

INQUIRY INTO THE LOOSE-FILL ASBESTOS INSULATION
ERADICATION SCHEME—QUARTERLY PROGRESS REPORTING

STANDING COMMITTEE ON PUBLIC ACCOUNTS

JULY 2016

REPORT 30

COMMITTEE MEMBERSHIP

Current Members

Ms Nicole Lawder MLA	Chair from 18 July 2016 Member from 8 August 2013 to 18 July 2016
Ms Joy Burch MLA	Deputy Chair from 23 February 2016 Member from 21 January 2016 to 23 February 2016
Mr Jayson Hinder MLA	Member from 15 March 2016
Mr Alistair Coe MLA	Member from 18 July 2016 Member from 6 June to 8 August 2013

Former Members

Mr Brendan Smyth MLA	Chair from 6 June 2013 Member to 6 June 2013
Ms Mary Porter AM MLA	Deputy Chair to 19 February 2016
Ms Meegan Fitzharris MLA	Member from 10 February 2015 to 21 January 2016
Ms Yvette Berry MLA	Member from 5 August 2014 to 10 February 2015
Dr Chris Bourke MLA	Member to 5 August 2014
Mr Zed Seselja MLA	Chair to 6 June 2013

SECRETARIAT

Dr Andréa Cullen AGIA ACIS	Secretary
Mr Greg Hall	Research Officer
Ms Lydia Chung	Administration Officer

CONTACT INFORMATION

Telephone	02 6205 0127
Post	GPO Box 1020, CANBERRA ACT 2601
Email	committees@parliament.act.gov.au
Website	www.parliament.act.gov.au

RESOLUTION OF APPOINTMENT

The Legislative Assembly for the ACT appointed the Standing Committee on Public Accounts on 27 November 2012.

Specifically the resolution of 27 November 2012 establishing the Standing Committees of the 8th Assembly, as it relates to the Public Accounts Committee states:

- (1) The following general purpose standing committees be established and each committee inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community:
 - (a) a Standing Committee on Public Accounts to:
 - (i) examine:
 - (A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and
 - (B) all reports of the Auditor-General which have been presented to the Assembly;
 - (ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;
 - (iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and
 - (iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue;¹

¹ ACT Legislative Assembly, *Minutes of Proceedings*, No. 2, 27 November 2012, pp. 24–27.

TERMS OF REFERENCE

Pursuant to Standing Order 216, the Committee resolved on 10 March 2015 to inquire into all tabled quarterly progress reports on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme and report to the Assembly as follows:

- 1) on any items or matters in those reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;
and
- 2) any other relevant matter.

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RECOMMENDATIONS

RECOMMENDATION 1

4.14 The Committee recommends that the ACT Government ensure that future quarterly progress reports on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme use a consistent and meaningful reporting framework—as per the Chief Minister’s and Treasury Directorate’s publication—*Organisational Performance Measurement and Reporting Guide (2013)*.

RECOMMENDATION 2

4.22 The Committee recommends that the ACT Government publish its quarterly progress reports on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme within 45 days of the end of each quarter.

RECOMMENDATION 3

4.26 The Committee recommends that the Minister for Workplace Safety and Industrial Relations inform the ACT Legislative Assembly by the last sitting day in August 2016 regarding the: (i) latest developments concerning claims of theft from “Mr Fluffy” affected properties being demolished by one of the authorised contractors; and (ii) closure of the West Belconnen Resource Centre for five days in June 2016 due to heavy rain—in particular, its impact on the demolition program and what measures were put in place to manage demolition waste and mitigate risk during the closure period.

RECOMMENDATION 4

4.34 The Committee recommends that the ACT Government’s quarterly progress reporting on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme include an updated estimation of the net financial impact of the Scheme.

RECOMMENDATION 5

4.46 The Committee recommends that the Minister for Workplace Safety and Industrial Relations inform the ACT Legislative Assembly by the last sitting day in August 2016, as to when: (i) in terms of the date, the decision was made to change the process for remediation of affected blocks; and (ii) the change in the process became effective.

RECOMMENDATION 6

4.49 The Committee recommends that the ACT Government ensure that, where applicable, all publicly available government policy documents pertaining to the Loose-fill Asbestos Insulation Eradication Scheme be updated to reflect the revised soil methodology requirements for clearing affected blocks.

RECOMMENDATION 7

4.55 The Committee recommends that the ACT Government take appropriate steps to ensure that its response to Auditor-General Report No. 4 of 2016: *The Management of the Financial Arrangements for the Delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* is made available prior to the commencement of the 2016 Caretaker period.

1 INTRODUCTION AND CONDUCT OF INQUIRY

INQUIRY ADOPTION AND TERMS OF REFERENCE

- 1.1 In its report on the Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–2015, the Standing Committee on Public Accounts (the Committee) noted that successful implementation of the Loose-fill Asbestos Insulation Eradication Scheme (the Scheme) would effectively require a coordinated approach across several directorates and agencies.
- 1.2 To ensure adequate coordination and monitoring, the Committee recommended that the government table quarterly progress reports on the implementation of the Scheme.²
- 1.3 The Government agreed with the recommendation, stating:

The Government has already agreed to do so. The Chief Minister’s Ministerial Statement on 30 October 2014 was the first such report.³
- 1.4 Accordingly, as an ongoing inquiry, the Committee resolved on 10 March 2015 to inquire into all tabled quarterly progress reports on the implementation of the Scheme and report to the Assembly as follows:
 - 1) on any items or matters in those reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed; and
 - 2) any other relevant matter.

CONDUCT OF THE INQUIRY

- 1.5 On 17 March 2015, pursuant to standing order 216 and 246A, the Chair advised the Assembly of the Committee’s resolution of 10 March 2015 as outlined above.
- 1.6 Post adoption of its inquiry, the Committee has been in a position to consider five quarterly reports as presented or tabled by the Government. In response the Committee Chair has made two 246A Statements relating to matters arising in these quarterly reports. The Statements were made on 7 May 2015 and 24 September 2015 respectively.

² Recommendation No. 57—PAC Report on inquiry into the proposed appropriation (Loose-fill asbestos insulation eradication) Bill 2014-15, pp. 144–145, 3 December 2014.

³ Government Response to PAC Report on Inquiry into the proposed appropriation (Loose-fill asbestos insulation eradication) Bill 2014–15, p. 19, 4 December 2014.

- 1.7 The Committee met on 26 July 2016 to consider the Chair’s draft report which was adopted on 26 July 2016.

STRUCTURE OF THE REPORT

- 1.8 The Committee’s report is divided into five chapters:
- Chapter 1—Introduction and conduct of inquiry
 - Chapter 2—Inquiry context
 - Chapter 3—Quarterly progress reporting
 - Chapter 4—Committee comment
 - Chapter 5—Conclusion

ACKNOWLEDGEMENTS

- 1.9 The Committee thanks all those who assisted it in the course of its inquiry.

