
The Parliament of the Commonwealth of Australia

Sealing a just outcome:
Report from the Inquiry into
RAAF F-111 Deseal/Reseal
workers and their families

Joint Standing Committee on Foreign Affairs, Defence and Trade

June 2009
Canberra

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Foreword

The sight of an F-111 flying overhead with afterburners blazing has provided excitement for a generation of Australians and the assurance that the highest priority of defending our nation was being met.

However, unknown to most, the task of keeping the F-111 operational was damaging the health and lives of too many RAAF personnel and others charged with that duty.

This report examines the concerns raised by these people.

As noted in the body of the report, the F-111 was a unique aircraft with capability and design attributes not shared by any other RAAF platform.

One consequence of the unique fuel storage system on the F-111 was a requirement for repair work in an environment not replicated on any other RAAF aircraft. These tasks have been at the very core of this Inquiry.

It would be inappropriate and an error, therefore, to apply any of the considerations in this report to activities on other aircraft.

Whilst some research and information referred to in this report will have relevance to other situations, the interpretations and conclusions drawn in this report specifically deal with the unique fuselage fuel tank repair work undertaken on F-111s.

Chapter 1 of this report notes 'that unlike most Inquiries conducted by parliamentary committees, this Inquiry went well beyond broad policy issues. At its core has been a consideration of specific cases directly impacting on upwards of 2 000 ex-personnel and many more family members.'

Reviewing the many concerns of these former F-111 workers, studying the results of research involving them, analysing the provisions of relevant legislation and examining the administration of these Acts and schemes have been demanding tasks. The complexity and gravity of these issues merited an extension of time for

the Committee to address all of these matters and develop meaningful recommendations.

At the outset, I wish to thank those involved with the F-111 fuel tank work for their patience throughout this process.

Without doubt, the ex-gratia scheme announced by the government in 2005 was the focus of many submissions and the cause of many complaints. Whilst it was intended to provide assistance with specified healthcare costs and a one-off financial payment for some, and did, it also created a series of anomalies that angered an already distressed group of people.

During one of the public hearings I commented that the scheme '...was born of fuzzy logic, shrouded in misleading spin, and then administered in confusion'.¹

These decisions were not taken by Defence or DVA. The relevant documents and considerations of those who actually made these decisions are not available to the Committee.

Widespread confusion about this payment was inevitable given the lack of consistency and clear policy explanation from the very day it was announced.

Meanwhile, many who were suffering health complications and who were denied access to the ex-gratia scheme felt abandoned and discriminated against.

Providing care and support and, where appropriate, compensation for those whose health has suffered because they undertook work on behalf of the Commonwealth has been a primary consideration in this Inquiry.

That most of those involved were service personnel imposes an even greater obligation on the Commonwealth. The Australian community quite rightly expect the Commonwealth to care for our servicemen and women who suffer ill health because of their service for our nation. That principle does not only apply to those who serve overseas.

The recommendations in this report, if adopted, will enable a significant number of former F-111 workers to access the same support made available to those who worked in the formal Deseal/Reseal programs.

They also remove arbitrary cut-off dates that of themselves have denied former workers or their estates access to support for which their service would otherwise have entitled them.

The absence of records for many involved in this work has been enormously frustrating. I received a number of comments from various people who believed certain types of records would address this problem. Considerable effort was

¹ Chair, Hon A R Bevis, *Transcript*, 19 September 2008, p. 18.

applied in pursuing these ideas. All were fruitless. The focus for record keeping was to support investigation of equipment issues that may have resulted in damage to, or loss of, aircraft and aircrew. It reflects a hopefully outdated culture in which ground personnel were rated a distant third consideration.

As a result, the report recommends that in certain circumstances, statutory declarations be used to establish entitlements. For deceased estates, a statutory declaration from the next of kin should apply with the same guidelines as those set out in the report.

Considerable time and effort were given to the health research involving the F-111 issues. As the report makes clear, this research does not support some of the concerns of the workers, notably with respect to SR51.

However, other research does raise potentially serious matters that require further investigation and are the subject of a recommendation.

Some of those in the F-111 community seek substantial compensation payments. Beyond the no-guilt statutory compensation schemes and the ex-gratia scheme payments, any additional payment is a matter for common law. It would clearly be inappropriate to interfere in these matters. The Committee recommendation concerning regular reports to the Defence Sub-Committee on progress in settling these matters will enable this issue to be monitored.

The Inquiry also found shortcomings in matters that extend beyond the F-111 issues. These are very important. The report includes recommendations on these.

I want to add my personal thanks to the many Defence and DVA staff whose advice and support of the Committee's Inquiry have enabled our work to proceed. I particularly want to acknowledge the willing support of the RAAF. The presence of senior RAAF personnel at all hearings and their assistance ensuring all requests were met were invaluable and greatly appreciated.

Special thanks are due to the small secretariat staff who have devoted much of the last year to the work of this Committee. Committee Secretary, Margot Kerley and Inquiry Secretary, Muzammil Ali, have organised the thousands of pages of submissions, exhibits and transcripts for the Inquiry. Defence Advisers Lt Col Paul Nothard (in 2008) and Wg Cdr Dave Ashworth (in 2009) have provided important assistance. I thank them all.

Finally, I want to record my thanks to the affected F-111 community. They deserve thanks for the duties they performed. Without their efforts, one of the nation's primary strike weapons for the last generation would not have been available to defend our nation.

I wish to thank the many F-111 workers, their families and in some cases widows and parents of deceased F-111 workers who came forward and gave evidence. Some have lived with the problems associated with working on the F-111 for decades. Some will go on living with these problems for years to come. And tragically, for some, the stress and worry will be too much for them to shoulder.

This report is a genuine effort that addresses many of the problems under review. At one level, I hope it goes a substantial way in bringing closure for many involved. At another level, the recommendations, if adopted, will provide access to support and assistance for perhaps two thousand people, which in itself is an important outcome.

The Hon Arch Bevis MP
Chair
Defence Sub-Committee

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Chair Senator M Forshaw

Deputy Chair The Hon D Hawker MP

Members

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Senator A Bartlett (till 30/06/08)	Mr M Danby MP
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Senator M Bishop	Mr S W Gibbons MP
Senator the Hon A Ferguson	Ms S Grierson MP
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Senator M Furner (from 16/03/09)	The Hon I Macfarlane MP
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Terms of reference

The committee will investigate and review claims for compensation from former F-III deseal/reseal workers including the Commonwealth's response to the health and support needs of former F-III Deseal/Reseal workers and their families. The Committee should ascertain whether the response was adequate, whether it was consistent with the findings of the Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) and whether the overall administration and handling of the program was adequate.

Terms of Reference:

The Inquiry will consider the adequacy and equity of the Health Care Scheme in meeting the health and support needs of participants and their families and whether this was consistent with the SHOAMP findings. Matters to be considered will include, but not be limited to:

- The differences, and transitional arrangements, between the interim health scheme and the final Health Care Scheme;
- The timing of cessation of access to the Health Care Scheme;
- The range of treatment and health benefits provided under the Health Care Scheme;
- Whether the current Health Care Scheme is consistent with the range of treatment and health benefits available to persons under other Health Care Schemes;
- The adequacy of arrangements under the Health Care Scheme affected family members (including widows) or serving members; and
- If the Health Care Scheme is not considered to be an adequate response to the health and support needs of participants and their families, consider and report on possible alternatives that are considered to be adequate in light of the findings of SHOAMP and other Health Care Schemes.

The Inquiry will consider the adequacy and equity of the financial element of the Ex Gratia Scheme and whether it was consistent with (i) the findings of SHOAMP,

(ii) the Health Care Scheme response (iii) the Tier definitions, and (iv) one off payments to other veteran groups. The Inquiry will consider, but not be limited to:

- Whether the lump sums available under the ex gratia scheme were appropriate;
- Whether the lump sums available were appropriate given the findings of the SHOAMP;
- Whether the lump sums, when considered along with the benefits available under the Health Care Scheme, were appropriate;
- Whether the lump sums available under the ex gratia scheme were appropriate, when considered along with the full range of benefits and compensation available under other Commonwealth or State statutory schemes;

Whether the lump sums were consistent with the definitions of Tiers of participants;

Whether the lump sums were consistent with other one-off payments made to veteran groups;

When assessing the question of adequate remedies whether regard should be given to the establishment of a dedicated administrative assessment and settlement scheme, and

If the lump sums available under the ex-gratia scheme are not considered to be financially adequate, discuss what compensatory payment would be appropriate in light of the SHOAMP findings, other one-off payments made to veteran groups, and the full range of benefits and compensation available under other Commonwealth and State statutory schemes or common law damages available under Australian law.

The Inquiry will consider whether the overall handling and administration of ex gratia and compensation claims was appropriate, timely and transparent for both participants and their families. The Inquiry will consider whether, but not be limited to:

- Cross agency cooperation was effective;
- The documentation and records held by both Agencies as they relate to Deseal/Reseal activities was adequate;
- The standard of evidence required to substantiate a claim was reasonable and, if not, whether alternative standards of proof may be used when making an eligibility determination;
- There has been equitable treatment of service personnel, public servants, civilian employees and contractors involved in Deseal/Reseal activities;
- Staffing resources were adequate to produce a timely result;
- There were unreasonable delays in the process, taking into account the complex nature of issues; and
- The overall handling and administration of ex gratia and compensation claims was appropriate and timely.



List of abbreviations

3AD	3 Aircraft Depot
501WG	501 Wing
ACPMH	Australian Centre for Post traumatic Mental Health
ADF	Australian Defence Force
AER	Airman's Evaluation Report
AFFITT	Airframe Fitter
AIHW	Australian Institute of Health and Welfare
ATECH	Aircraft Technician
BHP	"Better Health Program" – a cancer screening and disease prevention program administered by the Department of Veterans' Affairs
BOI	Board of Inquiry
C-130	"Hercules" aircraft
CAF	Chief of Air Force
C(CG E)	<i>Commonwealth Government Employees Act 1971</i>
CMVH	Centre for Military and Veterans Health

DAC	Doctor's Advisory Committee
DFWA	Defence Force Welfare Association
D/R	Deseal/Reseal
DSRS	Deseal/Reseal
DSTO	Defence Science and Technology Organisation
DVA	Department of Veterans' Affairs
F-111	F1-11 aircraft
FTRS	Fuel Tank Repair Section
ICD	International Classification of Diseases
IHCS	Interim Health Care Scheme
MCRS	Military Compensation and Rehabilitation Service
MSDS	Material Safety Data Sheets
OC501WG	Officer Commanding 501 Wing
OH&S	Occupational Health and Safety
PP179	Airman's Trade Progress Sheet
PPE	Personal Protective Equipment
RAAF	Royal Australian Air Force
RMA	Repatriation Medical Authority
RTE	Record of Training and Employment
SHCS	SHOAMP Health care Scheme
SHOAMP	Study of Health Outcomes in Aircraft Maintenance Personnel
SLE	Systemic Lupus Erythematosus
SM-ALC	Sacramento - Air Logistics Centre
SNCO's	Senior Non-Commissioned Officers

SOP	Statements of Principles
SR51	Trade name of chemical desealant
SRCA	<i>Safety, Compensation and Rehabilitation Act 1988</i>
TPI	Totally and Permanently Incapacitated
TUNRA	University of Newcastle Research Associates Ltd
USAF	United States Air Force
VEA	Veterans' Entitlement Act 1986
VVCS	Vietnam Veterans' Counselling Service



List of recommendations

Recommendation 1

That the definition of eligible personnel for the purposes of Tier 3 of the ex-gratia scheme be extended to include personnel posted to one or more of the F-111 maintenance squadrons 1, 6 and 482 who carried out Sealant Rework ('pick and patch') work during the period 1973 to 2000 and personnel who served in 3AD or 501 WG and who undertook fuel tank entry and Sealant Rework ('pick and patch') work outside of the formal DSRS program.

Recommendation 2

In absence of evidence to the contrary and where usual documentary evidence is not available or is inconclusive, a statutory declaration by the applicant confirming:

- They were posted to 1, 6 or 482 Squadron between 1973 and 2000, or 3AD or 501 WG and
- That they were required to undertake Sealant Rework ('pick and patch') or fuel tank entries, and
- Accompanied by a second corroborating statutory declaration from a commanding officer or superior officer or person who has already had a claim under the scheme approved

be accepted as evidence of qualifying service.

Recommendation 3

That the definition of eligible personnel for the purposes of Tier 2 of the ex-gratia scheme be extended to include personnel posted to one or more of the F-111 maintenance squadrons 1, 6 and 482 who spent between 20 and 59 cumulative working days carrying out Sealant Rework ('pick and patch') during the period 1973 to 2000 and personnel who served in 3AD or 501 WG and who undertook fuel tank entry and Sealant Rework ('pick and patch') work outside of the formal DSRS program.

Recommendation 4

In absence of evidence to the contrary and where usual documentary evidence is not available or is inconclusive, a statutory declaration by the applicant confirming:

- They were posted to the squadron between 1973 and 2000, and
- That they undertook Sealant Rework ('pick and patch') work for between 20 and 59 cumulative working days during the period 1973 to 2000 outside of the formal DSRS program, or 3AD or 501 WG and
- Accompanied by a second corroborating statutory declaration from a commanding officer or superior officer or person who has already had a claim under the scheme approved

be accepted as evidence of qualifying service.

Recommendation 5

That the definition of eligible personnel for the purposes of Tier 1 of the ex-gratia scheme be extended to include personnel posted to one or more of the F-111 maintenance squadrons 1, 6 and 482 who spent 60 or more cumulative working days carrying out Sealant Rework ('pick and patch') work during the period 1973 to 2000 and personnel who served in 3AD or 501 WG and who undertook fuel tank entry and Sealant Rework ('pick and patch') work outside of the formal DSRS program.

Recommendation 6

That where usual documentary evidence is not available or is inconclusive, a statutory declaration by the applicant confirming:

- They were posted to the squadron between 1973 and 2000, and
- That they undertook Sealant Rework 'pick and patch' work for 60 or more cumulative working days during the period 1973 to 2000 outside of the formal DSRS program, or 3AD or 501 WG and

- Accompanied by a second corroborating statutory declaration from a commanding officer or superior officer or person who has already had a claim under the scheme approved.

Recommendation 7

That a review be undertaken of those cases in which a statutory declaration has been rejected by DVA in determining an F-111 ex-gratia application. That the committee be provided with a copy of that review.

Recommendation 8

That the healthcare and compensation provisions made available under the F-111 ex-gratia scheme be in accordance with s7(2) of the SRCA or the VEA and this apply to the widened group in accordance with the recommendations in this report.

Recommendation 9

That the cut off date requiring applicants for the SHCS to submit claims prior to 20th September 2005 be removed. That all claims for SHCS received by DVA and rejected because of the September 2005 date be reviewed.

Recommendation 10

That the requirement excluding estates of those who died prior to 8th September 2001 from accessing the ex-gratia scheme be removed. Those estates of former personnel with qualifying service in accordance with the scheme and these recommendations be eligible for support under the ex-gratia scheme.

Recommendation 11

That the Minister for Veterans Affairs appoint a person with suitable qualifications and background knowledge of the F-111 workers claims to oversee the implementation of these recommendations and to provide expert assistance to DVA in processing claims. The person should be appointed for a minimum of two years and also provide periodic advice to the Minister on progress in handling claims.

Recommendation 12

That group counselling be made available to F-111 fuel tank repair workers and their families. That initially, participation in up to five group counselling sessions be made available to all who have access to funded individual counselling. That the Minister review whether further group counselling sessions should be made available, based on outcomes from these group counselling services.

Recommendation 13

That the Government give consideration to expanding respite care for partners of seriously ill former F-111 workers who are principal care providers.

Recommendation 14

That Defence provide a briefing on the progress of litigation to the Committee in March and September of each year.

Recommendation 15

The Committee recommends that Defence and DVA establish a dedicated website in relation to F-111 aircraft maintenance issues. Such a website should be comprehensive and include:

- The Board of Inquiry Report and recommendations
- The complete SHOAMP study reports
- Complete information on the ex-gratia payment including application forms
- A link to this report and recommendations

Contact details and role descriptions of all relevant personnel including the Defence Force Advocate, Ex-gratia processing team, DVA compensation processing team and other support mechanisms such as the F-111 DSRS Support Group, counselling support and the Commonwealth Ombudsman.

Recommendation 16

That a review of DVA staff training be undertaken to ensure a regular high standard of client focused delivery of services occurs. That policies for handling cases of seriously ill patients, especially those in vulnerable circumstances, be reviewed.

Recommendation 17

That the ADF expand its internal capability in occupational medicine as a matter of some urgency. That a review of current practices in handling OH&S matters within the ADF be conducted to amongst other things, respond to the structural and cultural issues identified in the BOI and by Professor Hopkins.

Recommendation 18

That the ADF fund further research into the mitochondrial changes identified in Professor Bowling's research. That as part of that research, further wider study be undertaken into the health implications of working with aviation turbine fuels and the results of these studies be reported back to the Committee at least annually.

Introduction

Conduct of the Inquiry

- 1.1 On 21 May 2008, the Minister for Veteran's Affairs, the Hon Alan Griffin MP, wrote to the Chairman of the Joint Standing Committee for Foreign Affairs, Defence and Trade, Senator Michael Forshaw, noting that:

One of the election commitments of the Rudd Government was that it would conduct a Parliamentary Inquiry into the adequacy of the ...health and support needs of RAAF Deseal/Reseal workers and their families.
- 1.2 The Minister's letter included Terms of Reference for the Inquiry 'prepared with reference to the concerns raised in a submission recently provided by the F-111 Deseal/Reseal Support Group Inc and also the intent of the Government's commitment'. A summary of the Terms of Reference together with a strategy of approach to the Inquiry was included on the Committee's first media release announcing a series of public hearings to be held in Canberra and Brisbane.
- 1.3 The Inquiry Terms of Reference were adopted by the Committee on 28 May 2008 and referred to the Defence Sub-Committee chaired by Arch Bevis MP. The Inquiry was advertised widely in the national and Queensland press and in publications with wide distribution among the Defence serving personnel and veterans' communities.
- 1.4 The Committee received 130 submissions and 12 Supplementary submissions from organisations and the general public. In all the Committee received 743 pages of submissions. Published submissions are

available on the Committee's website. A list of all submissions, exhibits and witnesses is included as Appendices A, B and C.

- 1.5 The Committee also heard evidence recorded in more than 360 pages of transcript evidence covering six public hearings.
- 1.6 After hearing initially from the Government agencies directly involved in the Deseal/Reseal (DSRS) issue, the Departments of Defence, Veterans' Affairs, and the Commonwealth Ombudsman, in Canberra on 21 July 2008, the Committee held two public hearings in Brisbane on 28 and 29 July 2008.
- 1.7 The Committee visited Amberley RAAF base on 28 July 2008. The Committee received a private briefing on the nature of fuel leak repair work and inspected training facilities, tools used and an F-111 airframe. Inspection of the various fuel storage areas in the F-111 provided a very graphic understanding of the extremely small work spaces for those involved in this work. Entry to some fuel tanks would make it difficult for even a small person to undertake this work. Once inside the tanks, some work areas were so confined, it is difficult to understand how personnel could spend hours at a time in such a cramped and physically unpleasant environment. To do so with a range of chemicals surrounding them on a hot Queensland summer day would have been very demanding.
- 1.8 In opening the first Brisbane hearing on 28 July 2008, the Chair noted that they provided an opportunity for 'those who were involved, who have first-hand experience and who participated in the DSRS program in its various guises and in different parts, to present their case in an open and transparent public hearing to the committee'.¹
- 1.9 Another public hearing was held in Canberra on 19 September 2008 and provided the Committee with an opportunity to revisit a range of issues with the relevant Government agencies as well as from organisations representing the interests of servicemen and veterans. A total of 47 witnesses were examined at the public hearings in Canberra and Brisbane.
- 1.10 On 25 November 2008, the Chair wrote to the Minister requesting an extension of time for the Committee to report after the 4 December date could not be met due to the complexity of matters under consideration.
- 1.11 The Committee held further public hearings on Thursday and Friday 16 and 17 April 2009, at which it took evidence from expert witnesses who were responsible for the research behind the health studies commissioned by the SHOAMP. The Committee also heard further evidence from the

1 Chair, Hon A R Bevis MP, *Transcript*, 28 July 2008, p. 1.

Deseal/Reseal Support Group Inc and from the Departments of Defence and Veterans' Affairs.

- 1.12 This Inquiry has taken longer than was first anticipated. Throughout the extended timeline in which this Inquiry was conducted, a steady stream of submissions and information was received. The Committee sought to examine each of these, often involving further analysis and research.
- 1.13 The nature of this Inquiry required a detailed consideration of specific provisions of the various compensation and support schemes available to Defence personnel at various times over the last three decades. In addition, specific schemes created for the DSRS and wider F-111 fuel leak workforce were examined in some detail. The relationship each of these had with the other was also reviewed.
- 1.14 The Committee has been mindful that unlike most Inquiries conducted by parliamentary committees; this Inquiry went well beyond broad policy issues. At its core, has been a consideration of specific cases directly impacting on upwards of 2 000 ex-personnel and many more family members.
- 1.15 The Committee is appreciative of the willingness of so many current and former RAAF personnel, their families and others to come forward with evidence and to tell their story in their own words. For some this was a difficult thing to do. The work of the Committee would not have been possible but for their evidence and submissions.
- 1.16 The RAAF and DVA were also forthcoming in support of the Inquiry. From the outset, their frank and open evidence, and their willingness to provide many additional details and evidence at the request of the Committee is acknowledged and appreciated.
- 1.17 In particular, the support of senior RAAF personnel has facilitated the work of the Committee at all times and has been appreciated.
- 1.18 Given the wide range of views about the matters canvassed in this Inquiry, some of which are irreconcilable, it is clearly not possible to produce a report that will meet with approval from all. That said, this report is a thorough and genuine effort to consider the available research and competing views and to provide the Government with a series of recommendations, which if adopted, would bring greater fairness and equity to the treatment of many ex F-111 workers.
- 1.19 Interestingly, a search to identify any similar inquiry of these matters in the USA was only able to identify reports in *The New York Times* in 1988 that mentioned:

“The Senate Environment and Public Works Committee is preparing to investigate health complaints by aerospace workers”.²

- 1.20 These hearings were held 6 March and 5 July 1989 in Los Angeles.³ The witnesses outlined their experiences at Boeing and Lockheed plants, generally within the previous 10 years. The US Senate Committee does not appear to have produced a report. Some twenty years later, this report is being presented to the Australian Parliament.
- 1.21 The issues before this Inquiry are not new. RAAF, governments and the people directly involved have grappled with them for many years. It is now time to finalise the issue.
- 1.22 A timeline of the key events which have defined these issues is as follows:

**F-111 Deseal/Reseal
Key Dates**

<i>Date</i>	<i>Event</i>
1973	The first F-111C aircraft arrive in Australia
1973 – 2000	Treatment of fuel leaks using ‘pick and patch’ methods
1977 - 1982	First DSRS program
1985 - 1992	‘Wings’ program
1991 - 1993	Second DSRS program
1996 - 1999	Spray Seal program
28 January 2000	Spray Seal program suspended
July 2000	BOI convened by CAF
8 September 2001	BOI report released
2001	Interim Health Care Scheme (IHCS) instituted
2002 – 2004	Study of Health Outcomes in Aircraft Maintenance Personnel
December 2004	Government accepts responsibility of DSRS health outcomes
December 2004	SHOAMP Health Care Scheme instituted
August 2005	Ex-gratia lump sum scheme announced
21 May 2008	Inquiry referred to Defence Sub-Committee

- 2 New York Times (13 November 1988) *Illnesses of Aircraft Workers to be Discussed* viewed 17 May 2008 at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=940DE6DF123FF930A25752C1A96E948260>.
- 3 *Hearings before the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development of the Committee on Environment and Public Works, United States Senate, One Hundred First Congress, first session, March 6, 1989; July 5, 1989.*

F-111 Fuel Tank Maintenance

The need for F-111 fuel tank repairs

- 2.1 In October 1963, the Australian Government placed an order for 24 F-111C aircraft from the United States Air Force (USAF). While delivery was scheduled for October 1968, technical issues and the loss of some USAF F-111 aircraft in Vietnam meant that the Australian order was not delivered until June 1973. This delay resulted in the Australian aircraft being in storage in the US for a period of some five years.
- 2.2 The F-111 possesses a number of special and even unique capabilities. One of these is its long range capability, enabling the aircraft to operate without refuelling over very long distances. To accomplish this, the F-111 maximises the storage of fuel in a way not adopted with any other aircraft in the RAAF. It is in one sense a 'flying fuel tank' with armaments attached and a cockpit for the pilot. Unlike many other aircraft, there is no fuel bladder in the F-111.
- 2.3 The Chief of Air Force (CAF) described the structure of the aircraft's fuel carrying capacity:

Because of the F111's role as a long-range strike aeroplane – which, again, it was very good at – and the shape of the aeroplane. A classic one is the A2 – the aft tank between the two engines. In most normal aeroplanes you would not try to

fit fuel in there. To maximise the amount of fuel that it carried, pretty much every nook and cranny in the aeroplane where fuel could be put was looked at, and that is where they put the fuel.¹

- 2.4 Approximately three months after delivery, the RAAF discovered deteriorating sealant while investigating fuel leaks. Shortly after this, the RAAF became aware of serious fuel leak issues being experienced by the United States Air Force (USAF) in their F-111 aircraft. The discovery of the deteriorating sealant, coupled with the fact that the aircraft had spent such a long time in storage meant that the RAAF was required to rectify major fuel leak issues on the aircraft.²

The Formal Deseal/Reseal Programs

- 2.5 Notwithstanding that 'pick and patch' work commenced almost immediately that aircraft were in service, it was in October 1977, following a similar program put in place by the USAF at the Sacramento Air Logistics Centre (SM-ALC), that the RAAF instituted a formal Deseal/Reseal (DSRS) program at No. 3 Aircraft Depot (3AD) to 'deseal' and then 'reseal' the fuel tanks with new sealant. Some eleven aircraft were maintained at RAAF Base Amberley while the remainder, were sent to the USAF in Sacramento between May 1981 and December 1982. This first Australian program ceased in February 1982. Additional DSRS programs were conducted from 1985 - 1992, 1991 - 1993 and 1996 - 2000.

