



Submission regarding the proposed Appropriation (Loose-fill
Asbestos Insulation eradication) Bill 2014-2015

A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
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We seek an approach which minimises the financial penalties and the emotional stress being placed on the victims of the Mr Fluffy disaster but is affordable. In particular, we ask that the following modifications be made to the Scheme:

1. Owners be given the option of being assessed at the time of opt-in or valuation rather than 28 October 2014- **minimal cost impact on ACT budget based on Government's own assessment of the real estate market**
2. The valuation to apply should be the higher of the two independent valuations provided –**estimated cost impact \$16.6m to \$33.5m but possibly less over the life of the Scheme**
3. Ensure that the Government's previously announced commitment to a stamp duty waiver is honoured and that affected owners are not forced to borrow money to pay the stamp duty up front. If enabling legislation or new regulations are necessary, action should be taken as soon as possible.- **minimal cost impact**
4. Ensure that stamp duty is waived as promised and not just reimbursed and where stamp duty is in any event payable (i.e. where the price of the replacement property exceeds the valuation of the affected property), stamp duty be levied at the basic rate applying to the difference in value, rather than that applying to the total value. – **minimal cost impact**
5. Extend the date from 1 July 2015 to at least January 2016 for owners to be able to stay in their homes without the need for onerous new safeguard measures where no contamination has been found in living areas – **no cost impact**
6. Ask technical advisers to come up with more workable solutions for those who need to stay in their homes for a longer period of time. – **minimal cost impact**
7. Increase the amount offered under the Relocation Assistance Grant to \$25,000 - **cost estimated to be a maximum of \$15.31m over the life of the Scheme**
8. Make the rebuild option more realistic. **Cost impact subject to any Scheme redesign**
9. Delay the public release of the list of affected blocks - **no cost impact on ACT Budget**

We also suggest that the Committee

10. Seek and make public information regarding the main cost elements of the Buyback Scheme over the current and next financial years

SUPPORTING COMMENTARY

The Chief Minister has asked the Standing Committee on Public Accounts to consider the above proposed bill and its explanatory statement in advance of the Bill's introduction into the Legislative Assembly.

We are owners of a house that had loose fill asbestos insulation and was part of the 1988-1993 removal program and we wish to make the following submission for the Committee's consideration. Our submission focuses on a number of problems that we in common with many other owners of affected houses have identified relating to the design of the scheme and its proposed implementation.

We are appreciative of the efforts that the Government has made to address the situation that has arisen. But while we recognise the financial constraints facing the Government, we and other affected owners remain extremely concerned about elements of the scheme and the impact that the Government's decision will have on us. We consider that there is a pressing need to ensure greater flexibility and fairness in the way in which the Scheme operates.

We note that most owners face the fear of large financial penalties as the result of the Government's decision. They are now in a situation of having to find a replacement home. In what could be a rising market, not only will affected owners have to pay more (and perhaps significantly more) for a property that is equivalent to the one that they are losing, but they will also have large stamp duty and other transaction costs. This will have a permanent impact on future levels of income and standard of living. At the same time, the Government will benefit from the acquisition of property through rezoning, future sales and stamp duty. In some cases the Government is likely to make a net profit on individual blocks through the benefits of selling a rezoned block together with windfall stamp duty garnered along the way. This is just not fair to the owners of the blocks concerned.

We believe that there are some changes that could be made that would make a real contribution to alleviating the difficulties now facing us and other affected families and that these changes could be achieved without incurring unacceptable increases in cost to the budget.

Changes that would make a real difference and make a fairer scheme include changes to the valuation process; modifications to the stamp duty concession; a more flexible approach to

those who need to stay in their homes in the medium term beyond 1 July 2015 and a modest increase in the Relocation Assistance Grant.

It needs to be remembered that the Mr Fluffy victims are in this situation because governments of the past ignored expert advice of the great dangers that this type of asbestos posed. We relied on government assurances that our houses were safe and made very substantial investments in them. In our case, if those assurances had not been given we would not have made our original purchase and we would not have subsequently undertaken a very substantial extension/renovation project. Like so many others, we have made a huge financial and emotional investment in our house on the basis of government assurances and it is our principal asset.

