

**ACT AUDITOR-GENERAL'S REPORT**

**WORKSAFE ACT'S MANAGEMENT OF ITS  
REGULATORY RESPONSIBILITIES FOR  
THE DEMOLITION OF LOOSE-FILL ASBESTOS  
CONTAMINATED HOUSES**

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The Speaker  
ACT Legislative Assembly  
Civic Square, London Circuit  
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'WorkSafe ACT's management of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely



Dr Maxine Cooper  
Auditor-General  
20 January 2017



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## SUMMARY

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On 28 October 2014, the ACT Government announced the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, which included an offer from the Government to buy all homes in the ACT affected by loose-fill asbestos (Mr Fluffy) insulation. Once acquired by the ACT Government, houses are to be demolished. The property blocks are then remediated and resold to defray overall scheme costs.

The demolition of Government-acquired properties began in July 2015. Of the 1,023 houses affected by loose-fill asbestos contamination, by 14 December 2016, 515 Government-acquired houses and 16 privately-owned houses had been demolished.

WorkSafe ACT is the Government's workplace health and safety regulator. WorkSafe ACT assists the Work Safety Commissioner in discharging the Commissioner's responsibilities as established under the *Work Health and Safety Act 2011* and other legislation. WorkSafe ACT's regulation of the demolition of loose-fill asbestos contaminated houses has been undertaken by its Asbestos Team.

The purpose of the performance audit was to examine the effectiveness of WorkSafe ACT's management of its workplace health and safety regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses in the ACT. This audit was planned so that sufficient demolitions had occurred to allow an audit to be undertaken, but before all demolitions had occurred.

## Overall Conclusion

Regulatory experience for the large-scale demolition of loose-fill asbestos contaminated houses was limited when the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* came into effect in October 2014. WorkSafe ACT needed to respond to this challenging situation and had regulated the demolition of 531 houses by 14 December 2016 (just over half the total number of houses to be demolished).

WorkSafe ACT does not have a strategy and program to guide the Asbestos Team's regulatory activities. There is also no evidence that the Asbestos Team's planning activities have been risk-based. The risks associated with ACT Government-acquired properties compared to privately-owned properties are different, yet there is no evidence that this has been considered. The one major incident that resulted in a WorkSafe ACT investigation was at a private demolition.

There has been considerable variability in how the Asbestos Team has undertaken its role, importantly in how and when site inspections have been undertaken. Only on the day of demolition have all sites received an inspection, although WorkSafe ACT documents indicate that more inspections were anticipated prior to the day of demolition. There is no documentation that

explains why inspectors had limited their inspections at some sites yet increased their inspections at other sites. This compromises transparency and accountability.

WorkSafe ACT investigations related to the one major incident at the demolition of a privately owned property (Darke Street, Torrens) lacked clarity in purpose. While several reports were produced, none effectively fulfilled the purpose of an employer investigation, which was warranted given an Asbestos Team inspector was present when the incident occurred.

Having a strategy and program and guiding activities with an understanding of risk is fundamentally important in clarifying the regulatory activities of the Asbestos Team. These will also provide a basis for measuring the effectiveness of the Asbestos Team in undertaking its regulatory role. As these are lacking an audit opinion on effectiveness is not able to be provided for the Asbestos Team's work to-date.

## Key findings

### PLANNING FOR THE REGULATION OF THE DEMOLITION OF LOOSE-FILL ASBESTOS CONTAMINATED HOUSES

Paragraph

A draft *Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide* (a 'how-to' guide) was developed collaboratively by the Asbestos Response Taskforce and WorkSafe ACT in December 2014 and provided to industry representatives. The purpose of the guide was unclear and it was not finalised. 2.10

In December 2014 WorkSafe ACT had also developed a '93 point checklist', the purpose of which was to identify legislative requirements, potential responsibilities for the 'person conducting a business or undertaking' relating to a demolition and tasks to be done by the regulator. In anticipation of the Government pilot demolitions and subsequent launch of the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* voluntary buyback program, WorkSafe ACT used the initial '93 point checklist' to develop inspectors' workplace inspection forms and checklists. Records maintained by WorkSafe ACT in its record management system (Objective IDMS) for the two private owner-initiated demolitions in the first half of 2015 showed the use of these forms and checklists. 2.15

There is no evidence that WorkSafe ACT used existing Access Canberra and Office of Regulatory Services documented guidance to develop and inform the Asbestos Team's regulatory approach to the demolition of loose-fill asbestos contaminated houses. For example, there was no evidence that a prioritisation process was undertaken or that specific risks were matched to specific regulatory responses. 2.25

There is no evidence that WorkSafe ACT's planning for its Asbestos Team's regulatory activities included an assessment of the relative risks of ACT Government-initiated demolitions and private demolitions. While there are far fewer private demolitions (potentially between two and three per cent of all possible demolitions), the health and safety risks may be significantly higher, because of the lack of ACT Government oversight through procurement and 2.29

contracting arrangements. Accordingly, scrutiny over private demolitions may need to be greater than that for ACT Government demolitions.

WorkSafe ACT has not developed a strategy or program of activities for the regulation of the demolition of loose-fill contaminated houses. A strategy would be expected to describe the overall aim of the regulatory activity and define regulatory outcomes. A program of activities would be expected to identify and describe actions to be undertaken for the purpose of achieving the regulatory strategy. 2.35

There is ambiguity associated with the inspections that must be undertaken by WorkSafe ACT officers for the demolition of loose-fill asbestos contaminated houses. It is unclear what inspections (site establishment, smoke testing, asbestos removal, pre-demolition, demolition, post demolition) are mandatory or discretionary. Furthermore, if inspections are discretionary, there is no guidance on how this discretion is to be exercised. Important statements (e.g. in briefings and budget submissions to Ministers) made by WorkSafe ACT appear to identify certain mandatory workplace inspections that are to take place, but there is inconsistency between these statements and WorkSafe ACT's draft *Workflow processes* document (July 2015). This creates uncertainty as to what the Asbestos Team is accountable for implementing, and therefore there is no basis for determining if the Asbestos Team is satisfactorily implementing its regulatory activities. 2.45

WorkSafe ACT has not identified specific 'minimum' requirements for the delivery of regulatory activity for the demolition of loose-fill asbestos contaminated houses nor has it identified associated performance activity information. Such information is needed to guide resource analyses, but does not exist. Accordingly, a June 2016 business case presented to the Minister seeking additional resources did not include important performance activity information necessary to estimate resources. The business case also did not consider other tasks of the team or efficiencies that may be gained through the team and industry becoming more efficient due to increasing experience. 2.58

As a principle, a regulator needs to be independent, and be seen to be independent, of those it regulates. In order to undertake its regulation of the demolition of loose-fill asbestos contaminated houses WorkSafe ACT sought funding for additional resources through the Asbestos Response Taskforce. The in-principle agreement of the Eradication Scheme Steering Committee to the additional funding was received and a formal request was then made to the Chief Minister. While there is no evidence that the independence of WorkSafe ACT has been compromised, the provision of the additional resources for the Asbestos Team was not obviously independent. 2.64

WorkSafe ACT's reporting of the Asbestos Team's activities against Safe Work Australia indicators and Access Canberra accountability indicators has been incomplete and inconsistent. Accordingly, WorkSafe ACT does not have an effective mechanism for monitoring and publically reporting the reduction in the risk of harm and improvements in compliance as a result of the activities of the Asbestos Team's regulation of loose-fill asbestos contaminated demolitions. WorkSafe ACT is 2.80

therefore unable to demonstrate its effectiveness in relation to objects of the *Work Health and Safety Act 2011*.

WorkSafe ACT has not identified an intended (target) performance level against which to compare actual performance for its regulation of the demolition of loose-fill asbestos contaminated houses, nor is there any internal reporting on the actual performance of the Asbestos Team on its regulatory activities. This means accountability and the Asbestos Team’s ability to demonstrate continuous improvement is compromised. 2.84

**IMPLEMENTATION OF WORKSAFE ACT REGULATORY RESPONSIBILITIES** Paragraph

Changes to practice as described by inspectors, with one exception, have not been recorded effectively, have not been subject to a transparent approval process, and have not been influential in reshaping a documented team inspection program or the team’s procedural documentation. Unlike other apparent changes to practice, a draft procedure was developed in February 2016 for the termination of services inspection, but this procedure was neither finalised or approved. 3.11

The weekly average number of demolitions requiring Asbestos Team regulation has increased from one demolition a week in September 2015 to nine a week in June 2016. Around 1,180 inspections were undertaken by the Asbestos Team (of four inspectors) between July 2015 and July 2016. In relation to Asbestos Team activities, each demolition site received an average of 4.35 inspections. This is about one inspection (and associated report) per work day per inspector on average. 3.21

The Audit Office’s case file review identified all demolition sites received a workplace inspection from an Asbestos Team inspector, and nearly all sites received an inspection on demolition day. However, only 16 per cent of sites received all four inspections (at smoke-testing, removal of asbestos, pre-demolition and demolition) as specified in the draft *Workflow processes* document (July 2015). If the four inspections identified in that document are accepted as the basic requirements for WorkSafe ACT’s regulation of the demolition of loose-fill asbestos contaminated houses, then inspection activity has fallen far short of meeting that requirement. As the rate of demolitions increased during 2015-16 there was a decline in the overall number of inspections per site and the quality of records management significantly declined. 3.34

The Audit Office’s case file review confirmed assertions of Asbestos Team officers that there had been a significant change in priorities for different inspections (i.e smoke testing and pre-demolition inspections declined, and post-demolition inspections increased). However, additional inspections to verify power had been terminated have only been undertaken for a few sites. There was no documented rationale for changes in priorities. 3.41

The Audit Office's case file review identified variability in the conduct of the four inspections identified in the draft *Workflow processes* document (July 2015). These results cannot be attributed to the use of 'reasonable discretion' of Asbestos Team inspectors as decisions to not conduct particular inspections have not been made according to a documented program and procedures and have not been appropriately explained and recorded. 3.47

The *How to Safely Remove Asbestos Code of Practice 2014* states that if a level of 0.02 fibres / ml is recorded, then the 'person conducting a business or undertaking' must stop work and notify WorkSafe ACT. Asbestos Team officers advised that the team had not been notified of any breach of the 0.02 level in the period 1 July 2015 to 26 July 2016. 3.59

In August 2016 there was an instance on one site (of an ACT-Government initiated demolition) where air quality monitoring detected a high reading (exceeding the 0.01 fibres / ml level, a reading of 0.04). Further testing identified that the high reading was primarily due to gypsum fibres (of 23 respirable fibres 16 were identified as gypsum and seven were identified as asbestos (amosite)). The air quality monitoring result was recalculated on the basis of the known respirable fibre count and returned a result of less than 0.01 fibres / ml. There is no indication that the contractor did not meet their obligations for reporting, but this incident exposed deficiencies in task allocation, planning, in team support and communications within the Asbestos Team, and the lack of a supporting case management system for readily retrieving information for a site. 3.71

Asbestos Team inspection reports have not identified why some sites have been the subject of post demolition workplace inspections and others have not. There is no procedural documentation for post demolition workplace inspections. It is not clear at what point WorkSafe ACT Asbestos Team's regulatory interest in a particular demolition site concludes, and how this is confirmed. 3.78

WorkSafe ACT is inadequately monitoring the implementation of Asbestos Team activities for the purpose of achieving continuous improvement in the regulation of the demolition of loose-fill asbestos contaminated houses. There is no evidence of team (or program) management oversight and the Asbestos Team is not using its available management information systems effectively to generate useful managerial information on regulatory activities. 3.88

Interactions such as team meetings and paired workplace inspections provide opportunities for practice sharing, quality assurance, personal development and learning amongst Asbestos Team inspectors. However, documentation and records associated with these interactions are inadequate to confirm the frequency of such activity, its purpose or its assurance value. 3.90

There is no independent assurance of the documented records of inspectors' activities, whether these are created as internal records, as workplace inspection reports for a 'person conducting a business or undertaking' or as statutory notices under sections 191 and 195 of the *Work Health and Safety Act 2011*. Records 3.93

prepared by inspectors potentially provide enduring evidence of a large proportion of inspectors' regulatory activities. These need to be of a high quality.

There is limited evidence of management activity specifically relating to probity controls and the risk of regulator capture. For example, a basic control is supervisory involvement in allocating inspectors to regulated entities. For the Asbestos Team this is an administrative support task, based on case loading, efficiency and continuity. Probity is not a consideration and there is no supervisory sign-off in assigning tasks to inspectors. A lack of application of probity controls accompanied by a lack of procedural documentation in general, decision rationale, risk management, quality assurance, outcome/output reporting and other oversight mechanisms means inspectors are currently at risk of accusations of preferential treatment or of imposing an excessive burden on the regulated entity. 3.97

Risk assessment procedures are established in procedural documentation of WorkSafe ACT. However there is no documentation of the conduct or results of any risk assessment for Asbestos Team activities. 3.102

The Asbestos Team's documentation and record keeping is poor. This is a concern, particularly as the Asbestos Team's actions and decisions may need to be evidence if subjected to an investigation or judicial examination. Furthermore, the Asbestos Team does not have in place a mechanism to confirm the completeness of its records of regulatory activity, such as records of workplace inspections on demolition day. 3.106

The Asbestos Team's inspection reports do not have content that meets Access Canberra's service documentation requirements of being 'clear and comprehensive ... and ... easy to understand', particularly reports in the latter part of 2015-16. WorkSafe ACT managers advised that reports are prepared by inspectors, but are not independently quality assured. Reports are not read by supervisors prior to sending to recipients, and have not been independently reviewed subsequently. Independent assurance would have prevented reports from being sent, on occasion, to contractors that were unintelligible or of limited value. 3.111

On some occasions inspectors have entered a house on the basis of an asbestos assessor's clearance certificate to indicate that it is safe to do so and challenged aspects of the assessor's assessment and therefore the basis for the certificate. The draft *Workflow processes* document (July 2015) and inspection checklists do not indicate that it is an inspector's role to enter a house and inspection reports do not provide a rationale for why it was necessary to do this in specific instances. Entering such an enclosure potentially presents a greater risk for the inspector's own health and safety. 3.118

Section 435 of the *Work Health and Safety Regulation 2011* requires that health monitoring should occur if there is a risk of exposure to asbestos when carrying out inspection work. For the inspectors who have entered a house (enclosure) and challenged the assessment underpinning the clearance certificate, there was no evidence that their health was being monitored by WorkSafe ACT prior to June 3.119

2016. WorkSafe ACT has since instructed its inspectors (December 2016) not to enter any house without a direction in writing from the Manager of the Asbestos Team.

## ESCALATION AND RESPONSE TO INCIDENTS

Paragraph

WorkSafe ACT has not identified how its *Workplace Safety: Compliance Framework* (June 2016) is to apply to the regulation of the demolition of loose-fill asbestos contaminated houses. It is not clear how and when potential compliance issues associated with the demolition of loose-fill asbestos contaminated houses will be actioned. 4.15

During the first 12 months of demolitions under the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* (July 2015 to July 2016) five Improvement Notices and four Prohibition Notices were issued. As Asbestos Team-specific expectations in response to WorkSafe ACT's *Workplace Safety: Compliance Framework* (June 2016) have not been articulated, it is not possible to determine if nine is considered reasonable or not. 4.25

A review of Asbestos Team-issued Improvement Notices and Prohibition Notices and accompanying workplace inspection reports found that records were inadequate and management involvement, although not mandatory but encouraged in guidance documents, was lacking. 4.32

The Audit Office's review of the regulation of the demolition of 146 houses shows that inspectors highlighted potential non compliance matters in an estimated 34 per cent of sites (49 sites). For 24 of these sites, there was no evidence that the potential non compliance matter had been addressed by the inspector or the regulated entity. This is potentially a lost opportunity to have a significant impact on workers' health and safety, particularly in using workplace inspection reports as a tool to raise safety standards. However in the absence of a compliance strategy, no conclusions can be drawn about whether or not the number of non compliance matters is significant, or whether the frequency of follow up is acceptable. 4.37

The duty to report a notifiable incident ultimately falls on the relevant 'person conducting a business or undertaking' with management or control of the workplace. Duty holders with knowledge of the incident are encouraged to coordinate their efforts to notify WorkSafe ACT. When an ACT Government employee was either a witness (and potential informant) to a matter or an employee contacted by a duty holder, records of the interaction between ACT Government officers indicate hesitancy and a lack of knowledge of procedure. When in doubt, ACT Government officers should be encouraged by WorkSafe ACT to advise WorkSafe ACT of potential notifiable incidents, regardless of duty holders' reporting responsibilities. 4.48

One incident relating to the regulation of the demolition of loose-fill asbestos contaminated houses has been investigated by WorkSafe ACT's Major Investigations Team. The incident occurred on the day of a private owner-initiated demolition at a house in Darke Street Torrens. WorkSafe ACT inspectors were in 4.51

attendance at the site at the time of the incident and shortly after.

For the incident at Darke Street, there was no evidence of a Notifiable Incident Report from the 'person conducting a business or undertaking' or the 'person in control of the premises' in WorkSafe ACT's information system (Objective IDMS). There is also no record of any interaction between WorkSafe ACT officers and the 'person conducting a business or undertaking' relating to the incident site on the day of the incident that confirms whether or how the duty of the 'person conducting a business or undertaking' to report was discharged. 4.65

The subject matter expert advised the Audit Office that given the immediate circumstances of the Darke Street incident, there are three types of investigative response that should have been anticipated, planned for and implemented: an employer investigation, a regulatory investigation and a performance review. In the case of the Darke Street incident, none of the five reviews or investigations subsequently undertaken adequately address the function of a performance review. There are a number of indicators of process errors that were capable of triggering a performance review of the investigative process (the third type of investigative response) during the course of the investigation, but this did not happen. 4.75

There was a lack of clarity as to the purpose of the reviews and investigations initiated into the Darke Street incident. Given the number of investigations that commenced, expressing clear terms of reference is a necessary initial step to ensure full coverage of the matters of interest, and also to avoid overlap, wasted effort and potential confusion. Without terms of reference there is also an increased risk that the conduct of one review may compromise another. Clear terms of reference for the various investigations were not provided. 4.80

The *Internal Review of Darke Street* report (21 August 2015) in part addresses two of the three investigative response types identified by the Audit Office's subject matter expert: an employer investigation and a performance (process improvement) review. However it was prepared and concluded within 48 hours of the incident and so was limited in its coverage. The Audit Office found no evidence of a management response to the report. 4.88

The purpose of the Procurement and Capital Works incident investigation leading to the *Incident investigation report* (26 November 2015) was not clearly established. Furthermore the incident investigation was not an effective employer or regulatory investigation, and as a performance review it did not trigger any follow up action. None of the investigations have effectively fulfilled the purpose of an employer investigation. 4.95

Procurement and Capital Works advised the Audit Office on 12 December 2016 that the *Incident investigation report* (26 November 2015) did not fit any of the three categories described by the subject matter expert (paragraph 4.67) but that the aim was 'to demonstrate, using a work related issue, the method of Root Cause Analysis, giving WorkSafe another technique which could assist them'. 4.96

Records identify that officers engaged in the first investigative responses to the Darke Street incident (August to November 2015) raised concerns about their independence and the need to be impartial. The close working proximity of investigators and inspectors shortly after the incident, and the probable overlap in the scope of each task created managerial challenges. Officers encountered difficulties in ensuring sensitive information was secure. The second regulatory investigation (that commenced in February 2016 and that led to the *Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens* (3 June 2016) was conducted by a newly appointed WorkSafe ACT investigator who had no prior knowledge of the people involved or the incident itself. This was a more effective response to managing the risk to independence and impartiality in the conduct of the investigation.

4.123

## Recommendations

### RECOMMENDATION 1 REGULATORY STRATEGY AND PROGRAM

Develop and formally adopt a regulatory strategy and program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work.

### RECOMMENDATION 2 REGULATORY PROGRAM

The program of activities to guide the Asbestos Team's regulation of the demolition of loose-fill asbestos contaminated houses should:

- a) reflect existing documented guidance from Access Canberra (and the previous Office of Regulatory Services) in the program's development;
- b) specify which Asbestos Team workplace inspections are mandatory or discretionary. For discretionary inspections guidance should be provided on how this is to be determined; and
- c) be regularly reviewed and changes made in response to performance, emerging risks and lessons learnt. Reasons for changes should be formally documented.

### RECOMMENDATION 3 RESOURCING ANALYSIS

WorkSafe ACT should bring forward the resourcing review originally noted by the Eradication Scheme Steering Committee for mid 2017 to early 2017 and should take into account the regulatory strategy and program of activities for the Asbestos Team.

#### RECOMMENDATION 4 PERFORMANCE MEASURES

Performance measures for the Asbestos Team's regulation of the demolition of loose-fill asbestos contaminated houses should be established. These should include:

- a) internal performance measures that allow WorkSafe ACT to review individual and team performance in relation to program goals and targets; and
- b) measures that focus on the monitoring of compliance and improvements in safety standards.

#### RECOMMENDATION 5 ASBESTOS TEAM REGULATORY ACTIVITIES

The implementation of the program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work should be:

- a) appropriately documented, stating the purpose of the activity, and how any permitted discretion has been applied;
- b) subject to quality assurance. This should include a review of documented records, particularly inspection reports, and records should be maintained of quality assurance activities such as meetings and supervisory discussion with inspectors;
- c) supported by documented probity procedures in order to protect Asbestos Team inspectors and regulated entities;
- d) informed by risk assessments. These need to be documented and reviewed, and be used as part of the prioritisation process in relation to programmed inspection planning, site and entity-based inspection activity, inspectors' personal safety and ACT Government versus private owner-initiated demolitions; and
- e) supported by procedures for documentation including specifying when documents are to be created and how they are to be managed. A managerial review of documentation should occur to check for completeness and accuracy of records.

#### RECOMMENDATION 6 ASBESTOS TEAM COMPLIANCE ACTIVITIES

Compliance activities of the Asbestos Team should be:

- a) clearly defined and articulated in accordance with WorkSafe ACT's *Workplace Safety: Compliance Framework* (June 2016);
- b) supported by a procedure to guide the validation, issuing and follow up of Improvement Notices and Prohibition Notices and escalation of matters that warrant more than routine supervision by management; and
- c) monitored and reviewed in relation to the Asbestos Team-specific response to the *WorkSafe ACT compliance framework*.

## RECOMMENDATION 7 NOTIFIABLE INCIDENTS

Procedures for WorkSafe ACT's management of notifiable incidents should be developed, approved and implemented. They should include, amongst other things, guidance for receiving and responding to notifiable incidents and encouragement for ACT Government employees to notify incidents (i.e. 'when in doubt, notify').

## RECOMMENDATION 8 CONDUCT OF INVESTIGATIONS

WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) and WorkSafe ACT's *Inspection and investigation manual* (February 2013) should be updated to include:

- a) requirements for an investigation plan to be developed and approved for all major investigations (including terms of reference covering aim, scope and approach);
- b) guidance on performance reviews relating to the conduct of investigations; and
- c) guidance on additional probity controls to be put in place when WorkSafe ACT is required to conduct a regulator's investigation of itself as a 'person conducting a business or undertaking'.

## Response from entities

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, Access Canberra (of which WorkSafe ACT is a business unit), part of the Chief Minister, Treasury and Economic Development Directorate, was provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comments. As part of this process, Access Canberra was offered the opportunity to provide a statement for inclusion in the Summary chapter.

The statement of the Head of Access Canberra is provided on page 12. The ACT Audit Office has also provided a comment in response to this statement on page 13.

In accordance with subsection 18(3) of the *Auditor-General Act 1996*, extracts of a draft proposed report and a final proposed report were provided to individuals or entities that have a direct interest in the proposed report. Extracts were provided to the:

- Asbestos Response Taskforce;
- Procurement and Capital Works;
- Chief Minister, Treasury and Economic Development Directorate; and
- former Work Safety Commissioner.

## Statement of the Head of Access Canberra

*I would like to thank the Auditor-General and her team for the time taken to consider the position of Access Canberra's executive team.*

*WorkSafe ACT (WSACT) welcomes the recommendations in the report and acknowledges the importance of having clearly documented governance and risk frameworks, policies and procedures about the regulation of loose-fill asbestos demolition activities. WSACT has commenced action to implement the changes put forward in the Audit Report.*

*While acknowledging the need to have well documented governance and risk frameworks, policies and procedures, WSACT emphasises that the regulation of the demolition of loose-fill asbestos contaminated houses operates within a clearly established and nationally harmonised best practice framework based on Work Health and Safety (WHS) legislation developed by Safe Work Australia. The ACT Government accelerated the adoption of Chapter 8 (Asbestos) of the framework with particular additions from 1 January 2015.*

*In addition to a number of improvements to the management of asbestos safety on work sites, the regulations provide improved controls for the safe demolition of asbestos affected domestic premises. Importantly, the regulations establish a new regime, overseen by WSACT that licenses and regulates the activities of asbestos assessors, asbestos removalists and asbestos demolition contractors. This includes the requirement to provide a copy of the asbestos removal control plan to WSACT. Licensed asbestos assessors and licensed asbestos removalists are also trained under the new harmonised competency-based training developed by Safe Work Australia. In addition, the stringent 'principal contractor' work health and safety obligations have been extended to the individual demolition site level. The primary duty of care for safety vests with the entities in control of the work site and brings a high level of safety regulation to these sites.*

*The Audit also notes that in relation to demolitions being undertaken by the Asbestos Response Taskforce, there is an additional layer of procurement-related controls contained in the active assurance model applied by Procurement and Capital Works.*

*The framework ensures that WSACT continues to meet its purpose under the Work Health and Safety Act 2011 to protect the safety of workers, workplaces and others. Since July 2015 WSACT has had regulation oversight of the demolition of 530 affected properties accounting for more than 200,000 hours of demolition activity. In that time there have been no notifiable injuries and there have been no unacceptable levels of asbestos detected in air monitoring. The Audit's recommendations to ensure well documented governance and risk frameworks, policies and procedures will strengthen the delivery, transparency and accountability of WSACT's regulatory role.*

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## Audit Office comment

*It has been respected in the audit report that there have been advancements in Commonwealth and ACT asbestos health and safety regulation since 2014. WorkSafe ACT's implementation of an articulated governance framework that includes risk analyses, policies and procedures and having reliable and robust mechanisms to demonstrate the effectiveness of its regulatory activities will provide transparency regarding the contribution WorkSafe ACT makes for achieving the objectives of the Work Health and Safety Act (2011) and accompanying regulation for the removal of loose-fill asbestos.*



# 1 INTRODUCTION

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- 1.1 This chapter provides an overview of Worksafe ACT responsibilities, the introduction of the ACT Government's *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* and the consequences of the latter on Worksafe ACT. It also presents the audit objective and scope, criteria, approach and method.

## Loose-fill asbestos insulation

- 1.2 Between 1968 and 1978-79 loose-fill asbestos was used to improve the thermal performance of residential buildings in the ACT.
- 1.3 The risks to health from loose-fill asbestos have since been recognised. In the period 1988 to 1993 the Commonwealth and then the ACT Government implemented a remediation program that focused on the removal and containment of the loose-fill asbestos contaminant. There had not been any program for the mass demolition of loose-fill asbestos contaminated houses in the ACT until the ACT Government announced on 28 October 2014 its *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*. Under this scheme the Government proposed to purchase all homes in the ACT affected by loose-fill asbestos, demolish the existing houses and make the remediated blocks available for purchase.
- 1.4 The Auditor-General report *The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* (Report 04/2016) provides detailed information on the eradication scheme and a timeline for key asbestos events in the ACT (refer to Appendices A and B of that report). That report focuses on financial, governance and risk arrangements of the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*. The implementation of the scheme is the responsibility of the ACT Government's Asbestos Response Taskforce, and as such the activities of the Taskforce were the principal focus for that audit.
- 1.5 This performance audit focuses on the management of the regulation of the demolition of loose-fill asbestos contaminated houses, including those houses acquired by the ACT Government under the Scheme and those houses in private ownership. WorkSafe ACT is the responsible regulator (irrespective of whether the house was acquired by the ACT Government or remains in private ownership) and was therefore the focus of this audit.
- 1.6 The scale of the loose-fill asbestos contamination problem in the ACT and the solution for managing it under the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* are unique and regulatory and industry experience was limited when the Scheme was introduced on 28 October 2014. This has presented challenges, including for WorkSafe ACT.

