28 November 2014

Mr. Andrew Kefford
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cc. The Secretary,
Standing Committee on Public Accounts,
Legislative Assembly for the ACT,
GPO Box 1020,
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E-mail: committees@parliament.act.gov.au

Dear Mr Kefford,

As the co-owner of a Mr. Fluffy house in a prime location in I write to you with regard to the Federal Government's funding proposal and the ACT Government's current buyback offer.

<u>The Facts</u>
The Asbestos Response Taskforce has acknowledged, in its *Long Term Management of Loose Fill Asbestos Insulation in Canberra* Homes document, there can be no single solution for dealing with Canberra's Mr Fluffy homes and that any program of demolition will need to take account of the desires of individual families. There are a number of reasons why the ACT Government's current buyback valuation proposal does not, and cannot, take into account the utility of our property, and I am unable to understand why the ACT Government is taking such a narrow-minded approach.

My husband and I purchased our significantly renovated home, which has since been further extended, in 1999. We have often joked that we started the upward trend in property values in the area because we paid a premium price for a block because it met all our utility requirements and we were not prepared to lose it. We were not prepared to lose it then. We are not prepared to lose it now.

Some of the relevant factors motivating our purchase that the ACT Government's proposed market valuation would not take into account include:

1. The house was within walking distance of my parents' home. I am an only child with elderly parents. My father has limited mobility a result of a stroke and is now experiencing the onset of dementia. My mother had a hip replacement in 2013 and is in increasing need of assistance.

2. The house was on a large block allowing us to extend to cater for a growing family and, importantly, allow us to live on a single level to cater for our old age. We did this in 2004 without any reservations expressed or conditions imposed by ACTPLA in relation to asbestos management.

3. Even after extending the dwelling, the block would remain large enough for a good-sized yard for children and to accommodate the addition of a swimming pool as our children got older, and further renovations to accommodate my parents, if that becomes necessary into the future.

4. Significantly, the property came with a Government issued Certificate of Completion of Asbestos Removal Work that advised the house was a safe residence.

For all these reasons had no plans to sell and we were happy to overcapitalise with our extension building to our specific needs with additional plans for the future. For all these reasons we are not be willing to sell our well-maintained five large bedroom home with three living areas, three garages, plenty of built-in storage, entertaining area and spacious yard.

We have an additional issue that impacts on our consideration of the buyback option. Our home secures a business loan taken out by my husband for a business that he was forced to close down in 2012 rather than face bankruptcy. There is a significant sum outstanding on that loan. Fortunately, the bank has allowed my husband to continue servicing the loan even though he closed the business. For the past eighteen months my husband has been slowly building a new business, but it is a long way from contributing financially to the day-to-day household expenses, let alone to our family's future.

My husband and I were extremely fortunate that we were able to make sound financial decisions during the early years of our partnership that have allowed us to pay off our mortgage and negotiate the difficulties of a failing business and starting over during the last seven years, but in the last 12 months the financial pressures have been growing. We cannot afford to start over in our 50s while we continue to carry the costs of a failed business and two children with special needs. We can't afford to take on another mortgage because we simply do not have the income to meet additional repayments.

Ms Gallagher, in her undated and unsigned letter received 19 November, states the Government's offer is:

> ... a fair way forward. This offer is more than the property would be worth on the open market and equal to the value of a comparable asbestos-free home.

There is no "comparable asbestos-free home" on the market that takes account of location, size, finish and utility.

To suggest the Government will not profit from the scheme is farcical. To suggest the government will absorb the costs of demolition, disposal and block remediation and is budgeting for a net cost over $300 million neglects the reality of the re-sale value of the 1021 affected blocks, many in prime locations and subject to subdivision.

The Government's buyback offer is simply not an option for us because it does not provide both the opportunity and the means to purchase an equivalent block with an equivalent dwelling without considerable financial loss. This must be the starting point for any market valuation. Similar homes are on the market for over $1.5 million, but they are not equivalent in terms of utility.

We are seeking new for old on our existing block. The principle of new for old is not a new one in the insurance industry and we have insured our home for its complete replacement value. Why can't the same principle be applied to replace the homes of people who wish to remain on their existing block? There is no need for the ACT to force me off my land to clean it up; at my invitation the land could be remediated and then the government pay for the rebuilding of an equivalent house.

It is also unreasonable for the Government to suggest that the relocation allowance will not be paid to families who stay in their home beyond 30 June 2015, particularly, where no asbestos contamination has been found and the condition of the home is unlikely to result in contamination in the foreseeable future. It does not provide a level playing field which is supposedly the Government's reasoning behind the immovable valuation date. No matter when we vacate, we will have relocation costs. Why should we fund those expenses out of our so-called market valuation when those who leave early not only get the extra money, but also leave properties that the Government must keep secure, at an additional expense, until demolition?

