely live there. And anger at the Queanbeyan Council who were aware of the fact that we owned a ‘Mr Fluffy’ property but did not inform us of this for six long years – years in which we unknowingly spread the asbestos fibres extensively throughout our house and living areas through renovation and general maintenance, combined with ignorance.

And then there’s the fear. The fear of not knowing if the cancers so associated with this poisonous material will affect us. Or worse, affect our family and friends whom we exposed because we did not, and could not have known. Unlike Fluffy houses in the ACT which underwent removal of much of the asbestos through a clean-up scheme, the NSW houses, for the most part, remain entirely ripe with these tiny fibres.

Our health risk is even greater than those in the ACT who are evacuated from their homes even as this inquiry progresses, with the chance of exposure amplified by the fact that due to the lack of appropriate NSW legislation, many of us don’t know it exists in our homes. This needs to stop. No one should have to go through this.

We don’t know whether we should pay the cost now to get the house repaired as per the current New South Wales advice, which we know to be only a poor band-aid solution without guaranteed effectiveness, or hold out in the hope that history won’t repeat itself again, and that the government

will realise that they should be protecting their citizens from this threat and help us out of this impossible situation.

We ask ourselves whether we could morally put the house on the market for rental knowing, that we could expose others to this toxic threat, but individuals can only suffer so much guilt and we think ours is maxed out. So our house will remain empty and a financial and emotional strain for now - at least we can then feel that in one way we are doing the right thing.

On top of this, we have to deal with a stigma that has been expressed by a number of members of the public that people with these houses are engaged in a ‘money-grabbing exercise’ by asking the government for help. As others have pointed out, this issue is not as visible as it would be if a bushfire ripped through our house – and we would be insured for that. Instead it’s a dirty topic that many people want to ignore.

We accept we now have an increased risk of a painful degrading death, but can’t risk this for others and are trying to do the right thing. All we can do is hope is for this committee to protect both current and prospective owners.

“This needs to stop. No one should have to go through this.”
Kieran Ferris.

Containment has been shown not to work, clean-ups have failed, lack of mandatory disclosure has resulted in exposure in every conceivable way, and putting the problem aside has merely delayed the impact 20 years, and expanded the long term health costs to the state and individuals.

The Real Estate Agents understand the risk, the Federal Asbestos Safety and Eradication Agency Head has stated the required solution, the ACT Government are acting and supporting residents – we just need to catch up over the border.

What we ask is that the political parties to get together with owners to discuss what the best possible situation is for them, and then to do what it can and must to remove this threat to our community for all.⁴

Luke’s message of solidarity from the ACT

In one sense I am the ring-in from the ACT. The purpose of my evidence is to show support for the members of Fluffy Owners and Residents’ Action Group (FORAG) who are from New South Wales and to share with you some insights into what it is like being an owner of one of these properties. I am a public servant. I reside in Fisher in the ACT. I am a husband and a father. I have two small children, 2½ years old, and eight weeks old, along with my wife. Four years ago I became a Mr Fluffy owner.

⁴ Submission 7, Mr Kieran Ferris; Evidence, Mr Kieran Ferris, 17 November 2014, pp 36-41; Evidence, Ms Petra Wiesner, Representative, Fluffy Owners and Residents’ Action Group, 17 November 2014, pp 14-28.

I am concerned for the economic, mental and physical wellbeing of the Mr Fluffy owners of New South Wales, particularly those owners who are resident in the border town of Queanbeyan and its surrounds.

I appear on behalf of the informal but highly active action group that was formed by the residents affected by Mr Fluffy asbestos earlier this year. In providing my evidence I will seek to represent the sentiment and the views of the 500-plus family groups represented by our action group. I cannot speak for every one of them.

We think it is a very welcome development that the Parliament of New South Wales established this joint select committee. A long-term solution to the management of loose-fill asbestos insulation in New South Wales, I am sure you will all agree, is very long overdue.

“There is bad stuff in these houses and it needs to go: It is as simple as that.”

Luke Brown.

There are two salient points I would like to highlight.

Firstly, the toxicity of loose-fill asbestos insulation and the risk to occupiers of buildings in and around Canberra has been known by governments for close to half a century. You would all agree, I am sure, that after 50 years it is wrong—simply wrong—that individuals can still purchase homes in this jurisdiction and in the jurisdiction across the border not knowing that that toxicity exists. The toxicity lurks like a predator throughout the very place that you and your family are supposed to feel most secure and safe.

I can assure you that living and owning a Mr Fluffy home is awful. It can be terrifying, depressing, and make your life a complete and utter misery.

It is without doubt that this toxicity has posed and continues to pose very real and serious risks to individuals. Children are possibly the most vulnerable. There are those who will tell you that the toxicity can be managed. Possibly in the short term, I suppose that might be the case although I am not necessarily convinced of that at all. In the long term, I am absolutely convinced that governments do not necessarily have the wherewithal to be able to continue to manage the risk for time immemorial.

Secondly, the point that I would like to highlight is that I do not think this is an insurmountable problem for the New South Wales government. While the scale of the problem in New South Wales is still to be officially identified, that should not prevent us proceeding down the path of finding a long-term solution. The consequence of the legacy of Mr Fluffy is that the market is rejecting Mr Fluffy properties. In one sense, that is the market-based solution to this but that means that the investments and the long-term ambitions of a large number of people, who have done nothing but work hard for their wellbeing, are being discarded.

Renters do not want to live in those houses—in many cases, they cannot live in them. To ensure that livelihoods, hard work and investments are protected, the only solution is for government intervention. A long-term solution to this problem is not necessarily complex. There is bad stuff in these houses and it needs to go: It is as simple as that.

It is simply about treating the Fluffy homeowners of Queanbeyan like I am sure all of you would expect to be treated in this situation.

“I can assure you that living and owning a Mr Fluffy home is awful. It can be terrifying, depressing, and make your life a complete and utter misery.”
Luke Brown.

I would like to emphasise the strong sentiment of the FORAG membership—that governments should seek to ensure that arbitrary lines on maps do not prevent all individuals affected by Mr Fluffy to be treated equally. While discussions between our group and the ACT Government continue over its recent announcements, FORAG would encourage the New South Wales Government to at least match the solution put forward by the ACT Government for its residents. To do otherwise would be dealing the first-rate residents of Queanbeyan a second-class solution to this problem.⁵

Decades of frustration for Michael

My wife and I are in the position that we have been through this 21 years ago, and here we are again. In our particular circumstance we purchased the home from my father. It was a family deal. I was talking extension; he was talking moving on, so it was one of those family deals that you did. Back in those days there was no building inspection as such, so there was no thought of anything of this particular nature on the horizon.

When the proverbial hit the fan in the ACT and then the talk started coming through, in our circumstance we had already been identified. I was elevated to the rank of deputy captain in what was then the New South Wales Fire Brigades, and as a result I needed a business line at home. Telstra was contracted to come in and put that line in, and to my understanding they had some form of reciprocal arrangement with council.

The first we knew, we had a council officer knocking at the door asking my wife if he could have access to grab a sample and basically they would come and report back. And as they say, the rest is history.

The frustration that I am feeling at the moment, I am frustrated because on top of all this we did what NSW Health said we had to do. So exhaust fans out, sealed up holes in roofs.

To be frank, and I had no choice in this matter, and it is good when you have good friends, but I needed to seal up three large vents leading directly from the rooms into the roof space. And what can I say? I had mates come over. What do you do? Dust masks help. None of those mates—they are still mates, by the way—have got recriminations. But we were terribly frustrated and with three young sons growing up we could not move anywhere.

As I said, we sealed up—everything was somewhat hunky-dory. In 2004 we mortgaged again with the specific aim of fully getting rid of the loose-fill asbestos insulation, which we did do. We had it done by professionals. We have our clearance certificate, et cetera. I have to be frank. I felt very safe. I do not know how I feel now. With all the notifications, I suppose coming via media, et cetera, when it all

⁵ Evidence, Mr Luke Brown, Representative, Fluffy Owners and Residents' Action Group, 17 November 2014, pp 14-15.

started again in recent times in the ACT, my wife, Maryanne, and I probably had our biggest blue because we are in business, it is our own, the house is underpinning the business.

I have eight staff. As I said, we have raised three sons in this house. I do not know I could say to you that I had any guilt trip about that. It was just a restriction. The biggest blue now is over our granddaughter. I have made jokes. It is bad enough getting between a mother and her sons but by God get between a granny and her granddaughter and she is on for young and old.

“I do not particularly want to leave [the house], but at the end of the day I do not see any other answer. Demolition is your answer.”
Michael Bresnik.

My biggest frustration and why I am here today. I have here a copy from NSW Health dated 6 July 1993 and amazing how in 2014 something similar, “There will be no cost to the home owner/occupier and any inconvenience will be minimal.” They are talking about the bloody testing, 1993, 2014. Newspaper reports, “Asbestos houses a time bomb”, 28 January 1993. It just goes on and on.

Basically, as I thought all those years ago, NSW Health should have been the lead in this. They abrogated their responsibility. I have never held Queanbeyan city council responsible for any of this because I do not think it is their responsibility, on my way of understanding. There are checks and balances with everything that you do in building a home. As I said, as far as I was concerned, up until this very point in time, 2004, at my expense we had it cleared.

So I am simply imploring to you is that I do not think you have any time left. I do not think you have a choice. To me, there is no answer other than demolition.

I do not particularly want to leave my family home, and I always brag and some of those in the know here, some of the local members, et cetera, know the street I live in. Very seldom do you see a for sale sign. Yet houses sell. It is a sought after street. I do not particularly want to leave it, but at the end of the day I do not see any other answer. Demolition is your answer.

In my case, I still have intentions of residing in Queanbeyan. Even if I accelerate any potential retirement plans I may have had, I cannot see that happening for a few more years. But my attitude would be, brutally, I am already out of pocket. Why should I go through it all over again? For mine, not only demolition, but if you will allow me to say that if I purchase a home in New South Wales, I think the stamp duty should be waived as well.

I would also like to point out that I, too, do not think WorkCover is the department, if that is the right word, for this type of thing. This is a public health issue. You would have seen steam coming out of my ears in recent times. Number one, we still have not had the test that we requested nearly three months later. The meeting that we had here with government representatives, some two or three months ago, was a total waste of time. I heard it all before and I was absolutely incredulous when the professor indicated they did not even have a protocol formed for testing. Now I receive some great big manila envelope. I am to tell everybody exactly the construction of my home, where vents are located, all that type of thing. I can do that easily enough but then to tell me that we will have seven days, 24-hour air monitoring.

If the testing is anything like what it was 21 years ago with two monitors going 24 hours a day in what I am envisaging will be in different strategic locations. You try to sleep at two o'clock in the morning with compressors going. Even though they are little ones, they are a bit like a fish tank. I just do not even see that as being the right way.

I remember questioning why NSW WorkCover is developing its own protocols when six minutes up the road not only had they developed them, they had already tested them and now they are already talking about demolition here we are having a gabfest about it all over again.⁶

Edwin asks how can this still be happening in 2014?

My name is Edwin Casey and I am 26 years old.⁷ I live with my partner aged 27 and our two children aged three and 11 months. For the last two years we had been renting in Canberra but decided earlier this year that we should try and purchase our own house as we tired of the disruption caused to the children by yearly leases.

I work in horticulture and I am also studying landscape architecture at the University of Canberra. My partner is as a receptionist and also works at weekends as a hairdresser to supplement our income. We just get by with help from family.

We starting looking at properties earlier in the year and in July we found this small two bedroom weatherboard. Whilst it was small, we anticipated that as the children grew we could extend it. The kitchen and shower area had been renovated in the last five years and it seemed a perfect place to start.

We undertook all the usual checks before entering into a sales contract, including having an inspection for asbestos and settled in August 2014. We moved in the end of August and have since enjoyed our quaint little slice of the country. Our house, although small has become our happy home. We have enjoyed the rural lifestyle, and are looking forward to raising our family in this community, and had hoped over time our small house could grow with our family.

On 12 November 2014 we received correspondence from WorkCover NSW notifying us of a confirmed presence of loose-fill asbestos. Understandably we were shocked, and left asking, how can in 2014, with all the information regarding this horrible product, such a mistake like this occur.

“Unlike the ACT, this house was able to exchange hands with potentially life threatening information concealed, completely within the rights of the owners, and the law”.

Edwin Casey.

When the private asbestos inspection took place, the inspector only looked in the roof cavity, or that part that could be accessed without removing the tin roof and saw insulation bats and although no samples were taken he reassured us that he could see no evidence of loose-fill asbestos. We had also

⁶ Evidence, Mr Michael Bresnik, 17 November 2014, pp 41-42.

⁷ Further to Mr Casey's submission, his experience was detailed in the following article: Emma MacDonald, 15 December 2014, accessed 15 December 2014, 'Bungendore family face ruin after their horrific Fluffy discovery', *Canberra Times*, <http://www.canberratimes.com.au/act-news/bungendore-family-face-ruin-after-their-horrific-fluffy-discovery-20141214-123xcg.html>.

thoroughly inspected the council records of the block and were confident we were free of loose-fill asbestos.

On the following morning of 13 November 2014, I phoned WorkCover NSW and spoke with an officer from the Heads of Asbestos Coordination Authorities Secretariat regarding the letter they had sent us.

I explained that we had newly purchased the property and had undertaken an asbestos inspection prior to exchanging contracts. I asked the officer if the source of ‘confirmation’ of loose-fill asbestos was from the records of an installer of the product. In response she explained that their information would have likely come from local council records.

I proceeded to call my local council, Palerang, seeking any information that they may have provided to WorkCover NSW and to ascertain whether they were aware of the presence of loose-fill asbestos in our property.

I spoke with the Health and Building Surveyor. He explained that in 1999 Queanbeyan City Council carried out a sampling program – which spanned the Queanbeyan area – where dust samples were volunteered and tested for loose-fill asbestos.

He explained that he was involved in that program having previously worked for the Queanbeyan city council and advised that as far as he was aware only one house tested positive within the Palerang shire. He noted that from memory it was on our street. I asked him whether he could check records at Palerang and Queanbeyan to see if he could find any more information regarding the positively tested property. He wasn’t able to confirm whether it was our property and he took my details and said he would look into it and call back.

“Understandably we were shocked, and left asking, how can in 2014, with all the information regarding this horrible product, such a mistake like this occur”
Edwin Casey.

On 14 November 2014, I received a phone call from Palerang Council’s Director of Planning and Environment. He reiterated the story told by the Health and Building Surveyor and also confirmed that the house in question was ours. He also explained that in June 2014 Palerang had received correspondence from the Queanbeyan city council notifying them that this property had previously tested positive.

We are now waiting upon NSW WorkCover investigations, including air testing and work being done to examine whether this toxic material is in the walls or sub frame.

From my knowledge of the circumstances in the ACT no one can ever give a guarantee that a house that has had loose-fill asbestos will ever be safe and as a consequence all the houses in Canberra are being demolished. I am yet to be told the date of the NSW WorkCover inspection and we have decided to organize our own and pay for it.

On 19 November 2014 we moved out of our house and are staying with family. We have done so on the advice of our new asbestos contractor and will remain out of the home until it has been tested.

With two small children in a bedroom with exposed wall vents we are not prepared to take any risks. Whilst we have moved in with family, this has been at our own cost, as unlike the ACT, there is no support for people that have had to move out. This has caused a significant amount of stress for our family, particularly our young children.

Even if testing informs us that there are no fibres in the air we will never be able to renovate or sell this house. We could not do morally what has been done to us even if we could and we expect that the NSW government will move quickly to make such action illegal.

If we were to follow the NSW WorkCover advice, then we would have to spend significant time and money to “make it safe”, which is a farce considering we have just purchased a property that should be a liveable home. I see that across the border in ACT expert advice is that these houses be knocked down because they cannot be safely managed. If the test comes back positive, I believe there is no alternate option but to knock our house down.

Throughout the purchase process, and in the subsequent months we have lived in the property, no information has been provided to us regarding the danger of our property. Unlike the ACT, this house was able to exchange hands with potentially life threatening information concealed, completely within the rights of the owners, and the law.

We are clearly shocked and upset that in 2014 with everything that is known about this problem that the system in New South Wales could allow anyone to be in our situation of buying a house, known by many in the government to be contaminated.

We hope that a strong response is given to the problem so that others don't have their financial security and health threatened like we have. This problem needs to be solved once and for all now.⁸

⁸ Submission 36, Mr Edwin Casey, pp 2-4.

Chapter 3 Loose-fill asbestos insulation in New South Wales

This chapter considers a number of issues relevant to loose-fill asbestos insulation in New South Wales. It begins by providing an introduction to asbestos and, in particular, its use as a loose-fill insulation product by a company known as ‘Mr Fluffy’ between 1968 and 1979 in Canberra and surrounding areas within New South Wales.

The chapter examines the number of New South Wales homes that have identified as being affected by loose-fill asbestos insulation and what is being done to better understand the state-wide extent of the problem. Next, the chapter documents the actions taken by relevant authorities in response to the identification of contaminated homes in Queanbeyan. It concludes by considering the voluntary testing scheme currently being provided by WorkCover NSW.

The nature and use of loose-fill asbestos

3.1 This section begins by looking at what asbestos is with a particular focus given to loose-fill asbestos. It then documents the use of loose-fill asbestos as an insulation product by Mr Fluffy.

What is asbestos?

3.2 Asbestos is the term used to describe a number of dangerous fibrous silicate minerals. There are two groups of asbestos:

- the serpentine group which contains chrysotile, commonly known as white asbestos
- the amphibole group which contains amosite (brown asbestos), crocidolite (blue asbestos), and other less common types, such as tremolite, actinolite and anthophyllite.⁹

3.3 Prior to 1987, asbestos was a commonly used material, mostly in the construction industry. It was mixed with cement to form products such as fibro sheets, pipes and gutters, under floor packing and insulation material. Asbestos was also used in brake linings in motor vehicles and in gaskets for various appliances.¹⁰

3.4 The Heads of Asbestos Coordination Authorities (HACA),¹¹ established by the NSW Government in August 2011 to coordinate the activities of statutory authorities regarding all aspects of asbestos information, assistance, compliance and enforcement, advised that most

⁹ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 4.

¹⁰ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 4.

¹¹ The HACA is chaired by the Chief Executive Officer, WorkCover NSW with representatives from: Department of Trade and Investment Regional Infrastructure and Services, Department of Planning and Infrastructure, Environment Protection Authority, Local Government NSW, Ministry of Health, Ministry for Police and Emergency Services, Office of Local Government, and the Workers’ Compensation Dust Diseases Board.

residential properties built or renovated before 1987 are likely to contain some form of asbestos.¹²

- 3.5 Due to its significant link to health risks, the manufacture and supply of all asbestos containing materials has been banned in Australia since 31 December 2003.¹³ The import of asbestos-containing materials is also controlled under the Customs (Prohibited Imports) Regulations 1956 (Cth). Importation of a prohibited import is an offence under the *Customs Act 1901 (Cth)*, and the obligation is on importers to ensure that the goods they are importing comply with Australian, state and territory legislative requirements.¹⁴

Loose-fill asbestos insulation and installation by ‘Mr Fluffy’

- 3.6 Loose-fill asbestos insulation is raw asbestos that has been crushed into a fine state to use for ceiling insulation. Due to its fibrous nature, it is easy to disturb and can easily become airborne, thereby posing significant health risks.¹⁵
- 3.7 ‘Mr Fluffy’ was the name used by D. Jansen & Co. Pty Ltd and its successor firms who installed loose-fill asbestos insulation between 1968 and 1979 in Canberra and surrounding regions, including areas within New South Wales.¹⁶ Mr Jansen also traded as ‘Asbestosfluff Insulation’ and J&H Insulation, but was most commonly known as Mr Fluffy.¹⁷
- 3.8 Although it is well established that Mr Fluffy used asbestos as a form of loose-fill insulation, there are limited records to indicate the extent of his business activities and where insulation was installed, as explained by Mr Peter Tighe, Chief Executive Officer of the Asbestos Safety and Eradication Agency:

Dirk Jansen, who was the owner and picked up the name as Mr Fluffy, actually marketed it as Asbesto-Fluff. It was a product imported from South Africa. There is some evidence that it came via New Zealand because it was brought in at a time when we had some embargoes in relation to South African products because it was at the time of the apartheid regime...Mr Jansen was a small business owner with a relatively small crew and very little infrastructure. Though it is not unusual in the construction industry, a lot of these jobs probably were cash only where there was no record of invoices, et cetera. I know the Australian Capital Territory has sought to pull as much information as it can about the operations of Dirk Jansen’s business but the records are just not there.¹⁸

¹² Submission 28, NSW Heads of Asbestos Coordination Authorities, p 6.

¹³ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 6.

¹⁴ NSW Government, *The NSW State-wide Asbestos Plan: A plan to secure the safe management of asbestos in NSW* (2013) p 5.

¹⁵ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 10.

¹⁶ Submission 17, ACT Government, Attachment 1, Asbestos Response Taskforce, *Long Term Management of Loose-fill Asbestos Insulation in Canberra Homes* (2014) p 1.

¹⁷ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 15.

¹⁸ Evidence, Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, 14 November 2014, p 8.

- 3.9** In addition to Mr Fluffy being installed in homes by contractors, there have also been reports that loose-fill asbestos insulation was provided in bags so that people could install the product themselves at home. Ms Amy Lovesey, a project officer with Local Government NSW, the state's peak body for local councils, confirmed that she has heard of a case where a person had purchased a bag of loose-fill asbestos insulation and spread it in the roof space themselves.¹⁹
- 3.10** Mr Shay Deguara, an Industrial Officer with the Safety, Workers Compensation and Industrial Relations division of Unions NSW, also stated that there were reports that people, including public servants from Canberra, had installed loose-fill asbestos insulation themselves in holiday houses on the south coast of New South Wales.²⁰
- 3.11** It is important to point out that non-asbestos loose-fill insulation continues to be widely used and is very different to the product used by Mr Fluffy. The Australian Capital Territory (the ACT) Government has acknowledged that consumers may be confused given non-asbestos loose-fill insulation looks very similar to the asbestos loose-fill product.²¹
- 3.12** According to the ACT Government's Asbestos Response Taskforce, the loose-fill asbestos insulation used by Mr Fluffy was comprised mostly of pure loose amosite asbestos, and in a small number of cases, crocidolite.²² Both forms pose serious health risks, although the ACT Government stated that crocidolite poses 'an even greater risk to health than amosite'.²³
- 3.13** During its business years, Mr Fluffy advertised with the promise of 'sure comfort and fuel savings' to homeowners. The insulation was also claimed to be 'CSIRO Tested and Approved' as 'the perfect thermal insulating material'.²⁴
- 3.14** In their submission, Maurice Blackburn Lawyers, a legal firm that has represented victims of dust diseases and has also been involved with Mr Fluffy issues in the ACT, claimed that that there was one Sydney based contractor who also installed loose-fill asbestos insulation in Sydney homes from as far back as 1955 to an unknown date. They noted that this company was known as 'Bowers Asphalt' and was located in Rozelle.²⁵ They also stated that one supplier of loose-fill asbestos insulation used by D. Jansen & Co was James Hardie & Co Pty Ltd.²⁶

¹⁹ Evidence, Ms Amy Lovesey, Project Manager, Asbestos Policy, Local Government NSW, 14 November 2014, p 48.

²⁰ Evidence, Ms Lovesey, 14 November 2014, p 48.

²¹ Submission 17, ACT Government, Attachment 1, Asbestos Response Taskforce, *Long Term Management of Loose-fill Asbestos Insulation in Canberra Homes* (2014) p 15.

²² Submission 17, ACT Government, Attachment 2, Asbestos Response Taskforce, *The ACT Government's preferred way forward on loose-fill asbestos: overview* (2014) p 2.

²³ Submission 17, ACT Government, Attachment 1, Asbestos Response Taskforce, *Long Term Management of Loose-fill Asbestos Insulation in Canberra Homes* (2014) p 3.

²⁴ Submission 17, ACT Government, Attachment 1, Asbestos Response Taskforce, *Long Term Management of Loose-fill Asbestos Insulation in Canberra Homes* (2014) p 1.

²⁵ Submission 34, Maurice Blackburn Lawyers, p 2.

²⁶ Submission 34, Maurice Blackburn Lawyers, p 3.

Number of affected homes in New South Wales

- 3.15** While the number of homes affected by loose-fill asbestos insulation has largely been determined in the ACT, the precise number of New South Wales homes has not been established.
- 3.16** This section details both the identified and estimated number of New South Wales homes contaminated by loose-fill asbestos insulation. As detailed below there is a clear discrepancy between the identified and estimated number of affected homes.
- 3.17** The section also discusses the independent forensic investigation being undertaken by the auditing firm PricewaterhouseCoopers which has been commissioned by the NSW Government to provide a comprehensive analysis on the potential location and number of homes contaminated by loose-fill asbestos insulation.²⁷

Identified number of affected homes

- 3.18** The HACA advised that, to date, 22 premises including an apartment block of 38 units have been identified as containing loose-fill asbestos insulation in New South Wales.²⁸ Of these premises 15 are located in the Queanbeyan City Council area, including the apartment block of 38 units.²⁹ The Queanbeyan City Council advised that this means there are 52 identified contaminated residences in the Queanbeyan local government area.³⁰ One property from each of the seven following areas is also known to be affected:
- Yass Valley Shire Council
 - Palerang Council
 - Orange Council
 - Lithgow Council
 - Bankstown Council
 - Parramatta Council
 - Manly Council.³¹
- 3.19** When the Queanbeyan figure of 52 is added to the seven properties identified in other areas, there are 59 homes state-wide that have been identified as being contaminated by loose-fill asbestos insulation.

²⁷ Correspondence from the Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research, to the committee, 8 December 2014.

²⁸ Correspondence from Ms Karyn Davidson, Secretariat Officer, Heads of Asbestos Coordination Authorities WorkCover NSW, to the committee, 8 December 2014.

²⁹ Correspondence from Ms Karyn Davidson, Secretariat Officer, Heads of Asbestos Coordination Authorities WorkCover NSW, to the committee, 8 December 2014. Note the Queanbeyan figure of 15 provided by HACA on 8 December 2014, differs slightly to that in the PricewaterhouseCoopers report which was up-to-date as at 10 November 2014 and had a Queanbeyan figure of 14.

³⁰ Submission 22, Queanbeyan City Council, p 9.

³¹ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 16.

3.20 Of those identified homes in New South Wales, five have been remediated and three have been demolished, as shown below:

- Queanbeyan: two remediated and one demolished
- Orange: one demolished
- Lithgow: one remediated
- Bankstown: one demolished
- Parramatta: one remediated
- Manly: one remediated.³²

3.21 The above numbers show that Queanbeyan is the area within New South Wales currently understood to be worst affected by loose-fill asbestos insulation. The actions taken by the Queanbeyan City Council in response to the issue are considered later in the chapter.

Estimated number of affected homes

3.22 The committee also received evidence which suggested that the estimated number of affected homes is much larger than the number of identified Mr Fluffy homes.

3.23 According to Mr Tighe, from the Asbestos Safety and Eradication Agency, the number of homes contaminated by loose-fill asbestos insulation in New South Wales could be in the hundreds. He also advised that it would be difficult to quantify the exact number of contaminated homes:

I would be surprised if it is not in the hundreds because of the fact that the general built population around where Mr Fluffy was marketing, he is not going to stop when he hits Queanbeyan, if it is going to be another fertile area—if he could sell at Yass or if he could sell down on the South Coast...I understand that the Heads of Asbestos Coordinating Authorities has been able to glean some information from some of the areas where they suspect he may have been operating in some of the local government areas and specific warnings have been put out there, but quantification is really a difficulty at the present time.³³

3.24 Local Government NSW presented a table (replicated below in table 1) which estimated that between 230 and 316 homes in New South Wales could be contaminated by loose-fill asbestos insulation.³⁴ The table is based on data provided to Local Government NSW by the Environmental Health Branch of the NSW Ministry of Health on 14 August 2014.³⁵

³² Correspondence from Ms Karyn Davidson, Secretariat Officer, Heads of Asbestos Coordination Authorities WorkCover NSW, to the committee, 8 December 2014.

