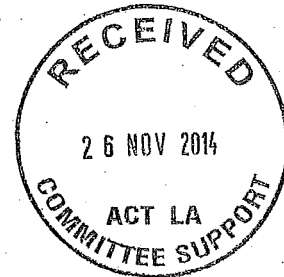


The Committee Secretary
Standing Committee on Public Accounts
by Email: committees@parliament.act.gov.au



Reference: Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014-15¹

Blume,

A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	35
DATE AUTH'D FOR PUBLICATION	27/11/14

Why

I am making this submission to draw to the attention of Members to a range of concerns I have about the broader matters the amendments in this Bill tries to address.

In particular I believe the Report to the Assembly from the Committee should request further consideration by the ACT Government of

- a) the fairness and equity of the options proposed for those householders and their families who own and have been living in 'Mr Fluffy' houses;
- b) and take greater account of community insurance principles in determining how the issue is to be resolved.

I know these matters are not strictly within the remit of the Committee, but the PAC offers a forum not otherwise available.

Who

The overwhelming evidence indicates that the Commonwealth Government should take primary responsibility for the costs of remediation & compensation for dealing with Mr Fluffy houses. That responsibility arises because:

- the installations occurred while the Commonwealth was administering the ACT,
- around the time of the installations there was clear advice to the Commonwealth of the dangers of the material in that and other uses,

¹ http://www.parliament.act.gov.au/in-committees/standing_committees/Public-Accounts/inquiry-into-the-proposed-appropriation-loosefill-asbestos-insulation-eradication-bill-201415?inquiry=662274

- the Commonwealth had already accepted responsibility and acted to undertake the first clean up program and signed an MOU on continuing responsibility, and
- the community insurance principles means that spreading the costs amongst all Australians (taxpayers anyway) offers a low cost per taxpayer for what is a national responsibility (NSW has yet to confront these issues for their residents in a meaningful way).

The Commonwealth has abrogated its responsibility using highly legalistic arguments and has done so with a breathtaking breach of moral and ethical standards as well as a break with conventions on dealing with natural disasters, which generally see a mixture of grants and loans to affected parties.

The Commonwealth's assistance is effectively zero as they have agreed only to a modest interest discount on a loan solely to reduce the impacts on the ACT Budget cash flow.

As a result response to deal with the Mr Fluffy houses now falls solely to the ACT Government (taxpayers) and our community more broadly.

What

The over-riding principles in dealing with what is a 'wicked' problem must be that of natural justice and fairness for those directly affected. Those affected have in no way been the 'cause' of their situation so they should be treated as we have treated others similarly affected, the nearest most recent corollary at scale in the ACT are those who lost homes in the ACT fires of 2003.

In the case of Mr Fluffy there is no underwriting assistance available from private insurance so the costs of compensation and remediation accrue to the ACT Government. The question then becomes one of what is 'fair' in determining who should pay for what. My own view is that the community insurance principle should allow us to remove the private financial load on the Mr Fluffy house owners to the greatest extent possible.

What has so far been proposed, with the best of intentions, seems to have diverged from the question 'what is fair to those affected' to a much more crude 'what can we do to minimise the costs to the ACT Budget'. It is reasonable and correct to ensure that there is no waste or poor allocation of ACT finances which have been re-directed to provide

the support for Mr Fluffy residents, but the core focus should be on their plight – and that is far more than financial – but the financial component too is bigger than seems so far to be recognised.

The financial offer as it stands is flawed when judged by what is 'fair' to the Mr Fluffy residents. The payment to be made is a market value for the house & land as at 28 October 2014. That seems reasonable, but is not. Why?

First these are forced sales, the owners have no choice (except by accepting an even higher risk of a negative outcome than the circumstances they now face) and that payment takes no account of other items that have to be paid for if one builds on a greenfield site (in situ or on a new block) such as: landscaping or gardens, driveways or paths, fitout of soft furnishings, light fittings or floor covering and garage or shed(s) separate from the residence.

Costs for temporary accommodation are not included, yet some have already moved out and their house is vacant and unusable. All will have to do so – unless they are among the lucky few who manage to co-ordinate the departure from the Mr Fluffy to the new home with no gap. The 60% who indicated a wish to stay on their own land will need at least 6 months accommodation elsewhere, more likely 9 or 12 months, maybe more.

Also not included are any financing costs such as bridging loans, early mortgage payment penalties or new mortgage setup costs. There could be other costs - for owner occupants and for landlords (such as loss of rental income). Removal & storage costs have not been included - to leave existing dwelling and move back to a new one (regardless of location).

When I sell my house and land at a time of my choosing to do whatever else I planned to do, then these items are costs that I know I will have to cover. But in this instance the 'sale' is unforeseen, unplanned for and in the case of many, at a time of life when there was no contemplation of such a situation. My friends and neighbours were looking forward to continued retirement in a house and a location they have lived in for more than 40 years, with all that entails.

The real valuation of the land to the owner (also if that becomes the ACT Government) is whatever it is at time the land is re-sold. That value will

be increased significantly if the land is strata titled or sub-divided to separate leases. The added value from any subdividing, which is normally around and doubling of the of the original single block UCV and will go to the ACT Government.

The increased value from elapsed time and the changed (higher value) market (driven largely by the additional several hundreds of Mr. Fluffy created buyers entering the market over and above the normal participants) will also go to the ACT Government.

