



Voluntary Unit Buyback Program Guidelines

LOOSE FILL ASBESTOS INSULATION ERADICATION SCHEME

July 2022

OVERVIEW

These Guidelines explain how units identified as containing or having contained loose fill asbestos insulation and were added to the Affected Residential Premises Register are managed. It provides information to owners of units who wish to participate in the ACT Government's buyback program as part of the Loose Fill Asbestos Insulation Eradication Scheme.

THE SCHEME

The ACT Government's Loose Fill Asbestos Insulation Eradication Scheme (Scheme) is designed to eradicate the ongoing exposure risks from the continuing presence of loose fill asbestos insulation in Canberra houses (including units). This will be achieved through the demolition of all affected houses and site remediation.

Under the Scheme the ACT Government has offered to purchase all affected Canberra houses (including units) to enable government facilitated demolition and site remediation. Remediated blocks will be offered for sale to assist in defraying overall Scheme costs. The Scheme is extended to cover Affected Units (see below for definition), with this extension to the Buyback Program being called the Unit Buyback Program.

Financial assistance toward demolition is not available to homeowners who choose not to participate in the Unit Buyback Program, or those who purchased an affected house or unit after it was added to the Affected Residential Premises Register (Register).

THE UNIT BUYBACK PROGRAM

Under the Unit Buyback Program, the ACT Government offers to buy all Affected Units in the ACT affected by loose fill asbestos insulation. The buyback offer is at market value of the unit on the date it was added to the Register and as if the unit does not contain loose fill asbestos insulation. Participation in the Unit Buyback Program is voluntary.

The Unit Buyback Program seeks to accommodate the personal circumstances of affected individuals and families.

The ACT Government's first advice remains that affected units should be vacated immediately. Whilst remediation works can be undertaken to make a unit safe in the short term, there is no effective, practical and affordable method to render units containing loose fill asbestos insulation safe to occupy in the long term.

Additionally, noting that participation in the Scheme is voluntary, the Government has made a standing offer to those not participating in the Scheme to be a 'purchaser of last resort'.

WHAT IS AN AFFECTED UNIT?

An Affected Unit is a Unit that contains, or has contained, loose fill asbestos insulation (Mr Fluffy).

Most Affected Units were part of the loose fill asbestos insulation survey and removal program undertaken by the Commonwealth and ACT Governments between 1988 and 1993.

Only the Loose Fill Asbestos Coordination Team (Coordination Team) determines whether a Unit is an Affected Unit.

The ACT Government has compiled and manages a publicly available list of affected properties, which includes blocks which are the subject of a Crown lease and Affected Units.

WHO IS AN ELIGIBLE HOMEOWNER?

An Eligible Homeowner is the person who owns the Affected Unit (that is, the title for the Affected Unit is registered in their name).

In legal terms, the Eligible Homeowner is the person who was the registered owner of an Affected Unit as at the date it is added to the Register and remains the registered owner at the time of purchase of the Affected Unit by the Territory. Where two or more people are the registered owners of an Affected Unit, as tenants in common or joint tenants, they are all Eligible Homeowners of that Affected Unit.

In addition, other persons may be considered by the Coordination Team to be Eligible Homeowners regardless of whether their interest arose before or after the date it was added to the Register. This might include:

- persons who became the registered owner of an Affected Unit as a result of inheritance from a deceased estate
- trustees (including executors of deceased estates)
- persons who have become the registered owner of an Affected Unit as a result of a settlement or orders made under the *Family Law Act 1975*
- mortgagee in possession of an Affected Unit due to default by the registered owner, and
- a liquidator, trustee in bankruptcy, administrator or other external administrator of the registered owner of an Affected Unit.

The Coordination Team will consider these applications on a case by case basis.

A person or company that purchases an Affected Unit after the date it is added to the Register has no entitlement to any assistance under the Scheme and is responsible for all costs associated with maintenance and/or demolition of the Affected Unit.

WHAT DO YOU GET?

As the registered owner of an Affected Unit added to the Register you may be entitled to a Relocation Assistance Grant to assist with the costs associated with moving out of an Affected Unit. For more information, please refer to the Relocation Assistance Grant Guidelines.

