

**Submission
No 13**

INQUIRY INTO LOOSE FILL ASBESTOS INSULATION

Organisation: Local Government NSW

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Submission to the Joint Select Committee Inquiry into loose-fill asbestos insulation

October 2014

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Opening

Local Government NSW (LGNSW) is the peak body for councils in NSW. LGNSW represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW welcomes the opportunity to make a submission to the Joint Select Committee Inquiry into loose-fill asbestos insulation and is able to provide further information to the Committee if requested.

This submission by LGNSW has been set out to address the Terms of Reference of the Inquiry:

1. *That a joint select committee be appointed to inquire into and report on loose fill asbestos insulation, also referred to as 'Mr Fluffy' insulation, in homes in New South Wales, and in particular:*
 - a) *the number and location of homes affected by loose fill asbestos insulation*
 - b) *the actions taken by governments to deal with loose fill asbestos insulation in other jurisdictions*
 - c) *the role of State and Local governments to advise and assist home owners and occupiers to reduce the risks posed by loose fill asbestos insulation*
 - d) *the requirements for property owners to notify potential buyers, renters, tradespeople and emergency service officers regarding the presence of loose fill asbestos insulation in their property, and*
 - e) *any other related matter.*
2. *That the committee report by 16 February 2015.*

Purpose

The purpose of this submission is to present the views of NSW councils, particularly those councils where communities are presently known to be affected by this issue or may potentially be affected by this issue in the future. Residents in several council areas may knowingly or unknowingly own or inhabit a home with loose-fill asbestos insulation. Not only are residents impacted by this issue, but also tradespeople, emergency response workers and volunteers, council staff and real estate agents. Councils are empathetic to the needs and concerns of those who live in and/or work in their Local Government Areas and thus have a strong interest in viable solutions to this problem.

LGNSW has met with councils which are either presently affected by this issue or may potentially be affected by this issue and councils have provided LGNSW with perspectives of council staff, elected representatives and those who live and work in their Local Government Area. LGNSW also met with residents in Queanbeyan who are presently affected by this issue,

including residents that have been dealing with anguish and disappointment in the way this issue has been handled by governments over decades.

LGNSW notes the importance of all spheres of government adequately responding to this issue to prevent harm to the community and protect the health of residents, tradespeople, emergency services officers, other workers and prospective purchasers of affected homes.

LGNSW calls for holistic management of this issue, given the potential financial, ethical, relational, reputational, physical and psychological implications and the need for outcomes that benefit the community as a whole now and for the future.

LGNSW is working with the Heads of Asbestos Coordination Authorities (HACA) on managing asbestos including loose-fill asbestos insulation. HACA has provided funding for a full-time Project Manager – Asbestos Policy at LGNSW to assist councils with safely managing asbestos and in particular to adopt and implement the Model Asbestos Policy for NSW Councils (2012-2016). The formation of HACA can be viewed as having heralded a new era of improved asbestos management in NSW and HACA has achieved a number of initiatives to date.

As a member of the HACA, LGNSW has contributed to a submission prepared by the HACA Working Group to the Joint Select Committee Inquiry into loose-fill asbestos insulation. Given the importance of this issue, LGNSW has also prepared this submission to further advocate on behalf of our member councils that are affected by this issue and voice their concerns and suggestions.

The number and location of homes affected by loose fill asbestos insulation in NSW

As a member of HACA, LGNSW has been reviewing and compiling information about loose-fill asbestos insulation from various sources.

LGNSW welcomed the NSW Government's announcement in August 2014 to appoint an independent investigation to establish the number of residential properties with ceiling insulation that may contain loose-fill asbestos material.

An independent specialist is working with the HACA to help establish the scope of properties impacted. The investigation will review and assess relevant records including inspection reports, risk assessments and compliance and disposal records. LGNSW anticipates that the findings of the investigation will be useful in formulating a response to the problem of loose-fill asbestos insulation in residential properties.