- 2.6 The Department of Defence provided a timeline of the various DSRS programs:

1977-1982: The first Deseal/Reseal program ran from 1977 to 1982 and used the chemical SR51 (SR= sealant remover) and SR51A, which are now considered to be toxic. This involved RAAF personnel from No 3 Aircraft Depot.'

1985 - 1993: The separate, but linked, 'wings' program ran from 1985 to 1993. This program did not involve fuel tank entry.

1 Air Vice-Marshal Brown, *Transcript*, 21 July 2008, p. 9.

2 *F-111 Board of Inquiry*, Volume 2, Chapter 2, p. 2-2.

1991 -1993: The second Deseal/Reseal program ran from 1991 to 1993 and used more benign chemicals, but still demanded exacting (mechanical) cleaning standards.

1996 - 1999: The less rigorous spray seal program ran from 1996 to 1999. This process involved a basic clean and then a spray of sealant in the tanks... While the chemicals were also relatively benign, the exposure to airborne particles of sealant exposed maintenance staff to a hazard.³

- 2.7 It should be noted that the Board of Inquiry (BOI) report states that the 'wings' program ran from, 1985 - 1992. The Committee has been advised that the date of 1993 as stated in the above submission was in error.
- 2.8 Defence informed the Committee that the most accurate estimate of the number of people involved in the formal programs is 872, based on work done for the SHOAMP. This comprised 785 RAAF personnel, 48 civilian contractors and 39 individuals who did not identify their rank at the time of the BOI.⁴ The Committee is also aware that some school students undertaking job experience may also have been exposed to this work, albeit for comparatively short periods of time.

The first program

- 2.9 The first formal DSRS program ran from October 1977 to December 1982. This program was modelled on a similar program being run by the USAF at the SM-ALC in Sacramento. One of the key elements of the USAF program and the first DSRS program at Amberley, was the use of the chemical desealant, SR51, supplied by the Eldorado Chemical Company in the USA. SR51 was not used in subsequent programs.
- 2.10 It was noted that the DSRS process produced highly noxious odours and potentially flammable fumes and therefore a specific facility was established at Amberley.⁵ This facility was building 661 at Amberley and was commonly known as the 'rag hangar'. The building was a canvas-covered, air-transportable hangar, situated some distance from the other maintenance facilities at Amberley. Access to the 'rag hangar' was restricted due to the use of SR51. The BOI noted that

3 Department of Defence, *Submission No. 83*, p. 10.

4 Department of Defence, *Submission No. 122*, p. 2.

5 *F-111 Board of Inquiry*, Volume 2, Chapter 3, p. 3-3.

warning signs relating to hazardous chemicals were prominently placed in the hangar during the desealing process.⁶

- 2.11 The recommended DSRS process itself is well documented in the BOI, However, much evidence has been taken demonstrating that on many occasions, the recommended safety procedures were not followed.
- 2.12 For example, Personal Protective Equipment (PPE) guidelines were seldom followed due to failures in the PPE, the restrictive confines of the internal tanks, availability of PPE and often very high temperatures in the work environment. Evidence regarding work procedures and PPE are covered later in this report.

The 'wings' program

- 2.13 Inspection of the wing tanks in Australia confirmed the USAF experience that the sealant in the wing tanks had also begun to deteriorate. The RAAF began a DSRS program on the wing tanks of the F-111 aircraft from 1985 until 1992. The work was conducted in Hangar 277, a general purpose aircraft maintenance hangar staffed with a combination of RAAF personnel and civilian contractors.
- 2.14 The 'wings' program differed from the first and subsequent programs in that tank entry was not required. Work in very restricted areas common in the other F-111 fuel tank work, was therefore not an issue with wing tank work. It is neither reasonable nor accurate to regard the wing repair work as similar to or as difficult as the F-111 fuselage tank repair work.

The second program

- 2.15 The USAF experience showed that major deterioration of the sealant could be expected after about seven years. It had also been found that the techniques in the first program and subsequent formal and informal 'pick and patch' activities did not remove all of the degrading sealant.⁷ Further fuel leaks had begun to appear and a second DSRS program was instituted at 3AD in 1991 and continued until 1993.

6 *F-111 Board of Inquiry, Volume 2, Chapter 3, p. 3-7.*

7 It should be noted that there were two types of 'pick and patch' activities – those conducted as part of the formal DSRS programs, and those conducted as part of the squadron maintenance programs.

- 2.16 The BOI points out several differences between this program and its predecessor, most notably the decision to send the program to tender to Australian industry due to staff shortages at Amberley. The 'wings' program was not included in the tender documentation. Five aircraft were also sent to SM-ALC in the USA for DSRS.
- 2.17 Other notable differences could be seen in the methods and sealants employed in comparison to the first program. The Materiels Research Laboratory (now known as the Defence Science and Technology Organisation or DSTO) conducted some research on the reasons behind the failures of the sealants and discovered that the existing sealant could be peeled from the tank surface, even when prepared under the manufacturer's instructions.
- 2.18 Two options were thus put forward. The first was to remove old sealant with the help of a chemical softening agent (such as the SR51 in the first program) or the use of hydrolasers. The latter option was chosen due to concerns about the health effects caused by the softening agent from the first program. A decision was also taken that the cleaning solvents to be used would not differ from those already in use in the 'wings' program.
- 2.19 The eventual tender was won by Hawker de Havilland, a subsidiary of Boeing. Several changes were made as part of the contractual arrangements between Hawker de Havilland and Defence including that warnings of the toxicity of chemicals and the need for PPE were included with 'DSRS Work Sheets' (officially known as Australian Aircraft Publications and issued internally by the RAAF).⁸
- 2.20 The facilities to be used were hangars 278 and 280 belonging to 3AD and later, 501WG.⁹ Contractual arrangements also left Hawker de Havilland responsible for some physical aspects of the work area including drainage, ventilation, power, light, water, first aid, the provision of a fresh air supply and adherence to all Commonwealth and State environmental laws. Importantly, as part of the contract, several training modules were also put into place – a five-day DSRS training course run by 3AD (which included aircraft safety, the DSRS process, OH&S and use of the hydrolaser), a DSRS operator's course

8 *F-111 Board of Inquiry*, Volume 2, Chapter 4, p. 4-3.

9 501WG was formed in 1992 and was the successor to 3AD which was disbanded. The functions from 3AD were transferred to 501WG along with those from 482 Sqn. 501WG consisted of other aircraft maintenance sections which dealt with a variety of maintenance issues. Most importantly for the purposes of this inquiry, it carried out DSRS and Spray Seal programs on the F-111 along with major maintenance.

conducted by Hawker de Havilland, hazardous substance training (for the safe use and handling of chemicals) and confined space entry training.

The spray seal program

- 2.21 The final program, the 'spray seal' program ran from 1996 to 1999. The RAAF became aware of a new process developed by Lockheed which used polythioether sealants. The process involved spraying the new sealant over the old sealant, without the need to remove the old sealant. Trials by Lockheed on F-117 aircraft showed minimal leaks over the course of four years.
- 2.22 The USAF at SM-ALC had not adopted the method developed by Lockheed due to its prohibitive cost; however RAAF began trials with similar chemicals on the F-111. At the same time, an industrial hygiene survey was conducted by Armstrong Laboratory in the USA which found that this process could be safely conducted using recommended PPE and safety procedures.
- 2.23 An Australian trial on an F-111 aircraft was approved in 1992 on the proviso that the Armstrong Laboratory instructions were fully complied with. The trial was conducted at 501WG and involved two technicians from SM-ALC providing instruction and also providing some additional PPE as used by the USAF. A report on the trial described it as successful. The SM-ALC technicians stressed the need for a specific minimum level of PPE due to the hazardous nature of the spray seal process.
- 2.24 The spray seal process was approved in January 1997 and was to be conducted at the 501WG Paint Shop. The BOI found that while the RAAF had appropriate approval and documentation of the processes involved, there were no specified time limits that personnel could be inside the fuel tanks. This was in contrast to the USAF which specified a maximum two-hour shift, with no more than four hours in any eight-hour shift to be performed inside the tanks. Like the second program, training was specified and included a confined spaced entry course, spray seal process training, hazardous substance training and a refresher course for the confined spaces entry course for previous participants.¹⁰

10 *F-111 Board of Inquiry, Volume 2, Chapter 4, p. 5-4.*

- 2.25 The Department of Defence informed the Committee:
- In 2000, following growing concern from Unit management at the number of F-111 fuel tank maintenance personnel reporting health problems, the spray seal program was halted on 28 January and a unit investigation began.¹¹
- 2.26 Following the suspension of the program, a BOI was commissioned to investigate areas of concern.

Flight Line maintenance

- 2.27 Several types of maintenance programs existed – the longer term major fuel leak repairs, conducted in the formal DSRS programs described above, and operational flight-line repairs, conducted in the maintenance squadrons, detailed below.
- 2.28 Within the formal DSRS programs, there was a full-scale maintenance program to ‘deseal’ and then ‘reseal’ fuel tanks. The formal programs also conducted a program of ad-hoc repairs which did not require a complete DSRS overhaul. This was known as ‘fuel tank leak repair’ or colloquially as ‘pick and patch’. Importantly, these ‘pick and patch’ repairs were also conducted as part of the maintenance work on the F-111s within the maintenance Squadrons 1, 6 and 482 outside of the formal DSRS programs. This form of ad-hoc repair was also conducted prior to the formal DSRS programs. ‘Pick and patch’ was also conducted at 3AD and 501WG even when no formal DSRS activities took place. The ‘pick and patch’ work began in 1973 and continued concurrently with all of the formal DSRS programs.
- 2.29 It should be noted that the ‘pick and patch’ repair processes within the formal DSRS programs were exactly the same as those used in the squadrons. This ad-hoc maintenance was conducted during times when the formal DSRS programs operated and also during periods when no formal DSRS operations were performed.

Occupations involved

- 2.30 Defence advised that the main occupation of those engaged in squadron-level ‘pick and patch’ was that of Airframe Fitter (AFFITT) (later renamed Aircraft Technician or ATECH). Some of these personnel also participated in the formal DSRS program. The Department estimates:
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11 Department of Defence, *Submission No. 83*, p. 1.

...the figure of 2300 covers all AFFITT/ATECH personnel involved in the four formal deseal/reseal programs and at F-111 Squadrons and aircraft depots. Consequently, it is clear that a number of these personnel, approximately 600, have already received an ex gratia lump sum payment from their involvement in the deseal/reseal programs.¹²

2.31 The Committee has taken evidence from many of those who worked in areas associated with DSRS and 'pick and patch' operations. It should be recognised that these individuals, worked in occupations that from time to time included work on F-111 fuel tank repair, or in related activities. Evidence to the Committee has been taken from those who worked in other occupations such as:

- Electrical fitters
- Surface finishers
- Incinerator operators
- Equipment Officers
- Non-Destructive Inspection Technicians
- Instrument Fitters
- Photographers
- Fire-fighters.

2.32 Of these various trades, evidence to the Committee indicates that the occupations of electrical fitters and surface finishers in particular were more likely than others to spend time in fuel tanks.¹³ One contributor to the Inquiry notes:

As an Electrical Fitter I was responsible, among other aircraft systems, for the Fuel Management Systems on the F111 aircraft. This included Fuel Contents, Fuel Quantity, Fuel Distribution, Fuel Transfer and Fuel Dump Systems. As a result, I and other Aircraft Electrical Fitters worked with and in conjunction with the Aircraft Airframe Fitters/ATECHs on many of the fuel system problems experienced on the F111 aircraft.¹⁴

12 Department of Defence, *Submission No. 123*, p. 3.

13 Mr A Aburn, *Submission No. 22*, and Mr G Steinhardt, *Submission No. 63*.

14 Mr A Aburn, *Submission No. 22*, p. 2.

2.33 Other evidence has suggested that checking and repair of electrical wiring within the airframe was not uncommon when the 'pick and patch' activities were being undertaken and whilst the aircraft was defueled. One witness notes that, while these trades were not specifically involved in the actual 'deseal' and 'reseal' of the aircraft:

...some other trades may have entered the tanks for such things as crack or damage recognition and/or repair, or for wiring or fuel probe removal and/or installation or repair.¹⁵

2.34 There was some evidence to suggest that while individuals had specific tasks to complete:

...quite often all aircraft maintenance workers working in the F111C Hangar would pitch in to ensure that aircraft were available for flying duties. This meant that all aircraft trades would be exposed to the types of chemicals used to conduct the pick and patch fuel tank repairs... This practice was quite widespread and, I believe, was condoned by the management.¹⁶

2.35 Mr Barry Gray, as a former warrant officer engineer in 482 Squadron told the Committee:

...the reverted sealant, it was everywhere. It was all over the aircraft, running down the sides. To get that cleaned for a flight was very difficult. We used all sorts of chemicals to get rid of it, similar to the tanks. The leaks were that bad we used to joke that you had a put a raincoat on when you walked around the aircraft to do a pre-flight...When we did the pick and patch, we would be in that tank up to eight or nine hours a day and that could be for a week until you found the leak. In this time, we would defuel the aircraft, get in there and find the leak, if we could, patch it and let the sealant go off.¹⁷

2.36 In reply to the Committee's observation that it was evident that there was 'a wide range of people who were involved in one way or another'¹⁸ Mr Doug Steley, a leading aircraftman (LAC) photographer at Amberley between 1976 and 1979, said:

15 Mr P Johnson, *Transcript*, 29 July 2008, p. 60.

16 Mr W. Knilands, *Submission* No. 13, p. 8.

17 Mr B Gray, *Transcript*, 28 July 2008, p. 38.

18 Chair, Hon A R Bevis MP, *Transcript*, 29 July 2008, p.2.

The reason for the photographs at that stage was that there were 24 squadrons operating F111s [worldwide] and any defect in any aircraft had to be shown to every other squadron so that they could check that area of the aircraft to make sure that there were no similar problems...you would climb up onto the aircraft and go down into the tanks with one of the workers. They would point out the areas that were to be photographed...Everything that happened inside that fuel tank from the time it had the fuel drained from it to the time it was ready to fly had to be documented.¹⁹

- 2.37 While it is accepted that AFFITT and ATECH classifications spent most time in the fuel tanks, it is apparent that there were other staff in occupational categories who entered fuel tanks.²⁰ For most, but not necessarily all in this category the time spent working in the difficult conditions of fuel tanks was substantially less than others who worked in either the formal DSRS programs or as Airframe Fitters in the squadrons.

Civilian contractors

- 2.38 In addition to those RAAF personnel who worked in the formal DSRS programs, contract personnel were also used to conduct repairs. These contracted staff worked only in the four formal DSRS programs and therefore would be entitled to the ex-gratia payment and the SHOAMP Health Care Scheme (SHCS) where they met the criteria.
- 2.39 With respect to compensation, whilst RAAF- employed personnel are covered by the *Safety, Compensation and Rehabilitation Act 1988* (SRCA) or the *Veterans' Entitlements Act 1986* (VEA) or both, civilian contractors have recourse only to the *Workers Compensation and Rehabilitation Act 2003 (Qld)*.

19 Mr D Steley, *Transcript*, 29 July 2008, pp. 2-3.

20 Department of Defence, *Submission* No. 123, p. 4.

Tasks involved

2.40 Defence outlined the differences in tasks between those involved in a 'pick and patch' type activity, and those involved in formal DSRS.²¹

2.41 Defence advised that the range of activities and time in fuel tank repair work undertaken in DSRS was greater than in 'pick and patch';

...workers re-entered the fuel tanks to 'hand pick' and physically remove any remaining sealants. This was achieved by using an assortment of dental picks, wire brushes, scrapers and rags.... This process used a general purpose solvent and took approximately 28 days for 24 hours per day utilising three shifts a day to complete. Similar tasks using general purpose solvents were undertaken during squadron pick and patch activities, but were generally of much shorter duration than the hand pick and cleaning phase of the Deseal/Reseal programs and significantly less intensive in terms of the amount of sealant needing to be removed...²²

2.42 The Committee has taken a great deal of evidence from individuals who were not officially employed in a specified DSRS section at Amberley, but were nonetheless exposed to the same or similar working conditions as those in the formal DSRS programs. The SHOAMP recognised that:

Some repair work similar to DSRS was conducted on the F-111 fuel tanks prior to, during, and after the formal Deseal/Reseal programs. The operation known as "Pick and Patch" was used to repair F-111 fuel tanks that were leaking. As with the formal DSRS programs, the Pick and Patch process involved entering the F-111 fuel tanks, carefully locating suspect areas of sealant, and removing the sealant from the area of concern plus a margin around it using solvents and tools such as dental picks. A patch of new sealant would then be applied. The aircraft subject to this process were in operational squadrons. As such, the Pick and Patch process involved running (*ad hoc*) repairs by the best means available whenever needed – and with a sense of

21 Department of Defence, *Submission* No. 83, p. 14.

22 Department of Defence, *Submission* No. 83, p. 14.

urgency given the requirements for a certain number of aircraft to meet flying commitments at any one time.²³

- 2.43 In addition, some depuddling of fuel tanks was required prior to 'pick and patch' work. For example, Mr Lawler noted that fuel needed to be removed from tanks or 'depuddled' before technicians could get to the sealant to be removed and the area patched:

'The other issue is that there was fuel left in the tanks. Those vapours continued to build up and cause us problems.'
Although those involved in 'pick and patch', 'did not pull all of the sealant out of the tanks...Sometimes we spent weeks at the squadrons, without exaggeration, digging up different parts trying to patch it. A lot of the time we sent the aircraft back out, it leaked again, and we brought the same aircraft back in.'²⁴

- 2.44 Air Vice-Marshal Brown noted in evidence that the 'pick and patch' activities in both the formal DSRS programs and squadrons were essentially the same:

In reality there was no real difference between the pick and patch work done at Squadrons 1, 6 and 482 and what was done in the reseal-deseal section.²⁵

- 2.45 Whilst the 'pick and patch' work undertaken in the formal DSRS program was virtually the same as that undertaken in the informal program, those in the formal DSRS programs were engaged in more extensive and prolonged work inside the F-111s. Those who undertook informal 'pick and patch' work had other duties unrelated to F-111 fuel tank repair. Defence notes:

There were guys in squadrons 482, 1 and 6 who spent considerable time in the tanks doing pick and patch work...
At the squadrons there would have been people who worked inside the tanks, but they would have also done other work.
They might have rigged flaps, done ramp servicing, and

23 University of Newcastle Research Associates 2004, *Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) - Phase III - Report on the General Health and Medical Study*, Dept. of Defence, viewed 18/03/09
<http://www.defence.gov.au/health/research/shoamp/docs/Vol_5_complete.pdf>, p. 8.

24 Mr S. Lawler, *Transcript*, 29 July 2008, p. 7.

25 Air Vice-Marshal Brown, *Transcript*, 19 September 2008, p. 61.

things like that. The whole time they were in the squadron was not spent inside the tanks.²⁶

- 2.46 There can be no dispute that F-111 fuel tank repair work was not limited to the formal DSRS programs run at 3AD and 501WG. While these areas were responsible for larger and more complex maintenance on the fuel tanks, the personnel in 1, 6 and 482 Squadron were responsible for the day to day operational requirements to keep the fleet flying. In fact, fuel tank leak repair (or 'pick and patch' as it is more commonly known) was conducted solely by 482 Squadron from 1973 until the commencement of the first DSRS program in 1977.
- 2.47 It is noted that the RAAF provided an allowance to some F-111 fuel tank workers during the period 1981 - 1990.²⁷ In 1990, this DSRS allowance was revoked and replaced by Arduous Conditions allowance.²⁸ The details are as follows:

RAAF Deseal-Reseal Allowance

3. An allowance called "RAAF Deseal - Reseal Allowance" is payable to a member who, during the day, performs -

- (a) deseal or reseal duties, other than supervision duties, in the fuel tanks on F111 aircraft, under adverse working conditions; or;
- (b) supervision, under adverse working conditions, of a member referred to in paragraph (a).

Rate of Allowance

4. Subject to clause 5, RAAF Deseal - Reseal Allowance is payable -

- (a) in respect of a member to whom paragraph 3(a) applies - at the rate of \$6.00 for each day on which he performs duties under adverse working conditions; and
- (b) in respect of a member to whom paragraph 3(b) applies - at the rate of \$3.00 for each day on which he performs supervisory duties under adverse working conditions.²⁹

26 Air Vice-Marshal-Brown, *Transcript*, 19 September 2008, p. 54.

27 The 1981 Determination can be found at:
http://www.defence.gov.au/dpe/pac/58B_1981_57.pdf

28 The 1990 Determination can be found at:
http://www.defence.gov.au/dpe/pac/58H_1990_3.pdf

29 The 1981 Determination can be found at:
http://www.defence.gov.au/dpe/pac/58B_1981_57.pdf

2.48 The Committee took evidence that the payment of this allowance was at times haphazard and inconsistent.

Board of Inquiry and Health Studies

- 3.1 The initial concerns relating to the health of many workers in the formal DSRS programs, led to the commission of a Board of Inquiry (BOI) in 2001. In response to recommendations from the BOI, a comprehensive system of health care and monitoring along with studies into the health of former DSRS workers was instituted. This Chapter deals with the BOI and the various health studies.

The Board of Inquiry

- 3.2 In July 2000, in response to an investigation by Officer Commanding No. 501 Wing (OC501WG), the Chief of Air Force commissioned a BOI to examine aspects of the four formal DSRS programs in relation to the health, chemical exposure and work practices of employees. The BOI researched over 1.5 million documents, covering a period of 27 years and took statements from over 650 individuals. The BOI report, released on 8 September 2001, included some 53 recommendations, all of which were accepted by the RAAF and were later transitioned as much as possible for wider use by Defence.

Events leading to the commissioning of the BOI

- 3.3 In late 1999 senior staff within the Fuel Tank Repair Section (FTRS) at 501WG at Amberley became concerned at the health effects being experienced by members of the FTRS. Inspections of the Material Safety Data Sheets (MSDS) concerning the chemicals being used in the DSRS process prompted further questions in relation to Personal Protective Equipment (PPE), especially respirator equipment. Concerns were also

raised by the Sergeant in charge of the FTRS with the medical section about the possibility of a chemical-related health issue within the wider F-111 program over a prolonged period. Separate reports from both the Commanding Officer of the FTRS and a doctor at the medical section, raised sufficient concern for the OC501WG to suspend any further fuel tank repairs.¹

- 3.4 On 4 February 2000, a formal investigation was launched by OC501WG to determine the level of exposure to chemicals, the numbers of affected individuals and the re-establishment of safe fuel tank repair processes. This was limited to the spray seal process that was introduced in 1996.
- 3.5 On 19 July 2000, the CAF commissioned a BOI to investigate the four formal DSRS programs in relation to the personnel involved and their health complaints, the chemicals used, the use and adequacy of PPE, work practices and OH&S, Commonwealth compensation legislation, medical and scientific knowledge concerning the chemicals and systematic issues arising that have ramifications for the RAAF or ADF.²

Findings of the BOI

- 3.6 The BOI made a range of findings including:
- The failure of the Air Force medical service, firstly to respond to the seriousness of the symptoms presented and secondly, by employing medical staff on contracts which prevented them from thoroughly examining the occupational environment in which their patients worked.
 - The lack of power felt by aircraft maintenance workers, especially where their health complaints were ignored and they were forced to accept this and 'get on with the job'.
 - The RAAFs reliance on PPE to protect its workers rather than on a commitment to the development of new solutions to prevent fuel leaks.
 - The problems with PPE in that they lacked protection from chemicals and on some occasions were not used at all because of the confined spaces in which the work was conducted.
 - A failure in the chain of command, especially at the lower levels where personnel felt pressured to meet operational requirements. This led to the development of a 'can-do' attitude and failure to insist on following

1 *F-111 Deseal/Reseal Board of Inquiry* Volume 2, Chapter 1.

