

# Loose Fill Asbestos Hazard: Important Update for Strata and Home Owners

**31 March 2017 Deadline for Strata to Register !**

**31 July 2017 Deadline to opt into Voluntary Purchase and Demolition Scheme if Loose Fill Asbestos Identified**

Home owners whose properties may contain the so-called Mr Fluffy loose fill asbestos insulation need to obtain advice and act urgently. The Government has implemented an assistance package which is managed through the Office of Fair Trading.

Loose fill asbestos insulation is a raw crushed asbestos product, which was widely used for ceiling insulation in the 1960s and 1970s, mainly by a company known as Mr Fluffy. In NSW, its use was initially identified in 28 local government areas. However, the Government has identified an additional 35 local government areas where it may have been used.

Homeowners may not be aware that they have it, as it could lie underneath insulation batts. It is a particularly dangerous product because over time fibres can move into the living areas of the home. It is also problematic because company liquidations, elapsed time and other circumstances probably preclude legal action, leaving effected homeowners to government assistance measures.

The main issues for homeowners whose homes may contain loose fill asbestos insulation are:

1. Information - You need to know whether your home contains loose fill asbestos insulation. If you are in a designated local government area and have registered you may be eligible for a free Government inspection or you could organise a private inspection by a licensed asbestos assessor. Bear in mind that use of loose fill asbestos insulation will not necessarily be limited to properties constructed prior to 1980 or within the designated local government areas, e.g. if contaminated materials were reused.
2. Management - Owners of properties affected by loose fill asbestos insulation are required to register the property in a public register and display a compliant warning sign at the main switchboard. This is a significant issue for agents, whether strata managing agents, letting agents or selling agents, because they have disclosure and other obligations under the property stock and business agents legislation. The Department of Fair Trading has issued a guide:
  - [http://www.fairtrading.nsw.gov.au/ftw/Property\\_agents\\_and\\_managers/Agency\\_responsibilities/Loose\\_fill\\_asbestos\\_guide.page](http://www.fairtrading.nsw.gov.au/ftw/Property_agents_and_managers/Agency_responsibilities/Loose_fill_asbestos_guide.page)
3. Renovation and other works – When working with or removing asbestos contaminated materials, particularly when dealing with loose fill asbestos insulation, the contractor will

generally need to be licensed and should always have appropriate expertise. Strata managing agents and homeowners engaging contractors should take great care with this.

We have seen catastrophic consequences of engaging a contractor with insufficient expertise, e.g. buildings rendered uninhabitable for extended periods, with enormous clean-up and compensation costs.

4. Selling & Leasing - The Government has proposed law reforms to require disclosure, when selling or leasing, of whether the property is listed in the register of properties containing loose fill asbestos insulation. This may be more complicated than it sounds, as the disclosure requirement is whether the property is listed in the register, not whether it is affected by asbestos. Clearly, there is potential for legal proceedings where a property sold or leased is not listed on the register, but nevertheless contains loose fill asbestos insulation and that is not disclosed to the purchaser or tenant.
5. Government Assistance - The New South Wales government has announced an assistance package in relation to loose fill asbestos:

[http://www.fairtrading.nsw.gov.au/ftw/Tenants\\_and\\_home\\_owners/Loose\\_fill\\_asbestos\\_insulation.page](http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Loose_fill_asbestos_insulation.page)

Broadly, this involves:

- a) Inspection – If your home was constructed prior to 1980, and you live in one of the designated local government areas and if you have registered by the 31 July 2016 deadline you can obtain a free test and government assistance as set out below.

Free testing is only available to those in a designated area that registered before 1 August 2016.

If your scheme lodged an intent to register by last year's deadline and is in a designated area, free testing will be available. For free testing to go ahead email the required [owners corporation special resolution](#) to Fair Trading by **31 March 2017** using [AsbestosEnquiry@Finance.nsw.gov.au](mailto:AsbestosEnquiry@Finance.nsw.gov.au)

- (a) Otherwise, you could organise a private inspection by a licensed asbestos assessor, which would be relatively inexpensive and arguably money well spent, particularly as the Government will reimburse the inspection fee if the result is positive and you are still able to opt into the second half of the Office of Fair Trading program being the Voluntary Purchase and Demolition Program operating for buildings that have tested positive and register before **31 July 2017**.

6. Remediation - If a property has been identified as affected by loose fill asbestos insulation and you have already registered or elect to opt into the Voluntary Purchase and Demolition Program by 31 July 2017, two options will be available:

- (a) Government acquires land for a compensation payment determined according to a valuation scheme, demolishes the building, remediates the land and sells the remediated property. This would be the only practical option for strata schemes.
- (b) Owner remains the owner of the property, but on the basis that the Government demolishes the building, remediates the land and makes a compensation payment based on the value of the building (treated as not affected by loose fill asbestos), enabling the property owner to sell or rebuild on the remediated property. This will be the only available option for some rural properties.

The scheme is voluntary, leaving a third option of doing nothing. This is highly inadvisable, for many reasons, including:

- i. The unsafe environment the owner and their family would be living in.
- ii. Exposure to legal claims by persons claiming to have been exposed to asbestos on the property.
- iii. Adverse impact on the value of the property.
- iv. The possibility that the owner will be unable to sell, rent, mortgage or insure the property.

7. Financial assistance - The NSW Government will also provide financial assistance to affected homeowners and tenants, including financial assistance with the cost of:

- Relocation, which may comprise a compensation payment and the stamp duty concession on purchase of a replacement property. The maximum compensation payment is \$10,000 for owner occupiers (plus an additional \$2,000 per dependent child living in the property, to a maximum of two) and \$1,000 per tenant for tenants.
- Replacing soft furnishings and clothes, to a maximum of \$1,000.
- Obtaining legal advice, to a maximum of \$1,000.
- Obtaining counselling, to a maximum of \$850.
- Additional assistance negotiated with utility providers and financial institutions.

The crucial points to note are that:

1. If you live in one of the designated local government areas and your home was constructed prior to 1980, there is a real risk that your home contains loose fill asbestos insulation. Department of Fair Trading information is that, as at 9 March 2017, 137 affected properties have been identified out of 21,500 tests conducted, including one large apartment.
2. Even if that is not your situation, there is a good chance that your property contains asbestos materials which are dangerous or could become dangerous.

3. There are things you can do about this, but you need to get advice and act quickly.
4. Further enquiries with the Office of Fair Trading today have revealed:
  - (b) If registration with the Office of Fair Trading did not take place before 1 August 2016 then free testing will not be available even in designated local government area;
  - (c) If you are a strata plan that has lodged an intent to register prior to 1 August 2016 you now have until 31 March 2017 to pass a special resolution confirming your strata plan's registration with the Office of Fair Trading program.
  - (d) If you undertake private testing to your building and find that it is affected by Loose Fill Asbestos Insulation then you still have until 31 July 2017 to participate in the Voluntary Purchase and Demolition Program operating for buildings that have tested positive, however an inspection and test will have to be undertaken privately and registration with the Office of Fair Trading Voluntary Purchase and Demolition Program before 31 July 2017 to be eligible
5. Therefore, from a conservative point of view those that have not already registered under then:
  - a. Strata plans that have already lodged an intent to register should pass a special resolution confirming registration by 31 March 2017; and if outside a designated area organise for private testing to be undertaken;
  - b. If no registration or intent to register has been lodged then undertake private testing before 31 July 2017 and if a positive result is found consider registering with the Office of Fair Trading Voluntary Purchase and Demolition Program before the published cut-off date of 31 July 2017.

**Prepared by Bannermans Lawyers**  
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