## WorkSafe ACT

- 1.7 WorkSafe ACT is responsible for regulating work health and safety in the ACT, including work health and safety for the demolition of homes affected by loose-fill asbestos (Mr Fluffy) insulation.

### Work health and safety legislation

- 1.8 The *Work Health and Safety Act 2011* is the principal legislation which establishes the overall framework for work health and safety and the range of duties designed to ensure work health and safety in the ACT. The ACT Work Safety Commissioner is a statutory office holder appointed by the ACT Government under the Act and officers in WorkSafe ACT support the Commissioner.

- 1.9 Section 3 of the *Work Health and Safety Act 2011* provides for its purpose:

... a balanced nationally consistent framework to secure the health and safety of workers and workplaces by ...

- (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant; and
- (b) providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and
- (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- (d) promoting the provision of advice, information, education and training in relation to work health and safety; and
- (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
- (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
- (g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in the ACT.

- 1.10 Subsection 19(1) of the Act provides for a primary duty of care on the part of employers:

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

- (a) workers engaged, or caused to be engaged, by the person; and
- (b) workers whose activities in carrying out work are influenced or directed by the person,

while the workers are at work in the business or undertaking.

- 1.11 Subsection 20(2) of the Act further provides that ‘the person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person’. Subsection 20(1) of the Act provides a definition of a *person with management or control of a workplace* as ‘a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace’.
- 1.12 The terms, a ‘person conducting a business or undertaking’ and a ‘person with management or control of a workplace’ are important terms, as these provide the means to identify responsibilities. This assists in holding the appropriate persons or entities to account. As a result of the different entities on a work site, with different roles and responsibilities, there may be multiple duty holders in accordance with sections 19 and 20 of the *Work Health and Safety Act 2011*.

### Revised legislative framework

- 1.13 WorkSafe ACT’s regulatory powers and duties were reviewed and changed in response to the need to remove loose-fill asbestos in houses at the scale required under the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*.
- 1.14 During 2014 a revised legislative framework for regulating the demolition of houses affected by loose-fill asbestos was created as a result of amendments to the *Work Health and Safety Regulation 2011*<sup>1</sup> which supports the *Work Health and Safety Act 2011*. On 1 January 2015, the amended *Work Health and Safety Regulation 2011* came into effect. It included a detailed chapter on asbestos (Chapter Eight) in line with model work health and safety regulation for all Australian jurisdictions. This introduced a broader and potentially more effective basis for WorkSafe ACT to regulate the demolition and remediation of loose-fill asbestos contaminated houses, including requirements for:
- an Asbestos Removal Control Plan if a house is to be demolished (section 464);
  - an Asbestos Management Plan if a house is to continue being occupied (section 429);
  - a notice to be provided to WorkSafe ACT of loose-fill asbestos removal (section 466); and
  - a clearance inspection (section 473) and clearance certificate (section 474) prior to demolition (or refurbishment) of a loose-fill asbestos contaminated residential house.

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<sup>1</sup> SL2011-36 Republication No 14 Effective: 1 January 2015

## Demolition of loose-fill asbestos contaminated houses

- 1.15 Owners of loose-fill asbestos contaminated houses in the ACT have been offered the opportunity to participate in the Government's *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* through a voluntary buyback program and through an assisted private demolition program. Five properties were already in ACT Government ownership before the Scheme was announced.
- 1.16 While the majority of the owners of the 1,023 affected houses<sup>2</sup> have accepted the ACT Government's offer to participate in the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, a few have not. As at 14 December 2016, the owners of all but 26 houses were participating in the Scheme.
- 1.17 Of the 997 properties (including the five already owned by the ACT Government) participating in the Scheme, 12 houses were in private ownership when demolished with Government financial assistance under the Government's assisted private demolition program.
- 1.18 Asbestos Response Taskforce records indicate that a total of 38 properties:
- have been demolished privately (12 with Government assistance and four without);  
or
  - have not participated in the Scheme and are not known<sup>3</sup> to have been demolished privately (22 properties).
- 1.19 On this basis 38 of the 1,023 affected properties (3.7 per cent) have already been demolished privately or and could potentially be demolished privately. This means there has been, and may continue to be, two streams of demolitions: those undertaken by the ACT Government and those undertaken by private operators. Each stream presents a distinct profile of risk to WorkSafe ACT as the regulator. WorkSafe ACT has a duty to regulate both private operators and the Asbestos Response Taskforce, which has engaged Procurement and Capital Works to manage the procurement and contracting of private sector contractors to undertake demolitions of houses in ACT Government ownership.
- 1.20 In addition WorkSafe ACT has a duty to regulate itself. Access Canberra, of which WorkSafe ACT is a business unit, employs staff that are delegated to work for the Work Safety Commissioner in WorkSafe ACT. Accordingly WorkSafe ACT must regulate workplace health and safety in its own workplace, including when its workplace is the site of a demolition where an inspector is working. In this circumstance WorkSafe ACT is not the 'person with management or control of a workplace' (i.e. the demolition site)

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<sup>2</sup> According to the Taskforce's website homepage key statistics there are a further 11 impacted properties.

<sup>3</sup> A small number of properties have been demolished privately without Government financial assistance, and their demolition may not be known to the Asbestos Response Taskforce until the property owner seeks to deregister the property from the *Affected Residential Premises Register*. WorkSafe ACT records in Objective IDMS indicate three further self-funded, privately-organised demolitions took place in the 2015-16 year.

according to section 20 of the Act) but WorkSafe ACT does have a duty of care towards its employees while on that site, by virtue of section 19 of the Act.

- 1.21 Since 1 July 2014, 515 Government-owned or Government-acquired houses have been demolished.<sup>4</sup> Over the same period Asbestos Response Taskforce records indicate there have been 16 privately organised demolitions (seven prior to 1 July 2015 and nine since 1 July 2015). The number of demolished loose-fill asbestos contaminated houses in the ACT has therefore gone from seven in the year 1 July 2014 to 30 June 2015, all in private ownership, to 524 houses since 1 July 2015. The current rate of demolition is about 40 houses a month.
- 1.22 During the first half of 2015 the nature of loose-fill asbestos contaminated house demolition in the ACT shifted from being small scale, property by property, private owner initiated demolitions to large scale, programmed, predominantly ACT Government initiated demolition. This has increased demands on WorkSafe ACT.

#### *Government initiated demolitions*

- 1.23 In 2015-16, the first full year of demolitions after the introduction of the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, 95 per cent of demolitions were managed by Procurement and Capital Works on behalf of the ACT Government.
- 1.24 In September 2015 Procurement and Capital Works established a panel of ten Head contractors following a tendering process. Properties acquired through the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* voluntary buyback program have been released in tranches to members of the panel.
- 1.25 An indicative demolition schedule has been published and updated by the Government's Asbestos Response Taskforce. Targets for the rate of demolition are based on factors such as the availability of properties, and Head contractors' capacity. In September 2015 this schedule identified:
- 2015 = 50 demolitions
  - 2016 = 200 demolitions
  - 2017 = 300 demolitions
  - 2018 = 300 demolitions
- 1.26 On 29 July 2016 the Asbestos Response Taskforce revised the 2016 target to 350 and its 2017 target to 335. On 14 December 2016 the Asbestos Response Taskforce identified that 515 ACT Government-owned or Government-acquired houses had been demolished since July 2015. This is more than twice the volume of demolitions that was originally scheduled in September 2015. The Asbestos Response Taskforce has also revised the 2017 target to 388 demolitions (an increase on the original target of 300).

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<sup>4</sup> Asbestos Response Taskforce website homepage Key Statistics 14 December 2016

## Audit objective and scope

- 1.27 The objective of this performance audit is to provide an independent opinion to the Legislative Assembly on the effectiveness of WorkSafe ACT's management of its workplace health and safety regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses in the ACT.
- 1.28 The scope of the audit includes WorkSafe ACT's planning and implementation of its regulation of workplace health and safety relating to the demolition of residential houses that are Government owned or privately owned.

## Demolition

- 1.29 The demolition phase is one of four phases and one of eleven activities as described in the Asbestos Response Taskforce's *'Mr Fluffy' – from Removal to Renewal: A guide for neighbours and the Canberra community*.

**Table 1-1 'Mr Fluffy' - from Removal to Renewal phases and activities**

Phase	Activity	Involving:
	Asbestos Assessment	Licensed asbestos assessors undertook assessments of each affected house to determine level of contamination.
Removal	Buyback	Homeowners opt into the Voluntary Buyback Program
	Property Management	Each surrendered affected house undergoes detailed scoping to understand history of the house, key features and hazards to inform the demolition process. The house is then secured and maintained, with lawns mowed by the Taskforce until it is scheduled for demolition.
	Scope & Schedule	Each house is examined against a range of complexities and considerations such as its location in bushfire zones, unit titling or shared wall, heritage status, rural locality, or occurring in a cluster. Then houses are grouped by suburb or district in six month windows for efficiency and to minimise neighbourhood disruption.
Demolition	Assessment and Site Set Up	Demolition contractors assess each house and submit a plan to WorkSafe ACT for approval prior to works commencing. With approval, the site is set up with equipment and the property is fenced off.
	Internal Asbestos Removal	The roof is wrapped, negative air units are installed to run 24/7 to create the environment for licensed asbestos removalists in protective gear to remove the asbestos and other insulation products prior to demolition. The walls are then sprayed with a PVA glue to trap any remaining fibres.
	Demolition	Weather permitting, the actual demolition of the house should take just one to two hours during which a fine water mist is sprayed over the site to suppress any dust, with the rubble transported in covered trucks to the disposal site.
	Clearance	When the house is removed, soil testing occurs to ensure site is free of loose fill asbestos at which time, the Taskforce delegate removes the block from the register of affected properties.
Rebuild	Sale or Repurchase	Where a homeowner is seeking to return and rebuild, the available block will be offered to them as a First Right of Refusal or to the public via auction.

Phase	Activity	Involving:
	Rebuild	The owners of the block can begin to rebuild through the normal development application process, adhering to the zoning and planning arrangements available to the block
Renewal	New home	A new beginning, free from loose fill asbestos

Source: Asbestos Response Taskforce's 'Mr Fluffy' – from Removal to Renewal A guide for neighbours and the Canberra community

1.30 This audit is focused on WorkSafe ACT's regulation of key demolition activities, including:

- from the point at which statutory notices and notifications are lodged by contractors with WorkSafe ACT that signals the intent to firstly remove loose-fill asbestos and then to demolish a house once the loose-fill asbestos contamination has been remediated by the removal contractor;
- the submission to WorkSafe ACT of any required documentation by contractors, and any steps WorkSafe ACT should then take in response to this documentation;
- property 'site establishment' (fencing, cut off services);
- construction of the building enclosure, to create a negative air environment, within which asbestos removal can take place;
- removal of loose-fill asbestos contamination and remediation of risk areas where removal is not reasonably<sup>5</sup> possible, for example through the use of PVA glue to bond contaminant to a structure;
- house demolition, that is knocking down the building; and
- subsequent site clearance of waste.

1.31 WorkSafe ACT's regulation of these activities involves the regulation of a number of different entities, functions and activities including:

- the Asbestos Response Taskforce of the ACT Government, as a 'person conducting a business or undertaking';
- Procurement and Capital Works, a business unit of the Chief Minister, Treasury and Economic Development Directorate, which provides the Principal's Authorised Person and contract management support to deliver the oversight of demolition contractor activities;
- Head contractors;
- private owners of houses and their contracted demolition agents;
- contractors including removal, demolition and other specialists such as electricians; and
- licensed asbestos assessors.

<sup>5</sup> Work Health and Safety Regulation s452 states 'so far as is reasonably practicable, that the asbestos is removed before the demolition is commenced.'

1.32 In addition WorkSafe ACT regulates itself, through the agency of Access Canberra, as an employer of staff that work in environments where there is potentially an elevated risk of harm to their health, safety and welfare.

## Audit criteria

1.33 The audit criteria are:

- WorkSafe ACT effectively plans for its regulatory role in the demolition of loose-fill asbestos contaminated houses. WorkSafe ACT:
  - has established strategies and objectives to provide direction to staff, to allocate resources appropriately and to ensure accountability;
  - has engaged an appropriate workforce for its role and provided ongoing development;
  - has developed suitable policy and operational procedures for its role, to fulfil its regulatory function and responsibilities; and
  - monitors and reviews its regulatory powers and duties, strategies, objectives, policies and operational procedures.
- WorkSafe ACT effectively implements its regulatory role in the demolition of loose-fill asbestos contaminated houses. WorkSafe ACT:
  - has met its responsibilities in relation to regulating the removal of asbestos from properties and the demolition of houses;
  - has effective documentation and record-keeping practices to demonstrate how it meets its responsibilities; and
  - monitors and reviews the performance of its operational activities.
- WorkSafe ACT effectively responds to incidents and non compliance related to the demolition of loose-fill asbestos contaminated houses. WorkSafe ACT:
  - has effective systems and procedures; and
  - has met its responsibilities.

## Audit approach and method

1.34 The audit adopted the Office's Performance Audit Methods and Practices (PAMPr) and related policies, practice statements and guidance papers. These policies and practices have been designed to comply with the requirements of the *Auditor-General Act 1996* and relevant professional standards (including *ASAE 3500 – Performance Engagements*).

1.35 The audit approach and method comprised:

- fieldwork, including:
  - detailed questions relating to regulation planning prior to and post July 2015; and
  - interviews with former and current officers in Access Canberra, WorkSafe ACT and the Asbestos Response Taskforce.

- identifying and reviewing relevant information and documentation relating to WorkSafe ACT's management of its regulatory roles and responsibilities;
  - a case file review of documentation held by WorkSafe ACT for each site at which a demolition had taken place between 1 July 2015 and 26 July 2016; and
  - identifying and reviewing Asbestos Team inspection documentation and WorkSafe ACT investigation team documentation.
- 1.36 The Audit Office engaged Mr Neil Quarmby of Managing Intelligence as a subject matter expert for this audit. Mr Quarmby is a former Head of Regulatory Operations for Comcare and has provided specialist case file review advice for this audit and expert advice relating to implementation of workplace health and safety responsibilities and better practice.
- 1.37 Auditing Standard ASAE 3500 requires that an audit consider events up to the date of finalising of the report. To achieve this, the Audit Office when seeking comments on the final draft report, requested Access Canberra to advise of any significant events affecting audit findings since fieldwork ceased (end of September 2016).

## Audited entities

- 1.38 The activities of WorkSafe ACT, which is a business unit of Access Canberra, an agency of the Chief Minister, Treasury and Economic Development Directorate was the primary focus of the audit. The agency is responsible for services formerly within the Office of Regulatory Services which included WorkSafe ACT.
- 1.39 Other areas of the Chief Minister, Treasury and Economic Development Directorate have been consulted during this audit. This includes the Asbestos Response Taskforce, and Procurement and Capital Works. The Taskforce is responsible for overseeing the delivery of the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*.
- 1.40 The Taskforce's Eradication Scheme Steering Committee, chaired by the Head of the Taskforce, is the primary executive-level decision making forum and is described as 'the key controlling and performance driving element of the governance structure' for all aspects of the Scheme. Members of the Eradication Scheme Steering Committee include the Under Treasurer and the Director-General of Economic Development Directorate along with the Taskforce Head.
- 1.41 Procurement and Capital Works is responsible for procurement and managing contracts, on behalf of the Asbestos Response Taskforce, for the demolition of ACT Government-acquired loose-fill asbestos contaminated houses. The Asbestos Response Taskforce, and Procurement and Capital Works are therefore the subject of workplace health and safety regulation by WorkSafe ACT.



## 2 PLANNING FOR THE REGULATION OF THE DEMOLITION OF LOOSE-FILL ASBESTOS CONTAMINATED HOUSES

2.1 This chapter examines the planning undertaken by WorkSafe ACT in late 2014 and up until July 2015, i.e. the year prior to the first ACT Government demolitions. It also includes consideration of planning work undertaken during the first year of demolitions, which commenced in July 2015 and involved a total of 243 demolitions.

### Summary

#### Key findings

	Paragraph
A draft <i>Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide</i> (a 'how-to' guide) was developed collaboratively by the Asbestos Response Taskforce and WorkSafe ACT in December 2014 and provided to industry representatives. The purpose of the guide was unclear and it was not finalised.	2.10
In December 2014 WorkSafe ACT had also developed a '93 point checklist', the purpose of which was to identify legislative requirements, potential responsibilities for the 'person conducting a business or undertaking' relating to a demolition and tasks to be done by the regulator. In anticipation of the Government pilot demolitions and subsequent launch of the <i>Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme</i> voluntary buyback program, WorkSafe ACT used the initial '93 point checklist' to develop inspectors' workplace inspection forms and checklists. Records maintained by WorkSafe ACT in its record management system (Objective IDMS) for the two private owner-initiated demolitions in the first half of 2015 showed the use of these forms and checklists.	2.15
There is no evidence that WorkSafe ACT used existing Access Canberra and Office of Regulatory Services documented guidance to develop and inform the Asbestos Team's regulatory approach to the demolition of loose-fill asbestos contaminated houses. For example, there was no evidence that a prioritisation process was undertaken or that specific risks were matched to specific regulatory responses.	2.25
There is no evidence that WorkSafe ACT's planning for its Asbestos Team's regulatory activities included an assessment of the relative risks of ACT Government-initiated demolitions and private demolitions. While there are far fewer private demolitions (potentially between two and three per cent of all possible demolitions), the health and safety risks may be significantly higher,	2.29

because of the lack of ACT Government oversight through procurement and contracting arrangements. Accordingly, scrutiny over private demolitions may need to be greater than that for ACT Government demolitions.

WorkSafe ACT has not developed a strategy or program of activities for the regulation of the demolition of loose-fill contaminated houses. A strategy would be expected to describe the overall aim of the regulatory activity and define regulatory outcomes. A program of activities would be expected to identify and describe actions to be undertaken for the purpose of achieving the regulatory strategy. 2.35

There is ambiguity associated with the inspections that must be undertaken by WorkSafe ACT officers for the demolition of loose-fill asbestos contaminated houses. It is unclear what inspections (site establishment, smoke testing, asbestos removal, pre-demolition, demolition, post demolition) are mandatory or discretionary. Furthermore, if inspections are discretionary, there is no guidance on how this discretion is to be exercised. Important statements (e.g. in briefings and budget submissions to Ministers) made by WorkSafe ACT appear to identify certain mandatory workplace inspections that are to take place, but there is inconsistency between these statements and WorkSafe ACT's draft *Workflow processes* document (July 2015). This creates uncertainty as to what the Asbestos Team is accountable for implementing, and therefore there is no basis for determining if the Asbestos Team is satisfactorily implementing its regulatory activities. 2.45

WorkSafe ACT has not identified specific 'minimum' requirements for the delivery of regulatory activity for the demolition of loose-fill asbestos contaminated houses nor has it identified associated performance activity information. Such information is needed to guide resource analyses, but does not exist. Accordingly, a June 2016 business case presented to the Minister seeking additional resources did not include important performance activity information necessary to estimate resources. The business case also did not consider other tasks of the team or efficiencies that may be gained through the team and industry becoming more efficient due to increasing experience. 2.58

As a principle, a regulator needs to be independent, and be seen to be independent, of those it regulates. In order to undertake its regulation of the demolition of loose-fill asbestos contaminated houses WorkSafe ACT sought funding for additional resources through the Asbestos Response Taskforce. The in-principle agreement of the Eradication Scheme Steering Committee to the additional funding was received and a formal request was then made to the Chief Minister. While there is no evidence that the independence of WorkSafe ACT has been compromised, the provision of the additional resources for the Asbestos Team was not obviously independent. 2.64

WorkSafe ACT's reporting of the Asbestos Team's activities against Safe Work Australia indicators and Access Canberra accountability indicators has been incomplete and inconsistent. Accordingly, WorkSafe ACT does not have an effective mechanism for monitoring and publically reporting the reduction in the risk of harm and improvements in compliance as a result of the activities of the Asbestos Team's regulation of loose-fill asbestos contaminated demolitions. WorkSafe ACT is therefore unable to demonstrate its effectiveness in relation to objects of the *Work Health and Safety Act 2011*. 2.80

WorkSafe ACT has not identified an intended (target) performance level against which to compare actual performance for its regulation of the demolition of loose-fill asbestos contaminated houses, nor is there any internal reporting on the actual performance of the Asbestos Team on its regulatory activities. This means accountability and the Asbestos Team's ability to demonstrate continuous improvement is compromised. 2.84

## Development of a regulatory response

2.2 During 2014 (October to December) discussions took place between the Asbestos Response Taskforce and WorkSafe ACT about how WorkSafe ACT would operationalise its existing responsibilities and those anticipated in amended legislation. At this time it was not known what the scale of the affected homeowners' response would be to the ACT Government's *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme's* voluntary buyback program. It was therefore not known whether WorkSafe ACT would be primarily regulating loose-fill asbestos demolition for houses in public or private ownership.

2.3 Regardless of the eventual scale of the affected homeowners' response to the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme's* voluntary buyback program, it was planned that the private sector would provide demolition services for ACT Government-acquired properties. Industry experience in managing the demolition of properties on a large scale was limited, and it was identified as necessary for the industry to be supported so that it could develop sufficient capacity to operate effectively and efficiently, and provide value for money for the ACT Government.

### Information and support for industry

2.4 To assist in supporting industry to build its capacity to undertake demolitions of loose-fill asbestos contaminated houses, the Asbestos Response Taskforce and the Work Safety Commissioner developed a 'how to' guide for industry, initially titled *Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide* (draft,

December 2014). At the same time WorkSafe ACT was developing a '93 point checklist' of potential regulatory activity to guide the planning of its regulatory response.<sup>6</sup>

2.5 Although the development of the December 2014 draft 'how to' guide was initially led by the Asbestos Response Taskforce, the guide also referred to WorkSafe ACT's expectations:

The guideline highlights key legislative requirements under ACT legislation including, where relevant, WorkSafe ACT's expectations regarding how the legislative requirements can be met.

2.6 The draft guide was shared with industry representatives. The Audit Office interviewed current and former officers of WorkSafe ACT and the Asbestos Response Taskforce who were at the time (August 2014 to February 2015) involved in the development of the early guidance material for industry and in the approach to work health and safety regulation for demolition. Officers identified that the guide involved a substantial level of effort and collaboration over a five-month period at a time when there was a lack of certainty as to the guide's eventual status (e.g. whether to be a mandated code of practice, or interim guidance), and the timing of the demolition pilots.

2.7 Officers provided varying accounts of the 'how to' guide's purpose, that is, whether it was intended by the ACT Government to assist in developing capacity and capability in the industry in order to create a viable basis for letting contracts, or whether the guide was intended to clearly establish WorkSafe ACT's regulatory expectations. The early drafts and editorial comments from officers indicate the guide had the potential to achieve both purposes.

2.8 By February 2015 it was agreed by WorkSafe ACT and the Asbestos Response Taskforce that further work on the 'how to' guide was unnecessary. The document was not finalised as either a guide or as a code of practice, with the document's limitations being that it was 'overly-prescriptive', would place restrictions on industry innovation and 'would impact on the overall Scheme cost'. However its status throughout much of 2015 was unclear since:

- its review was established as an Asbestos Response Taskforce accountability indicator for 2015-16; and
- it was the subject of a recommendation from the August 2015 'lessons learned' workshop following the demolitions pilots that Procurement and Capital Works and WorkSafe ACT meet with licensed asbestos assessors to develop a shared and consistent application of regulatory framework'. On 27 November 2015 action in response to this recommendation was reported to the Eradication Scheme Steering Committee as being 'complete'.

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<sup>6</sup> An initial review of regulation was circulated by the Work Safety Commissioner on 8 December 2014, titled 'Checklist Asbestos Removal from or Demolition of Loose-fill Asbestos Insulation ('Mr Fluffy') Houses (8pp).

2.9 With respect to the *Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide* (draft, December 2014), Asbestos Response Taskforce officers advised the Audit Office (12 December 2016):

... the ACT Government used it to assist the Pilot Demolitions Program. Although after the pilot demolitions it was agreed, with industry input, that the guide did not need to be further developed into a Code of Practice. It had served a valuable purpose in informing the early planning of administering the demolition program, contract risk apportionment and industry briefing on the challenges ahead and expectations of the Taskforce on the general approach and safety issues.

2.10 A draft *Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide* (a 'how-to' guide) was developed collaboratively by the Asbestos Response Taskforce and WorkSafe ACT in December 2014 and provided to industry representatives. The purpose of the guide was unclear and it was not finalised.

### Preparation for the pilot demolitions

2.11 During the first half of 2015, the Asbestos Response Taskforce and WorkSafe ACT continued preparations for the commencement of demolitions under the ACT Government's *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*. A demolition pilot of loose-fill asbestos contaminated houses was initially planned for the March to May period, but was moved to June and July 2015. There were two private owner-initiated demolitions which occurred in the first six months of 2015.

2.12 With respect to contracting for the pilot demolitions, Asbestos Response Taskforce officers advised the Audit Office (12 December 2016) that:

... the first approach was intentionally abandoned as it did not represent value for money due to a number of reasons including the risk apportionment to industry partly associated with the prescriptive nature of the Guide. The 'second' Pilot Demolition Program was progressed using a different procurement approach and a more performance and outcomes based scope framed around safety and compliance.

2.13 During this period there is evidence of WorkSafe ACT's articulation of an emerging strategy and program as on 28 May 2015 the Work Safety Commissioner provided a briefing on regulation of the demolitions via a YouTube video on the internet (refer to Appendix A).

2.14 The narrative in the video confirms that WorkSafe ACT:

- will interact with contractors and will query their plans for the removal and demolition activities;
- will be 'scrutinising the [removal] plan and coming out and making sure that this is being done safely';
- will have 'sighted the demolition plan and raised any concerns we have about that, if we have any';

- will on the day of the demolition ‘come out on site [making] sure it is being done appropriately’; and
- will no longer have a regulatory interest ‘once the material is taken away and disposed of and the site ... cleared’.

2.15 In December 2014 WorkSafe ACT had also developed a ‘93 point checklist’, the purpose of which was to identify legislative requirements, potential responsibilities for the ‘person conducting a business or undertaking’ relating to a demolition and tasks to be done by the regulator. In anticipation of the Government pilot demolitions and subsequent to the launch of the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* voluntary buyback program, WorkSafe ACT used the initial ‘93 point checklist’ to develop inspectors’ workplace inspection forms and checklists. Records maintained by WorkSafe ACT in its record management system (Objective IDMS) for the two private owner-initiated demolitions in the first half of 2015 showed the use of these forms and checklists.

## Development of a regulatory strategy and program

2.16 To examine WorkSafe ACT’s planning for the implementation of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses, the Audit Office has used the Australian National Audit Office’s *Administering Regulation, Achieving the right balance* Better Practice Guide (June 2014) as a basis for comparison.