As it is, by the time our block is offered for re-sale we will have used a substantial portion of the buyback funds to repay in full a secured debt that we would otherwise have been able to continue to pay-off, and pay rent for comparable accommodation (if available) at an inflated price. It is highly unlikely we will have sufficient left-over funds to re-purchase our block at some future value and re-build our home at inflated building costs (as witnessed in the aftermath of the 2003 bushfires). The number of Mr Fluffy families looking for alternate accommodation is already impacting the real estate market, in the same way the bushfires impacted on the market in 2003. Of course, the Government would want to fix the value of our home at 28 October – it is the only way to avoid the expected increase in property prices.

<u>The questions</u>

Why could the Government provide financial assistance to bridge the gap for 500 bushfire victims who were under-insured, but not compensate victims of Mr Fluffy who have no other avenue of recourse? Never was there any suggestion the costs should be recovered from the bushfire victims, quite the contrary. The recovery costs associated with the bushfires may have been significantly less, but those costs were met through a healthy budget as reflected in the Hansard debate on the Bushfire Fire Reconstruction Levy Bill 2003.

The Government has never shied away from imposing special levies on the entire community to benefit only a few of its members. The recent Lifetime Care and Support Levy added to all CTP insurance in the ACT is just one example. Has this levy been imposed because the current budget is considered to be insufficient to meet these costs? If the current budget is insufficient to fund the asbestos demolition, remediation and rebuilding costs, why is the Government not considering a special levy on all rate payers? Why are Mr Fluffy victims effectively being made to fund a significant portion of the buyback scheme?

Why shouldn't the cost burden of rectification and rebuilding be shared by the broader community? Why is the Government talking about "mitigating the cost of this program to the rest of the community" (The Canberra Times, October 28, 2014)? The idea of remediating all the blocks in the manner proposed has come about due to public health concerns; it has nothing to do with the 1021 Mr. Fluffy families. Indeed, we can take this further by acknowledging there is a not-insignificant portion of the community that has benefited over many years from sale of Mr Fluffy homes: former owners, real estate agents, building inspectors, banks, the ACT Government itself through conveyancing search fees, stamp duty, rates and land tax and the community from the flow-on effects.

Furthermore, the current crisis has been created by the actions and inactions of both the Federal and ACT governments who were aware of the risks posed by asbestos insultaion; the two governments who, in 1989, entered into a Memorandum of Understanding (MOU) that includes the provision for funding an "Additional Program" . Although an MOU does not traditionally have the force of law, the terms used are an important indicator of the commitment. I suggest the intent of the MOU is clear on its face. Why isn't the ACT Government pressing the Commonwealth to honour the commitment made in the MOU?

<u>Standards of Fairness</u>

The ACT Public Service Code of Conduct states:

> *Public sector decisions must be especially fair and reasonable. Reasons for decisions must be transparent and available. You must be able to explain your actions. In particular, procedural fairness requires decisions to be made without bias (or the apprehension of bias). They must be based on the evidence available and anyone who is adversely affected by the decision must be given the opportunity to provide their views and contribute their voice to the debate before matters are finalised.*

Reasonable care and skill involves:

> *... appreciating the special needs of different groups and individuals.*

The ACT Government's actions fail to meet the test of fairness in that there is no transparency and their blanket decisions have not taken into account the views of those adversely affected. I doubt that the process currently being put forward as a voluntary Buyback Program would stand up to the standards expected of private sector companies under the principles of Australian Consumer Law.

From information published, it appears that around 57% of Fluffy Owners and Residents Action Group member families want to rebuild on their blocks. I would guess that to be a fairly accurate representation of the general Mr Fluffy community. That leaves 43% of blocks for the ACT Government to acquire, subdivide and re-sell. The Mr Fluffy crisis should not be viewed as an opportunity to exploit a portion of the electorate to make a profit, but rather as an effective solution that allows the victims to rebuild their lives and the Government to come as close as possible to breaking even over a reasonable period of time. It should not be used to make 1021 families fund the mistakes of successive Commonwealth and ACT Governments

If the Government was really concerned about a cost-effective solution it would apply the same principle of people first that was applied to the Bushfire victims (The Report of the Bushfire Recovery Taskforce – Australian Capital Territory 2003, p.212) to Mr Fluffy victims and give the Asbestos Response Taskforce the same guidelines as the Bushfire Recovery Taskforce:

- Giving people real options and ensuring people can make informed choices;
- Respecting the needs of different groups in the community; and
- Acknowledging the different timeframes of individuals involved in the rebuilding and recovery process. (p.19)

The Government's proposal is not really about looking after the 1021 affected families because we are not being given options; rather we are being put under duress to accept a fait accompli and the longer we wait the more we stand to lose.

The remediation process is a health and safety initiative to protect the community. It is about the removal of a health hazard that the Government suddenly feels is contrary to the interests of the wider community and the wider community cannot escape sharing the cost.

