

Northern Territory Emergency Response (NTER)

DEPARTMENT OF FAMILIES, HOUSING,
COMMUNITY SERVICES AND INDIGENOUS AFFAIRS
ASBESTOS SURVEYS: COMMUNICATION ISSUES

December 2009

Report by the Commonwealth Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **18|2009**

Reports by the Ombudsman

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PART 1—INTRODUCTION

1.1 In June 2007, the Australian Government introduced the Northern Territory Emergency Response (NTER), designed to protect children, make communities safer and create a better future for Indigenous people in the Northern Territory (NT).

1.2 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is the agency primarily responsible for the coordination of the NTER measures. FaHCSIA is also responsible for delivery of certain NTER measures.

1.3 As part of the initiative, the Australian Government acquired statutory five-year leases over the majority of the 73 communities covered by the NTER. Pursuant to these leases, the Government has certain responsibilities for the maintenance of houses and infrastructure.

1.4 Also under the NTER, the Government implemented the Community Clean Up program with the aim of achieving immediate improvements in the overall health and safety of 73 remote Indigenous communities. The Community Clean Up program was funded to provide essential repairs to houses and tidy up community surrounds. As a result of this work, tradespeople informed FaHCSIA of concerns about the presence of 'Asbestos Containing Material' in buildings in these communities. As a consequence, all 73 NTER communities were inspected and surveyed for such material between late November 2007 and September 2008. On 29 May 2008, the Australian Government committed to the removal of all Asbestos Containing Material from communities within 12 months.¹

1.5 The Commonwealth Ombudsman's office received two complaints about the asbestos surveys, each from a different community. The first complaint was received in September 2008 and the second in March 2009. Both complaints expressed concerns about a lack of communication of the results of the asbestos surveys.

1.6 In investigating these complaints to determine whether FaHCSIA had appropriately administered the asbestos surveys, the office considered whether timely and appropriate explanations about the asbestos survey results were provided to all affected community members and relevant organisations.

1.7 The Ombudsman decided to prepare a report under s15 of the *Ombudsman Act 1976* to outline the conclusion of the investigation into these complaints and to highlight broader communication issues.

1.8 FaHCSIA's responses to issues raised by my office about the asbestos surveys are reflected in this report.

Commonwealth Ombudsman's role in the NTER

1.9 In August 2007, as part of the NTER measures and funded in the 2007–08 Budget, the Ombudsman established an Indigenous Unit. The purpose of this Unit is to:

¹ *Northern Territory Emergency Response - One Year On*, June 2008, p.25.

- conduct outreach to the 73 NTER Indigenous communities to provide information about the role of the office and to take complaints from community residents about the administration of Indigenous programs in the NT
- investigate and resolve complaints about Indigenous program service delivery
- identify systemic issues, provide feedback to agencies about implementation issues and work with key stakeholders to improve public administration, for example, by addressing gaps in service delivery.

Scope of investigation

1.10 Both complaints about the asbestos surveys were taken during outreach visits to remote Indigenous communities in the NT. The investigation of these complaints focused on:

- determining whether asbestos surveys were conducted
- the policies and plans for managing any Asbestos Containing Material
- ascertaining responsibility for the removal of such material
- FaHCSIA's communication with community members and relevant organisations about the results of the asbestos surveys and associated plans to remove the material.

1.11 The detail of the results of the asbestos surveys and the removal of any Asbestos Containing Material are not the focus of this report.

The report

1.12 This report is based on analysis of the findings of two complaint investigations, as well as investigation of FaHCSIA's broader approach to the issue. The information provided by FaHCSIA in response to our questions described the extent to which FaHCSIA communicated the results of the asbestos surveys to the residents, occupants and managers of buildings in the 73 NTER communities.²

1.13 The complaint received in September 2008 was from several members of a community (Community A) who were concerned about the presence of asbestos in their community. The complainants did not know the results of the surveys or what action was being undertaken to remove any asbestos. This office subsequently learned that Community A had been inspected in July 2008 and the final survey report had been supplied to FaHCSIA in September 2008.