2.17 The Australian National Audit Office’s guide advises that regulators should develop a hierarchy of plans, which encompasses an overarching regulatory strategy (e.g. self regulation or an enforcement-based regime), a compliance strategy, and a systematic risk-based program of specific activities, all established according to a prioritisation process:

A compliance monitoring strategy requires a regulator to develop and implement a schedule of planned compliance monitoring activities. A compliance plan or strategy should incorporate a program of activities for a specified period of time that may range from a month or quarter to several years depending on the type and nature of risks being managed. In implementing the monitoring activities a regulator may use a diverse range of interventions which are proportionate to the risk of non-compliance and regulated entities’ behaviour. (page 43)

A compliance monitoring strategy should usefully describe the types of activities to be undertaken, the reasons for their selection, and the frequency of the activities. (page 41)

In developing compliance monitoring strategies, regulators also need to consider the form of the regulatory regime. ... regulation can take many forms and subject to the nature of the regulatory regime the role of the regulator in monitoring compliance can vary. A regulator may have a limited compliance monitoring role in a self-regulation regime, while in an enforcement-based regime this would be a core activity for a regulator. (page 41)

A systematic, risk-based program of compliance review activities provides a regulator with a cost-effective approach to monitoring compliance, enables available resources to be targeted to higher priority regulatory risks and to respond proactively to changing and emerging risks. (page 41)<sup>7</sup>

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<sup>7</sup> Australian National Audit Office *Administering Regulation, Achieving the right balance* Better Practice Guide (June 2014) page 41

2.18 The Australian National Audit Office's guide also refers to establishing operating procedures:

... developing operating procedures or guidance—comprehensively documenting procedures can represent a significant overhead for a regulator, but the procedures can provide a point of reference; promote a consistent approach to regulatory administration by providing a clear decision-making framework and improve transparency of the decision-making process. (page 25)<sup>8</sup>

2.19 The following terminology has been adopted from the Australian National Audit Office's guide and used in this audit report:

- A **strategy** is an overarching document that describes the overall aim of regulation, and defines regulatory outcomes. This should refer to subordinate strategies such as compliance monitoring or enforcement strategies.
- A **program** is an aggregation of planned activities that target higher priority regulatory risks. A program's performance should be monitored and modified quickly to respond to changing and emerging risks.
- **Procedural documentation.** The Australian National Audit Office's guide makes multiple references to regulators needing to have well-documented procedures, and that these should be up to date, readily available, and endorsed by management. (The term 'Standard Operating Procedure' is widely used in WorkSafe ACT, and refers to procedural documentation primarily for WorkSafe ACT's internal use.)
- **Risk based.** This includes risk assessment (to identify and evaluate), and risk management (to prioritise and treat/tolerate specific risks) so that a regulator is 'effectively allocating its resources while avoiding imposing unnecessary costs on regulated entities'.<sup>9</sup>

2.20 As part of WorkSafe ACT's planning for its regulation of the demolition of loose-fill asbestos contaminated houses, the Audit Office sought to identify whether any strategy or program for regulatory activity had been developed for the demolition of loose-fill asbestos contaminated houses, and if so, whether this was based on a risk-based prioritisation process. The Audit Office sought evidence of documented and approved strategies and programs.

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<sup>8</sup> Australian National Audit Office *Administering Regulation, Achieving the right balance* Better Practice Guide (June 2014) page 25

<sup>9</sup> Australian National Audit Office *Administering Regulation, Achieving the right balance* Better Practice Guide (June 2014) page 7

## WorkSafe ACT and Access Canberra guidance for regulatory response

2.21 The Audit Office identified a range of WorkSafe ACT and Access Canberra (previously the Office of Regulatory Services of the Justice and Community Safety Directorate) documented guidance available to WorkSafe ACT to develop its regulatory response in the period July 2014 to July 2016 including:

- Justice and Community Safety Directorate *Standard operating procedures for programmed inspection* (final draft) (December 2012);
- Office of Regulatory Services *Inspections and Investigations manual* (February 2013);
- Office of Regulatory Services *Compliance and Enforcement Framework* (July 2014), and Access Canberra's *Worksafe ACT Compliance Framework* (June 2016);
- the *Access Canberra Accountability Commitment* (June 2016); and
- WorkSafe ACT risk registers.

2.22 The Justice and Community Safety Directorate *Standard operating procedures for programmed inspection* (final draft) (December 2012) is particularly relevant. This provides a method for how to develop a programmed inspection (PI) through the stages of development, process and reporting. The documented procedure states:

The purpose of this directive is three-fold:

- to establish procedures to be applied consistently throughout the WorkSafe ACT PI;
- outline the processes to be followed when planning PI and an activity at targeted industry or workplaces. This include the roles and responsibilities of inspectors involved in carrying out PI; and
- to report / monitor and facilitate compliance with the WorkSafe ACT and ORS requirement.

2.23 The documents presented in paragraph 2.21 establish WorkSafe ACT's and Access Canberra's general approach to planning an industry-specific regulatory response, including:

- program level planning and management;
- the identification of work health and safety risk of harm factors within an activity or industry, and the application of a prioritisation process;
- consideration of the range of regulatory activities for how priority risks can be responded to;
- the need for clear program objectives and purpose, and means of determining whether the program is effective;
- agreed standard operating procedures; and

- risk assessment (at various levels), including personal risk, workplace risk of harm and regulatory risk.<sup>10</sup>

2.24 While this guidance aligns with that in the Australian National Audit Office's *Administering Regulation, Achieving the right balance* Better Practice Guide (June 2014), there is no evidence that it has been applied to the development of a regulatory response by the WorkSafe ACT Asbestos Team. For example, WorkSafe ACT officers were unable to provide any evidence that important steps, as set out in the *Standard operating procedures for programmed inspection* (final draft) (December 2012), had been followed. While there was an early draft of a long list of activities or requirements (the '93 point' checklist, refer to paragraph 2.4) there has been no prioritisation or review of this, and no risk-based planning that determines the best mechanism (e.g. unannounced spot-checks versus scheduled inspection points versus documentary review or broad-based compliance focus) to regulate priority activities or requirements.

2.25 There is no evidence that WorkSafe ACT used existing Access Canberra and Office of Regulatory Services documented guidance to develop and inform the Asbestos Team's regulatory approach to the demolition of loose-fill asbestos contaminated houses. For example, there was no evidence that a prioritisation process was undertaken or that specific risks were matched to specific regulatory responses.

### ACT Government and private owner demolitions

2.26 Question Time Briefs provided to the Minister for Workplace Safety and Industrial Relations provide some information on WorkSafe ACT's regulatory approach:

The Mr Fluffy removal and demolition program is being conducted in two streams, those being managed by the Government and those being undertaken by private owners.

WorkSafe ACT has worked with all stakeholders to develop common systems and methodology ... [and] ... has the same expectations of both Government and private contractors ... and applies the same level of scrutiny.

2.27 Emails in November 2014 relating to the draft *Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide* (the 'how-to' guide) indicate that there was a preference by WorkSafe ACT for the guide to be used for private sector demolitions. This suggests that WorkSafe ACT at the time perceived different risks and needs between the two streams (i.e. Government-initiated demolitions and private demolitions).

2.28 For ACT Government-initiated demolitions, Procurement and Capital Works contract manages on behalf of the Asbestos Response Taskforce a panel of ten Head contractors. The panel was established in September 2015. This provides Procurement and Capital Works with leverage over the activities of the Head contractors, which may provide some

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<sup>10</sup> The Australian National Audit Office's *Administering Regulation, Achieving the right balance better practice guide* (June 2014) describes regulatory risk as 'an actual or potential event or circumstance that interferes with the achievement of a regulatory policy objective or administrative outcome. It can be categorised into two broad groups: risk that affects a regulator's ability to effectively administer regulation; and risk that decreases a regulated entity's ability or willingness to comply with regulatory requirements'.

assurance that workplace health and safety requirements will be consistently met regardless of the activities of WorkSafe ACT. However, the contract management of demolitions organised by private owners is unknown and likely to be variable. (In this respect, it is noted that privately organised demolitions have had a far greater incidence of being the subject of escalation processes (refer to paragraph 4.30)). ACT Government and privately organised demolitions are likely to present different profiles of regulatory risk.

- 2.29 There is no evidence that WorkSafe ACT's planning for its Asbestos Team's regulatory activities included an assessment of the relative risks of ACT Government-initiated demolitions and private demolitions. While there are far fewer private demolitions (potentially between three and four per cent of all possible demolitions), the health and safety risks may be significantly higher, because of the lack of ACT Government oversight through procurement and contracting arrangements. Accordingly, scrutiny over private demolitions may need to be greater than that for ACT Government demolitions.

### Development of workflow processes (July 2015 onwards)

- 2.30 In July 2015 a three-page draft document of the principal inspection activities was prepared by, and circulated between, inspectors. The document is titled *Workflow processes for WorkSafe ACT inspectors responding to "Mr Fluffy" asbestos removal and demolition notifications*. This document is important as it provides the first and only written procedural document foreshadowing a program-based approach to WorkSafe ACT's regulation of demolitions.<sup>11</sup> It is referred to by WorkSafe ACT officers and in this audit as the draft *Workflow processes* document (July 2015). The draft document was never finalised.

- 2.31 WorkSafe ACT officers provided conflicting accounts to the Audit Office as to the status of the draft *Workflow processes* document (July 2015) and in turn the status of the basic program of activities it outlined. One officer provided email evidence dated 10 July 2015 showing the reliance on the document:

Attached is a quick and dirty look at the processes we discussed for managing the Mr Fluffy jobs. Please have a look and give me your feedback by Wednesday morning so we can table this at the Asbestos Team meeting in the afternoon. As you can see, this reaffirms the level of commitment expected from the lead inspectors on these jobs.

- 2.32 Similarly, the acting Work Safety Commissioner described to the Audit Office the draft *Workflow processes* document (July 2015) as:

'documented operating procedures for inspections' and its 'date of implementation, 14 July 2015'.

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<sup>11</sup> Another draft '*Worksafe ACT Standard Operating Procedures for Mr Fluffy demolitions* October 2015 (7pp) was identified by one officer. This also was not finalised or promulgated.

2.33 Another WorkSafe ACT officer consistently referred to the team's 'workflow process' in Ministerial Question Time briefings (November to 2015 to July 2016):

Inspectors' workflow process ... identifies specific points at which WorkSafe ACT inspectors are required to engage stakeholders and conduct workplace visits to the sites.

2.34 One WorkSafe ACT officer also identified a later version of the draft *Workflow processes* document, which was prepared in October 2015 and identified that this version was similarly 'never finalised or implemented'.

2.35 WorkSafe ACT has not developed a strategy or program of activities for the regulation of the demolition of loose-fill contaminated houses. A strategy would be expected to describe the overall aim of the regulatory activity and define regulatory outcomes. A program of activities would be expected to identify and describe actions to be undertaken for the purpose of achieving the regulatory strategy.

#### RECOMMENDATION 1 REGULATORY STRATEGY AND PROGRAM

Develop and formally adopt a regulatory strategy and program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work.

#### RECOMMENDATION 2 REGULATORY PROGRAM

The program of activities to guide the Asbestos Team's regulation of the demolition of loose-fill asbestos contaminated houses should:

- a) reflect existing documented guidance from Access Canberra (and the previous Office of Regulatory Services) in the program's development;

### The role of workplace inspections

2.36 The draft *Workflow processes* document (July 2015) identifies when workplace inspections are to occur. The key inspections are:

- during smoke testing prior to the commencement of the removal of any loose-fill asbestos to assess the conformance of the enclosure over the structure;
- during removal of the loose-fill asbestos to confirm that it accords with the documented method, as set out in the contractor's site-specific Safe Work Method Statement or in the Asbestos Removal Control Plan;
- at pre-demolition to assess the contractors' readiness for demolition; and
- at demolition to confirm that the method accords with the documented method, as set out in the Safe Work Method Statement.

2.37 Notwithstanding the uncertainty associated with the status of the draft *Workflow processes* document (July 2015), there are inconsistencies in the activities outlined in the document and other documentation and advice on the nature and type of workplace inspections. The document requires that certain workplace inspections occur, yet it states that they are:

... not an exhaustive list and can be varied as required at the discretion of the inspector and after consultation with the team manager.

2.38 The phrase 'not an exhaustive list' indicates that other workplace inspections can be undertaken. It does not mean the four inspections in the list should not be undertaken. Accordingly, the reference to 'at the discretion of the inspector' and 'after consultation with the team manager' should be interpreted to refer to the addition of more inspections and not fewer.

2.39 Ministerial Question Time Briefs between November 2015 and July 2016 indicate that the workplace inspections in the *Workflow processes* document are mandatory:

The inspectors' workflow process identifies specific points at which WorkSafe inspectors are required to engage with stakeholders and conduct workplace visits to sites.

2.40 Two briefs (November 2015 and February 2016) refer to the listed inspections as 'not exclusive' (meaning not a complete list), and provide a basis for determining how many inspections may be necessary:

These points are not exclusive and the level of engagement required by inspectors will vary and be determined by the inspector, depending upon the individual contractors involved and the specifics of each site.

2.41 However, these briefs also consistently state:

Regardless of how many visits inspectors make to each site pre-demolition, they will attend every site on the day of demolition to ensure that the demolition systems and methodologies agreed to are being implemented.

2.42 The Work Safety Commissioner's video briefing (28 May 2015) (refer to Appendix A for the transcript) similarly indicates that two inspections should occur; one to ensure removal and one to ensure demolition processes accord with safe work method statements.

2.43 Furthermore a range of 'required activities' have been described in budget proposals seeking ministerial approval for increases in funding to WorkSafe ACT (17 February 2016 and 20 June 2016). The budget proposals identify a minimum of four inspections to be undertaken by WorkSafe ACT officers:

The minimum Access Canberra commitment to each property is four inspections per property throughout the process (site establishment, smoke testing, pre-demolition and demolition).

2.44 This refers to a minimum commitment based on four inspections, although it is noted that one of the inspections in this statement is not referred to in the draft *Workflow processes* document (July 2015) (i.e. a 'site establishment' inspection) and one is omitted (i.e. the removal of the loose-fill asbestos).

- 2.45 There is ambiguity associated with the inspections that must be undertaken by WorkSafe ACT officers for the demolition of loose-fill asbestos contaminated houses. It is unclear what inspections (site establishment, smoke testing, asbestos removal, pre-demolition, demolition, post demolition) are mandatory or discretionary. Furthermore, if inspections are discretionary, there is no guidance on how this discretion is to be exercised. Important statements (e.g. in briefings and budget submissions to Ministers) made by WorkSafe ACT appear to identify certain mandatory workplace inspections that are to take place, but there is inconsistency between these statements and WorkSafe ACT's draft *Workflow processes* document (July 2015). This creates uncertainty as to what the Asbestos Team is accountable for implementing, and therefore there is no basis for determining if the Asbestos Team is satisfactorily implementing its regulatory activities.

## RECOMMENDATION 2 REGULATORY PROGRAM

The program of activities to guide the Asbestos Team's regulation of the demolition of loose-fill asbestos contaminated houses should:

- b) specify which Asbestos Team workplace inspections are mandatory or discretionary. For discretionary inspections guidance should be provided on how this is to be determined; and

## Establishment of the Asbestos Team

- 2.46 WorkSafe ACT began establishing a dedicated Asbestos Team in June 2014. The Asbestos Team was established in anticipation of regulating the demolition of loose-fill asbestos houses after the introduction of the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*. The initial team comprised four inspectors one of which was the team manager. This was created using officers from within WorkSafe ACT.
- 2.47 The team's initial role was described to the Audit Office by the acting Work Safety Commissioner:
- The purpose of the team is to provide Work Health and Safety regulatory support to the Asbestos Response Taskforce.
- 2.48 However, an Asbestos Response Taskforce executive further advised the Audit Office that:
- WorkSafe, rightly is not part of the Taskforce governance model as they are the independent regulator of safety, and thus must be kept independent of our program and activities.
- 2.49 Striking the balance between providing support to the industry, including to the Asbestos Response Taskforce, and Procurement and Capital Works as the Asbestos Response Taskforce's contract manager of demolition services, and maintaining arms-length regulatory independence has been challenging for WorkSafe ACT, particularly for the Asbestos Team.

## Funding for the Asbestos Team

2.50 During 2014-15, in the year leading to when ACT Government-acquired house demolitions began in July 2015, financial and human resources were provided from within WorkSafe ACT, that is, resources were re-prioritised from existing budgets and priorities. Reflecting ACT Government priority to the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme*, from July 2015 additional funding has been reallocated to WorkSafe ACT from the *Appropriation (Loose-fill Asbestos Insulation Eradication) Bill 2014-15* for:

- two inspectors for one year, from July 2015; and
- ten officers (eight inspectors, support and a manager) from July 2016 for two years, 'with the possibility of a one-year extension if required to 30 June 2019', totalling \$3.95 million.<sup>12</sup>

2.51 The establishment and early implementation of the Asbestos Team's regulatory activities have taken considerable senior management and executive capacity. The former Work Safety Commissioner estimated that there were periods during the first two years of planning and implementation that required 70 per cent of the Commissioner's time.

## Presentation of a business case for funding

2.52 The Audit Office examined the business case and related records for additional resources as described in a minute signed by the Chief Minister, 20 June 2016, titled *Transfer of funding from the Asbestos Response Taskforce to Access Canberra for additional inspectors* to identify the performance information presented. Information was sought from WorkSafe ACT, Access Canberra and the Eradication Scheme Steering Committee of the Asbestos Response Taskforce relating to the period February to June 2016.

2.53 The rationale provided in the minute to the Chief Minister (signed 20 June 2016) for the additional resources is based on the delivery of a minimum of five inspections per site and it identifies potential consequences of not achieving the five inspections:

The minimum Access Canberra commitment to each property is four inspections per property ... Due to two recent electrical related incidents a further workplace visit prior to site establishment is required.

... any reduction in the number of inspections of the 'Mr Fluffy' houses will increase the risk to workers, ACT Government staff and potentially exposure and / or embarrassment for the program.

2.54 The minute identifies a projected 127 per cent increase in the number of sites in the first eight months of 2016-17 in support of the level of resources requested. The minute does not identify performance information such as whether or not the stated minimum five inspections requirement (and any supplementary inspections) has been achieved to date,

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<sup>12</sup> *Transfer of funding* minute to Chief Minister, signed and agreed 20 June 2016

or whether any efficiencies have emerged or will emerge as the result of growing experience of the team and the increased numbers of inspections.

- 2.55 WorkSafe ACT officers identified to the Audit Office that the Asbestos Team is also responsible for regulating Asbestos Management Plans. The requirement for these plans was introduced in regulation under the *Dangerous Substances Act 2004*. The Asbestos Response Taskforce's Asbestos Management Plans briefing explains:

From July 2016 WorkSafe ACT will be contacting Mr Fluffy residents who have not yet submitted an Asbestos Management Plan (AMP). If you continue to reside in your home after 30 June 2016 it is a regulatory requirement that you have an AMP in place.

- 2.56 There is no evidence that the requirement for the Asbestos Team to regulate Asbestos Management Plans was factored into the resourcing requirement in the minute signed by the Chief Minister on 20 June 2016. WorkSafe ACT officers indicated that it would require limited work in the first six months, and that the main compliance strategy initially was to be that of 'engagement' and 'education', and not enforcement.<sup>13</sup>
- 2.57 There is no evidence in the minute of specific consideration of the need for the Asbestos Team to regulate demolitions by property owners other than the ACT Government. While these may be comparatively insignificant (private owner-contracted demolitions represented five per cent of demolitions in 2015-16<sup>14</sup>) in terms of the number of demolitions, they may present a higher risk and need more inspection activity per demolition site.
- 2.58 WorkSafe ACT has not identified specific 'minimum' requirements for the delivery of regulatory activity for the demolition of loose-fill asbestos contaminated houses nor has it identified associated performance activity information. Such information is needed to guide resource analyses, but does not exist. Accordingly, a June 2016 business case presented to the Minister seeking additional resources did not include important performance activity information necessary to estimate resources. The business case also did not consider other tasks of the team or efficiencies that may be gained through the team and industry becoming more efficient due to increasing experience.
- 2.59 In endorsing the budget proposal for additional resources on 19 May 2016, the Eradication Scheme Steering Committee noted that the support from the Taskforce would be contingent on the resourcing increase being reviewed in 12 months' time. By May 2017 a majority of the houses identified (on 1 July 2015) on the *Affected Residential Premises Register* will have been demolished. Accordingly such a review may be too late. A six-monthly review may be appropriate.

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<sup>13</sup> Access Canberra's *WorkSafe ACT workplace safety compliance framework* refers to 'Engage, educate and enforce ... the three fundamental steps used by Access Canberra' (June 2016)

<sup>14</sup> 232 of the 243 properties demolished in 2015-16 were ACT Government-owned according to WorkSafe ACT records.

### RECOMMENDATION 3 RESOURCING ANALYSIS

WorkSafe ACT should bring forward the resourcing review originally noted by the Eradication Scheme Steering Committee for mid 2017 to early 2017 and should take into account the regulatory strategy and program of activities for the Asbestos Team.

#### Funding independence of the Asbestos Team

2.60 As discussed in paragraph 2.50, from July 2016 WorkSafe ACT received additional funding to undertake its regulation of the demolition of loose-fill asbestos contaminated houses. WorkSafe ACT initially presented a paper to the Eradication Scheme Steering Committee in March 2016 requesting 'that the Eradication Scheme Steering Committee (ESSC) approve the funding ... as soon as possible for a period of 2 years with the possibility of a 1 year extension'. Following the March 2016 meeting the Asbestos Response Taskforce advised WorkSafe ACT:

The Taskforce has considered the attached funding request and supports the requested funding up until end of financial year 2017-2018.

Advice from WorkSafe on when opportunities to reduce the resourcing emerge over the next two years to be provided as soon as possible.

The Taskforce will brief the Minister on the funding and the approach being taken.

WorkSafe will still need to seek Cabinet approval through the normal Treasury processes.

2.61 In May 2016 WorkSafe ACT made a further request for funding through the Eradication Scheme Steering Committee (ESSC). The May 2016 funding request was presented to the Committee by the Asbestos Response Taskforce Senior Finance Manager, who recommended that the Committee 'provide in-principle support for additional resourcing for WorkSafe' (after some adjustments to the quantum requested) and 'agree that funding be made available on a reimbursement basis, once Cabinet approval has been obtained'. The minutes of the meeting record that 'the ESSC members present gave their in-principle support to the recommendations in the paper' and that 'the next step will be for WorkSafe to prepare the Cabinet submission after running the draft past [Asbestos Response Taskforce executive] so [they] can confirm Taskforce support for the funding arrangements and noted that any funding provided will be contingent on Cabinet approval'.

2.62 Throughout May and June 2016 there was a series of emails between officers in the Asbestos Response Taskforce, Access Canberra (including WorkSafe ACT) and the broader Chief Minister, Treasury and Economic Development Directorate (specifically with Strategic Finance and Treasury officers) with respect to the most appropriate means by which the provision of funding could be practically achieved within regular budgetary processes. It was determined it would be achieved through a briefing to the Chief Minister, who approved the request on 20 June 2016. The funding was then transferred from the Asbestos Response Taskforce to Access Canberra to support WorkSafe ACT.

- 2.63 The activities of the Asbestos Response Taskforce in managing the demolition of loose-fill asbestos contaminated houses have been the subject of WorkSafe ACT's regulatory oversight. There is a natural tension between a regulator and regulated entity as fewer regulatory requirements are likely to reduce demolition costs. Accordingly, it is problematic that WorkSafe ACT sought additional funding through the Asbestos Response Taskforce and the Eradication Scheme Steering Committee. By doing so, the independence of WorkSafe ACT as the regulator is not obviously independent. In saying this, however, it is recognised that the Committee provided in-principle support to WorkSafe ACT for the additional funding and that the additional funding was actually achieved through a minute to the Chief Minister.
- 2.64 As a principle, a regulator needs to be independent, and be seen to be independent, of those it regulates. In order to undertake its regulation of the demolition of loose-fill asbestos contaminated houses WorkSafe ACT sought funding for additional resources through the Asbestos Response Taskforce. The in-principle agreement of the Eradication Scheme Steering Committee to the additional funding was received and a formal request was then made to the Chief Minister. While there is no evidence that the independence of WorkSafe ACT has been compromised, the provision of the additional resources for the Asbestos Team was not obviously independent.

### Administrative support for Asbestos Team inspectors

- 2.65 All inspectors conducting regulatory work such as workplace inspections were duly appointed under section 156 of the *Work Health and Safety Act 2011*.
- 2.66 However, there is no evidence of a team development plan or learning and development program. A WorkSafe ACT officer advised the Audit Office in July 2016 that a team learning and development plan was in the process of being developed, including a competency matrix. An examination of the draft matrix identified that all Asbestos Team inspectors at the time met two essential standards: construction white card and introduction to asbestos removal. Within the ACT these are mandatory for all workers entering construction sites, including WorkSafe ACT inspectors. No other requirements are documented by the Asbestos Team.

### Monitoring and reporting of Asbestos Team activities

- 2.67 The Asbestos Response Taskforce's website and newsletters provide a continuous commentary on demolitions, which includes incidents of public interest. WorkSafe ACT's website (and increasingly Access Canberra's as content and functionality is migrated across to Access Canberra's webpages) provides information on the regulation of workplace activity relating to loose-fill asbestos, but it does not report quantitative information specific to the Asbestos Team's activities.

## Externally reported performance

- 2.68 There are some broad publicly reported quantitative measures for WorkSafe ACT and Access Canberra of which the Asbestos Team is a part.
- 2.69 Safe Work Australia collects and publishes data quarterly for all jurisdictions. This includes data on health and safety inspections of the workplace. These are subdivided into 'proactive' and 'reactive' inspections and notices (e.g. Prohibition, Improvement and Infringement) issued. Asbestos Team activity is reported within the wider aggregation of WorkSafe ACT activity.
- 2.70 Performance in relation to accountability indicators for Access Canberra (of which WorkSafe ACT and therefore the Asbestos Team are part) are reported in the Chief Minister, Treasury and Economic Development Directorate's annual report. Accordingly, the Asbestos Team is reported within the wider Access Canberra results:
- number of inspections conducted by Access Canberra; and
  - compliance at the time of inspection.
- 2.71 Other than through these accountability indicators, the Chief Minister, Treasury and Economic Development Directorate annual reports (2014-15 and 2015-16) do not provide commentary on WorkSafe ACT regulatory progress or outcomes specific to demolition regulation.

## Incomplete reporting to Safe Work Australia

- 2.72 Safe Work Australia quarterly reports include data on WorkSafe ACT as a whole. The quarterly reports do not include specific data on the Asbestos Team's activities. The Audit Office therefore considered the data collected by Access Canberra from WorkSafe ACT Asbestos Team inspectors which is reported to Safe Work Australia.
- 2.73 In reviewing the data for Notices issued, it was identified that of the nine Notices issued by Asbestos Team inspectors during 2015-16, data relating to three Notices was not captured in the monthly data used for the Safe Work Australia annual *Comparative Performance Monitoring* reports.<sup>15</sup> A 33 per cent under reporting is significant, and indicates quality control (e.g. supervisory sign-off) is ineffective.

## Inconsistent reporting to Safe Work Australia (reactive and proactive inspections)

- 2.74 For the purpose of its annual *Comparative Performance Monitoring* reporting, Safe Work Australia defines 'reactive workplace intervention' as follows:

This is the count of workplace visits that have been undertaken in the resolution of a workplace incident or complaint. Workplace incidents include: notifiable work injury, dangerous occurrence or issuing of notices where a comprehensive investigation summary

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<sup>15</sup> Indicator 13 Work Health and Safety Compliance and Enforcement activity by jurisdiction

(brief of evidence) is completed. An investigation summary is the completion of a documentation template. The investigation summary includes details of action taken, notices issued and summaries of conversations with employees and employers.<sup>16</sup>

2.75 Safe Work Australia defines ‘proactive workplace intervention’ as follows:

Workplace visits that have not resulted from a complaint or workplace incident, undertaken by an inspector or a non inspector.

All planned interventions including routine workplace visits that involve inspections/audits and may also include visits that are solely for the purpose of delivering educational advice or information.

2.76 Nearly all of the Asbestos Team’s workplace inspections (99.5 per cent) are coded ‘reactive’ for the purposes of Safe Work Australia data collection. Most workplace inspection reports issued by the Asbestos Team also described the inspections as reactive. This is inconsistent with:

- the definitions in the Comparative Performance Monitoring reporting by Safe Work Australia, as accepted by all Australian Heads of Work Safety Authorities<sup>17</sup>;
- the Asbestos Response Taskforce’s risk management register for demolition which describes WorkSafe ACT’s activity as ‘pro-active regulatory practices’; and
- the opinion of the subject matter expert assisting in this performance audit who advised that workplace inspections reports should only be labelled as reactive where inspectors are called to a site for a complaint or in response to a notification of real or potential harm.