³³ Evidence, Mr Tighe, 14 November 2014, p 11.

³⁴ Submission 13, Local Government NSW, p 5.

³⁵ Submission 13, Local Government NSW, p 5.

Table 1 Estimate of the number of residential properties affected by loose-fill asbestos insulation in New South Wales

Area	Number of homes
Albury, Tumbarumba, Wagga Wagga	100-140
Berrigan	60
Cooma	Zero
Goulburn	Zero
Lithgow	Few
Queanbeyan	60-100
Sydney	Few; 10
Yass	Few
Total	230-316

Source: Submission 13, Local Government NSW, p 5.

3.25 On 18 November 2014, the committee wrote to the Hon Jillian Skinner MP, Minister for Health, and Minister for Medical Research, to ascertain whether the NSW Ministry of Health had in its possession records which document any incidence of loose-fill asbestos insulation in New South Wales homes and to request that any such information be passed onto the committee.³⁶

3.26 A response from the Minister was received on 8 December 2014. It did not provide the committee with any detail concerning the number of New South Wales homes contaminated by loose-fill asbestos insulation (either identified or estimated). The letter did, however, note that the NSW Ministry of Health has made documents available to the HACA to assist with its work in attempting to identify the number and location of homes affected by loose-fill asbestos insulation. The letter also advised that WorkCover NSW would be best placed to provide the committee with detailed data given its role in coordinating the PricewaterhouseCoopers forensic investigation.³⁷

The PricewaterhouseCoopers investigation

3.27 In October 2014, the HACA commissioned PricewaterhouseCoopers to undertake an independent forensic investigation of relevant records to determine the extent of loose-fill asbestos insulation in homes in New South Wales.³⁸

3.28 The records being investigated by PricewaterhouseCoopers have been obtained by WorkCover NSW (the agency responsible for chairing HACA and providing secretariat support) through servicing notices, as provided for by section 155 of the *Work Health and*

³⁶ Correspondence from the committee to the Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research, 18 November 2014.

³⁷ Correspondence from the Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research, to the committee, 8 December 2014.

³⁸ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 14.

Safety Act 2011 (NSW), to more than 13 government agencies and local councils requiring them to provide all of their records concerning loose-fill asbestos insulation.³⁹

3.29 Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW, advised the committee that PricewaterhouseCoopers ‘are looking at what [Mr Fluffy] could have reasonably done over that 12-year period and how many houses he may have been able to install the material in’.⁴⁰

3.30 Mr Dunphy also advised that HACA has been liaising with the Australian Government and Asbestos Safety and Eradication Agency to gather further information about Mr Fluffy’s operations. He did however, stress that the process of obtaining relevant documents was difficult, and stated that at this point key materials including financial records and operational logistics had not been uncovered:

We do not have any of his financials, and that is what we are keen to get. We do not have any of his operational logistics, which is also really useful in terms of trying to work out what it is capable of doing. We have sourced that by interviewing some of his former workers, but we are also seeking that information from the Australian Capital Territory Government. We are yet to get that, but it is something we have asked them for. They obviously also have told us that there are not very many records around the operation of [Mr Fluffy], but they are happy and they are cooperating with us in terms of providing that information.⁴¹

3.31 Having not been provided with NSW Ministry of Health records which document any incidence of loose-fill asbestos insulation in New South Wales, on 8 December 2014 the committee wrote to WorkCover NSW to request an update on the PricewaterhouseCoopers investigation. The committee also requested that WorkCover NSW make available any data concerning the number and location of New South Wales properties affected by loose-fill asbestos insulation.⁴²

3.32 On 11 December 2014, WorkCover NSW provided the committee with a copy of the PricewaterhouseCoopers interim report (the interim report), which contains indicative data concerning the number of New South Wales properties that may contain loose-fill asbestos insulation.⁴³

3.33 The interim report focused on 26 local government areas (LGAs) identified as potentially having residential properties contaminated by loose-fill asbestos insulation. The original scope

³⁹ Evidence, Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW, 14 November 2014, p 29.

⁴⁰ Evidence, Mr Dunphy, 14 November 2014, p 29.

⁴¹ Evidence, Mr Dunphy, 14 November 2014, p 34.

⁴² Correspondence from the committee to Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW, 8 December 2014.

⁴³ Correspondence from Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW to the committee, enclosing, PricewaterhouseCoopers, ‘Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW’, 11 December 2014.

of the forensic investigation had identified 20 potential LGAs but this was increased to 26 LGAs⁴⁴ following the conduct of preliminary enquiries, which included:

- company searches for Mr Fluffy entities
- searches of the internet and media publications
- requesting and reviewing information provided by LGAs and other New South Wales government agencies
- discussions with relevant stakeholders including residents, council members, and other individuals with information about Mr Fluffy.⁴⁵

3.34 The interim report acknowledged the uncertainty concerning the precise cessation of Mr Fluffy's operations. It also noted that the materials used by Mr Fluffy, namely crocidolite and amosite asbestos were banned nationally in 1984, meaning that properties built prior to this period are at risk of containing loose-fill asbestos insulation. This led the interim report to focus its quantification at estimating the number of affected residential properties that were built prior to 1984, which still remain today.⁴⁶

3.35 The interim report applied one primary model, and two secondary models to cross-check the data derived from the primary model. Each model focused on different input data to estimate the number of New South Wales properties that may contain loose-fill asbestos insulation.⁴⁷ The models used are outlined below:

- **The proximity model** – which was the primary model – used geographical distance between the ACT and identified LGAs to calculate potential exposure to Mr Fluffy. An estimate of the number of properties that may contain loose-fill asbestos insulation in each identified LGA was calculated by applying an exposure rate that reflects the proportion of properties likely to be affected. The exposure rate was based on the proportion of affected ACT properties which is 1.52 per cent. A maximum exposure rate of 1.52 per cent was applied to LGAs within close proximity to the ACT. A lower exposure rate was applied to LGAs that are further away from the ACT, with the minimum rate being 0.05 per cent.⁴⁸

⁴⁴ The 26 local government areas captured by the forensic investigation are as follows: Albury City Council; Bankstown City Council; Bega Valley Council; Berrigan Shire Council; Bombala Shire Council; Boorowa Council; City of Lithgow Council; Cooma-Monaro Council; Eurobodalla Shire Council; Goulburn Mulwaree Council; Greater Hume Shire Council; Greater Queanbeyan City Council; Ku-Ring-Gai Council; Manly Council; North Sydney Council; Orange City Council; Palerang Council; Parramatta Council; Shire of Young; Snowy River Shire Council; The Hills Shire Council; Tumbarumba Shire Council; Upper Lachlan Shire Council; WaggaWagga City Council; Warringah Council; Yass Valley Council.

⁴⁵ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 1.

⁴⁶ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 12.

⁴⁷ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 1.

⁴⁸ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 2 and pp 14-20.

- **The capacity model** estimates the number of residential properties affected by considering the capacity of Mr Fluffy to have installed loose-fill insulation over a number of years. Its key aim is to form a view on the feasible volume of work that Mr Fluffy had the capacity to achieve over the period of his operations.⁴⁹
- **The financial records model** sought to examine Mr Fluffy's financials to ascertain the scope of his operation. At the time of the interim report's publication insufficient information had been found to provide for an estimate based on financial records.⁵⁰

3.36 The models also applied three estimate types (high, mid and low) to account for different assumptions and the considerable uncertainty concerning Mr Fluffy's operations.⁵¹

3.37 Table 2 shows high, medium and low estimates regarding the number of New South Wales properties that may contain loose-fill asbestos insulation derived from the proximity and capacity models.

Table 2 Indicative data concerning the number of New South Wales properties that may contain loose-fill asbestos insulation

Modelling approach	High	Mid	Low
Proximity model	1,110	590	372
Capacity model	5,376	2,164	1,360

PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 2.

3.38 The interim report notes that its mid-point estimate is 590 affected properties, this being derived from the proximity model. It also notes that the mid-point estimate derived from the capacity model is substantially higher at 2,164 affected properties. Acknowledging the gap between the two figures, the interim report stated that this highlights the difficulty in quantifying Mr Fluffy's operations and demonstrates the need for further investigation. However, it was also argued that the data serves as useful starting point in helping the NSW Government develop an appropriate policy response:

Firstly this highlights the degree of uncertainty of estimating the number of affected properties, but secondly indicates that further investigations are required to narrow the gap and seek to reconcile the differences... The approaches we have adopted in this report are based on uncorroborated evidence and as such our estimates contain a significant degree of uncertainty. We do believe that the results of our estimation will enable the NSW Government to consider policy decisions [regarding] the next steps...⁵²

⁴⁹ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 2 and p 23.

⁵⁰ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 2 and p 25.

⁵¹ PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 1.

⁵² PricewaterhouseCoopers, 'Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW', p 3.

- 3.39** The committee sought comment from HACA regarding the figures contained in the interim report and the date the final report will be ready. HACA provided the following comment:

PricewaterhouseCoopers (PwC) has been commissioned to quantify the number of properties in New South Wales. PwC has provided preliminary advice, which will be further refined for its final report due by 30 April 2015, once there are more results from the free ceiling sample service. There is no reliable evidence about the amount of work that the Mr Fluffy contractor carried out and there is no evidence to suggest the Mr Fluffy contractor conducted more work outside the ACT. In 1987, Mr Jansen (the Mr Fluffy contractor) advised he carried out the bulk of his work in the ACT (PwC report, page 27). To date only 19 houses and one block of 38 units have been positively identified.⁵³

Committee comment

- 3.40** The committee agrees that the estimates contained in the PricewaterhouseCoopers report are useful in enabling the NSW Government, as well as relevant stakeholders, to better understand the state-wide extent of the problem posed by loose-fill asbestos insulation, notwithstanding that the figures are indicative and subject to a degree of uncertainty. It is important that the further avenues of investigation proposed by PricewaterhouseCoopers are pursued and that additional findings including the final report, which is expected to be completed in April 2015, are made publicly available. The committee does not believe that the actions contained in this report should be delayed until the April 2015 report is made public. It is therefore recommended that the NSW Government publish the final report of the PricewaterhouseCoopers forensic investigation concerning the number of New South Wales properties that may contain loose-fill asbestos insulation, when it is completed in April 2015.

Recommendation 1

That the NSW Government publish the final report of the PricewaterhouseCoopers forensic investigation concerning the number of New South Wales properties that may contain loose-fill asbestos insulation, when it is completed in April 2015.

Loose-fill asbestos insulation in Queanbeyan

- 3.41** The Queanbeyan local government area is the New South Wales locality known to be worst affected by loose-fill asbestos insulation.
- 3.42** This section documents the actions taken by both the Queanbeyan City Council and the NSW Government in response to the presence of loose-fill asbestos insulation in Queanbeyan homes.

⁵³ Correspondence from Ms Clemency Morony, Snr Manager – Government and Ministerial Services Unit, Safety, Return to Work and Support, WorkCover NSW, to the committee, 15 December 2014.

Queanbeyan's exclusion from loose-fill asbestos insulation removal

- 3.43** The issue of loose-fill asbestos insulation in Queanbeyan homes dates back to the late 1980s when the Commonwealth Government funded a visible and accessible loose-fill asbestos insulation removal program (the removal program) in the ACT.⁵⁴ The removal program and other components of the ACT response to the issue of loose-fill asbestos insulation is considered in further detail in chapter 5.
- 3.44** Given its close proximity to the ACT concerns were raised that Queanbeyan homes, as well as some properties on the New South Wales South Coast, might also be affected by loose-fill asbestos insulation.⁵⁵
- 3.45** The Queanbeyan City Council advised the committee that while over \$100 million was spent on the ACT removal program, Queanbeyan residents across the border in New South Wales were excluded.⁵⁶
- 3.46** According to Maurice Blackburn Lawyers, at the time the ACT removal program was being undertaken, the NSW Government was invited by the Commonwealth Government to assist with removing loose-fill asbestos insulation from affected homes in Queanbeyan and the New South Wales South Coast. The invitation however, was declined.⁵⁷
- 3.47** Maurice Blackburn Lawyers further stated it was their understanding from media reports at the time that the NSW Government also declined to investigate the extent to which Mr Fluffy had been installed in homes throughout Queanbeyan and its surrounding areas.⁵⁸
- 3.48** The Queanbeyan City Council argued that the apparent lack of NSW government involvement in addressing the problem of loose-fill asbestos insulation has left it to grapple with the issue in virtual isolation for over 25 years.⁵⁹
- 3.49** Mr Tim Overall, Mayor of Queanbeyan City Council, stated that the Council has failed in its attempt to garner support from relevant state and federal authorities in seeking to address the issue:

Queanbeyan City Council has been attempting to deal with the issue of loose Fluffy asbestos insulation in homes for almost three decades... Council has made numerous submissions to Federal and State Ministers, Prime Ministers and Premiers up to 2013 seeking intervention and assistance, but it has all been to no avail.⁶⁰

⁵⁴ Submission 22, Queanbeyan City Council, p 4.

⁵⁵ Submission 22, Queanbeyan City Council, p 4.

⁵⁶ Submission 22, Queanbeyan City Council, p 4.

⁵⁷ Submission 34, Maurice Blackburn Lawyers, p 6.

⁵⁸ Submission 34, Maurice Blackburn Lawyers, p 6.

⁵⁹ Submission 22, Queanbeyan City Council, p 4.

⁶⁰ Evidence, Mr Tim Overall, Mayor, Queanbeyan City Council, 17 November 2014, pp 1-2.

Actions taken by the Queanbeyan City Council

- 3.50** In 1991, the Council provided free testing of insulation in homes in the local government area to determine whether or not they contained asbestos material. Samples were submitted to Council and sent to the NSW Department of Health for positive identification. Where a sample proved positive for asbestos, the owners were advised, in accordance with guidelines from the NSW Department of Health, that the roof space and wall cavities could be sealed to minimise the risks. Seven premises were identified.⁶¹
- 3.51** In 1995 and 1996, a further Asbestos Insulation Identification Program was undertaken by the Council, in which 5,000 letters were sent to the owners of houses built before 1980. At that time, 272 premises were inspected but only an additional two homes were identified as being affected. This took the total number of homes affected in the Queanbeyan area to nine.⁶²
- 3.52** Mr Michael Thompson, Group Manager, Sustainability and Better Living, Queanbeyan City Council, informed the committee that council also maintains a register of contaminated homes. He explained that the register has details of 300 premises that have been tested, with only 15 being recorded as positive as of November 2014. This includes the before noted multi-unit development of 38 and a Department of Housing residence.⁶³ Mr Thompson also informed the committee that to date approximately 350 out of 5,000 potentially affected homes in Queanbeyan have been tested.⁶⁴
- 3.53** Despite council being aware of a number of homes having been contaminated by loose-fill asbestos insulation, the committee was advised that some of these homes have been traded several times.⁶⁵ Issues concerning the legal liability of councils to disclose to residents the presence of loose-fill asbestos insulation are considered in further detail in chapter 4.

The voluntary testing scheme

- 3.54** This section considers the current voluntary testing scheme being offered to residents in 26 local government areas within New South Wales.

Operation of the scheme and locations it is being offered

- 3.55** The HACA is currently offering a free voluntary testing service in 26 local government areas to those who have homes built prior to 1980.

⁶¹ Submission 22, Queanbeyan City Council, p 5 and Attachment 1, p 1.

⁶² Submission 22, Queanbeyan City Council, p 6.

⁶³ Evidence, Mr Michael Thompson, Group Manager, Sustainability and Better Living, Queanbeyan City Council, 17 November 2014, p 9.

⁶⁴ Evidence, Mr Thompson, 17 November 2014, p 2

⁶⁵ Evidence, Ms Petra Wiesner, Representative, Fluffy Owners and Residents' Action Group, 17 November 2014, p 20.

3.56 The areas selected are based on reference material from NSW Ministry of Health records and information provided by the ACT Government which indicated that Mr Fluffy may have worked or transported loose-fill asbestos into these regions.⁶⁶

3.57 Mr Dunphy from WorkCover NSW explained the scope of the voluntary testing scheme:

Anywhere there was any anecdotal information or even a suggestion in a media report that there may have been Mr Fluffy or loose-fill insulation used we have included those areas. Where we have identified a positive find in terms of records we have included those too. We have tried to be as expansive as possible and not rule out areas but at some stage some of these areas probably will be ruled out. But at this stage we wanted to make sure that people were given the opportunity to have access to the service and that we had the broadest range and the biggest coverage of the most credible areas where it is likely to have occurred.⁶⁷

3.58 The testing and assessment service will be available for a 12-month period. For those homes that are tested and found to have loose-fill asbestos insulation, the owners will be provided with a free independent technical assessment to 'advise on and confirm the adequacy of risk controls' at the property.⁶⁸

3.59 Table 2 shows the council areas in which testing is available and the number of requests received to date.

Table 3 Requests for loose-fill asbestos insulation testing - as at 27 October 2014

Council region	Number of requests	Council region	Number of requests
Wagga Wagga City Council	96	Warringah Council	12
Queanbeyan City Council	70	Orange City Council	10
Ku-ring-gai Shire Council	61	Bankstown City Council	10
Yass Valley Shire Council	44	Bombala Council	7
Cooma Monaro Shire Council	32	Boorowa Council	5
The Hills Shire Council	32	Upper Lachlan Shire Council	5
North Sydney Council	22	Berrigan Shire Council	4
Bega Valley Shire Council	16	Albury City Council	2

⁶⁶ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 15.

⁶⁷ Evidence, Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW, 14 November 2014, p 29.

⁶⁸ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 14.

Council region	Number of requests	Council region	Number of requests
Young Shire Council	16	Greater Hume Shire Council	1
Goulburn Mulwaree Council	16	Lithgow City Council	1
Palerang Council	14	Tumbarumba Shire Council	0
Snowy River Shire Council	13	Manly Council	0
Eurobodalla Shire Council	12	Parramatta City Council	0
		Total	502

Source: Submission 28, NSW Heads of Asbestos Coordination Authorities, p 16

3.60 In later advice to the committee the HACA noted that as at 4 December 2014:

- 910 registrations for the voluntary testing scheme have been made
- 332 samples from ceilings have been analysed with all samples determined not to contain asbestos
- 2066 inquiries have been made to WorkCover’s 13 10 50 call centre.⁶⁹

3.61 In addition to the free testing service, HACA has also provided information sessions on loose-fill asbestos insulation for council staff in all of the potentially affected 26 local government areas.⁷⁰

Concerns about the voluntary testing scheme

3.62 A number of inquiry participants raised concerns about the operation of the voluntary testing scheme. For example, Yass Valley Council argued that some homeowners are not aware of the scheme and its time limits meaning that they miss out on the offer.⁷¹

3.63 The Eurobodalla Shire Council expressed concern that sourcing information on whether a home was built before 1980 requires archive searches which are time consuming and costly for the homeowner. The Council recommended that if a resident self nominates, they should be able to provide an indicative date as to when the home was built and that this should be sufficient to qualify for the free assessment.⁷²

⁶⁹ Correspondence from Ms Karyn Davidson, Secretariat Officer, Heads of Asbestos Coordination Authorities WorkCover NSW, to the committee, 8 December 2014.

⁷⁰ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 13.

⁷¹ Submission 3, Yass Valley Council, p 1.

⁷² Submission 5, Eurobodalla Shire Council, p 1.

- 3.64** Local Government NSW criticised the scheme for being limited to certain local government areas given the boundaries of some of these areas have changed over time. As an example, Local Government NSW stated that the Upper Lachlan Shire Council used to be covered by Gunning, Crookwell and Mulwaree Shires and also parts of Yass. The organisation also highlighted that some relocatable homes had been moved from one area to another, for example, from Yass to Cooma.⁷³
- 3.65** Regional EnviroScience Pty Ltd, a hazardous materials laboratory and consultancy business operating in regional New South Wales, also argued that the designated local government areas involved in the testing service should be expanded. The consultancy stated that they are receiving inquiries about loose-fill asbestos insulation from other areas, such as Tumut, Tumbarumba, Tamworth, Narromine, Dubbo, Wellington and Coonabarabran.⁷⁴
- 3.66** Queanbeyan City Council noted the lack of information available on the implications of a positive test for loose-fill asbestos insulation as part of the current testing service. For example, they stated that owners would want to know who determines whether the home can be lived in, who will pay for the costs of work to seal living spaces and what would happen if there was a recommendation for residents to move out of the home.⁷⁵
- 3.67** Ms Alana Smith, a resident in the ACT who owns a Mr Fluffy home, highlighted the concern that some New South Wales homeowners might have in requesting testing:
- You offer free tests to anyone worried that they may have Mr Fluffy insulation - but you know as well as I know that most people wouldn't want tests done - because if they confirm their worst fears, with no help from the government, they are immediately financially ruined!⁷⁶
- 3.68** A number of inquiry participants supported the implementation of a mandatory testing program in light of concerns about people not coming forward for testing due to the stigma and financial concerns. A mandatory testing program will enable the NSW Government to better identify the number of New South Wales homes contaminated by loose-fill asbestos insulation. This issue is further discussed further in Chapter 4.

Committee comment

- 3.69** This chapter has identified a number of important issues relevant to the problem of loose-fill asbestos insulation in New South Wales homes. Over the subsequent chapters some of these issues will be considered in greater detail and it will become clear that the committee is far from impressed at what it perceives to be an inadequate response to the problem – especially in contrast to the more proactive approach adopted in the ACT. The remainder of this report outlines the committee's template for better addressing the negative health, financial and social risks posed by the presence of loose-fill asbestos insulation.

⁷³ Submission 13, Local Government NSW, p 6.

⁷⁴ Submission 21, Regional EnviroScience Pty Ltd, p 1.

⁷⁵ Submission 22, Queanbeyan City Council, p 14.

⁷⁶ Submission 16, Ms Alana Smith, p 1.

Chapter 4 Risks associated with loose-fill asbestos insulation

There are a number of serious implications and risks associated with owning or having lived in a property with loose-fill asbestos insulation. Not only are there significant risks to the health of anyone exposed to the substance, there are also legal and financial implications for homeowners. A number of these issues are affected by the uncertainty of whether people can remediate their homes and continue to live in them safely or whether homes have to be demolished, and whether the NSW Government will provide any assistance. Combined, these factors can become overwhelming, with many owners feeling a range of emotions, including grief, anger, frustration and guilt.

Health risks

- 4.1 Given the well-documented and widely accepted health risks posed by exposure to asbestos, this section considers whether it is safe for people to continue to live in a Mr Fluffy home. It also looks at whether this situation should be classed as a public health issue, as well as the nature of asbestos related diseases and deaths.

Is there a safe level of exposure to asbestos?

- 4.2 Relevant to addressing the problem of loose-fill asbestos insulation in homes is understanding the risks posed by exposure to asbestos and in particular, whether it is possible to have safe levels of exposure.
- 4.3 Before considering loose-fill insulation and the risks posed by this particular form of asbestos, it is worth noting that low levels of asbestos are present in the air and environment around us every day. The levels are, however, quite low, between 10 and 200 asbestos fibres in every 1,000 litres of air. Despite this exposure, the NSW Head of Asbestos Coordination Authorities (HACA) noted that ‘most people do not become ill...because the levels of asbestos present in the environment are very low’.⁷⁷
- 4.4 This view was supported by Mr Peter Tighe, Chief Executive Officer of the Asbestos Safety and Eradication Agency, who told the committee that there are low levels of asbestos in the environment but that they have been settled by weather patterns.⁷⁸
- 4.5 While asbestos may be in the environment, the committee also heard that there is no safe level of exposure to asbestos. According to Mr Andrew Kefford, Head of the Australian Capital Territory (ACT) Asbestos Response Taskforce, the consensus is that ‘there is no safe level of asbestos fibres in any context, recognising, of course, there is a level of asbestos in the background air because it is such a ubiquitous building product’.⁷⁹

⁷⁷ Submission 28, NSW Heads of Asbestos Coordination Authorities, p 6.

⁷⁸ Evidence, Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, 14 November 2014, p 6.

⁷⁹ Evidence, Mr Andrew Kefford, Head of the Australian Capital Territory Asbestos Response Taskforce, 14 November 2014, p 19.

- 4.6 Unions NSW also highlighted that there is no safe level of exposure to asbestos and stated that ‘asbestos has killed thousands of Australian people and is due to kill thousands more’.⁸⁰
- 4.7 Maurice Blackburn Lawyers, who have a history of representing victims of dust diseases and have been involved in Mr Fluffy issues in the ACT, also agreed that there is no known safe level of asbestos exposure below which there is no increased risk of developing mesothelioma.⁸¹
- 4.8 In terms of the types of asbestos and potential risks to health, the committee noted that there is a higher likelihood of airborne fibres from asbestos contaminated dust (which is left after asbestos removal) and loose-fill asbestos insulation. Where asbestos fibres are not bound, such as in sprayed roof insulation or in pipe lagging, there is likely to be a higher concentration of fibres released into the atmosphere. By comparison, asbestos fibres in bonded asbestos cement sheeting, such as fibro, are likely to have a lower health risk, unless it is broken, damaged or mishandled.⁸²
- 4.9 The ACT Government has acknowledged the high concentration of fibres in loose-fill asbestos insulation, generally because the asbestos was finely crushed and not blended with any other materials. They stated that ‘a sample of asbestos fibres just visible to the naked eye contains around 20,000 fibres and a sample the size of a 50 cent piece up to two million’.⁸³
- 4.10 Mr Tighe stressed to the committee how dangerous loose-fill asbestos insulation is: ‘There is nothing more dangerous than loose-fill asbestos out of all the asbestos containing materials that have been marketed’.⁸⁴

Are Mr Fluffy homes safe to live in?

- 4.11 In examining the potential health risks, the committee sought to understand whether it may be safe for people to live in a property affected by loose-fill asbestos insulation if the material is contained to or removed from the ceiling. The experience of the ACT is relevant to this discussion, given that it recently announced a plan to buy back and demolish approximately 1000 affected homes, after a remediation program was undertaken from 1989-1993.
- 4.12 The committee asked Mr Tighe, from the Asbestos Safety and Eradication Agency, whether he believed houses with loose-fill asbestos insulation are safe to live in. He encouraged the committee to consider the lessons learnt from the ACT, and expressed the view that such houses are ‘extremely unsafe’:

It is my view that those houses are extremely unsafe. The product risk from asbestos is the most virulent form of all asbestos contained materials [ACM]. It has an asbestos purity of around 90 to 95 per cent and when disturbed becomes friable in nature, which is a huge risk to the individual and anyone else who might enter the premises. It

⁸⁰ Submission 29, Unions NSW, p 6.

⁸¹ Submission 34, Maurice Blackburn Lawyers, p 2.

⁸² Submission 28, NSW Heads of Asbestos Coordination Authorities, p 9.

⁸³ Submission 17, ACT Government, Attachment 1, Asbestos Response Taskforce, *Long Term Management of Loose-fill Asbestos Insulation in Canberra Homes* (2014) p 1.