2 INQUIRY CONTEXT

2.1 On 28 October 2014, the ACT Government announced the Loose-fill Asbestos Insulation Eradication Scheme (the Scheme), under which it offered to buy all 1021 homes in the ACT affected by Loose-fill asbestos ('Mr Fluffy') insulation (the Buyback program).

2.2 The aim of the Scheme is:

...to eradicate the ongoing exposure risks from the continuing presence of loose fill asbestos insulation in Canberra houses.⁴

2.3 The Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15 (the Bill) was the mechanism for the appropriation of additional monies for the Scheme and related purposes for the financial year that began on 1 July 2014. The Bill was tabled in the Legislative Assembly on 25 November 2014.⁵

2.4 The funding for the Scheme is a \$1 billion concessional loan from the Commonwealth Government. The loan facility will allow the ACT Government to borrow up to \$1 billion at the Commonwealth's interest rate for a period of 10 years. This is expected to provide savings to the ACT Government of up to \$32 million over the life of the loan.⁶

2.5 According to the Explanatory Statement for the Bill:

Under the Scheme, the ACT Government will acquire, demolish, and safely dispose of all affected homes, remediate affected blocks and then resell them to defray overall Scheme costs. The Scheme also provides for emergency financial assistance, asbestos assessment and the hazard reduction program undertaken by the Asbestos Response Taskforce since it was formed in July 2014, as well as the ongoing relocation assistance grants payable when affected homes are vacated.⁷

2.6 Under the Buyback program the ACT Government has offered to purchase affected dwellings at market value as if they did not contain asbestos as at 28 October 2014. To do so, all affected houses will be independently valued by two valuers selected by the Australian Property Institute and the exchange price of each property will be the average of the two valuations.⁸

⁴ ACT Asbestos Response Taskforce. (2014) *The Loose Fill Asbestos Insulation Eradication Scheme—A Guide to the Voluntary Buyback Program*, p. 1.

⁵ ACT Legislative Assembly, *Minutes of Proceedings*, Tuesday 25 November 2014.

⁶ Senator the Hon. Eric Abetz—Media release: 'Commonwealth contribution to ACT 'Mr Fluffy' asbestos remediation programme', 28 October 2014.

⁷ Consultation copy—proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014-15, Explanatory Statement, p. 2.

⁸ ACT Asbestos Response Taskforce. (2014) *The Loose-fill Asbestos Insulation Eradication Scheme. A Guide to the Voluntary Buyback Program*, p. 5.

- 2.7 The guiding principles of the Scheme as detailed in the ACT Government's *Preferred Way Forward on Loose Fill Asbestos* (2014) publication 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).⁹
- 2.8 Under the Buyback program, the ACT Government has offered to purchase all affected houses in order to enable the demolition of houses and remediation of the sites. To this end, the Government has sent eligible homeowners an offer to accept in exchange for the surrender of their Crown lease.
- 2.9 Under the Buyback program, on surrender of the Crown lease for an affected block, an eligible homeowner will receive:
- the value of the affected block (house and land) as at 28 October 2014 including improvements;
 - an additional \$1,000 (inclusive of GST) to cover or contribute to legal fees incurred in attending to the surrender;
 - a right to a waiver of stamp duty 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; and
 - other benefits as detailed on the Asbestos Taskforce's website.¹⁰
- 2.10 In exchange for the package provided by the Territory to those signing up to the Buyback program, homeowners will be required to:
- surrender their interest in the affected block; and
 - 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

⁹ ACT Government. (2014) *The ACT Government's Preferred Way Forward on Loose-fill Asbestos: Overview*, 28 October, p. 3.

¹⁰ The Asbestos Taskforce, at the time the Scheme was announced, was seeking assistance for eligible homeowners from local businesses, lending institutions and service providers—ACT Government. (2014) *The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Supporting Detail*, 28 October; Asbestos Response Taskforce.

homeowner or any other party may have as a result of living in or being exposed to contamination in the affected home.¹¹

- 2.11 The Government has stated that the Buyback program is voluntary. To participate in the Buyback program, an application was required to be lodged by 30 June 2015. Applications received after that date will not be eligible to participate in the Program. Financial assistance toward demolition or future expenses is not available to homeowners who decide not to participate in the Buyback program.¹²
- 2.12 As noted in the quarterly progress report for 1 October 2015 to 31 December 2015 (tabled 5 April 2016) key buyback statistics for the Scheme, as at 31 December 2015, are summarised in Table 2.1.

Table 2.1—Key buyback statistics for the Loose-fill Asbestos Insulation Eradication Scheme¹³

Descriptor	Totals (as at 31 December 2015)
▪ Offers accepted	965
▪ Properties owned by Territory	793
▪ Owners electing not to participate in the Buyback program	19
▪ Private demolitions approved (contract prior to 28 October 2014)	12
▪ ACT Government Housing properties	5
▪ Range of offers made	\$360,000–\$3 million
▪ Total of offers accepted	\$696,708,543
▪ Average price paid for properties	\$701,281
▪ Median price paid for properties	\$640,000
▪ Presidential Determinations	60

- 2.13 According to the quarterly progress report for 1 October 2015 to 31 December 2015 (tabled 5 April 2016) detail on homeowners electing not to participate in the Buyback program included:

As at 31 December 2015, 19 owners had elected not to participate in the Buyback Program, and as at 14 February 2016, 22 owners have now made this decision.¹⁴

¹¹ ACT Government. (2014) *The ACT Government's Preferred Way Forward on Loose-fill Asbestos: Supporting Detail*, 28 October.

¹² ACT Government. (2014) *The ACT Government's Preferred Way Forward on Loose-fill Asbestos: Supporting Detail*, 28 October.

¹³ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, pp. 4–5.

- 2.14 With regard to prices paid for properties, according to the quarterly progress report for 1 October 2015 to 31 December 2015 (tabled 5 April 2016):

The average price paid for properties to date is \$701,281 and median is \$640,000. Offers range from \$360,000 to \$3 million. As at 31 December 2015, the total of offers made was \$744.7 million. Many owners have sought to exercise their stamp duty concession as they move to another property in the ACT with 528 concessions paid totalling \$12.6 million as at 31 December 2015.¹⁵

¹⁴ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 4.

¹⁵ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 5.

3 QUARTERLY PROGRESS REPORTING

3.1 Five quarterly reports on the Scheme have been presented to date. This chapter provides information/detail on: (i) key features of the five quarterly reports; and (ii) the usefulness of information contained within these reports to permit comparison and analysis of progress as it concerns performance across quarters.