2 *F-111 Deseal/Reseal Board of Inquiry* Volume 1, Appendix 2.

the full range of PPE and safety procedures. The BOI also identified a communication breakdown between SNCOs and junior engineering officers due to the intense workload placed upon these staff.³

3.7 Defence advised:

The Board of Inquiry report contained 53 recommendations. The Chief of Air Force subsequently added 2 supplementary recommendations (S1 and S2) and modified a number of other recommendations to reflect the broader Defence-wide approach required to resolve the issues identified.... recommendations can be divided into 3 broad categories: those that are Air Force specific, those that deal with systematic issues associated with the corporate management of occupational health and safety (OHS) in Defence and those that require less complex Defence-wide action.⁴

3.8 It should be noted however that the BOI made two key recommendations pertinent to the Committee's inquiry. The first was Recommendation 2.8:

The Air Force should ensure that all personnel who may have been exposed to toxic chemicals, in any of the programs, are provided with medical checkups and sympathetic advice and treatment. This should be at regular intervals, and careful records should be kept. This approach should be refined as the results of the DVA study become known.⁵

3.9 The second was Recommendation 9.2:

The Air Force should appoint someone to act as advocate for fuel tank repair workers whose health has been affected. This advocate should assist these workers in dealing with the authorities and, in particular, assist in preparing compensation claims.⁶

3 *F-111 Board of Inquiry, Volume 1, Chapter 1.*

4 *Department of Defence, Submission No. 122, p. 11.*

5 *F-111 Board of Inquiry, Volume 1, Appendix 3.*

6 *F-111 Board of Inquiry, Volume 1, Appendix 3.*

Health studies

SHOAMP Study

- 3.10 The Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) was commissioned on 8 September 2001 in response to a BOI finding that 'since 1977, some 400 ADF personnel and civilians had experienced adverse health effects while working on the F-111 DSRS maintenance program's.⁷
- 3.11 SHOAMP was conducted by the University of Newcastle Research Associates Limited (TUNRA). It aimed to:
- to assess whether there was an association between adverse health status and involvement in DSRS activities; and
 - to compare the health of the DSRS personnel with appropriate comparison groups.⁸
- 3.12 The SHOAMP was conducted over several phases. SHOAMP states:
- The first phase involved a literature review of the evidence of possible associations between chemical exposure and health outcomes, a qualitative study of a sample of those involved in DSRS, and the development of a protocol for conducting a General Health and Medical Study. The second phase involved mortality and cancer incidence studies... The third phase is a General Health and Medical Study...⁹

Methodology

- 3.13 The study's methodology involved the identification of workers involved in F-111 DSRS activities through lists provided to the BOI, media articles, via contact to a telephone hotline and reviews of other documentation such as photos and Defence records. The 'level of potential exposure was based on a self-completed questionnaire assessing the duration and types of DSRS activities they had been involved in'.¹⁰ This group was known as the 'DSRS Group' or the 'exposed group'. Two comparison groups were then chosen. The first of these were:

7 Department of Veterans' Affairs. *Submission* No. 89, p. 9.

8 Department of Veterans' Affairs. *Submission* No. 89, p. 9.

9 SHOAMP Report, Volume 5, p. xvi.

10 SHOAMP Report, Volume 5, p. xvi.

Technical personnel at RAAF Base Richmond (New South Wales) serving between 1975 and 1999. The purpose of this comparison group was to assess the effect of DSRS-specific exposures over and above other exposures involved in the technical musterings.¹¹

3.14 The second group comprised:

Other personnel, not involved in technical duties, posted at RAAF Base Amberley (Queensland) serving between 1975 and 1999. The purpose of this comparison group was to assess the effect of DSRS-specific exposures, over and above any other local exposures at Amberley, experienced by personnel not involved in aircraft maintenance.¹²

3.15 DVA advised the Committee that:

The SHOAMP was a formal epidemiological study that examined the health of 659 personnel involved in the four formal DSRS programs against two comparison groups comprised of 600 technical personnel at RAAF Base Richmond serving between 1975 and 1999; and another 495 personnel, not involved in technical duties, posted at RAAF Base Amberley serving between 1975 and 1999.¹³

3.16 Consenting participants from all groups were asked to complete a mailed written questionnaire and undergo physical examinations and interviews. Data was collected on several dimensions:

- general health and well-being (including quality of life)
- cardiovascular health (symptoms and postural hypotension)
- respiratory health (symptoms and spirometry testing)
- skin and breast (including dermatitis and gynaecomastia)
- neurological outcomes (including vibration sensation, colour vision, and olfaction)
- male sexual function and female reproductive health
- mental health (including depression and anxiety as measured by the Composite International Diagnostic Interview and neurasthenia)
- cognition and memory (as measured by a battery of neuropsychological tests).

11 SHOAMP Report, Volume 5, p. xvi.

12 SHOAMP Report, Volume 5, p. xvi.

13 Department of Veterans' Affairs. *Submission* No. 89, p. 10.

Findings

- 3.17 The second and third phases were of most interest to the Committee. The second phase involved two cancer and mortality studies. The first of these showed:

no statistically significantly increased mortality or cancer in the group exposed to F-111 DSRS activities, relative to either nontechnical personnel on the same Base, or technical personnel at another Base.¹⁴

- 3.18 The second of these however found that:

The analysis indicates a higher than expected incidence of cancer in the F-111 DSRS group, with an increase of around 40-50% in the incidence of cancer relative to both the Amberley and Richmond comparison groups.... The elevation in risk appears to be specific to DSRS activities and not general aircraft maintenance, in that the DSRS exposed had a higher incidence than both comparison groups. Also, the elevation was apparent for both Program 1 and Program 2, although not statistically significant in these sub-group comparisons.¹⁵

- 3.19 This finding caused the Committee some concern, especially in relation to the 'statistically non-significant' finding. This will be discussed further in Chapter 5.

- 3.20 The Committee also received submissions from some former DSRS workers that the major threat to their health came from SR51.

- 3.21 Accordingly, the Committee sought advice as to whether SR51 is a factor in the health outcomes of the SHOAMP study. The researchers told the Committee that:

The increased risk of cancer applies to SR51, but not just SR51. There are people in program 2 who did not work with SR51 who have showed the increased rates. The increased rate applies to both program 1 and program 2.¹⁶

- 3.22 Furthermore, they added:

We have not seen that program 1, which included SR51, was any different from the other programs.¹⁷

14 SHOAMP Report, Volume 5, p. xvi.

15 SHOAMP Report, Volume 5, p. xiii.

16 Professor J Attia, *Transcript*, 19 September 2008, p. 30.

17 Dr A Brown, *Transcript*, 19 September 2008, p. 30.

3.23 The third phase of SHOAMP was a General Health and Medical study. The findings of this final phase also caused some concern to the Committee. This study found that:

On average, the F-111 DSRS group reported nearly twice the number of poor health symptoms than the comparison groups. The DSRS group recorded significantly poorer quality of life than both comparison groups on both the physical and mental component scores of the SF-36 survey [a 36-item quality of life survey].¹⁸

3.24 This third phase examined a range of health issues including:

- cardiovascular health,
- respiratory health,
- dermatological and breast abnormalities,
- neurological outcomes,
- male sexual function and female reproductive health,
- mental health, and
- neuropsychological outcomes.

3.25 While not attributing causality, the study suggested that:

...the results point to an association between F-111 DSRS involvement and a lower quality of life and more common erectile dysfunction, depression, anxiety, and subjective memory impairment. There is also evidence, albeit less compelling, of an association between DSRS and dermatitis, obstructive lung disease (i.e. bronchitis and emphysema), and neuropsychological deficits.¹⁹

3.26 On the findings, the Committee notes that although the study was primarily to assess the adverse health outcomes of those in the formal DSRS programs, many of the health outcomes reported correlate well with the health outcomes self-reported by those in the squadrons.

18 SHOAMP Report, Volume 5, p. xvii.

19 SHOAMP Report, Volume 5, p. xx.

Third Study of Mortality and Cancer Incidence in Aircraft Maintenance Personnel

3.27 In early 2009, the Australian Institute of Health and Welfare (AIHW) released the third in a series of mortality and cancer incidence studies on former F-111 DSRS personnel within the formal programs. The first and second studies were made as part of the SHOAMP study. Comparisons were made with the general Australian male population, as well as groups from RAAF Base Amberley and RAAF Base Richmond.

3.28 The study made several findings. Among them:

- Overall cancer incidence in male personnel who were involved in DSRS programs was elevated by 44% when compared with the Australian male population; however the very small number of people involved means that this result was **not** statistically significant.
- Lip cancer incidence in DSRS personnel was four times as high as in the general Australian male population. This result was statistically significant, but based on only four cases.
- Overall mortality for the two comparison groups was lower than that found in the overall Australian male population; these results were statistically significant. Cancer incidence in personnel in the two comparison groups (RAAF Base Richmond in New South Wales and RAAF Base Amberley in Queensland) was similar to that of the Australian male population.
- Comparing the exposed groups (the DSRS personnel) with Amberley personnel showed no significant differences in mortality or cancer incidence.
- Comparing the exposed groups (the DSRS personnel) with Richmond personnel showed increased cancer incidence which was statistically significant. The results for mortality were less clear, with analysis of deaths in the period 1980-2004 showing a statistically significant lower rate, whereas analysis for the period 1999-2004 showed a statistically non-significant higher rate.²⁰

3.29 The Committee sought clarification on aspects of these findings. Mrs Roediger, from the Australian Institute of Health and Welfare advised:

... the overall cancer incidence in the male personnel involved in the deseal-reseal programs was up by 44 per cent compared with the Australian male population. However, due to the very small

20 Australian Institute of Health and Welfare (2009) *Third Study of Mortality and Cancer Incidence in Aircraft Maintenance Personnel: A Continuing Study of F-111 Deseal/Reseal Personnel*, Canberra, p. vi.

numbers, this is not a statistically significant result. It is possible that it is a clustering. The lip cancer incidence for the deseal-reseal personnel was four times as high as the general Australian male population. This result is statistically significant, but it is based on only four cases. The cancer incidence in personnel in the two comparison groups, which was a group of personnel at Richmond that was not involved in technical tasks and a technical group at Amberley, was similar to that of the Australian male population. So the differences do not seem to be due to being part of the RAAF or working in a technical capacity.

The overall mortality rate was lower for the personnel involved in deseal-reseal when compared with the Australian male population. That is expected. That is the healthy soldier effect coming into play. However, there were two cases of non-Hodgkin's lymphoma, which was higher than expected. Again, it is two cases. The mortality for the two comparison groups was lower than the Australian male population, and these results were statistically significant. As I say, that is just the healthy soldier effect. When comparing within those three RAAF cohorts, the exposed group, when compared with the Amberley personnel, showed no significant differences in mortality or cancer incidence. But when the exposed group was compared with the Richmond personnel, they showed an increased cancer incidence, which was statistically significant. The results for mortality were less clear, but that is what I have just read out to you. If you take the longer period, it was lower for the deseal-reseal. That is probably a selection or possibly a selection effect. If you take just that shorter period where we are more confident of the selection of the cohort, it was higher but not statistically significant. Overall, these results are very much like the results from the first two studies.²¹

- 3.30 In considering these and other health studies, it is important to recognise that all RAAF personnel were required to pass health tests and therefore have a better standard of health than the general population – producing the 'healthy soldier' effect mentioned above.

21 Mrs J Roediger, *Transcript*, 17 April 2009, p. 3.

CHALUS studies

3.31 The Chemical Hazard Assessment Laboratory at University of Sydney (CHALUS) was commissioned by DVA on behalf of Defence to undertake research work into the desealant, SR51, and to determine whether it was likely to be mutagenic or carcinogenic. That is, whether as a result of animal and cellular testing, would the desealant be likely to cause permanent genetic damage to DNA and likely to be a cause of cancer in humans. Three studies were conducted. The lead researcher provided an overview of their work on SR51:

... It was highlighted in the Board of Inquiry as one of the high risk chemicals of concern. As background, our research group uses laboratory experiments to focus on investigations assessing the toxicity of chemicals. Our main emphasis is really to focus on how chemicals exert their toxic effects, so it is focussing on the mechanism. We use a range of techniques – experiments that are done in a test tube, which we refer to as the *in vitro* experiments, and whole animal systems, which we refer to as the *in vivo* experiments. It was in response to a concern that exposure to SR-51 may be the cause of cancer in some of the deseal-reseal personnel that we undertook a series of studies in which we investigated whether exposure to SR-51 could damage DNA. We did this because damage to DNA is a common and known mechanism of how chemicals can cause cancer. So from these results and a series of *in vivo* and *in vitro* experiments, we found no evidence that SR-51 damages DNA.²²

3.32 The first study:

was designed to investigate the relative toxicities of the four components of SR-51® (Aromatic 150 solvent (Aro150), dimethylacetamide (DMA), thiophenol (TP) and triethylphosphate (TEP)).²³

3.33 This study confirmed that SR51 and its major solvent components produce toxic effects on the mitochondrial particles used in this test. These tests were *in vitro*. It is not known whether similar results of toxicity would result in living mammals.

22 Dr DJ Oakes, *Transcript*, 17 April 2009, p. 12.

23 Effects of a desealant formulation, SR-51 and its individual components on the oxidative functions of mitochondria. Moscova M; Oakes DJ; Pollak JK; Webster WS. *Environmental Toxicology and Pharmacology* 18 (2004) 181 – 184.

- 3.34 In the second study, cells were tested with the chemical up to toxic levels that destroyed the cells -- but there was no evidence that the chemical was mutagenic i.e. there was no DNA damage. The authors concluded that therefore it was unlikely to be a cause of cancer in exposed workers.²⁴
- 3.35 In the final study, due to concerns about memory loss in the F-111 cohort, a study of mice to examine working memory after exposure to SR51 was conducted. Due to methodological and paradigmatic deficiencies, the results neither proved nor disproved SR51 exposure in mice affects memory.²⁵
- 3.36 DVA commented:
- The study found that the toxicity profile of SR-51 is affected by increasing temperatures and also resulted in enlarged spleens in those mice exposed to a high dose of SR-51. Nevertheless, the results neither proved nor disproved that SR- 51 exposure in mice affects memory, and showed no evidence that exposure to SR-51 damages DNA.²⁶
- 3.37 The Committee asked the researchers to elaborate on their finding that SR51 was affected by temperature variation. The researchers responded:
- I think the point we were making is that it is a volatile chemical. The vapour phase is going to contain some of the volatile components of SR-51. When we analysed SR-51 – we were just wanting to know what was in this formulation – we found that the thiophenol in the vapour phase was oxidised. That was not unexpected. It was highlighted in the Board of Inquiry report. We were just making the point that volatile chemicals will be in different combinations in the vapour as opposed to the liquid phase.²⁷
- 3.38 Asked by the Committee whether SR51 could cause cancer:
- This was the main function of our work – to look at that. I am sure you have heard all this before. Because SR-51 has such a very, very strong odour, you can detect it at extraordinarily low levels and

24 Oakes, DJ, Ritchie, HE, Woodman, PDC, NArup, E, Moscova, M, Picker, K and Webster, WS (2009) Genotoxicity studies of a desalant solvent mixture, SR-51, *Toxicology and Industrial Health*, 25:5.

25 Oakes DJ; Ritchie HE; Woodman P, and Webster WS (2005) *Final Report on research into the toxicological effects of chemicals used in the F-111 Desal/Reseal Programs*. DVA Commissioned Report undertaken by CHALUS.

26 Department of Veterans' Affairs, *Submission* No. 89, p. 10.

27 Dr DJ Oakes, *Transcript*, 17 April 2009, p. 13.

way, way below – probably 1,000 times – the occupational health and safety levels that people think it is safe for people to inhale this at. So people are constantly aware that they have been exposed to SR-51. With the slightest amount on their clothes, they are going to keep smelling it. It is very clear that when people are exposed to chemicals that they can smell, they have an automatic emotional response to it. They either like it or they dislike it. Because this is a sulphur compound, they dislike it. So if you can imagine in working with a chemical that you are constantly aware that you are being exposed to, it creates anxiety in people. If you look at all the press reports that came out from the men that worked on this deseal-reseal, they commented on this exposure to SR-51 and the fact that they could smell it. They went home. They were barred from this. People did not want to sit near them. So they were constantly aware that they were exposed to this chemical. It is not in the least surprising that they became fearful of it. Certainly in the anecdotal reports that I have seen and the newspapers et cetera and at the SHOAMP meetings, the men have expressed concern that it was this exposure that was causing them damage.

It was our aim to examine whether SR-51 had properties that could cause cancer. There are very, very standard techniques for looking at these chemicals. The ones that are done by drug companies before chemicals can be registered and the ones that are done by pesticide manufacturers, they are all very standard tests. They are the ones that we performed. **They showed quite clearly that SR-51 did not have any properties that would lead to DNA damage as far as we could tell from those studies. In the absence of it causing DNA damage, it becomes highly unlikely that it is going to cause cancer.** So that was the main part of our work. You focused on some other parts of it that were not so fundamental. But this was the main part of our study.²⁸

Professor Frank Bowling

- 3.39 The Committee also considered the work being conducted by Professor Frank Bowling on Mitochondria in Fuel and Solvent Exposed Ex-Air Force Personnel. Professor Bowling informed the Committee:

28 Professor WS Webster, *Transcript*, 17 April 2009, p. 15.

In 2004, I was commissioned by the Chief of Air Force to study the possible effects on the mitochondria of personnel who were exposed to the F1-11 Deseal / Reseal programs. The purpose of these studies was to identify abnormalities of mitochondria in exposed individuals, both to understand the nature of cell injury following exposure and to identify a possible marker of cell injury.²⁹

3.40 The Committee was told that Professor Bowling's work comprised several pilot studies. As a result of his work, Professor Bowling concluded:

1. The results of these studies implicate changes in mitochondrial proteins in peripheral blood samples in individuals exposed to fuel solvents.
2. The data suggest involvement of immature blood cells (stem cells) in the protein changes seen following fuel exposure. It is my opinion that the mitochondrial changes seen in these pilot studies are an indication of disruption of stem cells in the bone marrow (and possibly in other tissues).
3. One individual who demonstrated a similar pattern had not been exposed to F111 DS / RS solvents but only to Aviation Turbine Fuel (significant accidental ingestion). This indicates that the damaging agent is a constituent of the fuel and not the solvents (used for Re-Seal/De-Seal).
4. The finding of changes persisting in peripheral blood several years after the exposure suggests that the cells responsible for generation of peripheral blood cells (stem cells) in the bone marrow have been affected.
5. The mitochondria in peripheral blood are generated from the mitochondria in the stem cells. Because mitochondria (proteins) are constantly regenerated using mostly nuclear genes and to much lesser extent mitochondrial genes, the most likely explanation is that the changes seen in mitochondrial proteins are a reaction to some disruption in the stem cells.
6. The cohort of individuals involved in fuel exposure are likely to vary considerably in their reponse to the cellular injury. The variation would be due to :-
 - (i) differences in exposure,
 - (ii) individual genetically determined susceptibilities,

29 Professor F Bowling, *Submission* No. 126.

- (iii) individual genetically determined repair abilities, and
- (iv) other lifestyle factors.³⁰

3.41 Professor Bowling informed the Committee:

The studies that we undertook were very small pilot studies. They were investigation studies to test this idea that mitochondria were involved. Three studies were undertaken. In each of them we chose to look at the elements from mitochondria that we call proteins. Each mitochondrion has about 600 proteins. We looked at mitochondrial proteins from airmen who had been exposed and from a matched group of controlled airmen or other individuals who had not been exposed. In each of the three experiments we saw small changes in the exposed airmen's samples. They were independent experiments and each experiment measured something slightly different. But each experiment showed the proteins in the samples from the exposed airmen were different from those in the airmen in the control group who had not been exposed. ... **Statistically it is still possible that in 600 proteins in a mitochondrion you might randomly get five that are increased. But because we got the same five in each of the airmen we tested I think that random chance becomes much, much less likely. I believe that there is a change that we are seeing...**[emphasis added] we need to further understand these proteins. There is another value in understanding them. I would make no guarantee at all of any treatment. But at least if we understand it there is always a possibility of treatment. If you do not know what you are dealing with it is very hard to do anything about it.³¹

3.42 Professor Bowling was asked whether, in relation to DNA damage that had been detected in his studies, there was significant evidence that mitochondrial DNA no longer worked. Professor Bowling responded:

There was no difference in the DNA. We cannot test that they worked, because to test that they work you have to do those biopsies I mentioned. So we looked at the building blocks that mitochondria are made out of – what we call the proteins. Those building blocks are where we found the differences. We did not look at what the building blocks were doing; we just looked at the building blocks themselves... **I believe that the mitochondria in the exposed individuals are reacting to changes or damage in the**

30 Professor F Bowling, *Submission* No. 126, p. 6

31 Professor F Bowling, *Transcript*, 16 April 2009, p. 6

stem cells.[emphasis added] The mitochondria constantly monitor the health of a cell. If they determine that the cell is too unwell, they will deliberately kill it.

Coxon study on psychological effects on spouses

- 3.43 The study was commissioned by CAF in February 2005 and completed in October 2006.³²
- 3.44 This small study³³ of 162 Air Force spouses used three standardised psychological questionnaires to measure psychological impacts on 91 spouses of DSRS participants, from an experimental group of 110 predominantly middle aged female spouses who had been invited to participate. A small control group of 25 Air Force spouses (from an initial group of 52 spouses who were not necessarily caregivers) and whose partners had not been involved in the DSRS processes, also completed the questionnaires.
- 3.45 Statistically significant differences were shown between the two groups on several scales of a self-administered index known as the Personality Assessment Inventory (PAI). The differences were found in levels of somatic complaints, anxiety, depression and antisocial features. The first three of these elements were higher in the experimental group.³⁴ The experimental group also reported higher levels of stress on this scale.³⁵
- 3.46 The researchers noted that:
- The results of the study indicate that there are significant deleterious effects on the psychological functioning of spouses of individuals involved in the F-111 Deseal/Reseal programs as a result of the program itself.³⁶
- 3.47 The researchers concluded that:

32 Coxon LW and Hartley, LR (2006) *Psychological Functioning in Partners and Spouses of Deseal/Reseal Personnel*, Study Commissioned by Chief of the Royal Australian Air Force.

33 Despite the concerns expressed by the F-111 Support Group concerning the effects of involvement in the Deseal/Reseal Programs on partners and families, this study failed to attract the involvement of many of those affected, thereby weakening the results.

34 Coxon LW and Hartley, LR (2006) *Psychological Functioning in Partners and Spouses of Deseal/Reseal Personnel*, Study Commissioned by Chief of the Royal Australian Air Force, p. 8.

35 Coxon LW and Hartley, LR (2006) *Psychological Functioning in Partners and Spouses of Deseal/Reseal Personnel*, Study Commissioned by Chief of the Royal Australian Air Force, p. 10.

36 Coxon LW and Hartley, LR (2006) *Psychological Functioning in Partners and Spouses of Deseal/Reseal Personnel*, Study Commissioned by Chief of the Royal Australian Air Force, p. 10.

...results have demonstrated a willingness for treatment and the likelihood of positive treatment outcomes for members of the Experimental Group, any future resources allocated for this purpose would be likely to be well utilised by these individuals.³⁷

- 3.48 It should be noted that through the course of this Inquiry, the Committee discovered that this particular report had not been made available to the study's participants. The Committee has rectified this.

Danek Report

- 3.49 The Committee also took evidence from Mr Stefan Danek, whose research also formed part of the BOI report. Mr Danek outlined his work to the Committee:

Since the RAAF's acquisition of the F-111 aircraft in the mid-1970s, the Defence Science and Technology Organisation has provided scientific and technical assistance and support to the Air Force on F-111 sealant related issues. The poor hydrolytic and thermal stability of the OEM polyester sealant used to seal the F-111 fuel tanks and its early degradation in service leading to fuel leaks has been well-documented. When the problem of the fuel leaks first arose, DSTO mobilised a team of scientists headed by Dr Brent Paul, now retired, to undertake scientific and technical research to understand why the sealant was in fact failing and to investigate ways in which the integrity of the F-111 fuel tank sealant system could be restored. A substantial corporate scientific and technical knowledge base on the F-111 fuel tank sealants was subsequently built within the DSTO over many years. When the fourth reseal program was halted in January 2000, DSTO was asked to provide technical assistance to the investigating officer appointed by the Air Force to examine existing spray seal procedures and hazards. DSTO continued to provide technical assistance to the Board of Inquiry when it was appointed in July 2000. Enormous reports from various subject matter experts were commissioned by the Board of Inquiry, including a toxicological assessment of deseal-reseal chemicals, the resistance of personal protective equipment, such as gloves and overalls, to various selected chemicals, the monitoring of airborne contaminants

37 Coxon LW and Hartley, LR (2006) *Psychological Functioning in Partners and Spouses of Deseal/Reseal Personnel*, Study Commissioned by Chief of the Royal Australian Air Force, p. 11.

during specific processes associated with the deseal-reseal programs and the modelling of potential exposure or potential airborne contaminants of these same chemicals.