1.14 The complaint received in March 2009 was from an individual in a different community (Community B) who was concerned about asbestos in the community. The complainant had not received any information about the survey results and said

² FaHCSIA advised that it has authorised a number of parties to manage land and premises in communities subject to the Australian Government's five-year leases. These parties include Commonwealth and NT Government agencies, NT Shire Councils, community organisations and individuals. The *Northern Territory National Emergency Response Act 2007* preserves rights, titles and interests in five-year leased land that existed immediately prior to the operation of the leases. However, as not all interests are registered with the Northern Territory's Land Titles Office, there is no complete list of pre-existing title holders or interests .

that the local Shire office had unsuccessfully tried to get the information, noting that the local Government Business Manager (GBM) had not provided information about the matter. It was subsequently determined that Community B had been inspected in March 2008 and the final survey report had been supplied to FaHCSIA in July 2008.

PART 2—ADMINISTRATION OF THE SURVEYS

Background

2.1 The NTER Community Clean Up program provided for 'make safe works' and 'minor vital repairs' to houses and other buildings in NTER communities. In response to feedback from tradespeople about the possible presence of Asbestos Containing Material in buildings and the health risks that this might pose, FaHCSIA moved to conduct surveys of a sampling of five communities from late November 2007 to January 2008. These revealed that the material was present in a number of buildings and as a result the surveys were extended to the remaining 68 communities from February 2008. The surveys were largely completed by September 2008.

2.2 In response to our enquiries, FaHCSIA advised that informal communication about the asbestos surveys occurred with occupants and community members during the survey phase. In Community A, for example, the GBM worked with the Shire to enable surveyors to gain access to the community for the purposes of the inspection. The Shire's Indigenous Liaison Officer also accompanied the contractor and spoke with occupants and community members as inspections were carried out.

2.3 While the conduct of the asbestos surveys, the nature of the results and consequent plans to manage Asbestos Containing Material were not the focus of this investigation, they were considered to the extent that they warranted communication to people affected by them. In this context, FaHCSIA provided the following information:

- all Asbestos Containing Material identified in the 73 communities was categorised using standardised risk ratings, including 'immediate' and 'high risk'
- immediate action was taken in three communities in which high friable risk Asbestos Containing Material was identified
- following completion of the surveys, advice was sought from the Chief Medical Officer (CMO) of the Department of Health and Ageing who stated:
'there appears to be negligible risk to the general community and resident staff from the Asbestos Containing Materials in the buildings and surrounds of the communities surveyed'
- the CMO proposed a suitable management strategy for community asbestos registers and the institution of annual inspections of the remaining Asbestos Containing Material.

2.4 Until the survey results were available, the flow of information was informal and ad hoc, relying on a combination of intermediaries (such as the managers of affected buildings) and GBMs to respond to individual's questions and requests for information. However, GBMs were not in a position to provide reliable information to community members until after a briefing in Alice Springs in October 2008, some 12 months after the surveys commenced.

2.5 FaHCSIA explained that 'given that the presence and extent of Asbestos Containing Material was not yet known prior to the asbestos surveys being undertaken, a formal communications plan could not be developed or provided to the community.' However, the discovery from the initial five asbestos surveys in November 2007 through February 2008 that Asbestos Containing Material was

present in communities led to surveys being conducted in all 73 communities from February 2008.

2.6 Intermediaries with responsibility for premises in communities were depended on to inform tenants, employees and other occupants of relevant buildings because of the agencies' direct relationship with them.

2.7 It is clear that FaHCSIA conducted this exercise under challenging conditions and that keeping people informed was difficult. For example, no list existed of organisations and individuals responsible for the management of land in the 73 communities due to the nature of the register held by the Northern Territory's Land Titles Office, or of persons responsible for or in control of buildings prior to the NTER.

2.8 In spite of requirements such as the Code of Practice for the Management of Asbestos in Workplaces (NOHSC: 2018[2005]), very little information on the presence of Asbestos Containing Material in the NTER communities was available to FaHCSIA.

2.9 On 27 November 2008, the Australian Government agreed to provide \$17 million for the Asbestos Management Project in the 73 NTER communities. The project involves:

- removal of Asbestos Containing Material where the asbestos specialists recommended removal within 12 months
- removal of the material from buildings where no agency can be identified to manage it in the future
- completion of the asbestos surveys by surveying buildings which were not accessible at the time of the initial survey (the follow-up surveys)
- removal of Asbestos Containing Material identified in the follow-up surveys as requiring removal within 12 months
- replacement of the material with other suitable material where this is required to maintain the functionality of the building
- with the agreement of the responsible agency, clearly marking all buildings that contain Asbestos Containing Material by placing a sign or sticker on a prominent place on the building, such as in the meter box, warning of the presence of such material.

