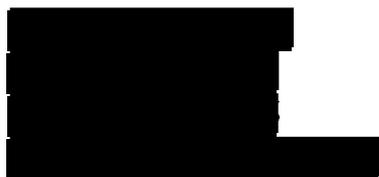


Submission by: Lorraine & Leo Carvalho



	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	1.
DATE AUTH'D FOR PUBLICATION	26.02.18

BC

Public Submission

Review of Auditor-General's Report No 1 of 2017: WorkSafe ACT's management of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses.

We welcome this opportunity to provide comments to inform the standing committee on our experiences dealing with management of the Asbestos Taskforce and Worksafe and their responsibilities for demolition of loose-fill asbestos contaminated houses.

We are the owners of a Mr Fluffy home in Lyons, in fact our home belonged to Mr Dirk Jansen the owner of the business commonly referred to as "Mr fluffy".

On 27 April 2016 my neighbours intervened to stop workers continuing with de-fitting demolition work of a Mr Fluffy house (asbestos contaminated building) at 4 Barrow Place Lyons owned by the ACT Government. They witnessed the workers knocking down the front and side door of the house with sledge hammers, crowbars and wearing no protective clothing even though signs on the front fencing indicated that this was necessary when entering the house. The neighbours were protecting the workers safety and the safety of nearby residents.

This house was contaminated as per the findings of test reports conducted by **Robson's Environmental** a firm of asbestos consultants commissioned by the ACT Government. On numerous occasions the neighbours of Barrow Place had

requested tests results and reports in relation to this house but they were denied by the Asbestos Taskforce.

To alleviate the concerns raised by the neighbours the Task Force organized a kerb side meeting the following day on 28 April 2016. At this meeting the Asbestos Task Force and WorkSafe disregarded allegations made by the residents of Barrow Place that a breach of the ceiling area had occurred. During the former occupants' removal process dust and debris fell onto the carpet from the "contaminated ceiling" (*Attachment A- picture*).

At the kerb side meeting this incident was conveyed to the Task Force, WorkSafe and PBS Constructions who gave assurances that all demolition works were conducted safely with further assurances given that tests would be conducted on the ceiling breach and reports would be given to concerned Barrow Place residents and us as soon as they became available. To date the only evidence given is a test report by Robson Environmental which was conducted on **02 May 2016**; three days after the incident of unprotected workers commencing the interior demolition de-fit process. The tests were not carried out on the carpet but on 7 grams of some material collected by Robson's.

The exposure risk taken by the contractor's was reasonably foreseeable and not insignificant, potentially dangerous to the health and safety of the workers and people in the neighbouring properties. At the time the pre-demolition commenced there had been no test results available; yet the contractors were allowed to commence pre-demolition works. The de-fitting of the interior of the house was primitive, whereby workmen were not wearing protective clothing, used crow bars and sledge hammers to gain access to the house. There was no protection for the community other than a wire fence around the perimeter of the property. This was not satisfactory when **such a dangerous substances could be released into the air**. We had been trying to get a response from the

Task Force to previous issues raised in relation to the contaminated material in the house. The Task Force response was to call the police and Leo was arrested for obstruction.

On 14 March 2017 Leo was found guilty of **unreasonable obstruction without conviction and charge dismissed by the Magistrate**. In our opinion he failed to address the first part of the charge i.e. were Leo's actions of stopping a truck from taking possible contaminated carpet from the site unreasonable as the Task Force assertions were that the carpet was not contaminated and our position was that the carpet should have been kept in storage and properly tested before determining the way it was to be safely removed. In all Mr Fluffy demolitions the Task Force and WorkSafe must take into account the assumption of risk to all those involved which include workmen, site visitors and neighbouring property owners whose properties surround the demolition site.

The ACT government's premise to the buyback scheme was that if exposed to asbestos material there is a significant possibility of being exposed to a deadly disease. Considering the circumstances and the incompetent manner in which the house at 4 Barrow Place was being demolished we consider Leo's actions of 13 May 2016 as being that of a reasonable person of normal fortitude.

