

## **Dangerous Substances (General) Amendment Regulation 2015 (No 2)**

### **SL2015-13**

#### **– Loose Fill Asbestos Contamination Reports –**

#### **Regulation Impact Statement**

#### **Executive Summary**

This Regulation Impact Statement (RIS) supports policy formulation on the establishment of regulatory arrangements that will require owners of ACT houses affected by loose fill (“Mr Fluffy”) asbestos insulation to have a Loose Fill Asbestos Contamination Report and Asbestos Management Plan in place. These arrangements are intended to reduce the risks to the public, workers and homeowners of ongoing exposure to asbestos fibres that are known to remain in the roof, wall cavities and sub-floor areas, as well as living areas, of affected houses.

More than 1,000 houses remain contaminated by loose fill asbestos insulation containing amosite and in a small number of cases crocidolite asbestos that was installed in the 1960s and 1970s. Despite a joint Commonwealth and ACT Government remediation program in the late 1980s and early 1990s, these properties remain contaminated by asbestos fibres that have sifted from roof cavities into wall and sub-floor cavities, and in many of these properties into the internal living spaces. Over 60 percent of these properties have been found to be contaminated in living areas in dust sampling carried out by licensed asbestos assessors in 2014.

The full history of this issue is set out in the report by the Asbestos Response Taskforce to the ACT Government in August 2014 *Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes* (the Taskforce Report). The report is available at <http://www.asbestostaskforce.act.gov.au/the-legacy/the-taskforce-report>.

On 28 October 2014, the ACT Government announced it would offer to buy back all affected houses at market value, ignoring the continuing presence of loose fill asbestos insulation, with a view to demolishing them. Full details of the Loose Fill Asbestos Insulation Eradication Scheme (the Scheme), of which the Buyback Program is part, is available at <http://www.asbestostaskforce.act.gov.au/buyback/key-forms-and-documents>.

Owners of affected properties participate in the Buyback Scheme on a voluntary basis. The Scheme provides for continued occupation of affected properties in the medium term, subject to the establishment of mandatory Asbestos Management Plan arrangements. This approach reflects the consensus advice of asbestos experts set out in the Taskforce’s Report:

The consistently held view throughout the Taskforce’s consultations on this issue is that there is no effective, practical and affordable method to render houses containing loose fill asbestos insulation safe to occupy in the long term. It is the similarly consistent view that most houses can, with significant effort, be rendered safe to occupy in the short to medium term.

The *ACT Government's Preferred Way Forward on Loose Fill Asbestos: Supporting Detail* document released in October 2014 took account of this advice and stated:

There will be some homeowners who are willing to accept a level of risk in order to stay in their homes in the medium term. This may be due to the age of the homeowners (and the fact as expressed by some that they have lived in the affected home for many years already), an unwillingness to leave established links to their community, an unwillingness to move twice (i.e. into short term accommodation followed by a new home), or the perceived benefits in staying within close proximity to work, school or support networks. Where a family wishes to make this choice, they will be required to undertake significant works to ensure their home is as safe as it can be for medium term accommodation. The ACT Government will mandate a program of sealing, remediation and cleaning under the *Dangerous Substances Act 2004* in 2015. This approach is not, however, a practical long term solution. This issue is discussed in more detail in the Taskforce Report.

Under the sealing program:

- clear advice will be given to affected homeowners that an affected home poses ongoing risks to health and safety that homeowners accept by continuing to stay in the home – even once works are completed
- a detailed assessment will be undertaken of the particular house to develop a specific remediation work plan (noting the Taskforce Report – while reflecting a consensus of expert opinion – provides only generic advice)
- public funds will not be expended on remediation of homes that the ACT Government considers should be demolished (i.e. owners who refuse to leave will bear all the costs of staying)
- owners of affected homes will be required to inform every person who enters their home of its status and condition
- regular asbestos assessments at the owners' cost will be required to ensure ongoing efficacy of remediation work
- regulators will regularly inspect properties to ensure compliance.