2.10 The agreement to fund this project was contingent on the Northern Territory Government (NT Government) agreeing to several key elements. On 6 January 2009, the survey reports were provided to the NT Department of the Chief Minister as part of seeking the NT Government's commitment to the Asbestos Management Project. In May 2009, the NT Government committed to the project, which commenced with the procurement of a project adviser to prepare project management plans (including communication plans and risk assessments).

2.11 In June 2009, FaHCSIA advised that it intended to achieve the outcomes of the Asbestos Management Program within 18 months, depending on seasonal influences. This is considerably later than the Government's commitment to a completion date of May 2009 which was reported in the NTER One Year Report (paragraph 1.4 refers).

PART 3—COMMUNICATING WITH COMMUNITIES

Asbestos survey results

3.1 The missing element in FaHCSIA's approach to communicating about the surveys is an organised, deliberate strategy that would inform communities from January 2008, the time that the initial five inspections had demonstrated that Asbestos Containing Material was present in a number of buildings and areas.

3.2 Such a strategy would have kept affected people informed of the process and when the results would be available, while also providing an avenue for them to make enquiries and raise concerns. It would have ensured that GBMs received information in a coordinated way and were able to pass it on at community meetings and in response to enquiries.

3.3 While FaHCSIA has advised that it has always seen the benefit in communicating information on the surveys to members of the community, concern about the complexity of some of the information and the potential to cause alarm led it to the view that this should be done in the context of an overall communication and management plan. In July 2009, FaHCSIA advised that the first detailed communication plan relating to the asbestos surveys was being prepared. It was finally activated when a letter was sent to GBMs on 20 August 2009, outlining the strategy which was based on a model of holding community meetings and distributing fact sheets to support verbal messaging.

3.4 The longer people are left without specific information about whether Asbestos Containing Material is in their houses and community buildings, the longer they are at risk of inadvertently disturbing it.

3.5 The reasons FaHCSIA provided for delaying communication with affected people in each of the communities suggest the need for a review of its approach. For example, FaHCSIA provided the following information in July 2009:

- in relation to Community A, FaHCSIA had not received any complaints from this community about asbestos. FaHCSIA was not aware of the individuals making the complaint, nor the basis on which they purport to represent the community, therefore, it is unclear how to proceed in order to meet the expectation of communicating with the community
- the release of complex information to community members can be alarming or confusing and should be conducted in the context of an overall communication management plan
- the Australian and NT Governments intend to work with the GBMs to provide information to communities about future management plans, including information about the negligible risk posed by the Asbestos Containing Material already identified
- FaHCSIA will be working with the NT Government to improve the quality and accuracy of the survey reports, as the surveys already conducted excluded some buildings that were inaccessible at the time of surveying. When this work is completed, FaHCSIA intends to communicate the asbestos survey reports, as appropriate, to community members.

3.6 The Ombudsman's office does not expect that FaHCSIA should provide asbestos survey information in its entirety to every member of the community. The office also recognises that the surveys, risk ratings and plans for removal include some complex and sensitive information. However, some information should have been provided to communities, and particularly residents, from the beginning—that is, when the surveying commenced and at critical stages of the process.

3.7 This delay in advice reaching Indigenous communities about the process which commenced with inspections in November 2007 overshadows FaHCSIA's many achievements in the course of what was originally seen as an intensive short-term activity, the Community Clean Up program. These achievements include FaHCSIA's prompt response to the surveys by its immediate removal of Asbestos Containing Material rated as high risk to health, the careful planning for the removal of lower risk material from remote Indigenous communities, and engagement with the NT Government to achieve this.

3.8 Even though FaHCSIA has taken steps to communicate the results of the asbestos surveys to various parties (see Appendix 1), more timely information to the residents was required, particularly given that they are likely to be most affected by the Asbestos Containing Material. The needs of residents should have been anticipated as they have a constant presence in the community and would have some knowledge of the surveys and the risks associated with Asbestos Containing Material.

3.9 FaHCSIA noted that, due to local government issues, it is not always within its control to make available the most up-to-date information to those best placed to receive it. FaHCSIA also advised that it has responded to every asbestos-related query and issue put to it.