KEY FEATURES OF QUARTERLY PROGRESS REPORTS

3.2 Key features of these reports are summarised in the table 3.1.

Table 3.1—Summary of key features of quarterly progress reports on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme

Report Number	Responsible Minister	Type and length of document	Date of tabling/presentation	Applicable quarter/period
1 st Quarterly report	Chief Minister	Ministerial statement and paper (4–5 pages)	30 October 2014	Not specified —the Statement provides ‘a formal update to the Assembly on the government’s response to the issue of Mr Fluffy loose-fill asbestos’ (<i>Hansard</i> , 30 October 14, p. 3824). Reference is also made to ‘next steps’ in the Scheme (p. 3828)
2 nd Quarterly report	Chief Minister	Ministerial statement (9–10 pages)	24 March 2015	1 October 2014–31 December 2014 quarter —the Statement also provides an update of recent activity of the Taskforce (p. 1) as well as foreshadowing ‘decisions and activity in the next few months’ (p. 7).
Nil report				January 2015–March 2015 quarter
3 rd Quarterly report	Chief Minister	Report (19–20 pages)	13 August 2015	31 March 2015–30 June 2015 quarter —the document also reports on some events before the reference period as well as some activities undertaken or planned up to August 2015.
4 th Quarterly report	Chief Minister	Report (31 pages)	17 November 2015	1 July 2015–30 September 2015 quarter —though some information is provided on totals ‘to date’—refer tables on pages. 20; 24.
5 th Quarterly report	Minister for Workplace Safety and Industrial Relations	Report (32 pages)	5 April 2016	1 October 2015–31 December 2015 quarter —though, the document also reports on events before the reference period as well as some activities/data post the quarter.
Report outstanding				1 January to 31 March 2016
Report outstanding				1 April to 30 June 2016

3.3 In considering the quarterly reports in aggregate, the following summarises important themes/aspects with regard to the timing, coverage and usefulness of the progress reporting on the Scheme:

- The nature of the quarterly reports has varied over time—specifically, the first two reports were Ministerial statements, while the last three were reports.¹⁶
- The quarterly reports have increased in length over time.
- The frequency of quarterly reports has varied— specifically, there is almost five months between the tabling of the 1st and 2nd quarterly reports; almost five months between the tabling of the 2nd and 3rd quarterly reports; approximately three months between the tabling of the 3rd and 4th quarterly reports; and almost four and a half months between the tabling of the 4th and 5th quarterly reports.
- For the applicable January 2015 to March 2015 quarter no progress report was provided.
- While reference periods have been stated for more recent quarterly reports, these have not been strictly adhered to. This has resulted in some repetition across quarterly reports.
- There has sometimes been a delay of several weeks between the end of a reference period reported upon and the date that quarterly reports have been tabled in the Legislative Assembly. This means that some of the information reported to the Assembly is dated at the time of tabling.
- The five quarterly reports appear to lack specificity with regard to the milestones of the Scheme (as informed by the Scheme’s objectives) and their achievement. The reports, in the main, appear to be silent about the objectives of the Scheme and its evaluation.

PROGRESS REPORTING OBSERVATIONS/THEMES

3.4 The five quarterly reports tabled to date each provide a range of information pertaining to aspects of the Scheme implementation. In the context of the importance of consistent reporting to permit comparison and analysis of progress as it concerns performance across quarters, seven reporting themes have been used to assess the quality of reporting across quarterly reports. This information is set out below.

IMPACT OF THE LOOSE-FILL ASBESTOS ERADICATION SCHEME ON THE TERRITORY BUDGET

3.5 The impact of the Scheme on the Territory Budget is a significant issue for the ACT Government and residents of the ACT.

3.6 While the 1st quarterly report does not make specific reference to the anticipated net cost of the Scheme to the ACT, the 2nd, 3rd, 4th and 5th quarterly reports all specifically refer to a cost of

¹⁶ In the 2nd quarterly report, the Chief Minister points out that future quarterly updates will be reports (p. 1).

\$400 million.¹⁷ Despite the significance of the budgetary impact of the Scheme, there has not been any substantial improvement in the level of information provided about budgetary impacts of the Scheme since the 2nd quarterly report was tabled in March 2015.

REPORTING FRAMEWORK, PERFORMANCE MEASUREMENT AND EVALUATION

- 3.7 A consistent reporting framework is not used across the five quarterly reports— the 1st and 2nd quarterly reports were Ministerial statements that lacked formal structure, while the 3rd, 4th and 5th quarterly reports adopted a broadly similar structure and covered similar themes.¹⁸
- 3.8 The quarterly reports, in particular the 3rd, 4th and 5th quarterly reports—are focused on reporting activity rather than outcomes.
- 3.9 The 3rd, 4th and 5th quarterly reports comment on specific initiatives relating to lessons learned, in the main, as part of the demolition phase. Specifically, this included reference(s) to a “Lessons Learned” workshop with industry after the pilot demolition program in August 2015¹⁹, a refinement in the method for sealing properties²⁰, updates on the investigation into the release of public information and an update on the rollover of a truck carrying ‘rubble from a Mr Fluffy demolition site in Coree on route to the West Belconnen Centre’²¹.
- 3.10 Notwithstanding this information, an overarching structured approach to evaluation of the Scheme as it relates to effectiveness, appropriateness, efficiency and impact, and subsequent reporting on these parameters across quarters, is not evidenced in the reports.

DRAFT VARIATION 343

- 3.11 Draft Variation 343 of the Territory Plan reduces the minimum size of affected residential blocks in RZ1 Zones from 800 square metres to 700 square metres or more for the purpose of

¹⁷ Mr Andrew Barr MLA, *Update on the ACT Government response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation, Ministerial Statement March 2015*, p. 3; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*, p. 4; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*, p. 5; Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 5.

¹⁸ Ms Katy Gallagher MLA, *ACT Asbestos Task Force ministerial statement and paper*, 30 October 2014; Mr Andrew Barr MLA, *Update on the ACT Government response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation, Ministerial Statement March 2015*; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*; Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*.

¹⁹ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 9; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*, pp. 2; 8–9; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*, p. 16.

²⁰ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 8.

²¹ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 11.

dual occupancy development. Amendments included in the DV are important as they have the potential to alleviate some of the costs to the Territory of the loose-fill asbestos eradication scheme.