Additionally, should you choose to participate in the Unit Buyback Program and on the purchase of the Affected Unit, you will receive:

- the market value of your Affected Unit as at the date it is added to the Register, including improvements and as if the unit does not contain loose fill asbestos insulation. That value will be determined in accordance with the valuation process set out in this guide.
- an additional \$1,000 (inclusive of GST) to cover or contribute to legal fees incurred in attending to the sale process.
- a right to a waiver of stamp duty on a residential property purchased in the ACT, up to the value of the stamp duty calculated as if it was payable on the Affected Unit (as valued).

Where the Affected Unit was purchased under a contract exchanged within six months from the date it was added to the Register different rules will apply. The valuation process will not be used. The Eligible Homeowner of an Affected Unit will be paid the amount they paid for the Affected Unit. Generally, the Eligible Homeowner in that instance, will not be entitled to a waiver of stamp duty. These will be managed on a case by case basis.

WHAT DO YOU GIVE UP?

In exchange for the benefits that are provided by the Territory above, you will give up certain rights in respect of the Affected Unit.

- your interest in the Affected Unit will be sold with ownership of the Affected Unit passing to the Territory. You will no longer own the Affected Unit, or be entitled to live in or rent the Affected Unit.
- a condition of the buyback offer is that you waive your right to pursue legal action against the Territory and the Commonwealth in relation to any financial loss as a result of purchasing, living in or any other interest in the Affected Unit. This waiver does not include any sickness or health claims that you or any other person may have as a result of living in or being exposed to contamination in the Affected Unit.

RIGHT OF FIRST REFUSAL

Unlike single houses, the Territory is not in a position to provide you with a first right of refusal to purchase a reinstated unit. Following completion of the buyback process the Territory will need to negotiate with the Owners Corporation for the Units Plan in which

your Affected Unit is located regarding options for future development. The outcome of those negotiations will determine the future actions regarding the unit, including demolition and possible reinstatement. The outcome of any such process is presently not known. Reinstatement of the Affected Unit is not guaranteed and resolution of complex legal and technical issues will take some time.

For similar reasons the purchase process is likely to be lengthy.

VALUATION PROCESS

In making an application under the Unit Buyback Program, you agree to the Australian Property Institute (API) arranging for your Affected Unit to be valued by two independent valuers.

You will need valuations unless the Affected Unit was the subject of a completed contract for sale entered into six months prior to the Affected Unit being added to the Register. In that case, the value set out in the contract for sale will be the value of the Affected Unit for the purposes of the Unit Buyback Program. In all other cases, soon after your application is accepted, you will be contacted by two valuers to arrange a time to attend your Affected Unit to value it.

As the valuers will need access to your unit, you will need to arrange a time with each of them to attend and for somebody to allow access and inspection. You should provide the valuers with any asbestos assessment report you have for the Affected Unit. If the Coordination Team holds an asbestos assessment report it may provide this to the API for the information of the allocated valuers. It is possible valuers may wear personal protective equipment during the valuation of some units.

Market value

The valuers will assess your Affected Unit at market value as at the date your unit was added to the Register.

The valuers will ignore the presence of loose fill asbestos and minor maintenance or presentation issues, especially where units have been vacated as a result of asbestos contamination. Please do not return to vacated units to attend to internal presentation issues.

There is no need for you to undertake cosmetic and minor improvements before the valuations, for example painting and updating fittings. Anything more than this, such as replacing carpets, window furnishings, bench tops and vanities should not be undertaken given the potential risks associated with this work for residents and contractors. In any event these works are likely to require prior building approval and supervision by licensed asbestos experts (regardless of whether you undertake this work yourself or engage a contractor).

As the valuers will value your Affected Unit as it was on the date it was added to the Register, any improvements undertaken after that date will not be considered. The

valuation includes fixtures and fittings that would normally pass with the property. Generally, any complete unapproved structures will be valued as approved structures.

The valuation will take into account all other defects and other forms of contamination.

The independent valuation

The two valuations will be undertaken by experienced and qualified valuers selected by the API, a non-government body. The Coordination Team has no say in the selection of the particular valuers for each Affected Unit who will be selected based on local area expertise and availability.

The two valuers will prepare their reports independently of one another and will provide the reports to you at the same time as they provide them to the Coordination Team. The Coordination Team will not have access to any draft reports from the valuers.

