

## **The Loose Fill Asbestos Insulation Eradication Scheme A Guide to the Voluntary Buyback Program for Properties Identified after Scheme Announcement**

This Guide provides information about the Loose Fill Asbestos Insulation Eradication Scheme (Eradication Scheme) Voluntary Buyback Program for individually titled properties added to the Affected Residential Premises Register (the Register) after 29 June 2015.

The information is applicable to Eligible Homeowners of affected houses located on individual Crown Lease blocks of land. It does not apply to units in a Units Plan governed by the Unit Titles Act 2001. For information on the Voluntary Unit Buyback Program for Properties Identified after Scheme Announcement please refer to [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce).

### The Eradication Scheme

The ACT Government's Eradication Scheme is designed to eradicate the ongoing exposure risks from the continuing presence of loose fill asbestos insulation in Canberra houses. This will be achieved through the demolition of all affected houses and site remediation.

Under the Eradication Scheme the ACT Government offered to purchase all affected Canberra houses to enable government facilitated demolition and site remediation. Remediated blocks are then offered for sale to assist in defraying overall Eradication Scheme costs.

Financial assistance toward demolition is not available to homeowners who choose not to participate in the Eradication Scheme, nor to those who purchase an affected house after the date it was added to the Register.

### The Buyback Program

Under the Buyback Program, the ACT Government offers to buy all houses in the ACT affected by loose fill asbestos insulation. For properties covered by this Guide, the buyback offer is at the market value of the property on the date it was added to the Register and as if the house does not contain loose fill asbestos insulation. Participation in the Buyback Program is voluntary.

The Buyback Program seeks to accommodate the personal circumstances of affected individuals and 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.

With this in mind, compulsory acquisition processes under ACT legislation are not being undertaken at this stage.

The ACT Government's first advice remains that affected properties should be vacated immediately. Whilst remediation works can be undertaken to make a property safe in the short to medium term, there is no effective, practical and affordable method to render houses containing loose fill asbestos insulation safe to occupy in the long term.



Recognising some owners may wish to remain in their homes at least in the medium term, the Government has established a legislative and regulatory framework requiring preparation and implementation of Asbestos Management Plans to minimise asbestos exposure risks for residents, as well as visitors and tradespeople entering or working in or on affected houses.

Additionally, noting that participation in the Scheme is voluntary, the Government has made a standing offer to those not participating in the Scheme to be a 'purchaser of last resort'. For further details on this offer please refer to [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce).

### **What is an affected block?**

An affected house is a house that contains, or has contained, loose fill asbestos insulation ("Mr Fluffy").

Most affected houses were part of the loose fill asbestos insulation survey and removal program undertaken by the Commonwealth and ACT Governments between 1988 and 1993.

An affected block is the land (that is the subject of a Crown Lease) on which the affected house is built. Only the ACT Government determines whether a block is an affected block.

The ACT Government has compiled and manages a publically available list of affected blocks.

### **Who is an Eligible Homeowner?**

An Eligible Homeowner is the person who owns an affected block.

In legal terms, the Eligible Homeowner is the person who is the registered Crown Lessee of an affected block as at the date it is added to the Register and remains the registered Crown Lessee at the time of the surrender of the affected block. Where two or more people are the Crown Lessees, as tenants in common or joint tenants, they are all Eligible Homeowners of that affected block.

In addition, other persons may be considered by the ACT Government to be Eligible Homeowners regardless of whether their interest arose before or after the date it was added to the Register. This might include:

- persons who became the registered Crown Lessee of an affected block as a result of inheritance from a deceased estate
- trustees (including executors of deceased estates)
- persons who have become the registered Crown Lessee of an affected block as a result of a settlement or orders made under the *Family Law Act 1975*
- mortgagee in possession of an affected block due to default by the registered Crown Lessee, and
- a liquidator, trustee in bankruptcy, administrator or other external administrator of registered Crown Lessee of an affected block.

The ACT Government will consider these applications on a case by case basis.

A person or company that purchases an affected block after the date it is added to the Register has no entitlement to any assistance under the Scheme and is responsible for all costs associated with maintenance and/or demolition of the affected house.

### **What do you get?**

As the Crown Lessee of an affected block added to the Register you may be entitled to a Relocation Assistance Grant to assist with the costs associated with moving out of an affected property. For more information please refer to the *Guide for the Relocation Assistance Grant for Properties Identified after Scheme Announcement*.

