Loose Fill Asbestos Hazard: Important Update for Strata and Home Owners. 31 March Deadline!

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. 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

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.

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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:

   - http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Loose_fill_asbestos_insulation/Voluntary_purchase_and_demolition_program/Assistance_for_owners_and_tenants.page

   Broadly, this involves:

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

      Free testing is available in the 28 local government areas initially identified, but is limited to 100 tests in each of the 35 additional local government areas where use is suspected.

      If your scheme was registered by last year's deadline, free testing is now 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

      Free testing areas

      - http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Loose_fill_asbestos_insulation/Register_for_free_testing.page?

      Online registration

      - http://surveys.fairtrading.nsw.gov.au/LFAIT_registration_form.asp

      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.

6. Remediation - If a property has been identified as affected by loose fill asbestos insulation, two options will be available:

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(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 maximus if $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 16 June 2016, over 100 affected properties has been identified, 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.

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3. There are things you can do about this, but you need to get advice and act quickly. In particular, those who may be affected by loose fill asbestos insulation and wish to take advantage of the free testing program or the government assistance package should register by 31 July 2016.

4. Further enquiries with the Office of Fair Trading today have revealed:

   (a) It is yet to decide what will be done about homes that fail to register by 1 August 2016.

   (b) It is considering requiring that strata schemes provide a general meeting resolution to support the making of an application to register by 31 July 2016. Please note no such requirement exists presently.

   (c) The content in the NSW Taskforce Report : Loose-Fill Asbestos Insulation in NSW Homes, http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/Tenants_and_home_owners/Loose_Fill_Abestos_Taskforce_Report.pdf appears to be inconsistent with the OFT website, for instance:

      i. references to dates of 1 August 2016, perhaps should be a reference to 31 July 2016 (see page 35 of the report); and

      ii. importantly references to dates of 1 August 2016, for free testing, should also be for eligibility for the government assistance package (see page 38 of the report).

5. Therefore, from a conservative point of view those seeking to register for free testing, or undertaking testing of their own or those considering making a claim for compensation under the government assistance package should do so on or before 31 July 2016.

Key takeaways

- Homeowners may unknowingly have loose fill asbestos insulation in their properties, posing serious health risks.
- The NSW Government provides assistance for inspections and remediation of affected properties.
- Property owners must register their properties and disclose asbestos presence when selling or leasing.
- Engaging licensed contractors for asbestos management is crucial to avoid catastrophic outcomes.
- The deadline for free government inspections has passed, but homeowners can still seek private assessments.

Bannermans Lawyers is a NSW strata law firm advising owners corporations, strata managers and lot owners.

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