After both valuations are received by you and the Coordination Team, the Coordination Team will formalise the buyback offer in a letter, with the contract price being the average of the two valuations, and seeking your advice on whether you would like to:

- accept the offer; or
- request a third and final binding valuation, known as a ‘Presidential Determination’; or
- decline the offer.

You will need to elect the option you would like to take by checking the appropriate box on the supplied Election Form and return it to the Coordination Team by post or email within 30 working days. Further information will be provided with the form to assist you in reviewing your choices.

Accept, appeal or decline

If you elect to accept the offer, the Coordination Team will arrange for a contract for sale to be drawn up and provided to your nominated solicitor.

Alternatively, you can reject both valuations and at your choice and cost, request a third and final binding valuation from a senior valuer appointed by the President of the API. This is known as a “Presidential Determination”. You will be bound by this determination, even if it is lower than the formally offered amount.

If you request a Presidential Determination, you will be required to pay the cost of that valuation.

If you wish to provide any further evidence or material to be considered as part of the Presidential Determination (for example, other valuations, receipts or invoices of works done to the affected block or submissions you have prepared), you will need to provide those documents at the time you make the election for a Presidential Determination.

Alternatively, you may elect not to proceed with the buyback process any further by indicating that preference on the form.

You have 30 working days from the date of the letter to return the election form to the Coordination Team. If you do not return the form within that time, your application will lapse and you will have no further opportunity to participate in the Unit Buyback Program.

Government nominated Presidential Determination

If there is a difference of ten percent (10%) or more in the two valuations, the Coordination Team may request a Presidential Determination. In that case, the Coordination Team will pay the costs of the Presidential Determination.

If the Coordination Team does seek a Presidential Determination, you will be sent a different form notifying you of this and setting out details of the process. This will include your right to provide additional material to support your views on the fair value of the Affected Unit.

If either party requests a Presidential Determination, the API President will appoint a senior valuer (not involved in the first two valuations) to conduct a third and final valuation. The Presidential Valuer will make an appointment with you to undertake a further inspection of the Affected Unit.

The Presidential Valuer will assess the market value of the Affected Unit on the same basis as the initial valuers, however, in addition to their own inspection, the person conducting the Presidential Determination will have access to the two initial valuations and will take them into consideration in preparing a valuation.

Where a Presidential Determination is undertaken, it will determine the value of the Affected Unit and this determination will be final.

Neither party is entitled to go back and rely on the previous valuations.

Following a Presidential Determination, you will be sent a further form indicating the final valuation and asking you whether you wish to proceed with the sale. You have 30 working days from the date of the new offer to make an election and return the form to the Coordination Team. If you do not return the form within that time, your application will lapse and you will have no further opportunity to participate in the Unit Buyback Program.

SALE PROCESS

Once the value of the Affected Unit is determined and you have elected to proceed with the sale process, the following process will apply.

A contract for sale will need to be prepared for the Unit. That contract would normally be prepared by your solicitor representing you as the seller – however in this instance the solicitor for the Territory will prepare the contract to reduce your obligations and legal fees. The Territory will also organise the obtaining of the required documents which by law the *Civil Law (Sale of Residential Property) Act 2003* must form part of the contract and the Territory will meet the cost of obtaining those documents.

You (or your solicitor) may also be asked to provide an authority to the Territory and its solicitor to inspect the records held by the Owners Corporation.

Once the above process is complete the Coordination Team's solicitor will send your nominated solicitor (or you, if not being legally represented):

- a contract for sale of the Affected Unit
- a deed in which you agree to release the Territory and the Commonwealth from certain future action
- statutory declarations (where applicable), and
- a template certificate of independent legal advice.

Please note that an important consideration in electing to sell the Affected Unit, is that you will not be able to walk away once the contract for sale has been exchanged. Once the contract for sale is exchanged you will be required to sell the Affected Unit.

You will need to sign the contract, the deed and the statutory declarations (where applicable) and have a solicitor complete and sign the certificate of independent legal advice for each Eligible Homeowner of the Affected Unit. To assist in meeting your legal costs, the amount you will be paid as the contract price will include \$1,000 in addition to the valuation of the Affected Unit.

Please note that the Coordination Team's contribution towards your legal costs is \$1,000, regardless of the amount your solicitor charges you and any applicable Goods and Services Tax (GST).

You will need to provide the documents back to the Coordination Team within 30 working days of receiving them, otherwise your application will lapse and you will have no further opportunity to participate in the Unit Buyback Program.

