



Voluntary Buyback Program Guidelines

LOOSE FILL ASBESTOS INSULATION ERADICATION SCHEME

March 2023

OVERVIEW

These Guidelines provide information about the voluntary Buyback Program for individually titled properties added to the Affected Residential Premises Register. The information is applicable to Eligible Homeowners of affected houses located on individual Crown Lease blocks of land.

It does not apply to units in a Units Plan governed by the *Unit Titles Act 2001* and that are managed through the Voluntary Unit Buyback Program Guidelines for unit titled properties.

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. 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 to enable government-facilitated demolition and site remediation. Remediated blocks are then offered for sale to assist in defraying overall Scheme costs.

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

THE BUYBACK PROGRAM

Under the Buyback Program, the ACT Government offers to buy all houses in the ACT affected by loose fill asbestos insulation. The buyback offer is at the market value of the property on the date it was added to the Register and as if the house does not contain loose fill asbestos insulation. Participation in the Buyback Program is voluntary. However, once a homeowner opts into the Buyback Program, the homeowner must surrender the property to the ACT Government.

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

The ACT Government's first advice remains that affected properties should be vacated immediately. Whilst remediation works can be undertaken to make a property safe in the short term, there is no effective, practical and affordable method to render houses 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 BLOCK?

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

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

An affected block is the land (that is the subject of a Crown Lease) on which the affected house is built. Only the ACT Government determines whether a block is an affected block.

The ACT Government has compiled and manages a publicly available list of affected blocks.

WHO IS AN ELIGIBLE HOMEOWNER?

An Eligible Homeowner is the person who owns an affected block.

In legal terms, the Eligible Homeowner is the person who is the registered Crown Lessee of an affected block as at the date it is added to the Register and remains the registered Crown Lessee at the time of the surrender of the affected block. Where two or more people are the Crown Lessees, as tenants in common or joint tenants, they are all Eligible Homeowners of that affected block.

In addition, other persons may be considered by the Loose Fill Asbestos Coordination Team (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 Crown Lessee of an affected block as a result of inheritance from a deceased estate
- trustees (including executors of deceased estates)
- persons who have become the registered Crown Lessee of an affected block as a result of a settlement or orders made under the *Family Law Act 1975*
- mortgagee in possession of an affected block due to default by the registered Crown Lessee, and
- a liquidator, trustee in bankruptcy, administrator or other external administrator of registered Crown Lessee of an affected block.

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

A person or company that purchases an affected block 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 house.

WHAT DO YOU GET?

As the Crown Lessee of an affected block 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 property. For more information, please refer to the Relocation Assistance Grant Guidelines.

Additionally, should you choose to participate in the Buyback Program, on the surrender of the Crown Lease for the affected block, you will receive:

- the market value of your affected block (house and land) as at the date it was added to the Register, including improvements and as if the house 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 surrender.
- 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 block (as valued).
- a first right of refusal to purchase the affected block (at full market value, to be determined at the time of purchase) after it is remediated.

Where the contract for sale for an affected block has exchanged but not settled before the date the block was added to the Register, different rules will apply. The valuation process will not be used. The Eligible Homeowner of the affected property will be paid the amount they paid for the affected property. 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 block.

- your interest in the affected block is surrendered. You will no longer be the registered owner/Crown Lessee i.e. you will no longer own the house and land, or be entitled to live in the house or on the land. The surrender is equivalent to the sale of residential property.
- 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 block. 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 home.

VALUATION PROCESS

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

You will need valuations unless the affected block was the subject of a completed contract for sale entered into six months prior to the affected property being added to the Register. In that case, the value set out in the contract for sale will be the value of the affected block for the purposes of the 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 home to value it.

As the valuers will need access to your home, 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 home. 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 homes.

Market value

The valuers will assess your house and land at market value as at the date your property was added to the Register.

The valuers will ignore the presence of loose fill asbestos and minor maintenance or presentation issues, especially where homes have been vacated as a result of asbestos contamination. Please do not return to vacated homes 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, benchtops 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 home as at 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 engaged by the API, a non-government body. The Coordination Team has no say in the selection of the

particular valuers for each affected property 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 surrender sum 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 deed of surrender 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 formerly 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 surrender 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 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 block.

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 block.

The Presidential Valuer will assess the market value of the affected block 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 block 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 surrender. 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 Buyback Program.

SURRENDER

Once the value of the affected block is determined and you have elected to proceed with the surrender process, the Coordination Team's solicitor will send your nominated solicitor (or you, if not being legally represented):

- a deed of surrender
- statutory declarations (where applicable), and
- a template certificate of independent legal advice.