In December 2014, the *Government Response to the Standing Committee on Public Accounts Report of the Inquiry into the Proposed Appropriation (Loose-Fill Asbestos Insulation Eradication) Bill 2014* stated (see [http://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0005/670883/20141204-Government-Response-to-PAC-inquiry.pdf](http://www.parliament.act.gov.au/_data/assets/pdf_file/0005/670883/20141204-Government-Response-to-PAC-inquiry.pdf)):

The Taskforce will communicate to affected homeowners through its next newsletter further details of the medium term asbestos management regime to which the Government agreed in principle in the week of 24 November 2014. Following consultations with the Work Safety Commissioner, under the Taskforce's proposed approach:

- regulations creating an obligation for there to be an asbestos management plan in place for affected homes will be made in March/April 2015 following appropriate consultation, including with the Asbestos Industry Forum
- the obligation to have such a plan in place will commence on 1 July 2015

- the actual works necessary will be determined by a licensed asbestos assessor based on an assessment of exposure risk on a house by house basis
- it is reasonable to expect necessary mitigation in a less contaminated house to be less significant than in a badly contaminated house

This RIS analyses two options that would give effect to the policy intent as outlined above, as well as examining a base case:

- Option 1: Maintain the status quo
- Option 2: Make regulations under the *Work, Health and Safety Act 2011*
- Option 3: Make regulations under the *Dangerous Substances Act 2004*

### **Conclusions and recommendation**

Maintaining the status quo will continue to expose occupants of affected houses, visitors and workers attending or seeking to undertake work on an affected house to residual amosite and crocidolite fibres that continually migrate into the living spaces of the affected houses. There would continue to be a risk of long term low level, or in some cases high level, exposure to asbestos fibres. This approach would fail to give effect to any aspect of the Government's stated policy.

The *Work Health and Safety Act 2011* does not have sufficient scope to impose obligations on the owners of affected houses because of its focus on the doing of work. Pursuing material amendments to this Act would see the Territory not acting in compliance with the Council of Australian Governments (COAG) Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. In addition, asbestos management plans for commercial buildings (i.e. workplaces) that are required under the Work Health and Safety (Asbestos) Regulations are far more onerous, detailed, costly and comprehensive than is necessary to manage the ongoing asbestos exposure risks in affected houses. This is particularly the case because affected owners have accepted some level of ongoing risk by not following the ACT Government's first advice on vacating their affected house immediately and participating in the Buyback Program.

Amendment of the Dangerous Substances Regulations to require Loose Fill Asbestos Contamination Reports for affected houses allows for an Asbestos Management Plan to be required that is evidence-driven tailored to each individual property. It is the simplest and most cost-effective way to implement the Government's policy, recognising that the arrangements are only intended to operate in the medium-term. It also allows obligations to be created that do not relate to the doing of work, but to the ongoing inherent exposure risk in affected houses.

## **A. Background to this Statement**

This document is intended to support policy formation giving effect to the Government's policy for managing the ongoing risks associated with the continuing presence of loose fill asbestos insulation in residential properties.

This RIS has been prepared in accordance with the *Legislation Act 2001* and the ACT Government *Best Practice Guide for Preparing Regulatory Impact Statement*.

Relevant documents cited in this RIS include:

- *Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes* (Asbestos Response Taskforce, August 2014)
- *Preferred Way Forward on Loose Fill Asbestos: Supporting Detail* (ACT Government, 28 October 2014)

## **B. Community and Industry Engagement**

The Asbestos Response Taskforce undertook extensive consultation to prepare advice in 2014 for the ACT Government on options for providing an enduring solution to the legacy of loose fill asbestos insulation in Canberra houses, including drawing on affected homeowner experiences and expectations. This is detailed in the Taskforce Report. Although the preferred approach is for affected houses to be immediately vacated, acquired by the Territory and demolished, the Scheme provides for continued occupation of affected houses in the medium term. It is also possible some affected owners will elect not to participate in the Program.