We also know from the 2003 fires aftermath that building costs will rise dramatically. So we can expect to see inflationary impacts of builders costs and building supplies costs. In 2003 they rose rapidly and stayed high for at least 3 years - with an added market participation of around half (550) what will be the case with Mr Fluffy houses. The impact of Commonwealth cuts will moderate this a little, but not much.

Note too the list above of costs that owners will need to pay out of their 'market payment' for the house & land – not exhaustive at all, but they add up to a significant amount – I think in the many tens of thousands, nearer to \$100K than not.

The Government costs are the actual payment of the market price, the management of the funds & process, the interest & capital to be paid back to the Commonwealth, the cost of demolition and remediation of the blocks, the cost of any subdividing process & works (likely to be passed on to LDA and thence in prices to new buyers).

The Government revenue will be from the sale of the land either as is or subdivided in some way as described above.

My perception is that the focus has moved almost entirely onto the revenue side to the detriment of the welfare our friends and neighbors in Mr Fluffy houses.

The actual cost to the ACT community is the difference between these costs and any revenue and I would place a higher emphasis on the people involved as they carry the largest burden while the rest of us have just a short term financial cost – best spread amongst as many people as can be done.

All of these are financial matters – and these are accompanied by massive emotional impacts from dealing with grief, fear, loss and the great anxiety wrought by high levels of uncertainty and the disruption already happening and knowledge of much more to come. No financial support can remove those feelings, but fairness and transparency can ameliorate them.

How

All those Mr Fluffy residents directly affected will all be losing, the key question we can deal with is the financial burden and ask: what is the 'reasonable' loss that should be carried by the Mr Fluffy owners versus what should be spread across all ACT taxpayers?

My view is that the answer requires a more granular and individual circumstance approach to the compensation program. This must include a mechanism to allow those who wish to retain their block (it seems that is the majority if the conditions were right!) to do so:

How might this be done? Those owners get paid the estimated replacement cost of the dwelling (the household insurers know how to work that out so Government shouldn't find it too hard) plus an accommodation, removal & storage cost for the period needed to be offsite to allow the demolition and rebuild to be completed.

The current owners still own the land and have to arrange the building etc within the agreed amount paid, and any other funds they choose to invest, and waive any further claim. I think that should include a waiving of stamp duty and any and all ACT Government fees usually charged for new construction.

That means that the current owners retain the capital gain value of the land. That might mean imposing a limitation on further sale of that land & house for a period (say 6 years) except in some defined circumstances (eg: death or major illness of one of the owners) so that owners are not able to get a windfall gain from a quick resale into a heated market.

Transparency in the processes needs to be improved. This should include the immediate public release of all costings and estimates used by the Government in coming to its decisions. This would include spreadsheets created by or provided to Government to determine best & worst case scenarios used as the basis for constructing the program.

There would be very little commercial in-confidence material or other reasons to withhold as the numbers can largely be sourced in the public domain. What should be provided is access to the work already done in collating and collecting them. Seeing what are the basis for Government decisions and all the assumptions behind the numbers would harm no-one and help many to understand the position taken.

A further part of the 'How' relates to those others of us affected. I see it as a secondary issue and am thankful that our lives have not been turned upside down and inside out as the Mr Fluffy residents have, but I live on a large battle-axe block between two culs-de-sac with a shared drive way with a Mr Fluffy neighbour and have another Mr Fluffy house on the opposite boundary and one at my front boundary. Another adjacent house was burned to the ground in 2003 – quite probably that original house was a Mr Fluffy too, which the ACT Government would know, but its burnt out remains were removed and a new house built.

That situation has some potential long term positives and many current negatives. Our neighbours are faced with catastrophic losses to deal with and I do not suggest any equivalence, but the issues are real and considerable.

There will be a demolition and at least partial clearing of those blocks with all the noise, dust and other impacts. The demolition guidelines and policing of them must include robust and continuing communications with the owners & all neighbours on the timing and the nature of the actions that will be occurring on the block. The demolishing and any soil removal and clearing must be only to the minimum necessary. To every extent possible there should be no damage to any assets, plants, fences or other parts or items of any neighboring blocks. Significant trees and plantings should be retained on the affected land and action taken to prevent damage to plants or shrubs on any adjacent land.

In what are now quiet residential streets Mr Fluffy neighbours will have adjacent blocks that for some time, a year or more, will have a vacant house, then a demolition site, then a cleared vacant block of land, then a building & construction site with finally a new building or buildings. In our case three within a hundred meters.

Should the blocks be sub-divided then the neighbours face a transition from living an area of free-standing residences on relatively large blocks to having two or three or more medium density dwellings next door to

them with increased noise, vehicular access, parking implications and other changes to local amenity. In my own case we have shared entrance going into a dual driveway with shrubs and greenery offering high visual amenity. Any sub-division would likely destroy that amenity or reduce it greatly.

Should zoning variation be proposed to support increased density then neighbours need to be brought into the process early. There is some irony in all this – allowing neighbours to also seek a rezoning to sub-divide brings a potential increase in the value of their land, but that could be realised only if they too sold into the market place and moved elsewhere, or were willing to change their current amenity by having more new dwellings adjacent to or in place of their current residence. For those of us who like living where they are this is a two-edged sword.

Summary

The fundamental question the Committee and the ACT Assembly should be considering is “What level of loss is to be inflicted on Mr Fluffy residents?”, as most will lose financially regardless of the balance struck between what the community pays and what is carried by them.

That should not diminish the emotional and other impacts of being forced from your home and having it destroyed and, for some, the fear of some future health consequence.