### **Inconsistent reporting to Safe Work Australia (reporting on compliance)**

2.77 A further inconsistency was evident in the intent to categorise workplace inspections as ‘compliant’ or ‘non-compliant’. It has been the practice of the Asbestos Team to only report compliance for proactive inspections, in accordance with Access Canberra (2015-16) performance indicator guidance. However this focus on compliance for proactive inspections rather than all inspections is not expressed in the accountability indicator description in the budget statement. The subject matter expert advised that:

... a clearer program objective of improved safety standards and clarity of the engagement purpose of work-site inspections would mean that inspectors focus more on assessing improvements in safety standards against best practice markers, rather than on assessing against minimum compliance standards as an enforcement role.

2.78 WorkSafe ACT officers also explained to the Audit Office that establishing and recording compliance or non compliance of a ‘person conducting a business or undertaking’ is challenging and so to simplify this they applied two principles:

- if an Improvement, Prohibition or Infringement Notice has been issued, the ‘person conducting a business or undertaking’ was non-compliant; or

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<sup>16</sup> Comparative Performance Monitoring (CPM) 18th Report, 2014/15 Data Requirements For Enforcement

<sup>17</sup> Heads of Workplace Safety Authorities biennial memorandum of understanding

- if no notice was issued, the ‘person conducting a business or undertaking’ is considered to be compliant.

- 2.79 On this basis, the capture and reporting of such data does not provide helpful information on the effectiveness of WorkSafe ACT’s regulatory activities, according to the objects of the *Work Health and Safety Act 2011* (refer to paragraph 1.9). For example, objects (a), (e) and (g) relate to protecting workers and other persons against harm, securing compliance with the Act, and providing a framework for continuous improvement and progressively higher standards of work health and safety. Reporting compliance according to the number of Notices issued does not address these objects. There is no other measure used by the Asbestos Team to monitor its effectiveness in relation to the objects of the Act.
- 2.80 WorkSafe ACT’s reporting of the Asbestos Team’s activities against Safe Work Australia indicators and Access Canberra accountability indicators has been incomplete and inconsistent. Accordingly, WorkSafe ACT does not have an effective mechanism for monitoring and publically reporting the reduction in the risk of harm and improvements in compliance as a result of the activities of the Asbestos Team’s regulation of loose-fill asbestos contaminated demolitions. WorkSafe ACT is therefore unable to demonstrate its effectiveness in relation to objects of the *Work Health and Safety Act 2011*.

### Internally reported performance

- 2.81 As noted in paragraphs 2.16 to 2.35, there is no clear articulation of a strategy or program of activities for WorkSafe ACT’s regulation of the demolition of loose-fill contaminated houses. Given the lack of program documentation, there is no statement of Asbestos Team purpose, goals or performance measures, and nor is there any intended (target) performance level against which to compare actual performance. Accordingly, there is no routine or periodic reporting and monitoring for Asbestos Team activities in aggregate.
- 2.82 WorkSafe ACT officers advised the Audit Office (15 December 2016) that:
- We contend [that WorkSafe ACT’s regulatory] interventions have been instrumental in limiting the number of injuries and incidents associated with the demolition activity.
- ...
- The Worksafe ACT Asbestos Team has regulated over 200,000 hours of demolition construction activity throughout the Asbestos Response Taskforce’s program of work. It has conducted 2,066 visits [since the beginning of Government managed demolitions to date] to Asbestos Response Taskforce [managed demolition] sites, and during the extent of demolition activity, there has been a single notifiable injury relating to a hand fracture, and only a small number of notifiable incidents (near misses).
- 2.83 WorkSafe ACT’s advice is noted. However, WorkSafe ACT does not have a performance management framework, or performance information, that can demonstrate WorkSafe ACT’s contribution to improving compliance and workplace health and safety outcomes on loose-fill asbestos-contaminated demolition sites in the ACT.

- 2.84 WorkSafe ACT has not identified an intended (target) performance level against which to compare actual performance for its regulation of the demolition of loose-fill asbestos contaminated houses, nor is there any internal reporting on the actual performance of the Asbestos Team on its regulatory activities. This means accountability and the Asbestos Team's ability to demonstrate continuous improvement is compromised.

#### **RECOMMENDATION 4 PERFORMANCE MEASURES**

Performance measures for the Asbestos Team's regulation of the demolition of loose-fill asbestos contaminated houses should be established. These should include:

- a) internal performance measures that allow WorkSafe ACT to review individual and team performance in relation to program goals and targets; and
- b) measures that focus on the monitoring of compliance and improvements in safety standards.



## 3 IMPLEMENTATION OF WORKSAFE ACT REGULATORY RESPONSIBILITIES

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- 3.1 This chapter considers how WorkSafe ACT has implemented its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses. This includes discussion of:
- the extent of inspectors' activities, including documentation of activities through workplace inspection reports;
  - changes to the focus of inspectors' activities during the course of the 2015-16 year; and
  - the management of Asbestos Team activities, including operational oversight and quality assurance.

### Summary

#### Key findings

	Paragraph
Changes to practice as described by inspectors, with one exception, have not been recorded effectively, have not been subject to a transparent approval process, and have not been influential in reshaping a documented team inspection program or the team's procedural documentation. Unlike other apparent changes to practice, a draft procedure was developed in February 2016 for the termination of services inspection, but this procedure was neither finalised or approved.	3.11
The weekly average number of demolitions requiring Asbestos Team regulation has increased from one demolition a week in September 2015 to nine a week in June 2016. Around 1,180 inspections were undertaken by the Asbestos Team (of four inspectors) between July 2015 and July 2016. In relation to Asbestos Team activities, each demolition site received an average of 4.35 inspections. This is about one inspection (and associated report) per work day per inspector on average.	3.21
The Audit Office's case file review identified all demolition sites received a workplace inspection from an Asbestos Team inspector, and nearly all sites received an inspection on demolition day. However, only 16 per cent of sites received all four inspections (at smoke-testing, removal of asbestos, pre-demolition and demolition) as specified in the draft <i>Workflow processes</i> document (July 2015). If the four inspections identified in that document are accepted as the basic requirements for WorkSafe ACT's regulation of the demolition of loose-fill asbestos contaminated houses, then inspection activity has fallen far short of meeting that	3.34

requirement. As the rate of demolitions increased during 2015-16 there was a decline in the overall number of inspections per site and the quality of records management significantly declined.

The Audit Office's case file review confirmed assertions of Asbestos Team officers that there had been a significant change in priorities for different inspections (i.e smoke testing and pre-demolition inspections declined, and post-demolition inspections increased). However, additional inspections to verify power had been terminated have only been undertaken for a few sites. There was no documented rationale for changes in priorities. 3.41

The Audit Office's case file review identified variability in the conduct of the four inspections identified in the draft *Workflow processes* document (July 2015). These results cannot be attributed to the use of 'reasonable discretion' of Asbestos Team inspectors as decisions to not conduct particular inspections have not been made according to a documented program and procedures and have not been appropriately explained and recorded. 3.47

The *How to Safely Remove Asbestos Code of Practice 2014* states that if a level of 0.02 fibres / ml is recorded, then the 'person conducting a business or undertaking' must stop work and notify WorkSafe ACT. Asbestos Team officers advised that the team had not been notified of any breach of the 0.02 level in the period 1 July 2015 to 26 July 2016. 3.59

In August 2016 there was an instance on one site (of an ACT-Government initiated demolition) where air quality monitoring detected a high reading (exceeding the 0.01 fibres / ml level, a reading of 0.04). Further testing identified that the high reading was primarily due to gypsum fibres (of 23 respirable fibres 16 were identified as gypsum and seven were identified as asbestos (amosite)). The air quality monitoring result was recalculated on the basis of the known respirable fibre count and returned a result of less than 0.01 fibres / ml. There is no indication that the contractor did not meet their obligations for reporting, but this incident exposed deficiencies in task allocation, planning, in team support and communications within the Asbestos Team, and the lack of a supporting case management system for readily retrieving information for a site. 3.71

Asbestos Team inspection reports have not identified why some sites have been the subject of post demolition workplace inspections and others have not. There is no procedural documentation for post demolition workplace inspections. It is not clear at what point WorkSafe ACT Asbestos Team's regulatory interest in a particular demolition site concludes, and how this is confirmed. 3.78

<p>WorkSafe ACT is inadequately monitoring the implementation of Asbestos Team activities for the purpose of achieving continuous improvement in the regulation of the demolition of loose-fill asbestos contaminated houses. There is no evidence of team (or program) management oversight and the Asbestos Team is not using its available management information systems effectively to generate useful managerial information on regulatory activities.</p>	3.88
<p>Interactions such as team meetings and paired workplace inspections provide opportunities for practice sharing, quality assurance, personal development and learning amongst Asbestos Team inspectors. However, documentation and records associated with these interactions are inadequate to confirm the frequency of such activity, its purpose or its assurance value.</p>	3.90
<p>There is no independent assurance of the documented records of inspectors' activities, whether these are created as internal records, as workplace inspection reports for a 'person conducting a business or undertaking' or as statutory notices under sections 191 and 195 of the <i>Work Health and Safety Act 2011</i>. Records prepared by inspectors potentially provide enduring evidence of a large proportion of inspectors' regulatory activities. These need to be of a high quality.</p>	3.93
<p>There is limited evidence of management activity specifically relating to probity controls and the risk of regulator capture. For example, a basic control is supervisory involvement in allocating inspectors to regulated entities. For the Asbestos Team this is an administrative support task, based on case loading, efficiency and continuity. Probity is not a consideration and there is no supervisory sign-off in assigning tasks to inspectors. A lack of application of probity controls accompanied by a lack of procedural documentation in general, decision rationale, risk management, quality assurance, outcome/output reporting and other oversight mechanisms means inspectors are currently at risk of accusations of preferential treatment or of imposing an excessive burden on the regulated entity.</p>	3.97
<p>Risk assessment procedures are established in procedural documentation of WorkSafe ACT. However there is no documentation of the conduct or results of any risk assessment for Asbestos Team activities.</p>	3.102
<p>The Asbestos Team's documentation and record keeping is poor. This is a concern, particularly as the Asbestos Team's actions and decisions may need to be evidence if subjected to an investigation or judicial examination. Furthermore, the Asbestos Team does not have in place a mechanism to confirm the completeness of its records of regulatory activity, such as records of workplace inspections on demolition day.</p>	3.106

The Asbestos Team's inspection reports do not have content that meets Access Canberra's service documentation requirements of being 'clear and comprehensive ... and ... easy to understand', particularly reports in the latter part of 2015-16. WorkSafe ACT managers advised that reports are prepared by inspectors, but are not independently quality assured. Reports are not read by supervisors prior to sending to recipients, and have not been independently reviewed subsequently. Independent assurance would have prevented reports from being sent, on occasion, to contractors that were unintelligible or of limited value.

3.111

On some occasions inspectors have entered a house on the basis of an asbestos assessor's clearance certificate to indicate that it is safe to do so and challenged aspects of the assessor's assessment and therefore the basis for the certificate. The draft *Workflow processes* document (July 2015) and inspection checklists do not indicate that it is an inspector's role to enter a house and inspection reports do not provide a rationale for why it was necessary to do this in specific instances. Entering such an enclosure potentially presents a greater risk for the inspector's own health and safety.

3.118

Section 435 of the *Work Health and Safety Regulation 2011* requires that health monitoring should occur if there is a risk of exposure to asbestos when carrying out inspection work. For the inspectors who have entered a house (enclosure) and challenged the assessment underpinning the clearance certificate, there was no evidence that their health was being monitored by WorkSafe ACT prior to June 2016. WorkSafe ACT has since instructed its inspectors (December 2016) not to enter any house without a direction in writing from the Manager of the Asbestos Team.

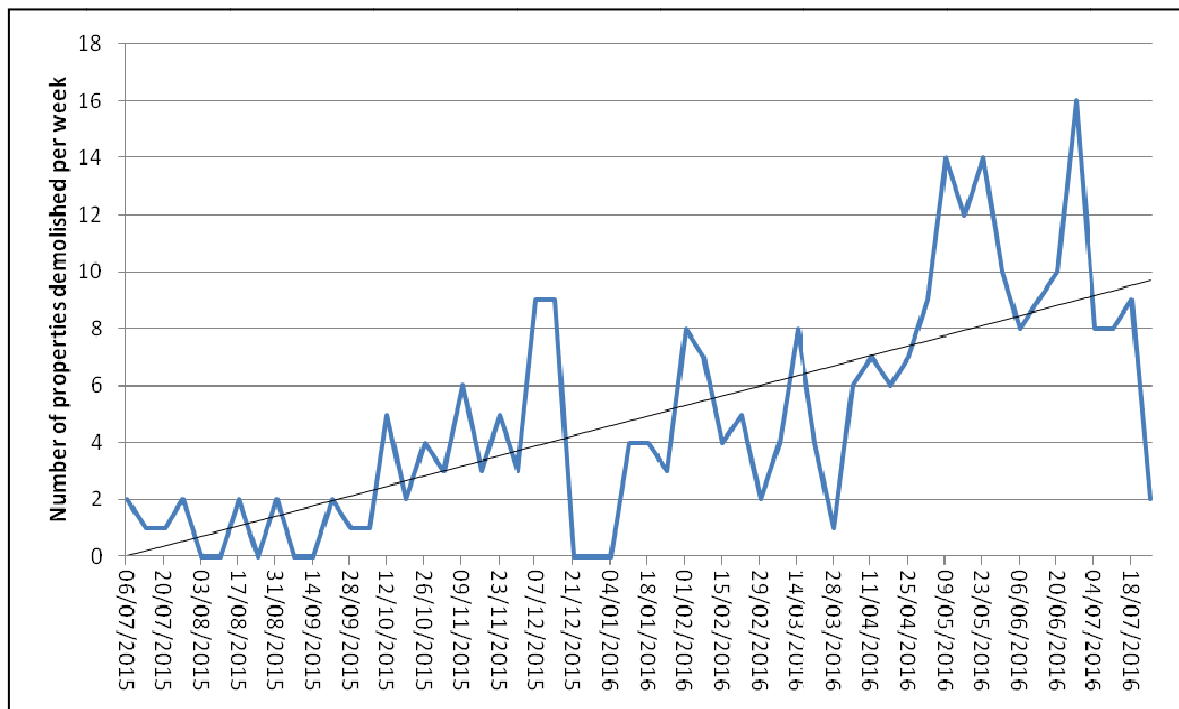
3.119

## Regulatory challenges

### Challenges in responding to demand

- 3.2 During 2015-16 the Asbestos Team was a small team of four inspectors, delivering a range of inspection activities for a rapidly growing number of demolitions of loose-fill asbestos contaminated houses. Figure 3-1 shows the number of demolitions of loose-fill asbestos contaminated houses attended by Asbestos Team inspectors between July 2015 and July 2016.

Figure 3-1 Asbestos Team-regulated demolitions per week



Source: Audit Office, based on case file review results workbook 6 October, 2016

3.3 Analysis shows that, while there has been considerable variability in the number of weekly demolitions attended by Asbestos Team inspectors, the number of demolitions attended increased from an average of one demolition a week in September 2015 to nine demolitions a week in June 2016. WorkSafe ACT officers advised the Audit Office that the challenge facing the Asbestos Team has been to coordinate its inspectors so that all the activities in the draft *Workflow processes* document (July 2015) can be implemented. When this was not possible priority was given to having an inspector present on the day of demolition.

3.4 Officers also advised that achieving all activities in the draft *Workflow processes* document (July 2015) is problematic due to:

- the inability to predict demand from week to week. While a fixed number of houses can be scheduled for demolition by the Asbestos Response Taskforce in blocks of three months, a contractor's operational considerations, for example to maximise cost efficiency, lead to short run peaks and troughs in the Asbestos Team's regulatory activities. This is demonstrated by the significant variability shown in Figure 3-1;
- the inability to substantially change the Asbestos Team's capacity to meet peaks. In this respect, however, it is noted that when more demolition day inspections are planned than there are inspectors available, one or two additional inspectors from elsewhere in WorkSafe ACT can be engaged; and
- the time-critical aspect of smoke testing, pre-demolition and demolitions inspections.

## WorkSafe ACT regulatory activities

- 3.5 According to the draft *Workflow processes* document (July 2015), WorkSafe ACT becomes involved in a demolition when a demolition or removal notice is received and concludes following the demolition day workplace inspection.
- 3.6 The receipt of a notice by WorkSafe ACT results in a site being allocated to an inspector who manages the regulatory activities as part of their case load. The inspector will need to review key documents and in so doing may challenge deficiencies. Communication with contractors is likely to occur remotely and during workplace inspections.
- 3.7 In order for the Audit Office to conduct a review of the implementation of WorkSafe ACT's regulation of the demolition of loose-fill asbestos contaminated houses, it was necessary to identify the Asbestos Team's main activities.
- 3.8 As established in the previous chapter, WorkSafe ACT has not established a regulatory strategy or program of activities for the Asbestos Team's regulation of the demolition of loose-fill asbestos-contaminated houses. In the absence of a regulatory strategy or program of activities the following activities have been identified by the Audit Office as being priority regulatory activities:
- WorkSafe ACT satisfying itself that a contractor's documentation is satisfactory and this will be confirmed either by providing 'approval' or through 'deemed approval' in the absence of WorkSafe ACT identifying any deficits (according to the draft *Workflow processes* document (July 2015) and Work Safety Commissioner's video of 28 May 2015);
  - each demolition site will be subject to four or more inspections (at smoke testing, removal of asbestos, pre-demolition and demolition) (according to the draft *Workflow processes* document (July 2015));
  - priority is given to workplace inspections for removal of asbestos and demolition to ensure the methods used accord with (approved or deemed approved) plans (according to the Work Safety Commissioner's video of 28 May 2015); and
  - an inspector will be present on site on demolition day (according to the Work Safety Commissioner video of 28 May 2015).

## Changes to inspection practices

- 3.9 During fieldwork officers in the Asbestos Team identified to the Audit Office the following changes in practice for those demolitions that took place between 1 July 2015 and 26 July 2016. These developments differ to the above approaches:
- the smoke testing inspection has been given lower priority than it was initially;
  - the pre-demolition inspection has been combined with or been displaced by the demolition day inspection;

- an additional site inspection has been proposed since February 2016 to take place prior to the construction of the enclosure and smoke test, in order to ensure services (particularly electricity) have been terminated ('de-energised') to the site; and
- additional inspections are undertaken to ensure site clearance after demolition day.

3.10 Asbestos Team officers identified that some of these changes have been the subject of discussions at weekly team meetings. Notes have been made of key matters for some meetings by one or more members of the Asbestos Team. The notes provided to the Audit Office were described by officers as 'personal notes'. The notes are not shared with others in the team, and there is no other record of discussions at, or outcomes from, these meetings. For example, notes state that:

'inspectors can use discretion when determining how many workplace visits are required to any given site' (4 May 2016)

'inspectors are not required to remain on site for the entire demolition if they are satisfied that it is being carried out in a compliant manner' (4 May 2016)

'separate pre demo [workplace visit] not necessarily required prior to demo day' (25 May 2016)

3.11 Changes to practice as described by inspectors, with one exception, have not been recorded effectively, have not been subject to a transparent approval process, and have not been influential in reshaping a documented team inspection program or the team's procedural documentation. Unlike other apparent changes to practice, a draft procedure was developed in February 2016 for the termination of services inspection, but this procedure was neither finalised nor approved.

### Audit Office case file review

3.12 The Audit Office conducted a review of case files associated with the activities of the Asbestos Team in order to determine the effectiveness of its regulatory activities.

### Sources of information for the case file review

3.13 WorkSafe ACT identified that records (e.g. forms, reports, emails, notices) of the regulatory activity it conducts relating to the demolition of loose-fill asbestos contaminated houses are maintained in a records system called Objective Integrated Document Management System (Objective IDMS). Objective IDMS has not been configured to generate summary information on the Asbestos Team's regulatory activity and there is no system-generated report of inspection activities across all sites. WorkSafe ACT has also not conducted any systematic review of its Asbestos Team records since July 2015 and there is, accordingly, a lack of managerial information and reporting in relation to the extent of the Asbestos Team's activities.

3.14 A '*Mr Fluffy job progression tracking register*' is maintained by the Asbestos Team in Objective IDMS. The Audit Office sought to use this as a basis for the conduct of a file review of the Asbestos Team's regulatory activities, but identified that the register (an Excel spreadsheet) contained errors due to incomplete listings (e.g. information missing

including demolition dates for particular sites and whether a demolition was a private or an ACT Government-acquired house). There were also anomalies in the spreadsheet (e.g. the inclusion of properties not on the *Affected Residential Premises Register*).

- 3.15 The Audit Office compiled its own list of demolitions from a number of sources. This comprised 272 properties where demolition was undertaken in the period 1 July 2015 to 26 July 2016. The Audit Office examined the Asbestos Team's involvement in these demolitions through a case file review.

#### Conduct of the case file review

- 3.16 The conduct of the case file review presented challenges in the absence of an agreed program and procedural documentation. The task was conducted by assessing records according to criteria based on available guidance, notwithstanding the draft nature of some of this guidance. The Audit Office's case file review was conducted between 15 and 30 August 2016. This was supplemented with follow-up questions to officers in the Asbestos Team and in WorkSafe ACT including a senior manager, a manager and team administrative support.

- 3.17 The review was conducted by the subject matter expert engaged for this audit, Mr Neil Quarmby, who is also a specialist workplace health and safety case file reviewer. The sample comprised 272 properties, 11 of which were in private ownership when the house on the property was demolished:

- July 2015 to Sept 2015, 13 houses demolished;
- October 2015 to Dec 2015, 50 houses demolished;
- Jan 2016 to March 2016, 54 houses demolished;
- April 2016 to June 2016, 126 houses demolished; and
- 1 to 26 July 2016, 29 houses demolished.

#### Records examined for the case file review

- 3.18 The Asbestos Team's records management practice reflects practice elsewhere in WorkSafe ACT, in that a folder is created in Objective IDMS for each regulated activity or event. In the case of the Asbestos Team this is a newly notified demolition site. The folder contains seven subfolders: workplace visits, inspectors' notes, photos and sketches, notices, correspondence, documents and reports.

- 3.19 WorkSafe ACT officers advised the Audit Office that Objective IDMS was the principal storage system and that it should be a complete record of inspectors' regulatory activity. The draft *Workflow processes* document (July 2015) states:

All relevant files notes from conversations and documentation are to be completed and lodged in [...] Objective in a timely manner throughout the course of the job.

- 3.20 An initial review of Objective IDMS identified that the most consistently created and stored documentation was the workplace inspection report. As workplace inspections form a central part of the approach to the regulation of loose-fill asbestos contaminated house demolitions, the subject matter expert paid particular attention to these.

### Case file review results

- 3.21 The weekly average number of demolitions requiring Asbestos Team regulation has increased from one demolition a week in September 2015 to nine a week in June 2016. Around 1,180 inspections were undertaken by the Asbestos Team (of four inspectors) between July 2015 and July 2016. In relation to Asbestos Team activities, each demolition site received an average of 4.35 inspections. This is about one inspection (and associated report) per work day per inspector on average.
- 3.22 This does not mean all inspections necessarily accord with the four inspections identified in the draft *Workflow processes* document (July 2015). Some inspections require multiple visits and some inspection reports referred to the site being 'locked up and inaccessible' or 'no workers present' and are therefore technically not workplace inspections as no work was underway. Some inspections are described by inspectors in their reports as orientation or conclusion visits (e.g. 'the site is cleared and all plant removed'). The number of workplace inspection reports per site varied widely from zero to 15 (refer to paragraph 3.48).
- 3.23 Safe Work Australia's most recent *Comparative Monitoring Report* (17<sup>th</sup> Edition, October 2015) reported that WorkSafe ACT's 30 inspectors conducted 2,874 workplace health and safety inspections in 2013-14, which is an average of 96 inspections per inspector or two inspections a week for each inspector. In comparison to 2013-14 inspection activity, Asbestos Team inspectors in 2015-16 undertook more than twice as many inspections per week per inspector.

### Primary tests for the case file review

- 3.24 A number of primary tests relating to the existence and purpose of workplace inspections for the 272 sites were performed by the subject matter expert. Testing considered whether or not a record of an inspection had been prepared and recorded in Objective IDMS, and if so, which inspection occurred (i.e. at smoke-testing, removal of asbestos, pre-demolition or demolition according to the draft *Workflow processes* document (July 2015)). The following are the results for each site and each of five primary tests.

#### *Test 1: Are there any workplace inspection reports in Objective IDMS?*

- 3.25 For 100 per cent (272/272) of demolition sites there was at least one site inspection record.

*Test 2: Was there an inspection report for demolition day or/and during the asbestos removal process in Objective IDMS?*

- 3.26 For 98.9 per cent of sites (269/272), there was an inspection report for at least the removal or the demolition stage. The Audit Office selected 138 of the total of 272 in order to identify whether there was an inspection report for both the removal and demolition. For 80 per cent of sites (110/138) there was.

*Test 3: Was there a demolition day inspection report in Objective IDMS?*

- 3.27 For 98.2 per cent of sites (267/272), there was a record of a site inspection during the demolition process on demolition day that fulfils the agreed function of that inspection (to test whether practice accords with the approved method).<sup>18</sup>

*Test 4: Were all four inspections (according to the draft Workflow processes document) undertaken according to Objective IDMS records?*

- 3.28 The Audit Office selected 138 of the total of 272 in order to identify whether four or more inspections were made that fulfilled the agreed functions of the four inspections according to the draft *Workflow processes* document (July 2015). For 16 per cent of sites (22/138) there was.
- 3.29 The Audit Office selected 134 of the total of 272 and identified that for 44 per cent of sites (59/134), four or more inspections were undertaken but either the smoke-test inspection or the pre-demolition inspection was not undertaken.

*Test 5: Are there Objective IDMS records that demonstrate contractor documentation is obtained, and if problems are identified, are these followed up?*

- 3.30 The Audit Office selected 138 of the total of 272 in order to identify whether there was evidence in Objective IDMS of sufficient documentation being lodged, and if problems were identified through the inspector's review of these documents then there was evidence of this being followed up. For 64 per cent of the sites (89/138) there was, although there was no evidence of a routine documentary review confirming that documentation was satisfactory.
- 3.31 Test 5 also involved the subject matter expert's consideration of the adequacy of inspection records for all 272 demolitions. Table 3-1 shows the subject matter expert's assessment of the functional and administrative effectiveness of records for each site. Records for each site were rated 'good', 'adequate', 'inadequate-minor problems', or 'inadequate-major deficiencies' by the subject matter expert.

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<sup>18</sup> The subject matter expert wording of this test is the 'inspection report must provide evidence of the inspector ensuring agreed systems and procedures are met. Inspections occurring after the demolition is complete or largely complete are not considered to meet this test'.

**Table 3-1 Subject matter expert assessment of adequacy of records**

	July to Sept 2015	Oct to Dec 2015	Jan to Mar 2016	April to June 2016
Good	8	22	24	9
Adequate	1	23	26	54
Inadequate – minor deficiencies	4	2	2	44
Inadequate – major deficiencies	0	3	2	19
<b>Number of demolitions</b>	<b>13</b>	<b>50</b>	<b>54</b>	<b>126</b>

Source: Audit Office, based on subject matter expert review

3.32 The subject matter expert's review of the adequacy of records show a marked increase in the inadequacy of records in the last quarter of 2015-16. This also coincided with a step change increase in the number of weekly demolitions (refer to Figure 3-1).

