



Voluntary Eligible Impacted Property Buyback Program Guidelines

LOOSE FILL ASBESTOS INSULATION ERADICATION SCHEME

March 2023

OVERVIEW

These Guidelines explain how the voluntary Eligible Impacted Property Buyback Program will be administered. This document explains the process to be followed by the ACT Government in assessing whether a property is deemed an Eligible Impacted Property and also explains the process for owners of Eligible Impacted Properties who choose to participate in the voluntary Eligible Impacted Property Buyback Program.

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 and a small number of units/townhouses. This will be achieved through the demolition of affected houses and site remediation.

Under the Scheme the ACT Government has offered to purchase all Affected Properties. A small number of Affected Properties share a wall, roof space or sub-floor space with one or more adjoining properties. In these cases, it has not always been possible to safely and efficiently demolish the Affected Property and completely remove the risks of loose fill asbestos insulation unless some, or all, of the adjoining property is demolished. These properties are considered to be 'Potentially Impacted Properties'.

The Loose Fill Asbestos Coordination Team (Coordination Team) will consider whether it is necessary to purchase a Potentially Impacted Property in order to facilitate the safe and efficient demolition of an Affected Property acquired under the Scheme's Buyback Program. A property becomes an Eligible Impacted Property where it meets the matters for consideration set out in these Guidelines. The Coordination Team offers to purchase Eligible Impacted Properties in accordance with these Guidelines.

The Eligible Impacted Property Buyback Program and associated financial assistance only applies to Eligible Impacted Properties. The Coordination Team will not seek to acquire Potentially Impacted Properties where the owner of the neighbouring Affected Property is not participating in the Buyback Program.

WHAT PROPERTIES ARE ELIGIBLE

A property is only able to be acquired through the voluntary Eligible Impacted Property Buyback Program where it has been assessed by the Coordination Team and determined to be an Eligible Impacted Property in accordance with these Guidelines.

WHAT DO YOU GET?

Under the Eligible Impacted Property Buyback Program, the Coordination Team offers to purchase an Eligible Impacted Property at an independently determined market value. The property will be valued at market value, ignoring the fact that the neighbouring property is an Affected Property marked for demolition but will otherwise assess the dwelling in its current state, using the same valuation process as utilised under the Scheme's Buyback Program for Affected Properties.

The Eligible Impacted Property will undergo two independent valuations. It will be valued at the date the property was deemed Eligible Impacted by the responsible Minister.

However, where the Eligible Impacted Property was purchased under a contract for sale, exchanged within six months immediately preceding the valuation date, different rules will apply. The valuation process will not be used. The contract price for that sale will form the offer price for the Eligible Impacted Property Buyback Program.

The owner of an Eligible Impacted Property may be eligible for:

- 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 Eligible Impacted Property.
- an additional \$1,000 (inclusive of GST) to cover or contribute to legal fees in attending to the sale process.
- an additional \$5,000 (inclusive of GST) towards removal and other relocation costs, payable once the property has been vacated. This assistance is available to tenants or owner occupiers.
- a first right of refusal to purchase the Eligible Impacted Property (at full market value, to be determined at the time of purchase) after it is remediated. However, First Right of Refusal is not available to owners of Units.

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 Eligible Impacted Property:

- your interest in the property will be sold with ownership of the Eligible Impacted Property passing to the Territory. You will no longer be the registered owner/Crown lessee i.e. you will no longer own the house and land or Unit (as applicable), or be entitled to live in the dwelling or on the land.

- a condition of the 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 Eligible Impacted Property. 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 property.

HOW IS A PROPERTY ASSESSED?

The Coordination Team's decision on whether or not a Potentially Impacted Property is an Eligible Impacted Property is made on a case by case basis once – and only when – the owner of the Affected Property has agreed to surrender the Crown lease of the Affected Property or sell the Affected Property to the Territory (if a unit), and is guided by the following considerations:

