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**SUBMISSION TO**  
**ACT LEGISLATIVE ASSEMBLY**  
**STANDING COMMITTEE ON PUBLIC ACCOUNTS**  
***INQUIRY INTO PROPOSED APPROPRIATION (LOOSE-FILL ASBESTOS***  
***INSULATION ERADICATION) BILL 2014-15***

by

Gebbie

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## Overview

This submission comments on the Appropriation Bill and the connected Loose-Fill Asbestos Insulation Eradication Scheme that it is intended to fund. It is acknowledged that many Mr Fluffy stakeholders welcome the introduction of the Bill into the Assembly and look forward to the early release of monies following passage of the Bill. Proposals made below to improve acceptability of the Scheme and which would impact positively on the required outlays are such that these could be made even at this late stage without disrupting implementation of the Scheme.

The Appropriation Bill may well meet ACT financial legislative requirements but is otherwise seriously lacking in transparency. Without detail on the critical assumptions underlying the figures in the Bill, it is not possible to assess their appropriateness. The detailed assumptions behind the proposed 2014-15 outlays for buy-back and home demolitions as well as for the revenue expected to be received by the Government through subsequent remediated land sales should be included in the Explanatory Statement.

It is evident that the Loose-Fill Asbestos Insulation Eradication Scheme to be funded by the Appropriation Bill is not supported at least in part by many if not most Mr Fluffy home owners. While a variety of different circumstances have been cited, in broad terms this is because the Scheme does not bring a sufficient level of fairness, flexibility and certainty to stakeholders, all core criteria frequently quoted by the Government as underpinning the Scheme. The take-up of the Scheme by affected home owners will be critical to the level of outlays required in this Bill. The details of the Scheme should be included in the Explanatory Statement and form an essential part of this PAC Inquiry. It seems surprising that a program requiring what are for the Territory relatively big expenditures, appears to have largely escaped Assembly scrutiny.

The issues of the initial loss of leases under the buy-back scheme and uncertainty over whether and at what cost and under what conditions these might be regained following remediation have emerged as major concerns of Mr Fluffy home owners. An additional option should be added to the Scheme allowing home owners to retain their leases throughout. This might for example require that home owners rather than the Scheme fund their own home demolitions to the standard required by the Government. Payment to owners would be reduced to an amount equal to the valuation of the house only. Such an option could reduce Government outlays and remove key stakeholder concerns without affecting those who favour the Scheme as currently drafted.

The Land Development Agency should not be responsible for valuing remediated blocks. The resale of these blocks should be handled at arm's length as for the initial valuations to avoid any conflict of interest. If the budget deficit widens significantly as expected, the Agency will be under intense pressure to increase revenues from the resale and this will not be fair to Mr Fluffy stakeholders.

The Asbestos Response Taskforce should be permitted the widest possible discretion in negotiating the Scheme's detailed terms and conditions with affected home owners. This is to ensure that specific individual circumstances are fully taken into account, thereby incorporating maximum flexibility and certainty of outcomes.

Where relevant, greater recourse to properly assessed property risk profiles should be adopted to avoid a "one size fits all" approach to widely differing risk situations.

## **BACKGROUND**

### **The Appropriation Bill**

While the Government's Asbestos Eradication Appropriation Bill and Explanatory Statement might meet the requirements of the Financial Management Act, these fail completely to pass any reasonable test of transparency. What exactly is being funded by these significant proposed outlays and importantly what detailed assumptions have been made to arrive at the specific figures in the Bill? Why is the appropriation being split into 3 parts - net cost of outlays, capital injection, payments on behalf of the Territory? What item(s) is offsetting outlays to give the proposed net cost and to what extent? Why is no mention made of the concessional loan from the Commonwealth Government and the interest payments? Answers to these simple questions at the very least are required in order to provide more background to support a complete and considered view about the detail of the Bill.

More importantly however, the Bill cannot be properly examined without also examining the circumstances connected with the proposed appropriations and in particular whether in their detail these are appropriate and consistent with the objectives set by the Government for the relevant program. To accommodate this, the Explanatory Statement should have included the details of the *Loose-Fill Asbestos Insulation Eradication Scheme* released by the Government on 28 October 2014. This in any case appears to have almost completely escaped Assembly scrutiny. This Inquiry should examine whether this Scheme appropriately reflects the publically and often stated objectives of providing fairness, flexibility in dealing with a wide range of individual circumstances, and certainty in terms of the health, emotional, financial and other issue arising for affected Mr Fluffy stakeholders. The view of this submission is that while the Scheme does provide fairness and more certainty for some stakeholders in particular circumstances, for many if not most Fluffy owners it does not.