⁸⁴ Evidence, Mr Tighe, 14 November 2014, p 8.

is my view that this is an urgent matter that needs to be dealt with, and dealt with constructively.⁸⁵

- 4.13** When asked whether people should be living in the houses identified as being affected, Mr Tighe replied that the health risks decrease if people are not exposed to the material:

The longer you are in the house the more likely you are to be affected by the exposure to friable asbestos....Once you are not in the residence then the likelihood of a catastrophic occurrence in relation to your health diminishes; it is just common sense. If you are not in the area of danger then your likelihood of being affected is lower.⁸⁶

- 4.14** While a remediation program was conducted by the ACT Government from 1989-1993, with the insulation being removed from most homes, the committee was advised that this did not resolve the issue. Mr Tighe explained that it has now been shown that the asbestos migrated into other parts of the house, such as wall cavities and sub floors. Mr Tighe stated that the ‘work done has not resolved the issue in relation to public risk’.⁸⁷

- 4.15** Mr Kefford, from the Asbestos Response Taskforce in the ACT, echoed these views when he told the committee that they had undertaken 800 assessments on affected properties in the ACT, with the results indicating that over half still had asbestos present in living areas, even after properties had been remediated. He also indicated that some properties were highly contaminated, such that the families have had to move out.⁸⁸

- 4.16** When asked why the ACT Government had changed their position from remediation to a plan to demolish affected homes, Mr Mark McCabe, Work Safety Commissioner and Head of Work Safe in the ACT, explained that the ‘game changer’ was when they realised that even if the fibres were sealed in the ceiling, they were still migrating to other areas:

...we always thought that if the fibres were left undisturbed there would not be a problem. We still think that. We have come to realise that, even if we do that, they will find their way into the house. Houses are cracking. There are so many entry points where they can get into a house it is unbelievable; downlights, cavity doors—the list goes on. The real game changer has been we thought as long as we told people not to disturb the walls, et cetera, they would be safe. We have now found out there are lots of fibres in the houses...We might be able to reduce the likelihood of that very significantly for a short period but it will make the house quite difficult to live in and it cannot be sustained over the longer period.⁸⁹

- 4.17** Mr Kefford also explained that the significant change in the ACT came as a result of realising the extent of contamination in homes in 2011 when they assessed an unremediated house in the suburb of Downer. He stated that the results showed that the house was severely contaminated, much more than expected, as asbestos fibres had migrated into walls, air conditioning ducts and sub floors.⁹⁰

⁸⁵ Evidence, Mr Tighe, 14 November 2014, p 2.

⁸⁶ Evidence, Mr Tighe, 14 November 2014, p 4.

⁸⁷ Evidence, Mr Tighe, 14 November 2014, p 2.

⁸⁸ Evidence, Mr Kefford, 14 November 2014, p 26.

⁸⁹ Evidence, Mr Mark McCabe, Work Safety Commissioner and Head of Work Safe, Australian Capital Territory, 14 November 2014, p 19.

⁹⁰ Evidence, Mr Kefford, 14 November 2014, p 13.

4.18 At that time, Mr Kefford explained, the consensus from experts was that the ‘risk posed by the continuing presence of fibres, even in remediated houses, is such that cannot be effectively managed’. The advice they provided to the ACT Government was as follows:

...there is no effective or practical way to attempt to further remediate the houses because, even if we were to go down the path of fully internally demolishing the homes, there would still be fibres left in the subsoil attached to what was left of the structure. Our advice has been that the only way to provide an enduring solution to this issue, which was very much the government’s intent, was to demolish the homes and eradicate the risk because it is not one that can be managed.⁹¹

4.19 While exposure pathways in the home can be sealed, for example, by sealing points to contain the issue, Mr McCabe also pointed out that even if that was possible, the fibres are likely to have already entered those other spaces.⁹² Mr Kefford emphasised to the committee that ‘there is no effective way to manage that risk in the long run’.⁹³

4.20 In addition, while air monitoring samples taken from remediated houses in the ACT may have shown a limited amount of fibres remaining in the property, Mr Tighe explained that such testing can be limited, as the building can move at any stage, with particles then moving through the atmosphere. He explained that there were cases where air monitoring samples were taken which had shown no fibres in the air, but has shown fibres on clothes and cupboards, similar to the way dust settles after internal air movement.⁹⁴

4.21 Despite the firm opinion of experts from the ACT, representatives from the Heads of Asbestos Coordination Authorities (HACA) in New South Wales presented a different view to the committee. Whilst they did not disagree with the advice provided in the ACT, they argued that a health risk assessment had not been conducted as yet.⁹⁵

4.22 Professor Wayne Smith, Director of the Environmental Health Branch with NSW Health and member of HACA, encouraged the committee to consider the difference between a hazard and a health risk:

A hazard requires both an exposure pathway and concentration levels and duration of exposure that is going to lead to likely health outcomes. If you can be sure that there is no exposure pathway then there is no risk. If you can be sure that the exposure pathway limits any exposure to very small amounts then it is a very low risk.⁹⁶

4.23 Professor Smith added that they have arranged an expert advisory panel to quantify what the likely health risks are:

⁹¹ Evidence, Mr Kefford, 14 November 2014, p 14.

⁹² Evidence, Mr McCabe, 14 November 2014, pp 17-18.

⁹³ Evidence, Mr Kefford, 14 November 2014, p 19.

⁹⁴ Evidence, Mr Tighe, 14 November 2014, p 6.

⁹⁵ Evidence, Professor Wayne Smith, Director, Environmental Health Branch, NSW Health, member of Heads of Asbestos Coordination Authorities, 14 November 2014, p 28.

⁹⁶ Evidence, Professor Smith, 14 November 2014, p 28.

...what we are looking at is whether there are levels of asbestos in the air that can be breathed in over a chronic period of time that are likely to be higher than background levels of asbestos.⁹⁷

4.24 Dr Kerry Chant, Chief Health Officer from NSW Health, agreed that people living in a Mr Fluffy property are constrained in terms of what they can do there, for example, not drilling into walls, however, she emphasised the importance of undertaking an assessment in homes to determine the level of exposure and what is happening with control pathways. Until that point, she advised the committee that ‘containment is an option that homeowners can take...[but] it does not preclude them from taking other action’.⁹⁸

4.25 When the committee questioned representatives from HACA about the different approaches being taken between the ACT and NSW, Mr Peter Dunphy, Acting General Manager of the Work Health and Safety Division of WorkCover NSW and member of HACA, argued that the approach is not inconsistent. He said the ACT’s approach was precautionary in nature and that they have not quantified the levels of risk to health. A proper health risk assessment, he argued, would allow them to make an informed recommendation to the NSW Government that could justify the rationale for spending large amounts of government money:

We as public servants have to make sure that if we are recommending advice obviously the first thing is about the safety of the people who are in the buildings but, secondly, we also need to be able to quantify and justify to government what would be the benefit of doing that.⁹⁹

4.26 While HACA representatives suggested that loose-fill asbestos insulation may be manageable if it is quarantined, Mr John Robson, Managing Director of Robson Environmental Pty Ltd, raised concerns about how the material could be sealed effectively when it migrates into other areas and is affected by movement. He also noted the challenge of maintaining a property in these circumstances:

If you can confirm that it is completely sealed, and no-one is going to break into that sealed surface or wall cavities, then you can say that it is safe. But the problem is guaranteeing that you do not have minor crevices, cracks and so forth, and perhaps asbestos already in carpets, ceilings or on the tops of wardrobes and the like. Those areas could be cleaned. But in any house with loose-fill asbestos in the ceiling space there is still the potential for it to come through if it is not totally sealed, and then checked on a regular basis. The problem with that is that it impacts on maintenance issues in ceiling spaces, wall cavities, electrical, plumbing, carpentry extensions and sliding door cavities, which are a bit difficult to seal. There are a whole lot of areas where it is potentially an ongoing hazard for people living in those dwellings.¹⁰⁰

⁹⁷ Evidence, Professor Smith, 14 November 2014, p 28.

⁹⁸ Evidence, Dr Kerry Chant, Chief Health Officer, NSW Health, 14 November 2014, pp 26-27.

⁹⁹ Evidence, Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW, 14 November 2014, p 35.

¹⁰⁰ Evidence, Mr John Robson, Managing Director, Robson Environmental Pty Ltd, 17 November 2014, p 30.

Asbestos related diseases

- 4.27** According to NSW Health, asbestos fibres can pose a serious risk to health if airborne, as inhalation is the main way fibres enter the body.¹⁰¹ Exposure can cause significant health risks, such as asbestosis, lung cancer and mesothelioma. The risk of contracting these illnesses increases with the number of fibres inhaled, and the symptoms of these diseases do not usually appear until about 20 to 30 years after the first exposure.¹⁰²
- 4.28** The common types of diseases caused by exposure to asbestos include:
- Asbestosis – a chronic chest disease caused by inhalation of high concentrations of asbestos fibres. The fibres initially damage cell membranes in the lungs, and over time, the lung tissue becomes hardened and scars.
 - Lung Cancer – cancer of the bronchial tubes, lungs and alveoli can develop. Smokers have a greater risk of getting lung cancer if they have been exposed to asbestos.
 - Mesothelioma – cancer of the lung lining, usually as a result of low level exposure to asbestos. It is a debilitating disease characterised by a high symptom burden, rapid decline and death.
 - Pleural disease – inflammation and irritation of the outer lining of the lung, the pleura. It stiffens and thickens widely or in patches, which fills with fluid and causes problems with breathing.¹⁰³
- 4.29** The Australian Mesothelioma Registry collects information nationally about people with mesothelioma. Since 1 July 2010 they have monitored all new cases of diagnosed mesothelioma, and according to their third annual report, as at 31 May 2014:
- they received 575 notifications of people newly diagnosed with mesothelioma between 1 January and 31 December 2013
 - 80 per cent of these notifications were aged over 65 years, and the majority were male
 - 218 mesothelioma patients diagnosed in 2013 were recorded as having died.¹⁰⁴
- 4.30** Maurice Blackburn Lawyers pointed out that it is only now that we are starting to see evidence of how asbestos use from the 1960s and 1970s has affected people:

There is a latency period between first exposure to asbestos and the development of mesothelioma and other asbestos related diseases of between 10 and 70 years. Accordingly, given the time period within which ACT and NSW based asbestos contractors deposited loose-fill asbestos insulation in ACT and NSW homes, that

¹⁰¹ NSW Health, *Asbestos and health risks*, accessed 10 November 2014, <http://www.health.nsw.gov.au/environment/factsheets/Pages/asbestos-and-health-risks.aspx>.

¹⁰² NSW Health, *Asbestos and health risks*, accessed 10 November 2014, <http://www.health.nsw.gov.au/environment/factsheets/Pages/asbestos-and-health-risks.aspx>.

¹⁰³ NSW Health, *Asbestos and health risks*, accessed 10 November 2014, <http://www.health.nsw.gov.au/environment/factsheets/Pages/asbestos-and-health-risks.aspx>; and submission 35, Associate Professor Rick van der Zwan and Julie Tucker, p 3.

¹⁰⁴ Australian Mesothelioma Registry, 3rd Annual Report, *Mesothelioma in Australia*, 2013.

being in the late 1960s to late 1970s, we are only now starting to see evidence of how this issue has affected people from a personal injury perspective.¹⁰⁵

- 4.31** Unions NSW also pointed out that on an international level, the World Health Organisation has estimated that over 107,000 people die due to occupational exposure to asbestos. In their submission, Unions NSW also stated that it has been predicted that there may be a peak in asbestos disease diagnosis and death in 2020:

Due to the long latency of asbestos disease it is hard to predict the peak in diagnosis and death. However, it has been predicted by some that the peak will come at approximately 2020. This peak of course will be dependent on the rate that we continue to expose people to asbestos.¹⁰⁶

- 4.32** In terms of occupational and non-occupational exposure, Unions NSW referred to information from the Australian Mesothelioma Registry which indicates that approximately 63 per cent of illnesses and deaths are related to occupational exposure. The remaining 37 per cent can be attributed to non-occupational exposure, which can be associated with household renovations and living in a house containing asbestos.¹⁰⁷

- 4.33** Unions NSW also argued that the profile of those contracting asbestos related illnesses has been changing over time, from people who were occupationally exposed to asbestos to others who have experienced non-occupational exposure:

The mix of people who are contracting asbestos related illness has been changing from the miners and manufacturers of asbestos to trades and construction, and now 3rd and 4th generation of non-occupational exposure.¹⁰⁸

- 4.34** As an example, Unions NSW stated that the Asbestos Diseases Foundation of Australia is aware of people contracting mesothelioma in their thirties after witnessing their parents work on buildings with asbestos when they were growing up.¹⁰⁹

- 4.35** The committee was also informed that the risks from exposure to asbestos are particularly serious for children and young people. Mr Tighe, from the Asbestos Safety and Eradication Agency, stated:

...it appears there is susceptibility for young people with immature lungs if they ingest the fibres, then it is likely to have a more adverse effect on younger people than people in different age demographics.¹¹⁰

- 4.36** In terms of evidence that people living in homes affected by loose-fill asbestos insulation have contracted asbestos related diseases, Mr Tighe acknowledged that there have been some reports in the ACT of mesothelioma sufferers who have lived in Mr Fluffy homes.¹¹¹

¹⁰⁵ Submission 34, Maurice Blackburn Lawyers, p 2.

¹⁰⁶ Submission 29, Unions NSW, p 7.

¹⁰⁷ Submission 29, Unions NSW, p 8.

¹⁰⁸ Submission 29, Unions NSW, p 9.

¹⁰⁹ Submission 29, Unions NSW, p 9.

¹¹⁰ Evidence, Mr Tighe, 14 November 2014, p 12.

¹¹¹ Evidence, Mr Tighe, 14 November 2014, p 8.

- 4.37** Regarding any evidence of people living in homes contaminated by loose-fill asbestos insulation, Associate Professor van der Zwan and Ms Julie Tucker, from the Regional Initiative for Social Innovation and Research, a multi-disciplinary research initiative that has examined the social, psychological and economic impacts of asbestos-related disease in Australia, noted that ‘as yet there are no reported cases of mesothelioma linked specifically to exposure to Mr Fluffy [homes] in New South Wales, however both the *Canberra Times* and the ABC have reported the recent (mesothelioma) diagnosis of two Mr Fluffy homeowners’.¹¹²
- 4.38** This led Associate Professor van der Zwan and Ms Tucker to argue that the possibility of New South Wales homeowners or occupiers developing mesothelioma as a result of exposure to loose-fill asbestos cannot be ruled out.¹¹³
- 4.39** Mr Tighe advised the committee that it is often difficult to accurately capture asbestos related diseases and deaths due to misdiagnoses: ‘We lose 1,000 plus people a year to asbestos related diseases and to a large extent that is probably a figure that is on the lower side as there is a lot of misdiagnosis’.¹¹⁴

A public health issue?

- 4.40** Owners and occupiers of properties with loose-fill asbestos insulation clearly face significant risks to their personal health. It is also argued that these properties represent a broader public health issue, given the likelihood of visitors attending affected properties and the potential for the insulation to become airborne during emergency situations, such as fires and storms.
- 4.41** When the committee asked Mr Kefford, Head of the Asbestos Response Taskforce in the ACT, why the situation is considered a public health issue there, he focused on the risks posed to members of the community coming into contact with the home, as well as people refusing to provide services to those living in the homes:
- ...one of the things we found, in terms of the behavioural and social response to this issue is, it is not just the people who are living in the homes, it is the people visiting the homes and the trades wanting to work on the homes. Indeed, we have had circumstances in recent times where personal carers have refused to go and provide services inside the homes because of the presence of asbestos.¹¹⁵
- 4.42** The Fluffy Owners and Residents Action Group also confirmed that there have been cases in which workers will not deliver goods or services to those living in known Mr Fluffy homes.¹¹⁶
- 4.43** Mr Tighe also suggested that this matter is a public health risk, with visitors and tradespeople likely to have to attend the home to perform work. He stated that ‘all residential properties are likely to have people attend to undertake service work’ and that such people are in an ‘extreme position’ in terms of exposure, particularly without protective equipment.¹¹⁷

¹¹² Submission 35, Associate Professor Rick van der Zwan and Julie Tucker, p 2.

¹¹³ Submission 35, Associate Professor Rick van der Zwan and Julie Tucker, p 5.

¹¹⁴ Evidence, Mr Tighe, 14 November 2014, p 11.

¹¹⁵ Evidence, Mr Kefford, 14 November 2014, p 15.

¹¹⁶ Submission 23, Fluffy Owners and Residents Action Group, p 4.

¹¹⁷ Evidence, Mr Tighe, 14 November 2014, p 5.

- 4.44** A number of witnesses also suggested that the situation is a public health risk because of the damage that can be caused by an emergency situation, such as a fire or storm.
- 4.45** Queanbeyan City Council asserted that if a fire or roof is damaged in a storm it is 'highly likely that asbestos fibres will be thrown tens of metres into the air and settle...in the neighbourhood'. They are unaware of an emergency plan to manage these events and explained that they do not have expertise to manage them. They called for clear guidelines to be developed and implemented to manage these emergency situations.¹¹⁸
- 4.46** Similarly, Yass Valley Council raised concerns about the issue, and explained that there were concerns from local residents about fire damaged properties containing asbestos materials and whether the material would be spread across the community. They also supported the development of procedures for responding to these situations.¹¹⁹
- 4.47** Ms Petra Wiesner, a representative of the Fluffy Owners and Residents Action Group, also argued that there is a risk of fibres from loose-fill asbestos insulation being distributed into the surrounding neighbourhood if there is a fire or severe storm. Her view was that demolition of affected homes would completely remove this risk.¹²⁰
- 4.48** The committee asked Mr Tighe from the Asbestos Safety and Eradication Agency about whether there are protocols in place to manage emergency situations where properties with loose-fill asbestos insulation are involved. Mr Tighe explained that HACA has put in place a protocol for these situations. He also stressed the importance of emergency responders having access to information that identifies affected homes, as the tagging of homes may not be effective in these situations.¹²¹
- 4.49** Relevant to the issue is having a register or online database in which affected homes are recorded. Ms Amy Lovesey, Project Manager, Asbestos Policy, Local Government NSW and member of HACA, supported the establishment of a confidential online database of affected homes being kept and provided to emergency services.¹²²
- 4.50** Queanbeyan City Council also supported having a register, but said that there needs to be guidelines about who can access it. They said they have come under pressure to release information on affected homes, and have done so, to NSW Fire and Rescue, NSW Rural Fire Service, State Emergency Service and WorkCover. They stated:

With more people being aware of the list of properties affected Council recommends that the NSW Government put in place guidelines around who has access to this information and how it can be used.¹²³

¹¹⁸ Submission 22, Queanbeyan City Council, p 16.

¹¹⁹ Submission 3, Yass Valley Council, p 1.

¹²⁰ Evidence, Ms Petra Wiesner, Representative, Fluffy Owners and Residents Action Group, 17 November 2014, p 15.

¹²¹ Evidence, Mr Tighe, 14 November 2014, p 5.

¹²² Evidence, Ms Amy Lovesey, Project Manager, Asbestos Policy, Local Government NSW, 14 November 2014, p 45.

¹²³ Submission 22, Queanbeyan City Council, p 16.

Committee comment

- 4.51** It is widely known in Australia that asbestos is a dangerous material that has the potential to cause significant health issues to those exposed to it. As a form of asbestos, loose-fill insulation presents an even higher health risk, given the fibres are so miniscule and cannot be seen by the naked eye. It is clearly a potent material that could easily be inhaled without a person knowing.
- 4.52** Representatives from HACA in New South Wales are providing advice to homeowners that loose-fill asbestos insulation is capable of being contained by sealing exposure pathways. However, the committee is not convinced that this is the right approach given the experience of the ACT Government. The evidence presented by the ACT Asbestos Response Taskforce and Asbestos Safety and Eradication Agency was very compelling, particularly in light of their examination of the contaminated house in Downer which showed the significant level of migration of fibres from the ceiling throughout the rest of that residence.
- 4.53** Although a formal health risk may not have been undertaken, as HACA claimed, the committee cannot understand why this would be needed given everything already known about the risks posed by asbestos, and particularly, loose-fill asbestos insulation. Containing the material to the ceiling seems impossible in most circumstances, given buildings will naturally move and create new exposure pathways.
- 4.54** The precautionary approach taken by the ACT Government recognises the potential health impact to those who live in affected homes. While the New South Wales experience to date has been somewhat different to the ACT, the committee believes that New South Wales can and should learn a lot from the ACT approach, particularly in terms of their knowledge that asbestos fibres will migrate into wall cavities and sub floors, amongst other areas. It is these risks that must be considered when determining the way forward in New South Wales.
- 4.55** The committee considers that the management of Mr Fluffy homes in New South Wales is a public health matter. The risks to homeowners, tradespeople and visitors cannot be underestimated, nor can the risks posed by an affected home being involved in an emergency event, such as a fire or storm. The NSW Government has a responsibility to address these issues to ensure the health of the community is protected.

Financial implications

- 4.56** The financial implications of owning a home with loose-fill asbestos insulation are significant. Not only are homeowners concerned about the potential costs of removing the material from their home, they also face the uncertainty of not knowing whether removal is sufficient, and whether in fact their home should be demolished.
- 4.57** In addition, many are paying mortgages for homes they cannot reside in or rent out while also incurring escalating costs in terms of renovation and maintenance to the property. The value of their properties has declined, and there are also questions about insurance coverage and arrangements with banks. It was evident to the committee that many of these issues are contributing to the understandably high levels of stress, anxiety and concern being experienced by affected families.

- 4.58** Mr Matthew Rigter, who owns a unit in Queanbeyan affected by loose-fill asbestos insulation, provided evidence to the committee that he has chosen not to rent out the affected property as he is concerned about the health of someone living there. Whilst he lives elsewhere, he has had to continue paying rates and other expenses associated with the property, despite not knowing its value and not receiving any financial assistance or support.¹²⁴
- 4.59** Ms Petra Wiesner, a representative of the Fluffy Owners and Residents Action Group, also spoke of the financial risks and uncertainty being faced by owners of affected properties. She emphasised the potential for costs to escalate for maintenance on affected properties, as well as the potential financial cost to communities from people getting ill:
- The costs that the community suffers when someone gets cancer are of course immense. Every new patient puts strain on our medical institutions, takes them from work, and costs those around them. They may need to rely on welfare payments and require greater services for their basic daily needs. Others may take time off work to care for the affected individual.¹²⁵
- 4.60** Ms Wiesner, who owns a property with loose-fill asbestos insulation, told the committee that her property is only worth the land value now, less remediation costs. She also pays a mortgage for the property but lives elsewhere and is paying expenses on both properties. Ms Wiesner acknowledged that the Queanbeyan City Council has allowed her to put her rates on hold for the affected property and that she is applying for hardship with the bank in relation to her mortgage.¹²⁶
- 4.61** In addition to the financial costs and loss in value of the property, Queanbeyan City Council noted that homeowners are limited in terms of renovation or repair work.¹²⁷
- 4.62** The Fluffy Owners and Residents Action Group also noted that even if they wanted to, owners were not able to rent out their properties.¹²⁸ For example, Ms Wiesner said that her agent would not rent out her property because the Real Estate Institute told the agent they would not be covered by insurance.¹²⁹
- 4.63** Regarding their home loans, Ms Wiesner noted that some individuals have made arrangements with banks, although she also knew of a case in which a bank would not extend a mortgage to someone because the bank valued the home as worthless, with no equity being recognised in the property.¹³⁰
- 4.64** In terms of claiming compensation from the company that installed loose-fill asbestos insulation, Mr Tighe advised the committee that Mr Fluffy ‘has been and gone’. While he is

¹²⁴ Evidence, Mr Matthew Rigter, 14 November 2014, p 85.

¹²⁵ Evidence, Ms Wiesner, 17 November 2014, p 15.

¹²⁶ Evidence, Ms Wiesner, 17 November 2014, p 22.

¹²⁷ Submission 22, Queanbeyan City Council, p 12.

¹²⁸ Evidence, Mr Brown, Representative, Fluffy Owners and Residents’ Action Group, 17 November 2014, p 15.

¹²⁹ Evidence, Ms Wiesner, 17 November 2014, p 19.

¹³⁰ Evidence, Ms Wiesner, 17 November 2014, p 19.

aware of some legal firms advising affected owners in terms of possible litigation, he suggested that compensation is difficult as ‘the boat sailed long ago’.¹³¹

- 4.65** Insurance has also been problematic, with reports that insurance policies contain asbestos exclusions. Representatives from the Fluffy Owners and Residents Action Group noted this issue, which was consistent with the ACT’s experience where affected homeowners have had difficulty getting claims honoured. Mr Kefford, from the ACT Asbestos Response Taskforce, explained that asbestos contamination is generally excluded from home and contents policies, however, he noted that in the ACT, the Chief Minister has written to insurers, amongst other services, to ask them to be compassionate towards those affected by honouring claims.¹³²
- 4.66** Local Government NSW also called for further work with the insurance sector on these issues as they stated that insurance coverage is unclear, and that there is uncertainty as to whether insurance would cover the cost of removing, demolishing or cleaning up the property.¹³³
- 4.67** Mr Kefford explained that in the ACT, the government has decided to provide assistance because of the losses being experienced by the families, particularly in light of these losses not being covered by insurance.¹³⁴ The financial assistance being provided by the ACT Government recognises the hardship and impacts families are experiencing.
- 4.68** Queanbeyan City Council supported the provision of financial assistance to affected families, including assistance with temporary accommodation and replacement of personal items and furniture if contaminated. They also felt owners would benefit from assistance with maintenance work to seal living spaces in the short term.¹³⁵

Committee comment

- 4.69** The financial impact of owning a home with loose-fill asbestos insulation can be enormous. In addition to their home losing value, many owners are having to pay to live elsewhere. Owners are also concerned about the costs of short-term remediation work and ultimately whether their home has to be demolished. These issues will undoubtedly have an impact on their financial future. The uncertainty for affected owners is apparent, with many living in a state of limbo waiting for NSW Government assistance.
- 4.70** The committee supports financial assistance being made available to affected families, similar to that provided for in the ACT. It is envisaged this assistance will be used to pay for things such as crisis accommodation, replacement of personal goods, rates and utility bills, and short-term emergency maintenance or remediation work. Nevertheless, as discussed in the next chapter, the committee believes that ultimately contaminated homes are uninhabitable in the long-term and a buy-back scheme is the only way to properly address the financial hardships faced by affected homeowners.

¹³¹ Evidence, Mr Tighe, 14 November 2014, p 11.

¹³² Evidence, Mr Kefford, 14 November 2014, p 15.

¹³³ Submission 13, Local Government NSW, p 10.

¹³⁴ Evidence, Mr Kefford, 14 November 2014, p 15.

¹³⁵ Submission 22, Queanbeyan City Council, p 12.

- 4.71 It is very apparent to the committee that the financial and emotional burden suffered by Mr Fluffy householders can be devastating. Those people who own Mr Fluffy properties, whether investors or first home buyers, are innocent victims of a deadly product. They must not be left to struggle alone and are deserving of financial support and assistance from society. Affected homeowners in New South Wales deserve this assistance no less than homeowners who live across the border in the ACT.
- 4.72 The committee therefore recommends that the NSW Government provide emergency financial assistance to the owners and residents of homes affected by loose-fill asbestos insulation to help them cover immediate, short term expenses.

Recommendation 2

That the NSW Government provide emergency financial assistance to the owners and residents of homes affected by loose-fill asbestos insulation to cover immediate expenses such as crisis accommodation, replacement of personal goods, rates and utility bills and short-term maintenance or remediation work.

Legal issues

- 4.73 This section explores a number of legal issues that arose during the inquiry, including the inspection and identification of homes, sale of affected properties and protection of tradespeople. It also discusses the obligations of property agents, as well as the removal, transportation and disposal of asbestos waste.

Inspection and identification of homes

- 4.74 In assessing the extent of loose-fill asbestos insulation in New South Wales, the committee canvassed whether there should be a mandatory testing program, rather than a voluntary one, and whether there should be a legal obligation for tradespeople to report properties affected by loose-fill asbestos insulation if they identify it when carrying out their work.