We believe it is **reasonable** and that the duty of care of the authorities in this case WorkSafe and the Task Force extend to cases of this nature, not just for the clarity and transparency of their own activities, but also to alleviate any concerns of the community that procedures had been followed properly and any understandable human error has been investigated thoroughly.

Unfortunately the decision taken by the Task Force and WorkSafe to have Leo arrested instead of taking notice of our concerns and by speedily removing the only evidence that could have proved that every box had been ticked and that the Task Force and WorkSafe had acted openly and were transparent beyond

doubt was destroyed when they hastily removed the carpet from the Barrow Place site prior to any testing being carried out.

This whole episode of Leo being arrested could have been easily avoided saving the rate payers thousands of dollars instead of the Task Force and WorkSafe manipulating the system involving the AFP, DPP and the Courts simply by engaging an independent assessor and not authorities who have a conflict of interest when conducting their duties.

It is our opinion that the actions by the Task Force and WorkSafe when demolishing Mr Fluffy homes are purely financial putting saving money over lifesaving. This is evident in an article in the Canberra Times on May 8 2016 where a Task Force spokeswoman stated that “there is no temporary stop to works for safety reasons” (*See Attachment B*).

The ACT legal fraternity should remind the ACT Government that the ACT Community has invested upon the legislators the Power to make and amend Laws for the protection of its citizens. The government powers are not there to be abused as in the case of the Amendment to the 2004 Dangerous Substances act, made retrospective in order to add some sort of legality to the bullying of people that did not accept the voluntary buyback. Owners of neighbouring properties surrounding Mr Fluffy homes should be able to openly approach authorities such as the Task Force and WorkSafe without fear of retaliation when we bring issues of serious demolition breaches to their attention.

Our own experience is that WorkSafe:

- Supervision on Mr Fluffy work sites is severely lacking.
- Safety procedures have not been followed by workers.
- There is a total disregard for the safety of the community as when complaints are made to WorkSafe they are ignored, as they have been in our case.

- When complaints are made to WorkSafe about safety issues on work sites there is no follow up by WorkSafe to those making the complaint.
- When making safety complaints to WorkSafe there is a lack of detailed notes taken by WorkSafe in order to follow up the issue.
- WorkSafe do not return your telephone calls and **when you eventually get in contact with them you are advised that they are unaware of your telephone contact** and the issue previously raised and you are brushed aside, we have experienced this on two separate occasions.

With estimates of over 30,000 families in the ACT being exposed to Mr Fluffy asbestos - a **Class-1 Carcinogen** the Task Force and WorkSafe should not be permitted to cut corners when the community's health and safety could be at risk. The demolition of Mr Fluffy homes in the ACT can if protocols around safety procedures are not followed have deadly consequences for many of Canberra's community members. As public finances are funding this program all authorities such as; the Asbestos Task Force and WorkSafe need to be held accountable and an immediate Board of Inquiry or Royal Commission with or without federal government support into the management of the program and WorkSafe's ability to safely demolish Mr Fluffy homes is essential.

Once again we thank you for the opportunity to provide a submission for the committee and if we can be of any further assistance please do not hesitate to contact us on the above telephone number, via email or send mail to the above address.

Yours sincerely

Lorraine & Leo Carvalho

28 June 2017

For your information we have attached a detailed timeline of events, letters, emails and pictures in relation to demolition of 4 Barrow place Lyons a “Mr Fluffy” house.