- whether the dwelling is structurally dependent on or shares part of a structure (such as roof or sub-floor) with the associated Affected Property
Note: Where the associated Affected Property and its neighbouring property are structurally separate, the neighbouring property will generally not be deemed to be an Eligible Impacted Property.
- whether there are migration pathways identified between the Potentially Impacted Property and the associated Affected Property.
- whether loose fill asbestos insulation is found in the Potentially Impacted Property
Note: The Coordination Team will consider whether there are migration pathways with an associated Affected Property that present a reasonable likelihood of loose fill asbestos insulation migration. In some cases the Coordination Team may seek to undertake an asbestos investigation to help inform this consideration.
- whether the structure and/or location of the Potentially Impacted Property poses an obstacle to efficient demolition of the associated Affected Property
Note: The Coordination Team will consider whether the associated Affected Property can be demolished without the process adversely affecting the structural integrity and safety of other properties, and whether these effects can be cost-effectively, safely and adequately mitigated.
 In some cases a dwelling that does not share a wall or other structure with an Affected Property may nevertheless pose an impediment to the safe, efficient or practical demolition of the Affected Property.

PARTICIPATION OF THE AFFECTED PROPERTY

The timing of the demolition of an Eligible Impacted Property will be determined, in part, by the date on which the owner of the associated Affected Property is required to surrender their Affected Property under the Buyback Program.

However, if the owner of the associated Affected Property chooses not to participate in the Scheme's Buyback Program, the Potentially Impacted Property will not be deemed to be an Eligible Impacted Property and the Coordination Team will not offer to acquire the Potentially Impacted Property.

WHAT IS THE PROCESS FOR THE ELIGIBLE IMPACTED PROPERTY BUYBACK PROGRAM?

The process comprises six steps:

- Step 1. **Contact the owner:** If it is determined that a dwelling is an Eligible Impacted Property, the Coordination Team will advise the owner of this in writing, make contact to discuss the process, see whether the owner is potentially interested in selling and invite them to apply for the Eligible Impacted Property Buyback Program.
- Step 2. **Application:** If the owner is interested and would like their property to be valued, they must complete an application form and submit it to the Coordination Team within 20 working days from the date of the letter from the Coordination Team to participate in the Eligible Impacted Property Buyback Program.
- Step 3. **Valuation:** The Eligible Impacted Property will undergo two independent valuations. The property will be valued at the date the property was deemed Eligible Impacted by the responsible Minister.

Valuations will be coordinated by the Australian Property Institute (API). Valuations will be at market value, ignoring the fact that an associated property is an Affected Property marked for demolition but will otherwise assess the property in its current state. Time taken to conduct valuations will depend on the availability of the valuers and the homeowner.
- Step 4. **Offer:** The Coordination Team will make an offer to purchase the Eligible Impacted Property, with the offer price based on the average of the two independent valuations. However, where the property was purchased under a contract for sale, exchanged within six months immediately preceding the valuation date (being the date the property was deemed as Eligible Impacted as determined in Step 3), the contract price for that sale will form the offer price for the Eligible Impacted Property Buyback Program. The homeowner will have 30 working days to accept the offer to sell the Eligible Impacted Property to the Territory, after which the offer will lapse.
- Step 5. **Exchange:** If the owner agrees to sell and accepts the offer, a contract for sale is exchanged and a settlement date is agreed. Settlement will need to occur within 12 months from the date the property was deemed as an Eligible Impacted Property by the responsible Minister.

Step 6. Settlement: On the agreed date, sale of the property is settled. Payment is then made and the property is then owned by the Territory.

VALUATION PROCESS

In accepting the invitation to participate in the Eligible Impacted Property Buyback Program by lodging an application form, you agree to the Australian Property Institute (API) arranging for your Eligible Impacted Property to be valued by two independent valuers.

You will need valuations unless the Eligible Impacted Property was purchased under a contract for sale, exchanged within the six months immediately preceding the valuation date (being the date the property was deemed as Eligible Impacted as determined in Step 3 of the Buyback Process). In that case, the value set out in the contract for sale will be the value of the Eligible Impacted Property for the purposes of the Eligible Impacted Property Buyback Program.

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 your 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 home's market value at the date the property was deemed Eligible Impacted by the responsible Minister.

The valuers will ignore the fact that an associated property is an Affected Property, but will otherwise assess your home in its current state. The valuations include fixtures and fittings that would normally pass with the property. Notwithstanding their inclusion for valuation purposes, you will be permitted to remove fixtures and fittings on settlement, provided doing so does not create a safety hazard (e.g. structural, electricity, gas) or asbestos exposure risk by exposing potentially contaminated building cavities. Guidance will be provided on what can be removed.