Mandatory testing of homes

- 4.75 Currently, a voluntary inspection scheme exists in New South Wales, where people can request their house to be tested if they suspect they have loose-fill asbestos insulation. However, the committee received evidence regarding the benefits of having a mandatory inspection program.
- 4.76 Mr Tighe, from the Asbestos Safety and Eradication Agency, pointed out that some people may be reluctant to volunteer to have their home tested and that this is a 'decision that impacts on many more people than just the householder themselves'. He supported mandatory testing in cluster areas where it has been identified that loose-fill asbestos insulation was installed:

If people are not going to volunteer to have some independent testing then I think there is an obligation to ensure that the public is protected by requiring some testing take place in areas where clusters or suspect installation of this product has taken place.¹³⁶

4.77 Eurobodalla Shire Council also noted that self-reporting and testing may be limited, with owners being concerned about repairs, renovations, costs, property values and stigma of owning an identified home.¹³⁷ Ms Wiesner, from the Fluffy Owners and Residents Action Group, remarked that voluntary testing is limited as ‘people who fear financial ruin will not step forward’.¹³⁸

4.78 Mr Tighe asserted that there would need to be ‘regulatory requirements’ coming from Parliament to allow a mandatory testing program to be established.¹³⁹ Similarly, Mr Dunphy, from HACA, agreed that there was need to be a legislative basis for compulsory identification of affected homes.¹⁴⁰

4.79 Mr Dunphy also highlighted that in the ACT, where mandatory testing occurred many years ago, some houses were not picked up:

When the Australian Capital Territory did the mandatory testing they still, even this year, found new houses that were not picked up in the mandatory testing. So you cannot give the community an assurance by doing mandatory testing that we are going to find every loose-fill insulation house by doing that.¹⁴¹

4.80 Yass Valley Council and Queanbeyan City Council expressed their support for a mandatory inspection program. Mr Michael Thompson, Group Manager, Sustainability and Better Living, Queanbeyan City Council, acknowledged the differences between the ACT and NSW, in terms of ACT properties being leasehold, but he stated that ‘we need to do something to find out the extent of the problem, because at the moment we have only covered about five per cent of homes’.¹⁴²

4.81 He also felt it could be similar to the current compulsory swimming pool safety inspection program that operates in New South Wales. Alternatively, he noted that another option would be to implement a program that is triggered on the sale of houses, for example, by mandating that a certificate be provided upon transfer of the property to a new owner.¹⁴³

Mandatory reporting by tradespeople

4.82 Another issue canvassed during the inquiry was whether tradespeople should have a legal obligation to report the presence of loose-fill asbestos insulation in a home.

¹³⁶ Evidence, Mr Tighe, 14 November 2014, p 3.

¹³⁷ Submission x, Eurobodalla Shire Council, p 2.

¹³⁸ Evidence, Ms Wiesner, 17 November 2014, p 26.

¹³⁹ Evidence, Mr Tighe, 14 November 2014, p 3.

¹⁴⁰ Evidence, Mr Dunphy, 14 November 2014, p 28.

¹⁴¹ Evidence, Mr Dunphy, 14 November 2014, p 30.

¹⁴² Evidence, Mr Michael Thompson, Group Manager, Sustainability and Better Living, Queanbeyan City Council, 17 November 2014, p 3; Submission 3, Yass Valley Council, p 1.

¹⁴³ Evidence, Mr Thompson, 17 November 2014, p 3.

- 4.83** Mr Tighe, from the Asbestos Safety and Eradication Agency, agreed that mandatory reporting by tradespeople may be helpful, ‘provided the individual has the capacity to identify it’. He noted that there are similar looking products to loose-fill asbestos insulation, such as Rockwool, such that it may be difficult to identify without a sample being tested.¹⁴⁴
- 4.84** Queanbeyan City Council also expressed support for mandatory reporting by tradespeople. Mr Thompson stated that he sees ‘no reason why that could not be another tool’. He gave the example of tradesmen who had attended a unit complex in Queanbeyan where they suspected the property was affected by loose-fill asbestos insulation and got it tested. This property is now known to be one of the affected premises in New South Wales.¹⁴⁵

Committee comment

- 4.85** The committee is concerned about the limitations of a voluntary home testing scheme, as currently being operated. The stigma and financial implications of owning a home with loose-fill asbestos insulation may act as a deterrent to testing. Given that the presence of loose-fill asbestos is a public health risk, resort to a mandatory testing scheme in order to overcome this deterrent would be justified.
- 4.86** A mandatory testing scheme will also enable the NSW Government to better identify the number of homes affected by loose-fill asbestos insulation. While the committee acknowledges that it is not financially viable or practical to test every house built before 1980, the committee believes that certain areas should be targeted, such as Queanbeyan, given they have the majority of houses known to be affected. The committee believes that the NSW Government must introduce legislation to provide a basis for mandatory testing in these areas. Accordingly, the committee recommends that the NSW Government implement a mandatory testing program for areas in which there are, or it is likely there are, a number of premises affected by loose-fill asbestos insulation.

Recommendation 3

That the NSW Government implement a mandatory testing program for homes built before 1980 in areas in which there are known to be, or it is likely that there are, a number of homes affected by loose-fill asbestos insulation.

Sale of affected properties

- 4.87** One of the legal issues that arose during this inquiry was whether owners have an obligation to disclose the presence of loose-fill asbestos insulation when selling their property. Concerns were expressed about how to best protect prospective buyers, particularly in light of the fact that a number of current owners of Mr Fluffy homes had purchased the property with little to no knowledge of the home being affected by loose-fill asbestos insulation.¹⁴⁶

¹⁴⁴ Evidence, Mr Tighe, 14 November 2014, p 7.

¹⁴⁵ Evidence, Mr Thompson, 17 November 2014, p 8.

¹⁴⁶ Evidence, Ms Wiesner, 14 November 2014, p 16 and 20; Evidence, Mr Brown, 14 November 2014, p 21; Evidence, Mr Thompson, 17 November 2014, p 8.

- 4.88** While the majority of participants contended that a person selling a Mr Fluffy home should have an obligation to disclose the issue to prospective buyers, there appeared to be uncertainty about the legal requirements in this area. Local Government NSW, the peak body for councils in New South Wales, asserted that the obligations in NSW for a vendor to disclose information about loose-fill insulation to an interested buyer are not well understood. They called for consideration of mandatory disclosure requirements.¹⁴⁷
- 4.89** According to the Queanbeyan City Council there is no legal requirement for an existing owner to disclose information about the property having loose-fill asbestos insulation. They said that the current situation is one of ‘buyer beware’, which is different to the ACT approach where it is mandatory to have a report prepared as a sale contract document as to whether the home contains asbestos.¹⁴⁸
- 4.90** Several inquiry participants who had unknowingly purchased a Mr Fluffy home highlighted the need for prospective buyers to be protected. Mr Matthew Rigger stressed how important it is for potential buyers to receive clear information about the risks, particularly in light of evidence that many people had bought affected properties because they did not understand the jargon in their contract or risks from the material. He said that the words ‘This house may contain friable asbestos is not worth the paper it is written on, and that people, such as owners, lawyers and agents, need training to decode the statements.’¹⁴⁹
- 4.91** Ms Wiesner, a representative of the Fluffy Owners and Residents Action Group, told the committee that she also purchased a property with loose-fill asbestos insulation without understanding the risks. Her pre-purchase building report noted the presence of asbestos insulation but they took it as a positive sign that the house was actually insulated. Mr Brown, also affected by this issue, said that when he bought his property there was a statement buried in the contract which said that asbestos had been removed. He noted that the statement was in small font and that it presented like a disclaimer.¹⁵⁰
- 4.92** In response to a question taken on notice, the HACA advised that the Department of Planning and Environment ‘is investigating options to mandatorily require property owners to notify potential [residents] of the presence of loose fill asbestos insulation in properties where it has been positively identified’. The HACA further advised that work was being undertaken to identify the most appropriate option for implementing mandatory disclosure and that ultimately it was a policy decision for it and the NSW Government.¹⁵¹

Section 149 certificates

- 4.93** Several submission authors and witnesses discussed the use of Section 149 certificates as a mechanism of disclosing to prospective buyers the presence of loose-fill asbestos insulation in a property.

¹⁴⁷ Submission 13, Local Government NSW, pp 8-9.

¹⁴⁸ Submission 22, Queanbeyan City Council, p 14.

¹⁴⁹ Evidence, Mr Matthew Rigger, 17 November 2014, p 86.

¹⁵⁰ Evidence, Ms Wiesner, 17 November 2014, p 16.

¹⁵¹ Answers to questions on notice, NSW Head of Asbestos Coordination Authorities (HACA), 14 November 2014, question 3.

- 4.94** According to the *Conveyancing Act 1919*, a Section 149 planning certificate must be attached to a contract for sale when a property is being sold.¹⁵² The *Environmental Planning and Assessment Act 1979* sets out the law in relation to planning certificates, including the requirement that local councils provide such a certificate on payment of a prescribed fee.¹⁵³
- 4.95** A Section 149 planning certificate typically provides information such as the zoning of land, prohibited and permissible land used and controls for development. It might also include information about contaminated land and flooding, and other matters as outlined in Schedule 4 of the regulation.¹⁵⁴ The information assists potential buyers to be aware of any restrictions that might apply to the property.
- 4.96** In terms of ‘contaminated land’, the *Contaminated Land Management Act 1997* requires a Section 149 planning certificate to include certain information where land is considered contaminated, as defined under the Act. While the committee noted that these provisions may be relevant to the discussion of what information is included on planning certificates, only one local council, Yass Valley, indicated that there were adding identified Mr Fluffy homes in their area to their contaminated land register, with this information then being used when planning certificates are issued.¹⁵⁵
- 4.97** HACA supported the use of Section 149 certificates to disclose the presence of loose-fill asbestos insulation in a house. However, they noted that the current legislation is constrained in terms of whether loose-fill asbestos insulation is considered a contaminant. When Mr Peter Dunphy, Acting General Manager of the Work Health and Safety Division of WorkCover NSW and member of HACA, was asked about this, he explained that the Schedule would need to be amended to avoid doubt about the requirements in this area and that they have requested the Department of Planning and Environment to seek advice on this issue.¹⁵⁶
- 4.98** Mr Dunphy asserted that the Schedule is not clear, such that other forms of asbestos might also be considered a contaminant, such as fibro asbestos. He stated that ‘to avoid doubt the Schedule needs to be updated to actually say loose-fill asbestos insulation’ so it can be registered on every Section 149 certificate.¹⁵⁷
- 4.99** A number of councils supported the inclusion of a general precautionary statement on planning certificates for properties built prior to 1982. Mr Dunphy stated that there is nothing to prevent councils from undertaking such action but that the wording must be carefully considered so as to minimise confusion and promote consistency.¹⁵⁸
- 4.100** Ms Amy Lovesey, member of HACA and Project Manager of Asbestos Policy with Local Government NSW, discussed the use of a statement on Section 149 certificates and explained that it is up to council whether they put it on all buildings built prior to 1980 or just identified

¹⁵² Evidence, Mr Brown, 17 November 2014, p 21.

¹⁵³ *Environmental Planning and Assessment Act 1979*, s 149. Schedule 4 EPA regs.

¹⁵⁴ Environmental Planning and Assessment Regulation 2000, Sch 4.

¹⁵⁵ Submission, Yass Valley Council, p 2.

¹⁵⁶ Evidence, Mr Dunphy, 14 November 2014, p 36.

¹⁵⁷ Evidence, Mr Dunphy, 14 November 2014, p 36.

¹⁵⁸ Evidence, Mr Dunphy, 14 November 2014, p 36.

homes. She suggested that a blanket statement may lose its value if it is put on all homes and that ‘maybe it is better to put it on those homes that have been identified positively’.¹⁵⁹

4.101 Ms Lovesey also raised concerns about whether the value of properties might be affected by a blanket statement. She cautioned that the issue needs careful consideration, particularly in terms of the wording that may be used.¹⁶⁰ She suggested that the council could encourage the person looking to buy the property to enquire at council for a report on the property, which could lead to the history of the property being disclosed, including any clearance certificate that would show loose-fill asbestos material has been removed.¹⁶¹

4.102 Queanbeyan City Council suggested that the following general statement be used:

Please be aware that loose asbestos fill insulation was installed in some homes in this local government area prior to this material being banned for use in 1980. If this sale involves a home constructed prior to 1980 the potential purchaser may wish to arrange for a qualified inspector to check the home for the presence of loose asbestos insulation material.¹⁶²

4.103 Mr Shay Deguara, an Industrial Officer with Unions NSW, also expressed support for notification of loose-fill asbestos insulation via Section 149 certificates. He suggested that for properties built before 1980, the owner could obtain a clearance certificate, which would show that the property is free of the material when it is being sold.¹⁶³

4.104 Mr Mark Morey, Assistant Secretary with Unions NSW, suggested that owners should be able to obtain a clearance certificate to have the blanket statement removed from their Section 149 certificate. He argued that this mechanism would provide an incentive for a person to have their house inspected and cleared, so that the value of the property is not affected.¹⁶⁴

4.105 In response to a question on notice, seeking information as to whether councils are currently putting information concerning loose-fill asbestos insulation on Section 149 certificates, Mr Noel Baum, Director – Policy, Local Government NSW, advised that his organisation had contacted staff from 26 councils on this issue. Mr Baum noted that ‘25 councils replied that [they] had not put information on Section 149 certificates relating to loose-fill asbestos insulation’. He further noted that one council had recently added the following information on their Section 149 certificates which state “Note: Houses built prior to 1982 may contain loose-fill asbestos. For further information contact WorkCover on 131 050 or www.workcover.nsw.gov.au”.¹⁶⁵

4.106 Maurice Blackburn Lawyers argued that advisors to vendors, such as real estate agents and lawyers, should be required to give notification of the fact that a home has loose-fill asbestos

¹⁵⁹ Evidence, Ms Amy Lovesey Project Manager, Asbestos Policy, Local Government NSW, member of HACA, 14 November 2014, p 36.

¹⁶⁰ Evidence, Ms Lovesey, 14 November 2014, p 45.

¹⁶¹ Evidence, Ms Lovesey, 14 November 2014, p 43.

¹⁶² Submission 22, Queanbeyan City Council, p 16.

¹⁶³ Evidence, Mr Shay Deguara, Industrial Officer, Safety, Workers Compensation and Industrial Relations, Unions NSW, 14 November 2014, p 56.

¹⁶⁴ Evidence, Mr Mark Morey, Assistant Secretary, Unions NSW, 14 November 2014, p 56.

¹⁶⁵ Answers to questions on notice, Local Government NSW, 10 November 2014, question 1.

insulation.¹⁶⁶ When the committee asked Mr Gary Adamson, Chair of the Strata Management Chapter of the Real Estate Institute, about his views of this, he expressed concerns about the onus being on agents, given their limited training and knowledge on issues related to asbestos.¹⁶⁷

Committee comment

- 4.107** To protect prospective purchasers, the committee supports the requirement to include in a section 149 planning certificate notification of the presence of loose-fill asbestos insulation in a home. This certificate is always included in a contract for sale of a home, and would indicate to a potential purchaser the issue with the property. As discussed by several witnesses, the information included on the certificate must be clear and easy to understand, so that potential purchasers can identify and fully appreciate the risks of purchasing the home.
- 4.108** While a number of councils are already implementing measures to help protect prospective purchasers, there must be consistency in the approach. The committee would encourage the NSW Government to liaise with Local Government NSW on these issues, so as to determine the best way forward on this matter.
- 4.109** The committee acknowledges that this inquiry has been limited to considering the very specific issue of loose-fill asbestos in homes and that for properties built before 1987 there are a significant number of other building products that do, or are likely to, contain asbestos. While a number of inquiry participants supported a broader obligation to include all asbestos products on either the s149 certificate or asbestos register, we do not have sufficient material before us to understand the full costs and benefits of such a scheme. What we do know is that asbestos is a deadly product and governments have an obligation to adopt measures to reduce the risk it poses to homeowners. The NSW Government should take a leadership role in relation to this matter with both local government and governments across Australia through the Council of Australian Governments process.

Recommendation 4

That the NSW Government amend Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* to ensure that the presence of loose-fill asbestos insulation in a home is included on a section 149 planning certificate.

Recommendation 5

That the NSW Government take a leadership role with local government and governments across Australia, through the Council of Australian Governments process, to undertake an urgent study into the costs and benefits of establishing a comprehensive asbestos register or reporting system to apply to all residential properties at time of sale.

¹⁶⁶ Submission 34, Maurice Blackburn Lawyers, p 9.

¹⁶⁷ Evidence, Mr Gary Adamson, Chair, Strata Management Chapter, Real Estate Institute, 14 November 2014, p 72.

Pre-purchase inspections

- 4.110** Another issue raised with the committee related to the limitations of pre-purchase inspection reports and the absence of a licensing or registering scheme for inspectors.
- 4.111** Ms Melissa Adler, Executive Director of Workplace Relations with the Housing Industry Association, noted that there is no licensing regime for pre-purchase inspections in New South Wales, similar to the ACT. She also explained that the contracts/reports often had standard ‘out-clauses’, such as not being able to inspect the subfloor if it is less than 600 millimetres off the ground. She stated that the ‘Australian Standard is very light on how far they have to go and where they have to look’.¹⁶⁸
- 4.112** She also confirmed that as there is no licensing or registering scheme, there is no training or asbestos awareness program for pre-purchase inspectors.¹⁶⁹

Legal liability of councils, lawyers and agents

- 4.113** Whilst most inquiry participants discussed the obligations of owners/vendors to disclose the presence of loose-fill asbestos insulation, Local Government NSW also questioned whether councils would have a duty of care to advise potential buyers or occupiers of affected homes if they became aware of a property having loose-fill asbestos insulation.¹⁷⁰
- 4.114** Ms Wiesner, a Queanbeyan resident who has a Mr Fluffy home, explained that in her situation Queanbeyan City Council is likely to have had knowledge the home was affected as her house was part of the original testing program. She admitted being angry at council about this, and noted that her property has been turned over several times.¹⁷¹
- 4.115** Queanbeyan City Council acknowledged reports that people had purchased homes unknowingly, when the council may have known that these homes were affected by loose-fill asbestos insulation. The council also acknowledged, in response to questioning, that it had not sought legal advice with respect to their potential liability in such cases.¹⁷²
- 4.116** Council’s rationale for not publicly disclosing the presence of loose-fill asbestos insulation in Queanbeyan homes was provided for in its submission, which stated:

The question is often asked why Council has not made the information in its possession public...Council has always considered that it is not Council’s information, nor is it Council’s role to disseminate information that is the property of the owner. Council is not required to advise potential purchasers about issues such as the presence of bonded asbestos or the presence of termites, so is this case any different?¹⁷³

¹⁶⁸ Evidence, Ms Melissa Adler, Executive Director, Workplace Relations, Housing Industry Association, 14 November 2014, p 65.

¹⁶⁹ Evidence, Ms Adler, 14 November 2014, p 65.

¹⁷⁰ Submission 13, Local Government NSW, p 8.

¹⁷¹ Evidence, Ms Wiesner, 17 November 2014, p 20.

¹⁷² Evidence, Mr Thompson, 17 November 2014, p 8.

¹⁷³ Submission 22, Queanbeyan City Council, p 15.

- 4.117 Concerning why council had not disclosed information concerning the presence of loose-fill asbestos insulation in Queanbeyan homes, Mr Thompson stated that council had ‘always felt it is an issue of buyer beware’. Mr Thompson then admitted that he could not explain why council had taken such a position.¹⁷⁴
- 4.118 Another unresolved issue for the committee was whether legal advisors or agents would be liable if they were or should have been aware that a property was affected by loose-fill asbestos insulation when the property was being purchased.

Committee comment

- 4.119 The committee was alarmed to hear stories where people have recently purchased a home with loose-fill asbestos insulation without full knowledge of the issue or appreciation of the risks. The shock and devastation felt by those owners when they realised their property was affected is understandable and it is clear that more needs to be done to protect prospective buyers of these homes. To that end, the committee was pleased to be advised that the Department of Planning and Environment is investigating options to mandatorily require property owners to notify potential residents of the presence of loose fill asbestos insulation in properties, where it has been positively identified.
- 4.120 It is simply unacceptable that governments, whether state, local or federal, have information on the presence of a deadly product in residential properties but are not providing that information to prospective purchasers and residents. This information must be made available to prospective purchasers by being included in mandatory disclosure requirements placed upon vendors.
- 4.121 The committee supports a specific legal requirement to be imposed on vendors to disclose to prospective buyers the presence of loose-fill asbestos insulation in a home. While there may be some vendors who are not aware that their home is affected, those who are must be legally obliged to inform all potential purchasers of the matter. Vendors who have knowledge their home is affected must also be obliged to disclose the issue to their advisor and agent, with these people also being required to inform potential purchasers.
- 4.122 The committee believes it is important to state that imposing this legal requirement in the absence of adequate financial assistance to affected homeowners would cause a significant and unfair financial burden on existing homeowners. It also faces the substantial risk that a minority of affected homeowners will seek to off load their properties in the shadow of this requirement coming into force and so place a further group of people at risk from loose-fill asbestos. For this reason we strongly urge the NSW Government to adopt this recommendation simultaneously with the establishment of a buy-back scheme as recommended by this committee in recommendation 10.

Recommendation 6

That the NSW Government impose a specific legal requirement on vendors, their agents and advisors, to disclose to prospective buyers the current or past presence of loose-fill asbestos insulation in a home.

¹⁷⁴ Evidence, Mr Thompson, 17 November 2014, pp 9-10.

Protection of tradespeople, visitors and emergency service workers

- 4.123** One of the issues the committee explored was how to protect tradespeople and other individuals, such as emergency service workers, from exposure to loose-fill asbestos insulation when entering affected properties. In particular, the committee sought to understand whether tagging of properties is appropriate and whether there are any other measures that can be undertaken.

Legal obligations of homeowners

- 4.124** A number of inquiry participants contended that a homeowner should have a legal obligation to inform a tradesperson attending their property of the presence of loose-fill asbestos insulation. Whilst Queanbeyan City Council noted that there is currently no legal requirement for such disclosure, Ms Melissa Adler, Executive Director, Workplace Relations, Housing Industry Association, asserted that a homeowner may be considered negligent if they did not advise a tradesperson accordingly:

We do not have strict legal advice but strictly speaking if a home owner knows there is a risk in their property and they do not advise a tradesperson coming to do work where their health and safety could be at risk, we would suggest there is an element of negligence there.¹⁷⁵

- 4.125** Eurobodalla Shire Council and Queanbeyan City Council similarly agreed that property owners should have an obligation to notify tradespeople, with both councils supporting the tagging of properties.¹⁷⁶

Tagging of properties

- 4.126** The ACT Government has mandated the tagging of all properties affected by loose-fill asbestos insulation in the ACT, so as to ensure tradespeople can easily identify properties affected by the product. This has required the owners of affected properties to affix a warning sticker to their meter box and switchboard, with such stickers being provided by the government. From 1 January 2015, WorkSafe Inspectors will be checking properties to ensure stickers are appropriately affixed, with penalties applying if they are not.¹⁷⁷

- 4.127** The ACT Government has also emphasised that having a sticker does not absolve the owner or occupier of the responsibility to inform a tradesperson of the presence of loose-fill asbestos:

It is important to note that stickers do not absolve a homeowner or occupant's responsibility to inform tradespeople, tenants or potential buyers that the home is affected by loose-fill asbestos, or to provide a copy of any asbestos assessment reports on the home.¹⁷⁸

¹⁷⁵ Evidence, Ms Adler, 14 November 2014, p 61.

¹⁷⁶ Submission 22, Queanbeyan City Council, p 15 and Submission 5, Eurobodalla Shire Council, p 2.

¹⁷⁷ ACT Government, *ACT Government Asbestos Response Taskforce*, accessed 20 November 2014, <http://www.act.gov.au/asbestos-response-taskforce>.

¹⁷⁸ ACT Government, *ACT Government Asbestos Response Taskforce*, accessed 20 November 2014, <http://www.act.gov.au/asbestos-response-taskforce>.

- 4.128** Mr Kefford, from the ACT Asbestos Response Taskforce, explained that the approach taken in the ACT has sought to ‘balance, at the request of the affected home owners, their privacy with the need to provide information for people who genuinely have a need to know’.¹⁷⁹
- 4.129** The Asbestos Safety and Eradication Agency supported the tagging of properties affected by loose-fill insulation. While Mr Tighe acknowledged that some residents in the ACT have felt it to be ‘branding’, he argued that it is a subtle measure that can be effective in advising tradespeople of the presence of loose-fill asbestos in the home. Mr Tighe did, however, recognise that it would not necessarily reach others attending the property, such as visitors or door-to-door salespeople.¹⁸⁰
- 4.130** Mr Tighe argued that owners would be remiss in relation to their responsibilities to a tradesperson if they did not inform them that the property was contaminated by loose-fill asbestos insulation. He stated that ‘at least if they are aware...they can put on appropriate protective equipment’ or make a judgment call as to whether they want to do the work.¹⁸¹
- 4.131** Local Government NSW also expressed support for labels being placed on affected homes as a measure to notify tradespeople attending the property. When asked whether labels should be attached to manholes and cavities, Ms Lovesey supported this proposal, although she said that they should be mainly affixed to the electrical meter box.¹⁸²
- 4.132** The Housing Industry Association also supported this measure. Mr Evans stated that it is an adequate measure for stickers to be placed in meter boxes, such as what is occurring in the ACT, and that it would be up to Government to determine if more is needed, such as labels on manholes and under the house cavities.¹⁸³
- 4.133** There were some concerns expressed about whether tradespeople would access or check the meter box. Mr Mark McCabe, Work Safety Commissioner and Head of Work Safe in the ACT, said that tradespersons should be encouraged to check the meter box routinely.¹⁸⁴
- 4.134** Given the concerns about tradespeople not checking meter boxes, Mr Adamson from the Real Estate Institute suggested that stickers should be affixed permanently in prominent positions on the property, such as on the front door or otherwise.¹⁸⁵
- 4.135** In terms of stickers, Local Government NSW stated in their submission that the labels must be mandated and provided free of charge to the owner, similar to the approach taken in the ACT.¹⁸⁶

¹⁷⁹ Evidence, Mr Kefford, 14 November 2014, p 16.

¹⁸⁰ Evidence, Mr Tighe, 14 November 2014, p 4.

¹⁸¹ Evidence, Mr Tighe, 14 November 2014, p 4.

¹⁸² Evidence, Ms Lovesey, 14 November 2014, p 40.

¹⁸³ Evidence, Mr Evans, 14 November 2014, p 62

¹⁸⁴ Evidence, Mr McCabe, 14 November 2014, p 17.

¹⁸⁵ Evidence, Mr Adamson, 14 November 2014, p 74.

¹⁸⁶ Submission 13, Local Government NSW, p 10.