- 3.12 The Variation is foreshadowed in the 2nd Quarterly report. Whilst the DV was open for public comment from 13 April 2015 to 25 May 2015—which fell within the reference period covered by the 3rd quarterly report—DV 343 is not specifically mentioned in the 3rd quarterly report. However, specific mention is made to the DV in the 4th quarterly report as well as its referral to the Standing Committee on Planning, Environment and Territory and Municipal Services (PETAMS) for consideration.²² The 5th quarterly report notes that the Government responded to the PETAMS Committee report on 17 November 2015 and had presented the plan variation, unchanged from DV 343, to the Legislative Assembly.²³

VALUATIONS

- 3.13 The number of valuations undertaken has not been reported in a consistent way in all quarterly reports.²⁴ There also appear to be errors or inconsistencies in the numbers of valuations and Presidential Determinations reported in the 3rd and 4th quarterly reports.²⁵
- 3.14 The 5th quarterly report refers to an additional 17 valuations during the October-December 2015 quarter, as well as an additional two owner-initiated Presidential requests. It also noted that the Taskforce has initiated a total of 27 Presidential Determinations.²⁶

EXTENSION OF THE LOOSE-FILL ASBESTOS INSULATION ERADICATION SCHEME

- 3.15 The 2015–16 Budget Review notes that the Scheme had ‘been extended to a small number of impacted dwellings in close proximity to affected properties.’²⁷ This matter is not discussed in

²² Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*, pp. 27–29.

²³ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, pp. 29–30.

²⁴ The 2nd quarterly report advises the number of ‘valuations undertaken to date’ rather than during the October-December 2014 reference period. Ms Katy Gallagher MLA, *ACT Asbestos Task Force ministerial statement and paper*, 30 October 2014; Mr Andrew Barr MLA, *Update on the ACT Government response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation, Ministerial Statement March 2015*, p. 7.

²⁵ The 3rd quarterly report indicates that during the quarter 110 valuations occurred bringing the total to 947; while the 4th quarterly report indicates that 37 additional valuations were undertaken bringing the total to 1016. In addition, the 3rd quarterly report noted that 20 homeowners had sought a Presidential Determination while the 4th quarterly report notes that 14 additional homeowners sought a Presidential Determination, bringing the total to 31. Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*, p.3; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*; p. 5.

²⁶ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 5.

²⁷ ACT Government, *ACT Budget 2015–16—Budget Review*, p. 35.

any of the first four quarterly reports, though some detail is provided in the 5th quarterly report.²⁸

GOVERNANCE

- 3.16 Governance arrangements are not discussed consistently across the five quarterly reports. The 1st and 2nd quarterly reports do not specifically refer to ‘governance’ at all and while the 3rd, 4th and 5th quarterly reports include governance as a sub-heading within their report structures, a comprehensive account of governance parameters for the Scheme and associated reporting across quarters, does not appear to be evidenced in the reports.²⁹

REFERENCES TO THE COMMUNITY AND EXPERT REFERENCE GROUP (CERG)

- 3.17 All five quarterly reports refer to the Community and Expert Reference Group, though the amount of attention given to the activities of the Group varies across the reports. While references are made to membership of the Group and its engagement activities with the community, data provided appears to be, in the main, limited to a count of the number of meetings held.
- 3.18 There also appears to be an error/inconsistency regarding the number of meetings reported in the 3rd, 4th and 5th quarterly reports—that is, the 3rd quarterly report refers to a total of 17 meetings. The 4th quarterly report refers to the conduct of an additional three meetings, with a total of 19 meetings held.³⁰ The 5th quarterly report advises that the CERG met once during the applicable quarter and in ‘total, the CERG have met 18 times’.³¹

²⁸ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015 —31 December 2015*, pp. 27–28.

²⁹ The 1st quarterly report—does not include any specific discussion of ‘governance’, though mentions some arrangements in relation to community support—specifically, the Community and Expert Reference Group (CERG); Canberra Connect; and the ACT Medicare Local—See Ms Katy Gallagher MLA, *ACT Asbestos Task Force ministerial statement and paper*, 30 October 2014, p. 3828. The 2nd quarterly report—does not include any specific discussion of ‘governance’, though like the 1st Quarterly report refers to the CERG. See Mr Andrew Barr MLA, *Update on the ACT Government response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation*, Ministerial Statement March 2015, p. 7. The 3rd quarterly report specifically discusses ‘governance’ as a sub-heading under ‘Key policy and regulation’—this discussion refers to the Eradication Scheme Steering Committee (ESSC) and to the CERG. See Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*, pp. 6–7, 19–20. The 4th quarterly report—discusses ‘governance’ as a sub-heading under ‘Key policy and regulation’—this discussion refers to the ESSC, the CERG, and the design of a resource for children in partnership with early Childhood Australia. See Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*; pp. 14, 16, 29–31. The 5th quarterly report refers to the ESSC, the CERG and the tabling by the ACT Auditor-General of a performance audit program 2015–16. See Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 31.

³⁰ Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulations 31 March 2015—30 June 2015*, p. 7; 20; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*, p. 30.

³¹ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 31.

REMEDIATION/CLEARING OF BLOCKS BY THE TASKFORCE

3.19 There appears to be inconsistency between references in the 4th quarterly report and evidence provided to the Committee regarding the role of the Taskforce in the clearing of blocks.

3.20 The 4th quarterly report states:

It is important to note that the Taskforce will not be clearing blocks through its demolition activity. The Taskforce's mandate is to eradicate loose fill asbestos from the community and will therefore be removing those structures affected by Mr Fluffy. In most circumstances this will be just the house and any attached structures such as garages or pergolas.³²

3.21 The advice in the 4th quarterly report appears to be different to the evidence provided to the Committee as part of its inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–2015. Specifically, discussion on the matter regarding clearing of blocks and the removal of soil ensued as follows:

MR COE: With regard to that 300 cubic metres per house, does that include the scraping of soil taken off the block? If so, what portion of the block are you expecting to take a scraping of soil off? Is it simply going to be the footprint of the house and a metre or two either side, or is it going to be the absolute perimeter of the block, in which case, for a 700-square metre block, if you go down 30 centimetres, that alone is 200 cubic metres. I am curious to know what assumptions you have made for that clearance.

Mr Kefford: The code of practice which we are in the process of finalising with the Work Safety Commissioner for the demolition process indicates the area of the footprint of the house and then between two and three metres excavated to 100 millimetres as a matter of course. But then the digging that goes on beyond that is testing driven. If asbestos is found at that depth or at the edge of that perimeter, we will either go down or out until we stop finding the amosite asbestos. The block at Downer, we did take 300 millimetres off the whole block. That was a predetermined depth and decision to do that.

We have also indicated, though, getting to the other part of your question, that the expectation is that blocks will be cleared, recognising that the government has made decisions in relation to future development on the blocks and part of repairing those blocks for that work will be clearing.

MR COE: But that is a commercial decision as opposed to an asbestos-driven decision?

³² Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 July 2015–30 September 2015*, p. 26.