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 property who will be selected based on local area expertise and availability.

The two valuers will prepare their reports independently of one another and 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 (consistent with the wider Buyback Program), 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 a contract for sale to be drawn up and provided to your 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 property 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 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 Eligible Impacted Property 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 property.

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 property.

The Presidential Valuer will assess the market value of the property 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 property 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 Eligible Impacted Property Buyback Program.

SALE PROCESS

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

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

Please note that an important consideration in electing to sell the Eligible Impacted Property, 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 Eligible Impacted Property.

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 Impacted Homeowner of the Eligible Impacted Property. 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 property.

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 Eligible Impacted Property Buyback Program.

Once you have provided the documents to the Coordination Team, our solicitors will provide your solicitor (or you, if you are not being legally represented) with a counterpart contract for sale executed by the Territory complete the sale of the property and pay you the contract price. You should note that, unlike a normal sale of property, the Coordination Team will not pay a deposit on exchange of the contract for sale and the full contract price will be paid to you on settlement.

The Coordination Team estimates 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 property, 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 days. If you still have not settled on the property by that time, the Coordination Team may terminate the contract for sale or enforce the sale process by court order. If court proceedings are required to enforce the sale 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 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 Impacted Homeowner to establish that:

- you have not exchanged a contract for sale for the property as a seller. Legally, this means that the property has not been the subject of a sale agreement that was signed but not settled. This includes any contract which was terminated or rescinded for any reason, and/or
- the premises are not currently occupied under a residential tenancy agreement, i.e. that the property 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 property or indicated that the property is currently occupied under a residential tenancy agreement, you will not be required to provide the relevant declaration(s).

If the property 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 you under the Eligible Impacted Buyback Program will be reduced by the value of those payments and the amount may be paid to the former buyer.

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

CERTIFICATE OF INDEPENDENT ADVICE

Each Eligible Impacted 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 waiver of future legal action and your rights and obligations.

YOUR RESPONSIBILITIES PRIOR TO THE SETTLEMENT DATE

You are still the owner of the property until the date of settlement. This means you still have legal obligations to ensure that it is safe and maintained. 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 Eligible Impacted Property insured until the date of settlement. 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:

- 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, and
- ensure that you or other people do not dump waste, garbage or other materials on the property.

On the date of settlement you are required to hand over a reasonably clean and tidy site. The Coordination Team may not settle if the property contains waste or is unsafe. If settlement needs to be rescheduled because of the condition of the property or safety issues, you may be required to pay additional fees.

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 CONCESSION

Eligible Impacted Homeowners who sell their property under the Eligible Impacted Property Buyback Program are entitled to a waiver of stamp duty on the purchase of a residential dwelling in the ACT. The value of the waiver will be equal to or less than the amount of duty payable on the purchase price of the Eligible Impacted Property.

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 concession amount.

The stamp duty concession 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 Eligible Impacted Property, 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 Eligible Impacted Property.

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

If you were either a joint tenant or tenant in common of the Eligible Impacted Property at the time of surrender you must either:

- obtain the consent of all other joint tenants or tenants in common of the relevant property 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 property at the date of settlement.

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

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 ongoing Buyback Program, which commenced on 18 August 2021 for Affected Properties under the Loose Fill Asbestos Insulation Eradication Scheme.

Eligible Impacted Property* – a Potentially Impacted Property that has been determined to be an Eligible Impacted Property in accordance with the *Civil Law (Sale of Residential Property) Act 2003* section 9A.

Eligible Impacted Homeowner – the registered owner(s) of the Eligible Impacted Property at the time the property is determined to be an Eligible Impacted Property in accordance with the policy. Where two or more people are the registered Crown Lessees/owners as tenants in common or joint tenants, they are all Eligible Impacted Homeowners of that Eligible Impacted Property.

Potentially Impacted Property* – a dwelling that adjoins or is adjacent to an Affected Property as determined by the Territory.

Scheme – the Loose Fill Asbestos Insulation Eradication Scheme.

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

*Potentially Impacted Properties and Eligible Impacted Properties are not Affected Properties. They will not be added to the Register and they will not be subject to current requirements under the *Dangerous Substances Act 2004* such as mandatory danger stickers in meter boxes or the requirement to maintain asbestos management plans that apply to Affected Properties.

** 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.