- 4.136** Further to the need to protect tradespersons from exposure to loose-fill asbestos insulation, the committee also considered the protocols in place for when emergency service workers attend homes which may be contaminated.
- 4.137** Mr Tighe stressed the need for emergency service workers to be made aware of the presence of loose-fill asbestos insulation in properties. He also argued that it would be unlikely that emergency responders would have the time to check tagged metre boxes. Mr Tighe made this point to highlight the need for some disclosure of contaminated homes to relevant authorities:
- [I]t is really about targeting someone who is going into the area where the asbestos contamination has taken place so that they are aware of it. I do not know how you can do that just by using tagging in metre boxes, for example, because if there has been a disaster then the emergency response people would not have time to glean where the contaminated buildings were vis-a-vis those that were not. So I think that, as much as people do not want identification of the properties on the public record, there is certainly an issue in relation to having that information available to people who are first responders, including fire brigades et cetera.¹⁸⁷
- 4.138** Mr Dunphy noted that the NSW Government was implementing three measures to better advise emergency services workers of the presence of loose-fill asbestos insulation in homes. Firstly, as part of the conditions for the voluntary testing program, homeowners are being required to sign a consent form agreeing to a warning label being placed on their metre box, in the event their home is found to be contaminated. Secondly, WorkCover provides information to the emergency services authorities regarding the presence of all dangerous goods on properties. This information is then added to the emergency service response database so 'that they know when they go to a fire whether there are dangerous goods at the location'. Thirdly, the HACA has provided a register of identified loose-fill asbestos insulation homes to emergency services so that they can add that to their records.¹⁸⁸

Training programs

- 4.139** In terms of measures to protect tradespeople, the committee also considered the adequacy of training and asbestos awareness programs in New South Wales. In particular, the committee noted that the ACT Government has created an obligation for mandatory asbestos awareness training for any occupation that comes into contact with homes.¹⁸⁹
- 4.140** Mr McCabe advised the committee that asbestos awareness training has been successful in the ACT, with over 14,000 people completing the course. Mr Kefford, from the ACT Asbestos Response Taskforce, also explained that the training is not just about Mr Fluffy homes, as it has a broader focus on asbestos awareness, with a component that reminds people about the existence of loose-fill asbestos insulation in some homes.¹⁹⁰
- 4.141** The need for and importance of training was highlighted by a number of inquiry participants. Mr Tighe, Chief Executive Officer of the Asbestos Safety and Eradication Agency, suggested that greater awareness of asbestos management and diseases is needed, particularly amongst

¹⁸⁷ Evidence, Mr Tighe, 14 November 2014, p 5.

¹⁸⁸ Evidence, Mr Dunphy, 14 November 2014, p 29.

¹⁸⁹ Evidence, Mr McCabe, 14 November 2014, p 17.

¹⁹⁰ Evidence, Mr Kefford, 14 November 2014, p 17.

younger tradespeople. He stated that there is a perception that asbestos diseases are an ‘old guy’s disease’:

It is unfortunate that a lot of younger tradespeople believe that asbestos and asbestos-related diseases are something of the seventies, eighties and nineties; it is an old guy’s disease. That is because of the period of gestation in relation to asbestos-related disease...Now we have got a new group of people who have been trained in those occupations and we have not had the installation of asbestos products since the early nineties. So there is a degree of naivety in relation to the process.¹⁹¹

- 4.142** In its submission, Local Government NSW also highlighted the importance of educating tradespeople to protect their health and those in the vicinity of their work. It argued that the Australian Government should be increasing their efforts in this area.¹⁹²
- 4.143** Mr Tighe explained that at the federal level, his agency is trying to develop more training programs on asbestos, particularly in light of their research which has indicated that formal asbestos awareness and safety training is not widespread, with approximately only 40 per cent of relevant people having undertaken such training.¹⁹³
- 4.144** Unions NSW provided evidence that there is no standardised form of training, despite there being a requirement for such training under the relevant code of practice. Mr Deguara also explained that some workers have become complacent about dealing with asbestos, which is a concern given the serious health risks.¹⁹⁴
- 4.145** The Housing Industry Association advised the committee that they are promoting asbestos awareness training in New South Wales, but as a voluntary training course. Mr Neil Evans from the Association explained that they promote such training at trade nights and through various publications, however, they noted that this information is limited to their members.¹⁹⁵

Committee comment

- 4.146** The potential health risks to tradespeople attending a property affected by loose-fill asbestos insulation are significant, particularly considering that many access the ceiling, walls and subfloor to carry out work. Where an owner is aware their home is affected, the committee believes that they should have a legal obligation to verbally disclose to the tradesperson the presence of loose-fill asbestos insulation at the property. This will allow the worker to determine what protective equipment is needed, and whether in fact, they want to continue carrying out the work.
- 4.147** Owners should also identify that their property is affected by displaying a sticker in the electrical meter box and on the ceiling cavity. While the committee acknowledges that some ACT residents have voiced concerns over this approach, the need to protect tradespeople must take priority. Therefore, the committee supports mandatory tagging of all properties

¹⁹¹ Evidence, Mr Tighe, 14 November 2014, p 4.

¹⁹² Submission 13, Local Government NSW, p 9.

¹⁹³ Submission 32, Asbestos Safety and Eradication Agency, p 12.

¹⁹⁴ Evidence, Mr Deguara, Unions NSW, 14 November 2014, p 52.

¹⁹⁵ Evidence, Mr Neil Evans, Executive Director, Housing Industry Association, 14 November 2014, p 67.

known to be affected, similar to the approach in the ACT, with penalties for owners that do not comply.

- 4.148** Another measure that will help protect tradespeople is mandatory asbestos awareness training. Education and training on these issues is critical in raising awareness about the risks of being exposed to asbestos. The committee supports training to be compulsory for all relevant industries and trades. The committee also believes that tradespeople must be trained to check whether a property is tagged as being affected by asbestos as a matter of routine.
- 4.149** The committee also believes that emergency service workers should be made aware of the presence of loose-fill asbestos insulation in homes. To that end, the committee urges the NSW Government to ensure that it is taking all reasonable steps to effectively advise the emergency services authorities of the location of contaminated homes.
-

Recommendation 7

That the NSW Government implement measures to protect tradespeople and emergency service workers from being exposed to loose-fill asbestos insulation, including:

- tagging of all properties known to be affected, with penalties for non-compliance
 - imposing a legal requirement on homeowners to disclose that their home is affected by loose-fill asbestos
 - developing a regular, mandatory asbestos awareness training program for relevant industries and trades
 - ensuring that all reasonable steps are being taken to effectively advise the emergency services authorities of the location of contaminated homes.
-

Removal, transport and disposal of waste

- 4.150** A number of inquiry participants raised concerns about the removal, transport and disposal of loose-fill asbestos insulation, particularly given the health risks that can arise from exposure. In particular, the committee explored the requirements around asbestos removal, the costs involved and how to prevent illegal dumping.
- 4.151** The committee noted that there are legal requirements in terms of asbestos removal, such that it can only be removed by a trained asbestos removalist. Local Government NSW, in its submission, also outlined that removalists are currently required to notify WorkCover prior to asbestos removal and whether the asbestos is friable or non-friable. It stated that this may be helpful in identifying the number of affected homes.¹⁹⁶
- 4.152** The committee asked Mr Dean Brunton, Hazard Materials Consultant with Robson Environmental Pty Ltd, about training for asbestos removalists and whether there are sufficient personnel to safely carry out this work. He raised a concern about the lack of

¹⁹⁶ Submission 13, Local Government NSW, p 7.

regulation of asbestos removal training, arguing that people are fast tracked through the courses.¹⁹⁷

- 4.153** Several participants noted that disposal costs may be excessive and that this may influence people to illegally dump the material. The Asbestos Safety and Eradication Agency acknowledged these concerns. With the environmental levy being added to disposal fees, and other health and safety regulations, Mr Tighe argued that the issue needed to be addressed.¹⁹⁸
- 4.154** Local Government NSW also argued that asbestos disposal should not be subject to excessive fees or the waste levy. Ms Susy Cenedese, Strategy Manager for Local Government NSW, explained that the cost of disposal for asbestos is quite high compared to other waste and that this can be a deterrent for people to manage the material appropriately.¹⁹⁹
- 4.155** When asked by the committee what legislative arrangements could address this issue, Ms Cenedese stated that Local Government NSW has been advocating for waiver of the section 88 waste levy on asbestos disposal.²⁰⁰
- 4.156** Other concerns raised about the removal and disposal of waste from houses affected by loose-fill insulation was whether sites were accessible, whether they had capacity and whether they were staffed. Ms Lovesey noted concerns from councils about where waste will go, particularly given there are proximity regulations, such that it may have to be disposed within a certain distance of where it is removed so there is not excessive transportation.²⁰¹
- 4.157** In the ACT, Mr Kefford explained that it was likely that each house demolished would produce 50 to 100 tonnes of waste, including soil from the footprint of the home.²⁰² He explained the demolition process and the controls to minimise the impact of fibres being distributed into the atmosphere, such as vacuuming and dust suppression and wetting. He also outlined that the ACT will be doing a pilot demolition, transport and waste program.²⁰³

Committee comment

- 4.158** The committee is concerned that the costs of disposing asbestos related waste may act as a deterrent for people to follow the necessary protocols. While no specific cases of illegal dumping of loose-fill asbestos insulation were brought to the committee's attention, the committee believes that the removal of any additional levy imposed for the disposal of asbestos waste will help to prevent this issue in the future.

¹⁹⁷ Evidence, Mr Dean Brunton, Hazard Materials Consultant, Robson Environmental Pty Ltd, 17 November 2014, p 32.

¹⁹⁸ Evidence, Mr Tighe, 14 November 2014, p 5.

¹⁹⁹ Evidence, Ms Susy Cenedese, Strategy Manager, Local Government NSW, 14 November 2014, p 41.

²⁰⁰ Evidence, Ms Cenedese, 14 November 2014, p 41.

²⁰¹ Evidence, Ms Lovesey, 14 November 2014, p 42.

²⁰² Evidence, Mr Kefford, 14 November 2014, p 20.

²⁰³ Evidence, Mr Kefford, 14 November 2014, p 24.

Recommendation 8

That the NSW Government examine reducing the costs levied for the disposal of asbestos waste, in order to encourage its safe disposal.

Obligations of strata and property managers

- 4.159** Another issue raised during the inquiry related to the obligations of strata and property managers in dealing with asbestos. The Real Estate Institute of NSW, a professional association of real estate agents and other property professionals, explained that strata managers are those that act for owners corporations to manage strata complexes, whereas residential property managers manage a tenancy on behalf of the landlord.²⁰⁴
- 4.160** In their submission, the Real Estate Institute of NSW stated that they were concerned that there are no clear guidelines or documented processes for their members to ensure they comply with their legal obligations. They explained that they have made several requests to the NSW Government to seek assistance on guidelines but are still unclear on their obligations. They provided the committee with copies of the correspondence they had sent and received from WorkCover on this issue.²⁰⁵
- 4.161** Mr Gary Adamson, Chair, Strata Manager Chapter, argued that the legislation is not clear on how it relates to agents and ‘as a result, [they] are placed in a rather unique position where [they] are responsible for things that [they] have no genuine authority to address’.²⁰⁶

Emotional impact

- 4.162** During this inquiry the committee received evidence from a number of individuals who were personally affected by the presence of loose-fill asbestos insulation in the homes they owned or in which they lived. The stories were extremely sad and powerful. Whilst the emotional impact and response varied, the committee noted common emotions of grief, anger, frustration and devastation. A number of these stories, as related in evidence or submission by the individuals concerned, are reproduced in Chapter 2.
- 4.163** Mr Kieran Ferris provided evidence about the impact these issues are having on families. He stated that the lack of resolution is affecting their ‘moral, financial and emotional integrity’. He also explained his emotional reaction to being informed he was the owner of a Mr Fluffy property: ‘It was a punch in the guts...It was the carpet being ripped out from underneath us. It was the reality that our house was worth nothing’.²⁰⁷
- 4.164** Mr Luke Brown, a representative from the Fluffy Owners and Residents Action Group, captured the raw emotion some home owners are experiencing:

²⁰⁴ Submission 2, Real Estate Institute of NSW, p 1.

²⁰⁵ Submission 2, Real Estate Institute of NSW, p 1.

²⁰⁶ Evidence, Mr Gary Adamson, Chair, Strata Management Chapter, Real Estate Institute of NSW, 14 November 2014, p 71.

²⁰⁷ Evidence, Mr Ferris, 17 November 2014, p 37.

The toxicity lurks like a predator throughout the very place that you and your family are supposed to feel most secure and safe. I can assure you that living and owning a Mr Fluffy home is awful. It can be terrifying, depressing, and make your life a complete and utter misery.²⁰⁸

- 4.165** A number of other submission authors who are owners of Mr Fluffy homes expressed varying emotions, including anger at having purchased an affected home unknowingly,²⁰⁹ guilt for potentially exposing friends and family to asbestos²¹⁰ and frustration and fear, with uncertainty about how the issue will be resolved and whether the ‘poisonous material’ will affect them.²¹¹ The committee also noted that many residents also have to face emotional impact of not being able to have family and friends visit.²¹²
- 4.166** Queanbeyan City Council also provided evidence about the stigma some owners are experiencing in their neighbourhoods. Council suggested that the fear of this stigma is having an impact on whether people volunteer to have their home tested for the material.²¹³ In addition, they stated that affected owners are feeling an ‘overwhelming frustration with the lack of action’ to resolve the issue, particularly given it was first identified over 20 years ago.²¹⁴
- 4.167** Ms Wiesner, who also owns an affected home, reflected on her emotional state and the trauma people are experiencing:
- I definitely feel let down. Even something as simple as a warning when purchasing the property would have saved us, ignoring the financial side, limitless amount of emotional burden that we have had to suffer...the trauma to anyone finding out that they have lived in a house that has this in it—a house that has not been cleaned, a house that has had this fluff visible in it—is extremely traumatic and I would not wish it upon my worst enemy.²¹⁵
- 4.168** On the issue of support and counselling, Mr Kefford, from the ACT Asbestos Response Taskforce, explained that the ACT Government has formed a partnership with ACT Medicare Local to provide psychological and mental health support to affected residents. He explained that this was an element of the scheme announced by the ACT Government in July.²¹⁶
- 4.169** When the committee asked Mr Michael Thompson, Group Manager, Sustainability and Better Living, Queanbeyan City Council, about whether they are aware of any counselling currently being provided, he responded in the negative. He also outlined that people are dealing with the issue differently and that they may be able to access counselling privately if needed:

²⁰⁸ Evidence, Mr Brown, 17 November 2014, p 15.

²⁰⁹ Submission 4, Name suppressed, p 1; Submission 7 Name suppressed, p 1; Submission 15, Name suppressed, p 2.

²¹⁰ Submission 7 Name suppressed, p 1.

²¹¹ Submission 7 Name suppressed, p 1.

²¹² Evidence, Mr McCabe, 14 November 2014, pp 20-21.

²¹³ Submission 22, Queanbeyan City Council, p 12.

²¹⁴ Submission 22, Queanbeyan City Council, p 12.

²¹⁵ Evidence, Ms Wiesner, 17 November 2014, p 23.

²¹⁶ Evidence, Mr Kefford, 14 November 2014, p 23.

Our interactions with affected owners show that people deal with this in many different ways. Some people are quite comfortable with it. For other people it is the bane of their existence and the only thing they can really think about. At the moment if those people feel they need counselling then they have to access it privately.²¹⁷

- 4.170** Nevertheless, Mr Thompson expressed support for counselling to be provided, or for assistance with the cost of counselling if needed.²¹⁸
- 4.171** Local Government NSW also suggested that residents in New South Wales should be provided with access to counselling, similar to what the ACT Government has provided to ACT residents. They noted that many local councils supported this proposal, particularly given the high levels of concern, distress and anxiety affected residents are experiencing. They suggested that a hotline may be of benefit, particularly if a large number of homes are affected.²¹⁹

Committee comment

- 4.172** The committee is deeply concerned about the emotional impact of this issue on individuals and families. The members of the committee acknowledge the tremendous financial burden each of them carry.
- 4.173** The committee recognises the pain, anger and guilt many individuals also feel. The committee acknowledges how difficult it must be for those individuals who wonder whether they have unwittingly exposed their family and friends to this dangerous material. The committee cannot stress enough that this situation is not the fault of the individuals concerned. Despite this not being their fault, the committee certainly appreciates the toll these issues are having on the mental health and well-being of the families involved.
- 4.174** The devastation being felt by individuals and families has had a profound effect on the committee, and we urge the NSW Government make provision for assistance and support to these people to help them move forward.

Recommendation 9

That the NSW Government make provision for free counselling and mental health support to individuals and families affected by loose-fill asbestos insulation.

²¹⁷ Evidence, Mr Thompson, Queanbeyan City Council, 17 November 2014, p 5.

²¹⁸ Evidence, Mr Thompson, 17 November 2014, p 5.

²¹⁹ Submission 13, Local Government NSW, p 7.

Chapter 5 A buy back scheme for New South Wales

This chapter examines the lessons that New South Wales can learn from the experience of the Australian Capital Territory (ACT) in dealing with homes affected by loose-fill asbestos insulation.

The chapter begins by documenting the evolution of the ACT's response from the removal of visible and accessible loose-fill asbestos insulation to the complete eradication of contaminated homes, followed by an examination of the core components of the ACT's current Loose-Fill Asbestos Eradication Scheme.

The chapter concludes by arguing that the only viable and enduring solution to address the ongoing negative impacts of loose-fill asbestos insulation in New South Wales is the eventual eradication of all contaminated homes via a buy-back scheme.

The evolution of the ACT response to loose-fill asbestos insulation

- 5.1** This section provides historical background detailing the actions taken in the ACT to manage the issue of loose-fill asbestos insulation. In brief, loose-fill asbestos insulation was first introduced into the ACT in the late 1960s. From the beginning health concerns regarding the product were raised. The visible and accessible loose-fill asbestos insulation removal program took place between 1989 and 1993. Events in 2011-2012 led to the ACT Government's adoption in 2014 of a policy which seeks to eradicate contaminated homes.

Introduction of loose-fill asbestos and early concerns

- 5.2** As in New South Wales, it is understood that loose-fill asbestos insulation was introduced into the roofs of ACT homes primarily by D. Jansen & Co. Pty Ltd, and its successor companies, most commonly known as 'Mr Fluffy'. It is estimated that Mr Fluffy's product may have been installed in approximately 1,000 ACT homes.²²⁰
- 5.3** According to Mr Peter Tighe, Chief Executive Officer, the Australian Government Asbestos Safety and Eradication Agency, Mr Fluffy used a crude installation method. Mr Tighe stated that: 'It was manufactured in bales. It came into a hopper and was churned up and then basically with a reverse vacuum just sprayed into the roof. It was a very simple system of installation'.²²¹
- 5.4** Mr Tighe added that there is an extreme risk associated with loose-fill asbestos insulation by virtue of the installation method. Namely, that the product is extremely friable and as a result has a higher propensity for movement within a property as compared to bonded asbestos material.²²²
- 5.5** Risks associated with product were first recognised in 1968 by an employee of the ACT Occupation Health Section, Mr Gersh Major. Mr Major had reviewed Mr Fluffy's installation

²²⁰ Submission 17, ACT Government, attachment 1, p 1.

²²¹ Evidence, Mr Peter Tighe, Chief Executive Officer, the Australian Government Asbestos Safety and Eradication Agency, 14 November 2014, p 7.

²²² Evidence, Mr Tighe, 14 November 2014, p 2.

process and in an internal briefing paper he argued that it ‘unnecessarily exposed [installers] to a harmful substance in the course of their work’. Mr Major also identified a potential risk of exposing the community to ‘asbestos dust’ given the possibility for air currents to carry it from roof spaces.²²³

5.6 Later that year the ACT Health Services Branch wrote to the Secretary of the Department of the Interior, and the Secretary-Manager of the National Capital Development Commission and called for D. Jansen & Co. Pty Ltd to ‘be dissuaded or even prevented, if possible, from using asbestos fluff insulation material in houses’.²²⁴

5.7 Despite Mr Major’s advice, and subsequent interagency correspondence, the issue of loose-fill asbestos insulation was not again considered by the ACT authorities until the 1970s. This time the matter was discussed with respect to its presence in government buildings. It was concluded by the Health Commission that ‘a distinct hazard to all persons exists unless proper care [has] been taken to ensure that they do not inhale excessive quantities of asbestos dust’. In addition, the Department of Housing and Construction decided it would no longer use sprayed asbestos or asbestos lagging of any kind in official buildings.²²⁵

The removal program

5.8 In the late 1980s, in accordance with increasing community awareness regarding all forms of asbestos, the dangers posed by the Mr Fluffy product were reconsidered by the ACT authorities. A result of this renewed attention was the implementation of the visible and accessible loose-fill asbestos insulation removal program (the removal program) which took place between 1989 and 1993.²²⁶

5.9 The removal program was jointly funded by the Commonwealth and ACT Governments. It was largely delivered by the ACT Government and incorporated three phases, namely:

- surveying approximately the 65,000 Canberra houses then in existence for the presence of loose-fill asbestos insulation
- sealing identified affected homes at all points where it was considered asbestos could enter into living areas
- the removal of loose-fill asbestos insulation involving encapsulation of the roof and vacuuming and sealing accessible areas.²²⁷

5.10 Despite the ACT removal program, similarly affected homes across the border in New South Wales, most notably in Queanbeyan, were not subject to the same treatment. According to the Queanbeyan City Council this has led to an ‘an overwhelming frustration with the lack of action on providing assistance with removing [loose-fill asbestos insulation]’ within the community.²²⁸

²²³ Submission 17, ACT Government, attachment 1, p 7.

²²⁴ Submission 17, ACT Government, attachment 1, p 7.

²²⁵ Submission 17, ACT Government, attachment 1, p 7.

²²⁶ Submission 17, ACT Government, attachment 1, p 8.

²²⁷ Submission 17, ACT Government, attachment 1, p 8.

²²⁸ Submission 22, Queanbeyan City Council, p 11.

5.11 Mr Andrew Kefford, Deputy Director General, Chief Minister, Treasury and Economic Development Directorate, and Head of the Australian Capital Territory Asbestos Response Taskforce, advised the committee that following the removal program, the general consensus within the ACT Government was that the treated homes had been remediated although some residual asbestos fibres may still be present. He also noted that this had been communicated to homeowners:

It has been the position of the Territory government since the original removal program was conducted in the nineties that the houses had been remediated but there were residual fibres in the walls and that had been communicated [to homeowners] on various occasions.²²⁹

5.12 Mr Kefford explained that letters were sent to homeowners which essentially stated that ‘asbestos was removed from the property as part of the program’. He added that ‘the language we used was that residual fibres remain in the walls and if they are going to do work on the house they should talk to the building controller’.²³⁰

5.13 Mr Mark McCabe, Work Safety Commissioner and Head of Work Safe, Australian Capital Territory, noted that in effect, the position post the removal program was that ‘we always thought that if the fibres were left undisturbed there would not be a problem’.²³¹

5.14 This position was maintained from 1993 to 2012. During that period the ACT Government from time-to-time identified a small number of houses that had been missed during the removal program and remedial action was taken. However, at the end of 2011 an un-remediated home was discovered in the suburb of Downer. In early 2012, as per standard procedure the Downer home was subject to the ACT’s missed home remediation process.²³²

5.15 During the course of remediating the Downer home it was very quickly discovered that it was severely contaminated. The contamination had spread throughout the home with asbestos fibres having got into the living areas.²³³

5.16 Mr Kefford advised the committee that the contamination was so dire that remediation was impossible and the decision was taken to purchase the home and demolish it.²³⁴

²²⁹ Evidence, Mr Andrew Kefford, Deputy Director General, Chief Minister, Treasury and Economic Development Directorate, and Head of the Australian Capital Territory Asbestos Response Taskforce, 14 November 2014, p 13.

²³⁰ Evidence, Mr Kefford, 14 November 2014, p 20.

²³¹ Evidence, Mr Mark McCabe, Work Safety Commissioner and Head of Work Safe, Australian Capital Territory, 14 November 2014, p 19.

²³² Evidence, Mr Kefford, 14 November 2014, p 13.

²³³ Evidence, Mr Kefford, 14 November 2014, p 13.

²³⁴ Evidence, Mr Kefford, 14 November 2014, p 13.

5.17 The ACT Government then examined the home to better understand the process by which the Downer home had been contaminated. Mr Kefford noted that:

The approach that we took to that process, which did not commence until the first quarter of 2013, was to encase the whole of the house in a protective shelter and basically forensically deconstruct it to get a better understanding of the extent to which the fibres had moved through the house, where they had moved and how they had moved, and so on. We received the final report on that process in December 2013. That showed the fibres had migrated in very significant numbers through the structure of the house as well as into the air-conditioning ducts in the roof and significantly through the subfloor areas...²³⁵

5.18 Figures 1 and 2 are photos showing examples of where the loose-fill asbestos fibres managed to penetrate the living areas.

Figure 1 Loose-fill asbestos fibres present on living area wall frames in the Downer home



Images of loose-fill asbestos in the living areas of the Downer Home, tendered by Mr Dean Brunton, Hazardous Materials Consultant, Robson Environmental, 17 November 2014.

²³⁵ Evidence, Mr Kefford, 14 November 2014, p 14

Figure 2 Loose-fill asbestos fibres present on living area bricks in the Downer home

Images of loose-fill asbestos in the living areas of the Downer Home, tendered by Mr Dean Brunton, Hazardous Materials Consultant, Robson Environmental, 17 November 2014

- 5.19** In February 2014, the ACT Work Safety Commissioner wrote to the owners of the homes that were part of the removal program to re-emphasise the need for careful management of loose-fill asbestos insulation and to encourage homeowners to engage a licensed assessor to provide advice in relation to their property.²³⁶
- 5.20** In accordance with this advice a number of properties were examined and it was soon established that for a significant number of homes, despite having been subject to the removal program, asbestos fibres were being discovered throughout the home.²³⁷
- 5.21** Mr Tighe from the Australian Government Asbestos Safety and Eradication Agency informed the committee that the removal program had ultimately failed in its objective of removing all asbestos fibres from Mr Fluffy homes. He explained that despite the extraction of visible asbestos fibres from roofs in the late 1980s and early 1990s the migration of asbestos throughout homes had already taken place:

Unfortunately, and we learn from experience, the first remediation that took place in the Australian Capital Territory was about removing visual loose-fill asbestos from ceiling cavities. There was an attempt to extract where they could sight loose-fill asbestos from the internal wall cavities and then there was a PVA substance sprayed over the internal areas of the ceiling but, unfortunately, the migration of asbestos had taken place well before that first level remediation had taken place. So, in essence, it

²³⁶ Submission 17, ACT Government, attachment 1, p 9.

²³⁷ Evidence, Mr Kefford, 14 November 2014, p 14

did not remove all the loose-fill asbestos that could possibly have been removed. They probably did the job they could do without a deconstruction of the building but, unfortunately, the work done has not resolved the issue in relation to public risk.²³⁸

5.22 It was this realisation that changed the thinking of the ACT Government. Mr McCabe labelled it a ‘game changer’. He noted that although the government still believes that asbestos fibres are not a problem if left undisturbed, it is unrealistic to think that they won’t find their way into a home given properties are forever moving and by virtue of the fact that there are multiple entry points, such as downlights, cavity doors and cracked cornices.²³⁹

5.23 Mr McCabe explained that the ACT Government’s understanding now is that while short-term remedial work might be able to be done it would be impossible to prevent asbestos fibres moving within homes over the long-term:

[W]e have come to realise it is almost impossible to stop that from happening permanently. We might be able to reduce the likelihood of that very significantly for a short period but it will make the house quite difficult to live in and it cannot be sustained over the longer period.²⁴⁰

The ACT Government Asbestos Response Taskforce

5.24 Based on its revised understanding of the threat posed by loose-fill asbestos insulation, the ACT Government established the Asbestos Response Taskforce (the taskforce) in June 2014 ‘to provide a coordinated and compassionate response to the lasting impacts of loose-fill asbestos in Canberra homes’.²⁴¹

5.25 The head of the taskforce, Mr Andrew Kefford advised the committee that it has three main functions:

- developing advice to share with the New South Wales authorities concerning loose-fill asbestos insulation
- administering an emergency financial assistance program as well as the affected home demolition program
- informing and educating the community.²⁴²

5.26 Mr Tighe commented positively on the ACT’s prompt establishment of the taskforce and suggested that it would be prudent for New South Wales to adopt a similar approach to best address the issue of loose-fill asbestos insulation:

I think you have to have a specific body that is tackling this issue; I think that is one of the major lessons from the Australian Capital Territory. Whether it is a task force or whether it is a specific government agency that has got a responsibility in that area that

²³⁸ Evidence, Mr Tighe, 14 November 2014, p 2.