Under the Government's Scheme, as currently designed, virtually all owners face the prospect of very significant financial penalties. Notwithstanding Government statements to the contrary, there is already evidence to suggest that there will be a significant difference between 28 October valuations and the price that will have to be paid for replacement homes. This is in no small part due to the short time frame that has been provided for opting in to the Scheme. It is clear from reports in the Canberra Times that this is forcing large numbers of prospective buyers onto the real estate market at a time when the stock of properties on the market is very much smaller than usual. Press reports indicate that the real estate industry estimates that the stock available is about 1,000 less than normal.

In addition to the increased capital cost of buying a new property, there are transaction costs that will not be covered by the assistance program, not least the cost of bridging finance and stamp duty payable over the limit currently set by the Government, plus rental costs for interim (but possibly quite lengthy accommodation), other relocation costs, costs of replacing household equipment and clothing that cannot be taken away and so on.

Whether our analysis of the current market situation is correct or whether the Government's assessment prevails, the victims of the Mr Fluffy disaster feel that they face a very uncertain future. And uncertainty drives fear and distress. There are, however, some relatively modest modifications to the Scheme that could be made that would make a real difference to the level of uncertainty and hence lessen both the financial and emotional stress that victims are suffering. These could be made without compromising in any way the clear objective of the Scheme. Indeed, they should facilitate a smoother and probably overall a quicker exit from affected properties. This is not only desirable in itself from an overall health and community point of view but there would also be some benefits to be achieved in terms of consequent reduced administrative costs, reduced demand for related services including health services, and facilitating a faster demolition program and hence revenue flow in the longer term.

Valuation Process and Date

The Program as currently designed has a deadline for opt-in of 30 June 2015. However, the valuation date has been set at 28 October 2014. This means that those who opt in are exposed to the very real risk of having to buy at a much later date in a rising real estate market.

Although large numbers of owners have already lodged applications under the Scheme, the Taskforce is unable to give a guarantee or even any meaningful indication about the time likely to be taken for valuations. It would appear that there could be a six month gap or even more between 28 October and the time many owners are provided with their Buyback valuation. To minimise the uncertainty, stress and possible financial disadvantage for owners, we suggest that owners should have the option of being assessed either at the time of opt-in or valuation rather than 28 October 2014. We note that in an attachment to an undated letter from the Chief Minister sent to affected owners in mid-November, the Taskforce states that the Government has been advised that the influx of "Mr Fluffy" owners will not have a major impact on the ACT property market. If one accepts the Government's view, it follows that the cost of our proposal is likely to be negligible.

We also suggest that a much fairer way to determine a final value would be to select the higher of two valuations rather than an average, especially given our understanding that the valuation approach could well be unduly conservative and lead to a result that would be noticeably less than the value that would normally be realised if a property were placed on the market. Further, the case for selecting the higher valuation is strengthened by the very limited appeal rights that are being allowed in the valuation process. It needs to be remembered that the appeal rights under the Scheme are very much less than are available to ACT citizens in respect of other government determinations, including those relating to property matters.

We have attempted to estimate the additional cost involved of accepting the higher valuation. Using quite conservative assumptions, we believe that it would be no more than \$33.5 million and that it would probably be significantly less than this. In undertaking this exercise, we looked at the 30 suburbs which have the largest number of "Mr Fluffy" houses. Those suburbs account for 744 houses or 73% of the 1021 houses concerned. The following assumptions applied: the lower valuation of a "Mr Fluffy" house would be at least equal to the median 2014 sales value in the suburb concerned¹; the higher valuation would in each case be 10% more than the median; and the 73% would be representative of the cost for the remaining 27%. In other words, the overall maximum additional cost of the Buyback would be 5%. It is, however, likely to be considerably less than this given that the Government and the Taskforce appear to consider that it would be unusual to have a difference of 10% between the two valuations. A more realistic assumption is that there might be a 5%

¹ Source: allhomes.com.au 2014 median non-unit sales prices by suburb

difference in valuations. In that event the overall additional cost would be only 2.5%. This would seem to mean an additional cost of the order of \$16.6 million. In the event that valuations were less than the median, the additional cost would of course be even lower.