DSTO was then approached by counsel assisting the Board to summarise these often lengthy reports and to provide a concise document to the board. I accepted this task and produced what is referred to as the Danek report, which is included in volume 2, part 1, chapter 7, annex D of the board of inquiry final report.³⁸

3.50 The Danek report includes a risk rating from 1 (lowest) to 9 (highest) for chemicals used in the F-111 repair work. The risk ratings from the report has been reproduced below:

Formulation	Risk Rating	Risk Ranking	Usage in program			
			1 st	2 nd	Wing	Spray
			DS-RS	DS-RS	DS-RS	Seal
SR51/A Desealant	9	HIGH	yes	no	no	no
MMS-425 Super Anzopon	9	HIGH	no	no	no	yes
PR-2911 spray Sealant	9	HIGH	no	no	no	yes
Methyl Ethyl Ketone (MEK)	6	MEDIUM	yes	yes	yes	yes
MIL-C-38736	5	MEDIUM	yes	yes	yes	no
PR-148	5	MEDIUM	yes	yes	yes	no
PR-1750	5	MEDIUM	yes	yes	yes	yes
EC-2216 ("Barrier")	4	MEDIUM	no	yes	yes	no
Q4-2817	4	MEDIUM	no	no	yes	no

Source F-111 Board of Inquiry, Volume 2, Chapter 7, Annexe D.

3.51 On these risk ratings, Mr Danek confirmed:

Initially, ... the aim was to identify the toxic materials that we use – all the products that we used in the deseal-reseal program and from the material safety datasheets and the composition of the products indicated therein to identify the most hazardous materials employed in the various deseal-reseal programs....the toxicologists identified the 12 most key risk materials... Based on those key risk chemicals, we went back to look at and identify what were the highest risk formulations. I tabulated in my report

nine formulations that we used in the various programs in order of their risk factors.

3.52 The report also made comments on a range of chemicals that were used in the formal DSRS programs.

3.53 In relation to MEK, the Danek Report found:

Workplace Scenarios. Connell and Miller estimated the possible exposure to personnel when using MEK in a variety of scenarios. These scenarios concentrated on 'worst case', involving no forced ventilation, with varying levels of natural ventilation and with varying usage rates of MEK. The results...show that under these scenarios the concentration of MEK, inside the desal hangar, would be below the recommended Exposure Standard. **However, the levels inside the tank would be from approximately 25 to 100 times the Exposure Standard** [emphasis added].³⁹

3.54 On this point, Mr Danek told the Committee:

To interpret that, I would suggest, firstly, we look at the assumptions that were made. As I said to you, we have to start somewhere. Whilst I do not have the details immediately to hand, I think the comment was made that it could be up to 100 times in certain scenarios. I believe that is zero ventilation of a fuel tank and then assumptions of a certain large usage rate of the methyl ethyl ketone. Nevertheless, whether it is 100 times or 10 times or five times, it is still a very high risk activity to undertake chemical or solvent cleaning inside a fuel tank in the absence of any ventilation and wearing appropriate breathing apparatus.⁴⁰

3.55 Another study:

...assessed the concentrations of MEK during typical equipment cleaning activity. **The levels of MEK were found to be extremely high, with an average concentration exceeding the TWA by a factor of 15** [emphasis added]. SIMTARS recommended that this practice be carried out in a fume cupboard.⁴¹

3.56 On this point, Mr Danek told the Committee:

One has to be aware that MEK is a very, very volatile solvent. It has a very low boiling point so it evaporates very, very quickly. If

39 *F-111 Board of Inquiry, Volume 2, Chapter 7, Annexe D, c.55.*

40 *Mr S Danek, Transcript, 17 April 2008, p. 34*

41 *F-111 Board of Inquiry, Volume 2, Chapter 7, Annexe D, c.62.*

you are using copious amounts of methyl ethyl ketone in any cleaning processes, and particularly if you have a large surface area of the solvent exposed, evaporation rates are going to be quite high. In the immediate vicinity above the pan or wherever you are working, the concentrations will be very high. SIMTARS recommended, rightly so, that any cleaning activity should be undertaken in a fume hood.⁴²

3.57 The Danek Report also states:

RAAF personnel working in fuel tanks used primarily Ansell Nitrile rubber gloves and also, when available, Butyl rubber gloves.⁴³... Nitrile type surgical gloves were evaluated for use with MEK by the Australian Government Analytical Laboratories, whereupon **“the gloves failed catastrophically during testing”** [emphasis added]. Within 10 seconds of exposure to liquid MEK, the glove material was weakened to such an extent that it could not hold the pressure required for the test process. It was concluded that the nitrile gloves were not considered suitable for usage with MEK due to the rapid degradation they exhibited.⁴⁴

3.58 In another study on these gloves:

Bromwich investigated the protection offered against MEK by Ansell Sol-Vex 37-185 Nitrile rubber gloves. It was found that Ansell Sol-Vex gloves are unsuitable for use with MEK, with an average breakthrough time of four (4) minutes with continuous exposure⁵⁵. They will give limited protection against occasional splashes for up to half an hour. If these nitrile rubber gloves are used in any formulation which has a significant (total > 10%) fraction of chemicals that permeates or degrades the gloves, then the action of those chemicals on the gloves may permit other chemicals that the glove is designed for, to permeate. This includes all ketones and many aromatic hydrocarbons like benzene, toluene and xylene. During cleaning operations inside fuel tanks, MEK is either directly sprayed onto tank structure and wiped off with a rag or applied via a rag dampened with MEK. Under these circumstances, it is reasonable to expect significant contact time of the glove with liquid MEK.⁴⁵

42 Mr S Danek, *Transcript*, 17 April 2008, p. 34.

43 *F-111 Board of Inquiry*, Volume 2, Chapter 7, Annexe D, c.67.

44 *F-111 Board of Inquiry*, Volume 2, Chapter 7, Annexe D, c.68.

45 *F-111 Board of Inquiry*, Volume 2, Chapter 7, Annexe D, c. 69.

Samples of Butyl gloves were also tested by Bromwich with MEK to determine their permeation resistance. Under the 'worst case' scenario of continuous exposure to liquid MEK, the chemical permeated in six hours rather than the published eight hours at 22°C. The permeation rate for an eight-hour shift was considered relatively low, however, the permeation rate would increase substantially for the second consecutive shift. Caution was expressed in re-using the gloves, in addition the breakthrough time was found to decrease markedly at higher temperatures⁴⁶

3.59 In respect of the gloves, Mr Danek told the Committee:

With respect to the gloves, the nitrile rubber gloves that we used in that program showed that they had a breakthrough time of methyl ethyl ketone of the order of four minutes. If you are using those gloves to undertake cleaning processes or cleaning activities in the fuel tanks and you are holding wet rags or rags wet and dripping with MEK, clearly that is not acceptable. If you were undertaking programs of perhaps even spraying, it may have been okay, depending on the residence time of the material on the gloves. But, in any event, the butyl rubber gloves should have been used in the first place. You indicated that there is some consideration given as to whether they should be used a second time. Bromwich's investigation into that looked at continuous immersion of those gloves in methyl ethyl ketone solvent, which is something that you are not going to have occur in any of the programs. At worst, it would be holding damp rags for some period of time and then cleaning inside. But, beyond that, in any of the spraying processes, you would not come across that.⁴⁷

3.60 The Committee also notes the views of Professor Andrew Hopkins on this matter. Professor Hopkins was an expert member of the F-111 Board of Inquiry. Although he did not appear before the Committee, Mr Fraser referred the Committee to his book, *Safety, Culture and Risk: The Organisational Causes of Disasters*, in which Professor Hopkins states:

The gloves sometimes disintegrated within five minutes of contact with the chemicals, and rather than constantly stopping to put on new gloves, workers at times chose to continue work without them. Moreover, some of the work required considerable manual dexterity. The gloves reduced dexterity and so workers

46 F-111 Board of Inquiry, Volume 2, Chapter 7, Annexe D, c. 70.

47 Mr S Danek, *Transcript*, 17 April 2008, p. 35.

sometimes had to remove them or cut the fingers off the gloves to get the job done.⁴⁸

3.61 In relation to workers exposed through coveralls, the Danek Report noted:

Both the Dupont Tyvek Barrier Man and Tychem SL (Saranex) coveralls were tested for breakthrough times and permeation rates against MEK.⁴⁹

Tyvek Testing. Testing of material from the Dupont Tyvek Barrier Man coverall showed that the suit offered no protection against MEK, with an almost instantaneous breakthrough time for the solvent. Similar results could be expected during exposure to other chemicals other chemicals. Examination of the surface of the suit under a microscope revealed a grid of non-penetrating pores, which facilitates 'breathing' but also minimises fluid resistance. Very limited splash protection would be provided against MEK or other solvents, including toluene.⁵⁰

3.62 In respect to the overalls, Mr Danek told the Committee:

The Tyvek Barrier Man coveralls, which were employed in that program, yes, they had very poor resistance to methyl ethyl ketone and to toluene, both of which were in the formulation of the primer MMS-425, which was employed in that program. In fact, the test undertaken by David Bromwich showed that **there was an almost instantaneous breakthrough of the solvent through those coveralls** [emphasis added]. That is not surprising when one looks under a microscope or even with the naked eye. You could see what appeared to be almost like air pores to allow the coveralls to breathe somewhat. It was a very, very thin protective layer of plastic over whatever the substrate was underneath.⁵¹

3.63 Professor Hopkins also makes observations in respect of the coveralls, stating:

The protective suits they were given were also inadequate in many ways. During the last of the programs, which involved spray sealing, and for which protective suits were particularly

48 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, p. 82.

49 *F-111 Board of Inquiry*, Volume 2, Chapter 7, Annexe D, c. 71.

50 *F-111 Board of Inquiry*, Volume 2, Chapter 7, Annexe D, c. 72.

51 Mr S Danek, *Transcript*, 17 April 2008, p. 35.

important, it turned out the material of which the suits were made was semi-permeable to two of the chemicals in use.⁵²

3.64 On the topic of SR51, Mr Danek told the Committee:

... the thiophenol has a highly objectionable odour which is indicative of its class of compounds of being a thiol. Everyone who has worked with it will vigorously attest to that. As also reported earlier today, the odour threshold for thiophenol is 0.3 parts per billion. As correctly indicated, that is over 1,000 times lower than the workplace exposure limit that is current now as well as what was current back in 1978.

3.65 This research presents a picture of potentially dangerous chemicals and inadequate protective clothing and work practices. It also identifies a range of illnesses and symptoms widely reported amongst F-111 workers. The inconclusive nature of some health studies was the subject of consideration by the Committee and will be addressed in subsequent Chapters.

52 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, p. 82.

Health Care, Compensation and Payment Schemes

- 4.1 This Chapter considers the health schemes instituted in response to the BOI and SHOAMP and the various schemes to provide compensation or cash payments.

Health care schemes

- 4.2 Two health care schemes were instituted as a result of the BOI. The first of these was the Interim Health Care Scheme (IHCS) which was subsequently replaced by the SHOAMP Health Care Scheme (SHCS).

Interim health care scheme

- 4.3 The earliest health care scheme that was developed in response to the concerns of the health of workers in the DSRS programs at Amberley was the IHCS. Its implementation was in response to the many F-111 maintenance workers who had presented with a wide range of conditions. It would have been inappropriate to wait until the results of the BOI recommended health studies were released. The aim of the IHCS was to:

...provide "sympathetic advice and treatment" for personnel who were posted to the RAAF Base Amberley and whose

health conditions were viewed as being “reasonably related” to DSRS activities.¹

IHCS eligibility

4.4 At the outset a joint advisory committee comprising doctors from Defence and DVA, which included expertise in the areas of occupational health and environmental health in the Air Force was established:

The Doctors’ Advisory Committee (DAC) was tasked with identifying a list of conditions for access to treatment under the IHCS. The DAC was frequently consulted in relation to the appropriateness of treatment for some conditions. It was the view of the DAC that a generous approach should be taken towards inclusion of conditions given the unknown nature of causation at that stage.²

4.5 The list of conditions recognised under the IHCS included:

- Skin rashes and associated systemic conditions
- Neurological conditions
- Mental disorder
- Personality change
- Neoplasms
- Haematological conditions
- Liver disease
- Gastrointestinal problems
- Fatigue
- Coronary heart disease, its precursors & sequelae
- Chronic infections
- Chronic respiratory conditions.³

4.6 Eligibility for the IHCS was split into two groups. DVA advised that:

Group 1 participants include serving members, ex-serving members and civilians who were engaged in F-111 aircraft maintenance activities at RAAF Base Amberley, Queensland. They include personnel who worked on the four formal DSRS programs **as well as those involved in general F-111 aircraft**

1 Department of Veterans’ Affairs, *Submission* No. 89, p. 7.

2 Department of Veterans’ Affairs, *Submission* No. 89, p. 7.

3 Department of Veterans’ Affairs, *Submission* No. 89, Attachment D.

maintenance work, such as Pick and Patch... [emphasis added].

...[Group 2 participants] include other individuals possibly affected, for example, personnel not directly engaged in F-111 aircraft maintenance activities, but who had been employed at RAAF Base Amberley, or are the direct family members of Group 1 participants.⁴

4.7 DVA advised that entry to the IHCS was subject to a number of conditions. These were:

- The level of participation in the DSRS programs which determined eligibility for either Group 1 or Group 2 status;
- Group 1 participants (currently serving/ex-ADF and civilians who were engaged in the DSRS programs) must have lodged a claim for compensation with either DVA, Comcare or WorkCover Queensland before they could access treatment through the IHCS; and
- Treatment was available to Group 1 participants for those conditions that were identified by the DAC as being reasonably associated with involvement in the DSRS programs.⁵

4.8 It should be noted that the decision to classify a member as either Group 1 or Group 2 was a decision that rested with the RAAF.⁶

4.9 In relation to the IHCS, DVA advised the Committee:

Bear in mind that it was a very wide and broad application of the interim healthcare scheme. At the time we asked people to ensure that they had a compensation claim lodged before they could get access to the Interim Health Care Scheme. We encouraged as many people as possible to lodge those claims so that they could get access. All of those people that had access to the Interim Health Care Scheme continue to have access to the Health Care Scheme, as it is now defined. There were some original decisions that were changed by government. The original decision was that they would have access to the health care scheme until all of their avenues for appeal for compensation had been exhausted. That was subsequently changed by the former minister to allow those people to continue to have access to the Health Care Scheme

4 Department of Veterans' Affairs, *Submission* No. 89, p. 7.

5 Department of Veterans' Affairs, *Submission* No. 89, p. 8.

6 Department of Veterans' Affairs, *Submission* No. 89, p. 7.

irrespective of whether they were subsequently found to be eligible for compensation.⁷

Claims assessment processes for Interim Health Care Scheme

4.10 In September 2001 the IHCS was introduced. DVA describes the process:

While policy responses were being developed, all Air Force workers who believed that they may have been affected were encouraged to access the Commonwealth's compensation schemes, the *Veterans' Entitlements Act 1986* (VEA) and *Safety, Rehabilitation and Compensation 1988* (SRCA). Civilian workers had access to the common law. While the SHOAMP was investigating the nature of the health impact of DSRS work, F-111 aircraft maintenance personnel were encouraged to register for the IHCS and submit a claim for compensation. All those who needed health treatment through involvement with DSRS work were able to access the required treatment, even while they waited for the outcome of their compensation claim. This was a unique arrangement particularly created in response to the specific circumstances of this group of people. Care was taken to ensure information and assistance was given to all those who approached DVA.⁸

4.11 DVA told the inquiry:

Entry into the IHCS was therefore subject to a number of conditions. These included:

- The level of participation in the DSRS programs which determined eligibility for either Group 1 or Group 2 status;
- Group 1 participants (currently serving/ex-ADF and civilians who were engaged in the DSRS programs) must have lodged a claim for compensation with either DVA, Comcare or WorkCover Queensland before they could access treatment through the IHCS; and
- Treatment was available to Group 1 participants **for those conditions that were identified by the DAC** as being reasonably associated with involvement in the DSRS programs.⁹

7 Mr E Killesteyn, *Transcript*, 21 July 2008, p. 89

8 Department of Veterans' Affairs, *Submission* No. 89, p.3.

9 Department of Veterans' Affairs, *Submission* No. 89, p. 8.

- 4.12 In 2001 and while the SHOAMP study was proceeding, DVA moved to implement the findings of the BOI:

Following the Air Force's BOI findings and during the course of the Health Study, all claims for compensation were extensively medically investigated to establish the diagnosis and any causal connection to F-111 activities. Where liability could be accepted under the existing legislation, action was taken to process the claim and provide the benefits which flowed from the decision, including medical treatment.¹⁰

- 4.13 This meant that claimants might receive their compensation under either the VEA or the SRCA, where supporting medical evidence or reference to Statement of Principles (SoPs) was sufficient under the Acts, or continue to receive benefits under IHCS pending the outcome of SHOAMP.¹¹ DVAs submission also noted:

Throughout the claim determination process, a case management approach was taken with each individual claim for compensation. In determining the outcome of each claim, reference was made not only to the individual's involvement with DSRS activities, but in the broader context of their overall work history. This meant that even if the claimant believed that the cause of their condition was their DSRS work, Departmental staff looked for any possible cause from other eligible Defence Service when assessing their claim.¹²

- 4.14 In evidence to the Committee DVA said that the IHCS was 'never a comprehensive response' (in the sense of being a solution to the issue replacing the reliance on existing compensation vehicles), but only one:

intended to provide non-liability services to assist the affected groups, as broadly defined as possible, while awaiting the results of the study. Entry to the scheme required a compensation claim to be lodged. Decisions were taken not to reject any claim for compensation under the Veterans' Entitlements Act or the Safety, Rehabilitation and Compensation Act pending the government response to the SHOAMP.¹³

10 Department of Veterans' Affairs, *Submission* No. 89, p. 9.

11 Department of Veterans' Affairs, *Submission* No. 89, p. 9.

12 Department of Veterans' Affairs, *Submission* No 89, p. 9.

13 Mr E Killesteyn, *Transcript*, 21 July 2008, p. 51.

- 4.15 In August 2005 the Government announced a number of responses to the SHOAMP including the continuation of non-liability health treatment through SHCS and the ex-gratia scheme.

SHOAMP Health Care Scheme (SHCS)

- 4.16 In response to the SHOAMP findings, the Government announced that the IHCS would cease on 19 August 2005. It also announced that all participants of the IHCS would be transferred to the new scheme, the SHCS.

SHCS eligibility

- 4.17 As with the IHCS, the SHCS treatment was categorised into two groups. The following categories of individuals were eligible for the SHCS, **provided that they had registered prior to 20 September 2005 and had lodged a claim for compensation under the SRCA or VEA** [emphasis added].

Group 1 status:

- Personnel involved in the F-111 Deseal/Reseal training conducted in Sacramento USA;
- Personnel, including supervisors, involved in the 1st and 2nd Deseal/Reseal Programs 1977-82 and 1991-93; the Spray Seal Program 1996-99 and the Wings Deseal/Reseal Program 1985-92;
- Personnel involved in the regular burning or disposal of Deseal/Reseal products including firefighters, boiler attendants, plant attendants and Department of Construction workers;
- Personnel who dismantled and/or disposed of the canvas from the Air Transportable Deseal/Reseal Hangar (the 'Rag Hangar');
- Personnel whose primary place of duty was within the Deseal/Reseal hangars;
- Fuel farm workers and personnel involved in the transport, delivery and handling of Deseal/Reseal products including SR51/51A. These workers and personnel must have regularly performed duties of supply and disposal of Deseal/Reseal products and must have had regular contact with contaminated fuel from the defuel process either at RAAF Base Amberley or No.7 Stores Depot;
- Personnel immersed in the settling pond at RAAF Base Amberley; and

- Work Experience students at Hawker de Havilland who worked inside the tanks.

Group 2 status:

- The immediate family members of Group 1 participants; and
- Service personnel and civilian employees employed on the Base during the F- 111 Deseal/Reseal programs who are not covered by the Group 1 definition.¹⁴

4.18 Also eligible were those who were already in the superseded IHCS.

4.19 DVA advised that at the announcement of SHOAMP, several changes from the IHCS were made:

- all new registrations had to be submitted by 20 September 2005;
- new compensation claims had to be lodged by 20 September 2005; and
- based on the SHOAMP Report, several conditions were removed from the list of treated conditions as they were found not to be associated with involvement in the F-111 aircraft maintenance programs. These conditions include heart conditions, chronic respiratory conditions and chronic infections. However, former IHCS participants who had previously received treatment for heart conditions, respiratory conditions or chronic infections continued to receive treatment for these conditions under the SHCS. No new participants of the SHCS could receive treatment for these conditions; and
- access to the SHCS would cease for an individual once liability for a condition has been accepted by the relevant statutory compensation authority or once all merit-based avenues of appeal had been exhausted (ie the Administrative Appeals Tribunal but not the Federal Court).¹⁵

4.20 On 14 February 2007, the Government amended this final point. The new arrangements meant that treatment would continue even after all merit based avenues of appeal had been exhausted. However, under these arrangements, health care would continue to be provided on the basis that the treatment did not constitute any admission of liability on behalf of the Government.

4.21 In addition, the DAC refined the list of conditions that would be treated under SHCS. These are summarised in the following table:

14 Department of Veterans' Affairs, *Submission* No 89, Attachment A.

15 Department of Veterans' Affairs, *Submission* No 89, p. 14.

Table 2: Conditions treated under SHCS

Category	Condition
Skin rashes and associated systemic conditions	Dysplastic naevus Eczema/dermatitis
Neurological conditions	Multiple sclerosis Parkinson's disease Peripheral neuropathy Spinal muscular atrophy Erectile dysfunction Cauda equine syndrome Neurogenic bladder Non-alcoholic toxic encephalopathy Acquired colour vision deficiency
Mental disorders and personality changes	Depression Sleep disorders with neurological basis Bi-polar affective disorder Vertigo Memory loss Anxiety Panic disorders Impaired cognition Alcohol and drug dependence
Malignant neoplasms and myeloproliferative disorders	All
Liver diseases	Liver disease (excluding diabetes) Pancreatic disease
Gastrointestinal problems	Irritable bowel disorder Ulcerative colitis/Crohn's disease Diverticulitis Bowel polyps
Immunological disorders	Mixed connective tissue disease Systemic lupus erythematosus Sarcoidosis

Source Department of Veterans' Affairs Submission No 89, Attachment E

- 4.22 Given the significance throughout this Inquiry of the circumstances of those involved in 'pick and patch' work, it is important to note that those who were engaged in 'pick and patch' activities in 1, 6 and 482 Squadron had access to health coverage by the Commonwealth through the IHCS. The transition to the SHCS allowed for those who were being treated for certain conditions (as outlined above) under the IHCS to be transferred to the new scheme. The treatment for those in the former IHCS continues to this day under the SHCS **provided that a compensation claim for related conditions was submitted by 20 September 2005**. The effect of this is that some workers in the squadrons who undertook 'pick and patch' work have had access to costs for treatment of a range of conditions provided by the Commonwealth. However, that is dependent on them successfully registering in the IHCS/SHCS **and** submitting a compensation claim for a related condition prior to the cut-off date of 20 September 2005.
- 4.23 Other squadron workers with identical work and health profiles who failed to register for the IHCS and lodge a claim for compensation prior to 20 September 2005 are denied benefits from the IHCS or SHCS.
- 4.24 The reasons for cut off dates for these schemes appear to be administrative rather for reasons of equity or public policy.
- 4.25 This also highlights the difference in eligibility between the IHCS and SHCS. As noted in par 4.6, the IHCS included '**personnel who worked on the four formal DSRS programs as well as those involved in general F-111 aircraft maintenance work, such as Pick and Patch**' ...[emphasis added]. Except for those who may qualify because of their prior acceptance in the IHCS, the SHCS excluded 'pick and patch' workers. The reasons for this omission are not clear to the Committee and difficult to understand given the otherwise wide scope of duties included, extending to fire fighters, boiler attendants and construction workers.