3.33 The case file review involved consideration of the Asbestos Team's engagement with regulated entities. Officers described the role of the Asbestos Team as being one of support to industry (e.g. head contractors, removal and demolition contractors and assessors) through engagement and advice, and only where necessary, enforcement. The subject matter expert concluded that the Asbestos Team's engagement with regulated entities was adequate, since records indicated that:

- all contractors had been engaged;
- the higher the frequency of engagement, the greater the extent of advice provided; and
- regulated entities received more advice and support early in the period of the case file review and less latterly.

#### *Summary of primary test results*

3.34 The Audit Office's case file review identified all demolition sites received a workplace inspection from an Asbestos Team inspector, and nearly all sites received an inspection on demolition day. However, only 16 per cent of sites received all four inspections (at smoke-testing, removal of asbestos, pre-demolition and demolition) as specified in the draft *Workflow processes* document (July 2015). If the four inspections identified in that document are accepted as the basic requirements for WorkSafe ACT's regulation of the demolition of loose-fill asbestos contaminated houses, then inspection activity has fallen far short of meeting that requirement. As the rate of demolitions increased during 2015-16 there was a decline in the overall number of inspections per site and the quality of records management significantly declined.

### Supplementary tests for the case file review

3.35 The case file review also included consideration of the assertions made by the Asbestos Team inspectors with respect to changes in the approach to workplace inspections as the number and frequency of demolitions increased. The following are the results for each site and each supplementary test (refer to paragraph 3.9).

#### *The smoke test inspection*

3.36 The Audit Office selected 138 of the total of 272 in order to identify whether the demolition was subject to a smoke test inspection. 25 per cent (35/138) were subject to a smoke test inspection. The incidence of smoke test inspections declined between 2015 and 2016 as 18 of a total of 35 demolitions considered in 2015 (51 per cent) were subject to a smoke test inspection while 17 of a total of 103 (17 per cent) were in 2016.

#### *The pre-demolition inspection*

3.37 The Audit Office selected 138 of the total of 272 in order to identify whether the pre-demolition inspection has been combined with or replaced by the demolition day inspection. Inspectors attended 41 per cent of sites (57/138) for pre-demolition inspections. The incidence of pre-demolition inspections declined between 2015 and 2016 as 24 of a total of 35 demolitions considered in 2015 (69 per cent) were subject to a pre-demolition inspection while 33 of a total of 103 (32 per cent) were in 2016.

3.38 Pre-demolition inspections on demolition day are unlikely to meet the draft *Workflow processes* document (July 2015) purpose for this test which is 'to check for any other issues' and to allow 'adequate time to address issues'.<sup>19</sup>

#### *The additional inspection for the termination of services*

3.39 An additional inspection to verify power had been terminated was proposed in late February 2016 but this has not eventuated. The Audit Office selected 40 of the 99 demolitions that occurred between March and May 2016 and identified that only two of these sites (0.5 per cent) received an additional inspection for this purpose.

#### *Post-demolition day inspection visits*

3.40 The Audit Office selected 28 sites for demolition (10 per cent of the total - seven in 2015 and 21 in 2016) and identified that post-demolition day inspections increased for the period examined in the case file review. Fifteen per cent of sites received post demolition inspections in the first six months (1/7), whereas 35 per cent of sites received post demolition day inspections in 2016 (7/21). In some instances in 2016 inspection interest in a particular site began on demolition day and continued for several weeks afterwards.

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<sup>19</sup> The case file reviewer viewed that where the inspector missed the pre-demo meeting and only attended the demolition day in the hour before the demolition and listened to the tool-box talk, it was considered not to achieve the inspection point function of attending the pre-demo (planning) meeting.

### Summary of supplementary test results

3.41 The Audit Office's case file review confirmed assertions of Asbestos Team officers that there had been a significant change in priorities for different inspections (i.e. smoke testing and pre-demolition inspections declined, and post-demolition inspections increased). However, additional inspections to verify power had been terminated have only been undertaken for a few sites. There was no documented rationale for changes in priorities.

3.42 The subject matter expert observed that:

The rise in post demolition inspections may be considered to fall outside the activities described in the *Work processes* document drafted in July 2015. It would be timely for the Asbestos Team's activities to be formally reviewed and re-defined within a program and to include new ideas on responses, and shifts in risk. A regular review of such a program (monthly) would ensure such modifications are agreed but also provide management communication of site inspection expectations, standards and tolerances.

#### RECOMMENDATION 2 REGULATORY PROGRAM

The program of activities to guide the Asbestos Team's regulation of the demolition of loose-fill asbestos contaminated houses should:

- c) be regularly reviewed and changes made in response to performance, emerging risks and lessons learnt. Reasons for changes should be formally documented.

## Inspector discretion in regulation

3.43 The case file review showed differences in approach to the regulation of the demolition of loose-fill asbestos contaminated houses. The case file review showed inspectors are varying or omitting one or more of the four inspections. WorkSafe ACT managers explained this as inspectors exercising discretion. Furthermore it is also noted:

- the draft *Workflow processes* document (July 2015) and Ministerial briefings (refer to paragraphs 2.37 to 2.41) refer to inspectors exercising discretion specifically to conduct, if necessary, more than the four workplace inspections (i.e. at smoke testing, removal of asbestos, pre-demolition and demolition);
- the November 2015 and February 2016 Ministerial briefings (refer to paragraph 2.40) refer to inspectors determining engagement levels, and therefore potentially the number and timing of workplace inspections, according to 'the individual contractors involved and the specifics of each site'; and
- WorkSafe ACT officers refer to exercising discretion, to do more or fewer inspections than the four in the draft *Workflow processes* document (July 2015) and that this is a mutually understood facility that has been verbally agreed at team meetings.

3.44 The example in Table 3-2 illustrates an inspector's exercise of discretion, in this case to conduct two inspections rather than four, and for only one of the two inspections to meet the purpose of any of the four inspections proposed in the draft *Workflow processes* document (July 2015).

**Table 3-2 Case study: commentary in inspection reports for one property**

Stated purpose of visit	Commentary
'Programmed inspection'	(Arrived 11.30am) Attended site to inspect pre asbestos removal process. Site displayed good housekeeping and electrical cable management. Inspected site documents package which was comprehensive and readily accessible. Held safety based discussion with [supervisor]. No issues noted and departed site at 11:55am
'Reactive demolition'	(Arrived 6.50am) Attended site to observe toolbox talk and the demolition. House was being saturated internally prior to the demolition. Toolbox talk conducted by [supervisor]. Topics included: demolition methodology, dust suppression, emergency procedures, individuals responsibilities, gate procedures, decontamination facilities and procedures, traffic control, neighbour notifications  Demolition began at 07:34 hrs in cold weather conditions with no noticeable breeze. Dust suppression of a misting canon and an individual manning a hose appeared to be very effective. Demolition was progressing as planned and without issue. Departed site at 07:44 hrs to attend another demolition. Called [supervisor] later that morning to enquire how the demolition had progressed. No issues had arisen and the demolition had progressed as planned.
Audit Office comments: According to Objective IDMS records, this site received a total of two visits, of 25 and 54 minutes. The first visit does not satisfy either a smoke-test inspection or an asbestos removal inspection. The second inspection does not satisfy a pre-demolition inspection but does satisfy a demolition inspection, albeit that the inspector left after ten minutes of the commencement of the knocking down of the building.	

Source: Audit Office, based on a review of workplace inspection reports for one house demolished in May 2016

3.45 The subject matter expert advised that under the *Work Health and Safety Act 2011* inspectors are empowered to exercise individual discretion directly through statutes related to the application of specified powers, and indirectly as a delegate of the Commissioner. If indirectly, this delegated power should be achieved through effective governance, that is:

... operationalised transparently through a strategy, role clarity, approved processes, policies and procedures, and managerial oversight.

3.46 As identified in paragraphs 3.21 to 3.42 the case file review showed a number of instances where inspections identified in the draft *Workflow processes* document (July 2015) were not undertaken. For example, only 16 per cent of sites (22/138), showed evidence of four or more inspections being made that fulfilled the agreed functions of the four inspections according to the draft *Workflow processes* document (July 2015). The subject matter expert advised that these results cannot be defended as 'reasonable discretion' since discretion needs to be:

- bounded by policy (e.g. a documented program and related procedural documentation) and it was not;
- evidenced based<sup>20</sup> and on record (i.e in inspection reports, notes and emails) and it was not; and
- subject to managerial oversight. On this, the evidence is inconclusive as it is not apparent what function team meetings perform as there are no reliable records of these meetings.

3.47 The Audit Office's case file review identified variability in the conduct of the four inspections identified in the draft *Workflow processes* document (July 2015). These results cannot be attributed to the use of 'reasonable discretion' of Asbestos Team inspectors as decisions to not conduct particular inspections have not been made according to a documented program and procedures and have not been appropriately explained and recorded.

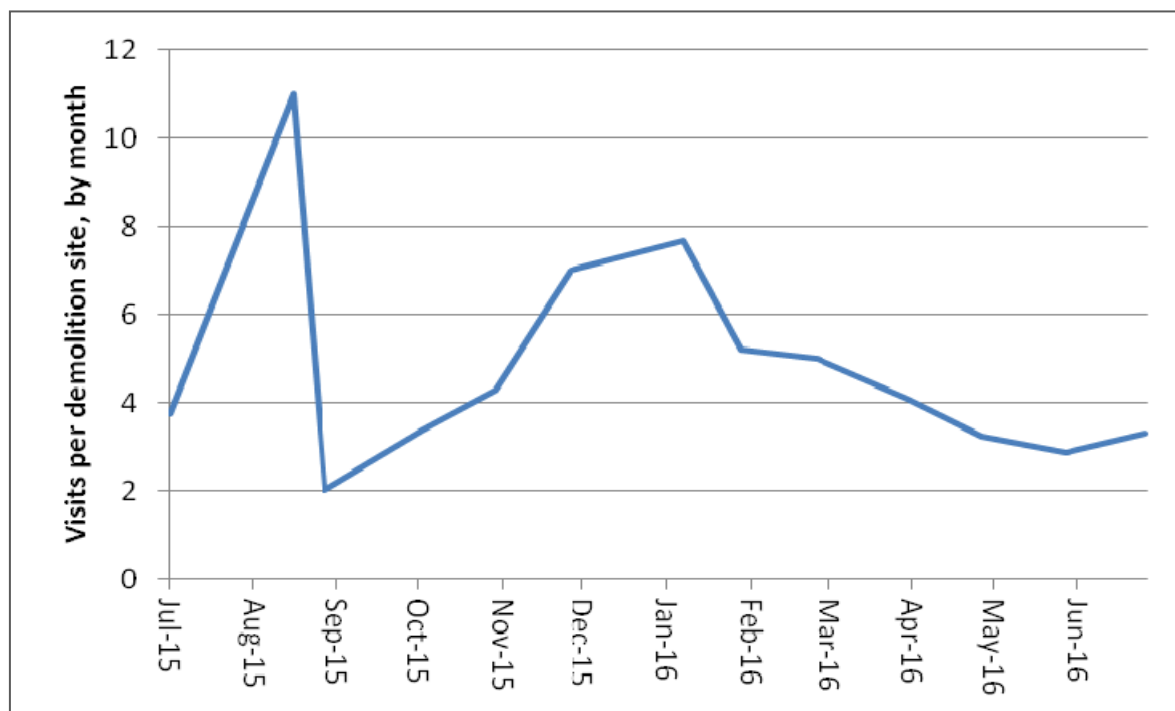
3.48 The number of inspections per demolition site varies greatly. Over five weeks one site received 15 visits, while a significant proportion of sites (27 per cent) only received one or two inspections.

3.49 Figure 3-2 presents the average number of inspections per demolition site each month. In the first quarter of 2015-16, there was a low number of demolitions (11 in total). Discounting the first quarter due to the 'small number' effect, the data indicates that the number of inspections per demolition increased in October to December 2015, and then reduced again between January and July 2016. The subject matter expert was unable to ascertain from records a rationale for this variability on a case by case basis. The reduction in the number of inspections per demolitions during 2016 also coincides with a substantial increase in the number of demolitions in this period (refer to Figure 3-1).

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<sup>20</sup> For example 'evidence based' refers to an inspector assessment of site-based and company-based risks which may trigger a rational decision to alter the inspection schedule.

**Figure 3-2 Average workplace inspections per site each month**



Source: Audit Office, based on case file review results

- 3.50 There is no record that provides the rationale for why at an aggregate level for all Asbestos Team activity there has been a shift over time towards fewer smoke test inspections, fewer pre-demolition inspections and more post demolition clearance inspections. The subject matter expert was also unable to ascertain from individual records any rationale for why this was so on a case by case basis, and advised that logically a site needs to be attended to make a risk-based assessment in order to reduce subsequent inspections. There were no records of any such assessment.
- 3.51 Some records provide very brief written commentary given the extensive time spent on site (arrival and departure times of inspectors are provided on the form). Others show the time on site as very brief (e.g. five minutes). The extent to which the time on site and commentary is a reflection of an inspector’s assessment of risks is not evident from the records.
- 3.52 Some inspections were conducted without a reason being apparent in records. This may include inspections which are unannounced spot checks, or are genuinely reactive visits, for example, in response to a complaint. However this needed to be documented and it was not.

## RECOMMENDATION 5 ASBESTOS TEAM REGULATORY ACTIVITIES

The implementation of the program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work should be:

- a) appropriately documented, stating the purpose of the activity, and how any permitted discretion has been applied;

### Air quality monitoring

3.53 A small number of complaints have been made by neighbours of demolition sites in relation to the incidence of apparent and potentially contaminated dust during demolition. These complaints have been made initially to Access Canberra or the Asbestos Response Taskforce and referred to the Asbestos Team in WorkSafe ACT. In responding to such complaints, the Asbestos Team is able to refer to a safeguard in the requirement for, and use of, air quality monitors on sites where there is removal and demolition activity.

3.54 The Asbestos Response Taskforce 'Support info sheet' *Demolition – Air monitoring* (14 October 2015) states:

Air monitoring is to be carried out in accordance with the Work Health and Safety Asbestos Regulations 2011 and the [*How to Safely Remove Asbestos Code of Practice 2014*].

The assessor uses special asbestos air devices which collect any dust on a small piece of filter paper and the paper is examined on the same day by a laboratory analyst using a microscope.

During asbestos removal, a licensed asbestos assessor conducts air monitoring around the outside of the enclosure as a 'double check' to make sure there is no leak. This is usually done near the negative air units.

After asbestos removal is completed, the licensed asbestos assessor also conducts air monitoring inside the enclosure.

During the demolition the licensed asbestos assessor carries out air monitoring on site during demolition to double-check that dust is being minimised via misting, spraying with water.

3.55 Air quality monitoring is undertaken by a licensed private sector asbestos assessor who is engaged by the private sector principal contractor for the site. In practical terms, the licensed asbestos assessor sets up at least four air quality monitors around the perimeter of the site, which are required to operate during on-site activity. The licensed asbestos assessor is required to retrieve and test the results of the air quality monitoring on a daily basis. The *How to Safely Remove Asbestos Code of Practice 2014* summarises the actions to be taken when air quality monitoring identifies potential contamination.

**Table 3-3 Action levels for responding to air quality monitoring results**

Action level	Control	Action
	No new control measures are necessary	Continue with control measures
At 0.01 fibres/ml or more than 0.01 fibres/ml but less than 0.02 fibres/ml	1. Review	Review control measures
	2. Investigate	Investigate the cause
	3. Implement	Implement controls to eliminate or minimise exposure and prevent further release
More than or equal to 0.02 fibres/ml	1. Stop removal work	Stop removal work
	2. Notify regulator	<b>Notify the relevant regulator</b> by phone followed by fax or written statement that work has ceased and the results of the air monitoring
	3. Investigate the cause	Conduct a thorough visual inspection of the enclosure (if used) and associated equipment in consultation with all workers involved with the removal work
	4. Implement controls to eliminate or minimise exposure and prevent further release	Extend the isolated/barricaded area around the removal area/enclosure as far as reasonably practicable (until fibre levels are at or below 0.01 fibres/ml, wet wipe and vacuum the surrounding area, seal any identified leaks (e.g. with expandable foam or tape) and smoke test the enclosure until it is satisfactorily sealed.
	5. Do not recommence removal work until further air monitoring is conducted	Do not recommence until fibre levels are at or below 0.01 fibres/ml

Source: *Work Health and Safety (How to Safely Remove Asbestos Code of Practice) 2014* made under the *Work Health and Safety Act 2014* (section 274), and *Work Health and Safety Regulation 2011*

### *Air quality monitoring results*

3.56 Asbestos Team inspectors are asked to confirm, as items in their removal and demolition workplace inspection checklists, that air quality monitoring is being conducted during three stages. However, there is no WorkSafe ACT procedural documentation that states that results need to be received by WorkSafe ACT from the licensed asbestos assessor or the principal contractor who engages the licensed asbestos assessor, or that results need to be monitored by an inspector. Accordingly, WorkSafe ACT does not collect and maintain the results of air quality monitoring as part of its normal business practice. There is however a duty placed on a principal contractor to investigate readings of over 0.01 fibres / ml, and to notify the Asbestos Team when 0.02 fibres / ml are exceeded (refer to Table 3-3).

3.57 The Audit Office reviewed a ten per cent selection of records of demolitions for 2015 and 2016. The selection indicates that the Asbestos Team received air quality monitoring results for around 60 per cent of the sites where demolition occurred in 2015, while no air quality monitoring results were received for the selection of sites where demolition

occurred in 2016. It was not apparent in records why air quality monitoring results were received in 2015 and not received in 2016 and whether those collected in 2015 were reviewed.

- 3.58 The Asbestos Team received an average of 4.5 days of air quality monitoring records for the ten per cent selection of records in 2016. The results in the selection do not indicate that the level of 0.01 fibres / ml was breached in any instance. No action is necessary by the contractor for readings below 0.01 fibres / ml.
- 3.59 The *How to Safely Remove Asbestos Code of Practice 2014* states that if a level of 0.02 fibres / ml is recorded, then the ‘person conducting a business or undertaking’ must stop work and notify WorkSafe ACT. Asbestos Team officers advised that the team had not been notified of any breach of the 0.02 level in the period 1 July 2015 to 26 July 2016.

#### *Asbestos removal clearance certificates*

- 3.60 By virtue of section 473 of the *Work Health and Safety Regulation 2011* the licensed asbestos assessor must undertake a clearance inspection ‘when the asbestos removal work is completed’. By virtue of subsection 473(3) the purpose of the clearance inspection is ‘to verify that the area is safe for normal use’; it includes a visual inspection and may include air monitoring. By virtue of section 474 the licensed asbestos assessor must issue a clearance certificate in relation to the clearance inspection.
- 3.61 Asbestos removal clearance certificates are provided to the principal contractor by the licensed asbestos assessor. Asbestos removal clearance certificates are required to be provided to the Asbestos Response Taskforce, along with a *Site Soil Validation Report* and a *Certificate of Completion (Demolition)* for the purpose of enabling the removal of a property from the *Affected Residential Premises Register* (refer to paragraph 2.59).
- 3.62 There is no standard format or approach that is required for asbestos removal clearance certificates. The Audit Office reviewed a selection of asbestos removal clearance certificates and identified a mixture of practices and approaches. In some instances the asbestos removal clearance certificate included full air quality monitoring results as an appendix and in some instances the asbestos removal clearance certificate included a simple statement that air quality monitoring results were satisfactory. In some instances two clearance certificates were issued for a site, with the first ‘pre-demolition’ certificate acknowledging air quality monitoring results and the second ‘post-demolition’ certificate not acknowledging air quality monitoring results.
- 3.63 WorkSafe ACT does not collect and maintain asbestos removal clearance certificates as part of its normal business practice.

*Public and private demolitions*

- 3.64 Properties acquired by the ACT Government under the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* voluntary buyback program accounted for 96 per cent of demolitions that occurred between 1 July 2015 and 26 July 2016.
- 3.65 The Asbestos Response Taskforce advised that with regard to air quality monitoring results:  
[Procurement and Capital Works] oversight is ongoing through the utilisation of their Active Certification Audit program and periodic, unannounced requests for copies of results (both on site and post-demolition).
- 3.66 This additional level of assurance, made possible through Procurement and Capital Works contract management, is not available to WorkSafe ACT for demolitions of loose-fill asbestos affected houses that have not been acquired by the ACT Government. This illustrates an aspect of the distinct regulatory risks of ACT Government-acquired versus privately-owned affected property demolitions (refer to paragraph 2.29).
- 3.67 Procurement and Capital Works, as the contract manager of the demolition of ACT Government-acquired houses was asked by the Audit Office whether there had been any instances reported to them of breaches of 0.02 fibres / ml at demolition sites in the period 1 July 2015 to 1 September 2016. Procurement and Capital Works advised that there had been only one site where a reading had exceeded the 0.01 fibres / ml level in the period (the site had a reading of 0.04 fibres /ml) (in August 2016).
- 3.68 The Audit Office examined this instance from records maintained in Objective IDMS and followed up with questions to WorkSafe ACT officers. This confirmed that the high reading was reported to an Asbestos Team inspector within two hours. However it was not communicated to another inspector who made a visit the next morning at 10am and 'discovered' the reading and the remedial action being taken by the contractor. Records show an appropriate course of action was followed according to the *How to Safely Remove Asbestos Code of Practice 2014* actions (Table 3-3).
- 3.69 Asbestos Team officers acknowledged the source of this communication mishap, and confirmed that:
- there are times when more than one inspector is looking after the same principal contractor but on different sites;
  - one inspector who had not been allocated the site of the high air monitoring reading was initially notified by the principal contractor on the evening of the high air monitoring reading; and
  - another inspector who had been allocated the site of the high air monitoring reading made an unscheduled inspection visit to the site the next day, a visit which was not known about prior to the visit taking place to Asbestos Team colleagues or team supervisors.

- 3.70 The air quality monitoring sample was sent to a laboratory for further testing which identified that of 23 respirable fibres identified, only seven were identified as asbestos (amosite). The licensed asbestos assessor subsequently recalculated the concentration of asbestos fibres and identified 'when the known sample volume for the monitoring run is applied to the SEM<sup>21</sup> respirable asbestos fibre count we get a calculated fibre concentration of <0.01 fibres/ml'.
- 3.71 In August 2016 there was an instance on one site (of an ACT-Government initiated demolition) where air quality monitoring detected a high reading (exceeding the 0.01 fibres / ml level, a reading of 0.04). Further testing identified that the high reading was primarily due to gypsum fibres (of 23 respirable fibres 16 were identified as gypsum and seven were identified as asbestos (amosite)). The air quality monitoring result was recalculated on the basis of the known respirable fibre count and returned a result of less than 0.01 fibres / ml. There is no indication that the contractor did not meet their obligations for reporting, but this incident exposed deficiencies in task allocation, planning, in team support and communications within the Asbestos Team, and the lack of a supporting case management system for readily retrieving information for a site.
- 3.72 The Asbestos Response Taskforce provided evidence to the Audit Office of the Taskforce's prompt and comprehensive review of risk control measures that occurred on the day following this incident.

## Site clearance

- 3.73 The draft *Workflow processes* document (July 2015) indicates inspectors are obliged to provide assurance that the demolition once underway on the day accords with the agreed Safe Work Method Statement for the task. However, there is a lack of clarity in the documented procedures for inspectors as to when the Asbestos Team's regulatory responsibilities end once a house is knocked down on demolition day.
- 3.74 The draft *Workflow processes* document (July 2015) does not specify any inspection function following a demolition day workplace inspection, yet the former Work Safety Commissioner's media video (28 May 2015) identifies:
- The material will then be taken away and disposed of and the site will be cleared and pretty much from WorkSafe's point of view that is the end of the process.
- 3.75 Nearly all of the 272 sites (98.2 per cent) have received an inspector's visit on demolition day. Workplace visit inspection reports focus on the knocking down of the building, and this addresses the purpose of the inspection. However an increasing percentage of sites have received inspections after demolition day and during, or even after, site clearance. These can extend an inspector's involvement to several weeks after demolition.

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<sup>21</sup> Scanning electron microscopy

3.76 As referred to in paragraph 3.50, in general there has been a reduction in workplace inspections prior to demolition day and an increase following demolition day in 2016 compared to 2015. Although there is no documented explanation why such post demolition day workplace visits are necessary and what they should achieve, completed workplace inspection reports refer to inspectors:

- checking the site is clear including plant (machinery);
- confirming post-demolition removal of material is taking place; and
- checking the safe work method statement is being followed.

3.77 The verification of a site as free of loose-fill asbestos contamination following clearance of demolition material is through a *Site Soil Validation Report* and an asbestos removal clearance certificate from the licensed asbestos assessor. Asbestos Team officers advised that this was not a matter for WorkSafe ACT. This is further explained in WorkSafe ACT's and the Asbestos Response Taskforce's *Soil validation process* information sheet (10 November 2015). This states that the verification of site clearance is tested at the point at which the property owner, whether privately owned or owned by the ACT Government, applies to the Asbestos Response Taskforce to have the property removed from the *Affected Residential Premises Register* (page 4):

Once the Taskforce has received all necessary documentation, including a correctly completed and signed Site Soil Validation report from a licensed asbestos assessor or soil validator, the property will be removed from the Affected Residential Premises Register.

3.78 Asbestos Team inspection reports have not identified why some sites have been the subject of post demolition workplace inspections and others have not. There is no procedural documentation for post demolition workplace inspections. It is not clear at what point WorkSafe ACT Asbestos Team's regulatory interest in a particular demolition site concludes, and how this is confirmed.

## Management of inspection activity

3.79 The Asbestos Team, as part of WorkSafe ACT, is obliged to manage its regulatory activities such that continuous improvement is evident. This is expressed in Object (g) of the *Work Health and Safety Act 2011*:

... to secure the health and safety of workers and workplaces by—

- (g) providing a framework for continuous improvement and progressively higher standards of work health and safety.

3.80 In addition to the case file review of the individual records of inspection activity, the Audit Office examined what and how information was made available to the Asbestos Team's managers and WorkSafe ACT executives in order to facilitate continuous improvement. This was achieved by reviewing records and interviewing officers in the Asbestos Team, WorkSafe ACT and Access Canberra.

3.81 The Audit Office examined:

- team management information (that is, information spanning the totality of the team's activities)<sup>22</sup>;
- quality assurance of inspection activities;
- probity controls over the team's implementation of activities;
- risk management;
- the completeness of records;
- inspection report writing; and
- health monitoring.

### Team management information

3.82 From interviews with Asbestos Team officers and consideration of records it is considered that there is limited management information readily available to those managing the Asbestos Team and overseeing its inspection activities. Team level information, when required, is compiled manually through ad hoc requests to inspectors or from manually created and checked spreadsheets. The Audit Office found no evidence of basic task or team level information being captured and routinely reported.

3.83 The main IT systems used by the Asbestos Team for creating and maintaining records were Objective IDMS, principally utilised for document storage and retrieval, and an IT system for capturing interaction with customers, referred to as a 'customer relationship management' system.<sup>23</sup>

3.84 Neither system was being used to provide summary information on the totality of Asbestos Team activity, for example, the number of sites at a point in time:

- for which a notice of proposed removal or demolition had been received;
- allocated to particular inspectors;
- where initial documentation had been received and checked with deemed approval to proceed;
- where the demolition day was expected imminently; or
- where the Asbestos Team's activities had concluded.

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<sup>22</sup> This would be referred to as program management information if a 'program' had been established.

<sup>23</sup> A system referred to as IBS was superseded by CRM in February 2016

3.85 The subject matter expert engaged by the Audit Office commented on the design and application of the information systems used by the Asbestos Team and advised:

There is no case management system. It is a records management system ...

The system does not permit useful and necessary management steps to be undertaken such as oversighting inspector case-loading, workflow progress, and probity matters ...

3.86 Regardless of the availability and use of existing information systems, there is no periodic team level reporting in terms of the achievement of defined team-level objectives, workflow, unresolved incidents or compliance matters such as open or remedied Improvement Notices or Prohibition Notices. There is no feedback between what is intended (targets) and what is achieved (actual performance) at the level of an individual demolition site, contractor or inspector or the team as a whole.