27/04/2016	Alerted by neighbours of Barrow place Lyons that PBS de-fit (<i>pre-demolition</i>) workers were bashing down the front door with crowbars and sledge hammers to gain entry at 4 Barrow place Lyons. Work stopped.
	Asked to attend kerbside meeting at 5 Tarraleah Crescent Lyons to discuss safety concerns with PBS demolition supervisors, Taskforce staff and WorkSafe.
28/04/2016	At kerbside meeting discussed safety breaches that occurred at 4 Barrow place Lyons. Requested reports on tested material from that address. Assurances given by Taskforce, WorkSafe and PBS demolition supervisor (<i>PBS not aware of a second report conducted on the property</i>) that reports would be handed over.
	<p>(Attachment: C - pictures) - House behind kerbside meeting shows contaminated waste strewn over property. Not properly contained in plastic and contents flowing over the sides of the skip bin onto the ground.</p> <p>Bags with red printing warning of asbestos waste were not correctly secured and packed into skip bin, doors and windows left open and gates not properly secured.</p> <p>On the day of the kerbside meeting and again on the following Sunday it was extremely windy allowing any asbestos contamination to be blown over neighbouring properties and beyond.</p>
12/05/2016	<p>Workmen from Aztech Services and PBS de-fitting 19 Olympus way Lyons taunted Carvalho family members as they passed the site saying – <i>today this house tomorrow we are coming to knock down your house.</i></p> <p>(Attachment: E - pictures) Shows workmen sweeping up rubble from the road that fell from the truck after the demolition. Several school children walked through this waste, the workmen thought it</p>

	<p>was funny and were laughing.</p> <p>The workmen also through contaminated waste in plastic bags into the back of an open tray ute and left the site, not exactly safe practice.</p>
<p>13/05/2016</p>	<p>PBS supervisor reneged on previous agreement for a later start and began de-fitting work on 4 Barrow place Lyons at 6:45am. Our son informed us that there were police with members of the Taskforce and a PBS demolition crew in front of our house. We were informed later that day the Taskforce demanded the presence of police but we were not advised why they were there.</p> <p>We had left home shortly before 8am on Friday 13 May 2016 and returned at approximately 11:45am. Members of the demolition crew and the Taskforce were in Barrow Place, Leo and our son Benjamin went to see a neighbour to discuss a video our son had taken whilst we were away.</p>
	<p>The video shows a PBS worker jumping into the skip bin containing items from the de-fit which included carpets that were known to contain asbestos (<i>Attachment:D - video</i>).</p> <p>The worker spoke very little English, was not wearing protective clothing and was jumping up and down in the skip bin. The worker had a protective kit that was neatly put to the side of the skip bin; the clothing was still in the original packaging.</p> <p>The action of jumping up and down on material supposedly encased in plastic meant that the plastic could have been torn exposing any contaminated materials to the air and surrounding properties outside of the foot print of the Mr Fluffy house. This also meant that contaminated soil would not be cleared as the Taskforce are only cleaning the actual foot print of the house on the property and not the surrounding areas of the property. This means that when the land is on sold to the new owners the land would still be contaminated.</p> <p>The video of this incident was shown to a members of the Taskforce and WorkSafe, approximately 30 minutes after looking at the video a truck pulled up to take the skip bin away.</p> <p>The neighbours of Barrow place had not been given a copy of the</p>

	<p>test result report on the contents of the house in particular the carpets as previously promised. We now know that the carpets were never tested.</p> <p>The workers were ill prepared to commence the de-fit and were not prepared for the possibility of contamination even though they had breached safety regulations.</p> <p>Prior to the de-fit the Taskforce have a licenced assessor conduct a second inspection on Mr Fluffy properties so the workers can come prepared to de-fit the property according to asbestos safety regulations. At the kerb side meeting it was discovered that PBS Constructions did not know about this report.</p> <p>The workers could not have known what to expect at 4 Barrow place as they were using sledge hammers and crowbars to break down doors and had not sited the second report as this was not completed until 02 May 2016 (<i>Attachment: F - report</i>).</p> <p>The carpet in two rooms was contaminated when the previous occupants were moving out of the property. Part of the cornice fell down with some of the roofing contents spilling onto the carpets, this carpet was never tested (see Attachment: B - picture).</p> <p>During the de-fit the non-English speaking workers whom were supervised by PBS were seen to be giving instructions using sign language.</p> <p>PBS Constructions made a commitment to wrap the carpet in plastic but there is no evidence that this was actually done.</p>
<p>13/05/2016</p>	<p>When the truck arrived to take the skip bin away Leo Carvalho stood on the foot path and refused entry to the truck. Once again we requested the report on the interior of the property as previously promised by members of the Taskforce, WorkSafe; and supervisors from PBS Constructions; the report was not forthcoming.</p>
	<p>A member of the Taskforce called the police to attend on site for the third time and Leo was arrested for obstructing a government vehicle. There were eleven police officers to arrest one seventy one year old man.</p>