Benefits available

- 4.26 In addition to treatment of the conditions outlined in the table above, DVA described the benefits available to Group 1 participants under the SHCS:

Group 1 participants who registered and submitted compensation claims before 20 September 2005 are eligible for:

- medical treatment (including medical consultations, pharmaceuticals, appliances) for conditions for which they have submitted a compensation claim;
- unlimited general counselling sessions through the Veterans and Veterans Families Counselling Service (VVCS) for issues and conditions associated with the DSRS programs;
- three genetic counselling sessions through VVCS to discuss the probability of developing or transmitting a disorder to offspring and the options open to them in order to prevent, avoid or ameliorate it;
- eligibility to attend VVCS-coordinated programs, including the Lifestyle Management Course and Heart Health;
- eligibility to participate in the BHP (a cancer screening and disease prevention program administered by DVA); and
- approved travel to medical consultations and VVCS counselling sessions.

Group 1 participants who registered but who had not submitted compensation claims before 20 September 2005 are eligible for:

- up to five general counselling sessions through VVCS;
- three genetic counselling sessions through VVCS;
- eligibility to attend VVCS-coordinated programs, including the Lifestyle Management Course and Heart Health; and
- eligibility to participate in the BHP (a cancer screening and disease prevention program administered by DVA).¹⁶

4.27 DVA also described the benefits available to Group 2 participants under the SHCS:

Group 2 participants who have registered before 20 September 2005 can receive:

- up to five general counselling sessions through VVCS; and
- three genetic counselling sessions through VVCS.¹⁷

16 Department of Veterans' Affairs, *Submission* No 89, p. 14.

17 Department of Veterans' Affairs, *Submission* No 89, p. 14.

Better Health Program

4.28 DVA advised the Committee that:

As part of its response to the findings of the SHOAMP Report, the Government announced the establishment of a Cancer and Health Screening and Disease Prevention Program for F-111 aircraft maintenance workers, which is now known as the Better Health Program (BHP). This program aims to monitor and screen F-111 aircraft maintenance workers for conditions possibly linked to their work in an effort to improve their health outcomes in the longer term.

The BHP was set up with the advice of an Expert Advisory Panel which included professionals in relevant fields. A cost effective GP-based model was developed which enables participants to access all screening services through their GP who can also recommend appropriate treatment if a positive screening outcome occurs.

The BHP comprises:

- Cancer Screening – provides early detection for colorectal cancer and melanoma; and
- Health Information and Disease Prevention – promotes a healthy lifestyle by providing information on health conditions including erectile dysfunction, depression and anxiety.

The BHP does not cover the costs for any treatment that may be recommended as a result of BHP's processes. If a participant receives a positive result or diagnosis, they are advised to submit a compensation claim through the usual channels.¹⁸

4.29 The Committee understands that the BHP was limited to those who were accepted into the ex-gratia payment scheme, in either Tier 1, 2 or 3.

¹⁸ Department of Veterans' Affairs, *Submission* No 89, p. 19.

Health Care Compensation

- 4.30 This section deals with relevant compensation claims under the *Veteran's Entitlements Act 1986* and the *Safety, Rehabilitation and Compensation Act 1988*, which covered almost all of the affected workers with the exception of contractors of Hawker De Havilland whose claims were dealt with under WorkCover Queensland (discussed below).

Veterans' Entitlements Act 1986

- 4.31 DVA defines entitlements to compensation benefits under the provisions of the *Veterans' Entitlements Act 1986* in the following terms:
- The VEA provides compensation and rehabilitation to a veteran, member of the Forces, member of a Peacekeeping Force or Australian mariner for injuries or diseases caused or aggravated by war service or certain defence service on behalf of Australia occurring on or before 30 June 2004. It also provides compensation to eligible dependants if their death is related to service occurring on or before 30 June 2004.¹⁹
- 4.32 For the purposes of the present inquiry it is important to note that all claims for compensation submitted under the *Veterans' Entitlement Act* are examined and determined by a delegate of the Repatriation Commission. In determining whether or not a veteran or serving member's injury is caused by service, the delegate of the Repatriation Commission must have regard to the Statements of Principles (SoPs).²⁰
- 4.33 SoPs are legislative instruments issued by the Repatriation Medical Authority (RMA) and are binding on the Repatriation Commission and other decision-making bodies in determining VEA compensation claims. Crucially, they set out the minimum factors that must exist in order to establish a causal connection between particular diseases, injuries or death and service.
- 4.34 The Repatriation Medical Authority's role is to determine what constitutes 'sound medical-scientific evidence' of a relationship

19 Department of Veterans' Affairs, *Submission* No 89, p. 24. Details of the definition are expanded on pp. 27-8.

20 Department of Veterans' Affairs, *Submission* No. 89, DVA, pp. 27-8.

between eligible service and the development of a particular condition. Two SoPs apply to each condition. One applies to those who have operational service and provides for determination of claims based on a reasonable hypothesis. The other applies to those who have eligible service (such as DSRS activities), and provides for determination of claims based on the balance of probabilities.²¹

Section 180A of the VEA

4.35 Section 180A of the VEA states:

(1) If:

(a) the Repatriation Medical Authority has determined, or has declared that it does not propose to make or amend, a Statement of Principles in respect of a particular kind of injury, disease or death (see section 196B); and

(b) the Commission is of the opinion that, because the Statement of Principles is in force, or because of the decision by the Authority not to make or amend the Statement of Principles:

(i) claims for pensions in respect of incapacity from injury or disease of that kind made by veterans, members of the Forces, or members of a Peacekeeping Force, of a particular class; or

(ii) Claims for pensions made by dependants of those veterans or members in respect of the death of such a veteran or; cannot succeed; and

(c) the Commission is also of the opinion that, in all the circumstances of the case, those veterans, members or their dependants should receive a pension;

the Commission may, in its discretion, make a determination in respect of that kind of injury, disease or death under subsection (2) or (3), or determinations under both subsections (as the case requires).

4.36 DVA advised the Committee:

The use of section 180A of the VEA provides the Repatriation Commission (the Commission) with the discretion to issue overriding determinations that have the same effect as the Statements of Principles (SoP) regime. This provision allows

²¹ Department of Veterans' Affairs, *Submission* No. 89, DVA, pp. 27-8.

the Commission to grant entitlements to certain classes of veterans when it considers that such entitlements should exist. However, the Second Reading Speech made it clear that the Commission's powers are intended to be used only in exceptional circumstances and not as a means to either usurp the Repatriation Medical Authority's (RMA's) function or as a further stage of appeal of the RMA's decision.

This power has only been used on one occasion to make determinations in respect of herbicide exposure in Vietnam....

In order to make a Section 180A determination, the Commission must specify both 'the factors that must as a minimum exist' and 'which of those factors must be related to service'. A 'factor' needs to define the circumstances, fact or influence that produced a particular injury, disease or death. That is, it needs to look at actual causation rather than the circumstantial link between employment and health outcomes. To list generic terms such as Deseal/reseal service is not sufficient. A factor needs to define the element or component of that service in a quantifiable way...

4.37 DVA cautioned against the use of subsection 180A as a blanket determination in this case advising that it:

would also provide a small group with peacetime only service a much more generous standard of proof than others in similar situations. It would effectively provide this group with easier access to VEA benefits (including war widow's pension) than veterans who have operational service. While veterans with operational service are subject to the more generous "reasonable hypothesis" standard of proof, they are still subject to the SoP regime which requires that a factor in a SoP be met.²²

4.38 Furthermore, DVA advised the Committee that:

the diseases that need to be specified in a 180A determination still need evidence. So you need to go through the same sort of process of establishing that there is medical scientific evidence that the disease should be listed. So the first starting point would be that the same diseases as 7.2. The second issue with 180A is that it is not merely a matter of incidence but of causation as well. So that is a further difficulty in using 180A

22 Departments of Defence and Department of Veterans' Affairs, *Submission No. 121*, p. 12.

as it is cast today. There is another problem with 180A as it is cast today, and that is that in order for the commission to even move to the step of considering evidence and how it might be listed, the RMA needs to declare that it will not make or amend a SOP. So it actually needs to say, 'We don't intend to act.' Now, to the commission's mind, the RMA has not made such a declaration. It does use the SHOAMP results. It does take them into account in the pool of materials it considers. So it cannot be said that there is information in front of the commission that the RMA does not have and is not applying.²³

Safety, Rehabilitation and Compensation Act 1988

4.39 DSRS personnel participants are also entitled to claim compensation under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). The DVA submission sets out the Act's coverage in the following terms:

The SRCA is the Commonwealth's workers' compensation legislation that applies to all employees of the Commonwealth. This includes members and former members of the Australian Defence Force (ADF), Reserves, Cadets and Cadet Instructors and certain other persons who hold honorary rank in the ADF as well as members of certain philanthropic organisations that provide services to the ADF.

²⁴

4.40 In relation to DSRS applicants for compensation, under either the *Veterans Entitlement Act 1986* or the *Safety, Rehabilitation and Compensation Acts 1986*, when DVA determines a claim by a member or former member of the ADF, the claims assessor is obliged to consider all possible links to that claimant's general service work history. The entitlement to compensation may currently be considered either:

- Under the specific DSRS provisions under subsection (ss) 7 (2) of the SRCA; and
- Based on their general work history under the SRCA and/or VEA.²⁵

23 Mr S Farrelly, *Transcript*, April 17 2009, p. 52.

24 Department of Veterans' Affairs, *Submission* No. 89, p. 24.

25 Department of Veterans' Affairs, *Submission* No. 89, pp.24-25.

- 4.41 In terms of coverage for those who worked in the formal DSRS programs, DVA advised:

With the exception of the pure contractors, all of the defence force members have coverage under the Safety, Rehabilitation and Compensation Act but not all of them have coverage under the Veterans' Entitlements Act.²⁶

Access to compensation under s7(2) of the SRCA

- 4.42 In addition, as part of the response to SHOAMP in 2005, it was decided to extend the provision in the SRCA which allows for a more beneficial standard of proof. Under subsection 7 (2) of the SRCA (and ss 31 of the C(CG)E Act 1971, the SRCA antecedent legislation), a claim must succeed unless the Commonwealth can prove that there is no probable connection between a particular type of employment and the subsequent development of a particular medical condition. In other words, the reverse onus of proof applies.²⁷
- 4.43 Access to these provisions was made available to all of those who were accepted into the ex-gratia scheme. Details of that scheme are included later in this chapter.
- 4.44 Despite the reversal of the burden of proof to establish a causal connection, it remains the case that in order to access the beneficial provisions of the above legislation, 'a claimant has to satisfy the Tiers One, Two or Three eligibility criteria of an F-111 DSRS participant and obtain a definitive diagnosis of a SHOAMP disease'.²⁸ Not all those diseases covered by the IHCS continued to be covered under its successor the SHCS. In an answer to a question on notice from the Chair, DVA provided a list of the diseases meeting the requirements of s7(2) of the SRCA.

The following diseases are accepted as meeting the requirements of subsection 7(2) of the SRCA and ss31 of the *Commonwealth Government Employees (C(CG)E) Act 1971* for all ADF personnel involved in the DSRS programs at RAAF Base Amberley with a Tier 1, 2 or 3 employment classification:

- Skin Rashes and associated systemic conditions (Dysplastic naevus, Eczema/dermatitis);

26 Ms C Spiers, *Transcript*, 19 September 2008, p. 49.

27 Department of Veterans' Affairs, *Submission* No. 89, p. 13. See also Mr E Killesteyn and Ms C Spiers, *Transcript*, 21 July 2008, p.62.

28 Department of Veterans' Affairs, *Submission* No. 89, p. 13.

- Neurological conditions (Multiple sclerosis, Parkinson's disease, Peripheral neuropathy, Spinal muscular atrophy, Erectile dysfunction, Cauda equine syndrome, Neurogenic bladder, Non-alcoholic toxic encephalopathy, Acquired colour vision deficiency);
- Mental disorder and personality changes (Depression, Sleep disorders with neurological basis, Bi-polar affective disorder, Vertigo, Memory loss, Anxiety, Panic disorders (including Agoraphobia with panic disorder), Impaired cognition;
- All malignant neoplasms and myeloproliferative disorders
- Liver disease (Liver disease and pancreatic disease, excluding diabetes);
- Gastrointestinal problems (Irritable bowel disorder, Ulcerative colitis/Crohn's disease, Diverticulitis, Bowel polyps); and
- Immunological disorders - Mixed connective tissue disease, SLE (systemic lupus erythematosus), Sarcoidosis.²⁹

4.45 The Committee notes that the only difference between this list and that provided earlier for the SHCS is that the s7(2) list does not provide for treatment of the 'alcohol and drug dependence' condition under the 'Mental disorders and personality changes' category.

4.46 Asked by the Committee about the process of determining the above conditions, DVA replied:

The Doctor's Advisory Committee's (DAC) primary role was to determine which conditions would be included in the SRCA sub-section 7(2) list of conditions. The DAC included doctors from Department of Defence and DVA who prepared the sub-section 7(2) list based on results of SHOAMP and the conditions they believed showed a significant increase in presentations in the F-111 DSRS cohort when compared to other personnel engaged in duties at RAAF Bases Amberley and Richmond.³⁰

4.47 Further details of the process for determining inclusions under s7(2) were provided by DVA:

Following the release of the SHOAMP, the Doctors Advisory Committee reconvened to examine the outcomes of the study and how they compared to those conditions covered by the

29 Department of Veterans' Affairs, *Submission* No. 119, pp. 5-6.

30 Department of Veterans' Affairs, *Submission* No. 119, p.6.

IHCS. The Study did not support coverage for some conditions previously covered by the IHCS such as heart conditions, chronic respiratory conditions and chronic infections. Within the constraints of the SHOAMP, the Doctors Advisory Committee took the most generous view of whether there was a possible link to DSRS activities, whilst ensuring that all decisions were based on reasonable medical evidence.³¹

- 4.48 In evidence to the Committee, DVA was at pains to point out the evidential principles on which all assessment of claims was based:

The Department of Veterans' Affairs has always used objective and scientifically supported evidence as a basis for decisions in relation to entitlements. Deseal-reseal entitlements are no different...eligibility for the SHOAMP Health Care Scheme was based on scientific results of that study, taking into consideration the expert advice of a doctors advisory committee. As is standard practice, compensation decisions relating to deseal-reseal participants were based, firstly, on diagnoses from relevant medical professions. Decisions under the Veterans' Entitlements Act 1986 were then finalised by comparing medical diagnoses with the requirements of the relevant statements of principles. Statements of principles are produced by the independent Repatriation Medical Authority and are based on sound scientific evidence. Decisions under the Safety, Rehabilitation and Compensation Act were also guided by the RMA statements of principles but only where use of the statement of principles would result in a favourable outcome.³²

Comparative benefits under the VEA and SRCA

- 4.49 In addition to the different access requirements for compensation under the VEA and the SRCA discussed above, there are different benefit outcomes for claimants. Benefit lists were provided by DVA.

- 4.50 Under the VEA:

Compensation is paid only as a fortnightly pension. VEA benefits are paid for life and, depending on the level of disability pension, may include access to the Gold Card for

31 Department of Veterans' Affairs, *Submission* No. 89, p. 27.

32 Mr E Killesteyn, *Transcript*, 21 July 2008, p.52.

health care treatment. Offsetting provisions apply to VEA disability pensions where the same condition is accepted under both the VEA and the SRCA. Other benefits payable under the VEA, include:

- War Widow's and orphan's pension;
- Health Treatment Cards for specific conditions or full treatment for all conditions;
- Commonwealth Seniors Health Card;
- Fringe benefits;
- Aids and appliances;
- Counselling services;
- Educational benefits to children;
- Rent assistance;
- Income support payments to eligible veterans' and their dependants; and various allowances such as Pharmaceutical allowance, Telephone allowance, Utilities allowance and Remote area allowance for income support recipients.³³

4.51 The following compensation benefits are payable under the SRCA:

Once a connection to defence service has been established, compensation and other benefits may be payable under the SRCA, which include:

- weekly compensation payments for a compensable injury resulting in incapacity for work;
- lump sum payments of compensation for permanent impairment (PI) and noneconomic loss suffered as a result of the compensable injury;
- compensation for the cost of any medical treatment, including surgical, pharmaceutical, etc, which is reasonably required as a result of the compensable injury;
- compensation for dependants of an employee whose death is a result of a compensable injury;
- payment for the costs incurred for the provision of normal household services which the employee is no longer able to undertake due to the compensable injury;
- payment for the cost of attendant care services to assist with personal hygiene,
- dressing, taking medications etc, if these services are reasonably required as a result of the compensable injury;

33 Department of Veterans' Affairs, *Submission* No. 89, p. 29.

- financial assistance with essential home, workplace and motor vehicle
- modifications required as the result of a compensable injury; and
- medical, vocational and psychological rehabilitation which aims, where possible, to return the employee to suitable work as soon as practicable. Where this is not possible it aims to maximise the extent of his or her physical, social and mental health recovery.³⁴

4.52 As both lists attest, compensation under both Acts is comprehensive. The problem for DSRS and squadron claimants was gaining access to them. In response to a question from the Chair, DVA advised that most DSRS claimants would have qualified for benefits under the SRCA but not necessarily for the VEA (which included the Gold Card):

A claimant can claim the same condition under both acts. As you can see, they will not follow the same path. If they are successful under both acts then we use the provisions of compensation offsetting to adjust for the fact that they have been previously compensated under the former act...

They will satisfy the SRCA rate. With the exception of the pure contractors, all of the defence force members have coverage under the Safety, Rehabilitation and Compensation Act but not all of them have coverage under the Veterans' Entitlements Act. That is why that act has some attraction.³⁵

Claims assessment processes under the VEA and SRCA

4.53 DVA outlined the compensation claims process in general terms in evidence to the Committee:

Generally there are four elements that must be established before a claim can proceed. Firstly, you have to establish that the person is a veteran or a serving member; secondly, that they had some particular service that is eligible under the act; thirdly, that they have some particular injury or disease that they believe relates to that particular service; and, finally, that it is confirmed in a diagnosis as to the extent of limitation. Those who are not successful in establishing a claim would

34 Department of Veterans' Affairs, *Submission* No 89, p. 26.

35 Ms C Spiers, *Transcript*, 19 September 2008, p. 49.

not have been successful in establishing all four of those elements.³⁶

4.54 DVA advised that claims assessors 'make decisions on the basis of the information and facts that can be supported by the legislation and the procedures'.³⁷ Both the VEA and the SRCA claims determination processes require diagnosis of a particular condition. The International Classification of Diseases (ICD) is used to identify and determine conditions.

4.55 In evidence to the Committee on 21 July 2008, DVA provided insights into the particular difficulties of determining DSRS claims. One area of difficulty was establishing causal links. In commenting on the health studies, DVA said:

The only issue around the studies is that you are very unlikely to find a health study of any kind which goes to the question of causation. The nature of most of these health studies is that they are essentially about self-reported conditions and give a correlation but do not necessarily prove anything about the causation. That is the difference between exposure and causation.³⁸

4.56 The other area of difficulty was in relation to the diagnosis of a specific disease (using the ICD). In the case of particular DSRS claims:

Often the claimants claimed symptoms with no specific condition. The GP might be supporting that and saying that they have these symptoms. Therefore, we need a specialist to try and figure out what the disease or condition is. Underpinning both compensation systems, you have to have a disease. We do not treat symptoms as a rule.³⁹

4.57 In answer to a question from the Committee relating to whether there were any people whose claims had been rejected because DVA could not certify the claimed condition under the Acts, DVA responded:

Yes, there are individuals who have had conditions rejected because the claimed condition was found not to be present based on the medical evidence.⁴⁰

36 Mr K Douglas, *Transcript*, 19 September 2008, p. 42.

37 Mr K Douglas, *Transcript*, 21 July 2008, p. 66.

38 Mr E Killesteyn, *Transcript*, 21 July 2008, p. 66.

39 Ms C Spiers, *Transcript*, 21 July 2008, pp. 66-67.

40 Department of Veterans' Affairs, *Submission* No. 119, p.9.

4.58 As at 21 July 2008, DVA listed rejected claims in the above category under both the SRCA and VEA, as a total of 1,235 individual conditions claims (or 17 per cent) by a total of 629 individual claimants. DVAs submission comments on these figures:

These numbers have been influenced by the fact that a large number of claims were lodged in relation to undiagnosed or self reported symptoms which could not be identified as compensable conditions.⁴¹

The Ex gratia payment scheme

Background

4.59 The SHOAMP study found that those who worked in the four formal DSRS programs 'reported nearly twice the number of poor health symptoms compared to the comparison groups, who were comprised of those who did not work in the F-111 fuel tanks'. While not attributing causality of these heightened illnesses to the F-111 program, the study showed that those in the formal DSRS programs suffered a much poorer quality of life, due to health outcomes, compared to those in the comparison groups. This prompted a two-pronged response by the Government; firstly, ex-gratia payments to recognise the unique working conditions endured by those in the DSRS programs and, secondly, a more defined package of health care building on the work done in the IHCS. Access to compensatory avenues was also relaxed.

4.60 On 19 August 2005, the then Ministers for Defence and Veterans' Affairs issued a media release outlining lump sum payments for DSRS workers following the SHOAMP findings. The payments, which would be administered by DVA, would be either \$40 000 or \$10 000. The press release stated:

The package is in response to the Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) and recognises that those people who participated in F-111 Deseal/Reseal work experienced a unique working environment.⁴²

41 Department of Veterans' Affairs, *Submission No. 119*, p.9.

42 Ministers for Defence, Veterans' Affairs: *Lump sum payments announced following health study findings*, media release Friday, 19 August 2005 ,

- 4.61 The press release also stated that in addition to the ex-gratia payment scheme, access to the existing compensation schemes, health care support and ongoing screening and prevention programs were available.

Purpose of the ex-gratia scheme

- 4.62 The ex-gratia payment scheme was in recognition of the poor working conditions endured by those working in the F-111 fuel tanks or in support roles of the formal DSRS program. **It was not a means of injury or medical compensation.**

- 4.63 The Defence submission states:

The underlying premise of the ex gratia payment was first and foremost an acknowledgement by the Commonwealth of the very poor working conditions experienced by RAAF personnel who were required to work inside F-111 fuel tanks for extended periods while being exposed to potentially toxic chemicals. The ex gratia payment was not a substitute for compensation ...⁴³

Eligibility and Payments

- 4.64 The August 2005 statement issued by the Government defining eligibility said:

DEFINITION OF A DESEAL/RESEAL PARTICIPANT FOR THE PURPOSES OF THE LUMP SUM PAYMENT SCHEME

Tier 1 - \$40,000

A person who meets any one of the following criteria can test their eligibility to receive a lump sum payment of \$40,000:

1. A person who spent at least 30 cumulative working days on the Fuselage Deseal/Reseal or Respray Programs during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000, whose duties involved working inside F-111 fuel tanks; **or**

http://minister.dva.gov.au/media_releases/2005/08_aug/joint_media_minister_def_vet_affairs.htm

43 Department of Defence, *Submission* No. 83.

2. A person who spent at least 30 cumulative working days on the Wing tank program during the period 1985 - 1992; **or**
3. A person who spent at least 60 cumulative working days carrying out Sealant Rework (Pick and Patch) during the period 1973 - 2000 while attached to an F-111 deseal/reseal section; **or**
4. Boiler and Plant Attendants whose usual place of duty was the Base Incinerator as an Incinerator operator and who spent at least 30 cumulative working days undertaking these duties during the period 1976 - 1986; **or**
5. A person who can demonstrate that they would have met one of the above criteria except for the fact that they:
 - had an immediate physical reaction; **and**
 - required medical treatment or intervention; **and**
 - were given a work restriction or medical fitness advice (PM 101) stating that they should not return to that working environment.

Tier 2 - \$10,000

A person who meets any one of the following criteria can test their eligibility to receive a lump sum payment of \$10,000:

1. A person who spent between 10 and 29 cumulative working days on the Fuselage Deseal/Reseal or Respray Programs during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000, whose duties involved working inside F-111 fuel tanks; **or**
2. A person who spent between 10 and 29 cumulative working days on the Wing tank program during the period 1985 - 1992; **or**
3. A person who spent between 20 and 59 cumulative working days carrying out Sealant Rework (Pick and Patch) during the period 1973 - 2000 while attached to an F-111 deseal/reseal section; **or**

4. Boiler and Plant Attendants whose usual place of duty was the Base Incinerator as an Incinerator operator and who spent between 10 and 29 cumulative working days undertaking these duties during the period 1976 - 1986; **or**
5. Fire Fighters employed as Instructors whose usual place of duty was the Fire Training School fire pits and who spent at least 60 cumulative working days actively involved in the burning of by-products from the F-111 DSRS process during the period 1976 - 1990; **or**
6. Personnel who were **not** involved in tank entry and whose usual place of duty was the Rag Hangar for 60 cumulative working days during the period Dec 1977 - Nov 1983; **or**
7. Personnel who were **not** involved in tank entry and whose usual place of duty was Hangar 255, 260, 277 or 278 for a continuous period of 60 cumulative working days during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000; **or**
8. A person who can demonstrate that they would have met one of the above criteria except for the fact that they:
 - had an immediate physical reaction; **and**
 - required medical treatment or intervention; **and**
 - were given a work restriction or medical fitness advice (PM 101) stating that they should not return to that working environment.