3.87 Additionally, there is no systematic recording or reporting in Objective IDMS or the 'customer relationship management' system that could inform a risk profile for a regulated entity or workplace location for loose-fill asbestos contaminated house demolition activity.<sup>24</sup>

3.88 WorkSafe ACT is inadequately monitoring the implementation of Asbestos Team activities for the purpose of achieving continuous improvement in the regulation of the demolition of loose-fill asbestos contaminated houses. There is no evidence of team (or program) management oversight and the Asbestos Team is not using its available management information systems effectively to generate useful managerial information on regulatory activities.

### Quality assurance of inspection activities

3.89 Asbestos Team officers referred to supervisory activities that served to improve consistency and support inspectors' learning and development including:

- conducting workplace inspections in pairs. Inspection records indicate that in a minority of cases two or more inspectors jointly undertake workplace inspections;
- regular team meetings; and
- supervisory 'drop ins' on other inspectors' site visits.

3.90 Interactions such as team meetings and paired workplace inspections provide opportunities for practice sharing, quality assurance, personal development and learning amongst Asbestos Team inspectors. However, documentation and records associated with these interactions are inadequate to confirm the frequency of such activity, its purpose or its assurance value.

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<sup>24</sup> The use of flags in CRM was discretionary, and used variably by different officers. The coding of events in IBS into categories 1 to 4 is not revisited after an initial categorisation, and is not applied to the new CRM.

- 3.91 Managers rarely read the team’s workplace inspection reports. An exception is when an Improvement Notice or Prohibition Notice (i.e. statutory notices under sections 191 and 195 of the *Work Health and Safety Act 2011*) have been issued. Workplace inspection reports are then routinely read by managers for the purpose of preparing for a meeting with the Notice recipient, but this is not done for quality assurance purposes.
- 3.92 While there may be no documented requirement for an inspector to seek authorisation from a supervisor prior to issuing notices or reports, *ex poste* supervisory or peer review of reports would ensure consistency and facilitate improvements. This does not happen.
- 3.93 There is no independent assurance of the documented records of inspectors’ activities, whether these are created as internal records, as workplace inspection reports for a ‘person conducting a business or undertaking’ or as statutory notices under sections 191 and 195 of the *Work Health and Safety Act 2011*. Records prepared by inspectors potentially provide enduring evidence of a large proportion of inspectors’ regulatory activities. These need to be of a high quality.

#### RECOMMENDATION 5 ASBESTOS TEAM REGULATORY ACTIVITIES

The implementation of the program of activities to guide the Asbestos Team’s regulation of loose-fill asbestos demolition work should be:

- b) subject to quality assurance. This should include a review of documented records, particularly inspection reports, and records should be maintained of quality assurance activities such as meetings and supervisory discussion with inspectors;

### Probity of Asbestos Team activities

- 3.94 In relation to the activities of regulators, the concept of ‘probity’ may be associated with inspectors or investigators not taking advantage of their position of power and appropriately applying their powers. The subject matter expert advised:

... Inspectors have access to coercive powers not immediately available to the Police in the ACT. Inspectors can stop a business operating based on reasonable probability of *potential* problems.

The most important outcome for regulators is harm reduction. However, a supporting aim [...] is to ensure equity in moderating a ‘level playing field’ for business and productivity. Hence, unbound use of inspector powers can generate quite corruptive behaviours and cultures between the regulated and the regulator.

... Accusations of bias and disproportionality are often made when inspectors seek to take enforcement action, hence having a range of probity controls in place as much protects the inspector as it does the PCBUs, and the regulator.

- 3.95 The regulation of the loose-fill asbestos contaminated house demolitions in the ACT involves regular and sometimes frequent interaction between the Asbestos Team inspectors and regulated entities, such as licensed asbestos assessors, principal contractors, and removal and demolition firms. In the majority of instances, these entities

are employed through contracts directly or indirectly with the ACT Government (Procurement and Capital Works), and there is a limited number of companies providing these services in the ACT (e.g. there are only ten Head contractors).

3.96 The subject matter expert advised that in regulating an industry where there are regular interactions between the regulator and the regulated entity, there is a significant probity risk of regulatory capture of inspectors, that is, inspectors losing their objectivity which then compromises competitive neutrality in the marketplace. The subject matter expert further advised:

Poor regulatory cultures emerge where there are few standards imposed, resources are perceived as low, few review mechanisms exist to challenge decisions, or where compliance officers choose whether or not to apply the standards and operating principles of the organisation.

...

Procedures should:

- Prevent a single officer from opening and closing a case;
- Ensure the rationale for opening and closing a case is captured; and
- Provide for an annual probity audit of inspector and manager decisions to intervene or not intervene.

3.97 There is limited evidence of management activity specifically relating to probity controls and the risk of regulator capture. For example, a basic control is supervisory involvement in allocating inspectors to regulated entities. For the Asbestos Team this is an administrative support task, based on case loading, efficiency and continuity. Probity is not a consideration and there is no supervisory sign-off in assigning tasks to inspectors. A lack of application of probity controls accompanied by a lack of procedural documentation in general, decision rationale, risk management, quality assurance, outcome/output reporting and other oversight mechanisms means inspectors are currently at risk of accusations of preferential treatment or of imposing an excessive burden on the regulated entity.

#### **RECOMMENDATION 5 ASBESTOS TEAM REGULATORY ACTIVITIES**

The implementation of the program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work should be:

- c) supported by documented probity procedures in order to protect Asbestos Team inspectors and regulated entities;

## Risk management

3.98 Section 17 of the *Work Health and Safety Act 2011* defines the management of risks as:

A duty imposed on a person to ensure health and safety requires the person—

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

3.99 There are no general requirements stated in the *Work Health and Safety Act 2011* as to how or when workplace risk is to be assessed or recorded.<sup>25</sup> However the operationalisation of risk management is described in WorkSafe ACT documents, for example:

- the Standard Operating Procedure for *Programmed Inspection* (2012). This refers to the identification of high risk areas for inspections in the initial planning phase and the assessment of a ‘person conducting a business or undertaking’s control of risk;
- the WorkSafe ACT risk plan which identifies that for asbestos inspections, field staff conduct personal risk assessments. This is described in the WorkSafe ACT risk plan as a control already in place; and
- the Standard Operating Procedure for *Entry to Workplaces and Related Powers and Obligations* (15 May 2013). This states that an inspector should ‘assess any potential risk to your own health and safety’ and provides a link to the Justice and Community Safety Directorate’s Field Work Risk Assessment Form.

3.100 The subject matter expert observed;

An effective case management system is capable of collecting inspector risk assessments, management risk assessments, and intelligence assessments on the trust level for companies. There are currently no records of these elements.

3.101 There was a lack of evidence of:

- risk assessments in inspection program planning;
- inspectors recording their assessments and decisions on company and individual risks and why they chose a particular response pathway in relation to a site; and
- inspectors’ personal risk assessments as part of their routine on-site activity. This deficit was highlighted in an internal review in August 2015.

3.102 Risk assessment procedures are established in procedural documentation of WorkSafe ACT. However there is no documentation of the conduct or results of any risk assessment for Asbestos Team activities.

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<sup>25</sup> There are industry or activity specific exceptions e.g. Section 176 diving.

## RECOMMENDATION 5 ASBESTOS TEAM REGULATORY ACTIVITIES

The implementation of the program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work should be:

- d) informed by risk assessments. These need to be documented and reviewed, and be used as part of the prioritisation process in relation to programmed inspection planning, site and entity-based inspection activity, inspectors' personal safety and ACT Government versus private owner-initiated demolitions; and

### Documentation and record-keeping

3.103 During the conduct of the case file review, the subject matter expert provided commentary on the completeness of the records maintained by the Asbestos Team in Objective IDMS, and advised that:

- workplace inspection folders, notices and (contractor) documents folders are relatively well populated; but
- there are few inspector notes in the system in general, and fewer and fewer items in correspondence folders over time.

3.104 On the initial completion of the case file review (30 August 2016), the Audit Office advised the Asbestos Team of 18 properties where there were no records in Objective IDMS of a demolition inspection or where a demolition inspection had taken place that did not meet the purpose of the inspections. Documentation was subsequently found by inspectors for the majority (12 of the 18) of these and this documentation substantiates that a workplace inspection had occurred. In 11 instances documentation had been prepared by an inspector but not lodged in Objective IDMS. This emphasises the importance of implementing a quality assurance process given the gaps in records. At 11 of the 272 demolition sites (to 26 July 2016), important documentation remained with the inspector until prompted by the Audit Office. Until this was corrected, the Work Safety Commissioner had no means, independent of the Asbestos Team inspector conducting an inspection, to confirm a core regulatory activity had occurred.

3.105 Two folders<sup>26</sup> in Objective IDMS were identified as the repository of procedural documentation for the Asbestos Team and guidance material for the regulated contractors. These folders contain around 40 documents. For most of these it cannot be identified whether each document is current, what the applicable date is, or whether it has been approved, superseded or withdrawn. These folders do not contain the draft *Asbestos removal and demolition of houses affected by loose-fill asbestos insulation guide* (December 2014), draft *Workflow processes* document (July 2015), or the draft *Worksafe ACT Standard Operating Procedures for Mr Fluffy demolitions* (October 2015).

<sup>26</sup> Two folders titled 'Documents not in use or incorrect' and 'Reference material for inspectors' were identified by WorkSafe ACT as the repository of guidance documentation.

- 3.106 The Asbestos Team's documentation and record keeping is poor. This is a concern, particularly as the Asbestos Team's actions and decisions may need to be evidence if subjected to an investigation or judicial examination. Furthermore, the Asbestos Team does not have in place a mechanism to confirm the completeness of its records of regulatory activity, such as records of workplace inspections on demolition day.

#### RECOMMENDATION 5 ASBESTOS TEAM REGULATORY ACTIVITIES

The implementation of the program of activities to guide the Asbestos Team's regulation of loose-fill asbestos demolition work should be:

- e) supported by procedures for documentation including specifying when documents are to be created and how they are to be managed. A managerial review of documentation should occur to check for completeness and accuracy of records.

### Quality of inspection reports

- 3.107 All Australian work health and safety regulators agreed in 2012 through the Commonwealth Heads of Workplace Safety Authorities (HWSA) that inspectors are to prepare and issue reports of their inspection when they have exercised power under state or territory work health and safety legislation to enter a workplace. Inspection reports are provided to relevant persons (for example the primary 'person conducting a business or undertaking' or contractors or the 'person with management and control of the workplace') and provide a near-contemporaneous, first-hand summary record of an inspection.
- 3.108 The Justice and Community Safety Directorate approved the *WorkSafe ACT Standard Operating Procedure – Inspection Reports* on 11 October 2012. This standard operating procedure was to be reviewed in October 2013, but it is not known if this occurred. WorkSafe ACT managers advised that they were unaware of any revised procedure. The Standard Operating Procedure states:

For inspectors and the regulator, a summary record of an inspection:

- enables the inspector's statutory actions, decisions and associated reasons to be recorded and clearly communicated to workplace parties
- adds to the profile of the relevant workplace which can be accessed and referred to when needing to cite any prior history of the regulator's interventions there
- can be referred to (together with notes taken at the time) when an inspector needs to refresh his/her memory (such as at a coronial inquest or undertaking proceedings in a court or tribunal)
- enable demonstration of what was/was not done at the time of an inspection should there be any review of inspector decisions or complaints about inspector conduct or behaviour
- provides demonstration of transparency and accountability in relation to inspection work as well as ensuring standards of professionalism and consistency.

3.109 Access Canberra service standards state:

We will give you clear and comprehensive advice, and make it easy to understand.

3.110 The subject matter expert commented:

Especially of concern were reports of site visits where no site visit occurred and poor or confused language.

... workplace visit reports often do not reflect the purpose of the visit and have inconsistent styles of language and intent.

Where follow-up work is indicated, there is often little connected discourse in subsequent reports.

Workplace visit (WPV) reports should present as a record of a visit, written for business. Reports also have a secondary purpose of record keeping. A number of reports (especially through 2016) appear to fulfil neither objective.

WPV reports supporting this program are labelled as reactive. This inspectorate work manifests as proactive/preventative, rather than reactive.

There is a clear decline in the quality of inspector reporting in 2016 and in particular from April 2016.

3.111 The Asbestos Team's inspection reports do not have content that meets Access Canberra's service documentation requirements of being 'clear and comprehensive ... and ... easy to understand', particularly reports in the latter part of 2015-16. WorkSafe ACT managers advised that reports are prepared by inspectors, but are not independently quality assured. Reports are not read by supervisors prior to sending to recipients, and have not been independently reviewed subsequently. Independent assurance would have prevented reports from being sent, on occasion, to contractors that were unintelligible or of limited value.

## Monitoring of the health of inspectors

3.112 Section 435 of the *Work Health and Safety Regulation 2011* provides for a 'duty to provide health monitoring' as follows:

(1) A person conducting a business or undertaking must ensure that health monitoring is provided, in accordance with section 436, to a worker carrying out work for the business or undertaking if the worker is—

(a) carrying out licensed asbestos removal work at a workplace and is at risk of exposure to asbestos when carrying out the work; or

(b) is carrying out other ongoing asbestos removal work or asbestos-related work and is at risk of exposure to asbestos when carrying out the work.

3.113 The work that Asbestos Team inspectors undertake when entering loose-fill asbestos contaminated houses is capable of presenting a 'risk of exposure to asbestos when carrying out the work' (paragraph 435(1)(b) of the *Work Health and Safety Regulation 2011*) and therefore triggering the need for health monitoring by WorkSafe ACT, as the 'person conducting a business or undertaking'. According to subsection 437(1), health monitoring 'is carried out by or under the supervision of a registered medical practitioner with experience in health monitoring'.

- 3.114 WorkSafe ACT first commenced health monitoring of its Asbestos Team inspectors in June 2016. At that point 25 inspectors within WorkSafe ACT were identified and were invited to participate in 'asbestos medicals'.

### Entry to enclosures

- 3.115 Due to proximity, there is potentially a greater risk of exposure to asbestos when workers enter the building enclosure. The Audit Office reviewed workplace inspection reports for evidence of entry to the enclosed building structure. Records indicate that between July and September 2015 three inspectors entered five of the 13 houses demolished during this period. At one property entry into the structure occurred during the smoke test inspection, prior to asbestos removal.

- 3.116 Of the remaining four properties, all entries were after asbestos removal and the issuing of an independent assessor's clearance certificate. However, for two of these four properties, inspectors entered the structure after the clearance certificate had been issued and then proceeded to challenge whether the removal work, as certified by the independent assessor was adequate. In one case a Prohibition Notice was issued including the commentary:

An internal visual inspection by Inspectors identified synthetic fibre material or similar on a structural beam of the roof cavity. This material may contain asbestos. A further visual inspection of glass windows and wooden studs, brickwork, could not identify the presence of a PVA solution.

- 3.117 Other examples have been identified, as recently as September 2016, of inspectors challenging assessors' assessments. One such assessment states:

'Walk inside the house found a number of rafters did not appear to be adequately sprayed or in some cases may have been missed'.

- 3.118 On some occasions inspectors have entered a house on the basis of an asbestos assessor's clearance certificate to indicate that it is safe to do so and challenged aspects of the assessor's assessment and therefore the basis for the certificate. The draft *Workflow processes* document (July 2015) and inspection checklists do not indicate that it is an inspector's role to enter a house and inspection reports do not provide a rationale for why it was necessary to do this in specific instances. Entering such an enclosure potentially presents a greater risk for the inspector's own health and safety.

- 3.119 Section 435 of the *Work Health and Safety Regulation 2011* requires that health monitoring should occur if there is a risk of exposure to asbestos when carrying out inspection work. For the inspectors who have entered a house (enclosure) and challenged the assessment underpinning the clearance certificate, there was no evidence that their health was being monitored by WorkSafe ACT prior to June 2016. WorkSafe ACT has since instructed its inspectors (December 2016) not to enter any house without a direction in writing from the Manager of the Asbestos Team.



## 4 ESCALATION AND RESPONSE TO INCIDENTS

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- 4.1 This chapter focuses on the Asbestos Team, WorkSafe ACT and Access Canberra's response to non compliance and incidents related to the demolition of loose-fill asbestos contaminated houses.

### Summary

#### Key findings

	Paragraph
WorkSafe ACT has not identified how its <i>Workplace Safety: Compliance Framework</i> (June 2016) is to apply to the regulation of the demolition of loose-fill asbestos contaminated houses. It is not clear how and when potential compliance issues associated with the demolition of loose-fill asbestos contaminated houses will be actioned.	4.15
During the first 12 months of demolitions under the <i>Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme</i> (July 2015 to July 2016) five Improvement Notices and four Prohibition Notices were issued. As Asbestos Team-specific expectations in response to WorkSafe ACT's <i>Workplace Safety: Compliance Framework</i> (June 2016) have not been articulated, it is not possible to determine if nine is considered reasonable or not.	4.25
A review of Asbestos Team-issued Improvement Notices and Prohibition Notices and accompanying workplace inspection reports found that records were inadequate and management involvement, although not mandatory but encouraged in guidance documents, was lacking.	4.32
The Audit Office's review of the regulation of the demolition of 146 houses shows that inspectors highlighted potential non compliance matters in an estimated 34 per cent of sites (49 sites). For 24 of these sites, there was no evidence that the potential non compliance matter had been addressed by the inspector or the regulated entity. This is potentially a lost opportunity to have a significant impact on workers' health and safety, particularly in using workplace inspection reports as a tool to raise safety standards. However in the absence of a compliance strategy, no conclusions can be drawn about whether or not the number of non compliance matters is significant, or whether the frequency of follow up is acceptable.	4.37
The duty to report a notifiable incident ultimately falls on the relevant 'person conducting a business or undertaking' with management or control of the workplace. Duty holders with knowledge of the incident are encouraged to	4.48

coordinate their efforts to notify WorkSafe ACT. When an ACT Government employee was either a witness (and potential informant) to a matter or an employee contacted by a duty holder, records of the interaction between ACT Government officers indicate hesitancy and a lack of knowledge of procedure. When in doubt, ACT Government officers should be encouraged by WorkSafe ACT to advise WorkSafe ACT of potential notifiable incidents, regardless of duty holders' reporting responsibilities.

One incident relating to the regulation of the demolition of loose-fill asbestos contaminated houses has been investigated by WorkSafe ACT's Major Investigations Team. The incident occurred on the day of a private owner-initiated demolition at a house in Darke Street Torrens. WorkSafe ACT inspectors were in attendance at the site at the time of the incident and shortly after. 4.51

For the incident at Darke Street, there was no evidence of a Notifiable Incident Report from the 'person conducting a business or undertaking' or the 'person in control of the premises' in WorkSafe ACT's information system (Objective IDMS). There is also no record of any interaction between WorkSafe ACT officers and the 'person conducting a business or undertaking' relating to the incident site on the day of the incident that confirms whether or how the duty of the 'person conducting a business or undertaking' to report was discharged. 4.65

The subject matter expert advised the Audit Office that given the immediate circumstances of the Darke Street incident, there are three types of investigative response that should have been anticipated, planned for and implemented: an employer investigation, a regulatory investigation and a performance review. In the case of the Darke Street incident, none of the five reviews or investigations subsequently undertaken adequately address the function of a performance review. There are a number of indicators of process errors that were capable of triggering a performance review of the investigative process (the third type of investigative response) during the course of the investigation, but this did not happen. 4.75

There was a lack of clarity as to the purpose of the reviews and investigations initiated into the Darke Street incident. Given the number of investigations that commenced, expressing clear terms of reference is a necessary initial step to ensure full coverage of the matters of interest, and also to avoid overlap, wasted effort and potential confusion. Without terms of reference there is also an increased risk that the conduct of one review may compromise another. Clear terms of reference for the various investigations were not provided. 4.80

The *Internal Review of Darke Street* report (21 August 2015) in part addresses two of the three investigative response types identified by the Audit Office's subject 4.88

matter expert: an employer investigation and a performance (process improvement) review. However it was prepared and concluded within 48 hours of the incident and so was limited in its coverage. The Audit Office found no evidence of a management response to the report.

The purpose of the Procurement and Capital Works incident investigation leading to the *Incident investigation report* (26 November 2015) was not clearly established. Furthermore the incident investigation was not an effective employer or regulatory investigation, and as a performance review it did not trigger any follow up action. None of the investigations have effectively fulfilled the purpose of an employer investigation. 4.95

Procurement and Capital Works advised the Audit Office on 12 December 2016 that the *Incident investigation report* (26 November 2015) did not fit any of the three categories described by the subject matter expert (paragraph 4.67) but that the aim was 'to demonstrate, using a work related issue, the method of Root Cause Analysis, giving WorkSafe another technique which could assist them'. 4.96

Records identify that officers engaged in the first investigative responses to the Darke Street incident (August to November 2015) raised concerns about their independence and the need to be impartial. The close working proximity of investigators and inspectors shortly after the incident, and the probable overlap in the scope of each task created managerial challenges. Officers encountered difficulties in ensuring sensitive information was secure. The second regulatory investigation (that commenced in February 2016 and that led to the *Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens* (3 June 2016) was conducted by a newly appointed WorkSafe ACT investigator who had no prior knowledge of the people involved or the incident itself. This was a more effective response to managing the risk to independence and impartiality in the conduct of the investigation. 4.123

## Escalation of incidents

4.2 'Escalated incidents' are incidents that:

- are notified to WorkSafe ACT through the making of a statutory Notifiable Incident Report under section 38 of the *Work Health and Safety Act 2011*;
- are the subject of complaint; or
- have been raised by Asbestos Team inspectors during workplace inspections. Some incidents have been escalated through the issuing of Improvement or Prohibition Notices or by WorkSafe ACT management intervention.

4.3 No single management report or management information system report (e.g. Objective IDMS) provides a single source of such incidents. The Asbestos Team was asked to provide a list of incidents or asked how such a list would be compiled. The Audit Office was advised that this was not possible other than by collating information manually from disparate sources. A sample of escalated incidents has therefore been compiled by the Audit Office on the basis of:

- discussions with officers in WorkSafe ACT;
- a media review;
- a review of Objective IDMS;
- the case file review undertaken by the subject matter expert as part of this audit (refer to paragraphs 3.21 to 3.42);
- WorkSafe ACT regular reports *WorkSafe ACT – Work Safety Events Summary from IBS and Matters before the court*; and
- periodic briefings and reports prepared by WorkSafe ACT or the Asbestos Response Taskforce, Ministerial Question Time Briefs, and Asbestos Response Taskforce monthly newsletters and quarterly reports to the Legislative Assembly.

4.4 The Audit Office established a list of 20 incidents relating to 17 locations for the period 1 July 2015 to 26 July 2016. Matters relating to non-friable asbestos or prior to the commencement of the Government’s demolition program were not considered. Although it is probable that this sample of 20 incidents comprises the majority of incidents relating to loose-fill asbestos, it cannot be confirmed with certainty given the lack of a single management report or management information system report. These 20 incidents formed the focus of the Audit Office’s examination of how the Asbestos Team, WorkSafe ACT and Access Canberra manage incidents that have the potential to result in enforcement action.

4.5 Of the 20 incidents (four of which related to one site):

- four led to the issuing of Prohibition Notices;
- five led to the issuing of Improvement Notices;
- seven related to potentially notifiable incidents of which four were notified; and
- three were from public complaints.

## Escalation management

4.6 Incidents may be escalated as follows:

- once identified, for example, through a Notifiable Incident Report, a complaint or an inspection activity, inspectors investigate and determine what regulatory action, if any, is necessary;
- Prohibition Notices or Improvement Notices may be issued by inspectors under powers under Part 9 of the *Work Health and Safety Act 2011*; and
- inspectors may take follow-up action once a Notice is issued, such as convening a face-to-face meeting with contractors or the 'person conducting or undertaking a business' and review subsequent action taken by the Notice recipient.

4.7 Incidents deemed by the Asbestos Team manager to be a more serious matter (there has been only one in the 20 incidents reviewed) may be referred to a separately managed Major Investigations Team of WorkSafe ACT and to WorkSafe ACT senior management to consider its potential for further investigation. More serious matters, once investigated, may also be taken to an advisory committee: until December 2015 matters were elevated to a WorkSafe ACT-specific Enforcement Committee and since January 2016 matters have been elevated to Access Canberra's Regulatory Advisory Committee.

4.8 Approved guidance for the management of escalated incidents includes:

- Access Canberra's *WorkSafe ACT: Compliance framework* (June 2016);
- WorkSafe ACT Standard Operating Procedures for *Serious Incident Inspection, Investigation and Prosecution* (April 2011, updated September 2014, with a review date of October 2015);
- WorkSafe ACT *Inspections and investigation manual* (Feb 2013); and
- Access Canberra Procedure: *Regulatory Advisory Committee* (April 2016).

## Documentation and record-keeping for escalated incidents

4.9 Documentation and record-keeping for the management of incidents is through Objective IDMS, Access Canberra's CRM and Safe Work Australia data collection spreadsheet workbooks. This is appropriate given the scale of the Asbestos Team's operations. The Asbestos Team conducted around 1,000 inspections in 2015-16. Although this is a large proportion of WorkSafe ACT's annual inspection activity, reported as 2,690 workplace inspections in the 2014-15 year,<sup>27</sup> it is a small proportion of the 95,000 inspections which were planned to be conducted across Access Canberra in 2015-16.<sup>28</sup>

<sup>27</sup> Chief Minister, Treasury and Economic Development Directorate 2014/2015 Annual Report, p72

<sup>28</sup> Chief Minister, Treasury and Economic Development Directorate 2015/16 Budget Statement, p46

- 4.10 The subject matter expert engaged by the Audit Office observed that WorkSafe ACT does not use its primary information system Objective IDMS as a case management system, but primarily uses it as a records management system. The subject matter expert advised:

An effective system should enable individual cases or events to be captured as part of a parent program in addition to cases being independently activated. The system should provide for reporting by activity, theme, program, and outcome.

- 4.11 As a result of deficiencies in the design and use of Objective IDMS, the Asbestos Team, WorkSafe ACT senior managers and Access Canberra's Executive have no visibility of the aggregate position of the Asbestos Team's work-in-progress, its outcomes, or exceptions activity such as Notices that have been applied or lifted. A regularly updated '*Mr Fluffy job progression tracking register*' provides a very basic facility to overview events (e.g. tasks/sites allocated to an inspector) that are open or closed, but the Audit Office identified reliability and completeness issues with respect to this information source (refer to paragraph 3.14).

## Enforcement action

- 4.12 WorkSafe ACT's *Workplace Safety: Compliance Framework* (June 2016) identifies that:

**Engage, educate and enforce** are the three fundamental steps used by Access Canberra. Compliance is encouraged through education but escalating enforcement action will be applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.

- 4.13 The framework further explains that in addition to advice and guidance, enforcement can be pursued through an Improvement Notice, a Prohibition Notice, injunctions, enforceable undertakings, revoking, suspending or cancelling authorisations, an Infringement Notice, and ultimately prosecution.
- 4.14 Of the 20 incidents considered by the Audit Office, none have resulted in legal proceedings or prosecution.<sup>29</sup>
- 4.15 WorkSafe ACT has not identified how its *Workplace Safety: Compliance Framework* (June 2016) is to apply to the regulation of the demolition of loose-fill asbestos contaminated houses. It is not clear how and when potential compliance issues associated with the demolition of loose-fill asbestos contaminated houses will be actioned.

### RECOMMENDATION 6 ASBESTOS TEAM COMPLIANCE ACTIVITIES

Compliance activities of the Asbestos Team should be:

- a) clearly defined and articulated in accordance with WorkSafe ACT's *Workplace Safety: Compliance Framework* (June 2016);

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<sup>29</sup> As at 23 November 2016

- 4.16 An undated WorkSafe ACT report on the first phase of a trial mobilisation of work health and safety inspectors (October 2015 to March 2016) identified that equipping inspectors with mobile technology was improving efficiency, allowing more visits, more effective regulation and potentially leading to lower levels of non compliance and better health and safety outcomes. The report states:

Since the start of the trial mobilisation there has been a 51 per cent decrease in workplace injuries, and a 33 per cent increase in safety compliance in the construction industry... 96 per cent of 2,726 workplaces inspected were found to be compliant with the *Work Health and Safety Act 2011* and/or the *Dangerous Substances Act 2004*.