We consider that the cost of our proposal, as estimated, is relatively modest especially when viewed in the context of the overall cost of the program. Also, the change suggested may well lead to reductions in cost elsewhere. It is, for example, likely to result in fewer appeals and facilitate faster surrender of properties, as well as resulting in much less stress and angst being felt by "Mr Fluffy" victims. It may well also reduce the number of instances in which "Mr Fluffy" victims consider that they have no option but to take legal action against the Government and other parties if they are to get adequate compensation.

Recommendations

1. Owners be given the option of being assessed at the time of opt-in or valuation rather than 28 October 2014. The cost to the budget is estimated to be negligible.
2. The valuation to apply should be the higher of the two independent valuations provided. The additional cost involved is estimated to be no more than \$33.3 million and may well be considerably less than this e.g. \$16.6 million or even lower.

Stamp Duty Concession

The Government has announced that there will be a waiver of stamp duty payable on the next property purchased by an affected owner in the ACT up to the value of the stamp duty calculated as if it were payable on the affected block (as valued) which is being purchased under the Scheme by the Government. This was confirmed by documentation sent out by the Taskforce. However, more recent advice from the Taskforce is that the actual situation is that the **stamp duty is not being waived but will be reimbursed** at the end of the surrender process. This could reduce the benefit significantly since the valuation/acceptance/surrender process is likely to take many months.

Any buyers who have already bought a replacement property on the strength of the Government's announcement will have to pay stamp duty no later than 90 days after the exchange of contracts. Amounts involved could be considerable – say \$12,600 for a \$400,000 home, ranging up to \$70,000 - \$80,000 in more expensive areas, and possibly even more in some cases. The great majority would need to borrow money to pay the stamp duty. This would not be reimbursed for perhaps some months and the cost to owners in interest charges of that delay would be considerable. Not only is this inequitable for those who have acted in good faith, but it could also discourage other owners wanting to exit quickly from their houses.

Further, and even more significantly, should the valuation of their current property turn out to be say \$50,000 to \$100,000 less than what they have had to pay for an equivalent

property, stamp duty will be payable on that difference. It is not clear from the information whether the stamp duty on this residual amount will be levied as for a purchase of a \$50,000 to \$100,000 property (i.e. at 2.2%) or at the much higher marginal band rate applying to some properties. **We believe that it would be very unfair for stamp duty on residual amounts to be levied at high marginal rates**, given that owners of affected properties have been forced into this situation and that the current market situation is very tight and likely to remain so during the currency of the Buyback Scheme. It would also introduce inequities in treatment between affected owners, because excess stamp duty would be being paid at significantly different rates, depending on the total value of the property. For properties in the range \$500,000 - \$750,000, owners pay a marginal rate of 5% and hence could be up for a payment of \$2,500 to \$5,000 on a residual of \$50,000 to \$100,000 instead of \$1,100 to \$2,200. For properties in the range \$750,000 to \$1 million, a marginal rate of 6.5% applies and the corresponding amount climbs to between \$3,250 and \$6,500. For those in the range \$1 million to \$1.650 million the amount would be between \$3,500 and \$7,000 (marginal rate of 7%).

Recommendations

3. Ensure that the Government's previously announced commitment to a stamp duty waiver is honoured and that affected owners are not forced to borrow money to pay the stamp duty up front. If enabling legislation or new regulations are necessary, action should be taken as soon as possible. The additional cost is estimated to be negligible.
4. Where stamp duty is payable (ie where the price of the replacement property exceeds the valuation of the affected property), stamp duty be levied at the basic rate applying to the difference in value, rather than that applying to the total value. The cost of this recommended modification is difficult to estimate accurately but is likely to be small, especially if the Government is correct in its view that market prices are unlikely to be significantly affected by the "Mr Fluffy" crisis.