Note: Only one ex-gratia payment may be made regardless of how many times a person may be eligible. Where a claimant is assessed as eligible for both payments, the higher amount will be paid.

DEFINITION OF A DESEAL RESEAL PARTICIPANT FOR THE PURPOSES OF A DETERMINATION UNDER s7(2) OF THE SRCA

Tier 3

The following personnel should be considered for inclusion in any determination under s7(2) of the SRCA:

1. Personnel who worked on the Fuselage Deseal/Reseal or Respray Programs during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000, whose duties involved working inside F-111 fuel tanks; **or**
2. Personnel who worked on the Wing tank program during the period 1985 - 1992; **or**
3. personnel carried out Sealant Rework (Pick and Patch) during the period 1973 - 2000 while attached to an F-111 deseal/reseal section; **or**
4. Boiler and Plant Attendants whose usual place of duty was the Base Incinerator as an Incinerator operator during the period 1976 - 1986; **or**
5. Fire Fighters whose usual place of duty was a Unit at RAAF Base Amberley and who were actively involved in the burning of by-products from the F-111 DSRS process during the period 1976 - 1994; **or**
6. Personnel who were **not** involved in tank entry and whose usual place of duty was the Rag Hangar during the period Dec 1977 - Nov 1983; **or**
7. Personnel who were **not** involved in tank entry and whose usual place of duty was Hangar 255, 260, 277 or 278 during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000; **or**
8. Motor Transport Drivers involved in the first deseal/reseal program who came into contact with aviation fuel contaminated with deseal/reseal by-products during the period 1977-1982;**or**
9. Maintenance personnel on the air transportable ('rag') hangar who were involved in removing/replacing canvas or dismantling the Hangar during relevant periods in 1978, 1980 and 1984; **or**

10. Personnel employed in Engine Test Cell No 1 during the period 1976 - 1986; **or**
11. Personnel tasked with entering the Warrill Creek Settling Pond for the purpose of maintaining the physical barrier during the period 1977- 2000.

EXCLUSIONS

This definition should not include others indirectly involved in the DS/RS procedures such as:

1. K Group and 7SD personnel; **and**
2. Dept of Housing and Construction Staff; **and**
3. ADG (or other personnel) who entered Warrill Creek for any other reason; **and**
4. Security Personnel; **and**
5. Work Experience students.⁴⁴

4.65 In terms of the lump sum, Defence advised that:

these payments are in addition to a person's entitlement to claim compensation and the receipt of such a payment is not related to having an injury or disease. The lump sum is non-taxable and has no impact on existing Government benefits or potential common law claims.

4.66 Section 51-5 of the *Income Tax Assessment Act 1997* makes these payments tax exempt. It states:

If you are:

a recipient of an ex-gratia payment from the Commonwealth known as the F-111 Deseal/Reseal Ex-gratia Lump Sum Payment

... the following amounts are exempt from income tax:

the ex-gratia payment.⁴⁵

4.67 The Committee was advised well after the final public hearing that the list supplied to the Inquiry and displayed on the Department's

44 Department of Veterans' Affairs, 'Definition of a Deseal/Reseal Participant at <http://www.dva.gov.au/f111_lump_sum.htm> at 8 June 2008.

45 Section S51-5 of the *Income Tax Assessment Act 1997*.

website contained an error. Whilst the error only related to a small number of people, it is very alarming that this could occur in a matter which had been so keenly scrutinised for many years.⁴⁶

4.68 Eligible claimants were required to be formally attached to one of the four formal DSRS programs. Workers who were sent informally to one of the formal DSRS sections, sometimes for short periods, did not qualify for a payment. Similarly, those who worked performing 'pick and patch' activities in 1, 6 and 482 Squadrons or any other associated area not directly attached to one of the formal sections were ineligible for the scheme. Chapter 2 contains a discussion on the differences between the tasks of those involved in the formal programs compared to those involved in the squadrons.

4.69 When asked why 482 Squadron was excluded from the Tier definitions DVA responded:

If you look at the history of this issue, the board of inquiry focused on the formal programs, the SHOAMP, by and large, focused on the formal programs and the resulting responses primarily focused on the four formal programs – with the exception of the healthcare schemes, which are much more liberal in terms of access. The whole process has been one that has focused on the four formal programs.⁴⁷

4.70 This response overlooks the fact that the IHCS included those in the squadrons engaged in 'pick and patch' work, though DVA did say that:

Essentially, the schemes – the ex-gratia payment, the better health scheme and the compensation system – operate independently in accordance with the requirements set down by each⁴⁸.

4.71 The omission from the ex-gratia scheme of those who were attached to Squadrons 1, 6 and 482 whose duties involved fuel tank entry has generated a great deal of anger amongst those excluded and is at the core of many submissions. As Air Vice-Marshal Brown stated:

46 Department of Veterans' Affairs, *Correspondence*, 2 June 2008.

47 Mr E Killesteyn, *Transcript*, July 21, p. 74.

48 Mr E Killesteyn, *Transcript*, July 21, p. 75.

In reality there was no real difference between the pick and patch work done at Squadrons 1, 6 and 482 and what was done in the reseal-deseal section.⁴⁹

- 4.72 Given that the 'pick and patch' work in the squadrons was the same as 'pick and patch' work carried out in the DSRS programs, the claims of unfair treatment are understandable.
- 4.73 The Committee notes that personnel who were never required to enter F-111 fuel tanks, such as boiler and plant attendants and fire fighters were included in the Tier 2 criterion for the 'Definition of a DSRS Participant', whilst those involved in the informal 'pick and patch' activities in the squadrons were excluded.
- 4.74 Presumably work in the extremely confined F-111 tanks typified the 'unique working environment' for which the ex-gratia payment was created. No explanations for this apparent anomaly excluding squadron 'pick and patch' workers was provided to the Committee except for the DVA comments expressed above.
- 4.75 There are a substantial number of squadron personnel, whose duties would have involved significant periods of tank entry. These individuals experienced working conditions for various periods of time on a par with and arguably worse than others included in Tier 2 and Tier 3.

Link between SHCS and Ex-Gratia / s7(2) SRCA

- 4.76 As outlined in this report, initially a participant had to register for the IHCS. However, to begin receiving treatment, the participant was required to lodge a claim for compensation. This meant that the applicant had to satisfy the requirements for compensation under the SRCA or VEA. The treatment received is in accordance with the IHCS list identified by the Doctors Advisory Committee (DAC). That is necessary as these conditions are accepted as 'reasonably linked' to DSRS.
- 4.77 The following table provides a useful summary of the varying benefits applying to different schemes and different categories within schemes:

49 Air Vice-Marshal Brown, *Transcript*, September 19, p. 61.

BENEFITS AND SERVICES AVAILABLE TO SHCS PARTICIPANTS AND EX GRATIA LUMP SUM RECIPIENTS

	Reimbursement for specified conditions through SHCS	VVCS general counselling	VVCS genetic counselling	VVCS programs, incl Lifestyle Management Course & Heart Health	Better Health Program	Ex gratia lump sum payment \$40,000	Ex gratia lump sum payment \$10,000	Recognition for working on the F-111 Deseal/Reseal Programs for compensation purposes
Group 1 SHCS (submitted claims before 20 Sept 2005)	✓	Unlimited	3 sessions	✓	✓			
Group 1 SHCS did not submit claims before 20 Sept 2005)		5 sessions	3 sessions	✓	✓			
Group 2 SHCS		5 sessions	3 sessions					
Tier 1 ex gratia					✓	✓		
Tier 2 ex gratia					✓		✓	
Tier 3 ex gratia					✓			✓

Note: Group 1/Group 2 and ex gratia status are not mutually exclusive and personnel can be eligible under both SHCS and ex gratia schemes.

Source DVA Submission No. 89, Attachment F.

Existing Claimants and Payments

4.78 It is important to recognise the Commonwealth has provided substantial assistance to many who were involved in F-111 fuel tank repair work. The established compensation systems have been successfully accessed by many.

4.79 The Committee asked DVA about the number of compensation claims that had been received. DVA responded that at 21 July 2008:

We have 628 claimants so far, with claims still coming in. In fact, we have received three claims in the last month. Of those 628 claimants, 70 are claims lodged within the VEA only, 115 are lodged with the SRCA only, and 443 are claims lodged under both VEA and SRCA.⁵⁰

4.80 DVA lists the total DSRS claims:

As at 1 July 2008, the Department had received compensation claims from a total of 626 individuals.

- 556 members lodged claims under SRCA for a total of 3,769 conditions
- 512 members lodged claims under the VEA for a total of 3,655 conditions.
- 442 of the 626 claimants have lodged claims for benefits under both Acts.

As at 1 July 2008 there were 2 outstanding VEA claims and 9 outstanding SRCA claims. New claims are still being received and all claims are being determined as quickly as possible.⁵¹

4.81 DVA also provided the following claims figures:

There have been 626 individual complainants; 70 claims have been made under the Veterans' Entitlements Act only; 114 have been made under the Safety, Rehabilitation and Compensation Act only; and 442 have been made under both acts. Of (the) 626 (complainants) 500, or around 80 per cent, are now in receipt of a disability pension or have received a lump sum permanent impairment payment or a widows' benefit. Of the 500, 378 are receiving benefits under the Veterans' Entitlements Act. The 373 disability pensioners

50 Mr K Douglas, *Transcript*, 21 July, p. 57.

51 Department of Veterans' Affairs, *Submission* No. 89, DVA, p.25.

consist of 67 totally and permanently incapacitated, three each of extreme disablement allowance and intermediate, 77 at the 100 per cent rate, 223 at rates varying from 10 per cent to 90 per cent and five receive a war widows' pension. The remainder of the 122 have received benefits under the Safety, Rehabilitation and Compensation Act. Of that, 113 people have received lump sum permanent impairment payment of between \$10,000 and \$370,000, with the majority receiving between \$30,000 and \$40,000, and nine have received the widows' benefit... It is important to note that this includes all those who have claimed compensation for conditions caused by deseal-reseal service, whether or not their condition was accepted as due to that service.⁵²

4.82 The Committee asked DVA how many claimants were Totally and Permanently Incapacitated (TPI). DVA responded that there were sixty-three claimants.⁵³

4.83 The Committee sought to further define that group of claimants whose claims had been rejected by DVA. In response DVA said:

...we had 1,215 claims. As I understand it, 489 of those claims were refused. While I cannot give you a precise answer, our view is that more than 90 per cent of the claims that were refused would have been involved in – if I can just make it clear – the informal pick and patch activities as distinct from those pick and patch activities that were defined as part of the formal program.⁵⁴

4.84 DVA then defined the latter group in more precise terms:

There is also a generic description that people use to describe those who were outside the formal programs, particularly those who were in Squadrons 482, 1 and 6, as involved in pick and patch activities. I guess that that group of pick and patch workers are the ones who are concerned about whether further benefits should be extended to them.⁵⁵

52 Mr E Killesteyn, *Transcript*, 19 September, p. 40.

53 Mr K Douglas, *Transcript*, 21 July 2008, p. 77.

54 Mr E Killesteyn, *Transcript*, 19 September, p. 60.

55 Mr E Killesteyn, *Transcript*, 19 September 2008, pp.60-1: 'Of the 489 people who were refused, greater than 90 percent of those cases were pick and patch activities not involved in the formal programs- in other words, those people who were more than likely posted to Squadrons 482, 1 and 6.'

4.85 DVA advised the Committee that under the VEA, a total of \$16.1m has been paid to claimants involved in F-111 fuel tank repair. In addition a total of \$19.6m has been paid under the provisions of the SRCA.⁵⁶ Together with the payment of \$22.60m⁵⁷ from the ex-gratia system, a total of \$67.9m⁵⁸ has already been paid to assist those involved in F-111 fuel tank repairs.

56 Department of Veterans' Affairs, *Submission No. 89*, Table 9, p. 30.

57 Department of Veterans' Affairs, *Submission No. 89*, p. 24.

58 Mr E Killesteyn, *Transcript*, 21 July 2008, p. 59.



Figure 1: The F-111 as many Australians know it

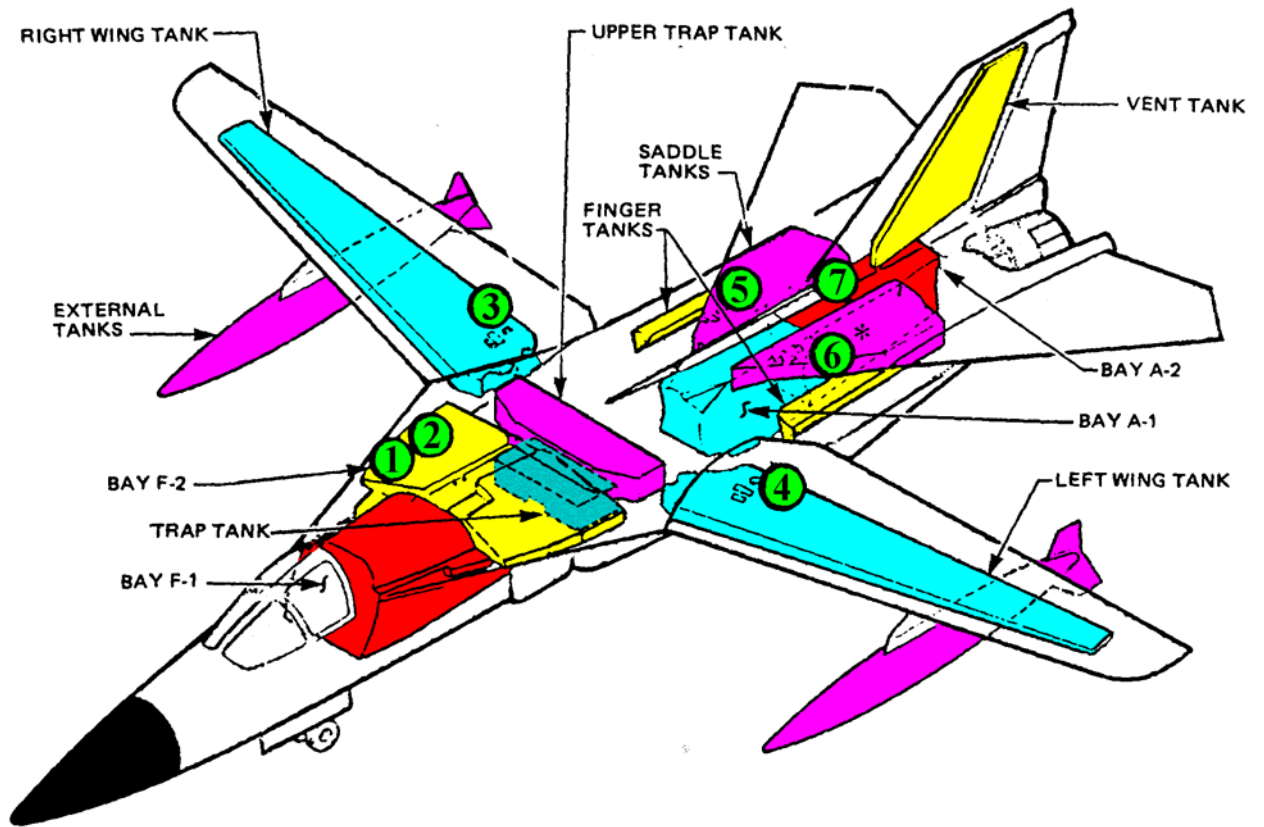


Figure 2: Diagram of F-111 fuel tank location



Figure 3: Inadequate use of Personal Protective Equipment



Figure 4: Confined work area



Figure 5: The newly constructed 'rag hanger' at Amberley



Figure 6: Working in the confines of a fuel tank with no Personal Protective Equipment

Wing program- Inadequate PPE



Figure 7: Inconsistent use of Personal Protective Equipment



Figure 8: Coping with cramped working conditions

Confines of aft tank- No PPE



Figure 9: Working in the confines of a fuel tank with no Personal Protective Equipment



Figure 10: The F-111 as many Australians know it

Complaints, Problems and Perceptions

- 5.1 This Chapter deals with the complaints, problems and perceptions, which the Committee encountered as part of its deliberations. These issues included the distinction between the various maintenance programs, the distinctions between the different health care schemes and the issues surrounding DVAs management of the ex-gratia and compensation claims process. It also addresses the perceptions of many maintenance program staff about their treatment by DVA and the ongoing health concerns held by many.
- 5.2 Prominent matters requiring comment include:
- the differences between those in the formal DSRS programs and those in the maintenance squadrons,
 - eligibility and quantum of the ex-gratia payment,
 - the entitlement of former personnel to the ex-gratia payment,
 - processing of claims, especially for the ex-gratia payment,
 - any link between the ex-gratia payment and health outcomes,
 - any link between health consequences and the chemicals used in the program, in particular SR-51 used in the first program.
- 5.3 The Committee has taken a great deal of evidence in relation to these issues from many former DSRS and squadron personnel as well as the two Departments charged with administering the Government response. Many of these submissions point to differing levels of

understanding within the F-111 maintenance community and the Departments regarding eligibility and the basis of benefits. Inadequate or confusing communication by Government and the responsible Departments contributed to this.

- 5.4 The Committee was encouraged to review the work of Professor Andrew Hopkins, an expert member of the F-111 Board of Inquiry. In his book *Safety, Culture and Risk: The Organisational Causes of Disasters*, he comments:

The Air Force is not a heartless organisation. Fuel tank workers were Air Force “members” and the Air Force had a policy of looking after its own. How could its health and safety management system have failed so totally?¹

- 5.5 Professor Hopkins makes several other observations which are relevant to the subject matter of this Inquiry. His statements relate to the culture of the Air Force at the time of the formal DSRS programs and shed light on why there were a multitude of factors which led to this issue being largely ignored for a long period. He observed:

In short, although the Air Force was aware of the “can do” problem and of the fact that people would tolerate dangerous conditions or bend the rules in various ways to get the job done, it had not been able to translate this awareness into effective action to protect the health of the fuel tank repair workers.²

- 5.6 And:

For a subordinate to bring an issue to the attention of a superior was in some respects an admission of failure, which naturally encouraged the subordinate to get the job done with the resources at hand.³ ... It was a culture within the unit that you could not bring up and raise any concerns and you simply did what you were told or got a kick in the arse⁴... These perceptions were not unfounded. In the first deseal/reseal program, one worker who refused to re-enter the fuel tanks was charged with an offence, convicted and sentenced to seven days detention at Amberley...⁵

1 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, p. 84.

2 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, p. 89.

3 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, p. 90.

4 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, pp. 93-94.

5 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, pp. 93-94.

5.7 Professor Hopkins also identified concerns that for many years Defence valued platforms over their people. He noted :

Shortly after (the BOI), a striking example came to light of the way the priority of platforms over people had operated in the Australian Navy during the Vietnam War... The navy's ships needed to draw water from overboard, both for drinking and for use in the ships' boilers. This water had to be distilled before use, to remove salt. Navy patrols spent considerable amounts of time in estuarine waters in Vietnam which were known to be contaminated with other substances and there was a possibility that distillation would not remove these contaminants. The Navy therefore chose not to use distilled water from the estuaries for its boilers, lest it damage ships' engines; water for the boilers was to be produced only from the pristine waters offshore. Distilled water from the estuaries could, however, be used as drinking water!

In fact, the estuaries were contaminated with agent orange, which was used as a defoliant in the war, and some of the constituents of agent orange were carcinogenic. Ironically, the distillation process served only to concentrate these substances, and this is what the sailors were drinking. Studies have shown that the death rates among naval veterans from this period are significantly higher than normal, higher even than for other veteran groups, and contaminated drinking water appears to be the most likely explanation. The Navy had attended to the welfare of its platforms in this matter, but not its people, with tragic consequences.⁶

5.8 Professor Hopkins concluded:

Until the Air Force puts the same effort into securing expert safety advice as it does into securing expert advice on materials, until it applies the same level of quality control to ensuring the safety of maintenance workers as it applies to ensuring the adequacy of maintenance processes, it will remain vulnerable to the criticism that it puts platforms ahead of people...⁷

6 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, pp. 92-93.

7 Professor A Hopkins (2005) *Safety, Culture and Risk: The Organisational Causes*, p. 92.

- 5.9 This may well be a harsh conclusion. However it is no doubt a view held by some who have been adversely affected by their work on F-111s and publicly acknowledged by a member of the BOI.
- 5.10 An indication that the problem Professor Hopkins draws attention to exists can be found in the resources devoted to occupational medicine. The Committee has been advised that there are only two full-time ADF officers who are occupational medicine specialists. However, they are not being employed in the capacity of occupational medicine. The ADF relies upon one civilian and a small number of reservists to provide that capability.
- 5.11 It is inconceivable that the ADF would contemplate such a small in-house capability for basic support of any of its major platforms. Yet when it comes to personnel there seems to be an assumption that specialist occupational medical specialists are unnecessary.

Comparing the tasks

- 5.12 Chapter 2 sets out the tasks involved in the F-111 fuel tank repair work in the DSRS programs and squadrons.
- 5.13 Paragraph 2.46 summarised the situation:
- There can be no dispute that F-111 fuel tank repair work was not limited to the formal DSRS programs run at 3AD and 501WG. While these areas were responsible for larger and more complex maintenance on the fuel tanks, the personnel in 1, 6 and 482 Squadron were responsible for the day to day operational requirements to keep the fleet flying. In fact, fuel tank leak repair (or 'pick and patch' as it is more commonly known) was conducted solely by 482 Squadron up until 1983 after which it was also carried out at 1 and 6 Squadron.
- 5.14 Air Vice -Marshal Brown noted:
- In reality there was no real difference between the pick and patch work done at Squadrons 1, 6 and 482 and what was done in the reseal-deseal section.⁸
- 5.15 There were alternative views. Mr Peter Johnson, a retired RAAF Warrant Officer, drew the Committee's attention to the relative

8 Air Vice-Marshal G. Brown, *Transcript*, 19 September 2008, p. 61.

intensity of the exposure of those in the formal DSRS programs compared to those in the squadrons:

It should be remembered that the BOI was convened following the health concerns emanating from the deseal-reseal programs conducted at 3AD or 501 Wing. These deseal-reseal programs, with the exception of spray seal, can be defined as the complete and entire removal of sealing compound from within the fuel tanks, and in the case of the fuselage tanks the laying up of an adhesion promoter, a barrier, two coats of brushable A2 sealant, and one coat of the thicker protective coat of B2 sealant over every seam and joint within the tanks.⁹

5.16 The comparison with 'pick and patch' work was clear in Mr Johnson's view:

Whilst pick and patch may have involved entry into the tanks for various periods of time, there can be no comparison with the time spent in the tanks during deseal-reseal, which involved being in the tanks for not days but months on end, in some areas somewhat like working in a coffin with the foot end kicked out. Indeed the first aircraft, A8126, took almost seven months to complete due to the lack of experience of both the troops and the supervisors.¹⁰

5.17 Evidence from Mr Stanley Lawler, an ATECH in 6 Squadron, illustrates the different emphasis from the view point of a 'pick and patch' worker:

The shortest period would have been three days. That is prepping the tank, getting in, finding the damaged area, digging it out, resealing it and putting any plumbing or anything that had to go back in if we had removed plumbing. That would be the shortest period...especially towards the late eighties when the leaks were really getting bad we would spend eight hours a day in the tank.¹¹

5.18 The serious problem of inadequate records, dealt with later in this Chapter, has exacerbated efforts to clarify these matters to the satisfaction of all.

9 Mr P Johnson, *Transcript*, 29 July 2008, p. 59.

10 Mr P Johnson, *Transcript*, 29 July 2008, pp. 59-60.

11 Mr SJ Lawler, *Transcript*, 29 July 2008, p. 8.

Compensation and the ex-gratia payment

- 5.19 Evidence to the Committee from the Department of Defence and the Department of Veterans' Affairs have made it clear the ex-gratia payment was not to be regarded in any sense as a compensation for DSRS related health conditions. Many in the F-111 fuel tank repair community clearly understood it to be otherwise.
- 5.20 The ex-gratia payment announced by the Government was in recognition of the difficult working conditions faced by those in the formal DSRS programs. It is clear from the submissions to this Inquiry that many believed it was made in recognition of health dangers for those working with F-111s. It seems that there are several reasons for these beliefs.
- 5.21 Firstly, the initial press release announcing the scheme was made in conjunction with the release of the SHOAMP findings. Secondly, the wording of the Tier definitions could be misconstrued to imply that all 'pick and patch' workers were eligible, when in reality, it was limited to those in the formal DSRS programs. Thirdly, while the payment was for a 'unique working environment', payments were also made to members of other professions such as boiler and plant attendants who did not work in the confined conditions of an F-111 fuel tank. Finally, the quantum of the payments, while seen to be adequate by some, was in no way an adequate sum to act as compensation for adverse health outcomes – a cause of anger amongst those who saw it as a payment for health problems and personal suffering.