Effective communication

3.10 It is difficult to see how the approach taken by FaHCSIA to communicating with Indigenous communities about the planning, conduct and results of the asbestos surveys is consistent with the Indigenous engagement principle set out in the Council of Australian Governments National Indigenous Reform Agreement and National Partnership Agreement on Indigenous Remote Service Delivery:

Engagement with Indigenous men, women and children and communities should be central to the design and delivery of programs and services.

3.11 There is no doubt that communicating effectively with Indigenous people living in remote communities is challenging. Channels that may be suitable for regional and urban areas such as the internet, electronic media and English-language publications, have limited application in many remote Indigenous communities. We recognise, as does FaHCSIA, that each community is unique and a uniform approach is unlikely to be effective.

3.12 GBMs are key liaison points in communities and their role includes communicating the NTER measures and other Indigenous programs at the local level, engaging with acknowledged and respected Elders and working collaboratively with other Australian and NT Government agency representatives on the ground. They play a valuable role in engaging and empowering Indigenous people and in coordinating the flow of information about asbestos.

3.13 The GBM group could have been used more effectively if FaHCSIA had adopted a proactive approach from late 2007, or even January 2008, when the need to extend the surveys was confirmed after the results of the initial five inspections were known. A targeted, well defined strategy would have ensured consistency in the messages delivered to specific audiences. FaHCSIA's decision to delay communications until the results of all the surveys were available meant that a coordinated approach to providing information to GBMs did not commence until October 2008. The communication strategy was scheduled to commence some time later, in August 2009, prior to the follow-up surveys.

3.14 We note that one community which had raised its concerns with the Minister for Families, Housing, Community Services and Indigenous Affairs received the following attention:

- work to remove visible asbestos debris in advance of the broader asbestos management project in response to concerns about asbestos from demolished housing
- FaHCSIA staff regularly communicated details of the removal project to members of the community through an asbestos awareness presentation, hand-out and fact sheet distribution, and responded to questions in the community
- FaHCSIA staff liaised with stakeholders including the Central Land Council, the NT Government and the relevant Shire Council
- after the Asbestos Containing Material was removed, FaHCSIA and the NT Department of Health and Families visited the community to address any queries and provided a project completion report to the Chairman of the community board and to the GBM.

3.15 This comprehensive response by FaHCSIA was particularly important given the level of risk to that specific community. FaHCSIA's general approach however, was inadequate because it relied on communities and individuals to ask questions and seek information rather than FaHCSIA providing timely information about its planned approach, progress and results.

3.16 In its defence, FaHCSIA advised that its predominant priority has been to ensure the safety of community members and an appropriate response to the potentially harmful asbestos.

Beyond the asbestos surveys

3.17 Communication issues have been at the core of many complaints made to the Ombudsman's office about the NTER and other Indigenous programs in the Northern Territory. Common elements in these complaints include:

- targeting intermediaries, including shires, GBMs and Elders, and not articulating clearly the expectation that they will inform all members of a community
- information being conveyed solely in one-off sessions and meetings
- different approaches by GBMs to providing information, leading to varying degrees of understanding and awareness across the communities
- crucial written material not being translated into the appropriate language(s)
- failure to use interpreters

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- a limited understanding of cross-cultural communication issues
- key messages and important information being delivered in one format or via one method only
- passive communication of important information, for example, only conveying information on the internet

PART 4—KEY FINDINGS AND RECOMMENDATIONS

4.1 This investigation examined FaHCSIA's approach to communicating the results of asbestos surveys conducted in the 73 NTER communities to affected community members and relevant organisations.

4.2 The key finding of this investigation is that FaHCSIA's approach to communicating with Indigenous communities about the conduct of the asbestos surveys was inadequate for the following reasons:

- there was no coordinated communication strategy from the time asbestos was found in the initial sample of five communities in January 2008 until August 2009—FaHCSIA relied on Indigenous communities to make enquiries and on GBMs and intermediaries to pass on information which was provided to them in an ad hoc manner
- FaHCSIA's focus was on a strategy for communicating the results of the surveys when they were finalised—this did not include communication about the process which commenced in communities in November 2007
- irrespective of the level of risk within a community, once asbestos was found in the initial sample of five communities, FaHCSIA should have been proactive in providing timely and appropriate progress reports and communicating the survey results to each of the communities.