	<p>There were various ways in which the police could have handled this situation but they chose to arrest Leo because that is what the Taskforce demanded.</p> <p>This incident would not have occurred had the report been cited by the residences of Barrow Place. The Taskforce were not interested in trying to discuss or settle issues that were raised about the health and safety of neighbours surrounding the Barrow Place property. The Taskforce brushed aside the neighbours' concerns and continued to de-fit the property.</p>
	<p>During court proceedings for Leo's obstruction case it had come to light that the Taskforce member who swore out Workplace Orders on Lorraine, Leo and Benjamin Carvalho on 12 May 2016 had lied In her affidavits. The Taskforce member had sworn under oath that she was "fearful for my safety and that of my staff. I sought the assistance of an AFP officer..."</p> <p>The taskforce officer lied under oath to get the Workplace Orders. In the court proceedings the arresting police officer told the court that "Leo was one of the nicest people he had arrested in his 27 years of policing". <i>(Transcript can be provided if necessary)</i></p>
	<p>To lie under oath as the Task Force officer did is a criminal offence yet she is allowed to do this and there is no apology to our family or any evidence that the Taskforce officer was reprimanded for deliberately lying under oath to the court in order to get the Workplace Orders.</p> <p>Once again this debacle is about the safety of workers and the neighbouring community where a Mr Fluffy house is being demolished. Although we have asked many questions in regard to the inappropriate way in which the neighbouring house in Barrow place was being demolished we have never had any of our questions answered instead the Taskforce became heavy handed and called the police.</p>
<p>14/05/2016</p>	<p>This person was pointed out to us at a community meeting at Curtin shop which the Taskforce organised to discuss issues surrounding demolition of Mr Fluffy houses.</p>

	<p>We attended a community meeting at Curtin shops to ask questions about the safety aspects of the demolition that was to take place at 4 Barrow place Lyons.</p> <p>We were not going to attend but changed our minds at the last minute. Within five minutes of our arrival at least four police officers also arrived. Apparently the police were asked to attend the evening prior to this meeting.</p>
	<p>On 12, 13 and 14 May 2016 we tried to get answers to our previously asked questions on the lack of safety in relation to the demolition of 19 Olympus Way and 4 Barrow place. Our questions went unanswered as they still do today.</p> <p>There was no violence, harassment or intimidation on behalf of our family however the taskforce used the police to intimidate, bully, threaten and have Leo arrested because we dared speak out about the wrongs of the program and the lack of safety measures either taken or ignored to protect the workers and the surrounding neighbours.</p>
	<p>During the Curtin meeting we asked the Taskforce officers specific questions in relation to the safety of the demolitions in particular those in Olympus way and Barrow place Lyons, our questions went unanswered.</p> <p>Two of the Taskforce members laughed at a very distressed woman when she asked what had happened to her belongings that she had left behind due to their contamination (<i>Attachment: G - Canberra Times article</i>).</p> <p>Every time the lady asked a question the Taskforce officers sniggered and laughed and took a very defensive stance towards the distressed lady. The lady was very distressed to find out that the demolition crew had taken her belongings, belongings she had to leave behind.</p> <p>Her concerns were that these items were being sold or used by the contractors after being told that they were contaminated. The lady tried to express her concern for the community but the Taskforce members' response was to laugh. (<i>There is a video of this interaction however what was played in court has been edited and does not show the exact context of the meeting</i>).</p>

In front of witnesses I was insulted by a Taskforce officer. Whilst I did retaliate with an open hand hit on the table and shouted some words that I would not normally use I walked away and spoke to police.

At the same time of this incident there were other people who were in a volatile state and known to the Taskforce, they were name calling and in a heated debate about various aspects of the buyback program and yet it was only the Carvalho family who were arrested and given Workplace Orders. In fact the magistrate commented that she found the man in green more offensive than the Carvalho's" yet we were the only ones who were penalised *(Transcript can be provided)*.

The taskforce were allowed to continue with the interim orders that Taskforce officer lied to get for eleven months before it could be heard in court. Days before the hearing, the orders were discontinued.