- 4.17 Nevertheless, as discussed in paragraphs 2.16 to 2.35, WorkSafe ACT has not identified a regulatory strategy or program of activities, nor has it translated this into a statement of Asbestos Team purpose, goals or performance measures or intended (target) performance level against which to compare actual performance.

## Improvement and Prohibition Notices

- 4.18 Improvement Notices and Prohibition Notices are described as ‘remedial obligations on ‘persons conducting a business or undertaking’ and not punishments’. In relation to improvement notices, the WorkSafe ACT Standard Operating Procedure *Issuing improvement notices* (October 2012) states Improvement Notices:

... are used to remedy contraventions of the *Work Health and Safety Act 2011* which do not or will not involve a serious risk to the health and safety of a person emanating from an immediate or imminent exposure to a hazard (when a prohibition notice is the most appropriate notice to issue).

...

It is WorkSafe ACT’s policy that inspectors will issue an improvement notice in all cases, unless a prohibition notice is appropriate in the circumstances, where they reasonably believe there is a contravention or likely contravention unless:

- the situation is remedied when they are present at the workplace
  - the issue is the subject of an agreed action plan
  - some other appropriate action is considered by the inspector to achieve the desired outcome
- Improvement notices.

4.19 In relation to Prohibition Notices, according to the Standard Operating Procedure *Issuing Prohibition Notices* (October 2012):

Inspectors are empowered under Section 195(2) of the WHS Act to give a direction prohibiting the carrying on of an activity at a workplace (or the way an activity is carried out) where they reasonably believe:

- an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard, or
- an activity may occur at a workplace that, if it occurs will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

A prohibition notice must be issued to the person who has control over the activity to be prohibited.

4.20 The issuing of a Prohibition Notice is potentially very disruptive to a business as it can stop a business from functioning as it intends, which can impose a significant economic cost on the business.

4.21 Although there is no requirement in the *Work Health and Safety Act 2011* for an inspector to inspect a workplace to verify that the risks identified in the Notice have been remedied, it is WorkSafe ACT's policy, according to the Standard Operating Procedure *Issuing Prohibition Notices* (October 2012), for inspectors to follow up compliance with a Prohibition Notice to verify that the risks identified have been remedied by the entity ('person conducting a business or undertaking') to whom the notice was issued.

4.22 It was reported in the Chief Minister, Treasury and Economic Development Directorate's 2014-15 Annual Report that Worksafe ACT carried out 2,690 workplace inspections and these resulted in 342 Improvement Notices and 115 Prohibition Notices issued under the *Work Health and Safety Act 2011*.

### Prohibition Notices issued 1 July 2015 to 26 July 2016

4.23 A total of nine Improvement or Prohibition Notices have been issued by Asbestos Team inspectors for matters arising at the 243 loose-fill asbestos demolition sites over the 2015-16 year. These sites received an estimated 1,090 workplace inspections over the same 12-month period. Compared to the number of inspections and Notices issued in the previous year (2014-15) for all of WorkSafe ACT, the Asbestos Team issued proportionately fewer notices for the volume of inspections.

4.24 The subject matter expert advised that:

The number of notices issued is a broader indicator of successful prevention work. For regulatory activity such as that of the Asbestos Team, the number of Notices should be small and reducing over time if prevention work is successful.

4.25 During the first 12 months of demolitions under the *Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme* (July 2015 to July 2016) five Improvement Notices and four Prohibition Notices were issued. As Asbestos Team-specific expectations in response to

WorkSafe ACT's *Workplace Safety: Compliance Framework* (June 2016) have not been articulated, it is not possible to determine if nine is considered reasonable or not.

## Management of Notices

4.26 Records from Objective IDMS were examined to establish whether there was sufficient evidence available in the records system to examine:

- the purpose of the Notice and the timeframe for action by the recipient 'person conducting a business or undertaking';
- whether the matter was elevated by the issuing inspector to the Asbestos Team's management;
- the management response to the matter;
- whether the Notice was sent with a supporting workplace inspection report if relevant; and
- whether the matter was followed up by the issuing inspector.

4.27 Table 4-1 shows a summary of the findings of the examination of the management of Notices in Objective IDMS.

**Table 4-1 Review of nine Improvement Notices (IN) and Prohibition Notices (PN)**

Case	1	2	3	4	5	6	7	8	9
Type of Notice	PN	IN	PN	IN	IN	IN	PN	PN	IN
Purpose and timeframe for action clear	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Matter elevated by inspector to management	Yes	No	Yes	Yes	Yes	No	Yes	No	No
Management responded to matter	No	No	No	No	No	No	No	Yes	No
Notice sent with a supporting workplace inspection report	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Inspector followed up matter (e.g. revocation)	Yes	No	Yes	Yes	Yes	Yes	No	No	No

Source: Audit Office, based on subject matter expert case file review 15 September 2016

4.28 Records indicate that inspectors routinely provided the workplace inspection report to the Notice recipient. This report in all cases provided the context for the compliance matter raised in the accompanying Notice. The Notices provided a clear purpose and articulation of expectations as to what is necessary to comply. While in the majority of cases matters were elevated by an inspector to management, there is evidence of a management response in only one instance.

4.29 A review of the nine Notices and related workplace inspection reports in the period 1 July 2015 to 26 July 2016 identified the following anomalies:

- there were instances where similar concerns (relating to the availability of an Asbestos Removal Control Plan) have generated different responses. In one case a Prohibition Notice was generated, in another an Improvement Notice was generated and in another, no notice was generated;
- a Prohibition Notice relating to removal work was issued for one 'person conducting a business or undertaking' at two sites, even though the second site had already completed its removal work; and
- a Prohibition Notice was issued to a company (rather than a location or activity), without there being a file note of any managerial endorsement.

4.30 Four of the nine Notices were issued to contractors at private owner organised demolitions. These demolitions account for four per cent of all demolitions in the case file review period. Five Notices were issued to ACT Government organised contractors. Such information, including the nature of the matter giving rise to the Notice, may be used to inform the assessment of regulatory risks associated with ACT Government and privately organised demolitions (refer to paragraph 2.27).

4.31 There is no statutory or procedural requirement for an inspector to consult or seek management approval before issuing a Notice. However, it is a sensible, precautionary measure to do so, particularly in the case of a Prohibition Notice due to the major effect that it can have on a business and to record that this happened. Standard operating procedures do not mandate prior approval by management, although procedures advise this should occur where possible (refer to paragraph 4.18 and 0):

Before issuing an Improvement Notice the Inspector should consider discussing the matter with their Team Manager to ensure all appropriate issues have been considered.

Before issuing any Prohibition Notice the Inspector should discuss the circumstances with their Manager if time and safety permits.

4.32 A review of Asbestos Team-issued Improvement Notices and Prohibition Notices and accompanying workplace inspection reports found that records were inadequate and management involvement, although not mandatory but encouraged in guidance documents, was lacking.

#### **RECOMMENDATION 6 ASBESTOS TEAM COMPLIANCE ACTIVITIES**

Compliance activities of the Asbestos Team should be:

- b) supported by a procedure to guide the validation, issuing and follow up of Improvement Notices and Prohibition Notices and escalation of matters that warrant more than routine supervision by management; and

## Discretion in enforcement action

- 4.33 The issuing of an Improvement Notice or Prohibition Notice signals a proposed remedy in relation to a compliance matter. Simply put, if there has been a Notice, there has been an incidence of non compliance. However, other than matters raised in Notices, inspectors' workplace inspection reports identify a range of matters as potentially non compliant which have not been the subject of a Notice. For example in Case Study 1 (refer to Table 4-2) several non compliance matters were identified in the workplace inspection report accompanying the Notice, while only one was the subject of the Prohibition Notice. While the enforcement policy outlines a range of actions inspectors may take e.g. to engage, to educate (i.e. advise) or to enforce, it was not evident from records how non compliance matters raised in the workplace inspection report had been acquitted by the inspector, if not by a Notice.
- 4.34 The Audit Office sought to establish from Asbestos Team inspectors' Objective IDMS records the frequency of non compliance matters being raised where these are not dealt with by way of a Notice. A review of all workplace inspection reports associated with a selection of 50 sites (18 per cent of the total number of demolition sites in the case file review period) identified that 13 per cent (23 of 173) of workplace inspection reports contained potential non-compliance matters.
- 4.35 A larger selection of 146 sites was then reviewed (54 per cent of all demolition sites) for any available evidence (all records in Objective IDMS, and not just the workplace inspection reports) of non compliance matters and whether these were addressed by a Notice or some other means. With respect to these sites:
- 97 sites (66 per cent) had no deficiencies or improvements identified as a result of the inspectors' regulatory activities;
  - 49 sites (34 per cent) had deficiencies or improvements identified and recorded by the inspector. An Improvement or Prohibition Notice was issued in relation to 6 sites of these 49 sites;
  - 19 sites had the deficiency or improvement addressed by some action other than a Notice (e.g. advice, or remedy 'on the spot' noted); and
  - 24 sites had deficiencies or improvements identified by the inspector but Objective IDMS records do not identify what remedial action was taken by the inspector.
- 4.36 The subject matter expert advised that:
- There is no stated compliance strategy. However, if the Asbestos Team's regulatory activities are proactive and preventative in nature, it would be reasonable to expect low levels of non-compliance and for these levels to decrease over time as an outcome of inspectorate engagement. There is no evidence of reporting and managerial oversight of such performance measurement.

4.37 The Audit Office’s review of the regulation of the demolition of 146 houses shows that inspectors highlighted potential non compliance matters in an estimated 34 per cent of sites (49 sites). For 24 of these sites, there was no evidence that the potential non compliance matter had been addressed by the inspector or the regulated entity. This is potentially a lost opportunity to have a significant impact on workers’ health and safety, particularly in using workplace inspection reports as a tool to raise safety standards. However in the absence of a compliance strategy, no conclusions can be drawn about whether or not the number of non compliance matters is significant, or whether the frequency of follow up is acceptable.

**RECOMMENDATION 6 ASBESTOS TEAM COMPLIANCE ACTIVITIES**

Compliance activities of the Asbestos Team should be:

- c) monitored and reviewed in relation to the Asbestos Team-specific response to the *WorkSafe ACT compliance framework*.

4.38 Table 4-2 is a case study of an Asbestos Team inspector’s two inspections of a demolition site in northern Canberra in 2016.

**Table 4-2 Case Study 1 - 2016 demolition in a northern suburb of Canberra**

Case study
<p>This property received two workplace inspections from an Asbestos Team inspector.</p> <p>According to the workplace visit (1) report of the asbestos removal stage, a 31 minute visit was made: ‘Attended the site to inspect the asbestos removal process. Site presented very well with good housekeeping ...</p> <p>However a major failure in the procedure was noted, when a worker inside the enclosure could not raise a worker’s attention on the outside, he proceeded to partially exit the enclosure via the materials decon to speak to the outside worker. This behaviour could expose the outside worker to asbestos fibre contamination as he had effectively left the enclosure without decontamination. Also noted was the fact the same asbestos removal worker’s coveralls were open by approximately 300 mm below the neck.</p> <p>I immediately pointed this out to the outside worker and instructed him to initiate a suitable procedure in-line with the Code of Practice for workers to gain the attention of outside personnel that does not compromise the safety of the workers both inside and outside the enclosure. Will request to see evidence of revised procedures and controls from the PCBU in regards to the above matter on my follow up visit.’</p> <p>According to the workplace visit (2) report of the demolition stage, a 2.5 hour visit was made.</p> <p>The visit report does not refer to the above matters</p> <p>No other visit report is in Objective IDMS for this site, and subfolders for visits, notes, correspondence, and documents do not contain further information on this matter.</p>

Source: Audit Office, based on WorkSafe ACT records

4.39 The case study provides an example of an inspector identifying a deficiency, potentially relating to non-compliance, and proposing an improvement. This case study prompts a number of questions:

- on what basis did the inspector exercise discretion not to issue an Improvement Notice? The matter relates to an inspector's discretion needing to be evidence based and transparency, and subject to independent oversight, as examined in paragraph 3.46;
- did the inspector also exercise discretion in not following up this matter, or was this an oversight?; or
- was a follow-up visit made and not recorded? This would be an issue with respect to documentation and record-keeping; and
- what is WorkSafe ACT's view as to the purpose of workplace inspection reports issued by the Asbestos Team? For example, are such reports prepared as a record of inspection activity, to record compliance levels, or are they intended to inculcate preventative behaviours over time? A strategy and program of activities would have the potential to express the purpose of Asbestos Team workplace inspections.

## Notifiable incidents

4.40 ACT legislation provides a duty to bring serious incidents to the attention of WorkSafe ACT so that a timely response can be made. The *Work Health and Safety Act 2011* defines a Notifiable Incident as one where there is a death or serious injury or dangerous incident. A 'dangerous incident' is defined in section 37 as follows:

... **dangerous incident** means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to—

(a) an uncontrolled escape, spillage or leakage of a substance; or

...

(l) any other event prescribed by regulation.

4.41 Publicly available guidance from WorkSafe ACT states that:

The person who conducts a business or undertaking is responsible for ensuring that WorkSafe ACT is notified immediately after becoming aware that a notifiable incident has occurred (Work Health and Safety Act 2011, s38 (1)).

After becoming aware that an incident has occurred, workplaces must report 'notifiable incidents' to WorkSafe ACT IMMEDIATELY, and by the fastest possible means ...

WorkSafe ACT requires, in accordance with section 38(4)(b) of the WHS Act 2011, that you follow up your immediate notification in writing by completing this Notifiable Incident Report Form and forwarding it to [WorkSafe ACT].

A written notice must be in a form, or contain the details, approved by the regulator (38(5) of the WHS Act 2011).<sup>30</sup>

<sup>30</sup> *WorkSafe ACT Notifiable Incident Report form WSACT FM0006*

#### 4.42 WorkSafe ACT guidance provides greater clarity on who is responsible for making the notification:

Any person conducting a business or undertaking from which the 'notifiable incident' arises must notify WorkSafe ACT immediately after becoming aware that it has occurred.

If the 'notifiable incident' arises out of more than one business or undertaking then each must ensure that the incident has been notified to WorkSafe ACT. In these circumstances the duty holders must, so far as is reasonably practicable, consult, cooperate and coordinate to put appropriate reporting and notification arrangements in place.

For example contractors at a construction workplace may agree that the principal contractor for the workplace will notify of all 'notifiable incidents' that occur at the workplace.<sup>31</sup>

### Incidents since ACT Government-acquired house demolitions began (1 July 2015)

4.43 WorkSafe ACT does not have procedural documentation for the management of Notifiable Incidents although the Standard Operating Procedure *WorkSafe ACT Support Staff Handling Incoming Phone Enquiries* refers to dealing with notifiable incidents.

4.44 Seven of the 20 'escalated incidents' identified in this audit were identified as Notifiable Incidents. Table 4-3 shows the Audit Office's review of these Notifiable Incidents, according to the evidence in Objective IDMS, to assess if, how and when they were notified and followed up.

**Table 4-3 Notifiable Incidents review**

Case	1	2	3	4	5	6	7
Evidence of WorkSafe ACT being advised in a timely manner <sup>32</sup>	Yes	Yes	Yes	Yes	No	No	Yes
Appropriate report format used	No	No	No	Yes	No	Yes	Yes
Evidence of matter being investigated	Yes	No	Yes	Yes	No	N/A	Yes
Evidence of follow up / closure	No	No	Yes	Yes	Yes	N/A	Yes
Government involvement prior to formal notification	Yes	Yes	Yes	No	Yes	Yes	Yes

Source: Audit Office, based on subject matter expert case file review

4.45 In two of the seven Notifiable Incident cases there was no evidence in Objective IDMS of the matter being initially advised in a timely manner. Three were reported through an appropriate *Notifiable Incident Report* format, as mandated by WorkSafe ACT and as

<sup>31</sup> *WorkSafe ACT How to report a Notifiable Incident* WSACT GN0084

<sup>32</sup> Timeliness is important to fulfil the duty to preserve incident sites s39 *Work Health and Safety Act 2011*

required by subsection 38(5) of the *Work Health and Safety Act 2011*. In two cases, there is no evidence that WorkSafe ACT enquired into the matter after being notified.

4.46 In the four cases where no appropriate *Notifiable Incident Report* was made, records indicate that the potential for a matter to be reported as a Notifiable Incident was discussed between a person with a responsibility to report and others, but matters were not resolved. In these four cases an ACT Government employee was either a witness (and potential informant) to the matter or was communicated with shortly after the incident. In these cases there is evidence that advice was sought as to the need to report the matter, but no report was made in the prescribed format.

4.47 The subject matter expert advice on better practice is:

The PCBU should be advised to notify when in doubt.

The PCBU should be encouraged to indicate if they are investigating and when they can advise the regulator on their findings. This may negate the need for the regulator to deploy to minor cases.

All notifications need an assessment file note against harm, threat and corporate priority; assessed by whom; and reasons for NFA or referral for action.

4.48 The duty to report a notifiable incident ultimately falls on the relevant ‘person conducting a business or undertaking’ with management or control of the workplace. Duty holders with knowledge of the incident are encouraged to coordinate their efforts to notify WorkSafe ACT. When an ACT Government employee was either a witness (and potential informant) to a matter or an employee contacted by a duty holder, records of the interaction between ACT Government officers indicate hesitancy and a lack of knowledge of procedure. When in doubt, ACT Government officers should be encouraged by WorkSafe ACT to advise WorkSafe ACT of potential notifiable incidents, regardless of duty holders’ reporting responsibilities.

4.49 The Asbestos Response Taskforce has advised the Audit Office that it has had in place since November 2015 an ‘issue management plan’ and accompanying governance arrangements and that the Taskforce:

... does inform WorkSafe of all incidents and does adopt a “safety first” commitment including notifying when in doubt. The Taskforce as a PCBU notify WorkSafe when incident investigations are underway. This is demonstrated through the long standing invitation and participation by WorkSafe officers in the Taskforces risk review workshops.

## RECOMMENDATION 7 NOTIFIABLE INCIDENTS

Procedures for WorkSafe ACT’s management of notifiable incidents should be developed, approved and implemented. They should include, amongst other things, guidance for receiving and responding to notifiable incidents and encouragement for ACT Government employees to notify incidents (i.e. ‘when in doubt, notify’).

4.50 Of the 20 incidents considered for the purpose of this chapter, three were identified as a result of complaints by members of the public. The Audit Office reviewed these for evidence in Objective IDMS of follow up action and identified for:

- Complaint 1 there was no evidence of follow up in WorkSafe ACT's record (in Objective IDMS) to support the assurances given to complainants and the community by the Asbestos Response Taskforce;
- Complaint 2 there was evidence of follow up in WorkSafe ACT's records (in Objective IDMS) but no evidence of follow up contact with the complainant; and
- Complaint 3 there was evidence of follow up in WorkSafe ACT's records (in Objective IDMS) but no evidence of follow up contact with the complainant.

## Referral of Darke Street incident to WorkSafe ACT Major Investigations Team

4.51 One incident relating to the regulation of the demolition of loose-fill asbestos contaminated houses has been investigated by WorkSafe ACT's Major Investigations Team. The incident occurred on the day of a private owner-initiated demolition at a house in Darke Street Torrens. WorkSafe ACT inspectors were in attendance at the site at the time of the incident and shortly after.

4.52 The Audit Office reviewed the management response to this incident from the day of the incident through to September 2016. A number of examinations of the incident have taken place over this period resulting in written reports. These reports are referred to as 'investigations', 'reviews' or 'advice':

- *Internal Review of Darke Street, workplace visit incident*, conducted by an investigator from the WorkSafe ACT Major Investigations Team, initiated on 20 August 2015 with a report completed on 21 August 2015;
- *Incident investigation report*, conducted by a Procurement and Capital Works investigator, initiated on 25 August with a report completed on 26 November 2015;
- *WorkSafe ACT Enforcement Committee Brief E16394*, conducted by two investigators from the WorkSafe ACT Major Investigations Team, initiated on 20 August 2015 with a report completed on 30 November 2015;
- *Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens*, conducted by an investigator from the WorkSafe ACT Major Investigations Team, initiated on 30 November 2015 with a report completed on 3 June 2016; and
- *Memorandum of advice* dated 1 August 2016, an external examination of the merits of prosecution sought and received by the Government Solicitor's Office, which was reported to the Access Canberra Regulatory Advisory Committee on 2 September 2016.

- 4.53 The Audit Office review of the management response to this incident considered:
- guidance that was available to inform WorkSafe ACT's response to the incident;
  - how the incident was reported to WorkSafe ACT; and
  - WorkSafe ACT's subsequent response to the incident.
- 4.54 Given the incident occurred while an Asbestos Team inspector was on site, the Audit Office review of this incident included a particular focus on how WorkSafe ACT ensured impartiality and confidentiality in its subsequent response. This is important as:
- WorkSafe ACT has workplace health and safety responsibilities as an employer for its employees, whether employees are involved in, impacted by, or a witness / informant to an incident;
  - WorkSafe ACT is the regulator of workplace safety standards in the ACT and can take enforcement action against employers, including itself, for breaching the *Work Health and Safety Act 2011*; and
  - the Major Investigations Team is a function within WorkSafe ACT, and there are potentially close working relationships (e.g. as colleagues) between members of the Major Investigation Team and those in the Asbestos Team.
- 4.55 The Audit Office review did not consider the specific details of the incident, or the reasonableness of investigative findings, conclusions and resulting actions taken by WorkSafe ACT and Access Canberra.

### Procedural documentation for an investigation

- 4.56 Existing procedural documentation approved by the Office of Regulatory Services (of the Justice and Community Safety Directorate) in 2011 and 2013 outlines procedures for determining and managing major workplace health and safety investigations:
- WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011); and
  - WorkSafe ACT's *Inspection and investigation manual* (February 2013).
- 4.57 This procedural documentation continues to be referred to by officers. Access Canberra has not redrafted and published guidance on investigations. The process of reviewing and updating all of Access Canberra's Standard Operating Procedures is an ongoing process.

4.58 WorkSafe ACT's *Inspection and investigation manual* (February 2013) identifies that a thorough assessment of the issues should be undertaken, a comprehensive report should be developed and submitted setting out the circumstances of the matter, preferred action and recommendations, and that the file/brief of evidence should be submitted to the Senior Manager Operations for decision by the Enforcement Committee. WorkSafe ACT's *Inspection and investigation manual* (February 2013) also provides guidance on securing the scene, initial inspection reports and triaging events. Also, a timeframe is proposed:

It is the responsibility of the Manager to ensure that within 7 days of a Type 2 incident being notified to ORS an Investigation Report is prepared and for the Senior Manager Operations to make a determination as to whether it should proceed further to investigation.

4.59 WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) is more detailed. This document identifies that:

[the] preparation of the Preliminary Investigation Report would remain the responsibility of ... the Reactive Team' (paragraph 3.1);

[this] is to be completed within three days (paragraph 3.2): and that

this is passed to the Investigations team for review (paragraph 4.1); and if warranted

the matter is referred to the Investigations team for a comprehensive investigation (paragraph 5.1);

to be reported within 4 months (paragraph 5.2) for the Enforcement Committee; and

The Enforcement Committee will determine based on the facts and the recommendation of the Inspector/Manager Investigations whether or not to refer the matter to the DPP for prosecution or whether other intervention actions are required or that the investigation is complete (paragraph 6.2).

4.60 WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) also specifies that:

An internal review of investigations will be conducted by the Manager Investigations to assess whether timeframes have been met and where any improvements can be made (paragraph 11.1).

4.61 There are inconsistencies in the two sources of procedural documentation (i.e. WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) and WorkSafe ACT's *Inspection and investigation manual* (February 2013) over the conduct of investigations. For example, WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) clearly differentiate between responsibilities of the 'Reactive Team' and those of the 'Investigative Team', while this distinction is not made in WorkSafe ACT's *Inspection and investigation manual* (February 2013).

4.62 Neither source of procedural documentation anticipates a circumstance where a WorkSafe ACT employee is involved, impacted or a witness to the incident.

## Management response to the Darke Street incident

4.63 The incident of 20 August 2015 was quickly reported by phone to WorkSafe ACT by the Asbestos Team inspector on site at the time of the incident. A WorkSafe ACT manager and colleagues were on site within one hour of the incident and a member of the Major Investigations Team within six hours.

4.64 As stated in paragraph 4.42, while there is a duty on all those with knowledge of an incident to coordinate their efforts to notify WorkSafe ACT, the duty to notify WorkSafe ACT ultimately resides with the 'person conducting a business or undertaking'. Published WorkSafe ACT guidance states, in accordance with paragraph 38(4)(b) of the *Work Health and Safety Act 2011*, that:

Immediately after becoming aware that a notifiable incident under the *Work Health and Safety Act 2011* / dangerous occurrence under the *Dangerous Substances Act 2004* has occurred, a person in control of a business or undertaking (PCBU) or person in control of premises respectively must ensure that WorkSafe ACT is notified of the 'notifiable incident' / dangerous occurrence by the fastest possible means:

- either by phone or fax or email: and
- you follow up your immediate notification in writing by completing this Notifiable Incident Report Form and forwarding it to WorkSafe ACT.

4.65 For the incident at Darke Street, there was no evidence of a Notifiable Incident Report from the 'person conducting a business or undertaking' or the 'person in control of the premises' in WorkSafe ACT's information system (Objective IDMS). There is also no record of any interaction between WorkSafe ACT officers and the 'person conducting a business or undertaking' relating to the incident site on the day of the incident that confirms whether or how the duty of the 'person conducting a business or undertaking' to report was discharged.

4.66 A brief for the Minister was prepared by the Work Safety Commissioner on 28 August 2015, with the benefit of the completion of the internal review (refer to paragraph 4.52). The management of the incident has involved officers at all levels of WorkSafe ACT and Access Canberra. In addition to the briefing on 28 August to the Minister, monthly Question Time Briefs have referred to the incident, although not to the progress of investigations.

## WorkSafe ACT's response to the Darke Street incident

4.67 The subject matter expert has advised the Audit Office that given the immediate circumstances of the Darke Street incident, there are three types of investigative response that should have been anticipated, planned for and implemented: an employer investigation, a regulatory investigation and a performance review.

4.68 The subject matter expert provided the following advice in relation to WorkSafe ACT's response to the Darke Street incident.

## Employer investigation

### 4.69 The subject matter expert advised:

This is an investigation within WorkSafe ACT. It is triggered by the primary duty of care and officer due diligence obligations of the *Work Health and Safety Act 2011* (s19, s20, and s27(5) respectively). The intent of such investigations is to meet the object (s3(1)(a)) of the Act of 'protecting workers against harm ...'. To fulfil due diligence obligations, such investigations would need to be managed separately to the business arm, in this case the Asbestos Team, involved in the incident and would report findings to the officers of the WorkSafe ACT as the PCBU'.

Often these investigations precede or run in parallel with the Regulator's investigation and may lead to different findings reflecting the different focus and levels of proof. They do not need to be conducted by a work health and safety expert although investigative experience and due process is necessary.

### *The investigative outcome*

### 4.70 The subject matter expert advised:

In relation to an employer investigation, this function was broadly addressed and reflected in the report *Internal Review of Darke Street, workplace visit incident*. This immediate investigation by WorkSafe ACT was followed by a more extensive investigation, independent of WorkSafe ACT, by an officer from Procurement and Capital Works, and was captured in the report *Incident Investigation Report*. However this report does not fulfil the remit of an employer investigation' [Refer to paragraph 4.88].

## Regulatory investigation

### 4.71 The subject matter expert advised:

This is an investigation by the Work Health and Safety Regulator of the PCBU responsible for the incident site and activity. Such investigations occur under the Regulator's enforcement functions (especially *Work Health and Safety Act 2011* s152(b)) and will meet the Act's objects, especially s3(1)(e) 'securing compliance'. Given the Darke Street incident involved a number of workers from differing PCBUs, the scope of the investigation would include cause and culpability related to the PCBU in control of the site and other contributing PCBUs.

