

Submission to the ACT Legislative Assembly, Public Accounts Committee

Inquiry into the proposed Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014–15

Kilcullen

The purpose of this submission is to argue that legislation relating to the demolition of houses contaminated by loose-fill asbestos should make several changes to the Government's announced plan.

But first I want to criticise the way the Government has gone about this. Until this present Inquiry, the ACT Government has given little or no opportunity for owners of asbestos-contaminated houses to say how they want the problem treated. We have never, at any stage, been asked any question by the Taskforce.


As far as we know, the Government has made no attempt to collect information about the different categories of people affected by their plans and the different ways in which they will be affected. The people affected have had to try to give this information in the process of criticising an already-announced plan, and so far the Government shows no sign of flexibility.

The attitude of ACT politicians seems to be that they are simply acting on expert advice, and their role is to explain patiently to disgruntled laypeople what the experts' plan is. On the contrary, politicians are responsible to the public for the value judgments embodied in the plan.

The Government's plan was made in secrecy and then sprung on the community. They have made effort to communicate their views to home owners, but the Government has not sought our views. The Government also has not made much effort to explain to the rest of the ACT community why they are being asked to contribute to the solution—hence some ill-informed "letters to the editor".

Thus the operation has not by any means been an example of "participatory planning" (http://en.wikipedia.org/wiki/Participatory_planning). It has not been "consultative", there has been no attempt to give people affected any "ownership" of the plan, there is no "buy in".

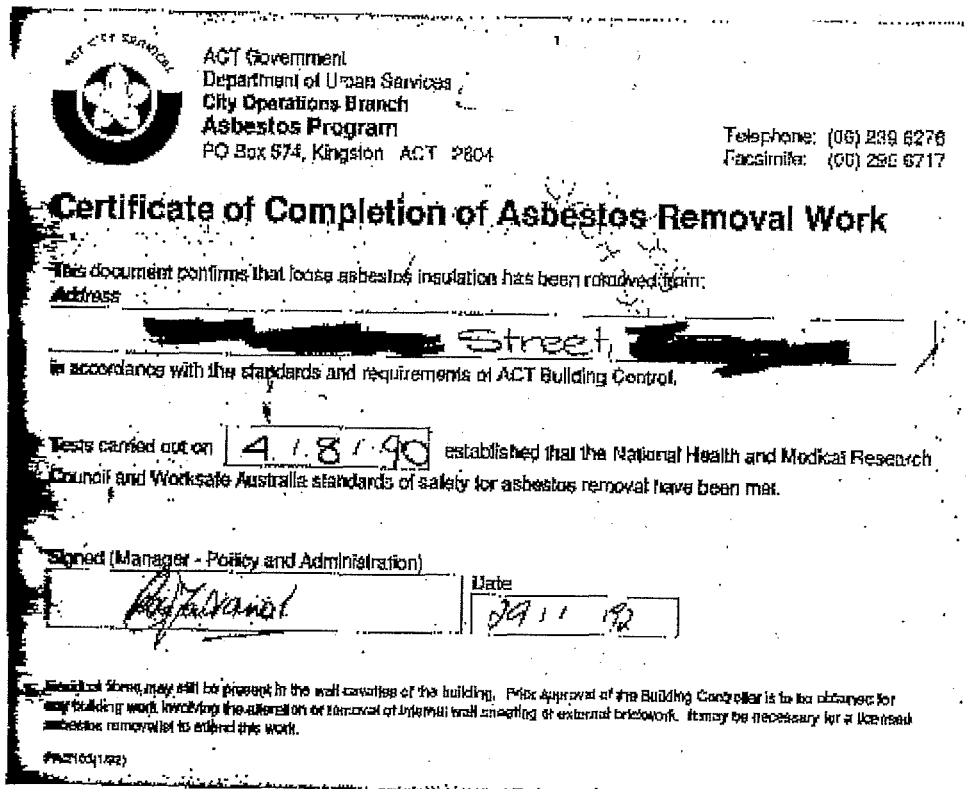
The Government describes the scheme as a voluntary buyback, but there will be compulsion later for those who fail to volunteer. Government spokespersons suggests that the law requires that if these houses are compulsorily acquired they must be valued with the asbestos taken into account—i.e. that the value must be the land value minus the cost of demolishing and removing the building. (The Government could amend the law regarding compulsory acquisition, but they give the impression that this is beyond their power.) The threat of compulsory acquisition at a low price is a gun held to owners' heads to make them volunteer.