Additionally, should you choose to participate in the Eradication Scheme and upon surrender of the Crown Lease for the affected block, you will receive:

- The market value of your affected block (house and land) as at the date it was added to the Register, including improvements and as if the house does not contain loose fill asbestos insulation. That value will be determined in accordance with the valuation process set out in this guide.
- An additional \$1,000 (inclusive of GST) to cover or contribute to legal fees incurred in attending to the surrender.
- A right to a stamp duty concession on a residential property purchased in the ACT, up to the value of the stamp duty calculated as if it was payable on the affected block (as valued).
- A first right of refusal to purchase the affected block (at full market value, to be determined at the time of purchase) after it is remediated.

Where the contract of sale for an affected block has exchanged but not settled before the date the block was added to the Register, different rules may apply. These will be managed on a case by case basis.

### **What do you give up?**

In exchange for the benefits that are provided by the Territory above, you will give up certain rights in respect of the affected block.

- The interest in the affected block is surrendered. You will no longer be the Crown Lessee i.e. you will no longer own the house and land, or be entitled to live in the house or on the land. The surrender is equivalent to the sale of residential property.
- A condition of the buyback offer is that you waive your right to pursue legal action against the Territory and the Commonwealth in relation to any financial loss as a result of purchasing, living in or any other interest in the affected block. This waiver does not include any sickness or health claims that you or any other person may have as a result of living in or being exposed to contamination in the home.



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### How to Apply

You may apply to the ACT Government to surrender your affected block in accordance with this guide.

You (and all Eligible Homeowners for the affected block) must complete and sign the Application Form and

**send it to:** Asbestos Response Taskforce  
Buyback Program  
GPO Box 158  
Canberra City ACT 2601

or

**email it to:** [asbestostaskforce@act.gov.au](mailto:asbestostaskforce@act.gov.au) (a scanned fully signed copy must be provided)

To participate in the Buyback Program, you must lodge an application within 60 working days of the date your property was added to the Register. You will be formally advised of this date in writing. Applications received after the specified date will not be accepted, and will be considered as a rejection of the Government's offer to participate in the Buyback Program.

### What you need to do

If you are an Eligible Homeowner, to apply to surrender your affected block you will need to complete and provide the *Buyback Program: Application Form for Properties Identified after Scheme Announcement*.

In making your application you will need to provide the ACT Government with personal information including:

- your name, address and other contact details, and
- your interest in accessing the Buyback Program (i.e. are you the Crown Lessee or, if not, what other circumstances give rise to your application?)

You may be requested to provide additional information.

### Privacy

The ACT Government may need to share some or all of this information and details of the affected block, to the Australian Property Institute ACT Division (API), independent valuers and directorates, the Territory's legal representatives, departments and agencies in the Territory, Commonwealth and state and local governments and other parties for the purpose of administering the Eradication Scheme and managing health and other risks posed by asbestos contamination.

You are required to acknowledge this as part of your application and you may review the *Information Privacy Act 2014* at <http://www.legislation.act.gov.au/a/2014-24/current/pdf/2014-24.pdf>

**Phone** ACCESS CANBERRA 13 22 81  
**Web** [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce)

**Email** [asbestostaskforce@act.gov.au](mailto:asbestostaskforce@act.gov.au)  
**Twitter** @TaskforceACT

## Valuation Process

In making an application under the Buyback Program, you agree to two independent licensed valuers undertaking valuations of your affected block for the purposes of determining the buyback offer.

As the valuers will need access to your home, you will need to arrange a time with each of them to attend and for somebody to allow access and inspection. You should provide the valuers with any asbestos assessment report you have for the affected home. If the Territory holds an asbestos assessment report it may provide this to the valuers. It is possible valuers may wear personal protective equipment during the valuation of some homes.

### Market value

The valuers will assess your house and land at market value as at the date your property was added to the Register, regardless of when the valuations occur.

The valuer will ignore the presence of loose fill asbestos and minor maintenance or presentation issues, especially where homes have been vacated as a result of asbestos contamination. Please do not return to vacated homes to attend to internal presentation issues.

There is no need for you to undertake cosmetic and minor improvements before the valuations, for example painting and updating fittings. Anything more than this, such as replacing carpets, window furnishings, benchtops and vanities should **not** be undertaken given the potential risks associated with this work for residents and contractors. In any event these works are likely to require prior building approval and supervision by licensed asbestos experts (regardless of whether you undertake this work yourself or engage a contractor).

As the valuers will value your home as it was on the date it was added to the Register, any improvements undertaken after that date will not be considered.

The valuation includes fixtures and fittings that would normally pass with the property. Generally, any complete unapproved structures will be valued as approved structures.

The valuation will take into account all other defects and other forms of contamination.