Conditions applying while residents stay in their homes post - June 2015

More compassionate consideration needs to be given to those who want or need to stay in their homes in the medium term beyond the current deadline of 30 June 2015. Quite apart from other considerations, it appears almost certain that the valuation and offer process will not be completed by that time. The Taskforce should not unnecessarily be forcing people into hurried purchases or onto the rental market.

Nevertheless, the Taskforce is indicating that there will be mandatory requirements which would mean that down lights, exhaust fans, air conditioning and heating systems would be inoperable, soft furnishings might need to be replaced and much more. These conditions are excessively and unnecessarily harsh and as the Taskforce has indicated that it expects that its requirements would make it impracticable for most people to stay in their homes. The

approach would seem to be mainly driven by a desire to force people out of their houses as early as possible. This is unreasonable and unacceptable, especially where no evidence has been found of contamination in the living areas (and a large number of houses fall in this category).

Recommendations

5. Extend the date from 1 July 2015 to at least January 2016 for owners to be able to stay in their homes without the need for onerous new safeguard measures where no contamination has been found in living areas. No significant cost.
6. Ask technical advisers to come up with more workable solutions for those who need to stay in their homes for a longer period of time. No significant cost.

Relocation Assistance Grant

All who opt in to the Program will be facing costs for a wide range of things, including various legal costs above and beyond the \$1,000 currently being provided (which is strictly limited to Deed related advice), temporary accommodation, contents removal, settling in costs, replacement of contaminated furnishings and clothing and various other expenses. We suggest that a more realistic package would be \$25,000 per household.

Recommendation

7. Increase the amount offered under the Relocation Assistance Grant to \$25,000 (plus retaining the existing additional amount for each child). Estimated maximum increased cost is \$15.31 million

A more realistic Rebuild Option

The uncertainties and the conditions being placed on the rebuild option have made it an unreasonably unattractive option for many, if not all. Efforts should be made to make it a more viable proposition for those wishing to rebuild on their present blocks. Greater weight needs to be given to the strength of the emotional attachment that many have to their present properties and their desire to remain in their present communities. The Scheme needs to be more flexible and modifications should be introduced to allow provision to be made for priority demolition, as well as a right to repurchase at UCV without subdivision.

Recommendation

8. Make the rebuild option more realistic

Delay the release of the list of affected homes

The Government has announced its intention to release the list of affected blocks in early 2015. We believe that the release of the list should be delayed until properties are surrendered. Labelling of addresses prior to then would have the unintended consequence of owners being seen as forced buyers in the real estate market, only exacerbating pressure on prices. A better approach would be to start a list once properties are being surrendered and update it regularly as more contracts are concluded.

A further consideration is that there are already instances of owners and their children being stigmatised in the community. This adds enormously to the emotional stress under which victims are labouring and this cannot be justified.

Recommendation

9. Delay the public release of the list of affected blocks

Cost of the Program

The Bill is seeking appropriations totalling \$762,031,000 million in 2014-2015. The Canberra Times of 15 November reports that another \$250 million will be sought for 2015-2016. Details regarding the main expenditure components of the Scheme have not been provided. The appropriation sought for 2014-2015 appears on the face of it to be more than might have realistically been expected, as does the total amount of expenditure over the two financial years. It would be helpful to have further information about the costs of the program, including how much will be required to buyback the houses, the expected cost of demolition, expected cost of other assistance to victims, and details of other costs especially the administrative costs of the program. Estimates should also be provided of the extent to which the Government expects to defray costs by future sales of the blocks concerned.

Recommendation

10. Seek and make public information regarding the main cost elements of the Buyback Scheme

Should you wish to contact us or to elaborate on any of the matters we have raised, we can be reached on

Yours sincerely

Donaldson &
25 November 2014

Fanning