Once you have provided the documents to the Coordination Team, our solicitors will provide your solicitor (or you, if not being legally represented) with a counterpart contract for sale executed by the Territory to complete the sale of the Affected Unit and pay you the contract price.

The Coordination Team the date of settlement will be 20 working days from the date you return the executed contract and deed and completed solicitor's certificate. If you are in a position to complete in less than 20 working days, the Coordination Team will make every effort to accommodate your request. Prior to entering into the contract for sale you may request a longer period in which to complete. This may be important if you need to find new accommodation or need to coordinate settlement dates on the purchase of a new home.

If you have a mortgage or any other person has an interest in the Affected Unit, you will need to arrange for those interests to be removed before or on the settlement date. Your solicitor will be able to advise you of the necessary steps.

If you do not make these arrangements, the Coordination Team may not accept the settlement on the scheduled day and you may have to arrange another date for settlement. You may be charged a fee, in line with normal conveyancing practice, reflecting the Territory's legal costs if you fail to settle within five working days following the scheduled date for settlement.

If you do not complete the settlement process on the scheduled date, the Coordination Team may notify you to complete within a further 14 working days. If you still have not settled on the Affected Unit by that time, the Coordination Team may terminate the contract for sale. You will also have a right to terminate if the Territory does not comply with its obligations under the contract for sale.

STATUTORY DECLARATIONS

Depending on the information that you provide in your application, you may be provided with one or more statutory declarations to be completed by each Eligible Homeowner to establish that:

- you have not exchanged a contract for sale for the Affected Unit as a seller. Legally, this means that the Affected Unit has not been the subject of a sale agreement that was signed but not settled. This includes any contract which was terminated or rescinded whether or not as a result of the discovery of contamination, and/or
- the premises are not currently occupied under a residential tenancy agreement, i.e. that the unit is not currently rented or occupied by tenants.

If you have indicated on your application that you have entered into a contract to sell the Affected Unit or indicated that the Affected Unit is currently occupied under a residential tenancy agreement, you will not be required to provide the relevant declaration(s).

If the Affected Unit was the subject of a contract for sale and you have kept any payment in respect of that sale (including all or part of any deposit) the amount to be paid to you under the Unit Buyback Program will be reduced by the value of those payments and the amount may be paid to the former buyer.

If the Affected Unit is currently tenanted, the Coordination Team will need to confirm that vacant possession will be provided to the Territory on the completion date.

CERTIFICATE OF INDEPENDENT ADVICE

Each Eligible Homeowner will need to provide a certificate of independent legal advice signed by your solicitor. That certificate will confirm the solicitor provided you with advice as to the nature of the sale, the contents of the associated deed and your rights and obligations.

HOME CONTENTS

The valuation will not take into consideration any removable goods and personal belongings, even if they are contaminated and are left behind on completion.

Apart from the Relocation Assistance Grant, the ACT Government is not providing assistance to compensate or reimburse for any household goods or possessions. Information about the Relocation Assistance Grant can be found at www.loosefillasbestos.act.gov.au.

You or your tenants should make enquiries with your home contents or landlord insurer in relation to the scope and coverage of your insurance policy in relation to household goods and personal belongings.

YOUR RESPONSIBILITIES PRIOR TO THE SETTLEMENT DATE

You are still the owner of the Affected Unit until the date of settlement. This means you still have legal obligations to ensure that it is safe and does not pose a risk. You may also have obligations in relation to the Owners Corporation (also known as Body Corporate) for your complex.

Insurance

The Coordination Team strongly encourages you to keep in place any contents policy you may have for the Affected Unit insured until the date of settlement. It is noted your Owners Corporation should have taken out insurance for the physical structures comprising your unit.

General maintenance and hazards

You are required to manage your property and undertake normal maintenance. You should also take prudent steps to minimise potential hazards, especially if you have moved out. You should:

- ensure your warning sticker tag is attached to the switchboard and meter box as required by law
- undertake routine checks of the unit, particularly following storms or high wind
- ensure that the grass is mowed, and gutters are cleared to minimise fire risks
- securely lock the premises to deter thieves, vandals, squatters and other uninvited persons
- secure swimming pools and other water features
- ensure that you or other people do not dump waste, garbage or other materials on the Affected Unit, and
- remove any goods you wish to take with you, consistent with the Surrender Process: Fixtures and Fittings information sheet and guidance from the Contents and Soft Furnishing information sheet.