### The Independent Valuation

The two valuations will be undertaken by experienced and qualified valuers engaged by the Territory in consultation with the API. Valuers will be selected based on local area expertise and availability.

The two valuers will prepare their reports independently of one another and will provide the reports to you at the same time as they provide them to the ACT Government. The ACT Government will not have access to any draft reports from the valuers.

After both valuations are received the ACT Government will write to you advising of the surrender sum, which will be the average of the two valuations, and seeking your advice on whether you would like to:

1. accept the offer; or
2. request a third and binding offer, known as a 'Presidential Determination'; or
3. decline the offer.

You will need to elect the option you would like to take by checking the appropriate box on the supplied Election Form and returning it to the ACT Government by post or email within 60 working days. Further information will be provided with the form to assist you in reviewing your choices.

#### Accept, appeal or decline

If you elect to accept the offer, the ACT Government will arrange for a deed of surrender to be drawn up and provided to your nominated solicitor.

Alternatively you can reject both valuations and at your choice and cost, request a third and binding valuation from a senior valuer appointed by the President of the API. This is known as a "Presidential Determination". You will be bound by this determination, even if it is lower than the original offer.

If you request a Presidential Determination, you will be required to pay the cost of that valuation.

If you wish to provide any further evidence or material that you would like to be considered as part of the Presidential Determination (for example, other valuations, receipts or invoices of works done to the affected block or submissions you have prepared), you will need to provide those documents at the time you make the election for a Presidential Determination.

Alternatively you may elect not to proceed with the surrender process any further by exiting the Scheme.

#### Government nominated Presidential Determination

If there is a difference of ten percent (10%) or more in the two valuations, the ACT Government may request a Presidential Determination. In that case, the ACT Government will pay the costs of the Presidential Determination.

If the ACT Government does seek a Presidential Determination, you will be sent a different form notifying you of this election and setting out details of the process. This will include your right to provide additional material to support your views on the fair value of the affected block (see above).

If either party requests a Presidential Determination, the API President will appoint a senior valuer (not involved in the first two valuations) to conduct a third and final valuation. The Presidential Valuer will make an appointment with you to undertake a further inspection of the affected block.

The Presidential Valuer will assess the market value of the affected block on the same basis as the initial valuers, however, in addition to their own inspection, the person conducting the Presidential Determination will have access to the two initial valuations and will take them into consideration in preparing a valuation.

Where a Presidential Determination is undertaken, it will determine the value of the affected block and this determination will be final on both parties.

Neither party is entitled to go back and rely on the previous valuations.

Following a Presidential Determination, you will be sent a further form indicating the final valuation and asking you whether you wish to proceed with the surrender. You have 60 working days to make an election and return the form to the ACT Government.

### **Surrender Process**

Once the value of the affected block is determined and you have elected to proceed with the surrender process, the ACT Government's solicitor will send you:

- a deed of surrender
- statutory declarations (where applicable), and
- a template certificate of independent legal advice.

You will need to sign the deed and the statutory declarations (where applicable) and have a solicitor complete and sign the certificate of independent legal advice for each Eligible Homeowner of the affected block. To meet your legal costs, the amount you will be paid as part of the surrender will include \$1,000 in addition to the valuation of the affected block.

Please note that the ACT Government's contribution towards your legal costs is \$1,000, regardless of the amount your solicitor charges you and any applicable Goods and Services Tax (GST).

You will need to provide the documents back to the ACT Government within 60 working days of receiving them, otherwise your application may be rejected or lapse. Once you have provided the documents to the ACT Government, our solicitors will provide you (or your solicitor, if you choose) with a counterpart deed of surrender executed by the Territory and work with you to complete the surrender of the affected block and pay you the surrender sum.

The ACT Government estimates the date of surrender will be 20 working days from the date you return the executed deed and completed solicitor's certificate. If you are in a position to surrender in less than 20 working days, the ACT Government will make every effort to accommodate your request. Prior to entering into the surrender deed you may request a longer period in which to complete. This may be important if you need to find new accommodation or need to coordinate settlement dates on purchase of a new home.

If you have a mortgage or if any other person has an interest in the affected block, you will need to arrange for those interests to be removed before or on the surrender date. Your solicitor will be able to advise you of the necessary steps.

If you do not make these arrangements, the ACT Government may not accept the surrender on the scheduled day and you may have to arrange another date for surrender. You may be charged a fee, in line with normal conveyancing practice, reflecting the Territory's legal costs if you fail to surrender within five working days following the scheduled date for surrender.