Known addresses

Based on present knowledge, LGNSW is aware that in NSW, approximately 22 residential properties have been confirmed as having had loose-fill asbestos insulation material installed in the past and an additional property in Queanbeyan is suspected but unconfirmed. For some of these properties the material has been partially or mostly removed and some of the properties have since been demolished. This is outlined in Table 1.

Table 1: Number of residential properties with loose-fill asbestos insulation material installed in the past (confirmed through laboratory testing unless noted)

Local Government Area	Number of known addresses where loose-fill asbestos insulation material was installed in the past	Source of information
Queanbeyan City Council	16 (some with material partially or mostly removed) (including 1 unconfirmed and including a block of units)	Identified during testing program commenced in 1989 and residents advising Queanbeyan City Council in recent years
Palerang Council	1	Identified during testing program commenced in 1989
Yass Valley Council	1	Identified during testing program commenced in 1989
Orange City Council	1 (Council advised the affected property was demolished)	WorkCover and additional information from Council
Bankstown City Council	1 (Council advised the affected property was demolished)	Records from Dust Diseases Board and additional information from Council
Manly Council	1 (WorkCover has advised the affected property was 'remediated')	Records from Dust Diseases Board and additional information from WorkCover
Lithgow City Council	1 (WorkCover has advised the affected property was 'remediated')	Records from Dust Diseases Board and additional information from WorkCover
Parramatta City Council	1 (WorkCover has advised the affected property was 'remediated')	Records from Dust Diseases Board and additional information from WorkCover

Other areas suspected

It is strongly suspected that there are more properties in NSW that currently have, or have had, loose-fill asbestos insulation than are indicated in Table 1.

It is thought that at least 230 residential properties in NSW could be affected based on the information provided by the Ministry of Health on 14 August 2014, "Health Protection NSW, Environmental Health Branch - Asbestos Files and Mr Fluffy Relevant Documents" which includes estimates of the number of affected homes.

The information provided by the Ministry of Health has been collated and summarised in Table 2.

Table 2: Estimates of the number of residential properties with the potential for loose-fill asbestos insulation mentioned in the information provided by the Ministry of Health.

Area	Number of homes mentioned
Albury, Tumbarumba, Wagga Wagga	100-140; 140
Berrigan	60
Cooma	0
Goulburn	0
Lithgow	Few
Queanbeyan	60-100; 10-15% of ACT (<i>i.e. at least 105-158</i>)
Sydney	Few; 10
Yass	Few
Total	230 - 316

It is suspected that loose-fill asbestos could also be present in homes in northern Sydney. *The ACT Government Submission to the Australian Government Asbestos Management Review Issues Paper* (2011) referred to 'the recent removal of loose-fill asbestos in two northern Sydney homes.' LGNSW considers that if loose-fill asbestos has been installed in two Sydney homes, it is likely to have been installed in other Sydney homes on the basis that the contractor selling and/or installing the material would have been seeking to maximise their sales. LGNSW does not know if the two northern Sydney homes referred to in *The ACT Government Submission to the Australian Government Asbestos Management Review Issues Paper* (2011) are the homes listed in Table 1, or other homes.

St Ives has been identified as an area where asbestos was transported (in a letter from the ACT Chief Minister to the NSW Premier in April 2014). North Sydney was also identified (in the same letter) and on this basis Ku-ring-gai Council and North Sydney Council are suspected to possibly be affected by loose-fill asbestos insulation.

LGNSW together with WorkCover met with two members of the ACT Asbestos Response Taskforce in Canberra (4 August 2014) however very limited information is available as to how the ACT had identified the potentially affected areas in NSW in 2011. The Taskforce noted that the identification of St Ives was originally by WorkCover NSW. The Taskforce provided some information verbally that Mr Fluffy was thought to have supplied a container of loose fill asbestos to Finlay (in Berrigan Shire Council) which may have been enough asbestos to insulate 60 homes. The Taskforce did not explain how this information had been obtained but this information is consistent with the estimate in Table 2.