Mr Kefford: For that element, we will not be digging the block; we will simply be clearing it in preparation for future development. In terms of the digging and removal of soil, that is ultimately a testing-driven thing so that either the depth that we go to or the extent around what was the footprint of the house will be determined by the Asbestos assessor on the day of demolition.³³

³³ PAC Inquiry into proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–2015, (*Transcript of evidence*, 28 November 2014, pp. 10–11).

4 COMMITTEE COMMENT

- 4.1 The Mr Fluffy legacy is not just about the past, it is about the present, and the future of the lives of many people—those affected families and households but also Canberra as a community.
- 4.2 The Committee acknowledged in its report on the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–2015, that successful implementation of the Scheme would effectively require a coordinated approach across several directorates and agencies.
- 4.3 To ensure adequate coordination and monitoring, the Committee recommended that the Government table quarterly progress reports on the implementation of the Scheme.³⁴ The Government agreed with this recommendation.
- 4.4 Given the impact of the Mr Fluffy legacy on those affected families and households, Canberra as a community, and the Territory budget, successful implementation of the Scheme will be paramount in determining how those affected families and households, and Canberra as a community, are/is able to move forward now and into the future.
- 4.5 The Committee has carefully considered the five quarterly reports available to date and is of the view that a number of areas warrant comment.

REPORTING PERFORMANCE

STRUCTURE, CONSISTENCY AND USEFULNESS OF PERFORMANCE INFORMATION

- 4.6 With regard to reporting structure—the Committee notes that a consistent reporting framework has not been used across the five quarterly reports—the 1st and 2nd quarterly reports were Ministerial statements that lacked formal structure, while the 3rd, 4th and 5th quarterly reports adopted a broadly similar structure and covered similar themes.³⁵
- 4.7 With regard to performance information—the quarterly reports, and in particular, the 3rd, 4th and 5th quarterly reports are focused on reporting activity rather than outcomes. In the

³⁴ Recommendation No. 57—PAC Report on inquiry into the proposed appropriation (Loose-fill asbestos insulation eradication) Bill 2014-15, pp. 144–145, 3 December 2014.

³⁵ Ms Katy Gallagher MLA, *ACT Asbestos Task Force ministerial statement and paper*, 30 October 2014; Mr Andrew Barr MLA, *Update on the ACT Government response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation, Ministerial Statement March 2015*; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*; Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*.

absence of consistent reporting against appropriate performance measures, performance cannot be explained meaningfully or appropriately evaluated.

- 4.8 The five quarterly reports tabled to date, each provide a range of information pertaining to aspects of the Scheme's implementation. In the context of the importance of consistent reporting to permit comparison and analysis of progress as it concerns performance across quarters, seven reporting themes were used to assess the quality of reporting across quarterly reports. This information is detailed in chapter three.
- 4.9 The Committee highlights the importance of consistent reporting. While noting that there will always be an evolutionary aspect to a reactionary scheme such as this and learned experience will affect processes and alter expectations, consistent reporting whilst permitting performance to be compared from one quarter to the next also avoids any conclusion that performance may be selectively reported. Where changes to reporting are necessary they should be clearly explained including the reasons why the change has occurred and, where possible, data should be provided for the original and replacement measure for the changeover quarter.³⁶
- 4.10 The Committee suggests that the former Chief Minister and Treasury Directorate's publication—*Organisational Performance Measurement and Reporting Guide (2013)*³⁷ would be a useful reference from which to develop a performance framework for consistent and meaningful reporting across quarters. The Guide proposes that:

Reporting must:

- explain the difference between planned performance and actual performance
- provide a picture of overall performance
- provide an unbiased and complete picture
- identify assumptions, gaps and variances
- present information clearly and concisely
- provide explanations of assumptions, gaps and variances.³⁸

- 4.11 The Committee notes that recently the Auditor-General found that the 'Taskforce produces a comprehensive set of reports for a range of stakeholders'.³⁹ In particular, the Eradication Scheme Steering Committee (ESSC)—the primary governance committee established to oversee the effective delivery of all phases of the Scheme—receives reports covering:

³⁶ NSW Audit Office. (2000) Better Practice Guide—*Reporting Performance: A guide to preparing performance information for annual reports*, November, pp. 12–13.

³⁷ CMTD. (2013) *Organisational Performance Measurement and Reporting Guide*.

³⁸ CMTD. (2013) *Organisational Performance Measurement and Reporting Guide*, p. 2.

³⁹ ACT Auditor-General's Report No. 4 of 2016: *The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, p. 45.

- a summary scheme progress report, including progress towards the achievement of key milestones and key statistics and an overview of key Taskforce activities by phase (personal support, buyback, demolition and sales);
- a Finance report, including the one page dashboard report (recently amended to reflect the changes in focus for the Taskforce);
- reports from the Executive Director, Program, Governance and Risk, Director, Acquisition and Sales, Director, Communications and Personal Support, the ACT Property Group, Procurement and Capital Works; and
- other business, including items requiring decisions as opposed to delivery of information.⁴⁰

4.12 The Committee is of the view that the information it considers should be included in the Quarterly reports on implementation of the Scheme is readily available and could be easily extracted with minimal impost on resources for inclusion in these reports to the Legislative Assembly.

4.13 The Committee acknowledges that whilst it appears this information is available in other mediums—importantly, the bulk of it appears to be in an internal capacity, for example, in the form of reports to the internal ESSC and not in the public domain.

Recommendation 1

4.14 The Committee recommends that the ACT Government ensure that future quarterly progress reports on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme use a consistent and meaningful reporting framework—as per the Chief Minister’s and Treasury Directorate’s publication—*Organisational Performance Measurement and Reporting Guide (2013)*.

EVALUATION

4.15 The Committee notes that the 3rd, 4th and 5th quarterly reports comment on specific initiatives relating to lessons learned, in the main, as part of the demolition phase. Specifically, this included reference(s) to a “Lessons Learned” workshop with industry after the pilot demolition program in August 2015⁴¹, a refinement in the method for sealing properties⁴², updates on the

⁴⁰ ACT Auditor-General’s Report No. 4 of 2016: *The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, p. 45.

⁴¹ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 9; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*, pp. 2; 8–9; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*, p. 16.

investigation into the release of public information and an update on the rollover of a truck carrying ‘rubble from a Mr Fluffy demolition site in Coree on route to the West Belconnen Centre’⁴³.