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First change

The ACT Government should offer owners who want to do their own “knock-down-and-rebuild” *the same compensation it will give those who demolished their houses before 28 October 2014*, i.e. the cost of demolition and the value (without asbestos) of the building(s) that have to be demolished (See “Properties privately demolished between 18 February 2014 and 28 October 2014”, http://www.act.gov.au/data/assets/pdf_file/0008/654866/Policy-Framework-Final-Supporting-Detail-28102014.pdf).

Here is a copy of the Certificate we relied on when we bought our house:



ACT GOVERNMENT
Department of Urban Services
City Operations Branch
Asbestos Program
PO Box 574, Kingston ACT 2604

Telephone: (06) 239 6276
Facsimile: (06) 239 6717

Certificate of Completion of Asbestos Removal Work

This document confirms that loose asbestos insulation has been removed from:
Address: _____ Street, _____
in accordance with the standards and requirements of ACT Building Control.

Tests carried out on 4.1.81.90 established that the National Health and Medical Research Council and Worksafe Australia standards of safety for asbestos removal have been met.

Signed (Manager - Policy and Administration) _____ Date 19.11.12

Residual fibres may still be present in the wall cavities of the building. Prior approval of the Building Controller is to be obtained for any building work involving the alteration or removal of internal wall cladding or external brickwork. It may be necessary for a licensed asbestos removalist to attend this work.

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The small print reads: “Residual fibres may still be present in the wall cavaties [sic] of the building...”. In fact there were fibres not only in the wall cavities but in other places, including the cornices, from which asbestos has leaked into the living spaces in five rooms. The Certificate is seriously misleading. If we had not been misled by the Government’s assurance into thinking the asbestos had been successfully removed, we would not have bought the house. If the ACT Government does not properly compensate people who relied on this assurance, its assurances in future will not be believed.

So our main argument is in terms of fairness. Being forced to relocate is for some people, including us, a serious disadvantage. We bought the house in reliance on an assurance explicitly given by the ACT Government that the house was safe, which has turned out to be untrue. The Government’s plan to remedy the situation should not impose further disadvantage on people the Government misled.

My wife and I want the toxic building demolished, but we want to rebuild as soon as possible on our present block. We live close to other members of our family, we like

our neighbours and our neighbourhood, since 2001 we have put down roots in the local community. We moved from Sydney to the ACT to be close to our family. One of our daughters, her husband and two children are within easy walking distance. We eat together, the children visit us and play in our house and garden. Other members of our family who live overseas or in Tasmania visit Canberra occasionally and stay with us. We want to continue this way of life with minimal disruption, and therefore want to stay in our present location.

But the Government's plan does not give us the option of "knock-down-and-rebuild" on the same block, since it does not give us any compensation if we keep ownership of our block. To knock down and rebuild with no compensation would be prohibitively expensive.

If we had acted before 28 October we would have been compensated. Because we waited for the Government to announce their plan (and the Chief Minister thanked us for our patience) we will miss out and be forced to relocate. To offer compensation to some and not to others is inequitable.

We are told that we can sell to the Government and then buy back after they have demolished the buildings. This is not a good option for two main reasons:

- First, the price is unpredictable. Spokespersons for the Government have been telling us that real estate prices may well fall. But this is clearly not what they themselves expect. The Government's plan is predicated on the assumption that resales will return 70% of the total cost of the whole project—i.e. 70% of the cost of the buyback, plus the cost of the demolition, plus the costs of clearing the block, plus interest, plus administrative costs, etc. This implies that land prices will rise, since the return cannot be accounted for solely by profits from subdivision. They tell us that prices may fall, or not rise much, but they are suggesting to the rest of the community that prices will rise so much that land sales will yield \$700,000,000.
- Second, there is no assurance that the Government will sell the block back soon. The demolition program will take years, and beyond that the Government may hold the blocks while they wait (perhaps in vain) for land prices to rise.