²³⁹ Evidence, Mr McCabe, 14 November, p 19.

²⁴⁰ Evidence, Mr McCabe, 14 November, p 19.

²⁴¹ ACT Government Asbestos Response Taskforce, ‘ACT Government Asbestos Response Taskforce’, accessed 20 November 2014 <http://www.act.gov.au/asbestos-response-taskforce>.

²⁴² Evidence, Mr Kefford, 14 November, p 13.

builds a level of expertise that can put the information out there, reassure people, go to public meetings, give them the accurate information so they can make a decision in their best interests.²⁴³

5.27 In 2011, the NSW Government established the NSW Heads of Asbestos Coordination Authorities (HACA) to co-ordinate the activities of statutory authorities in relation to *all* aspects of asbestos information, assistance, compliance and enforcement.²⁴⁴

5.28 Unlike the ACT taskforce, the HACA is not a body set-up to singularly deal with presence of Mr Fluffy asbestos fibres in New South Wales homes. A number of inquiry participants identified the lack of a specific body to manage the issue as a key reason for why the ACT is further ahead in addressing the problem than New South Wales. For example, Local Government NSW, the peak body for councils in NSW, argued that:

The differences between the approaches and advice from the NSW and ACT Governments is problematic for councils and communities, who are asking why is there one approach to this issue in the ACT and a mere stone's throw away in Queanbeyan residents are receiving different treatment for the same problem.²⁴⁵

The ACT Loose-Fill Asbestos Eradication Scheme

5.29 The key components of the ACT's Loose-Fill Asbestos Eradication Scheme (the scheme) are as follows:

- an offer to purchase all affected Canberra homes and demolish them
- short-term interventions to minimise the asbestos risk in instances where families seek to stay in an affected home
- emergency financial assistance and counselling support
- a waiver on the stamp duty applicable to an affected homeowner's next ACT property purchase
- demolition and disposal processes
- the resale of remediated blocks of land.²⁴⁶

5.30 The buy-back is being implemented by the Asbestos Response Taskforce (the taskforce). The demolition and block remediation component is being overseen by regulatory authorities including WorkSafe ACT, the Environment and Planning Directorate, and the Environment Protection Authority.²⁴⁷

5.31 To pay for the administration of the scheme the ACT Government has secured a \$1 billion dollar loan underwritten by the Commonwealth Government.²⁴⁸

²⁴³ Evidence, Mr Tighe, 14 November 2014, p 2.

²⁴⁴ Submission 28, NSW Head of Asbestos Coordination Authorities, p 4.

²⁴⁵ Submission 13, Local Government NSW, p 8.

²⁴⁶ Submission 17, ACT Government, attachment 4, p 4.

²⁴⁷ Submission 17, ACT Government, attachment 4.

²⁴⁸ Evidence, Mr Tighe, 14 November 2014, p 11.

- 5.32** It is estimated that 1,021 homes will be eligible for the scheme. As of November 2014 technical assessments have been undertaken in 800 homes. In more than half of those properties asbestos fibres have been found inside the living spaces.²⁴⁹
- 5.33** Mr Neil Evans, Executive Director, ACT and Southern NSW Region, Housing Industry Association, impressed upon the committee the enormity of the rebuilding effort by noting that it would more than double the work required to rebuild the 500 homes lost during the 2003 Canberra bushfires.²⁵⁰

Purchase to demolish

- 5.34** The cornerstone of the scheme is the offer to purchase all homes affected by loose-fill asbestos insulation within the ACT. The ACT's commitment to the buy-back is underpinned by its position that demolition is the only viable long-term solution to the problem. This position is made clear in the taskforce's information document, entitled, *The ACT Government's Preferred Way Forward on Loose Fill Asbestos*:

Demolition of all affected homes is the only enduring solution to the ongoing health and safety risks to residents, workers and visitors posed by the continuing presence of loose-fill asbestos insulation in Canberra homes and their attendant social, financial and practical consequences.²⁵¹

- 5.35** A copy of *The ACT Government's Preferred Way Forward on Loose Fill Asbestos* is reproduced in Appendix 1.
- 5.36** Under the terms of the buy-back, the ACT Government has offered to purchase all affected homes at a market value to be determined by qualified valuers under the supervision of the Australian Property Institute, ACT Division. The market value will be assessed as if the home did not have loose-fill asbestos insulation. Participation in the process is voluntary and contingencies have been made to address instances where homeowners seek to stay in their home.²⁵²
- 5.37** The buy-back scheme offer commenced on 28 October 2014 and closes on 30 June 2015. Taskforce Head, Mr Kefford advised that a homeowner does not need to have settled or vacated the property by the closing date 'but they have to indicate a preparedness to engage by that date'.²⁵³
- 5.38** Mr Kefford informed the committee that as of 13 November 2014 approximately 250 homeowners had contacted the taskforce to indicate a willingness to participate in the scheme. He further noted that given the size of the scheme, wherever possible, those homeowners suffering the worst financial duress were being prioritised for valuation and purchase.²⁵⁴

²⁴⁹ Evidence, Mr Kefford, 14 November 2014, p 13.

²⁵⁰ Evidence, Mr Neil Evans, Executive Director, Australian Capital Territory and Southern New South Wales Region, Housing Industry Association, 14 November 2014, p 63.

²⁵¹ Submission 17, ACT Government, attachment 4, p 4.

²⁵² Evidence, Mr Kefford, 14 November 2014, p 18.

²⁵³ Evidence, Mr Kefford, 14 November 2014, p 18.

²⁵⁴ Evidence, Mr Kefford, 14 November 2014, p 18.

- 5.39** Despite a significant number of homeowners quickly engaging with the buy-back offer, the Hon. Katy Gallagher MLA, the then ACT Chief Minister, acknowledged that not all affected parties are completely happy with the plan.²⁵⁵
- 5.40** In order to consult with the public and expert stakeholders concerning the operation of the buy-back, on November 2014 the proposed enabling legislation, the *Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15*, was referred to the ACT Legislative Assembly Standing Committee on Public Accounts (the ACT Public Accounts Committee) for a brief inquiry.²⁵⁶
- 5.41** The ACT Public Accounts Committee tabled its report on 3 December 2014. The report called for the scheme to allow greater flexibility so that responses to contaminated properties can be better tailored to individual circumstances.²⁵⁷
- 5.42** The report's key recommendations are to:
- Provide owners with the option of having their contaminated home demolished before building a new home built on the block, without the need to sell the property to the ACT Government and buy it back.²⁵⁸
 - Allow homeowners in exceptional circumstances, such as the elderly, to stay in their homes.²⁵⁹
 - Establish a Board of Inquiry to 'investigate the full history of the Mr Fluffy legacy' and have it report by 1 March 2016.²⁶⁰
- 5.43** The *Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15* was debated in the ACT Legislative Assembly on 4 December 2014. During debate the opposition successfully moved an amendment to require that the appropriation required for the buy-back be subject to certain guiding principles. These principles call for the elimination of the risk posed by loose-fill asbestos; promote, as far as reasonably possible, fair outcomes for affected homeowners; encourage flexibility in the buy-back's administration; and minimise the financial cost to the ACT.²⁶¹

²⁵⁵ Tom McIlroy, *Canberra Times*, 'More than 300 Mr Fluffy homeowners sign up for buy-back', 16 November 2014, accessed 21 November 2014 <http://www.canberratimes.com.au/act-news/more-than-300-mr-fluffy-homeowners-sign-up-for-buyback-20141116-11n3bz.html>.

²⁵⁶ ACT Parliament, Standing Committee on Public Accounts, Inquiry terms of reference, 'Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15'.

²⁵⁷ ACT Parliament, Standing Committee on Public Accounts, Report, volume 1, 'Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15', p 130.

²⁵⁸ ACT Parliament, Standing Committee on Public Accounts, Report, volume 1, 'Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15', recommendations 19-21, p 137.

²⁵⁹ ACT Parliament, Standing Committee on Public Accounts, Report, volume 1, 'Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15', recommendation 35, p 140.

²⁶⁰ ACT Parliament, Standing Committee on Public Accounts, Report, volume 1, 'Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15', recommendation 57, p 145.

²⁶¹ *Minutes*, ACT Legislative Assembly, 4 December 2014, pp 961-962.

- 5.44** In response to the key recommendations contained in the ACT Public Accounts Committee report, Ms Gallagher was reported in the media as rejecting the proposal for owners to have their house demolished but not be required to sell their land to the government. According to Ms Gallagher ACT Treasury modelling has found that the proposal would cost an extra \$55 million. This figure being based on the government's plan to recoup some of the buy-back scheme's cost through the eventual sale of remediated blocks that have been readied for dual occupancy.²⁶²
- 5.45** Regarding the recommendation to enable homeowners in exceptional circumstances to stay in their homes, Ms Gallagher indicated that affected residents would be given up to five years to leave their homes.²⁶³

Should NSW adopt a purchase to demolish scheme?

- 5.46** A number of inquiry participants, including the Fluffy Owners and Residents' Action Group,²⁶⁴ and Unions NSW argued that the NSW Government must adopt something akin to the ACT's buy-back offer and make it available to all New South Wales homeowners with properties affected by loose-fill asbestos insulation.
- 5.47** Maurice Blackburn Lawyers similarly argued in support of a NSW demolition buy-back scheme, stating that in light of the known health risks and the lessons learnt from the ACT 'it is absolutely clear that [purchase to demolish] is the only reasonable course for the NSW Government to take'.²⁶⁵
- 5.48** Asked to comment on the arguments made in support of the ACT scheme, Mr Peter Dunphy Acting General Manager, Work Health and Safety Division, WorkCover NSW and member of HACA advised the committee that the ACT's response was based on a 'precautionary approach'. Namely, the concept which supports taking protective action before there is definitive scientific proof of a risk. He noted that the ACT has not yet quantified the exact health risk and is currently in the process of doing so.²⁶⁶
- 5.49** Professor Wayne Smith, Director, Environmental Health Branch, NSW Health and HACA member, added that prior to adopting a precautionary approach in response to an issue, a risk assessment must be done first so that there is a quantitative estimate from which to base any future action. He also indicated that the risk posed by Mr Fluffy affected houses in New South Wales would be assessed prior to any remedial work being performed:

²⁶² Kirsten Lawson, *Canberra Times*, 'ACT Chief Minister Katy Gallagher rejects pleas from Mr Fluffy residents to keep their homes', accessed 5 December 2014 <http://www.brisbanetimes.com.au/act-news/act-chief-minister-katy-gallagher-rejects-pleas-from-mr-fluffy-residents-to-keep-their-homes-20141204-11zwq0.html>.

²⁶³ Kirsten Lawson, *Canberra Times*, 'ACT Chief Minister Katy Gallagher rejects pleas from Mr Fluffy residents to keep their homes', accessed 5 December 2014 <http://www.brisbanetimes.com.au/act-news/act-chief-minister-katy-gallagher-rejects-pleas-from-mr-fluffy-residents-to-keep-their-homes-20141204-11zwq0.html>.

²⁶⁴ Submission 25, Fluffy Owners and Residents' Action Group, p 4.

²⁶⁵ Submission 34, Maurice Blackburn Lawyers, p 6.

²⁶⁶ Evidence, Mr Peter Dunphy Acting General Manager, Work Health and Safety Division, WorkCover NSW, 14 November 2014, p 35.

I think before you actually make a decision on whether you need a precautionary approach—a precautionary approach is usually taken where you do not know what the level of risk is and you are unsure whether it is a high risk or a low risk. If you actually can do a proper health risk assessment and come up with a quantitative estimate of what the likely risk is, then you can actually make a more informed decision that you do not need to take a precautionary approach on...What we are trying to do at the moment is to ascertain whether we can get a handle on the level of health risk actually posed by these Mr Fluffy affected houses.²⁶⁷

5.50 In addition to the emphasis on obtaining quantitative data, Mr Dunphy argued there is a need to be sure that if ‘we are spending large amounts of government money we have to be able to justify the rationale for doing that’.²⁶⁸

5.51 Contrary to the position seemingly endorsed by the HACA, Mr Tighe from the Australian Government Asbestos Safety and Eradication Agency argued that the weight of available evidence clearly shows the need for immediate action with regard to Mr Fluffy homes:

Unfortunately, in relation to asbestos there are people who, in fact, move away from what we describe as the precautionary approach and indicate that an exposure or short-term exposure may not necessarily be harmful for you. The evidence that is coming through in relation to asbestos-related diseases shows that medium exposure over a short term can lead to mesothelioma, and there is no time-weighted average when you look at exposure to this carcinogen.²⁶⁹

5.52 Mr Luke Brown, Representative, Fluffy Owners and Residents’ Action Group and owner of a Mr Fluffy affected property in the ACT, similarly argued that the evidence base is already there to justify immediate action. He stated that the negative health impacts of asbestos are commonly recognised and accepted, thus leading him to question the need to undertake a health risk assessment to discover something already known:

To be honest though, I think governments have missed that opportunity [for a health based risk assessment]. The first time that this was really starting to be raised at senior bureaucratic levels was in 1968...All right, if you wanted to do a health risk assessment, it would have been great if they started doing it in 1968. We would have a very good sense of what the effects are. I think the title of your select committee says its all—loose-fill asbestos insulation. Everyone knows that asbestos can kill you. I do not think we need another bureaucratic process in New South Wales to seek to prove otherwise. Surely the evidence is already there.²⁷⁰

Homeowners who seek to stay

5.53 It is the stated position of the ACT Government that its preferred way forward is to demolish all Canberra homes affected by loose-fill asbestos insulation. However, efforts have still been made to accommodate the circumstances of affected homeowners for those who wish to stay

²⁶⁷ Evidence, Professor Wayne Smith, Director, Environmental Health Branch, NSW Health, 14 November 2014, p 35.

²⁶⁸ Evidence, Mr Dunphy, 14 November 2014, p 35.

²⁶⁹ Evidence, Mr Tighe, 14 November 2014, p 3.

²⁷⁰ Evidence, Mr Luke Brown, Representative, Fluffy Owners and Residents’ Action Group, 17 November 2014, p18.

in their homes. In advice to the committee, Mr Kefford stated that it is intended for assistance to these homeowner to be made available only in the medium term:

The first point is that our advice is that the houses are dangerous, the risk cannot be managed, they should be demolished and we have offered to buy them straight away...Having said that, the advice that we have is that it is possible, but with quite some effort, to render the houses safe for habitation in the medium term in most cases—in some cases it is not. The Government has been very careful to attempt to respect the wishes of individuals in what is a bounded choice but to give them a choice to make.²⁷¹

- 5.54** For homeowners who choose to stay in their homes in the medium term a set of mandatory obligations to minimise the risk of entry of asbestos fibres into the living areas will apply from 2015.²⁷²
- 5.55** Regarding homeowners who ultimately choose not to participate in the buy-back process, *The ACT Government's Preferred Way Forward on Loose Fill Asbestos* states that 'the taskforce will investigate and provide advice to government on regulatory options for intervention where homeowners have not accessed the buyback program'. For the moment, however, compulsory acquisition processes are not currently being undertaken.²⁷³
- 5.56** As noted earlier, the ACT Public Accounts Committee has recommended that homeowners in exceptional circumstances, such as the elderly, be allowed to stay in their homes.²⁷⁴ In response to this recommendation the ACT Chief Minister has indicated that affected residents will be given up to five years to leave their homes.²⁷⁵

Emergency financial assistance and counselling support

- 5.57** As part of its package to encourage affected homeowners to engage with the scheme and to assist affected homeowners, the ACT Government announced an emergency financial assistance package in July 2014 worth \$10,000 per affected home with an additional \$2,000 to be allocated per child.²⁷⁶
- 5.58** Mr Kefford informed the committee that the ACT Government envisages that the financial assistance will 'be spent either on new accommodation and replacement of emergency goods, clothes and so on or, alternatively, if they were able to stay in the home, to pay for those short-term hazard reduction works'.²⁷⁷

²⁷¹ Evidence, Mr Kefford, 14 November 2014, p 22.

²⁷² Submission 17, ACT Government, attachment 4, p 4.

²⁷³ Submission 17, ACT Government, attachment 4, p 4.

²⁷⁴ ACT Parliament, Standing Committee on Public Accounts, Report, volume 1, 'Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15', recommendation 57, p 145.

²⁷⁵ Kirsten Lawson, *Canberra Times*, 'ACT Chief Minister Katy Gallagher rejects pleas from Mr Fluffy residents to keep their homes', accessed 5 December 2014 <http://www.brisbanetimes.com.au/act-news/act-chief-minister-katy-gallagher-rejects-pleas-from-mr-fluffy-residents-to-keep-their-homes-20141204-11zwq0.html>.

²⁷⁶ Evidence, Mr Kefford, 14 November 2014, p 22.

²⁷⁷ Evidence, Mr Kefford, 14 November 2014, p 22.

- 5.59** In addition, the ACT Government has joined with ACT Medicare Local to provide psychological and mental health support to affected individuals. The taskforce is also working with the ACT Chief Health Officer and health and community services directorates to ensure the appropriateness of counselling and other support services.²⁷⁸

Stamp duty waiver

- 5.60** Another component of the ACT scheme is that affected homeowners who participate in the buyback will be eligible for a waiver on the stamp duty applicable on a future purchase of a property in the ACT.²⁷⁹
- 5.61** The amount of the waiver will equal the amount of the stamp duty that would have been calculated on the surrender sum. The waiver will be able to be used by an eligible homeowner in the repurchase of property for owner-occupation only. All other ACT Government property transaction costs will be also waived.²⁸⁰
- 5.62** Mr Michael Bresnik, an owner of a home affected by loose-fill asbestos insulation in Queanbeyan, argued that a stamp duty waiver should be a component of any future buy-back demolition scheme in New South Wales. He stated that ‘for mine, not only demolition, but if you will allow me to say that if I purchase a home in New South Wales, I think the stamp duty should be waived as well’.²⁸¹

Demolition and disposal processes

- 5.63** Regarding the demolition of contaminated homes, Mr Kefford advised the committee that the taskforce was planning ‘to procure and oversee [the demolitions] rather than do it ourselves’. Mr Kefford then noted a finding from the 2003 bushfires rebuild which showed that the most efficient response was for the government to oversee the deconstruction and demolition processes but have the actual demolition work done by approved contractors.²⁸²
- 5.64** Mr Kefford indicated that the likely demolition model would see the work broken down by location, ‘where we will procure the demolition of all the homes and expect to let the head contractor to demolish 50 homes in a suburb’. He also informed the committee that the taskforce was currently in the process of developing tender documents for the demolition process and that these would be put to the market in the near future.²⁸³
- 5.65** On the issue of contractors being involved in the demolition process, Mr Tighe from the Australian Government Asbestos Safety and Eradication Agency emphasised the need for the work to be done by well qualified people. Mr Tighe also stated that the ACT was working to develop a demolition and disposal model and would be requiring approved contractors to undertake their work in accordance with this model so as to achieve a consistent approach:

²⁷⁸ Evidence, Mr Kefford, 14 November 2014, p 22.

²⁷⁹ Submission 17, ACT Government, attachment 4, p 13.

²⁸⁰ Submission 17, ACT Government, attachment 4, p 13.

²⁸¹ Evidence, Mr Michael Bresnik, 17 November 2014, p 42.

²⁸² Evidence, Mr Kefford, 14 November 2014, p 15.

²⁸³ Evidence, Mr Kefford, 14 November 2014, p 15.

One of the critical things that I think is important here— and it is a discussion I have had with Mr Kefford—is having the people who are doing that work well qualified and well supervised so that they do not take shortcuts and we do not finish up with some of the legacy problems we had out of the initial clean-up. I think he is very well placed and understands the problem... [F]rom my discussions with Andrew my understanding is that they were going to employ their own group so they could ensure that they had a consistent process for demolition and disposal and that from the start of the project to the finish of project they had clear criteria about how each of the steps were going to take place.²⁸⁴

- 5.66** Mr Kefford confirmed Mr Tighe’s advice regarding the development of a model demolition and disposal process. He outlined the means by which the model will be developed and emphasised the importance of undertaking the demolitions safely to assuage any community concern:

The demolition is done with air monitoring in place, but what we are going to do before we start doing this on a wholesale scale is—the Territory owns five affected houses as part of its community housing portfolio, so we will be doing a pilot demolition process just to confirm our methodologies before we go to market and part of that will be proving that we can do it safely, because clearly this is an issue that is now beginning to register with neighbours and others who live near the facility that we are demolishing, houses that we have said are dangerous next door to them and they quite rightly want to know that we can do it properly and safely.²⁸⁵

- 5.67** Mr Kefford advised that the taskforce is working from the assumption that for every contaminated home which is demolished, there will be approximately 50 to 100 tonnes of waste requiring disposal.²⁸⁶

- 5.68** At this stage the plan is for the waste to be sent to an asbestos-licensed landfill facility located at West Belconnen, a suburb in Canberra’s north-west. The taskforce is also in the process of examining if there are other facilities, both in New South Wales and in the ACT, which are appropriately licensed and regulated to receive what will amount to a significant volume of waste.²⁸⁷

- 5.69** With respect to household contents the ACT Government has stated that ‘there is no practical way to certify that household contents are not contaminated’. Nevertheless a position has been taken which will allow most household contents to be removed from affected homes provided goods are not taken from known contaminated areas.²⁸⁸

- 5.70** In response to questioning regarding whether there are risks involved with transporting asbestos contaminated materials to landfill sites, Mr Kefford informed the committee that during the demolition process asbestos fibres will either be vacuumed or bonded to the actual structure of the home. He also stated that contaminated materials will be transported to landfill sites in covered trucks, emphasising that it can be done safely:

²⁸⁴ Evidence, Mr Tighe, 14 November 2014, p 7.

²⁸⁵ Evidence, Mr Kefford, 14 November 2014, p 24.

²⁸⁶ Evidence, Mr Kefford, 14 November 2014, p 20.

²⁸⁷ Evidence, Mr Kefford, 14 November 2014, p 16.

²⁸⁸ Submission 17, ACT Government, attachment 4, p 17.

The way in which the demolition is done is there is at least partial internal demolition and as much of the remaining asbestos is vacuumed up first while the skin of the building is, in effect, its own containment vessel. Once that work has been done, the remaining fibres will be bonded to the structure...when the demolition actually happens there is further dust suppression and wetting and so on that takes place. Transportation is done in covered trucks so it can be done safely.²⁸⁹

Resale of remediated blocks

- 5.71** Once the demolition of a contaminated home has been completed and the land remediated, the ACT Government will provide eligible homeowners the first right of refusal to repurchase their block (or part of their block) for owner-occupation at market value to be determined at the time the block is made available for resale.²⁹⁰
- 5.72** The process for the resale of remediated blocks will be managed by the Land Development Agency as part of the ACT Government's land release program.²⁹¹
- 5.73** The ACT Government has stated that the 'timing of remediated blocks becoming available for repurchase will not be known for some time... [It] will depend on procurement processes, industry capacity, and the determination of the most efficient sequencing and scheduling of demolition of houses'.²⁹²

Buy-back and demolition in New South Wales

- 5.74** The previous chapter identified the negative health, financial and social risks posed by the presence of loose-fill asbestos insulation. That chapter made a number of recommendations to help identify the scope of this problem and to deal with these risks.
- 5.75** The committee believes that ultimately the only way the NSW Government will achieve a viable and enduring overall solution to the loose-fill asbestos problem is by implementing its own buy-back and demolition scheme for affected residences.
- 5.76** It is perplexing that New South Wales has always been so far behind the ACT in its efforts to address the issue of homes contaminated by loose-fill asbestos insulation. Not only has the ACT Government been historically active in seeking to remove loose-fill asbestos fibres from homes, it has been responsive and swift in implementing further actions once it became evident that its initial efforts had not been completely successful.
- 5.77** The committee acknowledges that the deconstruction and study of the Downer home has unfortunately proven that the ACT's remediation efforts in the 1980s and 1990s were not successful in removing all loose-fill asbestos fibres from contaminated homes. The committee accepts the position that these homes are ultimately uninhabitable, posing continuing risks not only to residents and visitors but also to the general public.

²⁸⁹ Evidence, Mr Kefford, 14 November 2014, p 24.

²⁹⁰ Submission 17, ACT Government, attachment 4, p 14.

²⁹¹ Submission 17, ACT Government, attachment 4, p 25.

²⁹² Submission 17, ACT Government, attachment 4, p 25.

- 5.78** The committee notes that the ACT Government responded almost immediately to the Downer home findings by establishing the Asbestos Response Taskforce (the taskforce). The taskforce has enabled the ACT Government to move quickly and develop a suite of actions in the best interests of the community. Notably, this includes announcement of the Loose-Fill Asbestos Eradication Scheme with its key components including the buy-back and the provision of financial assistance and counselling.
- 5.79** In contrast to the ACT, the NSW Government response to date appears agonisingly slow. This lack of apparent urgency only compounds the historic inaction taken by previous NSW governments in dealing with this issue and further disheartens those affected homeowners who are desperately seeking some sign that their plight is being taken seriously.
- 5.80** Concerning the evidence provided by the HACA regarding the application of the precautionary approach, the committee accepts the need for government interventions, of any kind, to be supported by a demonstrated need and where appropriate a robust evidence base. However, what the committee cannot agree with is HACA's focus on undertaking health risk assessments to ascertain a risk which, in the committee's view, is already well known and understood.
- 5.81** The committee believes that the demolition of all affected New South Wales homes is the only viable and enduring solution to address the ongoing health and safety risks to residents, visitors and the general public. Therefore, the committee recommends that the NSW Government urgently establish a taskforce to develop and implement a buy-back scheme to demolish homes identified as being contaminated by loose-fill asbestos insulation in New South Wales, modelled on the approach adopted by the ACT Government.

Recommendation 10

That the NSW Government urgently establish a taskforce to develop and implement a buy-back scheme to demolish homes identified as being contaminated by loose-fill asbestos insulation in New South Wales, modelled on the approach adopted by the ACT Government.