The scope of the proposed asbestos management arrangements has been discussed with owners of affected houses in public forums and individual meetings. The Taskforce has refined the design of the regulations to take account of concerns raised by affected owners about their safety and comfort in a house subject to the arrangements.

Discussions with relevant regulators have confirmed the existing Building Regulations place limitations on sealing up heating and cooling systems (which cannot be done without building approval being sought), and works that materially affect liveability or even affect the health of owners. In some cases, it will not be possible to reconcile these competing requirements and it may be that earlier than desired surrender of an affected house becomes necessary. This prospect was foreshadowed in the Scheme documents in October 2014, and in the Taskforce Report.

The Taskforce also consulted licensed asbestos assessors and removalists, including representatives of the Asbestos Industry Forum, to ensure the proposed approach was workable, practicable and achieves a reasonable level of hazard reduction. The proposed approved form has been designed with the assistance of licensed asbestos removalists and assessors. Consideration has been given to financial or other hardship whereby support may be sought if a homeowner cannot comply with any proposed regulations. A guideline (incorporated in the proposed approved form) to preparing loose fill asbestos contamination reports and necessary remedial work has been prepared to standardise the work of the assessors and removalists and control costs to a reasonable level.

The ACT Work Safety Commissioner, who is responsible for compliance and enforcement of the Dangerous Substances Regulations, was consulted in the development of the proposed arrangements

and the procedures and regulations required giving it effect. WorkSafe ACT inspectors also contributed the development of the proposed arrangements, and the approved form.

All affected homeowners will be provided with information and supporting materials explaining to them the purpose of the proposed asbestos management arrangements including costs, the process involved and their legal obligations. General community information will also be provided to alert the community to the controls being put in place to support reducing exposure to the public, workers and the homeowners.

The list of affected properties to which the arrangements will apply will be published in the week of 30 June 2015.

The management plan arrangements will only apply to occupied affected houses, so do not affect vacant properties surrendered to the Territory. Occupied Territory-owned houses (i.e. a small number of public housing properties) are subject to the proposed arrangements.

### C. **Summary of the Loose Fill Asbestos Contamination Report**

The main features of the medium term management approach put in place through the regulations are:

- Where the owners of a property on the register of affected houses do not agree to surrender their house to the Territory, or where they have agreed to do so but have a settlement period of more than one year, the owner must commission a biennial (every two years) 'loose fill asbestos contamination report', at their own expense, from a licensed asbestos assessor.
- This report will identify any loose fill asbestos dust or debris in the living areas of the house, any exposure pathways from the ceiling, walls or sub floor cavities and set out mandatory remedial work to be done to remove any contamination, and seal up exposure pathways.
- The reports will be prepared on an approved form to standardise the approach taken by assessors, and the extent and type of clean up/ seal up work to be done. The approved form will contain guidelines for assessors and asbestos removal workers.
- To assess contamination, the licensed asbestos assessors will take an appropriate number of settled dust samples in areas where exposure pathways are identified. These samples will be analysed and the results recorded in the report.
- Assessors will be able to advise four types of hazard reduction actions:
  - *lock* doors and manholes to building cavities
  - *label* access doors with 'Danger- Do Not Enter, Asbestos' signs
  - *clean up* any asbestos dust or debris found in living areas
  - *seal up* any holes or cracks in walls, floors, cornices and ceilings. This will not extend to undertaking any building work, including replacing downlights, Tastics, exhaust fans, or covering up or disabling heating or cooling systems.