If you do not complete the surrender process on the scheduled date, the ACT Government may notify you to complete within a further 20 working days. If you still have not surrendered the affected block by that time, the ACT Government may terminate the deed of surrender. You will also have a right to terminate if the Territory does not comply with its obligations under the surrender deed.

### **Statutory Declarations**

Depending on the information that you provide in your application, you may be provided with one or more statutory declarations to be completed by each Eligible Homeowner to establish that:

- you have not exchanged a contract of sale for the affected block as a seller. Legally, this means that the affected block has not been the subject of a sale agreement that was signed but not settled. This includes any contract which was terminated or rescinded whether or not as a result of the discovery of contamination, and/or
- the premises are not currently occupied under a residential tenancy agreement, i.e. that the home is not currently rented or occupied by tenants.

If you have indicated on your application that you have entered into a contract to sell the affected block or indicated that the affected block is currently occupied under a residential tenancy agreement, you will not be required to provide the relevant declaration(s).

If the affected block was the subject of a contract of sale and you have kept any payment in respect of that sale (including all or part of any deposit) the amount to be paid to the Eligible Homeowner under the Buyback Program will be reduced by the value of those payments and the amount may be paid to the former buyer.

If the affected block is currently tenanted, the ACT Government will need to confirm that vacant possession will be provided to the Territory on the surrender date.

### **Certificate of Independent Advice**

Each Eligible Homeowner will need to provide a certificate of independent legal advice signed by your solicitor. That certificate will confirm the solicitor provided you with advice as to the nature of the surrender and your rights and obligations.

### **Home contents**

The valuation will not take into consideration any removable goods and personal belonging, even if they are contaminated and are left behind on surrender.

Apart from the Relocation Assistance Grant, the ACT Government is not providing assistance to compensate or reimburse for any household goods or possessions. Information about the Relocation Assistance Grant can be found at [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce).

You or your tenants should make enquiries with your home contents or landlord insurer in relation to the scope and coverage of your insurance policy in relation to household goods and personal belongings.





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The ACT Government has provided guidance in relation to home contents and personal belongings. This can be found at [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce).

### **Your responsibilities prior to the surrender date**

You are still the owner of the affected block until the date of surrender. This means you still have legal obligations to ensure that it is safe and does not pose a risk.

#### Insurance

The ACT Government strongly encourages you to keep the affected block insured until the date of surrender. While some insurance policies exclude asbestos contamination, insurance is still required, for example, to recover damage as a result of storms, fire, break and entry and vandalism.

#### General maintenance and hazards

You are required to manage your property and undertake normal maintenance. You should also take prudent steps to minimise potential hazards, especially if you have moved out. You should:

- ensure the warning sticker tag provided with this Guide is attached to the switchboard and/or meter box as required by law
- undertake routine checks on your property, particularly following storms or high wind
- ensure that the grass is mowed and gutters are cleared to minimise fire risks
- securely lock the premises to deter thieves, vandals, squatters and other uninvited persons
- secure swimming pools and other water features
- ensure that you or other people do not dump waste, garbage or other materials on the affected block, and
- remove any goods you wish to take with you, consistent with *The Surrender Process: Fixtures and Fittings* guide and the *Guidance in relation to contents in homes affected by loose fill asbestos insulation* information sheet which are available at [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce).

On the date of surrender you are required to hand over a reasonably clean site (save for asbestos contamination and household items you have left behind). The ACT Government may not accept the surrender if the block contains other waste or is unsafe. If settlement needs to be rescheduled because of the condition of the property, (for example, excessive waste or other goods dumped outside the home) or safety issues, you may be required to pay additional fees.

You are free to leave any household items that you consider contaminated in the affected house after the date of surrender and the ACT Government will dispose of these as part of the decontamination process (provided such items were part of the contents of the affected block prior to surrender).

### **Permit to return to the property**

At the time of surrender you may apply for an access permit. This permit will allow you to return to your former property for up to five days in order to finalise the relocation of your belongings. You will not be permitted to occupy or sleep at the property. You can apply for this permit by advising your solicitor of this request in the lead up to the surrender of the affected property.

**Phone** ACCESS CANBERRA 13 22 81  
**Web** [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce)

**Email** [asbestostaskforce@act.gov.au](mailto:asbestostaskforce@act.gov.au)  
**Twitter** @TaskforceACT

## Stamp Duty

Eligible Homeowners who surrender an affected block under the Buyback Program are entitled to a stamp duty concession on a purchase of a residential dwelling in the Territory. The value of the concession will be capped at the value of duty that would have been payable on a property of the value determined for the surrender for the affected block under the Buyback Program.