4.3 The August 2009 communication strategy is promising in that it sets out FaHCSIA's four objectives to:

- explain why follow up surveys are being conducted
- explain why some Asbestos Containing Material needs to be removed
- provide reassurance to community members about any health and safety concerns
- flag the timeframe for any removals of asbestos.

4.4 My office will monitor FaHCSIA's formal assessment of the effectiveness of this strategy and will also continue to monitor the engagement of all Australian Government agencies with Indigenous Australians in the Northern Territory.

4.5 I make the following recommendations for action by FaHCSIA:

Review of administrative procedures and priorities

Recommendation 1

FaHCSIA should undertake a formal assessment of the specifically targeted communications package which was delivered to 73 NTER communities via Government Business Managers commencing August 2009.

Recommendation 2

FaHCSIA, as the agency responsible for the coordination of the NTER measures and delivery of some of them, should:

- review its approach to communicating with Indigenous people in the NT to ensure that engagement with Indigenous men, women and children and communities is central to the design and delivery of programs and services
- remind other Australian Government agencies responsible for Indigenous programs of this obligation.

APPENDIX 1—AGENCY RESPONSE

FaHCSIA has informed this office that it has taken the following steps since finalising the asbestos surveys.³

- Communication to community members was through the GBMs, who are Commonwealth officers stationed in most of the 73 NTER communities
 - in Galiwinku community, for example, the GBM advised that he spoke to community members to explain that the Australian and NT Governments are cooperating to remove Asbestos Containing Material that has been identified as requiring removal within 12 months.
- FaHCSIA provided relevant extracts of survey reports to those persons who have requested authority to use five-year leased land, where that request was made for land on which Asbestos Containing Material had been identified.
- Copies of the asbestos survey reports were made available on FaHCSIA's initiative and on request to appropriate organisations.
- In October 2008:
 - GBMs were briefed in Alice Springs by asbestos experts on what asbestos is, the identification of Asbestos Containing Material, health effects, risk assessments and air monitoring results
 - the GBM in one community led a concerned community member through the asbestos presentation that the GBM had received
 - FaHCSIA provided all 73 asbestos reports to the NT Department of Local Government and Housing to assist it in developing the scope of works for communities targeted by the Strategic Indigenous Housing and Infrastructure Program.
- On 6 January 2009, the NT Government Department of the Chief Minister was provided with survey reports for the purpose of seeking NT Government commitment to the Asbestos Management Project. Formal commitment was provided on 6 May 2009.
- On 11 February 2009 FaHCSIA wrote to all GBMs to:
 - provide them with background on asbestos management activities that had occurred to date
 - promote FaHCSIA's asbestos email mailbox as a means of communication for any asbestos-related queries and concerns that they or others living or working in communities may have
 - inform them that the Asbestos Containing Material identified in the surveys presents a negligible risk to community members, employees, contractors, or visitors as long as it remains in its current state.
- One community's concerns were raised with the Minister for Families, Housing, Community Services and Indigenous Affairs on 4 April 2009, following which work to remove visible asbestos debris was completed in advance of the broader asbestos management project. FaHCSIA staff then engaged in regular communication with members of the community, liaising with the Central Land Council, the NT Government and the relevant Shire

³ November 2007 to 31 January 2008: surveys of five communities revealed that Asbestos Containing Material was present in a number of buildings and areas. February 2008 to September 2008: surveys were conducted of the remaining 68 NTER communities.

council. On completion, there was a joint visit to the community to address any queries and provide a project completion report to the Chairman of the community Board.

- On 2 June 2009, copies of the relevant asbestos register were provided to all GBMs for the communities in which they work (copies had been provided earlier to individual GBMs on an ad hoc basis) along with advice of future actions to be undertaken.
- On 11 June 2009, FaHCSIA sent letters and asbestos surveys to the Office of Township Leasing and the Shire Councils.
- As at 16 July 2009, FaHCSIA was developing a coordinated asbestos management plan which includes a communications plan.
- On 5 December 2009, FaHCSIA advised that 'a specifically targeted communications package was delivered to each of the 73 NTER communities via the GBMs at a critical stage of the Asbestos Management Project; that is, prior to the follow-up surveys.'

ABBREVIATIONS AND ACRONYMS

CMO	Chief Medical Officer
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
GBM	Government Business Manager
NT	Northern Territory
NTER	Northern Territory Emergency Response
NT Government	Northern Territory Government