- The extent of possible sealing up work is limited by safety and building regulation requirements, including not impacting on the health or safety of the occupants. Where a property is found to be in very bad condition or is severely contaminated, the assessor will report the property to WorkSafe ACT for appropriate action. WorkSafe has a range of compliance measures available to it under the dangerous Substances Act ranging from education through to improvement notices and fines.
- It will be mandatory for the locking, labelling, cleaning or sealing work to be done by a licensed asbestos removal worker within six months of the report date.
- Asbestos assessors will be required to lodge the completed Loose Fill Asbestos Contamination Report form with the regulator (WorkSafe ACT). A copy will also be provided to the homeowner.
- When the work is completed by a licensed asbestos removalist, they will sign the homeowner's copy of the form and resubmit the form to WorkSafe ACT.
- Owners of an affected house will be required to provide a copy of the Loose Fill Asbestos Contamination Report to any person entering the house, and any occupier. They are also required to not tamper with any seals, locks or labels put in place.
- The owner will be required to notify WorkSafe ACT of any intended significant maintenance or building work that may disturb loose fill asbestos in the cavities of their house.

#### **D. Problem with the Current Regulation**

There are currently no regulations in place that could implement the detailed policy contained within the Scheme documents. This policy required the following features:

- Mandatory interventions necessary to minimize the risk of entry of asbestos fibres into living areas ('sealing program')
- Ongoing vigilance and testing
- Owners will be required to provide visitors and workers with a Loose Fill Asbestos Contamination Report
- Owners will be required to pay for any remediation works recommended by assessors to manage the identified ongoing risks
- Any building work or maintenance will continue to require building approval as for all other residential properties and no renovations can occur unless the asbestos is first removed
- There will be ongoing requirements on owners in relation to ensuring the safety of workers and visitor

There is currently no legislative requirement in ACT legislation addressing these issues

#### **E. RELEVANT STAKEHOLDERS**

There are a range of stakeholders that will be impacted by the proposed Asbestos Management Plan arrangements.

<b>Group</b>	<b>Stakeholders included</b>	<b>Impact</b>
Homeowners who have not agreed to surrender their Crown Lease	Unknown at this time	Asbestos assessor fee: approx \$1200  Asbestos removalist fees: approx \$1500 per day, depending on contamination identified  (these costs occur every two years)
Licensed Asbestos assessors	Approx 30	Additional workload  Income generated from reports
Licensed Asbestos removalists	Approx 30	Additional workload  Income generated from reports
Worksafe ACT	Asbestos Unit	Inspection, audit and compliance costs  establish a register of the Plans
Community, visitors, workers		Reduction in potential exposure to asbestos fibres and long term health effects

## **F. OBJECTIVE**

The objective of establishing medium term management arrangements is to ensure the ongoing risks of asbestos exposure in affected houses are managed, and that exposure to asbestos for owners, occupiers, workers and the visitors is minimised.

## **G. OPTIONS**

- **Option 1: Maintain the status quo**

This option contains no regulatory response and is not acceptable.

- **Option 2: Make regulations under the Work, Health and Safety Act**

The *Work Health and Safety Act 2011* does not have sufficient scope to impose obligations on the owners of affected houses because of its focus on the doing of work. Pursuing material amendments to this Act would see the ACT not in compliance with the Council of Australian Governments (COAG) Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. In addition, the asbestos management plans for commercial buildings (i.e. workplaces) that are required under the Work Health and Safety (Asbestos) Regulations are far more onerous, detailed, costly and comprehensive than is necessary to manage the ongoing risks of asbestos exposure in affected houses.. This is particularly the case because affected owners have accepted some level of ongoing risk by not following the Government's first advice on vacating their affected house and participating in the Buyback Program.

- **PREFERRED OPTION - Option 3: Make regulations under the Dangerous Substances Act**

In 2014, the ACT Government introduced part 3.5 of the Dangerous Substances Regulations applying to affected houses to mandate warning labels (or ‘sticker tags’) in meter boxes and switchboards. It is a simple matter to amend this part to reflect medium term management of the ongoing asbestos exposure risks to owners, workers and the public in these residential properties. The application of the arrangements to an affected house will be ascertained through the establishment, under amendments contained in the Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015, of a register of affected houses.