



Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Bill 2015 (Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday 28 October 2015 (Proof).

Second Reading

Mr SCOT MacDONALD (Parliamentary Secretary) [12.02 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

The Government is pleased to deliver for a second time the second reading speech on the Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Bill 2015. This bill provides the necessary legislative framework to implement the Government's comprehensive policy in relation to loose-fill asbestos insulation. Throughout the 1960s and 1970s, pure loose-fill asbestos insulation was installed as ceiling insulation in at least 1,000 residential premises in the Australian Capital Territory and an unknown number in New South Wales. The presence of loose-fill asbestos in residential premises potentially creates an enormous risk to the community because of the type of asbestos it is; it cannot be identified through ordinary inspection and there are no guarantees of success with remediation.

Similar to the actions already undertaken by the Australian Capital Territory to address this problem, this Government has put in place a voluntary purchase demolition program and community awareness and disclosure requirements. An implementation task force has been established within NSW Fair Trading and work is already underway on the identification of properties containing loose-fill asbestos insulation, as well as putting the necessary procedures in place to commence the program. This bill contains amendments to the Home Building Act 1989 that will establish disclosure requirements by allowing the creation of a register of affected properties and mandatory warning signs on those properties. It also makes amendments to the Duties Act 1987 to provide for a stamp duty concession for homeowners who need to purchase a new property as a consequence of their voluntary participation in the program.

Before I go into the detail of the bill, I will outline how this reform has come about and the work this Government has done to ensure that the program and disclosure requirements properly address the potential risks. At the outset, it should be noted that loose-fill asbestos insulation is different from other forms of asbestos. The loose-fill asbestos installed in those residential premises is typically 100 per cent pure, not bonded or mixed with any kind of adhesive or compound. The raw and pure asbestos was crushed in a hopper and then pumped with air into roof spaces as ceiling insulation. That means that the fibres easily can become airborne if disturbed and may be inhaled, which could increase health risks. Over time, the fibres can migrate out of roof cavities into subfloors, wall cavities and the habitable areas of residential homes.

What complicates the situation further is that loose-fill asbestos cannot be identified by sight alone. It requires specialised testing by a licensed asbestos assessor. This means a building report will not confirm its presence to a prospective buyer. The presence of loose-fill asbestos insulation in homes has been on the public radar for many years. However, potential risks to the community have not been addressed adequately because affected properties were unable to be identified. In August 2014 the New South Wales Government announced free ceiling insulation testing for residences in 26 local government areas [LGAs] that, from archival government records, were likely to be affected LGAs. The Government then announced increased support and assistance for affected residents through the Make Safe Assistance Package in December 2014. This package included free technical assessments and building works to seal exposure pathways, and provided environmental cleaning and reimbursement for soft furnishings, financial assistance for short-term accommodation, and counselling services.

In December 2014 the Government also established the Loose-Fill Asbestos Insulation Taskforce to consider the cost and benefits of a New South Wales Government purchase and demolition program. The task force also was asked to make recommendations on the most effective options to manage the potential ongoing risks posed by the presence of loose-fill asbestos insulation in residential premises in New South Wales. The task force determined that demolition, comprehensive site remediation and disposal were the most effective methods of removing the potential health risks from affected properties. The task force also made a number of recommendations about the identification of affected homes for homebuyers, tenants, tradespeople and emergency service workers.

On 29 June 2015 the Government announced that it had accepted all 13 recommendations made in the final report from the task force, including the establishment of a new implementation task force within NSW Fair

Trading to oversee a voluntary purchase demolition program. The Voluntary Purchase Demolition Program will safely remove any long-term risk posed by loose-fill asbestos insulation in residential premises and will provide affected homeowners with assistance and support. The Government has set aside \$250 million for the Voluntary Purchase Demolition Program, providing the financial support needed to implement it. While the program is similar to that undertaken by the Australian Capital Territory, affected homeowners in New South Wales will have two options available to them to provide flexibility to accommodate their individual circumstances. In all cases, the premises must be demolished and the land remediated.