- 4.16 Notwithstanding provision of the aforementioned information, an overarching structured approach to evaluation of the Scheme as it relates to effectiveness, appropriateness, efficiency and impact, and subsequent reporting on these parameters across quarters, is not evidenced in the reports.
- 4.17 The Committee notes that specific identification of program objectives would provide a useful framework for subsequent reporting and assist in the assessment of the Scheme’s progress. Furthermore, specific consideration of how the Scheme could be evaluated could also lead to the identification of a framework and measures to assess performance.
- 4.18 The Committee further notes that the guiding principles/objectives of the Scheme as detailed at page 3 of the *Government’s Preferred Way Forward on Loose Fill Asbestos: Overview* publication provide an instructive basis from which a useful framework and measures to assess and evaluate performance of the Scheme could be developed.⁴⁴

TIMELINESS OF REPORTING

- 4.19 The Committee notes that the frequency of quarterly reports has varied—specifically, there was almost five months between the tabling of the 1st and 2nd quarterly reports; almost five months between the tabling of the 2nd and 3rd quarterly reports; approximately three months between the tabling of the 3rd and 4th quarterly reports; and approximately four and a half months between the tabling of the 4th and 5th quarterly reports. For the applicable January 2015 to March 2015 quarter, no progress report was provided.
- 4.20 Furthermore, at times there has been a delay of several weeks between the end of a reference period reported upon and the date that quarterly reports have been tabled in the Legislative Assembly—this means that some of the information reported to the Legislative Assembly has been dated at the time it was tabled.
- 4.21 The Committee notes that the quarterly progress report(s) on the Scheme for the period(s) 1 January to 31 March 2016 and 1 April to 30 June 2016 are overdue.⁴⁵

⁴² Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 8.

⁴³ Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government’s response to the issue of ‘Mr Fluffy’ Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 11.

⁴⁴ http://www.asbestostaskforce.act.gov.au/_data/assets/pdf_file/0006/681090/The-ACT-Governments-Preferred-Way-Forward-On-Loose-Fill-Asbestos-Overview.pdf

⁴⁵ The fifth quarterly progress report on the Scheme was tabled on 5 April 2016 for the period 1 October to 31 December 2015.

Recommendation 2

- 4.22 The Committee recommends that the ACT Government publish its quarterly progress reports on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme within 45 days of the end of each quarter.**
- 4.23 The Committee notes that during the 1 April to 30 June 2016 quarter, two significant matters arose, initially with direct consequences for the demolition phase but also with the potential for longstanding consequences. These concerned the: (i) claims of theft from properties being demolished by one of the authorised contractors (May 2016)⁴⁶; and (ii) closure of the West Belconnen Resource Centre for five days in June 2016—the site for disposal of demolition waste—due to heavy rain.⁴⁷
- 4.24 The Committee acknowledges that whilst the report for 1 April to 30 June 2016 quarter, when tabled, will provide further information concerning the aforementioned matters, the Report remains outstanding.
- 4.25 Given the significance of the two matters, together with the 8th Assembly's last scheduled sitting period falling in August 2016, the responsible Minister should inform the Assembly with regard to the latest developments concerning the claims of theft from properties being demolished by one of the authorised contractors (May 2016) and closure of the West Belconnen Resource Centre for five days in June 2016—the site for disposal of demolition waste—due to heavy rain.

Recommendation 3

- 4.26 The Committee recommends that the Minister for Workplace Safety and Industrial Relations inform the ACT Legislative Assembly by the last sitting day in August 2016 regarding the: (i) latest developments concerning claims of theft from “Mr Fluffy” affected properties being demolished by one of the authorised contractors; and (ii) closure of the West Belconnen Resource Centre for five days in June 2016 due to heavy rain—in particular, its impact on the demolition program and what measures were put in place to manage demolition waste and mitigate risk during the closure period.**

⁴⁶ *Canberra Times*—‘Fluffy worker alleges furnishings are being sold’, 12 May 2016; *Canberra Times*—‘Firm told not to remove items’, 13 May 2016; *Canberra Times*, ‘Fluffy owner ‘devastated’—Family watches as home demolished’, 14 May 2016; *Canberra Times*—‘Demolition of Kambah Fluffy houses on hold as theft claims probed’, 31 May 2016.

⁴⁷ *Canberra Times*—‘Rain stops Fluffy dump at tip site for five days’, 24 June 2016.

REPORTING ON FINANCIAL IMPACT OF THE SCHEME

- 4.27 The Committee reiterates previous comments it has made with regard to the impact of the Scheme on the Territory's budget. The one-off size and cost of dealing with the Mr Fluffy legacy represents about a fifth of the ACT Government's annual budget. In 2014, the cost of the Scheme was estimated to equate to approximately 22 per cent of ACT Government revenue. At that time, the estimated net cost of the Scheme was expected to be significant from the Territory's perspective. The initial expected net cost of between \$300 million and \$500 million represents approximately 10 per cent of the Territory's annual budget.⁴⁸
- 4.28 As to more recent cost estimates for the Scheme, as at mid April 2016, the Auditor-General advised that:
- The total cost of the Scheme is still uncertain. As at mid April 2016, the estimated total cost of the buyback program is just over \$700 million. The demolition program has resulted in 152 houses being demolished to date, and the costs of demolishing the houses have exceeded the target budget, but are within the appropriations for the demolition phase and are within the modelling estimates. The sales program commenced in April 2016, with 10 blocks being offered to the public. When a more representative number of blocks has been sold, land values and sales revenue will be able to be more accurately estimated.⁴⁹
- 4.29 The Committee acknowledges that the financial impacts of the Loose-fill Asbestos Insulation Eradication Scheme have been modelled using a range of assumptions, together with the best estimates available.
- 4.30 Notwithstanding that the buyback phase of the Scheme is effectively complete and the demolition phase is well underway, the process for the resale of remediated blocks is at an early stage and there remains risks on the extent to which sales proceeds will offset the cost of the buyback and remediation activities. While early indications support the buyback, demolition and forecast sales outcomes, market absorption and take up rates, coupled with the uncertain market response to the sale of remediated vacant land, involves risk.⁵⁰
- 4.31 The Committee notes that while the 1st quarterly report does not make specific reference to the anticipated net cost of the Scheme to the ACT, the 2nd, 3rd, 4th and 5th quarterly reports all specifically refer to a cost of \$400 million.⁵¹ Despite the significance of the budgetary impact of

⁴⁸ ACT Asbestos Response Taskforce. (2014) *The ACT Government's Preferred Way Forward on Loose-fill Asbestos: Supporting Detail*, 28 October, pp. 7–8.

⁴⁹ ACT Auditor-General's Report No. 4 of 2016: *The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, p. 2.

⁵⁰ *2016-17 Budget Paper No. 3*, p. 423.

⁵¹ Mr Andrew Barr MLA, *Update on the ACT Government response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation, Ministerial Statement March 2015*, p. 3; Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 31 March 2015—30 June 2015*, p. 4; Mr Andrew Barr

the Scheme, there does not appear to have been any substantial improvement in the level of information provided about budgetary impacts of the Scheme since the 2nd quarterly report was tabled in March 2015.