The Government has already acknowledged that the remediation process could take in excess of five years, but it could be spread out significantly more based on the risk of danger of individual homes. This would allow the Government to take into account the condition of affected homes, the fact that some homes have not been contaminated, the fact that some homes where contamination was found have since been sealed and the fact that the elderly wish to live out their lives in their family home. The Government has the opportunity, therefore, to budget for current spending and plan for long-term future spending in a more cost-effective way.

It would not be inconceivable for the Government to budget for a range of options. The Government's stated $300 million net loss is difficult to substantiate, when one takes into account the average block sizes, average serviced block sales figures, average demolition costs, average buyback price and average rebuild cost and the option of a levy on the over 145,000 households in the ACT. Cost recovery must be viewed in the long-term and costs spread over another 26 year period are not unreasonable.

Currently we have a very short-term vision fuelled by panic which has resulted from the fact that the Government can no longer bury its head in the sand.

<u>Social impact</u>
My husband and I have given back to the community through volunteer organisations and by donating to the various bushfire, flood and cyclone relief appeals. We worked tirelessly with our neighbours on 18 January 2003 to control the bushfire on and prevent it reaching homes. We have done these things selflessly. Now in our time of need, when one might think that what goes around comes around, we are faced, instead, with a less than compassionate response from the Federal and ACT governments and some sectors of the general community. In retrospect, losing our home in the bushfires would have been a lucky break.

My family became aware of the asbestos issues affecting our home in July 2014. Immediately upon receipt of the July letter we registered with the Asbestos Response Taskforce. Our assessment was undertaken on 22 October and on 29 October we received the report that 'no asbestos was detected' from 11 swabs of the living areas, including the return air duct adjacent to a sliding door cavity. The assessor pre-empted the findings on the basis of the excellent condition of our home, furthermore, the assessor assured us that having down lights was not an issue because the ceilings had been cleaned and sealed so well.

The stress of this of not knowing for three months was unbearable and the additional stress of facing financial ruin and a situation where it will be more difficult for me to be on hand to assist my parents is clearly having an adverse affect on my health and my family. Although I am concerned about residual asbestos fibres in the few walls remaining of the original dwelling and subfloor, I am more stressed about the impact of the ACT Government's knee-jerk reaction and superficial funding proposal. I have cried almost constantly since the announcement of the Government's buyback proposal. I tried to put on a brave face for my children by telling myself every day that reason and good governance will prevail, but that strategy has not been very successful when clearly I have trouble functioning, evidenced, in part, by the fact that it has taken me a month to get my thoughts coherent enough to put together this letter only to find public submissions were due by 26 November. Why does Ms Gallagher feel it is acceptable to harass me with communications about the fairness of the Government's decision, but failed to take the opportunity to inform me that I can make a submission to the Standing Committee on Public Accounts?

It will take more than 8 months for my family to assess the full impact of our current situation and how best to manage our future and I will not be pressured into making any decisions, accepting any offers or giving any commitments until I have explored in detail and costed all our options (something the Government might like to do also). For now I am having trouble finding the motivation to clean my usually pristine home and really can't see the point of pulling out the weed that is defacing the garden. For now I need to learn how to manage the day-to-day things while living under this cloud and only then I will think about the longer term solution.

<u>Summary</u>

- We purchased our home for its utility.
- We relied on a Government issued certificate that the asbestos had been safely removed from our home. People are entitled to rely on Government certificates and approvals. Mr Kefford knows this very well ('Protests over Deakin McMansions, Domain.com.au, 7 January 2013; ABC News, 23 May 2013).
- In 2004 we extended our home with no reservations expressed or conditions imposed by ACTPLA.
- We were not informed of the situation regarding our home until the ACT Government's letter of July 2014.
- An asbestos assessment in October 2014 found no asbestos in our living areas, including in the return air duct adjacent to a cavity sliding door.
- Before demolition occurs we want the ACT Government to fund further assessment of the wall cavities and subfloor to confirm the Mr Fluffy status of our home.
- We are not be willing to simply give up our home to a government that has repeatedly fumbled and passed up every opportunity to address this long standing problem and who now think they can either force or intimidate us to leave our property without fair and equitable compensation.
- We wish is to remain in our home until it is either shown to be unsafe or it is demolished; additionally we wish to retain our block and be able to rebuild an equivalent dwelling. We expect this will be facilitated by the ACT Government, through the Taskforce, without our incurring any financial loss.

The Taskforce has indicated that it needs to meet with all Mr. Fluffy owners. I invite Mr. Kefford to hold his meeting with my family at our home and look forward to that occurring sooner rather than later. In the interim, I understand, from the FORAG, that we are entitled to have a case manager appointed. As it is impossible to contact the Taskforce by phone, would you please arrange for a case manager to contact me on

Yours sincerely,