So if we accepted the buy-back in the hope of repurchasing the block, we might have to wait for a long time and then find that the price is beyond us:

Ms Gallagher said 200 houses or more would be demolished a year. People would have the option of selling as soon as the scheme began, but if they wanted to return to their land, they might have to wait some time, with the program rolling out over years – perhaps suburb by suburb. They would have to pay market rate at whatever time the land was ready to be re-sold, she said, conceding that might be beyond the ability of some to afford. (<http://www.canberratimes.com.au/act-news/mr-fluffy-houses-will-be-demolished-says-chief-minister-katy-gallagher-20141028-11czbh.html#ixzz3Jdro2oLY>).

The average owner who repurchases under the present scheme can expect to pay not only 70% of what the Government paid them in the buy-back, but also 70% of all of the Government's other costs; the total may come close to the sum paid them in the buy-back. Repurchasers will have a scraped block with no building, and what they were paid in the buy-back will have been almost or quite eaten up.

It should be noted that it may not be financially disadvantageous to the ACT Government to compensate owners who knock down and rebuild without surrendering ownership. Their present plan commits the Government *to pay upfront*

the value of the whole property, land included, and they will be paying interest on this from the beginning until they resell the land at an uncertain price and time. On our proposal they would pay when the demolition took place only the cost of demolition and the value of the contaminated building, not the value of the land and other structures. I believe other submissions will make the same point. David Evans has suggested that the payments could be linked to progress payments on rebuilding; I agree with this.

Second change

For those who do accept the Government's buy-back offer but want to return and rebuild on the same block, the buy-back agreement should specify a *latest date* and a *maximum price* at which the current owners will be able to buy the property back, with a significant penalty to be paid by the Government to the current owners if the time limit is not met.

If it is for some reason (which we do not see) essential for the Government to acquire temporary ownership of the block, the ill effects would be less if the Government gave an assurance of price and time.

The penalty would have to be significant: otherwise the Government might give this assurance to persuade owners to "volunteer" to participate in the buy-back but then disregard the time limit.

Third change

The Government should clearly abandon the intention of "scraping" the blocks ("The block is essentially scraped, so the trees will go, the garden will go, the pool will go, everything will go" <http://www.canberratimes.com.au/act-news/mr-fluffy-houses-will-be-demolished-says-chief-minister-katy-gallagher-20141028-11czbh.html#ixzz3HPj4zJKV>). The destruction of mature trees and gardens is vandalism. The Government should instead promise not to destroy anything on the property *except what is necessary to make the block asbestos-free*.

It is not believable that destroying the trees and garden was ever thought to be necessary to eliminate asbestos. The purpose of "scraping" was to make the block attractive to developers. The Government should leave it to purchasers to do any clearing they want to do (subject to conservation rules); the sale price may be less, but the cost of preparing the block for sale will also be less.

A recent (undated) letter from the Chief Minister enclosed a "Response to concerns around the buyback", which says something seemingly different from her earlier statement: "The clearing of blocks will be evidence-based. Testing during the remediation process will determine the depth and area of soil/yard which needs to be removed. The government's expectations about the future treatment and resale of the block—including whether the original owner/s intend/s to repurchase—will also be considered."

The scientific-sounding phrase "evidence-based" is not at all reassuring, since evidence may mean evidence about what will maximise commercial return. The decisions should be based strictly on scientific information about what must be done to eliminate asbestos. The promise that the original owners' intentions will be "considered" is also not reassuring. Often governments "consider" and reject.

Ms Gallagher's recent letter and the "Response" do not anywhere acknowledge that some owners wish to retain ownership of their property while they demolish and rebuild. This line of opposition to her scheme is simply ignored. This surprises me, because in a letter she sent me on October 27 she wrote: "I know homeowners have clear views on what such a solution may look like and, [in your case], the preference is to have the option to stay on your current blocks. This is one of the key considerations before the ACT and Commonwealth governments...". Why has it dropped out of consideration?

The nearest Ms Gallagher's recent letter comes to answering our concerns is when she says: "I acknowledge that it does not offer everyone everything they want, but I must stress that to attempt to do so would make addressing this problem financially impossible". No one is so unreasonable as to ask that the plan "offer everyone everything they want". What we ask is that it include the option to stay on our current blocks.

The Government must acknowledge and specifically address the concern clearly raised by many of the people affected, that the current plan forces us to relocate permanently.

These are my contact details:

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