The initial press release

- 5.22 The ex-gratia payment scheme was announced by the Ministers for Defence and Veterans' Affairs via a press release on 19 August 2005. The press release stated that in addition to the ex-gratia payment scheme, access to the existing compensation schemes, health care support and ongoing screening and prevention programs were available.
- 5.23 The press release said:

***LUMP SUM PAYMENTS ANNOUNCED FOLLOWING
HEALTH STUDY FINDINGS***

The Federal Government has agreed to provide a \$21 million lump sum payment package to personnel who participated in

F-111 Deseal/Reseal work for the Australian Defence Force, Defence Minister Robert Hill, and Veterans' Affairs Minister De-Anne Kelly announced today.

The package is in response to the Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) and recognises that those people who participated in F-111 Deseal/Reseal work experienced a unique working environment.

"Under the scheme, ex-gratia lump sum payments of \$40 000 or \$10 000 will be paid to F-111 Deseal/Reseal eligible participants, following the Government's acceptance of the SHOAMP findings announced in December 2004," Senator Hill said.

"The lump sum payments are in addition to any compensation that may be available to individuals under statutory workers' compensation schemes and will not differentiate between military personnel, public servants or contractors.

"I would encourage anyone who believes they have a work related injury or disease to test their possible eligibility by applying for these entitlements."

Veterans' Affairs Minister De-Anne Kelly said the ex-gratia payments, along with access to existing workers' compensation entitlements, health care support and an ongoing Cancer and Health Screening and Disease Prevention Program, represented a significant commitment by the Government.

"The SHOAMP Health Care Scheme will be available for those people who have lodged a claim for compensation with either the Department of Veterans' Affairs or their statutory workers' compensation scheme," Mrs Kelly said.

"This new Health Care Scheme will begin on 19 August and will replace the Interim Health Care Scheme, which ran for the duration of the SHOAMP study."

Mrs Kelly said anyone who had lodged a compensation claim, and was currently registered with the Interim Health Care Scheme, would automatically transfer to the new Health Care Scheme delivered by the Department of Veterans' Affairs (DVA).

"The SHOAMP Health Care scheme will close to applicants from 20 September 2005. I urge anyone who believes they may be eligible to claim for a particular health condition to submit a compensation claim and to register for the new scheme as soon as possible.

"DVA will also provide a Cancer and Health Screening and Disease Prevention Program. This program aims to improve the future health and lifestyle of F-111 Deseal/Reseal participants by assisting in the early detection of conditions that may be linked to their participation in Deseal/Reseal activities," Mrs Kelly said.

The Department of Veterans' Affairs will contact anyone who had submitted a compensation claim, or who was registered with the Interim Health Care Scheme, to provide further information about testing their eligibility for the lump sum payment, the SHOAMP Health Care Scheme or the Cancer and Health Screening and Disease Prevention Program.¹²

- 5.24 Whilst announcing some very beneficial outcomes, this press release generated confusion within the wider F-111 maintenance community. Confusion over the perceived linkage between the ex-gratia payment and health considerations was evident in the statement and contributed to the subsequent misconceptions on this matter. For example, the statement says the, '**ex-gratia lump sum payments of \$40 000 or \$10 000 will be paid to F-111 Deseal/Reseal eligible participants, following the Government's acceptance of the SHOAMP findings**'¹³ [emphasis added].
- 5.25 The F-111 community were well aware that the SHOAMP was a study of health impacts. The establishment of the SHCS, announced in the same statement, was related to these health considerations. The ex-gratia payment had no such link. It would have been preferable, in retrospect, if both issues had been dealt with separately to avoid this confusion. As Chapter 4 details, the ex-gratia payment was not linked in any way to health considerations. There are ample cases of

12 Ministers for Defence, Veterans' Affairs: *Lump sum payments announced following health study findings*, Media Release Friday, 19 August 2005, http://minister.dva.gov.au/media_releases/2005/08_aug/joint_media_minister_def_ve_t_affairs.htm

13 Ministers for Defence, Veterans' Affairs: *Lump sum payments announced following health study findings*, Media Release Friday, 19 August 2005, http://minister.dva.gov.au/media_releases/2005/08_aug/joint_media_minister_def_ve_t_affairs.htm

payments made to individuals who have reported no relevant health issues, whilst others with health concerns have been denied the payment.

Eligibility for the ex-gratia scheme

5.26 Many submissions to the Committee demonstrate the importance of the ex-gratia eligibility rules to the F-111 maintenance community. The Committee sought comment from Defence on the confusion surrounding the ex-gratia payment. Defence replied:

When the ex gratia payment was announced it was quite clear that this was not in relation to health outcomes and was not to fund future health claims. However, as you would be aware from many of the submissions on your website, large numbers of the people who have written submissions have had and still have the belief that this was partially in recompense of future health costs.¹⁴

5.27 Defence also added:

Following the release of the SHOAMP, the healthcare study, an interdepartmental committee canvassed a range of options and they were put to the government in a formal submission. It was the decision of government that the lump sump payment scheme should be enacted.¹⁵

5.28 The details of the ex-gratia scheme are set out in full in chapter 4. The scheme's Tier definitions added to confusion about the rationale underpinning eligibility.

5.29 The inclusion of personnel who were never required to enter an F-111 fuel tank undermines the concept of the payment being for 'those people who participated in F-111 DSRS work (who) experienced a unique working environment' as set out in the Minister's original 2005 statement. Indeed it invited the belief that the payment was for reasons more to do with possible health related issues.

5.30 Considered another way, what were the unique working environment characteristics that were common to a DSRS worker, and say a fire fighter or boiler attendant? It is difficult to see any connection that could be related to the Minister's 2005 statement.

14 Dr I Gardner, *Transcript*, 21 July 2008, p. 17.

15 Mr S Grzeskowiak, *Transcript*, 21 July 2008, p. 19.

- 5.31 It is possible that the diverse duties included in the criteria and which contributed to these concerns and confusion were a result of decisions to cast the net as wide and as generously as possible and to be inclusive, at least in respect of work undertaken in the formal DSRS programs, although not for others in the F-111 fuel tank maintenance community.
- 5.32 In fact, the inclusion of 'pick and patch' duties in the eligibility requirements and reference to 1973, well before any formal DSRS program commenced led many employed in Squadrons 1, 6 and 482 who performed 'pick and patch' activities to believe they would be eligible for the scheme. A careful reading of the criteria shows this was not the case. The criteria states:
- 'A person who spent at least 60 cumulative working days carrying out Sealant Rework (Pick and Patch) during the period 1973 - 2000 while **attached to an F-111 deseal/reseal section**'. [emphasis added].¹⁶
- 5.33 The first formal DSRS program began in 1977, thus having the start date of 1973 added to the confusion as the tiered payments were only for those in the four formal programs. Subsequently, many squadron personnel, upon seeing this date and its association to the words 'pick and patch' believed that they were eligible for the payment, even though it stated 'while attached to an F-111 deseal/reseal section'. Many were astonished at their subsequent rejection.
- 5.34 The details of the development of the ex-gratia system and the factors that led to the final wording of the criteria are unclear. The reference to 'pick and patch' in the criteria was intended to apply to only that work in a formal DSRS program. This is in spite of the clear understanding that this term was widely used to describe repair work undertaken in the squadrons from 1973.
- It has also been argued that squadron 'pick and patch' work was meant to be included in the criteria. That is a view held by some in the F-111 repair community.
- 5.35 In any event, it is clear that the Tier definition has been a source of much confusion and anger for those who undertook 'pick and patch' activities within the squadrons.

16 Department of Veterans' Affairs, *Definition of a deseal/reseal participant*, viewed 17 May 2009 at http://www.dva.gov.au/f111_lump_sum.htm.

5.36 The eligibility requirements were poorly worded and announced at the same time as the SHOAMP which was confusing to many. Again, given the inclusion of others who had never worked inside an F-111 fuel tank, and the general presentation of the scheme at the time, it is understandable that so many have misinterpreted the official intent of the scheme. Understandably, the restriction of the scheme to only the 'pick and patch' work done in the formal DSRS program has been a source of many complaints.

5.37 In evidence to the Committee, DVA confirmed that:

There was a description in tier 1 that used the term 'pick and patch'. There is also a generic description that people use to describe those who were outside the formal programs, particularly those who were in Squadrons 482, 1 and 6, as involved in pick and patch activities. I guess that that group of pick and patch workers are the ones who are concerned about whether further benefits should be extended to them.¹⁷

5.38 The misunderstandings and confusion is understood within Defence. The Deputy Chief of Air Force agreed that the ex-gratia scheme had led to disappointment:

The ex-gratia payment scheme led to disillusionment and disappointment for many. The scheme was designed to recognise adverse working conditions, not health outcomes. While the scheme acknowledged the working conditions of deseal-reseal workers, it led to payments being made to many people who were not sick and, hopefully, will remain unaffected by their work on F111 aircraft. At the same time, other personnel involved in F111 fuel tank repair who did not receive the ex gratia payment have become seriously ill, possibly as a result of exposure to the same or similar chemicals involved in the deseal-reseal process.¹⁸

5.39 The Vietnam Veteran's Federation, Queensland Branch, also makes the point that the ex-gratia scheme was widely regarded as inadequate with unrealistic barriers to its accessibility for aircraft maintenance workers:

Not only do they need to meet restrictive date boundaries but stringent job descriptions to gain entry into any one of the tiers. Again there is a clear perception of interference in

17 Mr E Killesteyn, *Transcript*, 19 September 2008, p. 60.

18 Air Vice-Marshal Brown, *Transcript*, 19 September 2008, p. 39.

entitlement. Under the Tiers created by the Ex gratia Payments severity of the disability is ignored in favour of the job apparently done. While it is agreed that the Ex gratia payment was not compensation in its pure form; to argue it is not a type of compensation is fruitless. It would not have been offered if it were not to make payment for a disadvantage suffered because of a functional deficiency.¹⁹

- 5.40 It is customary for veteran's compensation to be linked to adverse health determinations. The very fact that this payment had no such formal basis, notwithstanding its link to the SHOAMP study has been a factor in the subsequent problems.

Quantum

- 5.41 Many in the F-111 maintenance community had raised expectations following comments made by the Chief of Air Force [at the time] at a meeting in Amberley. Mr Tony Brady notes the heightened expectations about the ex-gratia payment:

We, as a group, were told by Angus Houston [CAF at the time], that the ex-gratia payment was approved and that the amount was being discussed, He then went on to inform us "not to go out and buy a new house over Christmas, but that the amount was 'substantial and life-changing', and we would need to seek financial advice to ensure it was properly invested to secure our futures", This was then reinforced by the provision of funds to go towards financial advice for members receiving the ex-gratia payment.²⁰

- 5.42 It is also the case that the DSRS Support Group Inc advised their members to obtain financial advice, indicating a certain level of expectation that a substantial sum was involved.²¹
- 5.43 In explanation of this particular matter, the Department of Defence, in evidence to the Committee stated:

...in December 2004 ... the CDF went to Amberley to explain what the government decision had been. It was a private and closed meeting. People who were there were there only by invitation. During the meeting people started to ask questions

19 Vietnam Veteran's Federation, Queensland Branch, *Submission* No. 51, p. 5.

20 Mr T Brady, *Submission* No. 73, p.3.

21 Mr D Sayer, Attachment to *Submission* No. 82, p.6.

about when they could expect the payment and how much, and people started to speculate on the amount. There were some pretty wild guesses as to what it might be.

At the time the CDF said, 'Before you make any decisions about what you are going to do with whatever it is that you get, get some financial advice.' His motives, from memory, were to dampen down speculation and no more. People drew an inference from that that the amount was going to be quite substantial. The advice was followed up soon after by the support group which put out a sheet of advice that said, amongst other things, 'Without knowing the amount of money, get some financial advice as to what you are going to do.'²²

5.44 In evidence to the Committee, Mr Malcolm Wheat, on behalf of the Vietnam Veterans Federation, Queensland Branch, stated:

Regardless of the intention of the ex gratia scheme, it has been a source of distress for many airmen. We all acknowledge that. The principle that it is not compensation is well accepted now. However, this then does not mean that the structure of the scheme should not be reflective of sound compensation and repatriation principles. Moreover, the scheme is deficient in that no account has been given to the social, family and future work functions of those involved. If the payment is for poor working conditions, what of the broader effect of working in such conditions? Even though the scheme may have been based on the best intentions, it was ill considered in failing to properly address the real effects of poor working conditions and encompass all who had experienced the dangerous working environment.²³

5.45 The Vietnam Veteran's Federation demonstrated a wider view linking the ex-gratia payment to compensation:

Whether the amounts offered as sorry money are adequate can only be measured against what the Nation would view as fair and equitable. Given the type of payment, the use of the payment and the tangible feeling of regret to be conveyed by such a payment we can only conclude that the amounts offered and the system used for assessment and access was

22 Wing Commander W Sanders, *Transcript*, 19 September 2008, p. 62.

23 Mr M Wheat, *Transcript*, 29 July 2008, p. 50.

poorly constructed and falls well short of an acceptable offer of recompense...It is not our intention to state a figure but to reinforce the belief of the Airmen that the offer was inadequate and for those suffering terminal and long term conditions, an insult.²⁴

5.46 For example, Mr Andrew Morrell states:

In relation to the lump sum payment received under the ex gratia scheme I feel totally undervalued as a person. I was a 19 year old kid when employed in DSRS and I performed my work as I was ordered to. To later learn that people in positions of influence had knowledge that this work was harmful and neglected to rectify this situation is infuriating. To think that a payment of \$40,000 will nullify, or even sooth some of the pain caused from DSRS, is pathetic on behalf of the Australian Government.²⁵

5.47 When asked what he thought the ex gratia scheme was for, Mr Ian Fraser, President of the F-111 DSRS Support Group Inc replied:

I saw it as an attempt at an apology to the people who had been forced to work under those conditions....I really did not understand why this ex gratia payment came out. Maybe it was an effort to try and do something, but it was certainly underdone.²⁶

The claims process

5.48 In order to access the ex-gratia payment, former DSRS participants were required to submit a claim form, known as the 'Claim for Lump Sum Payment by an F-111 Deseal/Reseal Participant'.²⁷ This form was to be lodged with DVA, where the assessment process took place.

5.49 DVA told the Committee that in addition to a DVA delegate who determined and authorised claims for payment:

...an F-111 Lump Sum Payment Team was established comprising Air Force Officers:

- well versed in researching service records;

24 Vietnam Veteran's Federation, Queensland Branch, *Submission* No. 51, p. 5.

25 Mr A Morrell, *Submission* No. 57, p.1.

26 Mr I Fraser, *Transcript*, 28 July 2008, p. 11.

27 Department of Veterans' Affairs, *Claim for Lump Sum Payment by an F-111 Deseal/Reseal Participant*, <http://www.dva.gov.au/Clientforms/Documents/D9021.pdf>

- with extensive DSRS engineering backgrounds who provided technical advice on claims;
- with extensive personnel management experience who prepared recommendations for the Delegate based on the Air Force records and technical advice.²⁸

5.50 As part of the process, claimants were asked to attach any supporting documentation that they felt relevant to their claim. The claims team also had access to Defence records from which to verify claims.

5.51 Mr Stephen Adams details the extent of proof of involvement required and details the frustration typically felt by those who were unable to meet the requirements:

When the inquiries began I registered with the F-111 Deseal /Reseal Health Care Scheme and in December 2002 I received a letter...stating that my involvement with the Deseal/Reseal team had been confirmed. On the 10 Oct 2005 I submitted a Claim for Lump Sum Payment by an F-111 Deseal/Reseal Participant...giving all the information I had at the time. I satisfied the criteria for a Tier 2 participant as laid down in the Definition of a Deseal/Reseal Participant for the purposes of the Lump Sum Payment Scheme,...

I received a letter...on 31 Oct 2005 from DVA stating that my claim was being examined further and to supply more information such as records of training and employment, course certificates and pay records indicating confined space allowance etc. None of what they asked for was available, eg; Record of Training and Employment (RTE) were not introduced until 1984, there was no such thing as confined space entry courses or allowance in 1980 etc. I rang the 1800 number given for clarification and was told that I would have to come up with something. I asked if a Statutory Declaration from a work associate would suffice and was told no. I then sent a letter...trying to include everything that my memory would allow. On the 12 Sep 06 I received a letter rejecting my claim...stating that my duties did not satisfy the definition of an F-111 Deseal/Reseal participant as I did not participate in one of the four specified Deseal/Reseal Programs. You can imagine how this made me feel. The letter also stated that there was no formal mechanism for an internal review of the

28 Department of Veteran's Affairs, *Submission* No. 89, p. 22

decision and my only option was to supply more info or contact the Commonwealth Ombudsman.²⁹

5.52 Not surprisingly, Mr Adams' concluded:

I believe that the overall handling and administration of the ex gratia payments was inappropriate and certainly not transparent for participants or their families. The onus was put onto participants to prove their involvement when this proof should have already existed within the Department of Defence. The sort of proof that was asked for was totally unrealistic and mostly not available to members. A lot of the things asked for to substantiate claims did not even exist in the first and second Deseal programs. My feeling is that these claims were handled by a department that was uncaring to participants and completely out of touch with military and workplace procedures of the era. It seems that it was all too convenient to reject claims by stating that no records exist.³⁰

5.53 The DSRS Support Group Inc, detailed the series of policy decisions resulting in changed criteria for making health care claims.³¹ The DSRS Support Group Inc also refers to the effects on claimants of the delays to their claims during changes to the programs:

The Department of Veteran's Affairs held over member's claims for compensation until the finalisation of the SHOAMP Health Study, then the Cancer and Mortality Study, then the Government response to the SHOAMP Health Study, then the release of the Ex-Gratia Lump Sum Payment criteria. Claims which had been submitted in 2001 were not processed until late 2006.³²

5.54 Many submissions echo the feelings of anger and frustration that the denial of claims made to DVA engendered in claimants. Mr Gerard Murray, a Non-Destructive Technician at 3AD, told the Committee:

That is the thing that has hurt me and many others the most – the feeling that I was being treated as a liar by the Department of Veterans' Affairs. Despite knowing that I more than met the criteria to be assessed as a tier 1 participant, I was assessed by the Department of Veterans' Affairs as tier 3.

29 Mr S Adams, *Submission* No. 53, pp. 1-2.

30 Mr S Adams, *Submission* No. 53, p. 3.

31 F-111 Deseal/Reseal Support Group Inc, *Submission* No. 91, pp. 8-9.

32 F-111 Deseal/Reseal Support Group Inc, *Submission* No. 91, p. 11.

According to the definitions provided by the Department of Veterans' Affairs, this meant that they had agreed with me that, yes, I was there involved in the program, but somehow they had come to the conclusion that I was not there for the amount of time that I said I was. Considering the amount of evidence I have provided to them to the contrary, I would like to know how they came to this decision.³³

- 5.55 As a result of their experiences as health care claimants, some became hostile and suspicious in their relationship with DVA. Mr William Knilands told the Committee:

To me, DVA tries to negate what you are saying in your claim. I suppose I could put it this way: it seems to me that they are paying compensation out of their own pockets and they want to try and lower the amount that they pay. I have had nothing but hassles with them.³⁴

Evidentiary requirements

- 5.56 DVA outlined to the Committee the three categories of evidence that were used in the assessment of ex-gratia claims. The first of these is sourced from official RAAF records and includes such things as:

...records including Medical records, individual service and personnel records, the Airman's Trade Progress Sheet, Air Force Record of Training and Employment, and Defence pay records.³⁵

- 5.57 The evidence in the second category included such things as statements made to the BOI, evidence submitted as part of compensation claims or from the application processes for inclusion in IHCS or SHCS.

- 5.58 The third category of evidence is:

...usually in the form of personal photographs, copies of their service records which may have been missing from their individual personnel records or a Statutory Declaration

33 Mr G Murray, *Transcript*, 28 July 2008, p. 20.

34 Mr W Knilands, *Transcript*, 28 July 2008, p.46. Similar experiences were documented in other submissions, including Submissions 13, 11, 17, 22, 43, 63, 64, & 85.

35 Department of Veterans' Affairs, *Submission* No. 89, p. 22.

where the Declaration is supported by primary or secondary evidence.³⁶

- 5.59 Some contributors to the Inquiry were concerned that their claims were rejected in part due to the submission of statutory declarations rather than evidence that could not be located. DVA advised the Committee that:

When assessing a claim, the Delegate must firstly assess the evidence from all sources and must be reasonably sure that the evidence supports their declaration. In the absence of any primary or secondary evidence, a statutory declaration may be used...The decision to grant an entitlement to an ex gratia lump sum payment is made on the balance of probabilities. Therefore, where the information outlined in a Statutory Declaration conflicts with evidence from either a primary or secondary source, the Delegate will give less weight to the Statutory Declaration in reaching a decision.³⁷

- 5.60 One example that was provided was of an individual who:

...ran the section, and we have photographs of him being in the section. I filled out a statutory declaration. He put in for the ex gratia payment and it was denied because there were no records in the Department of Defence of his ever having worked there....There were stacks of people on the base knew he was there, but there is no documented evidence that he worked there so he is being denied that payment. I find that very unreal or unjust. He was there for seven months before he moved up to the main hangar and took over up there.³⁸

- 5.61 One submission stated:

The only alternative standard of proof that I had was to get a Statutory Declaration from a work associate. I was told by DVA when asked to supply more information that this was not acceptable proof.³⁹

- 5.62 On this issue of rejection DVA responded:

There were some difficulties with the use of statutory declarations. We understand that individuals always expect

36 Department of Veterans' Affairs, *Submission* No. 89, p. 22.

37 Department of Veterans' Affairs, *Submission* No. 89, p. 23.

38 Mr R Townsend, *Transcript*, 19 September 2008, p. 14.

39 Mr S Adams, *Submission* No. 32, p. 4.

to be taken at their word, even at a distance of 30 years. Unfortunately, in a small proportion of cases, the available records or supporting evidence did not support the declaration.⁴⁰

5.63 Further, in relation to statutory declarations, DVA advised:

where the information outlined in a Statutory Declaration conflicts with evidence from either a primary or secondary source, the Delegate will give less weight to the Statutory Declaration in reaching a decision. The fact that the Statutory Declaration is given less weight in these circumstances is not a reflection of the veracity of the participant's perception regarding the duties that he undertook. Rather, it is the only piece of evidence to support their ability to meet the definition against overwhelming contemporaneous evidence to the contrary....Staff in the F-111 Lump Sum Payment Team who are involved in the processing of claims go to considerable lengths to support applications that lack all the necessary documentation. Where any of the evidence for service is misplaced or unavailable then the claimant can make a statutory declaration stating the full particulars and history of the service, what documents (if any) there were and how they were lost, and the names and addresses of any witnesses who can corroborate the service record. Where a statutory declaration corroborates a claim, it must provide details of how and why the person making the declaration is able to confirm the claimant's service. This process has resulted in a number of claims being settled in the claimant's favour.

Defence records

5.64 One of the difficulties encountered by many claimants was the lack of maintenance records held in relation the F-111 maintenance workers. Defence advised that after an exhaustive search by RAAF, including interviews with former 1 and 6 Squadron personnel, aircraft maintenance records prior to 1992 were unavailable. Defence also advised:

The documentation of the four formal Deseal/Reseal Programs was recorded on documents EE500, EE505, EE506, EE508 and Program task Worksheets. This documentation

40 Mr E Killesteyn, *Transcript*, 21 July 2008, p. 40.

was returned to the operating squadrons (Numbers 1, 6 and 482 Squadrons) at the completion of individual aircraft servicing.⁴¹

5.65 And that:

Prior to 2002, aircraft maintenance documentation was only retained for five years in accordance with Defence Instruction (Air Force) AAP 7001.006-1 Section 1 Chapter 2 Paragraph 212. The documentation was then destroyed in accordance with Australian Archive Disposal Authority 569. This policy was changed in 2002, to require all aircraft maintenance documentation to be retained for the life of the aircraft.⁴²

5.66 However:

...despite the RAAF-wide policy in effect in 1992, the Chief Engineer at RAAF Base Amberley had become concerned over the level of maintenance records held regarding the F-111 Fleet. During his tenure, records were not destroyed in accordance with existing RAAF policy....Consequently, as has been established, the complete maintenance documentation for F-111 aircraft only exists from 1992 until now.⁴³

5.67 The Committee has pursued the nature of available documents with some effort. The best available advice and perusal of indicative EE500 series documents confirms that while much of the documentation exists post 1992, the names recorded on that documentation were primarily for certification purposes. The EE500 series documents do not record the individual names of those who worked on a particular aircraft.