Where incidents such as the Darke Street incident directly involve the Regulator's own staff, the investigation needs to be managed carefully as the investigation can – in certain circumstances – lead to enforcement action against the Regulator itself. Investigations may be phased; that is, there may be a preliminary investigation that leads to a decision to initiate a more detailed investigation. Investigations may relate to proving or disproving a criminal offence, or may be based on a balance of probability and lead to non-court related enforcement action.

Where seeking to prove criminal offences, investigations are normally attended by external legal advisories related to the merits of the case to achieve court outcomes. The findings of Regulator investigations are made available to involved PCBU to promote justice, truth, accountability, and prevention outcomes.

### The investigative outcome

4.72 In relation to a regulatory investigation, the subject matter expert advised this function was broadly addressed through:

... what may be termed an 'interim investigation' that is, the *WorkSafe ACT Enforcement Committee Brief E16394*, performed by an investigator appointed by the Major Investigations Team and reported to the Enforcement Committee on 30 November 2015;

... a more detailed investigation, then triggered using a newly appointed investigator of the Major Investigations Team who was independent of the original investigation and findings. This is reflected in the report *Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens*, 3 June 2016; and

A memorandum of advice, to test the findings set out in the *Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens*. This 'merits advice'<sup>33</sup> was provided to the ACT Government Solicitor in a memorandum of advice'.

### Performance review

4.73 The subject matter expert advised:

Where there is a possibility of process errors or professional misconduct in the course of an investigation, the Regulator may choose to conduct an internal review of an investigation. This may lead to re-initiating the investigation, internal remedial measures, or confirm original findings. Such reviews meet the *Work Health and Safety Act 2011* object s3(1)(f), of:

... ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act.

Performance reviews may also consider whether an investigation meets performance standards and expectations such as those set out in WorkSafe ACT's 2011 procedures or the 2013 manual. These reviews may be for the purpose of process improvement and accountability.

4.74 There is no evidence of any type of performance review associated with the Darke Street incident. There is no evidence of any management-initiated performance review into investigative conduct, or process improvement, other than the initial internal review. The subject matter expert advised:

A number of indicators of poor performance have been raised throughout the conduct of the various responses that were capable of triggering an independent review, for example of the framework and procedures for responding to critical incidents, especially where a WorkSafe ACT inspector was involved. This has not happened to date.

4.75 The subject matter expert advised the Audit Office that given the immediate circumstances of the Darke Street incident, there are three types of investigative response that should have been anticipated, planned for and implemented: an employer investigation, a regulatory investigation and a performance review. In the case of the Darke Street incident, none of the five reviews or investigations subsequently undertaken adequately address the function of a performance review. There are a number of

<sup>33</sup> 'Merits advice' is written advice relating to the inherent rights and wrongs of a legal case, absent of any emotional or technical biases. The evidence is solely applied to cases decided on the merits, and any procedural matters are discounted.

indicators of process errors that were capable of triggering a performance review of the investigative process (the third type of investigative response) during the course of the investigation, but this did not happen.

- 4.76 The management of the investigative response to the Darke Street incident, including stated and apparent purpose and outcome, and conduct and impartiality is examined in more detail in the following section.

### Stated purpose: terms of reference of investigative activity

- 4.77 WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) and WorkSafe ACT's *Inspection and investigation manual* (February 2013) (refer to paragraph 4.56) do not state the need for clear, written terms of reference prior to commencing an investigation. Also, there is no agreed investigations report format that requires the purpose and credentials of the investigation to be explained. This increases the risk of a confused scope and misunderstanding of what an investigation is aiming to achieve.
- 4.78 The Audit Office sought to identify the intended purpose of each investigation or review. The reports and related documentation were reviewed, and WorkSafe ACT, Access Canberra and Procurement and Capital Works officers were asked to provide terms of reference. Limited evidence was available to confirm the agreed purpose of each investigation or review, either at the outset or in the resulting report.
- 4.79 The lack of terms of reference led to vagueness regarding purpose. For example, a brief for the Minister on 28 August 2015 indicated the Work Safety Commissioner 'called for an independent investigation to be conducted by an experienced investigator from Shared Services Procurement'. However, the nature of this investigation was not clear in the briefing as to whether it was, for example, an investigation of WorkSafe ACT as a 'person conducting a business or undertaking' and its duty of care obligations (section 19 of the *Work Health and Safety Act 2011*, i.e. an employer investigation), or of the contractor as a 'person conducting a business or undertaking' and its obligations (section 20 of the *Work Health and Safety Act 2011*, i.e. a regulatory investigation).
- 4.80 There was a lack of clarity as to the purpose of the reviews and investigations initiated into the Darke Street incident. Given the number of investigations that commenced, expressing clear terms of reference is a necessary initial step to ensure full coverage of the matters of interest, and also to avoid overlap, wasted effort and potential confusion. Without terms of reference there is also an increased risk that the conduct of one review may compromise another. Clear terms of reference for the various investigations were not provided.

## Apparent purpose and outcome

4.81 In the absence of documented terms of reference to guide investigations, the Audit Office reviewed the content of the resulting investigation reports to establish the purposes they may serve, and the outcomes proposed.

### The employer investigation

4.82 It is highly probable that two investigations were initiated to meet WorkSafe ACT's due diligence and duty of care obligations under the *Work Health and Safety Act 2011*. One occurred immediately and a more detailed investigation occurred over the subsequent two months.

#### *Internal Review of Darke Street (21 August 2015)*

4.83 The *Internal Review of Darke Street (21 August 2015)* investigation was commenced on 20 August and a report was provided to the Work Safety Commissioner on 21 August 2015. It is referred to in the Commissioner's briefing to the Minister on 28 August 2015. The *Internal Review of Darke Street* did not inform WorkSafe ACT's decision to commence the Major Investigation Team's investigation as that investigation was triggered by a different requirement of the Act. The major investigation commenced concurrently. This was appropriate.

4.84 The officer conducting this internal review was not provided in advance with written terms of reference. However, the resulting report (21 August 2015) clearly states its purpose, and this relates to process improvement (i.e. a performance review) and to WorkSafe ACT as the employer and 'person conducting a business or undertaking' (i.e. an employer investigation) as:

To review processes ... and instructions [and] to identify whether WorkSafe complied with its duties under Work Health and Safety legislation and make recommendations about organisational learning from this incident.

4.85 The *Internal Review of Darke Street (21 August 2015)* report found that guidance for the Asbestos Team:

- makes minimal reference to inspectors conducting risk assessments regarding their own safety when carrying out workplace visits; and
- does not include a specific Standard Operating Procedures (SOP) in relation to conducting visits to friable asbestos removals or demolitions.

4.86 Furthermore the *Internal Review of Darke Street (21 August 2015)*:

- found that inspectors' risk of exposure to asbestos had been identified on the WorkSafe ACT risk register, but the action required had not been carried out; and
- made five recommendations including that:
  - inspectors should conduct personal risk assessments; and

- Standard Operating Procedures should be created for workplace inspections in general and specifically for inspections of loose-fill asbestos contaminated properties.

4.87 The Audit Office found no evidence that:

- the *Internal Review of Darke Street* (21 August 2015) report's recommendations have been considered by the senior management of Access Canberra or WorkSafe ACT;
- a management commitment has been made to address the recommendations;
- recommendations were implemented in the intervening 15 months since the review was first reported to the Work Safety Commissioner; or
- there has been a performance review to date of any investigation for the purpose of process improvement, in accordance with WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011). The *Internal Review of Darke Street* (21 August 2015) report was too early in the investigative process to qualify as an effective performance review that considered investigative conduct, or process improvement.

4.88 The *Internal Review of Darke Street* report (21 August 2015) in part addresses two of the three investigative response types identified by the Audit Office's subject matter expert: an employer investigation and a performance (process improvement) review. However it was prepared and concluded within 48 hours of the incident and so was limited in its coverage. The Audit Office found no evidence of a management response to the report.

#### *The Incident investigation report (26 November 2015)*

4.89 The Audit Office and the subject matter expert reviewed the *Incident investigation report* (26 November 2015) prepared by a Procurement and Capital Works investigator. The report provides a more detailed review of the incident than that found in the *Internal Review of Darke Street* (21 August 2015) report. The investigation occurred over three months and was conducted by an officer from Procurement and Capital Works, a business unit of the Chief Minister, Treasury and Economic Development Directorate. While there is no documented connection between the more detailed review by Procurement and Capital Works and the initial internal review, it is plausible that one would follow the other as the employer (WorkSafe ACT) sought more detail on safety systems in place and potential harm to an employee.

4.90 No written terms of reference were shared or agreed for this investigation. The investigation was described in emails by officers as a 'root cause analysis' task, following conversations between the investigator and the Work Safety Commissioner. The purpose of the investigation is not established in the report.

- 4.91 The report describes events and reaches conclusions that substantially overlap with the Major Investigation Team regulatory investigations. For example, the report makes a recommendation to WorkSafe ACT 'to issue a series of Improvement Notices to the principal contractor' ('person conducting a business or undertaking').
- 4.92 The subject matter expert also advised:
- There is no evidence of an investigation plan for this review. The *Incident Investigation Report* contains no scope or intent, no list of evidence considered, and does not provide the credentials of the investigating officer. The review appears to have diverted to become an investigation of the cause of the incident and considers the culpability of the PCBU in control of the site, and not WorkSafe ACT, as the employer of the inspectors. *Work Health and Safety Act 2011* investigations of the culpability of the PCBU in control of the site are to be conducted by the Regulator through duly appointed inspectors to allow access to powers, the application of Work Health and Safety systems expertise, and appropriate regulatory oversight.
- 4.93 The Procurement and Capital Works investigator conducting the investigation was not an inspector duly appointed by WorkSafe ACT as the regulator. If the Procurement and Capital Works investigation was intended to be a regulatory investigation, it was ineffective for it to be conducted by an investigator who was not appointed under Part 9 of the *Work Health and Safety Act 2011* since without this appointment the investigator would not have the powers and duties of a work health and safety inspector. This would provide limitations on the conduct of the investigation.
- 4.94 Furthermore, there is no evidence of this investigation report triggering any follow up action either through the Enforcement Committee or through the Work Safety Commissioner.
- 4.95 The purpose of the Procurement and Capital Works incident investigation leading to the *Incident investigation report* (26 November 2015) was not clearly established. Furthermore the incident investigation was not an effective employer or regulatory investigation, and as a performance review it did not trigger any follow up action. None of the investigations have effectively fulfilled the purpose of an employer investigation.
- 4.96 Procurement and Capital Works advised the Audit Office on 12 December 2016 that the *Incident investigation report* (26 November 2015) did not fit any of the three categories described by the subject matter expert (paragraph 4.67) but that the aim was 'to demonstrate, using a work related issue, the method of Root Cause Analysis, giving WorkSafe another technique which could assist them'.

### The regulatory investigation

- 4.97 The Major Investigation Team conducted two investigations between 20 August 2015 and 3 June 2016.

*WorkSafe ACT Enforcement Committee Brief E16394*

4.98 This first investigation was conducted by two investigators between 20 August 2015 and 30 November 2015 at which point the investigator's report was provided to WorkSafe ACT's Enforcement Committee. The subject matter expert advised:

There were no terms of reference or investigations plan for this response. The report is silent on scope and elements of proof related to suspected breaches. The report presents as a two-page memo to the WorkSafe ACT Enforcement Committee and therefore it is unclear how the Regulator uses this function to achieve investigative outcomes of improving PCBU safety systems.

Furthermore, while the purpose of the investigation is unclear, it presents as the preliminary inspection / investigations process as advised in WorkSafe ACT's Standard Operating Procedures for *Serious Incident Inspection, Investigation and Prosecution* (notwithstanding the requirement for the production of a preliminary report within three days).

4.99 There were no terms of reference or investigations plan for this investigation. The resulting report describes events, provides an assessment of culpability, and provides two recommendations: to further investigate or close the investigation. No detail was provided as to what action to take in either case. The Committee resolved to investigate further and provided three areas for particular attention for further investigation.

4.100 The Audit Office considers this first Major Investigations Team investigation to be a regulatory investigation. However the resulting report was ineffective as a mechanism for directly improving workplace health and safety. The subject matter expert advised that it is more appropriate to describe this investigation as a preliminary investigation, although it does not meet the timeframe set out in WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011).

*Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens (June 2016)*

4.101 On 30 November 2015 WorkSafe ACT's Enforcement Committee resolved to have the incident investigated further. A second Major Investigation Team investigation commenced with a new lead investigator in February 2016.

4.102 According to WorkSafe ACT officers' accounts to the Audit Office, the first Major Investigation Team investigation was conducted by an inspector who had a prior working relationship with the inspectors directly or indirectly involved in the incident, as colleagues. The Enforcement Committee's direction on 30 November to conduct a further, more detailed investigation led to the appointment of a new lead investigator, new to the investigation and new to WorkSafe ACT and thereby unencumbered with prior knowledge of the people involved or the incident itself.

4.103 There were no terms of reference for the further investigation other than to address the three recommendations in the Enforcement Committee's decision of 30 November 2015.

- 4.104 This second investigation reported on 3 June 2016 to the recently established Access Canberra Regulatory Advisory Committee. The report made four recommendations including that WorkSafe ACT should identify and detail the learning outcomes from this incident and establish an implementation strategy for those learning outcomes. This recommendation indicates the investigation in part fulfilled the function of a performance review (process improvement), although this is not expressed in the report, as well as a regulatory investigation.
- 4.105 While some of the four recommendations are within the scope of Regulatory Advisory Committee activity, the recommendation relating to learning outcomes is out of scope of the committee and better addressed through Executive functions.<sup>34</sup> The subject matter expert advised:

This investigation provided a more stylised investigation report; however, it only appears to present to the Regulatory Advisory Committee. Again, it remains unclear how the Regulator uses investigations to achieve safety outcomes in addition to justice outcomes. The report is more thorough in detailing evidence considered and findings.

*Memorandum of advice: Merits advice (June to August 2016)*

- 4.106 On 7 June 2016 further advice was sought by Access Canberra through the Government Solicitor's Office to obtain an opinion regarding the prospects of securing a successful prosecution in relation to the incident. This was received on 1 August 2016, and informed a submission to the Regulatory Advisory Committee on 2 September 2016. This 'merits advice' differed in opinion to that of the further investigation report (3 June 2016). The subject matter expert advised that this does occur in investigative work and shows the value in having external advisory triggers; in particular for criminal investigations.
- 4.107 The Audit Office considers the 'merits advice' is an element of the regulatory investigation. The 'merits advice' responded to and restated clear instructions as to the purpose of the advice.
- 4.108 The Regulatory Advisory Committee accepted the recommendations in the submission to refer the matter to the ACT Director of Public Prosecutions, and to put the carriage of the investigation in the hands of an independent Access Canberra investigator, that is, an investigator in a business unit of Access Canberra other than where WorkSafe ACT resides.

## Conduct of investigations

- 4.109 Given the incident of 20 August 2015 occurred while a WorkSafe ACT inspector was on site, the Audit Office review included a particular focus on how WorkSafe ACT ensured impartiality and confidentiality in its subsequent response.

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<sup>34</sup> Standard Operating Procedures for Access Canberra Regulatory Advisory Committee 6 April 2016

- 4.110 The lack of terms of reference of the investigations and reviews created difficulties between those conducting the work. For example, a 25 August 2015 email from one investigator to another stated:

I understand you are hoping to speak to other witnesses to the Darke Street incident ... I do not wish to be obstructive but I would be grateful if you could hold off contacting anybody until [the Work Safety Commissioner] has determined the terms of reference for your investigation so that we can ensure our investigations don't impinge on each other.

- 4.111 Furthermore, a 3 September 2015 email from one investigator to a WorkSafe ACT manager:

It was our initial understanding that ... would be reviewing our initial processes and procedures, whilst ... focused on the incident itself. However it now appears that neither will be carrying out a review of WorkSafe ACT's practices and procedures ... this is a concern.

### *Impartiality*

- 4.112 The Audit Office reviewed records relating to the conduct of the *Incident investigation report* (26 November 2015) conducted by a Procurement and Capital Works investigator and the *WorkSafe ACT Enforcement Committee Brief E16394* (30 November 2015) conducted by two investigators from the WorkSafe ACT Major Investigations Team. Records identify that officers from the outset raised concerns about the need to be impartial and to establish investigative independence.

- 4.113 The Work Safety Commissioner's briefing to the Minister on 28 August 2015 identified that the Commissioner called for an independent investigation to be conducted by Procurement and Capital Works, in addition to the already-completed internal review (*Internal Review of Darke Street* (21 August 2015)). The Procurement and Capital Works investigation was underway by 25 August 2015.

- 4.114 However there is a risk that this 'independent investigation' could be challenged as not being impartial since the investigator is employed within the same business unit as the contract management team for the demolition of the Government-acquired loose-fill asbestos contaminated houses, that is, Procurement and Capital Works. As such there is potentially prior experience amongst colleagues of the management of contractors, removal and demolition sub contractors and asbestos assessors, and an ongoing contractual relationship with these entities.

- 4.115 The risk of challenge to the impartiality of this investigation depends on the purpose of the investigation but as stated in paragraph 4.95 the purpose of the investigation was not clear. As a regulatory investigation, its purpose could have been to review all or any 'person conducting a business or undertaking' related to the incident. This presents a greater risk depending on the businesses concerned. As an employer investigation, it presents a lesser risk.

- 4.116 While the prospect of managing three investigations and reviews running concurrently presented logistical challenges, there is a risk that one investigation could be influenced by another where information is inadvertently shared. This is particularly so in the case of

sharing findings. The *Internal Review of Darke Street* (21 August 2015) report was shared with the Major Investigations Team investigators on 4 September 2015, early in the course of their investigation. This was unnecessary and potentially created a risk of findings not being impartial.

- 4.117 According to emails in the period August to November 2015, officers shared this concern about the impartiality of the investigative process with each other and with senior managers and executives in WorkSafe ACT. For example, one WorkSafe ACT officer advised another officer on 3 September 2015:

I think it would be more appropriate for an external agency to conduct a more detailed review so that no accusation of bias or conflict of interest can be alleged.

- 4.118 Similarly, on 4 September 2015 a WorkSafe ACT officer advised another officer:

I am not comfortable receiving emails [...] on this matter for the simple reason it could be viewed as attempting to influence an investigation.

- 4.119 The record of the meeting of the Enforcement Committee on 30 November states:

... the Committee considered whether there might be an allegation of bias on the part of WorkSafe ACT in the light of the fact that one of [its employee was involved in / impacted by / witness to] the incident. The Committee considered that the matter should be treated the same as any other, that is to say, that the matter should be investigated as any other ...

- 4.120 The subject matter expert advised:

Achieving impartiality in work health and safety investigations (as the Regulator) is a relative goal. Such investigations draw on powers and access information only attained through law by the regulator and through the employment of accredited inspectors. Hence, investigations conducted by work health and safety Regulators into incidents involving their own staff will often necessitate a decision to employ an inspector who is distant from those involved, or bring in a third party and appoint them as an inspector for that investigation. Access Canberra managers appeared to make reasoned judgements in this regard; albeit within no agreed framework.

### *Confidentiality*

- 4.121 The Objective IDMS system provides a document storage and retrieval facility for inspection activity and investigation activity records. The system has functionality that enables system users to be granted access rights ('privileges') to specific documents and folders. This protection, although requested on 21 August 2015, was not effectively implemented at the beginning of the Major Investigations Team investigation. Emails between WorkSafe ACT officers identify restrictions on privileges were not effectively implemented until at least 7 September 2015. There was over the course of the preceding 17 days a substantial risk that documentation that was confidential to the Major Investigation Team was capable of being accessed by others in WorkSafe ACT including Asbestos Team inspectors.

### Gathering evidence

- 4.122 Records indicate the Major Investigations Team investigation was a challenging, sensitive and time consuming task, including obtaining statements from those capable of giving first-hand account of events during and immediately after the incident. Statements were gathered over a period of ten weeks after the incident. Not all statements from WorkSafe ACT officers were provided prior to the conclusion of the first investigation (30 November 2015), and this potentially hindered certain lines of inquiry.
- 4.123 Records identify that officers engaged in the first investigative responses to the Darke Street incident (August to November 2015) raised concerns about their independence and the need to be impartial. The close working proximity of investigators and inspectors shortly after the incident, and the probable overlap in the scope of each task created managerial challenges. Officers encountered difficulties in ensuring sensitive information was secure. The second regulatory investigation (that commenced in February 2016 and that led to the *Briefing Note Summary to the submission for consideration of investigation into the demolition of 9 Darke Street, Torrens* (3 June 2016) was conducted by a newly appointed WorkSafe ACT investigator who had no prior knowledge of the people involved or the incident itself. This was a more effective response to managing the risk to independence and impartiality in the conduct of the investigation.

## RECOMMENDATION 8 CONDUCT OF INVESTIGATIONS

WorkSafe ACT's Standard Operating Procedure *Serious incident inspection, investigation and prosecution* (April 2011) and WorkSafe ACT's *Inspection and investigation manual* (February 2013) should be updated to include:

- a) requirements for an investigation plan to be developed and approved for all major investigations (including terms of reference covering aim, scope and approach);
- b) guidance on performance reviews relating to the conduct of investigations; and
- c) guidance on additional probity controls to be put in place when WorkSafe ACT is required to conduct a regulator's investigation of itself as a 'person conducting a business or undertaking'.

## APPENDIX A: COMMISSIONER'S TRANSCRIPT

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### Work Safety Commissioner's YouTube video transcript 28 May 2015

Our view is that it can absolutely be done safely. We don't have any doubt that it can be but we will be making sure it will be done safely. It will be our number one priority. The day of the demolition will in many ways look similar to a normal demolition with a couple of important differences. I guess the main thing is the work that will be done before the day. Virtually all the material, all the asbestos and contaminated material will be gone by the day of the demolition. The last bit is we'll be knocking over the house where any remaining fibres will be sprayed and sealed to the remaining building materials so that the risk on that final day is infinitesimally small. But nonetheless there will be people on hand to make sure that it goes on safely and if anything is detected it will stop and that material will be dealt with, so we are leaving no stone unturned to make sure this is done safely.

So the first step is a planning stage where we ask, OK, so what is the plan for doing this? Have you looked at the house, where it is situated on the site, what is the potential impact on neighbouring houses? What other things are on site that need to be dealt with, how will traffic management be dealt with etc?

From that stage it moves to the removal stage. So there will be a process put in place to remove all the asbestos in a controlled environment. WorkSafe will again be scrutinising that plan and coming out and making sure that this is being done safely. Once that is done the removal of the asbestos is signed off by a licensed asbestos assessor. That then enables the demolition to go ahead.

We will have sighted the demolition plan and raised any concerns we have about that, if we have any. The day of the demolition WorkSafe will come out on site, make sure it is being done appropriately. The house will be knocked over with a number of experts on site to make sure that if anything arose they are dealt with. The material will then be taken away and disposed of and the site will be cleared and pretty much from WorkSafe's point of view that is the end of the process.

I guess the most important thing I would say is I want the community to understand that there is an assurance from WorkSafe that 1) we will not let the work go ahead unless we are assured that the people doing it are competent and capable of doing it and 2) if it is not being done properly we will stop it.

Source: Audit Office, based on transcript of video



## APPENDIX B: ADVICE ON INSPECTION REPORTS

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### **Following the case file review, the subject matter expert was asked to provide an opinion on what is better practice in the preparation of inspection reports**

Inspector reports should be captured in Worksafe's processes and procedures as a flexible tool used under a variety of circumstances from simple visits, through to more complex inspection processes (potentially involving a number of visits), through to investigation reports. This may necessitate a variety of templates based on a standard theme. While the type of case may vary, the purpose remains to meet service delivery standards for openness and transparency with those regulated and to capture a corporate record of an activity. They should clearly indicate if the inspection is part of a proactive program or a reactive visit, relate to a compliance issue, or be advisory in nature. Any sense that inspector reports cannot contain advice should be dispelled in policy. The advisory nature of an inspector's functions is protected in law and is covered in the National Compliance and Enforcement Policy.

Inspector reports should be produced for loose-fill asbestos contamination site visits. Given the proactive and routine nature of these visits they may be more truncated than other inspectorate visits. However, they need to be clear on the stage of the visit and provide an overview of inspector's notes and assessment. This overview should be at the start of the report to assist readability for the PCBU. Where an inspector makes a number of complex findings or findings against the PCBU, an escalation for immediate quality assurance to their manager or peer review should occur prior to release.

Inspection reports should record observations, advice and requirements levied at the time of the inspection and constitute a true record from the inspector's view. They should be locked when entered into the case management system and then subject to variation as a separate version if required. Inspector reports should not include any correspondence-style commentary with the PCBU. Requirements noted at the time with PCBU members should be recorded. If the inspector requires the PCBU to do further work and did not mention this during the inspection, this requirement should be stated in correspondence covering the inspector report to ensure consistency and correctness in reporting. Reports should be written in a language that the PCBU can understand and requirements kept simple and clear.

To improve consistency and style, reports should have a management quality assurance review mechanism and be sampled by professional review function. Feedback from PCBUs on improvements in inspector reports should occur at least annually. As a record of an inspection, the report should have electronically exploitable tags that allow trend and reporting assessment of purpose and outcome; assisting the evaluation of regulatory performance.

Source: Prepared for the Audit Office, 9 September 2016 by Neil Quarmby of Managing Intelligence



## Audit reports

<b>Reports Published in 2015-16</b>	
Report No. 11 – 2016	2015-16 Financial Audits – Financial Results and Audit Findings
Report No. 10 – 2016	2015-16 Financial Audits – Audit Reports
Report No. 09 – 2016	Commissioner for International Engagement – Position Creation and Appointment Process
Report No. 08 – 2016	Annual Report 2015-16
Report No. 07 – 2016	Certain Land Development Agency Acquisitions
Report No. 06 – 2016	Management and administration of credit cards by ACT Government entities
Report No. 05 – 2016	Initiation of the Light Rail Project
Report No. 04 – 2016	The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme
Report No. 03 – 2016	ACT Policing Arrangement
Report No. 02 – 2016	Maintenance of Public Housing
Report No. 01 – 2016	Calvary Public Hospital Financial and Performance Reporting and Management
Report No. 10 – 2015	2014-15 Financial Audits
Report No. 09 – 2015	Public Transport: The Frequent Network
Report No. 08 – 2015	Annual Report 2014-15
<b>Reports Published in 2014-15</b>	
Report No. 07 – 2015	Sale of ACTTAB
Report No. 06 – 2015	Bulk Water Alliance
Report No. 05 – 2015	Integrity of Data in the Health Directorate
Report No. 04 – 2015	ACT Government support to the University of Canberra for affordable student accommodation
Report No. 03 – 2015	Restoration of the Lower Cotter Catchment
Report No. 02 – 2015	The Rehabilitation of Male Detainees at the Alexander Maconochie Centre
Report No. 01 – 2015	Debt Management
Report No. 07 – 2014	2013-14 Financial Audits
Report No. 06 – 2014	Annual Report 2013-14
<b>Reports Published in 2013-14</b>	
Report No. 05 – 2014	Capital Works Reporting
Report No. 04 – 2014	Gastroenterology & Hepatology Unit, Canberra Hospital
Report No. 03 – 2014	Single Dwelling Development Assessments
Report No. 02 – 2014	The Water and Sewerage Pricing Process
Report No. 01 – 2014	Speed Cameras in the ACT
Report No. 08 – 2013	Management of Funding for Community Services
Report No. 07 – 2013	2012-13 Financial Audits
Report No. 06 – 2013	ACT Auditor-General's Office Annual Report 2012-13
Report No. 05 – 2013	Bushfire Preparedness

These and earlier reports can be obtained from the ACT Auditor-General's website at <http://www.audit.act.gov.au>.