Media articles and news clips from the past including the 1990s and 2005, mention a number of locations in NSW that may have loose-fill asbestos insulation including:

- Bega Valley Shire Council
- Cooma-Monaro Shire Council
- Eurobodalla Shire Council
- Goulburn Mulwaree Council
- Snowy River Shire Council
- Yass Valley Council
- Young Shire Council

One problem with listing the number of homes by LGA is that the boundaries of LGAs have changed. For example, Upper Lachlan Shire Council includes what were previously three separate LGAs (Gunning, Crookwell and Mulwaree) and parts of Yass.

Another issue is relocatable homes may have been moved from one LGA to another LGA. For example there are homes in Yass which have been transported from Cooma.

Councils may not always have accurate numbers of properties in the LGA as in some areas unlawful development has occurred (for example, Upper Lachlan Shire Council). In other areas, rural properties did not require approval until 1992 (for example, Berrigan Shire Council).

Non-residential buildings affected

In addition to homes, a number of schools and commercial buildings are also affected by loose fill asbestos in the ACT and NSW.

In discussions with potentially affected councils (Attachment A), councils noted they were not aware of any loose-fill asbestos in any other buildings in their LGA other than those already known by NSW Government. Councils also advised they were not aware of any loose-fill asbestos in council owned properties.

Note that councils are required to keep a register of asbestos in council workplaces constructed prior to 31 December 2003 (under clause 425 of the *Work Health and Safety Regulation 2011* (NSW)).

Investigating number of affected homes

Councils have identified that another avenue for the NSW Government to discover more about locations where loose fill asbestos insulation has been used is to review the records kept by WorkCover NSW of when friable asbestos removal is notified to WorkCover.

Currently asbestos removalists are required to notify WorkCover prior to asbestos removal and note whether the asbestos to be removed is friable or non-friable asbestos and provide details of removal. To further improve the data on loose-fill asbestos insulation in future, WorkCover could specifically require asbestos removalists to notify WorkCover whether loose fill asbestos insulation is to be removed from a property

The actions taken by governments to deal with loose fill asbestos insulation in other jurisdictions

The differences between the approaches and advice from the NSW and ACT Governments is problematic for councils and communities, who are asking why is there one approach to this issue in the ACT and a mere stone's throw away in Queanbeyan residents are receiving different treatment for the same problem? The recent announcement by the Commonwealth Government and ACT Government regarding a loan from the Commonwealth to assist with the cost of demolishing affected homes in the ACT, has again catalysed public speculation that the NSW Government should be seeking to replicate the action of the ACT Government.

Actions taken by the ACT Government are outlined on the ACT Asbestos Response Taskforce website. LGNSW views many of these actions as commendable given the actions are supportive for communities, especially the waiving of disposal fees for loose-fill asbestos home owners where houses containing loose-fill asbestos are renovated or demolished (announced on 21 June 2014). LGNSW strongly advocates that asbestos disposal should not be subject to excessive fees or the waste levy in NSW. This is a long held view of LGNSW and we would be pleased to provide more information on this issue should this be of benefit to the Committee.

Many of the affected councils in NSW consider that the counselling hotline and counselling sessions offered by the ACT Government to ACT residents is something that would be useful to replicate in NSW. Councils would like to see the NSW Government offer this to NSW residents as householders in NSW are experiencing concern and anxiety about this issue and would benefit from this support. Particularly if a larger number of homes in NSW are found to contain loose-fill asbestos such a hotline would be very helpful, especially for people who had no prior knowledge that their home contained loose-fill asbestos and become shocked and worried upon finding out this information.

The NSW Government has the opportunity to learn from the way in which this issue has been managed in the ACT and provide suitable assistance to homeowners and communities in NSW. LGNSW will continue to work with the NSW Government develop solutions that are workable and helpful for NSW councils and their communities.

Should a NSW taskforce be established and resourced to work under the HACA to manage the issue of loose-fill asbestos insulation in NSW, LGNSW would welcome the opportunity play a role in assisting the taskforce (as staff resources permit).