The first option for homeowners is to sell both their home and land to the Government. The second option is to allow the Government to demolish their premises while the homeowner retains ownership of the remediated land. Given the nature of the different ownership structures and properties, the options have certain restrictions for owners of residential units and owners of large rural properties under the terms and conditions of the program. Independent valuations of the properties undertaken by the Government contain conditions that do not advantage or disadvantage participants as a result of the passage of time. Importantly, these valuations will be on the property as if it did not contain loose-fill asbestos insulation. Participants in the program will also have access to practical support from case managers who will assist them with applying for financial assistance to relocate, to obtain legal advice, to replace furnishings or to seek counselling.

As I mentioned earlier, the identification of affected premises is integral to removing the risks posed by loose-fill asbestos insulation. As at 30 September 2015, 74 premises in New South Wales, including 41 units, have been confirmed by thorough testing to contain loose-fill asbestos insulation. The majority of affected premises—58—have been identified by a search of historical records by the Heads of Asbestos Coordination Authorities [HACA]. An additional 20 premises have been identified from the free ceiling insulation testing program, four of which are pending confirmation by way of technical assessment. It is important to note that there have been 3,258 negative test results over this same period of time.

On 12 October 2015, I announced that, following confirmation of an affected property in Narrandera Shire Council, this local government area [LGA] is now included on the list of eligible LGAs for the free testing program, making the total number of eligible LGAs now 27. These 27 LGAs are primarily in regional New South Wales—Queanbeyan, Berrigan, Greater Hume and Yass Valley—with all having had at least one positive test. The Sydney metropolitan area also has eligible LGAs—Bankstown, Parramatta and Manly also contain affected properties. However, positive tests have not been detected in the metropolitan area as part of the free ceiling testing program. I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave granted.

I would now like to deal with the provisions in the bill.

The establishment of the Register provides transparency and aligns with the NSW Government's commitment to open data.

The Register will record the address and title particulars of all residential premises that have undergone prescribed testing and have been identified as containing or have contained loose-fill asbestos insulation.

The regulations will provide for what type of verification is required in order for the Secretary to be satisfied of the presence of loose-fill asbestos insulation. The objective is that a listing can only be made on the basis of a testing process that is definitive and the regulations will prescribe what that will be.

In the event that there are circumstances, where, for the protection of the public from potential risks, it is necessary to include other premises on the register, the bill provides a regulation making power to do that.

The Register will assist in informing workers and employees that there is a possibility of exposure, before attending the affected premises. Equally, it will provide emergency services workers with advanced notice of the status of any affected premises and allow for appropriate precautions to be taken.

Particulars of premises that were affected but have been, through the Program, demolished and remediated will be removed from the Register.

This is fair and appropriate as once the premises have been demolished and the land is free of loose-fill asbestos insulation; there are no longer any risks to the community or future homeowners.

If there is a need to access historical information about properties that may have been affected at one time, this information will be accessible upon application. For example; people who once lived in these premises may need that information in the event of a negative health diagnosis.

This amendment also contains a requirement for the Secretary to remove any particulars from the register that are false, erroneous or misleading or have been erroneously included. A regulation making power allows other circumstances to be prescribed where it may be appropriate to remove any other particulars.

This is an important requirement that protects the rights of homeowners and the integrity of the Register.

Without the Register, affected premises are likely to continue to change hands, with prospective buyers being unaware that they are buying an affected home.

Tradespeople, service providers and emergency service workers currently cannot identify affected premises. Workers will continue to risk possible exposure by accessing affected premises without taking the necessary precautions to ensure work is conducted safely.

The second amendment in the bill introduces a requirement in the Home Building Act 1989 for owners of affected residential premises to display a compliant warning sign at any prescribed place on the premises.

In many instances, it is anticipated that the sign will be placed on or near the electrical meter box as this is the commonly accepted location for safety-related notices.

The objective of this requirement is to alert anyone working, residing or visiting, that the premises represent a possible risk from loose-fill asbestos insulation.

The third and final amendment contained in the bill will amend the Duties Act 1997 so that participants in the Voluntary Purchase Demolition Program can access a stamp duty concession on the purchase of a replacement home in NSW.

The stamp duty concession is part of the package of financial support aimed to assist affected homeowners.