Please note that an important consideration in electing to sign the Deed, is that you will not be able to walk away once the Deed has been exchanged. Once the Deed is exchanged you will be required to surrender the affected property.

You will need to sign 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 block. To assist in meeting your legal costs, the amount you will be paid as the surrender sum will include \$1,000 in addition to the valuation of the affected block.

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 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 deed of surrender executed by the Territory to complete the surrender of the affected block and pay you the surrender sum.

The Coordination Team estimates the date of surrender will be 20 working days from the date you return the executed deed and completed solicitor's certificate. If you are in a position to surrender in less than 20 working days, the Coordination Team will make every effort to accommodate your request. Prior to entering into the surrender deed 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 if any other person has an interest in the affected block, you will need to arrange for those interests to be removed before or on the surrender 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 surrender on the scheduled day and you may have to arrange another date for surrender. You may be charged a fee, in line with normal conveyancing practice, reflecting the Territory's legal costs if you fail to surrender within five working days following the scheduled date for surrender.

If you do not complete the surrender process on the scheduled date, the Coordination Team may notify you that you must complete within a further 14 days. If you still have not surrendered the affected block by that time, the Coordination Team may terminate the deed of surrender or enforce the surrender process by court order. If court proceedings are required to enforce the surrender process, you may be liable for court fees and the Territory's legal costs. You will also have a right to terminate if the Territory does not comply with its obligations under the surrender deed.

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 block as a seller. Legally, this means that the affected block 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 home 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 block or indicated that the affected block is currently occupied under a residential tenancy agreement, you will not be required to provide the relevant declaration(s).

If the affected block 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 the Eligible Homeowner under the Buyback Program will be reduced by the value of those payments and the amount may be paid to the former buyer.

If the affected block is currently tenanted, the Coordination Team will need to confirm that vacant possession will be provided to the Territory on the surrender 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 surrender and your rights and obligations.

HOME CONTENTS

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

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 SURRENDER DATE

You are still the owner of the affected block until the date of surrender. This means you still have legal obligations to ensure that it is safe and does not pose a risk.

Insurance

The Coordination Team strongly encourages you to keep the affected block insured until the date of surrender. While some insurance policies exclude asbestos contamination, insurance is still required, for example, to recover damage as a result of storms, fire, break and entry and vandalism.

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 the warning sticker tag provided with this Guide is attached to the switchboard and/or meter box as required by law
- undertake routine checks on your property, 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 block, 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 surrender 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 accept the surrender if the block contains other waste or is unsafe. If the surrender date needs to be rescheduled because of the condition of the property, (for example, excessive waste or other goods dumped outside the home) 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 house after the date of surrender 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 block prior to surrender).

PERMIT TO RETURN TO THE PROPERTY

At the time of surrender 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 surrender of the affected property.

STAMP DUTY

Eligible Homeowners who surrender an affected block under the 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 surrender sum of the affected block.

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. In particular, if you are planning to buy back your former affected block you may wish to retain the waiver for that purpose even if you buy a new home in the meantime.

However, if you choose to use the waiver on the purchase of your former block you will be required to declare that you will be using that block for your own occupation (not as an investment property or to on-sell).

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 block, you will be liable to pay the stamp duty on the assessed value of the new dwelling, less the amount available under the concession.

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

A single concession of stamp duty is available for each affected block 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 block at the time of surrender you must either:

- obtain the consent of all other joint tenants or tenants in common of the relevant affected block at the date of surrender 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 block at the date of surrender.

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

PROCESS FOLLOWING SURRENDER OF AFFECTED PROPERTY

Once the affected block is surrendered to the Territory it will be secured in preparation for management by the Territory. This will involve the demolition of the affected house and any unapproved structures, as well as the removal of contaminated soil and other material.

If you have indicated a desire to repurchase your block, you will be offered a first right of refusal at the market value at the time it is offered for sale. This value will be informed by qualified, independent valuers based on the best and highest use of the block.

You will be entitled to use your stamp duty waiver on the purchase of your former block, provided you have not used it in the meantime, and you will be building a home on that block for your own occupation.

If you do not purchase your former block, the ACT Government will consider whether it is suitable for public housing or other residential use by the Territory or the Commissioner for Social Housing. If not, it will be offered for sale under the Territory's land release program to the general public.

TERMS USED IN THIS GUIDE

Affected Property – a property 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.

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.