The role of State and Local governments to advise and assist home owners and occupiers to reduce the risks posed by loose fill asbestos insulation

Uncertainty regarding the role of Local Government and State Government to advise householders, prospective buyers and emergency services

Uncertainty for councils and questions that need to be resolved include:

- What are the current legal obligations in NSW for a vendor to disclose information about loose-fill asbestos insulation to a prospective buyer?
- Do councils have a duty of care to advise potential buyers or occupiers of affected homes where councils become aware of a positive sample result for a specific address?
- Should councils have conditions of consent relating to loose fill asbestos? Could the NSW Government offer councils sample wording for conditions of consent relating to loose fill asbestos?

Many councils are concerned with the problem of people selling a home with loose-fill asbestos insulation to an unsuspecting buyer who is then potentially placed at risk to their health and at a disadvantage financially due to the cost to remove loose-fill asbestos or the reduced value of the home.

Some (but not all) councils are supportive of placing information on section 149 certificates. This information could possibly include:

- An indication to the buyer to look into the issue further
- A generic statement that pre-1980 homes could be affected by loose-fill asbestos insulation

Councils need clarification and guidance as to what information can be placed on section 149 certificates. Consistent advice is needed here rather than each council consulting their own legal advisers. To that end LGNSW has asked the Department of Planning and Environment to provide advice on this issue.

Considerations include: ensuring accuracy of the information placed on section 149 certificates; whether prospective purchasers will access and heed the information on a 149 certificate; and whether there is a more appropriate mechanism to inform prospective buyers. Councils also need clarity about how loose-fill asbestos issues should be managed once a section 149 certificate has been annotated, particularly regarding the roles of the various agencies.

Communicating with the public

Relevant councils are willing to play a role in advising their communities about the risks posed by loose fill asbestos insulation, particularly where the information has been provided by relevant authorities or experts in a standardised format, as is currently the case in NSW where the HACA Working Group has provided information to councils on other asbestos-related issues. Councils are able to inform their communities through various channels such as: websites, local papers, newsletters, letters and social media (for example Facebook and Twitter).

For example, the NSW Government is offering a free testing service by Licensed Asbestos Assessor for home owners in certain LGAs if the home owner consents to the results of the test being shared with Local and State Government. In areas outside the LGAs eligible for the free testing or where the resident is unwilling to disclose their test results, the home owner would need to arrange and pay for the testing themselves. For some communities, residents are able to afford the cost of paying for a Licensed Asbestos Assessor to take a sample of insulation material and have it tested at an accredited laboratory. For other communities, residents may not be willing or able to pay for this service which can cost a home owner around \$300-600.

Relevant councils are helping to promote the NSW Government's free testing service and property assessments to residents in their LGA. These councils are also advising the NSW Government of the known or predicted age of buildings in the LGA where the homeowner wishes to take advantage of the free testing service (to help determine their eligibility).

The requirements for property owners to notify potential buyers, renters, tradespeople and emergency service officers regarding the presence of loose fill asbestos insulation in their property

Potential buyers

As noted above, it seems any current legal obligations in NSW for a vendor to disclose information about loose-fill asbestos insulation to a prospective buyer are not well understood.

Many councils are concerned with the potential situation where a homeowner sells an affected home to an unsuspecting buyer who is then potentially placed at risk to their health and at a disadvantage financially due to the cost to remove loose-fill asbestos and/or a reduced economic value of their home.

There is a need to consider ensuring mandatory disclosure of the presence of loose-fill insulation by the vendor to prospective purchasers of the affected home. There may also be an argument for disclosure to prospective purchasers of properties adjacent to affected homes.

The purchaser is not in as good a position as the vendor to identify the presence of loose-fill asbestos which can only be done by having a sample tested. The vendor may also be aware of other issues, such as newer insulation being placed over older insulation and renovations affecting the ceiling space.

Educating tradespeople

There was a resounding call from councils that tradespeople must be educated on this issue to protect their health and the health of those in the vicinity of their work, and that the NSW and Commonwealth Government should be increasing their efforts to educate tradespeople.