The concession is capped at the amount of duty that would have been payable on the purchase of the loose-fill affected home by the Government, if they were required to pay stamp duty.

To illustrate how this will work, if a homeowner transfers their affected home to the NSW Government at a value of \$350,000, the duty payable on the transfer would be \$11,240.

If the homeowner then buys a replacement home for \$400,000, the duty payable would be \$13,490. Therefore, the concession would be capped at \$11,240 and the homeowner will only pay the difference—\$2,250.

This amendment has been carefully crafted to ensure that it is flexible enough to meet all circumstances where it may be appropriate for a person to obtain the stamp duty exemption, but is also restrictive to ensure that it is only available for an affected property, and a binding agreement for the acquisition has been entered into after the commencement of the amendment.

The amendment also provides that only one duty concession is available for each affected property that has been acquired.

This ensures that the objective and provisions provided by the Voluntary Demolition and Purchase Program are met and there is no rorting of the concession.

The bill provides the necessary amendments for principal legislation, however, the Government also plans to introduce a number of changes to regulations, to help identify affected premises and provide increased protections for the New South Wales community.

These legislative changes were also recommended in the report from the New South Wales Parliament Joint Select Committee Inquiry on Loose-fill Asbestos Insulation.

These reforms include changes to the regulations under the Environmental Planning and Assessment Act 1979 to insert loose-fill asbestos insulation as a matter to be listed on a section 149 (2) planning certificate.

There will also be amendments made to the Residential Tenancies Regulation 2010 to protect current and future tenants living in premises affected by loose-fill asbestos insulation.

The 'new tenant checklist' under the Residential Tenancies Act 2010 will be amended to specifically confirm the presence of loose-fill asbestos insulation.

The safety and well-being of New South Wales residents is paramount and has been the Government's guiding principle throughout this process.

I would like to acknowledge the Hon Minister Dominic Perrottet and his staff, as well as the members of the Loose-fill Asbestos Insulation Taskforce, the SafeWork New South Wales Project Team and local Government representatives. I thank industry and stakeholder groups such as Housing Industry Association, Master Builders Association, the Real Estate Institute of New South Wales and the National Electrical and Communications Association for their contribution throughout this process.

The community of Queanbeyan, part of the Monaro electorate, has been hit hardest by this crisis. 58 out of the 74 confirmed affected premises are located within the Queanbeyan LGA, as at 30 September 2015.

I would also like to thank the Member for Monaro for his long term commitment to seek a resolution for affected homeowners.

I also acknowledge the thorough review of this issue by the Joint Select Committee chaired by Revd. the Hon Fred Nile, MLC.

However, most importantly, I commend the affected residents who provided submissions, gave evidence at the Joint Select Committee Inquiry or met with the Taskforce.

I note the evidence at the Joint Select Committee Inquiry of the young family with two children, who discovered some weeks after moving into their new home that it was affected by loose-fill asbestos insulation.

They were unaware that a building report would not reveal the presence of loose-fill asbestos insulation. Nor were they aware that the owners or the local council were not compelled to disclose the presence of loose-fill asbestos insulation.

The young family made the decision to re-locate as they were not prepared to stay in the home and risk exposure. As a result of the positive test, it is unlikely that the property could be sold or leased to other occupants, leading to further financial strain for this family.

Their story is typical of the level of uncertainty many affected homeowners face.

It is important that the community understands that the disclosure of the presence of loose-fill asbestos insulation is vital to managing the risks that it poses. It is also important information that needs to be available to potential purchasers of an affected property, tradespeople, maintenance workers, service providers, tenants and emergency service workers.

This Government has worked hard to ensure that the measures in the bill strike an appropriate and reasonable balance between safeguarding the community through disclosure and transparency while minimising the degree of regulatory intervention.

In closing, I would like to thank the Commissioner for Fair Trading Rod Stowe, Assistant Commissioners Rhys Bolien and Andrew Gavrielatos, as well as officers from Fair Trading Matt Press, Gabbie Mangos and Sharon Hogan, and my policy director, Jane Standish for their efforts and continued enthusiasm.

I commend this bill to the House.