The actions by the taskforce is a blatant attack on our personal liberties of freedom of speech and movement, it also is a deliberate vexatious claim against our family.

All we were asking for was answers to specific safety issues that were in line with safety regulations and were not being adhered to in the demolition of Mr Fluffy houses in Olympus way and Barrow place Lyons.

Instead of receiving answers to our safety concerns we were dragged through the court in what we consider was vexatious and an attempt by the Taskforce to silence our concerns about the safety of the demolitions of Mr Fluffy homes. This process has cost our family approximately \$20,000 to defend, we have had no apology for what the taskforce has done nor have we been approached by any member of the Taskforce to discuss our concerns.

At 6:45am we heard a loud banging noise and went outside to discover the house in Barrow place being demolished. There was no warning that the demolition was to take place on that day.

We had been advised by neighbours that the house was going to be demolished on 26 May 2016 and was arranging not to be there on the day even though the Taskforce and PBS Constructions had

	<p>failed to notify us of the exact demolition date.</p> <p>Our granddaughter was present at the time we grabbed her and Leo left our property with her. Lorraine contacted the Taskforce (<i>even though this was in contravention to the Workplace Orders</i>). The Taskforce said that they had contacted us about the demolition but this was another lie. Had we known about the demolition we would have made arrangements not to be in our home at that particular time instead of 26 May 2016.</p> <p>At the time of the demolition Lorraine was suffering from a serious lung condition. Although we advised the Taskforce of Lorraine's health issue the Taskforce choose to ignore any of our concerns and went ahead with the demolition of the Barrow place property.</p>
	<p>Lorraine also contacted WorkSafe who advised that they would contact the safety officer who was on site however by the time we got to speak to someone from WorkSafe the site officer had already left the Barrow place property. When WorkSafe telephoned back they informed Lorraine that they would get the safety officer to go back to the site.</p> <p>No WorkSafe or Task Force member contacted us in relation to the demolition after we complained of the incident. It was more than a week later when Lorraine contacted WorkSafe to discuss what had happened before there was any contact. The officer the same officer who was on the Barrow place work site said that he would look into the issues raised and would phone back – he has never telephoned back - we are still waiting.</p>
	<p>During the demolition process neighbours in Barrow place contacted the EPA and WorkSafe to complain of clouds of dust and debris coming over our house (<i>Attachment: H - email attached</i>). To my knowledge there have been no satisfactory answers or apology for what occurred on 24 May 2016 (<i>Attachment: I - see pictures of contamination</i>).</p>
	<p>Approximately two hours after demolition started work on the Barrow place site stopped. Lorraine went outside and was covered in fine dust coming over our property from the demolition at 4 Barrow Place Lyons.</p>

	<p>WorkSafe were informed of what was happening and they stood by and did absolutely nothing.</p>
	<p>Neither WorkSafe nor the Taskforce gave any thought to the safety of our family or neighbours in relation to the demolition of 4 Barrow place or 19 Olympus Way Lyons (<i>Attachment: E & I – pictures of 19 Olympus Way</i>).</p> <p>We had written to the Taskforce with our health and safety concerns and we were ignored for our trouble.</p> <p>The house at 4 Barrow place was not wrapped in plastic despite the position of the house being close to our property; standing almost two floor levels above and looking down on our property.</p> <p>We informed PBS Constructions that because the house was above ours we needed more safety measures to stop dust and debris from coming onto our property which the attached pictures indicate it did. Our requests were ignored by the Taskforce, WorkSafe and the demolition contractors.</p>
	<p>We have never received any explanation for the lack of safety in the de-fit and eventually demolition of 4 Barrow place Lyons. It is our belief that the house was demolished in an unsafe and reckless manner out of sheer spite because we dare complain about the safety aspects of the demolition.</p>
	<p>Whilst WorkSafe and the Taskforce may take the view that the house at 4 Barrow place was performed in a safe manner according to the asbestos demolition guidelines and this may be so, however given the close proximity to our property and the height above our property of the Barrow Place house more safety measures were required to avoid the fall out that occurred on this demolition as indicated by the pictures attached.</p>