Appendix 1 Submissions

No	Author
1	Name suppressed
2	Real Estate Institute of New South Wales
3	Yass Valley Council
4	Name suppressed
5	Eurobadalla Shire Council
6	Asbestos Diseases Foundation of Australia Inc.
7	Mr Kieran Ferris
8	Name suppressed
9	Mr Donald Dawkins
10	Mr Michael Bresnik
11	Orange City Council
12	Mr Geoff Fary
13	Local Government NSW
14	Boorowa Council
15	Name suppressed
16	Ms Alana Smith
17	ACT Government
18	Name suppressed
19	Name suppressed
20	Confidential
21	Regional Enviroscience Pty Ltd
22	Queanbeyan City Council
23	South East Regional Organisation of Councils
24	Housing Industry Association Ltd
25	Fluffy Owners and Residents' Action Group
26	Palerang Council
27	Confidential
28	NSW Head of Asbestos Coordination Authorities
29	Unions NSW
30	Mr Matt Rigter
31	Confidential
32	Asbestos Safety Eradication Agency, Australian Government

No	Author
33	Confidential
34	Maurice Blackburn Lawyers
35	Associate Professor Rick van der Zwan & Ms Julie Tucker
36	Mr Edwin Casey

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 14 November 2014 Macquarie Room Parliament House, Sydney	Mr Peter Tighe	Chief Executive Officer, Asbestos Safety and Eradication Agency, Australian Government
	Mr Andrew Kefford	Deputy Director General, Chief Minister – Treasury and Economic Development Directorate, Head of the ACT Asbestos Response Taskforce
	Mr Mark McCabe	Work Safety Commissioner, Head of Work Safe ACT
	Mr Peter Dunphy	Member of Heads of Asbestos Coordination Authorities and Acting General Manager, Work Health and Safety Division, WorkCover NSW
	Mr Kerry Chant	Member of Heads of Asbestos Coordination Authorities and Chief Health Officer, NSW Health
	Professor Wayne Smith	Member of Heads of Asbestos Coordination Authorities and Director, Environmental Health Branch, Ministry of Health
	Mr Craig Lamberton	Member of Heads of Asbestos Coordination Authorities and Director, Hazardous Incidents and Environmental Health, Environment Protection Authority,
	Ms Amy Lovesey	Member of Heads of Asbestos Coordination Authorities and Project Manager – Asbestos Policy, Local Government NSW
	Ms Susy Cenedese	Strategy Manager, Local Government NSW
	Mr Mark Morey	Assistant Secretary, Unions NSW
Mr Shay Deguara	Industrial Officer (Safety, Workers Compensation and Industrial Relations), Unions NSW	

Date	Name	Position and Organisation
	Mr Neil Evans	Executive Director – ACT/NSW Southern, Housing Industry Association
	Ms Melissa Adler	Executive Director – Workplace Relations, Housing Industry Association
	Mr Gary Adamson	Chair, Strata Management Chapter, Real Estate Institute of New South Wales
	Mr Gary Triganza	Chair, Property Management Chapter, Real Estate Institute of New South Wales
	Mr Matthew Rigter	
Monday 17 November 2014 Jim Snow Room, R B Smith Community Centre, Queanbeyan	Cr Tim Overall	Mayor, Queanbeyan City Council
	Mr Michael Thompson	Group Manager, Sustainability and Better Living, Queanbeyan City Council
	Mr Luke Alexander Brown	Representative, Fluffy Owners and Residents' Action Group
	Ms Petra Wiesner	Representative, Fluffy Owners and Residents' Action Group
	Mr John Robson	Managing Director, Robson Environmental Pty Ltd
	Mr Dean Brunton	Hazard Materials Consultant, Robson Environmental Pty Ltd
	Mr Kieran Ferris	
	Mr Michael Bresnik	
	Mr Max Dews	

Appendix 3 Site visit

Monday, 17 November 2014
Fyshwick, Australian Capital Territory

The committee travelled to Robson Environmental in Fyshwick, Australian Capital Territory and met with organisation representatives Mr John Robson, Managing Director and Mr Dean Brunton, Hazardous Materials Consultant. The committee was briefed about the risks, management and disposal of friable asbestos. The committee also visited Robson Environmental's National Association of Testing Authorities (NATA) accredited laboratory to examine the composition of friable asbestos via microscopes.

Appendix 4 Tabled documents

Friday 14 November 2014

Macquarie Room, Parliament House, Sydney

- 1 Responding to the asbestos problem: The need for significant reform in NSW, tendered by Mr Shay Deguara, Unions NSW

Monday 17 November 2014

Jim Snow Room, R B Smith Community Centre, Queanbeyan

- 2 A document containing images of loose fill asbestos, tendered by Mr Dean Brunton, Hazardous Materials Consultant, Robson Environmental
- 3 Correspondence dated 8 August 2014, from the Office of the Mayor, The City of Queanbeyan, to the Hon Eric Abetz, Minister for Industrial Relations, requesting assistance and funding to handle asbestos related issues, tendered by Cr Tim Overall
- 4 Correspondence dated 27 August 2014, from the Hon Eric Abetz, Leader of the Government in the Senate, Minister for Employment and Minister Assisting the Prime Minister for the Public Service, responding to the request for assistance and funding from the City of Queanbeyan, tendered by Cr Tim Overall.

Appendix 5 Answers to questions on notice

The Committee received answers to questions on notice from:

- Mr Kieran Ferris
- Mr Michael Bresnik
- Mr John Robson, Robson Environmental Pty Ltd
- Mr Matthew Rigter
- Real Estate Institute of New South Wales
- Heads of Asbestos Coordination Authorities
- Housing Industry Association Ltd
- Queanbeyan City Council

Appendix 6 The ACT Government's preferred way forward

The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Overview



28 October 2014

Introduction

Asbestos is a common building material in Australia and in Canberra in particular. In its most common form – bonded wall sheeting and roofing material – the (mainly chrysotile or white) asbestos fibres are held in a cement matrix. Bonded asbestos products pose a risk to health and safety when poorly handled or decayed, but in most cases those risks can be effectively managed.

Asbestos is, however, known to be present in 1021 Canberra homes in a particularly dangerous form: pure, loose amosite (brown), and in a small number of cases crocidolite (blue), fibres that were installed between 1968 and 1980 as insulation. In that form, the microscopic, needle-like asbestos fibres are readily able to migrate from the roof and wall cavities throughout the structure of an affected home and enter the living areas through any penetration in the ceiling, wall or floor. A sample of asbestos fibres of this sort that is just visible to the naked eye contains around twenty thousand fibres, and a sample the size of a fifty cent piece contains up to two million.

Amosite and crocidolite asbestos have been banned from import, use and resale in Australia for many years. The continued occupation, maintenance, renovation and sale of affected homes are inconsistent with this national ban. National asbestos policy has evolved during the last decade from “management and containment” to eradication of the risks posed by friable asbestos (i.e. loose fibres).

Loose Fill Asbestos Eradication Scheme

Following consultation with asbestos experts, and having regard to the findings of assessments of affected homes conducted since February 2014, the ACT Government has reached the conclusion that the ongoing risks posed by the continuing presence of loose fill asbestos insulation in Canberra homes cannot be effectively managed.

It has accepted the advice of the Asbestos Response Taskforce (the Taskforce) that there is no effective, practical and affordable method to render homes containing loose fill asbestos insulation safe to occupy in the long term.

Eradication of ongoing exposure risks through the demolition of all affected homes and subsequent site remediation is the only enduring solution to the health risks posed to residents, visitors and workers by the continuing presence of loose fill asbestos insulation in Canberra homes, and their attendant social, financial and practical consequences. The practicalities of living in homes that cannot easily be worked on or maintained, the already manifest negative market responses from prospective renters and purchasers, the social isolation – self imposed and otherwise – of people fearful about contamination affecting family and strangers, and above all the risks to mental and physical health are so great as to warrant an approach founded on eradication, as distinct from management, of risk.

Under the Loose Fill Asbestos Insulation Eradication Scheme (the Scheme) the ACT Government will offer to purchase all affected Canberra and will then demolish them. Remediated blocks will be offered for sale in due course to assist in defraying the overall cost of the Scheme.

Supporting Information

This document provides an overview of the Scheme. More detail on its operation is set out in the accompanying *Loose Fill Asbestos Insulation Eradication Scheme: Policy Framework* which will be available shortly from the Taskforce's website at <http://www.act.gov.au/asbestos-response-taskforce>.

The detailed arguments underpinning the Scheme are set out in the Taskforce's report: *Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes* (the Taskforce Report) which is available on the Taskforce's website, along with further information and fact sheets.

This document should be read in conjunction with the Taskforce Report.

Guiding Principles

The objectives of the Scheme are to:

- eliminate, by demolishing all known affected houses, the ongoing risk of exposure to loose fill asbestos insulation for homeowners, tenants, tradespeople and the wider community
- provide a fair outcome for owners of affected homes
- provide, so far as is possible and reasonable, flexibility and options for informed choices to be made by owners of affected homes
- minimise overall net costs to the Canberra community and the ACT Government (thereby minimising the flow-on impact to other government policy and program delivery areas).

Buyback Eligibility

Under the buyback component of the Scheme, the ACT Government offers to purchase all homes in the ACT affected by loose fill asbestos insulation. This will be achieved through the voluntary surrender by affected homeowners of the Crown Lease for an affected block.

The buyback offer will be at market value as if the home did not contain loose fill asbestos insulation and will be expressed as a "surrender sum". The surrender sum will be determined by independent valuations prepared by qualified valuers under the supervision of the Australian Property Institute ACT Division.

Where an affected home has been sold (or agreement to sell has been reached and contracts entered into) between 18 February 2014 and 28 October 2014 (the date of announcement of the Scheme) the buyback offer will be at the agreed purchase price set out in the signed contracts (i.e. there will not be a further valuation process). Before making any payments in this circumstance, the affected homeowners will be expected to provide a declaration that they have rescinded the contract of sale.

Participation in the Scheme is voluntary.

The Government's buyback offer will remain open until 30 June 2015, but only one valuation process will be undertaken for each affected home in order to establish market value at the time for all affected homes and limit opportunities for speculation on property price movements.

The buyback offer is extended to all affected homeowners immediately, and affected homes will be valued as at the date of the announcement of the Scheme (28 October 2014).

The buyback offer is made only to the registered owner of an affected home at the date of the announcement of the Scheme (Eligible Homeowners), or their successors in title through legal processes including probate, family court orders or in relation to bankruptcy. For the avoidance of doubt, the buyback offer will not be extended to individuals or corporations that purchase an affected house after the date of announcement of the Scheme (28 October 2014).

The Scheme seeks to accommodate the individual circumstances of affected families, including in relation to assistance for those who wish to stay in their homes in the medium term, against the backdrop of the need for all affected homes to be demolished in that same time frame. With this in mind, compulsory acquisition processes under ACT legislation will not be undertaken at this stage. The Taskforce will investigate and provide advice to Government on regulatory options for intervention where homeowners have not accessed the buyback program.

Indicative Timeframe

The indicative timeline for implementation of the Scheme is set out in the following table.

<u>Timing</u>	<u>Anticipated Activity</u>
2014	
October	agreement to adoption of harmonised work health and safety regulations for asbestos management
28 October	Scheme announcement, Taskforce Report released
November	appropriation bill presented to Legislative Assembly
November	buyback offer open
2015	
January	pilot demolition processes commences
January	demolition program tender design process
January	commencement of work health and safety regulations governing asbestos
30 June	buyback offer closes
By July (subject to tenders)	demolition program commences

There are three key variables that will affect the time needed to complete all demolitions (which may be up to five years) including:

- the uptake of the buyback offer for affected homes
- finalisation of procurement processes and methodological approaches
- the capacity of the asbestos assessment and removal, and demolition and civil works industries to undertake the necessary works.

The Taskforce will continue to work closely with relevant industry bodies to provide greater clarity around capacity, staging and sequencing issues. Capacity in the asbestos removal and demolition industries in the ACT will need to be significantly increased to meet the demand created by the Scheme. A ramp-up period is expected to be evident through the first half of 2015. It is unclear at this stage how quickly affected houses can be demolished as that will depend on those industries' responses to the Taskforce's intended tender process.

The Taskforce will report quarterly to the Legislative Assembly and that reporting series, along with ongoing Taskforce communications, will provide updated schedules as appropriate.

Purchase of new homes

The ACT Government will waive stamp duty (up to an amount equal to the duty payable on the surrender sum for the affected home) on the next purchase of a property in the ACT by an Eligible Homeowner. This entitlement cannot be cashed out for purchases outside the ACT.

Demolition

The Taskforce will procure the demolition of all affected houses on a schedule designed to minimise costs to the ACT Government and disruption to the community, and in accordance with prescribed safety regulations. It is anticipated this will be done in tranches to maximise efficiencies and to minimise disruption to local communities. The demolition process could take up to five years to complete, and the Taskforce will maintain properties pending demolition and make arrangements for their security. That said, it is desirable from an elimination of risk as well as cost containment perspective, that affected homes are demolished as expeditiously as is safely possible. The actual timeline will be settled in light of the tender process and the actual response of affected homeowners in relinquishing their homes.

While actual decisions on appropriate demolition methodologies will be determined on a case by case basis as part of settling the site specific Asbestos Removal Control Plan, most affected houses are unlikely to need to be demolished in a 'bubble'. Following the removal of the bulk of remaining loose asbestos fibres by licensed asbestos removalists, the remaining structure will be demolished in a controlled fashion using appropriate dust suppression to ensure any remaining fibres not bonded to the structure of the house are not released to the air. The Taskforce is working with regulators and licensed asbestos assessors, removalists and demolition contractors to settle safe and cost effective approaches to demolition and will commence a pilot program of demolitions in early 2015. It is not anticipated significant demolition activity will commence until mid 2015. The final approaches adopted by the Taskforce to this process will be informed by the experiences and data gained through the pilot demolition program.

Once an affected house has been demolished, soil will be removed from the footprint of the house and an area surrounding it. The final depth and extent of soil removed will be based on testing for contamination. Once all contaminated soil has been removed, the block will be remediated to natural ground level with clean fill.

As is currently the case, friable asbestos and contaminated waste will be properly disposed of by licensed asbestos removalists, and demolition waste will be disposed of in appropriately equipped and licensed facilities such as the West Belconnen Resource Management Facility.

Where families choose to stay in an affected home

The ACT Government recognises that some families will choose to remain in an affected home in the medium term and will provide detailed advice to those families in relation to interventions necessary to minimise the risk of entry of asbestos fibres into the living areas. These interventions will have a significant impact on the amenity of affected homes and will extend well beyond the short term remediation of identified hazards currently being undertaken in response to asbestos assessments to, in short, sealing of all possible entry points for fibres. They will also involve significant ongoing vigilance and testing.

Those obligations will be made mandatory in 2015. Given the conclusion that all affected houses should be demolished the Government will not spend public funds on further remediation of these homes. This means that owners who decide to remain in their homes in the medium term will bear all the costs of staying.

Homeowners choosing to remain in their home in the medium term will – consistent with current requirements – require building approval to undertake any kind of maintenance or renovation work, and works not associated with minimisation of asbestos exposure risks are unlikely to be approved. Owners of affected homes will be subject to ongoing obligations under the *Dangerous Substances Act 2004* and the *Work Health and Safety Act 2011* in relation to the safety of workers and other visitors to their homes.

Those families that wish to remain in their home until the settlement date of the buyback process will likely be able to do so subject to the advice of licensed asbestos assessors and completion of necessary further remediation measures.

Resale of remediated blocks

The ACT Government will, subject to conditions, offer to resell remediated blocks to the original owner at market value (off market) for owner-occupation, to Territory entities including the Land Development Agency (LDA) and Housing ACT for the purposes of those agencies, or through the LDA to the market.

Remediated blocks will be sold on the basis that it will be permissible (in most cases) to unit-title dual occupancy developments in RZ1 zoned areas. While it is already possible to build such developments in that zone, it is not currently possible to unit-title them. Most blocks larger than 700m² are conducive to such development. Around 88% of affected blocks are larger than 700m².

This approach will not be adopted in heritage precincts, or where the characteristics of a particular block do not accommodate it.

In some cases, consideration will be given to subdivision or consolidation of remediated blocks.

First right of refusal

Under the Scheme, the ACT Government will give Eligible Homeowners the opportunity to repurchase their block for owner-occupation off market at the point it is available. The sale price will be based on the market value of the block (taking account of unit-titling or subdivision) at the time it is available for resale.

Eligible Homeowners will be permitted to take up a land rent lease on their block or subdivided block. They will also be permitted to use their stamp duty waiver on the repurchase of their block (provided it has not been applied to a purchase in the intervening period).

Eligibility for the land rent scheme will be the same as for any participant in that scheme, as determined by the LDA at the time the resale process occurs.

The demolition schedule and timing of remediated blocks becoming available for repurchase will not be known for some time after the announcement of the Scheme, and will depend on procurement processes, industry capacity, and the determination of the most efficient sequencing and scheduling of demolition of houses acquired by the Taskforce.

Household contents

There is no practical way to certify that household contents are not contaminated. Nevertheless, most household contents can be removed from most affected homes provided goods are not taken from known contaminated areas. The Taskforce and WorkSafe ACT encourage a measured and sensible response to the management of contents and household goods from affected homes by homeowners, businesses and the wider community.

Even where asbestos fibres have been detected in settled dust within living or storage areas of an affected home, expert advice to the Taskforce is that the health risk from possible exposure associated with moving goods from other areas of a home is low, but cannot be discounted.

Expert advice provided to the Taskforce is that the risk to the community associated with potential contamination of contents in affected homes is similarly low.

Goods stored in subfloor and ceiling areas, and in cupboards where fibres have been detected should not be moved or recovered unless they have been decontaminated by a licensed asbestos removalist.

A similar position should be adopted in relation to all contents of homes where residents have been advised to vacate, especially where fibres have been detected in air conditioning and heating ducts.

Emergency financial assistance

The Government will extend to owner-occupiers or tenant/s named on the relevant lease residing in an affected home as at 28 October 2014, emergency financial assistance of \$10,000 plus \$2,000 per

dependent child living in the home. Only one package per household will be paid. It will be paid after the home is vacated.

Where some financial assistance has already been provided, the balance of the assistance package will be made available as a lump sum. This assistance remains available while the buyback offer is open.

The Taskforce will not reimburse costs for any hazard reduction works conducted on an affected home after 28 October 2014, except where quotations have already been accepted by the Taskforce.

Administration of the Scheme

The Scheme will be delivered by the Taskforce.

Its development has occurred and will continue to occur in consultation across the ACT Government, including with the Head of Service, Solicitor-General, Under Treasurer, Office of the Auditor-General, Work Safety Commissioner, Environment Protection Authority, and Environment and Planning and Territory and Municipal Services Directorates and others as appropriate.

Governance, staffing and risk management processes in the Taskforce have also been developed with reference to the findings of the Commonwealth Royal Commission into the Home Insulation Program.

Appendix 7 Canberra Times article

12/16/2014

Print Article: Bungendore family face ruin after their horrific Fluffy discovery

canberratimes.com.au

The Canberra Times

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Bungendore family face ruin after their horrific Fluffy discovery

Emma Macdonald

Published: December 14, 2014 - 11:30PM

- [Why Mr Fluffy is such a big deal in Canberra](#)

Canberra couple Eddie Casey and Dale Freestone were well aware of Mr Fluffy asbestos when it came time for them to buy a home in August.

That's why they hired a licensed asbestos assessor from Canberra to fully check the small Bungendore cottage in which they wanted to raise their two children.

When the report came back, all clear for signs of Mr Fluffy's distinctive loose amosite asbestos, the sale proceeded and the couple crossed the NSW border from their rented Garran home to start enjoying country life with Leon, 3, Grace, 1.

That's why a letter last month from WorkCover NSW informing them their new cottage contained Mr Fluffy came as an almighty shock.

"I thought it was a mistake in the paperwork," said Eddie, a 25-year-old landscape architecture student at the University of Canberra.

He asked the Palerang Council to check its records and hired another A-class licensed asbestos assessor from Canberra, Robson Environmental, to urgently test the house.

Devastatingly for the family, council records confirmed that the home had tested positive for Mr Fluffy during a voluntary dust sampling program conducted by the Queanbeyan City Council in 1999.

The Robson report further confirmed amosite in the hallway and master bedroom and in visible patches stuck to the timber joists under a second layer of non-asbestos insulation in the ceiling.

Mr Casey and Ms Freestone are now receiving legal advice.

The couple have found another rental home in Bungendore and are moving out of their cottage.

They are also facing financial ruin, having scraped together the money for the deposit on their home. Now they face rent and all associated costs while paying back a mortgage on a house in which they can no longer live.

The family have decided to come out publicly to illustrate the complete lack of a safety net for Mr Fluffy-affected homes in NSW. They note that if they had bought a similar home back in Canberra, they would be entitled to immediate financial help worth \$14,000 and be offered a buyback of their property - almost certainly at the price they paid.

John Barilaro, the NSW Nationals member for Monaro and a member of the NSW Joint Select Committee on Loose Fill Asbestos, said this family's case was a "worst nightmare" of NSW Mr Fluffy discoveries.

But Mr Barilaro expressed confidence that the NSW Government was poised to financially help affected families consistent with the aid rolled out by the ACT government - \$10,000 for each family and \$2000 per dependent child.

Given the urgency of the Mr Fluffy crisis, the committee was also bringing forward its reporting date from February to just before Christmas.

<http://www.canberratimes.com.au/action/printArticle?id=64008592>

1/2

Appendix 8 Minutes

Minutes no. 1

Thursday 18 September 2014

Joint Select Committee on Loose Fill Asbestos Insulation
Members' Lounge, Parliament House, Sydney, at 4.15 pm

1. Members present

Revd Nile, *Chairman*
Mr Barilaro
Mr Blair
Dr Kaye
Mr Maguire
Mr Veitch
Mr Whan

2. Tabling of resolution establishing the committee

Chairman tabled the resolution of the Legislative Council establishing the committee, which read as follows:

1. That a joint select committee be appointed to inquire into and report on loose fill asbestos insulation, also referred to as 'Mr Fluffy' insulation, in homes in New South Wales, and in particular:
 - a. the number and location of homes affected by loose fill asbestos insulation
 - b. the actions taken by governments to deal with loose fill asbestos insulation in other jurisdictions
 - c. the role of state and local governments to advise and assist home owners and occupiers to reduce the risks posed by loose fill asbestos insulation
 - d. the requirements for property owners to notify potential buyers, renters, tradespeople and emergency service officers regarding the presence of loose fill asbestos insulation in their property, and
 - e. any other related matter.
2. That, notwithstanding anything to the contrary in the standing orders of either House, the committee consist of seven members comprising:
 - a. five members of the Legislative Council, of whom:
 - i. one must be a Government member, being Mr Niall Blair
 - ii. two must be Opposition members, being Mr Mick Veitch and Mr Steve Whan
 - iii. two must be cross bench members, Dr John Kaye and Revd Fred Nile, and
 - b. two Government members of the Legislative Assembly.
3. That Revd Nile be chair of the committee.
4. That, notwithstanding anything to the contrary in the standing orders, at any meeting of the committee, any four members of the committee will constitute a quorum.
5. That a committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:
 - a. the Chair is present in the meeting room
 - b. all members are able to speak and hear each other at all times, and
 - c. members may not participate by electronic communication in a meeting to consider a draft report.
6. That the committee report by 16 February 2015.

7. That this House requests the Legislative Assembly to agree to a similar resolution and name the time and place for the first meeting.

3. Message from the Legislative Assembly

The Chairman tabled a message from the Legislative Assembly agreeing to the Council's resolution and appointing Mr John Barilaro and Mr Daryl Maguire to serve on the committee.

4. Election of Deputy Chair

The Chairman called for nominations for Deputy Chair.

Mr Whan moved: That Mr Blair be elected Deputy Chair of the committee.

There being no further nominations, the Chairman declared Mr Blair elected Deputy Chair.

5. Procedural resolutions

Resolved, on the motion of Dr Kaye: That, unless the committee decides otherwise, the following procedures apply for the life of the committee:

Filming, broadcasting and still photography of public proceedings

That the committee authorise the filming, broadcasting, webcasting and still photography of the public proceedings of the committee, in accordance with the resolution of the Legislative Council of 18 October 2007.

Publishing transcripts of evidence

That the committee authorise the publication of transcripts of evidence taken at public hearings.

Publishing answers to questions on notice

That the committee authorise the publication of answers to questions on notice.

Publishing submissions

That the committee authorise the publication of all submissions to the inquiry, subject to the committee clerk checking for confidentiality, adverse mention and other issues and, where those issues arise, bringing them to the attention of the committee for consideration.

Attachments to submissions

That all attachments to submissions remain confidential, unless otherwise published by the committee.

Media statements

That media statements on behalf of the committee be made only by the Chairman.

6. Conduct of the inquiry into loose fill asbestos insulation

6.1 Inquiry timeline

Resolved, on the motion of Mr Veitch: That the committee adopt the following inquiry timeline:

Call for submissions	Friday 19 September 2014
Closing date for submissions	Friday 31 October 2014
Public hearings	Friday 14 November 2014 in Queanbeyan, and Monday 17 November 2014 in Sydney
Report deliberative	Tuesday 10 February 2015
Table report	Monday 16 February 2015.

6.2 Stakeholder list

Resolved, on the motion of Mr Veitch: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.

6.3 Advertising

Resolved, on the motion of Mr Maguire: That the committee advertise the inquiry in the Early General News section of the following newspapers: Sydney Morning Herald, The Daily Telegraph, The Queanbeyan Age, The Chronicle, The Daily Advertiser and The Canberra Times.

6.4 Process for determining witnesses

Resolved, on the motion of Mr Blair: That the secretariat circulate to members the Chairman's proposed list of witnesses to provide them with the opportunity to amend the list or nominate additional witnesses, and that the committee agree to the witness list by email, unless a meeting of the committee is required to resolve any disagreement.

6.5 Questions on notice and supplementary questions

Resolved, on the motion of Dr Kaye: That for the duration of the inquiry:

- supplementary questions be lodged with the secretariat up to two days following the receipt of the hearing transcript
- witnesses be requested to return answers to questions on notice and supplementary questions within 21 days of the date on which questions are forwarded to the witness.

7. Adjournment

The committee adjourned at 4.30 pm, until Friday 14 November 2014 (public hearing).

Beverly Duffy

Clerk to the Committee

Minutes no. 2

Friday 14 November 2014

Joint Select Committee on Loose Fill Asbestos Insulation

Macquarie Room, Parliament House, Sydney, at 8.45 am

1. Members present

Revd Nile, *Chairman*

Mr Blair, *Deputy Chair* (until 1.00 pm)

Ms Barham (participating)

Mr Barilaro (until 3.00 pm)

Mr Khan (participating from 2.00 pm)

Mr Maguire

Mr Veitch

Mr Whan

2. Apologies

Mr Shoebridge

3. Change in committee membership

The Chairman noted the resolution of the House of 22 October 2014 discharging Dr Kaye from the committee and appointing Mr David Shoebridge to the committee.

4. Previous minutes

Resolved, on the motion of Mr Whan: That draft minutes no. 1 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Received:

- 9 October 2014 – From Mr John Jarratt, Ambassador, Asbestos Awareness Month Campaign to the Committee Chairman, seeking his support for Asbestos Awareness Month.
- 10 October 2014 – From Mrs June Trewin to the secretariat, commenting on the inquiry process.
- 27 October 2014 – From Mr John Robson, Managing Director, Robson Environmental, to the committee, requesting to appear as a witness at a committee hearing and inviting the committee to visit the organisation's laboratory in Queanbeyan.
- 6 November 2014 – From Ms Katy Gallagher MLA, Chief Minister, ACT Government, to the Committee Chairman, declining the invitation to attend a public hearing and nominating alternate ACT Government officials.
- 11 November 2014 – From Mr Dean Brunton, Hazardous Materials Consultant, Robson Environmental, second invitation from Robson Environmental for the committee to visit its laboratory in Queanbeyan.

Sent:

- 3 November 2014 – From the Committee Chairman to Ms Katy Gallagher, MLA, Chief Minister, ACT Government, inviting the Chief Minister and/or officials from the ACT Government to attend a public hearing.
- 3 November 2014 – From the Committee Chairman to the Hon Dominic Perrottet MP, Minister for Finance and Services, requesting representatives from the Ministry for Finance and Services to attend a committee hearing.
- 5 November 2014 – From the Committee Chairman to the Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research, requesting representatives from the Ministry for Health to attend a committee hearing.

6. Submissions

6.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos 2, 3, 5, 6, 9, 11, 12, 13, 14, 16, 17, 21, 22, 23, 24, 25, 26, 28, 29, 30, 32 and 34.

6.2 Partially confidential submissions – name suppressed

Resolved, on the motion of Mr Maguire: That

- the committee authorise the publication of submission nos 1, 4, 7, 8, 15, 18, and 19 with the exception of identifying information which are to remain confidential, as per the request of the authors
- the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submission no 10.

6.3 Confidential submissions

Resolved, on the motion of Mr Veitch: That the committee keep submission nos 20, 27, 31 and 33 confidential, as per the request of the authors.