### **Connection to the Eradication Scheme**

In the context of the size of the proposed outlays in the Bill it is not clear why in the Scheme lease buy-back was chosen over other options, nor what lower cost options were examined and not pursued by the Government? There are lower cost options; for example allowing owners to fund and carry out private demolition and clean up to the standard required by the Government while receiving lesser payments for their house

only. The trade-off would be allowing such owners to retain their existing crown leases throughout, thereby removing one of the most contentious elements (the buy-back of leases) in the announced Scheme. Addition of such an option to the Scheme could be done even at this late stage without adversely affecting those who support the current buy-back Scheme.

The stated intention of the buy-back and demolition Scheme is to be voluntary. At the same time the overall Government objective is to demolish all Mr Fluffy homes. This raises the significant question of what the Government intends to do with those homes where the owner does not choose to sign onto the buy-back Scheme. Take-up of the Scheme will impact on the required outlays. The Government has stated that it does not intend to compulsorily acquire these homes at this stage, perhaps a thinly veiled warning that it still might? Compulsory acquisition of affected properties would also have implications for the size of outlays in the Bill; some say it would likely decrease the overall costs of the Scheme? To what extent have these risks been incorporated into Scheme costs?

On the revenue side of the equation, what sum will be gained through the resale of remediated blocks and what are the assumptions behind this? There appears to be little information available about this controversial part of the Scheme, except that the press has reported that the net cost to the Government will be some \$300m. If confirmed, why has \$300m been decided as an acceptable deficit? To what extent has extending greater fairness and certainty to Fluffy owners been compromised by issues connected to the size of the net contribution to the Government's budget, including its ability to fund other significant cost priorities such as light rail? In an effort to increase this revenue stream some blocks, with particular characteristics, will apparently be rezoned and/or retitled, in addition to being revalued. Further, the resale is to be handled by the Land Development Agency raising questions of possible conflict of interest (the initial property valuation is being handled at arm's length). It is important that the full intentions concerning this part of the Scheme be released as soon as possible as it contains significant potential for unfairness, discrimination and uncertainty. Stakeholders need to know up front if their former blocks are going to be subject to rezoning and/ or change of title arrangements. It is acknowledged that much of this revenue may accrue in years beyond 2014-15. However, a holistic approach to this Bill demands its examination here.

The question of ensuring fairness to Fluffy home owners has been rightly extended to the issue of what contribution to the Scheme is appropriate for the wider ACT community to shoulder. The Government seems to have suggested that the figure of \$300m is about right. However, what justification there is for this figure is unclear at this stage and no doubt there would be a wide range of community views. In this context it needs to be remembered that this present day problem is a result of inept, incompetent behaviour by governments, both Territory and Commonwealth, over many years. To quote the Canberra Times, "many in the Canberra community will regard Mr Fluffy home owners as being the unwitting victims of government failure, if not incompetence". It can therefore be argued that the broader community has a strong obligation to assist in fixing the problem created by its representatives (governments). It can also be argued that on

top of long term health concerns, likely severe dislocation, demolition of longstanding family homes, uncertainty over whether they can regain their existing blocks, uncertain financial situations and so on, too much is now being asked of Fluffy home owners.

### **Some Contentious Elements of the Eradication Scheme**

The Government's zero risk or "one size fits all" approach to asbestos risk is perhaps understandable from a political perspective. However it is of course at odds with a flexibility objective and has raised the ire of many Fluffy home owners. Many asbestos assessments have been carried out with Government support and many of these are understood to have shown no evidence of friable asbestos in living areas. Yet these properties are to be treated the same as those where asbestos has been found creating significant confusion amongst stakeholders. Adding to the confusion, there are plenty of instances where Fluffy families have occupied these lower risk properties for many years and are prepared to continue to do so.

In this same context, the Scheme has sensible provision for ongoing occupation of Fluffy homes in the medium term. At the same time the Government may impose a range of onerous, impractical technical conditions at the owners' expense that seem to be aimed at forcing occupants out by effectively making it near impossible for ongoing occupation. Who these measures are aimed at protecting is unclear. It is important that any such measures are related to the actual risk posed by individual properties and that one size does not fit all circumstances.

### **The Asbestos Response Taskforce**

The establishment of the Asbestos Response Taskforce, no doubt at significant cost, is welcomed as a key means of bringing focus and speedier action to this area. A great deal of work has already been carried out by the Taskforce in a short period of time. In its implementation and administration of the Scheme however, anecdotal evidence suggests that the Scheme's provisions are being, or are to be, too rigidly applied. To ensure that the flexibility and fairness objectives of the Scheme are met as fully as possible it is imperative that the Taskforce be permitted wide discretion. One way to help achieve this would be to assign a particular case worker to each property and /or family group so that specific, individual circumstances and issues can be dealt with more directly, efficiently and flexibly. Public forums are simply not capable of achieving this.