- 4.32 The Committee further notes that, more recently, the Auditor-General has recommended that the Government should:

...provide information on the total costs of the Scheme by publicly reporting on the revenue and costs (including borrowing costs) of the Scheme from its inception to completion in the annual budget papers.⁵²

The total cost of the Scheme needs to be provided to stakeholders and the public in a readily accessible manner. Accordingly, whole-of-life reporting on revenue and costs (including borrowing costs) from the Scheme's inception to completion needs to be presented in a publicly available document, for example, in the Chief Minister, Treasury and Economic Development Directorate annual budget papers.⁵³

- 4.33 As the Committee has commented previously, the impact of the Scheme on the Territory Budget is a significant issue for the Government and residents of the ACT. Accordingly, the Committee is of the view that information on the full costs of the Scheme should be available in a readily accessible medium for the benefit of key stakeholders and decision makers, and importantly, the ACT community. Whilst inclusion in the annual budget papers and the mid-year budget update are suitable mediums, the quarterly progress reports are also another suitable medium.

Recommendation 4

- 4.34 The Committee recommends that the ACT Government's quarterly progress reporting on the implementation of the Loose-fill Asbestos Insulation Eradication Scheme include an updated estimation of the net financial impact of the Scheme.**

MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 July 2015—30 September 2015*, p. 5; Mr Mick Gentleman MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 October 2015—31 December 2015*, p. 5.

⁵² ACT Auditor-General's Report No. 4 of 2016: *The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, p. 2.

⁵³ ACT Auditor-General's Report No. 4 of 2016: *The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, p. 30.

REMEDICATION OF BLOCKS

4.35 The Committee notes there appears to be inconsistency between references in the 4th quarterly report and evidence provided to the Committee regarding the role of the Taskforce in the clearing of blocks.

4.36 The 4th quarterly report states:

It is important to note that the Taskforce will not be clearing blocks through its demolition activity. The Taskforce's mandate is to eradicate loose fill asbestos from the community and will therefore be removing those structures affected by Mr Fluffy. In most circumstances this will be just the house and any attached structures such as garages or pergolas.⁵⁴

4.37 The aforementioned advice appears to be different to the evidence provided to the Committee as part of its inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–2015. Specifically, regarding clearing of blocks and the removal of soil, the Head of the Asbestos Taskforce told the Committee:

The code of practice which we are in the process of finalising with the Work Safety Commissioner for the demolition process indicates the area of the footprint of the house and then between two and three metres excavated to 100 millimetres as a matter of course. But then the digging that goes on beyond that is testing driven. If asbestos is found at that depth or at the edge of that perimeter, we will either go down or out until we stop finding the amosite asbestos. The block at Downer, we did take 300 millimetres off the whole block. That was a predetermined depth and decision to do that.

We have also indicated, though, getting to the other part of your question, that the expectation is that blocks will be cleared, recognising that the government has made decisions in relation to future development on the blocks and part of repairing those blocks for that work will be clearing.

...

For that element, we will not be digging the block; we will simply be clearing it in preparation for future development. In terms of the digging and removal of soil, that is ultimately a testing-driven thing so that either the depth that we go to or the extent around what was the footprint of the house will be determined by the Asbestos assessor on the day of demolition.⁵⁵

4.38 The Committee notes that the Government's publication—*The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Supporting Detail*—provides the following explanation regarding remediation:

⁵⁴ Mr Andrew Barr MLA, *Quarterly Report: Update on the ACT Government's response to the issue of 'Mr Fluffy' Loose-fill Asbestos Insulation 1 July 2015–30 September 2015*, p. 26.

⁵⁵ Mr Andrew Kefford, PAC Inquiry into proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–2015, *Transcript of evidence*, 28 November 2014, pp. 10–11.

Soil Remediation methodology

Following demolition of an affected home, soil will be removed from the footprint of the house and an area surrounding it in accordance with the methods and standard prescribed under the *Environment Protection Act 1997*. The code of practice for demolition includes a section on block remediation that requires:

- soil to be removed to a depth determined by testing undertaken by an asbestos assessors (but to a minimum of 100mm);
- clean soil to be brought to the site and stabilised by qualified civil contractors; and
- the site to be topsoiled and grassed to minimise erosion.

After remediation is complete, a new 99 year Crown Lease will be issued for the block.

This process cannot be applied to unit-titled properties. The Taskforce will liaise directly with Eligible Homeowners and relevant bodies corporate in pursuit of an equivalent outcome for owners and an acceptable resolution for the body corporate.⁵⁶

4.39 In light of the information above, there appears to be inconsistency between references in the 4th quarterly report, evidence provided to the Committee regarding the role of the Taskforce in the clearing of blocks, and information pertaining to the soil remediation methodology as set out in the Government's preferred way forward publication.

4.40 The Committee notes the view expressed by the ACT Asbestos Response Taskforce:

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.⁵⁷

4.41 The Committee notes that the inconsistency regarding the extent to which affected blocks will be cleared was raised during a hearing of the Select Committee on Estimates 2016–17 initially in the context of questioning as to why remediated blocks, whilst having soil 'suitable for reuse and reoccupation for residential purposes'⁵⁸ will not have a government assurance that all loose-fill asbestos has been removed.⁵⁹

⁵⁶ *The ACT Government's Preferred Way Forward on Loose-fill Asbestos: Supporting Detail* p. 24, refer http://www.asbestostaskforce.act.gov.au/_data/assets/pdf_file/0009/675504/Policy-Framework-Final-Supporting-Detail-28102014.pdf

⁵⁷ *The ACT Government's Preferred Way Forward on Loose-fill Asbestos: Overview*, p. 2, refer http://www.asbestostaskforce.act.gov.au/_data/assets/pdf_file/0006/681090/The-ACT-Governments-Preferred-Way-Forward-On-Loose-Fill-Asbestos-Overview.pdf

⁵⁸ Select Committee on Estimates 2016–17, *Transcript of evidence*, 30 June 2016, p. 1119.

⁵⁹ Select Committee on Estimates 2016–17, *Transcript of evidence*, 30 June 2016, pp. 1118–1120.

