



ACT Buyback Program for Mr Fluffy Affected Properties

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Loose Fill Asbestos in the ACT

'Mr Fluffy' is the commonly used name for the loose fill asbestos fluff insulation installed in homes between 1968 and 1979 in the ACT and surrounding regions. The insulation typically consists of crushed amosite (brown asbestos). The asbestos fibres present in loose fill insulation are now known to be carcinogenic and inhalation of them is associated with an increased risk of developing lung cancer and mesothelioma.

Between 1989 and 1993 the ACT and Commonwealth Governments undertook a remediation program to remove loose fill asbestos from ACT homes. However, as was later realised, the remediation program failed to fully decontaminate affected homes. There are presently 1021 affected homes known to still be in existence.

The ACT Government's Asbestos Response Taskforce announced in October of 2014 that the only 'enduring solution' to the Mr Fluffy crisis presented by these 1021 homes is to demolish all of them and remediate the blocks by removing contaminated topsoil.

ACT Buyback Program

The ACT Government announced on 28 October 2014 they would purchase all properties containing loose fill asbestos.

Under the terms of the Buyback Program homeowners who choose to participate will enter a deed with the Territory to surrender their property in exchange for a sum of money. This sum of money represents the market value of their property.

Homeowners that participate will be given a right of first refusal to repurchase their property after it has been remediated. In addition they will receive \$1,000 to cover legal costs, \$10,000 towards relocation costs and a waiver of stamp duty on their next home purchase within the ACT. The stamp duty waiver is capped at the amount of stamp duty the owner would be required to pay for a property of equivalent value.

The Buyback program is open until the 30 June 2015.

Buyback Program Valuation Process

After an eligible homeowner completes and submits the Buyback Program Application form the Asbestos Taskforce will contact two

independent valuers from the Australian Property Institute ACT Division (API). **The market value of the block will be calculated by taking the average of the two valuations. The valuers are to ignore the asbestos contamination when making their valuations.**

A homeowner may reject the valuations and seek a third valuation from the President of the API. This third valuation will be performed at the homeowner's own cost and will be final. All valuations will be made as if the property were being valued on 28 October 2014. This is to avoid any effect fluctuations in the property market may have on the valuations since the Buyback Program was announced.

First Right of Refusal

The Buyback Program Application form also allows for homeowners to opt to have a first right of refusal to repurchase their property. Owners that choose this option can repurchase their property after their house has been demolished and the grounds remediated.

The price at which owners will be able to repurchase their property will be based on the higher valuation of two valuations made by API valuers. These valuations will be performed after demolition and remediation has occurred.

The timeframe for the Asbestos Taskforce to complete the demolition and remediation works is five years. Thus a homeowner may have to wait the full five years before they are able to repurchase their property.

Where homeowners choose not to repurchase their property in its entirety the ACT Government may subdivide the block as it sees fit. The homeowner may then also exercise their first right of refusal with respect to repurchasing the subdivided block of their choice.

The Deed of Release

A condition of the Buyback offer is that homeowners waive their 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 the homeowner or any other person may have as a result of living in the home or being exposed to contamination in the home.

The deed of release is not the product of a statutory scheme. Common law principles suggest the terms of the deed are negotiable. However, as a consequence of signing the deed a homeowner will lose the ability to recover compensation for certain economic losses which are not accounted for in the sum of money they receive for surrendering their property.

Non-recoverable Losses

Due to the nature of the Buyback Program homeowners who participate will not be compensated for a number of categories of economic loss, including:

A) Relocation costs

Homeowners will be responsible for relocation costs exceeding the relocation assistance package of \$10,000 plus \$2,000 per dependant. The relocation assistance package extends to residents only, so tenants may receive it but landlords who do not reside in the affected home will not be eligible. Where a homeowner participates in the Buyback Program they will be responsible for shouldering costs of removalists, interim rental accommodation and decontamination of belongings. In addition homeowners may also face longer term hardship as a result of being displaced from their suburb and established community.

B) Increases in property market prices

As the market valuation is determined by reference to the property's value on 28 October 2014, any increases in property prices

after this date will not be reflected in the valuation. This aspect of the Buyback Program may greatly affect properties which have been the subject of recent changes in circumstances such as new interest by property developers or rezoning of the area into a more valuable higher density zone.

Where a property surrendered under the Buyback Program is subject to later changes in circumstances which increase its value the repurchase price may greatly exceed the amount homeowners initially received for surrendering their property. **In this instance there is a real risk homeowners will not be able to afford to repurchase their property in its entirety.**

C) Mortgage refinancing costs

The Buyback Program does not provide any compensation to cover the costs of refinancing a homeowner's mortgage. Depending on the nature of the loan agreements between a homeowner and their mortgagee this could amount to significant losses associated with refinancing the purchase of a new home. **Thus, homeowners should be aware that the deed does not bind lenders to honour existing mortgage arrangements.**

Homeowners who are not in receipt of secure income may struggle to obtain finance in order to purchase a comparable property if they participate in the Buyback Program.

D) Lost investment

The loss of investment is especially relevant to property developers or other owners who purchased an affected house as an investment property in the hope it would later be rezoned. The market valuation of the Buyback Program does not directly take into account the rezoning potential of a property which may be of significant value. Property owners should consider the potential rezoning value of their property and weigh this against the decontamination costs prior to entering the Buyback Program.

Conclusion and Recommendations

The Buyback Program offers a reasonable and needed solution to the Mr Fluffy housing problem. However, the surrender process is not mandatory and property owners may be able to seek alternative forms of compensation from either the ACT, Commonwealth or third parties involved in the sale or certification of the house.

Homeowners should recognise the value of these potential other forms of compensation prior to signing the deed. **As a general comment, property owners who have substantial non-recoverable losses or who have purchased their properties in the last six years should seek legal advice on their options.**

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