You are entitled to this concession only if you:

- were a Crown Lessee of the affected block on the date it was added to the Register (including joint tenants and tenants in common); or
- were a Crown Lessee of the affected block after the date it was added to the Register as a result of a contract of sale exchanged prior to the date it was added to the Register; or
- became a Crown Lessee of the affected block after the date it was added to the Register as a beneficiary of a deceased estate; or
- became a Crown Lessee of the affected block after the date it was added to the Register as a result of a binding financial agreement or orders made under the *Family Law Act 1975*.

Persons who become Eligible Homeowners as a mortgagee in possession of affected blocks, creditors, trustees of bankrupt estates, liquidators and other administrators of affected blocks, or purchased the block under a contract exchanged after the date it was added to the Register will not be eligible for the stamp duty concession upon surrender.

It is important to note that the stamp duty concession is only available if you are purchasing property in the ACT. It cannot be used on a purchase interstate or be cashed out if the actual duty payable on your new property is less than the concession amount.

The stamp duty concession may only be used once, but is not required to be used on the next purchase of land in the Territory. In particular, if you are planning to buy back your former affected block you may wish to retain the concession for that purpose even if you buy a new home in the meantime.

To exercise the stamp duty concession on entering into a contract to purchase a home in the Territory you must claim the concession when lodging the contract for duty assessment with ACT Revenue.

If the value of the new dwelling exceeds the assessed value of the affected block, you will be liable to pay the stamp duty on the assessed value of the new dwelling, less the amount available under the concession. The following example is provided to explain how this works:

The agreed surrender sum for the block is \$700,000. Based on a stamp duty rate as at December 2016, the stamp duty payable on that amount is \$23,460. If you choose to buy a new home for a purchase price of \$800,000, the stamp duty on that amount is \$29,210. You may claim your concession to the value of \$23,460 and pay the additional \$5,750.

No credit or refund will be available should the value of the new dwelling be less than the assessed value of the affected block.

A single concession of stamp duty is available for each affected block regardless of the number of tenants in common or joint tenants who were Eligible Homeowners.



If you were either a joint tenant or tenant in common of the affected block at the time of surrender you must either:

- obtain the consent of all other joint tenants or tenants in common of the relevant affected block at the date of surrender to the use of the concession on the new purchase, or
- produce orders from a court authorising the use of the stamp duty concession notwithstanding the absence of consent from all other joint tenants or tenants in common of the relevant affected block at the date of surrender.

You will be required to sign a statutory declaration that the stamp duty concession in respect of your affected block has not been claimed previously.

### **Buyback**

Once the affected block is surrendered to the Territory it will be secured in preparation for management by the Territory. This will involve the demolition of the affected house and any unapproved structures, as well as the removal of contaminated soil and other material.

If you have indicated a desire to repurchase your block, you will be offered a first right of refusal at the market value at the time it is offered for sale. This value will be informed by qualified, independent valuers based on the best and highest use of the block.

You will be entitled to use your stamp duty concession on the purchase of your former block, provided you have not used it in the meantime and you will be building a home on that block for your own occupation.

If you do not purchase your former block, the ACT Government will consider whether it is suitable for public housing or other residential use by the Territory or the Commissioner for Social Housing. If not, it will be offered for sale under the Territory's land release program to the general public.

### **Where to go for additional information?**

There are a number of documents supporting the Eradication Scheme and the Buyback Program which are available on the website, [www.act.gov.au/asbestostaskforce](http://www.act.gov.au/asbestostaskforce), including:

- the rationale underpinning the Eradication Scheme are set out in the Asbestos Response Taskforce's Report: *Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes* (the Taskforce Report)
- an overview of the Eradication Scheme is provided in *The ACT Government's Preferred Way Forward on Loose Fill Asbestos Eradication Scheme: Overview*
- a detailed policy framework for *The ACT Government's Preferred Way Forward on Loose Fill Asbestos Eradication Scheme: Supporting Detail*.

## ACCESSIBILITY

The ACT Government is committed to making its information, services, events and venues as accessible as possible.

If you have difficulty reading a standard printed document and would like to receive this publication in an alternative format, such as large print, please phone 13 22 81 or email [asbestostaskforce@act.gov.au](mailto:asbestostaskforce@act.gov.au)

If English is not your first language and you require a translating and interpreting service, please phone 13 14 50 and ask for 13 22 81.



If you are deaf, or have a speech or hearing impairment, and need the teletypewriter service, please phone 13 36 77 and ask for 13 22 81.

For speak and listen users, please phone 1300 555 727 and ask for 13 22 81. For more information on these services visit <http://www.relayservice.com.au/>