On the date of settlement you are required to hand over a reasonably clean site (save for asbestos contamination and household items you have left behind). The Coordination Team may not settle if the block contains other waste or is unsafe. If settlement needs to be rescheduled because of the condition of the property, (for example, excessive waste or other goods dumped outside the unit) or safety issues, you may be required to pay additional fees.

You are free to leave any household items that you consider contaminated in the Affected Unit after the date of completion and the Coordination Team will dispose of these as part of the decontamination process (provided such items were part of the contents of the Affected Unit prior to completion).

PERMIT TO RETURN TO THE PROPERTY

At the time of settlement you may apply for an access permit. This permit will allow you to return to your former property for up to five days in order to finalise the relocation of your belongings. You will not be permitted to occupy or sleep at the property. You can apply for

this permit by advising your solicitor of this request in the lead up to the settlement of the affected property.

STAMP DUTY

Eligible Homeowners who sell an Affected Unit under the Unit Buyback Program are entitled to a waiver of stamp duty on the purchase of a residential dwelling in the Territory. The value of the waiver will be equal to or less than the amount of duty payable on the contract price of the Affected Unit.

It is important to note that the stamp duty waiver is not available if you are purchasing property interstate and cannot be cashed out if the actual duty payable on your new property is less than the waiver amount.

The stamp duty waiver may only be used once, but is not required to be used on the next purchase of land in the Territory.

To exercise the stamp duty waiver on entering into a contract to purchase a home in the Territory you must claim the waiver when lodging the contract for duty assessment with ACT Revenue.

If the value of the new dwelling exceeds the assessed value of the Affected Unit, you will be liable to pay the stamp duty on the assessed value of the new dwelling, less the amount available under the waiver.

However, no credit or refund will be available should the value of the new dwelling be less than the assessed value of the Affected Unit.

A single waiver of stamp duty is available for each Affected Unit regardless of the number of tenants in common or joint tenants who were Eligible Homeowners.

If you were either a joint tenant or tenant in common of the Affected Unit at the time of completion of the sale you must either:

- obtain the consent of all other joint tenants or tenants in common of the relevant Affected Unit at the date of settlement to use the waiver on the new purchase, or
- produce orders from a court authorising the use of the stamp duty waiver notwithstanding the absence of consent from all other joint tenants or tenants in common of the relevant Affected Unit at the date of settlement.

You will be required to sign a statutory declaration that the stamp duty waiver in respect of your Affected Unit has not been claimed previously.

PROCESS FOLLOWING SALE OF AFFECTED UNIT

Once the sale of the Affected Unit is completed it will be secured by the Territory until the future of the unit can be determined in conjunction with the Owners Corporation.

DEFINITIONS

Affected Unit – a unit listed on the Affected Residential Premises Register (the Register) established under the *Dangerous Substances Act 2004*.

Buyback Program – the Buyback Program for Affected Properties under the Loose Fill Asbestos Insulation Eradication Scheme.

Scheme – the Loose Fill Asbestos Insulation Eradication Scheme.

Unit* – A unit in a Units Plan governed by the *Unit Titles Act 2001*.

** Where a property is part of a unit plan which includes an Affected Property listed on the Register, the common title for all Units (but not the individual unit titles) now records that the block is a loose fill asbestos affected block. This ‘administrative interest’ statement cannot be removed from the common title until the affected Unit is demolished, remediated and removed from the Register.*

FURTHER INFORMATION

Call Access Canberra on 13 22 81 and ask to speak with the Loose Fill Asbestos Coordination Team, or email loosefillasbestos@act.gov.au.

ACCESSIBILITY

The ACT Government is committed to making its information, services, events and venues as accessible as possible. If you have difficulty reading a standard printed publication and would like to receive this publication in an alternative format, such as large print, please phone 13 22 81 or email loosefillasbestos@act.gov.au.



If English is not your first language and you require a translating and interpreting service, please phone 13 14 50 and ask for 13 22 81.

If you are deaf, or have a speech or hearing impairment, and need the teletypewriter service, please phone 13 36 77 and ask for 13 22 81.

For speak and listen users, please phone 1300 555 727 and ask for 13 22 81. For more information on this service visit www.relayservice.com.au.