- 4.42 Further, in response to a line of questioning at the same hearing of the Select Committee on Estimates 2016–17, seeking to clarify the inconsistency between evidence provided to the Public Accounts Committee regarding the role of the Taskforce in the clearing of blocks, and information pertaining to the soil remediation methodology as set out in the Government’s publications, the Head of the Taskforce commented:

If that was the impression that I gave in my earlier answer, that was not where I was going; absolutely. I remember sitting here and answering questions with former Chief Minister Gallagher about this point. At one point certainly we were contemplating scraping the whole block but, as the minister has outlined, the response to this has evolved over time. Certainly at the point we published the first right of refusal policy, having concluded those discussions, it was very clear that we would not be because we did not need to. I am happy to look at the records of the previous hearings and come back to you on notice.⁶⁰

- 4.43 On notice, the Minister for Workplace Safety and Industrial Relations advised:

The policy and regulatory underpinnings of the Government's response to the continuing contamination of 1,022 Canberra houses with loose fill asbestos insulation has, of necessity, evolved as the Government's and community's knowledge of the health, social, practical and financial consequences of this legacy issue have emerged in the aftermath of the Work Safety Commissioner's letter of 18 February 2014. This means that, at times, early views have been expressed which have subsequently been reviewed and refined based on further experience, expert advice as well as expressed community and affected owner preferences.

At the time of the announcement of the Scheme on 28 October 2014 and during the inquiry by the Standing Committee on Public Accounts (PAC) into the *Appropriation (Loose Fill Asbestos Insulation Eradication) Act 2014-15*, the position adopted was, in general, affected blocks would be cleared.

Indeed, in public commentary "scraping the block" or "clearing corner to corner" were used. This language was properly used at the time based on the then understanding of relevant issues. Such language was, however, consistently qualified by the overriding caveat that post-demolition soil removal would be guided by scientific evidence of asbestos contamination as directed by licensed asbestos assessors.⁶¹

- 4.44 Notwithstanding subsequent clarification regarding the inconsistency in the information about the extent to which affected blocks will be cleared as due to an ‘evolving response to an unfolding crisis’, it raises a number of important questions, such as, when was the decision made that the extent of remediation would vary from a corner to corner approach?

⁶⁰ Mr Andrew Kefford, Select Committee on Estimates 2016–17, *Transcript of evidence*, 30 June 2016, p. 1122.

⁶¹ Minister for Workplace Safety and Industrial Relations, Select Committee on Estimates 2016–17, QToN No. E16–316.

- 4.45 The Committee believes that detail as to when—(i) in terms of the date, the decision was made to change the process for remediation of affected blocks; and (ii) the change in the process became effective—requires clarification.

Recommendation 5

- 4.46 The Committee recommends that the Minister for Workplace Safety and Industrial Relations inform the ACT Legislative Assembly by the last sitting day in August 2016, as to when: (i) in terms of the date, the decision was made to change the process for remediation of affected blocks; and (ii) the change in the process became effective.**

- 4.47 The Committee notes in line with the Government’s ‘evolving response’ to the requirements for clearing affected blocks that the Taskforce’s Demolition Innovation Fact Sheet released in June 2016 provides ‘updated public information’ about the change in approach.⁶²

- 4.48 The Committee acknowledges that updated public information about the change in approach is now available. However, the Committee notes, at 20 July 2016, the *Government’s Preferred Way Forward on Loose Fill Asbestos: Supporting Detail* document reflects the original advice with no indication that it has been changed.⁶³ The Committee is of the view that, where applicable, all government policy documents publicly available should be updated to reflect the revised approach to clearing affected blocks.

Recommendation 6

- 4.49 The Committee recommends that the ACT Government ensure that, where applicable, all publicly available government policy documents pertaining to the Loose-fill Asbestos Insulation Eradication Scheme be updated to reflect the revised soil methodology requirements for clearing affected blocks.**

⁶² Minister for Workplace Safety and Industrial Relations, Select Committee on Estimates 2016–17, QToN No. E16–316.

⁶³ *The ACT Government’s Preferred Way Forward on Loose-fill Asbestos: Supporting Detail* p. 24, refer http://www.asbestostaskforce.act.gov.au/data/assets/pdf_file/0009/675504/Policy-Framework-Final-Supporting-Detail-28102014.pdf

MANAGEMENT OF THE FINANCIAL ARRANGEMENTS FOR THE DELIVERY OF THE SCHEME

- 4.50 The Committee notes that Auditor-General Report No. 4 of 2016: *The Management of the Financial Arrangements for the Delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* was presented on 27 May 2016.
- 4.51 The Audit report presented the results of a performance audit that examined:
- ...the financial arrangements surrounding the costings for the Scheme, the funding of the Scheme and the governance and risk management arrangements for the implementation of this complex program, particularly in relation to the financial risks.⁶⁴
- 4.52 The Audit made three recommendations across the three audit themes—namely, planning and financing the scheme; governance and risk management; and management of finance and risk for each phase of the scheme.
- 4.53 Pursuant to the new approach for responding to reports of the Auditor-General, a government response is due four months after presentation.⁶⁵ The Committee acknowledges that the four month timeframe for the provision of the Government response will fall after the commencement of the Caretaker period.
- 4.54 The Committee is of the view that, where possible, the Government should take appropriate steps to ensure that its response is made available prior to the commencement of the Caretaker period.

Recommendation 7

- 4.55 The Committee recommends that the ACT Government take appropriate steps to ensure that its response to Auditor-General Report No. 4 of 2016: *The Management of the Financial Arrangements for the Delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* is made available prior to the commencement of the 2016 Caretaker period.**

⁶⁴ ACT Auditor-General's Report No. 4 of 2016: *The Management of the Financial Arrangements for the Delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, May 2016, p. 1.

⁶⁵ ACT Government. (2016) *Guidelines for responding to performance audit reports by the Auditor-General*, April.

5 CONCLUSION

- 5.1 The Mr Fluffy legacy is not just about the past, it is about the present, and the future of the lives of many people—those affected families and households but also Canberra as a community.
- 5.2 Given the impact of the Mr Fluffy legacy on those affected families and households, Canberra as a community, and the Territory budget, successful implementation of the Scheme will be paramount in determining how those affected families and households, and Canberra as a community, are/is able to move forward now and into the future.
- 5.3 To ensure adequate coordination and monitoring, the Committee recommended that the Government table quarterly progress reports on the implementation of the Scheme, to which the Government agreed.⁶⁶
- 5.4 The Committee has carefully considered the five quarterly reports available to date and has made a number of recommendations to improve the timeliness and consistency of reporting; and usefulness of information pertaining to performance in these reports. The Committee has also sought clarification with regard to the status/protocol for clearing affected blocks.
- 5.5 The Committee would like to thank all those who assisted it in the course of its inquiry.
- 5.6 The Committee has made **seven** recommendations in relation to its *inquiry into the Loose-fill Asbestos Insulation Eradication Scheme—Quarterly progress reporting*.

Nicole Lawder MLA

Chair

26 July 2016

⁶⁶ Recommendation No. 57—PAC Report on inquiry into the proposed appropriation (Loose-fill asbestos insulation eradication) Bill 2014–15, pp. 144–145, 3 December 2014.