Tradespeople may also be able to provide information about properties or areas that are potentially affected where they have observed insulation materials that look like loose-fill asbestos.

Emergency service officers

It is important that emergency service officers are aware of which homes contain loose-fill asbestos so that in the event of an emergency affecting such homes, officers can take

adequate precautions to minimise the risk they will be exposed to asbestos fibres.

It would be useful if the NSW Government maintained a confidential online database of homes affected by loose-fill asbestos.

There is a need for a protocol to be developed to clarify and formalise how information will be shared with emergency services on an ongoing basis as additional properties containing loose fill asbestos become known or after the material is removed from properties. LGNSW notes that the HACA Working Group may be best placed to develop this protocol.

Informing and educating emergency service officers about this issue is also very important.

Labels indicating loose-fill asbestos insulation

Labels in the electrical meter boxes and access points to manholes of affected homes would be a useful way to alert tradespeople of the hazard.

As has been done in the ACT, labels should be provided to the property owners or householders by the NSW Government. This would ensure the labels are clear and consistent and would assist in areas that do not have a major hardware store where residents could purchase a label.

Additionally, rather than relying on the goodwill of the home owner to affix a label, the presence of a label in the electrical metre box to indicate loose-fill asbestos should be mandated. Providing the label free of charge by post, along with instructions on how to affix the label would ensure this requirement would involve minimal burden for the home owner and greatly assist to protect people who may be working at the property. Homeowners with concerns over the privacy of their electrical meter box could choose to install a lock on their meter box at their own cost.

Any other related matter

Insurance

In LGNSW's meetings with councils, questions arose as to whether homeowners' insurance would be likely to cover:

- Costs of removing loose-fill insulation;
- Costs of demolishing a home if ordered to;
- Costs of temporary accommodation or relocating from a home deemed to be uninhabitable due to health risks;
- Costs of clean-up of loose-fill asbestos in the event of an emergency or incident (e.g. fire, storm, building collapse).

LGNSW has discussed with the HACA Working Group the need to liaise with the insurance industry to proactively address potential issues.

Conclusion

It is well known now that asbestos has been grossly mismanaged in the past. An unfortunate chain of events has left a currently unquantified number of people facing an unintended hazard and fearful of unimaginable potential consequences.

Yet now there is an opportunity to make positive steps to rectify this problem: to investigate the scope of the problem; to find the most appropriate ways to notify those who could potentially be affected; to support those who have unknowingly purchased an affected home; and importantly to prevent people becoming exposed to asbestos.

In NSW, there is the opportunity to learn from the ACT Government and to hear from those in and around the ACT who have grappled with this issue for some time now.

LGNSW calls on the NSW Government to devote adequate funding and commitment to this issue so that it can be properly resolved rather than continuing to be an ongoing problem for decades to come.

Attachment A

List of meetings arranged by LGNSW on behalf of the HACA Working Group in relation to loose-fill asbestos insulation

Friday 25 July 2014

Palerang Council and Queanbeyan City Council (at Palerang Council)
Goulburn Mulwaree Council

Monday 28 July 2014

North Sydney Council

Tuesday 5 August 2014

Ku-ring-gai Council

Thursday 14 August 2014

Bega Valley Shire Council
Snowy River Shire Council
Cooma Monaro Shire Council and Bombala Council (at Cooma Monaro Shire Council)

Friday 15 August 2014

Eurobodalla Shire Council

Thursday 28 August 2014

Shellharbour City Council
Forum for owners and occupiers of homes containing loose-fill in Queanbeyan (at Queanbeyan City Council)

Wednesday 3 September 2014

Wagga Wagga City Council and Tumbarumba Shire Council (at Wagga Wagga City Council)
Greater Hume Shire Council and Albury City Council (at Greater Hume Shire Council)

Thursday 4 September 2014

Berrigan Shire Council

Wednesday 10 September 2014

Upper Lachlan Shire Council
Yass Valley Council

Thursday 11 September 2014

Young Shire Council
Boorowa Council

Friday 12 September 2014

Orange City Council
Lithgow City Council