6.4 Attachments to submissions

Resolved, on the motion of Mr Barilaro: That

- the committee authorise the publication of the following attachments to submission nos 12 (attachment no 1), 17 (attachment nos 1-4), and 22 (attachment nos 1-6)
- the committee authorise the publication of attachment no 9 to submission no 22 with the exception of identifying information which is to remain confidential, as per the recommendation of the secretariat.

7. Request for evidence to be taken *in camera*

Resolved, on the motion of Mr Barilaro: That the last two witnesses appearing at the hearing of Monday 17 November 2014 be heard *in camera*.

8. Allocation of questioning

Resolved, on the motion of Mr Whan: That the sequence of questions to be asked during the hearing alternate between opposition, government, and cross bench members, in that order, with an equal proportion of time being allocated to each.

9. Witness request to give public evidence but have their name redacted from the published transcript

Resolved, on the motion of Mr Barilaro: That the transcript of evidence to be given by Kieran on Monday 17 November 2014 be published with the exception of Kieran's surname, which is to remain confidential, as per his request.

Ms Barham joined the meeting.

10. Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, Australian Government, was sworn and examined.

The evidence concluded and the witness withdrew.

The following witnesses from the ACT Government were sworn and examined:

- Mr Andrew Kefford, Head of the ACT Asbestos Response Taskforce
- Mr Mark McCabe, ACT Work Safety Commissioner.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Heads of Asbestos Coordination Authorities were sworn and examined:

- Mr Peter Dunphy A/General Manager, Work Health and Safety Division, WorkCover NSW
- Dr Kerry Chant, Chief Health Officer, Ministry of Health
- Professor Wayne Smith, Director, Environmental Health Branch, Ministry of Health
- Mr Craig Lamberton, Director, Hazardous Incidents and Environmental Health, Environment Protection Authority
- Ms Amy Lovesey, Project Manager-Asbestos Policy, Local Government NSW.

The evidence concluded and the witnesses withdrew, except for Ms Lovesey.

Ms Susy Cenedese, Strategy Manager, Local Government NSW, was sworn and examined.

Ms Lovesey was examined as per her prior affirmation.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

11. Deliberative meeting

Resolved, on the motion of Mr Veitch: That the committee conduct a site visit to Robson Environmental's asbestos testing laboratory in Queanbeyan, on Monday 17 November 2014.

The committee took a break in proceedings **from 1.05 pm until 2.00 pm.**

12. Public hearing

Witnesses, the public and the media were admitted.

The following witnesses from Unions NSW were sworn and examined:

- Mr Mark Morey, Assistant Secretary
- Mr Shay Deguara, Industrial Officer (Safety, Workers Compensation and Industrial Relations).

Mr Deguara tendered the following document:

- NSW Ombudsman "Responding to the asbestos problem: The need for significant reform in NSW, November 2010".

The evidence concluded and the witnesses withdrew.

The following witnesses from Housing Industry Association were sworn and examined:

- Mr Neil Evans, Executive Director- ACT/ NSW Southern
- Ms Melissa Adler, Executive Director- Workplace Relations.

Mr Barilaro left the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses from Real Estate Institute of New South Wales were sworn and examined:

- Mr Gary Triganza, Chair, REINSW Property Management Chapter Committee
- Mr Gary Adamson, Board Director.

The evidence concluded and the witnesses withdrew.

Mr Matthew Rigter, an asbestos affected homeowner, was sworn and examined.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

13. Additional *in camera* witness

Resolved, on the motion of Mr Maguire: That the committee take *in camera* evidence from an additional witness at the hearing of Monday 17 November 2014.

14. Submission invitation

Resolved, on the motion of Mr Veitch: That the committee invite the Law Society NSW to make a submission to the inquiry.

15. Adjournment

The committee adjourned at 4.50 pm, until Monday 17 November 2014, 9.00 am, Robson Environmental (*site visit*).

Alex Stedman
Clerk to the Committee

Minutes no. 3

Monday 17 November 2014
Joint Select Committee on Loose Fill Asbestos Insulation
Robson Environmental, Fyshwick at 9.00 am

1. Members present

Revd Nile, *Chairman*
Mr Blair, *Deputy Chair*
Mr Barilaro (until 3.00 pm)
Mr Maguire (until 4.00 pm)
Mr Shoebridge
Mr Veitch
Mr Whan

2. Site visit

The committee attended the Robson Environmental asbestos testing laboratory for a tour and briefing by the following representatives:

- Mr John Robson, Managing Director
- Mr Dean Brunton, Hazardous Materials Consultant
- Mr Morgan Leech, Lab Technician.

The site visit concluded at 10.00 am.

3. Public hearing, Queanbeyan – John Snow Room, R B Smith Community Centre

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from Queanbeyan City Council were sworn and examined:

- Cr Tim Overall, Mayor
- Mr Michael Thompson, Group Manager, Sustainability and Better Living.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Fluffy Owners and Residents' Action Group were sworn and examined:

- Mr Luke Brown, representative
- Ms Petra Weisner, representative.

The evidence concluded and the witnesses withdrew.

The Chair directed the public and the media to withdraw.

The public and the media withdrew.

4. **Deliberative meeting**

Resolved, on the motion of Mr McGuire: That the committee take *in camera* evidence from an additional witness at the hearing.

Resolved, on the motion of Mr Veitch: That the committee write to the Hon Jillian Skinner MP Minister for Health, Minister for Medical Research to seek advice as to whether NSW Health has in its possession records which document any incidence of loose fill asbestos insulation in New South Wales homes and whether this information could be passed onto the committee.

Resolved, on the motion of Mr Shoebridge: That the committee write to relevant federal agencies to seek advice as to whether they have in their possession, records obtained by the Royal Commission into the Home Insulation Program, which document any incidence of loose fill asbestos insulation in New South Wales homes and whether this information could be passed onto the committee.

The committee took a break in proceedings from **X time until X time**.

5. **Public hearing**

The public and the media were re-admitted.

The following witnesses from Robson Environmental were sworn and examined:

- Mr John Robson, Managing Director
- Mr Dean Brunton, Hazardous Materials Consultant.

The evidence concluded and the witnesses withdrew.

Kieran, an asbestos affected homeowner, was sworn and examined.

The evidence concluded and witness withdrew.

Mr Michael Bresnik, an asbestos affected homeowner, was sworn and examined.

The evidence concluded and the witness withdrew.

Mr Max Dews, an asbestos affected homeowner, was sworn and examined.

Resolved, on the motion of Mr Shoebridge: That:

- the committee redact any redact any wording which identifies the address and location of the block of units referred to in Mr Dews' evidence from the transcript of proceedings
- the committee Chairman direct the media and the public not to disclose the address and location of the block of units referred to in Mr Dews' evidence.

The evidence concluded and the witness withdrew.

The Chair directed the public and the media to withdraw.

The public and the media withdrew.

Mr Barilaro left the meeting.

6. ***In camera* hearing**

According to previous resolutions of the committee, the committee proceeded to take evidence in camera.

Persons present other than members of the Committee: Ms Beverly Duffy, Mr Alex Stedman, Ms Shu-Fang Wei, Ms Angeline Chung and Hansard reporters.

Witness A was sworn and examined.

The evidence concluded and the witness withdrew.

Witness B was sworn and examined.

The evidence concluded and the witness withdrew.

Witnesses C and D were sworn and examined.

The evidence concluded and the witnesses withdrew.

Mr Maguire left the meeting.

Witness E was sworn and examined.

The evidence concluded and the witness withdrew.

7. Tendered documents

Resolved, on the motion of Mr Veitch: That the committee accept and publish the following documents tendered during the Inquiry into loose fill asbestos insulation:

- A document entitled “Responding to the asbestos problem: The need for significant reform in NSW, November 2010”, NSW Ombudsman, tendered by Mr Shay Deguara, Industrial Officer (Safety, Workers Compensation and Industrial Relations), Unions NSW
- A document containing images of loose fill asbestos, tendered by Mr Dean Brunton, Hazardous Materials Consultant, Robson Environmental
- Correspondence dated 8 August 2014, from the Office of the Mayor, The City of Queanbeyan, to the Hon Eric Abetz, Minister for Industrial Relations, requesting assistance and funding to handle asbestos related issues, tendered by Cr Tim Overall
- Correspondence dated 27 August 2014, from the Hon Eric Abetz, Leader of the Government in the Senate, Minister for Employment and Minister Assisting the Prime Minister for the Public Service, responding to the request for assistance and funding from the City of Queanbeyan, tendered by Cr Tim Overall.

8. Adjournment

The committee adjourned at 4.35 pm *sine die*.

Alex Stedman
Clerk to the Committee

Draft minutes no. 4

Monday 15 December 2014

Joint Select Committee on Loose Fill Asbestos Insulation

Macquarie Room, Parliament House, Sydney at 9.04 am

1. Members present

Revd Nile, *Chairman*

Mr Blair, *Deputy Chair*

Mr Barilaro

Mr Maguire

Mr Shoebridge

Mr Veitch

Mr Whan

2. Previous minutes

Resolved, on the motion of Mr Whan: That draft minutes nos 2 and 3 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 11 November 2014 – Letter from Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research advising of her inability to appear at the hearing on 14 November 2014 and nominating Dr Kerry Chant, Chief Health Officer, NSW Health to appear instead
- 17 November 2014 – Email from Mr Kieran Ferris, inquiry witness on 17 November 2014, stating that he no longer wants his surname redacted from the transcript and that his submission be made public
- 5 December 2014 – Email from Mr Tim McKibbin, Chief Executive Officer, Real Estate Institute of New South Wales (the institute), seeking advice regarding a question taken on notice concerning data on the presence of loose-fill asbestos insulation in New South Wales homes. The institute has advised that, subject to payment, it is prepared to conduct a survey of its members to obtain the requested data. Alternatively, the institute has suggested that it seek the data requested by the committee at a forthcoming meeting with WorkCover NSW on 15 December 2014
- 5 December 2014 – Email from Mr Matthew Rigter forwarding further information to the committee following his appearance as a witness on 14 November 2014
- 8 December 2014 – Letter from Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research in response to a request seeking advice as to whether NSW Health has in its possession records which document any incidence of loose-fill asbestos insulation in New South Wales homes and whether such information could be passed onto the committee
- 8 December 2014 – Email from Ms Karyn Davidson, Secretariat Officer, Heads of Asbestos Coordination Authorities, WorkCover NSW in response to committee secretariat request for updated figures on the number New South Wales homes identified as being contaminated by loose-fill asbestos insulation
- 11 December 2014 – Email Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW enclosing a copy of the interim report prepared by PricewaterhouseCoopers as part of its investigation into the number of New South Wales homes affected by loose-fill asbestos
- 15 December 2014 – Email from Ms Clemency Morony, Snr Manager-Government and Ministerial Services Unit, Safety, Return to Work and Support, in response to committee secretariat request for further information on the PricewaterhouseCoopers interim report and requesting that certain identifying/sensitive information from the report be redacted.

Resolved, on the motion of Mr Maguire: That the committee publish the email from Ms Morony, dated 15 December 2014.

Sent:

- 18 November 2014 – From the Committee Chairman to the Australian Attorney General's Department seeking advice as to whether it has in its possession, records obtained by the Royal Commission into the Home Insulation Program, which document any incidence of loose-fill asbestos insulation in New South Wales homes and whether this information could be passed onto the committee
- 18 November 2014 – From the Committee Chairman to the Department of Prime Minister and Cabinet seeking advice as to whether it has in its possession, records obtained by the Royal Commission into the Home Insulation Program, which document any incidence of loose-fill asbestos insulation in New South Wales homes and whether this information could be passed onto the committee
- 18 November 2014 – From the Committee Chairman to Mr John Robson, Managing Director, Robson Environmental Pty Ltd thanking him and his colleague Mr Dean Brunton for hosting a committee site visit to their asbestos laboratory, and also for their participation in the public hearing, at very short notice, on Monday 17 November 2014
- 18 November 2014 – From the Committee Chairman to the Hon Jillian Skinner MP, Minister for Health, Minister for Medical Research seeking advice as to whether NSW Health has in its possession records which document any incidence of loose-fill asbestos insulation in New South Wales homes and whether such information could be passed onto the committee
- 8 December 2014 – From the Committee Chairman to Mr Peter Dunphy, Acting General Manager, Work Health and Safety Division, WorkCover NSW requesting a copy of the interim report prepared by PricewaterhouseCoopers as part of its investigation into the number of New South Wales homes affected by loose-fill asbestos
- 12 December 2014 – From the Committee secretariat seeking further information regarding the PricewaterhouseCoopers interim report
- 12 December 2014 – From the Committee Chairman to the Bernie Banton Foundation seeking advice as to whether the foundation is aware of any individuals who have suffered any negative health impacts attributable to loose-fill asbestos.

3.1 Correspondence from the Real Estate Institute of New South Wales concerning a question on notice taken about the presence of loose-fill asbestos insulation NSW

Resolved on the motion of Mr Shoebridge: That the Chairman, on behalf of the committee, provide a response to the Real Estate Institute of New South Wales advising that the committee no longer requires the institute to gather data concerning the presence of loose-fill asbestos insulation in New South Wales homes.

3.2 PricewaterhouseCoopers report – forensic investigation of Mr Fluffy records

Resolved on the motion of Mr Blair: That the committee publish the PricewaterhouseCoopers report entitled, *Preliminary findings: Independent investigation into the use of loose-fill asbestos containing ceiling insulation in residential properties in NSW*, subject to the redaction of identifying/sensitive information, as requested by the Heads of Asbestos Coordination Authorities.

4. Submissions

4.1 Public submission

The committee noted that submission no. 35 was published by the committee clerk under the authorisation of an earlier resolution.

4.2 Submission nos. 36 and 7

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of:

- submission no. 36, with the exception of names, identifying information and sensitive information which are to remain confidential, as per recommended by committee secretariat
- submission no.7 in full, as per request of the submission author.

5. Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of an earlier resolution:

- answers to questions on notice from Mr Kieran Ferris, received 17 November 2014
- answers to questions on notice from Mr Michael Bresnik, received 19 November 2014
- answers to questions on notice from Mr John Robson, Managing Director, Robson Environmental Pty Ltd, received 25 November 2014
- answers to questions on notice from Mr Matthew Rigter, received 2 December 2014
- answers to questions on notice from Mr Tim McKibbin, Chief Executive Officer, Real Estate Institute of New South Wales, received 5 December 2014
- answers to question on notice from Ms Elizabeth Rooke, Workplace Adviser, Housing Industry Association, received 11 December 2014
- answers to questions on notice from Ms Clemency Morony, Snr Manager–Government and Ministerial Services Unit, Safety, Return to Work and Support WorkCover NSW, received 11 December 2014
- answers to questions on notice from Ms Amy Lovesey, Project Manager–Asbestos Policy, Local Government NSW, received 11 December 2014.

Resolved, on the motion of Mr Veitch: That the committee authorise the publication of answers to questions on notice from Mr Rigter with the exception of names, identifying information and sensitive information which are to remain confidential, as per recommended by committee secretariat.

6. Consideration of Chairman’s draft report

The Chairman submitted his draft report entitled *Loose-fill asbestos insulation*, which, having been previously circulated, was taken as being read.

6.1 Amendments to the Chairman’s draft report

Resolved, on the motion of Mr Maguire: That the following amendments to the Chairman’s draft report be adopted:

a) New paragraphs 3.32–3.40, and recommendation no.1

5.82 On 11 December 2014, WorkCover NSW provided the committee with a copy of the PricewaterhouseCoopers interim report (the interim report), which contains indicative data concerning the number of New South Wales properties that may contain loose-fill asbestos insulation.

5.83 The interim report focused on 26 local government areas (LGAs) identified as potentially having residential properties contaminated by loose-fill asbestos insulation. The original scope of the forensic investigation had identified 20 potential LGAs but this was increased to 26 LGAs following the conduct of preliminary enquiries, which included:

- company searches for Mr Fluffy entities
- searches of the internet and media publications
- requesting and reviewing information provided by LGAs and other New South Wales government agencies
- discussions with relevant stakeholders including residents, council members, and other individuals with information about Mr Fluffy.

5.84 The interim report acknowledged the uncertainty concerning the precise cessation of Mr Fluffy's operations. It also noted that the materials used by Mr Fluffy, namely crocidolite and amosite asbestos were banned nationally in 1984, meaning that properties built prior to this period are at risk of containing loose-fill asbestos insulation. This led the interim report to focus its quantification at estimating the number of affected residential properties that were built prior to 1984, which still remain today.

5.85 The interim report applied one primary model, and two secondary models to cross-check the data derived from the primary model. Each model focused on different input data to estimate the number of New South Wales properties that may contain loose-fill asbestos insulation. The models used are outlined below:

- **The proximity model** – which was the primary model – used geographical distance between the ACT and identified LGAs to calculate potential exposure to Mr Fluffy. An estimate of the number of properties that may contain loose-fill asbestos insulation in each identified LGA was calculated by applying an exposure rate that reflects the proportion of properties likely to be affected. The exposure rate was based on the proportion of affected ACT properties which is 1.52 per cent. A maximum exposure rate of 1.52 per cent was applied to LGAs within close proximity to the ACT. A lower exposure rate was applied to LGAs that are further away from the ACT, with the minimum rate being 0.05 per cent.
- **The capacity model** estimates the number of residential properties affected by considering the capacity of Mr Fluffy to have installed loose-fill insulation over a number of years. Its key aim is to form a view on the feasible volume of work that Mr Fluffy had the capacity to achieve over the period of his operations.
- **The financial records model** sought to examine Mr Fluffy's financials to ascertain the scope of his operation. At the time of the interim report's publication insufficient information had been found to provide for an estimate based on financial records.

5.86 The models also applied three estimate types (high, mid and low) to account for different assumptions and the considerable uncertainty concerning Mr Fluffy's operations.

5.87 Table 2 shows high, medium and low estimates regarding the number of New South Wales properties that may contain loose-fill asbestos insulation derived from the proximity and capacity models.

Table X Indicative data concerning the number of NSW properties that may contain loose-fill asbestos insulation

Modelling approach	High	Mid	Low
Proximity model	1,110	590	372
Capacity model	5,376	2,164	1,360

5.88 The interim report notes that its mid-point estimate is 590 affected properties, this being derived from the proximity model. It also notes that the mid-point estimate derived from the capacity model is substantially higher at 2,164 affected properties. Acknowledging the gap between the two figures, the interim report stated that this highlights the difficulty in quantifying Mr Fluffy's operations and demonstrates the need for further investigation. However, it was also argued that the data serves as useful starting point in helping the NSW Government develop an appropriate policy response:

Firstly this highlights the degree of uncertainty of estimating the number of affected properties, but secondly indicates that further investigations are required to narrow the gap and seek to reconcile the differences... The approaches we have adopted in this report are based on uncorroborated evidence and as such our estimates contain a significant degree of uncertainty. We do believe that the results of our estimation will

enable the NSW Government to consider policy decisions [regarding] the next steps...

5.89 The committee sought comment from HACA regarding the figures contained in the interim report and the date the final report will be ready. HACA provided the following comment:

PricewaterhouseCoopers (PwC) has been commissioned to quantify the number of properties in New South Wales. PwC has provided preliminary advice, which will be further refined for its final report due by 30 April 2015, once there are more results from the free ceiling sample service. There is no reliable evidence about the amount of work that the Mr Fluffy contractor carried out and there is no evidence to suggest the Mr Fluffy contractor conducted more work outside the ACT. In 1987, Mr Jansen (the Mr Fluffy contractor) advised he carried out the bulk of his work in the ACT (PwC report, page 27). To date only 19 houses and one block of 38 units have been positively identified.

Committee comment

5.90 The committee agrees that the estimates contained in the PricewaterhouseCoopers report are useful in enabling the NSW Government, as well as relevant stakeholders, to better understand the state-wide extent of the problem posed by loose-fill asbestos insulation, notwithstanding that the figures are indicative and subject to a degree of uncertainty. It is important that the further avenues of investigation proposed by PricewaterhouseCoopers are pursued and that additional findings including the final report, which is expected to be completed in April 2015, are made publicly available. It is therefore recommended that the NSW Government publish the final report of the PricewaterhouseCoopers forensic investigation concerning the number of New South Wales properties that may contain loose-fill asbestos insulation, when it is due to be completed in April 2015.

Recommendation X

That the NSW Government publish the final report of the PricewaterhouseCoopers forensic investigation concerning the number of New South Wales properties that may contain loose-fill asbestos insulation, when it is due to be completed in April 2015.

b) New paragraph inserted after paragraph 4.90

5.91 In response to a question taken on notice, the HACA advised that the Department of Planning and Environment 'is investigating options to mandatorily require property owners to notify potential [residents] of the presence of loose fill asbestos insulation in properties where it has been positively identified'. The HACA further advised that work was being undertaken to identify the most appropriate option for implementing mandatory disclosure and that ultimately it was a policy decision for it and the NSW Government.

c) New paragraph inserted after 4.102

5.92 In response to a question on notice, seeking information as to whether councils are currently putting information concerning loose-fill asbestos insulation on Section 149 certificates, Mr Noel Baum, Director – Policy, Local Government NSW, advised that his organisation had contacted staff from 26 councils on this issue. Mr Baum noted that '25 councils replied that [they] had not put information on Section 149 certificates relating to loose-fill asbestos insulation'. He further noted that one council had recently added the following information on their Section 149 certificates which state "Note: Houses built prior to 1982

may contain loose-fill asbestos. For further information contact WorkCover on 131 050 or www.workcover.nsw.gov.au".

5.93 d) New sentence inserted at the end of paragraph 4.115

5.94 To that end, the committee was pleased to be advised that the Department of Planning and Environment is investigating options to mandatorily require property owners to notify potential residents of the presence of loose fill asbestos insulation in properties, where it has been positively identified.

5.95 e) Subsequent additional footnotes

6.2 Consideration of Chairman's draft report as amended

Chapter 2

Resolved, on the motion of Mr Whan: That the following news article be added as a footnote to the final case study in chapter 2 and be included as an appendix:

- Emma MacDonald, 15 December 2014, 'Bungendore family face ruin after their horrific Fluffy discovery', *Canberra Times*, accessed 15 December 2014, <http://www.canberratimes.com.au/act-news/bungendore-family-face-ruin-after-their-horrific-fluffy-discovery-20141214-123xcg.html>.

Chapter 3

Resolved, on the motion of Mr Shoebridge: That paragraph 3.3 be amended by omitting '2003' and inserting instead '1987'.

Resolved, on the motion of Mr Shoebridge: That the new paragraph 3.40 be amended by inserting 'The committee does not believe that the actions contained in this report should be delayed until the April 2015 report is made public' after ', are made publicly available'.

Chapter 4

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 4.70:

'It is very apparent to the committee that the financial and emotional burden suffered by Mr Fluffy householders can be devastating. Those people who own Mr Fluffy properties, whether investors or first home buyers, are innocent victims of a deadly product. They must not be left to struggle alone and are deserving of financial support and assistance from society. Affected homeowners in NSW deserve this assistance no less than homeowners who live across the border in the ACT.'

Resolved, on the motion of Mr Shoebridge: That the paragraph 4.105 be amended by inserting at the end of the paragraph:

'The committee acknowledges that this inquiry has been limited to considering the very specific issue of loose-fill asbestos in homes and that for properties built before 1987 there are a significant number of other building products that do, or are likely to, contain asbestos. While a number of inquiry participants supported a broader obligation to include all asbestos products on either the s149 certificate or asbestos register, we do not have sufficient material before us to understand the full costs and benefits of such a scheme. What we do know is that asbestos is a deadly product and governments have an obligation to adopt measures to reduce the risk it poses to homeowners. The NSW Government should take a leadership role in relation to this matter with both local government and governments across Australia through the Council of Australian Governments process.'

Resolved, on the motion of Mr Shoebridge: That the following new committee recommendation be inserted after recommendation 3:

‘That the NSW Government take a leadership role with local government and governments across Australia, through the Council of Australian Governments process, to undertake an urgent study into the costs and benefits of establishing a comprehensive asbestos register or reporting system to apply to all residential properties at time of sale.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 4.115:

‘It is simply unacceptable that governments, whether state, local or federal, have information on the presence of a deadly product in residential properties but are not providing that information to prospective purchasers and residents. This information must be made available to prospective purchasers by being included in mandatory disclosure requirements placed upon vendors.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 4.116:

‘The committee believes it is important to state that imposing this legal requirement in the absence of adequate financial assistance to affected homeowners would cause a significant and unfair financial burden on existing homeowners. It also faces the substantial risk that a minority of affected homeowners will seek to off load their properties in the shadow of this requirement coming into force and so place a further group of people at risk from loose-fill asbestos. For this reason we strongly urge the NSW Government to adopt this recommendation simultaneously with the establishment of a buy-back scheme as recommended by this committee in recommendation 8.’

Resolved, on the motion of Mr Blair: That the paragraph 4.117 be amended by inserting ‘and other individuals, such as emergency service workers,’ after ‘protect tradespeople’.

Resolved, on the motion of Mr Blair: That the following new paragraphs and quote be inserted after paragraph 4.129:

‘Further to the need to protect tradespersons from exposure to loose-fill asbestos insulation, the committee also considered the protocols in place for when emergency service workers attend homes which may be contaminated.

Mr Tighe stressed the need for emergency service workers to be made aware of the presence of loose-fill asbestos insulation in properties. He also argued that it would be unlikely that emergency responders would have the time to check tagged metre boxes. Mr Tighe made this point to highlight the need for some disclosure of contaminated homes to relevant authorities:

[I]t is really about targeting someone who is going into the area where the asbestos contamination has taken place so that they are aware of it. I do not know how you can do that just by using tagging in metre boxes, for example, because if there has been a disaster then the emergency response people would not have time to glean where the contaminated buildings were vis-a-vis those that were not. So I think that, as much as people do not want identification of the properties on the public record, there is certainly an issue in relation to having that information available to people who are first responders, including fire brigades et cetera.

Mr Dunphy noted that the NSW Government was implementing three measures to better advise emergency services workers of the presence of loose-fill asbestos insulation in homes. Firstly, as part of the conditions for the voluntary testing program, homeowners are being required to sign a consent form agreeing to a warning label being placed on their metre box, in the event their home is found to be contaminated. Secondly, WorkCover provides information to the emergency services authorities regarding the presence of all dangerous goods on properties. This information is then added to the emergency service response database so ‘that they know when they go to a fire whether there are dangerous goods at the location’. Thirdly, the HACA has provided a register of identified loose-fill asbestos insulation homes to emergency services so that they can add that to their records.’

Resolved, on the motion of Mr Blair: That the following new paragraph be inserted after 4.139:

‘The committee also believes that emergency service workers should be made aware of the presence of loose-fill asbestos insulation in homes. To that end, the committee urges the NSW Government to ensure that it is taking all reasonable steps to effectively advise the emergency services authorities of the location of contaminated homes’.

Resolved, on the motion of Mr Blair: That recommendation 5 be amended by inserting:

- ‘and emergency services workers’ after ‘protect tradespeople’
- a fourth dot point to read: ‘ensuring that all reasonable steps are being taken to effectively advise the emergency services authorities of the location of contaminated homes’.

Chapter 5

Resolved, on the motion of Mr Shoebridge: That:

- paragraph 5.81 be amended by inserting ‘urgently’ after ‘the NSW Government’
- recommendation 9 be amended by inserting ‘urgently’ after ‘the NSW Government’.

Resolved, on the motion of Mr Blair: That:

- the draft report, as amended, be the report of the committee and that the committee present the report to the House
- the transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry be tabled in the House with the report
- upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee
- the report be tabled on Wednesday 17 December 2014
- the Chairman hold a media conference after the tabling of the report.

7. Adjournment

The committee adjourned at 9.52 am, *sine die*.

Alex Stedman

Clerk to the Committee