5.68 Group Captain Lawson informed the Committee that:

The package of information I have provided you outlines, firstly, how the maintenance policy for the aircraft is defined and then documented. Part of that process identifies the particular trade groups with responsibility for particular scheduled or unscheduled maintenance tasks. So that gives you an outline of the trade group responsibility basis of the types of skill sets and the groups of individuals that would be

41 Department of Defence, *Submission No. 83*, p. 15.

42 Department of Defence, *Submission No. 83*, p. 16.

43 Department of Defence, *Submission No. 83*, p.16.

drawn from within the squadron to perform those particular tasks as they arose.

The EE500 documentation and the planned servicing schedules are the primary means by which performance of maintenance is recorded. Those documents capture the trade group and the details of the individuals who are certified for the performance of the task or for the progressive inspection, if it is a task that is required to be checked by a trade supervisor, and then a third level, if that is necessary, mainly for critical flight issues. There is a third level inspection. The EE505 is the form within those work packages that captures those details of the individuals and their specimen signatures so that when you are reviewing the performance of maintenance at the end of the servicing, for example, you can correlate the initials in the relevant certification area with the individual that actually certified the performance or the checking of that maintenance.⁴⁴

5.69 In describing how the system of EE500 series documentation worked, Group Captain Lawson stated:

What happens is the maintenance control section will raise a work package. That work package will consist of an EE505. You will not get the time that it is issued, but that is the form where the guys who get involved in the maintenance certification process will enter their details and sign off. There will be some EE508s, which are in there for the purpose they may document some unscheduled maintenance task that needs to be performed. While the aircraft is offline for routine servicing, there might be modification, for example, that needs to be incorporated as well. That will be captured on the EE508 so that the technicians who will be performing the servicing know that they have that additional task to perform. Behind that will be all of the planned servicing schedule sheets for the routine servicing itself. So that work package is issued. As the guys step through and perform the maintenance, they certify and sign it off. When all the tasks are complete, that completed work package goes back to the maintenance control section, which double-checks that no tasks have been missed. The EE500, which is the pack that sits

44 Group Captain R Lawson, Transcript, 17 April 2009, p. 29.

with the aircraft, will then be signed off as the R4 servicing having been completed.⁴⁵

5.70 Many contributors to the Inquiry have commented on the fact that individual aircraft maintenance records, which would have proven their involvement in the formal DSRS programs, are unavailable. This issue has been given extensive coverage in the BOI and its history will not be documented here in detail. One submission stated:

Claimants were required to produce documented evidence of their involvement in the scheme. Yet, and this runs as a thread throughout the dealings with claimants, they were prejudiced by RAAF's failure itself to maintain adequate records in the first instance.⁴⁶

5.71 Other evidence that could have been used in the substantiation of claims is the Record of Training and Employment (RTE). This recorded trade proficiency, training and general experience and in 1981 replaced the Airmen's Trade Progress Sheet (form PP179 introduced in 1967). A key feature of a person's RTE is that it outlined the types of training undertaken and included such things as confined spaces entry training and F-111 Familiarisation (Ground Handling) Course. In most cases both of these courses would have been completed prior to tank entry. RTEs are given to personnel upon discharge. Given the years since discharge for many, with probable relocations over time, it is unclear how many former F-111 fuel tank workers still have this document. It is likely many RTEs have been lost or discarded over the years since discharge.

5.72 One submission said:

Members RTE's did not document that they worked in the Pick and Patch program at the time because it was considered to be 'Major Servicing & Major Rectifications' at 482 Sqn by our senior engineering staff and RTE's were documented accordingly with the above phrase.⁴⁷

5.73 Consequently, whilst the existence of an RTE entry relevant to F-111 fuel tank repair would confirm participation in 'pick and patch', the absence of such an entry does not necessarily prove the individual did not perform those tasks.

45 Group Captain R Lawson, Transcript, 17 April 2009, p. 30.

46 Herbertgeer Lawyers, *Submission* No. 115, p. 10.

47 Mr B Victor, *Submission* No. 113, p. 2.

- 5.74 The Committee explored whether the Airman's Evaluation Report (AER) might assist in identifying those involved in F-111 fuel tank repairs. This document is an annual assessment of an individual's performance and generally indicates the main tasks and responsibilities that the individual undertook during the reporting period. It is therefore of little assistance.
- 5.75 The Committee understands that further evidence may be found in the Personal History File of all ADF members, which is a permanent file kept by Air Force Headquarters. This contains all documentation which is career relevant including postings, training, issues, annual appraisals, requests and special reports. Even this however does not contain the day-to-day records of any maintenance tasks performed.
- 5.76 The absence of key records has frustrated and hampered the work of the Committee as it has everyone who has sought to investigate this issue.

Time-based criteria

- 5.77 Tiers 1 and 2 of the ex-gratia payment have criteria linked to the amount of time that a worker would have spent inside a fuel tank while employed in the formal programs. Tier 1 recipients were required to have spent at least 30 cumulative days inside F-111 fuel tanks during the first or second and DSRS programs. Tier 2 recipients were required to have spent 10-29 days working in these programs or the 'Wings' program. The 'days' requirement for those doing 'pick and patch' activities within the formal program was much longer.
- 5.78 DVA commented on the exposure component of ex-gratia payment saying :

The ex gratia payment was a payment to recognise the unique working conditions that the core deseal-reseal people experienced – that is, the people who were involved in the formal deseal-reseal programs. As a consequence of taking that line, you need to make some choice about the varying degrees to which people were subjected to that unique working experience.⁴⁸

- 5.79 One submission said:

Exposure is specific and we see this as an inequitable distribution of the ex-gratia payments. It currently depends

48 Mr E Killesteyn, *Transcript*, 19 September 2008, p. 69.

entirely on how many cumulative days a person worked in the Deseal/Reseal section as to whether they are entitled to \$40,000 or \$10,000. It has no quantitative and/or qualitative dosages nor within any time frame.⁴⁹

5.80 Another submission noted:

I could not provide the proof required for the 30 consecutive days so I then assumed that I would be entitled to the lesser amount of \$10,000. This was not the case... Many of us were affected the same was [sic] as those that worked in the rag hanger, the same foul smell...and the mental trauma of being stuck in a confined contaminated space with the same toxic chemicals and residual aircraft fuel.⁵⁰

5.81 Many submissions to the Inquiry reflect the belief that the Tier eligibility criteria centred on levels of exposure to toxic chemicals as a component of adverse working conditions. As detailed in this report, that widespread misunderstanding was not unreasonable in the circumstances, however it was an incorrect view.

Deceased estates

5.82 Over the years of the F-111 maintenance work and subsequent debate, there have been a number of deaths in the DSRS community, some of which occurred prior to the lump sum and health initiative package announced in 2005 and the BOI in 2001. While Defence has not been able to ascertain the number of deaths which have occurred amongst former DSRS personnel, it is widely accepted that there have been several.

5.83 DVA told the Committee:

The Government decided to grant payments to the estate of an individual who died and would have otherwise satisfied the Tier 1 or Tier 2 definition of an F-111 DSRS participant... It is usual for Government policies to put in place limitations on claims. Therefore, in order to provide the most generous date of effect, estates were paid where the DSRS participant died on or after 8 September 2001 on the basis that this was the first time that the ADF had publicly admitted possible liability.⁵¹

49 The Returned & Services League of Australia, *Submission* No. 70, p. 4.

50 Mr C Cust, *Submission* No. 25, p. 1.

51 Department of Veterans' Affairs, *Submission* No. 89, p. 33.

- 5.84 The Committee recognises that the RAAF went to significant efforts to determine the number of deaths that have occurred of former personnel in DSRS programs. It did so as part of the identification process of former DSRS staff for the BOI. The Committee appreciates that Defence recognised that this date has precluded some families of some former DSRS personnel accessing the ex-gratia payment.
- 5.85 Defence said:
- The committee should also give consideration to removing at least one of the constraints on the previous ex gratia scheme. I refer to the criteria of the scheme that prevented spouses of personnel who were involved in deseal-reseal who died prior to 8 September 2001 from making a claim.⁵²
- 5.86 Furthermore, DVA suggests that the ‘...number of cases that this will affect is not yet known but it is likely to be small’.⁵³
- 5.87 The Committee agrees that this should be pursued.

Exposure to chemicals

- 5.88 A running theme in the evidence presented to the Committee was that of the exposure to chemicals by various groups of personnel and the extent to which these chemicals were handled. Many of the submissions related to the chemical SR51, however, this chemical was not used in the ‘pick and patch’ activities conducted by the squadrons and was used only in the first DSRS program.

SR51

- 5.89 A number of people engaged in the second or third DSRS program and/or ‘pick and patch’ work believe they were exposed to SR51.
- 5.90 The Committee notes that not only did those involved in squadron-based ‘pick and patch’ not use SR51, nor did those in the formal DSRS program after 1982. It follows that exposure to SR51 cannot be regarded as a requirement for access to the ex-gratia payment scheme.

52 Air Vice-Marshal Brown, *Transcript*, 19 September 2008, p. 39.

53 Department of Defence and Department of Veterans’ Affairs – Joint *Supplementary Submission*, No. 121, p. 11.

5.91 The Committee heard from a number of witnesses that chemical exposure was endured by many trades associated with F-111 fuel tank repairs. One submission noted that RAAF pilots refused to transport SR51 due to the fact that:

...the toxic stench and emissions given off by the drums and the possibility of the pilots and crew being overwhelmed by the stench.⁵⁴

5.92 Truck drivers, warehouse staff and others handled drums with SR51 from truck to pallet and disposed of residue from the empty drums by burning in an open pit. Routine transportation of the drums of chemical also provided opportunities for exposure to the contents:

I had to climb onto the truck and go down and check. So many of the drums had either burst at the seals or were bursting around the outside of the welding, and I would come out with it all over me.⁵⁵

5.93 In support of this evidence another storeman and supplier Mr Peter Flannery told the Committee:

Other sections that were indirectly involved in the SR51 program, apart from the base squadron service personnel, included the surface finishers, which are the aircraft painters; the transport drivers; the general hands in the barrack section; NDI personnel; firemen; photographers; aircraft electricians; all the airframies as well; and the aircraft metalworkers. As I say, we are not here to take anything away from the desealers-resealers themselves. We just wanted to put our case to you from the point of view of the equipos.⁵⁶

5.94 As noted in evidence from storemen and suppliers Mr Moon and Mr Flannery, disposal of the DSRS chemicals exposed firemen to the residues. Mr Corrie who served as a firefighter at Amberley through 1983 to 1985, told the Committee:

My first handling of the chemicals came in mid-1983 where we were asked at the time to dispose of close to 200 drums. The drums were to be burnt out and prepared for disposal. ...We could not cut off the lids with our cutting equipment because of the flammability, so we actually chiselled the lids

54 Mr P Moon, *Submission* No. 14, p. 2.

55 Mr P Moon, *Transcript*, 28 July 2008, p. 34.

56 Mr P Flannery, *Transcript*, 28 July 2008, p. 36.

off the drums, placed them in our fire pit and burnt them out.⁵⁷

- 5.95 As well as direct physical contact with the drums, the open pit incineration disposal method allowed direct inhalation of fumes:

We had no gloves, so we had the fumes all over our hands. We used to go back to fire section and it would be in our boots because we would have to climb into the fire pit to pull the drums out. This did not go on for one or two days; this went on for at least five or six weeks. It took us that long to get rid of the drums. I found out later on that once these different chemicals have been burnt, the toxicity is a lot higher through the smoke and we were breathing all of that in.⁵⁸

- 5.96 Incinerator operators were another group exposed to chemicals. Mr Ray Webster told the Committee:

It was a two-chamber incinerator. It was lit up on dieselene. You would try to get enough heat into the top chamber to allow the SR51 chemical to be put into it. You kept the bottom chamber running a lot of the time because the residue of SR51 that we were getting had a lot of moisture in it and when you looked in the top chamber you could see the bright sparks taking part that could have been water in amongst the chemical.⁵⁹

- 5.97 Drums of chemical to be disposed of required manhandling by the incinerator operator. In answer to a Committee question about the state of the drums, Mr Webster replied:

Most of them were reasonable. A few had cracks in the top. When you took them off a pallet and dropped them on the ground to get them closer to the overhead tank it could spray out. It did spray out. You were manhandling it. You were tipping it up on its side, rolling it, popping it down and as soon as it hit the ground it popped up.⁶⁰

- 5.98 The Committee accepts that many individuals who worked in the first formal program and in associated areas were exposed to SR51 on a

57 Mr G Corrie, *Transcript*, 29 July 2008, p. 37.

58 Mr G Corrie, *Transcript*, 29 July 2008, p. 37.

59 Mr R Webster, *Transcript*, 29 July 2008, p. 47.

60 Mr R Webster, *Transcript*, 29 July 2008, p. 47.

regular basis. What is clear from the evidence presented however is that SR51 was used only during this program and not in any other formal DSRS program nor in the squadron 'pick and patch' activities. It is acknowledged that the chemical had an extremely unpleasant odour and was difficult to remove from the skin of those who used it. Chapter 3 of this report highlights a number of studies in relation to the chemical, all of which are unable to conclude that SR51 caused any detrimental health effects.

Health schemes and studies

Issues with SHOAMP

Methodological concerns

- 5.99 The Committee sought information on aspects of the SHOAMP methodology. The prospect that the control group at Richmond may have contained participants who were involved in 'pick and patch' activities was discussed.
- 5.100 The second concern was in the finding from the *Second Study of Mortality and Cancer Incidence* that a 40-50% increase in the rates of cancer in the DSRS group was not statistically significant.
- 5.101 Finally, the matter of a time-based criteria, especially in relation to the ex-gratia payment Tier definitions was examined. The Committee sought scientific clarification of this matter. In addition to Defence and DVA, the Committee also took evidence from the TUNRA researchers in relation to these and other matters concerning the study.

Potential contamination of Control group

- 5.102 The Committee asked whether it was possible that someone in either control group – in Richmond or in Amberley – could have previously been involved in the work of 1, 6 and 482 Squadrons.
- 5.103 DVA confirmed that:
- You could be in a control group that was from Richmond. One control group was the non-technical group from RAAF Base Amberley, so that should not have had any pick and patchers. But the second control group, which was from

RAAF Base Richmond, were technical people, so there is the potential that they could have been doing a range of technical trades, including having done some pick and patching.⁶¹

5.104 Further, one of the TUNRA researchers who appeared before the Committee confirmed that:

To some extent, we wanted the Richmond control group to be doing similar work because we wanted to see whether there was actually some difference about F111 deseal-reseal over and above the general maintenance work that was done on aircraft. That was why we chose the Richmond control group. We wanted them to be representative of general aircraft maintenance people because the hypothesis was that there was something over and above that which was affecting the F111 deseal-resealers.⁶²

5.105 In terms of the participants involved in the study in the 'exposed' group, the researchers told the Committee that:

We thought that if we restricted ourselves to the formal programs, we would have the highest exposure and the best chance of identifying that significant effect. However, we always recognised that there were many common factors between the formal programs and pick and patch, particularly program 2.⁶³

5.106 The fact that the Richmond control group were not screened to ensure they had not previously been involved in F-111 fuel tank repair work casts some doubt on the usefulness of the study and is a concern to the Committee. In relation to the *Third Study on Mortality and Cancer Incidence*, Mrs Roediger told the Committee:

There were 277 people who had been at both Amberley and Richmond, but whether any of those people had been involved in the deseal-reseal at an earlier posting, we do not have that information...⁶⁴

... Anybody who had been identified as part of the deseal-reseal group was removed from the other cohorts. But whether there were people who were not identified, they are not identified.

61 Ms C Spiers, *Transcript*, 21 July 2008, p. 83.

62 Dr A Brown, *Transcript*, 19 September 2008, p. 24.

63 Dr A Brown, *Transcript*, 19 September 2008, p. 29.

64 Mrs J Roediger, *Transcript*, 17 April 2009, p. 4.

5.107 Mrs Rodiger also told the Committee:

One of the cohorts was selected from non-technical personnel, so they should not have had any sorts of exposures. So that is your control group for separating out people who have not had any of those sorts of exposures. We were not asked to look at other sorts of risks internal to different types of technical activities, so we have not done a breakdown of all of those other sorts of risks. But by taking a non-technical group, we have had a group that did not have any of those sorts of exposures. We have also had a group that has had the more general level of exposures. The reason for choosing those two cohorts is that the question was whether this particular deseal-reseal was a cause of higher levels of mortality and of cancer and morbidity generally. In order to determine that, we have to separate effects due to being an RAAF person, which comes from both of those cohorts, but also separate out effects that come from being a technical person outside of being in the deseal-reseal program, which has a range of other exposures. So that is why the two cohorts were chosen in that way. It is specifically to look at that deseal-reseal group.⁶⁵

Statistical significance of findings

5.108 As a part of the SHOAMP series of studies, several mortality and cancer incidence studies were conducted. The second of these studies found that:

The analysis indicates a higher than expected incidence of cancer in the F-111 DSRS group, with an increase of around 40-50% in the incidence of cancer relative to both the Amberley and Richmond comparison groups.... The elevation in risk appears to be specific to DSRS activities and not general aircraft maintenance, in that the DSRS exposed had a higher incidence than both comparison groups.⁶⁶

5.109 The researchers outlined factors that would indicate levels of significance:

The first one was that we saw exactly the same result in the two control groups. Whether we compared Richmond to the

65 Mrs J Roediger, *Transcript*, 17 April 2009, p. 6

66 SHOAMP Report, Volume 5, p. xiii.

Amberley controls, the result was the same. If there were other things influencing the rate of cancer, they would normally have been different between the two control groups and you would not see the same result with both. The fact that they were both the same told us that this is a strong result....⁶⁷

The second thing was that we know that we missed some cancer deaths. The cancer incidence in the exposed group was about 70 per cent less than in the Australian population. Whereas in the two control groups it was 30 per cent less. So that told us we missed some cancer deaths. Because of this problem with records, **there were people who had died of cancer before the study began** [emphasis added] and, despite asking and looking at pictures and squadron photographs, we just could not identify them. So, in fact, that 40 per cent to 50 per cent increase is conservative. If we factor in those extra cancer deaths that are clearly missing then the number would be even higher...⁶⁸

The third thing is that you have to be careful that people who are exposed to something like deseal-reseal, which is a pretty nasty experience, might present to a doctor and be diagnosed with cancer earlier. So we are seeing a shift in diagnosis rather than a true increase in diagnosis.⁶⁹

The last one is something called 'volunteer bias'. Another thing that you worry about in a study like this is that because people are self-reporting, perhaps only the ones who are sick or who have had adverse events are coming forward. What we can do is some modelling to see how many healthy people would have had to fail to participate to bias a result that far away from zero, if you will. We identified about 900 people who were exposed. You would have to postulate that there were at least another 800 people who were perfectly well and who had worked who did not come forward to participate in the study to nullify this, which is quite a lot.⁷⁰

67 Professor J Attia, *Transcript*, 19 September 2008, p. 26.

68 Professor J Attia, *Transcript*, 19 September 2008, p. 26.

69 Professor J Attia, *Transcript*, 19 September 2008, p. 26.

70 Professor J Attia, *Transcript*, 19 September 2008, p. 26.

- 5.110 The TUNRA researchers advised the Committee that a study of cancer prevalence against the general Australian population had also been undertaken. It was found that:

The cancer rates in the exposed group were higher than in the Australian population...The control group had about a 30 per cent less cancer mortality rate and about the same cancer rate as the general Australian population.⁷¹

- 5.111 In relation to the *Third Study on Mortality and Cancer Incidence*, the Committee was interested in the finding that a 44 percent increase in the overall rate of cancer incidence was not statistically significant.

- 5.112 The Committee asked exactly how many individuals this study was based on, along with the exact number of cancer incidences. Mrs Roediger replied:

There were 873 people in the exposed group. Forty people have cancer. There were 16 deaths over that long period back to 1980, or 13 deaths back to the shorter period to 1999.⁷²

- 5.113 The Committee asked how close to statistically significant this result was. The researcher's responded:

Very close. And closer with this study than it was with the previous study, even though it is about the same height above the general population. If we saw the same sorts of proportions occur in another few years, that would make it statistically significant. That would be enough to make it statistically significant.⁷³

- 5.114 When pressed on this point, the researcher's responded that it could be potentially 'two or three'⁷⁴ additional occurrences of cancer to make this particular finding statistically significant.

- 5.115 Mrs Roediger said:

When you have extremely small numbers, when you take the 21 million of the Australian population and you pluck out an extremely small number, the chances are that the extremely small number will not reflect the overall characteristics of the population.⁷⁵

71 Professor J Attia, *Transcript*, 19 September 2008, p. 25.

72 Mrs J Roediger, *Transcript*, 17 April 2009, p. 8.

73 Mrs J Roediger, *Transcript*, 17 April 2009, p. 7.

74 Mrs J Roediger, *Transcript*, 17 April 2009, p. 8.

75 Mrs J Roediger, *Transcript*, 17 April 2009, p. 7.

5.116 The absence of a statistically significant finding has been used to argue those involved in the F-111 work can not establish a sufficient causal link between their work and cancer. Yet had there been just two or three more cases of cancer it would be statistically significant.

5.117 The researchers informed the Committee that:

We do not know that all the exposed people have been identified. In particular, the main area of uncertainty is in that period of people who had died prior to the actual cohort selection. We believe that extensive work was done. The Department of Defence made every effort using networks, photographs and records to identify as many people as they possibly could. The fact that the numbers show that there were potentially some people who died earlier than that points to the fact that this did ultimately depend upon people having been approached confirming this or somebody confirming it on their behalf... There may well have been people who died prior to 1999 who were not counted in the numbers. The numbers suggest that is possibly the case.⁷⁶

5.118 In light of this evidence it seems reasonable to assume that had these additional deaths been documented it is likely that the researchers would have made a statistically significant finding in relation to some of their results. As some have noted, "The dead people didn't volunteer for the study".

Measures of exposure

5.119 The Committee was interested in the element of exposure time and how this came to be included in the ex-gratia Tier definitions. While acknowledging that the TUNRA researchers did not hold a policy-related view, the Committee was nonetheless interested in a scientific explanation of the factors that led to its consideration.

5.120 The TUNRA researchers suggested that exposure could be measured to include 'time' along with:

...this combination of organic solvents that they used, the fact that they were in 40-degree heat, it was very volatile and they were in confined spaces. That is really the exposure; it is that combination of solvents, heat and closed spaces.⁷⁷

76 Mrs J Roediger, *Transcript*, 17 April 2009, p.9.

77 Professor J Attia, *Transcript*, 19 September 2008, p. 31.

- 5.121 The researchers also commented on the 'pick and patch' element, stating that:

...it is likely that the pick and patch people were not exposed to the same intensity. They may have done it in the same sort of environment, going in there and doing that, but they may have done a day here, two days, and other things. That probably reduces their exposure to some extent and lessens their probability of getting some effect because of that. .. I think time or intensity is always an element of exposure.⁷⁸

- 5.122 The researchers also classified participants according to their potential level of exposure:

We classified people who worked less than nine months on the program, 10 to 29 months and then 30 or more months. As we went across those three groups we saw a gradual increase in the risk.⁷⁹

- 5.123 Taken together, these findings and views may be important in the overall context of the health and compensation issues for these F-111 aircraft maintenance workers. However as there is no link to health as a criteria for the ex-gratia payment, this information does not have a direct bearing on that matter.

- 5.124 The inclusion of time thresholds for access to the ex-gratia payment also contributed to a perception that exposure to potentially harmful substances was relevant. In fact, the special health care provisions announced as part of the ex gratia payment package are available to Tier 3 personnel. There is no time threshold required for acceptance into Tier 3.

General concerns and questions

- 5.125 The researchers informed the Committee that the exposed group included about 20 private contractors and 22 women in the 900-strong group. Due to the size of the sample, neither of these groups were examined separately, although women were excluded from the cancer and mortality study.⁸⁰

78 Dr A.Brown, *Transcript*, 19 September 2008, p. 32.

79 Professor J Attia, *Transcript*, 19 September 2008, p. 33.

80 Dr A Brown, *Transcript*, 19 September 2008, p. 30.

- 5.126 Specifically in respect of children and families, the Committee asked the researchers whether any studies had been conducted. The researchers responded:

We did try to look at some issues about fertility and birth defects in the general health and medical study. We did not look at any of the other broader health things about mental health or a whole range of other symptoms. One of the questions that was raised for us at the beginning was that there may have been some issues with reproductive health and fertility. We made an attempt. We asked those people fronting for the medical examination and that part of that study to give a questionnaire to their partners. We tried to get information about pregnancies that may have occurred, difficulty getting pregnant, fertility specialist consultations and those things. We were unable to show any differences between them and the partners of the control group. The women were actually included in that particular bit.⁸¹

- 5.127 Professor Frank Bowling also noted:

the studies in which I have been involved have been only in adult airmen. I have not reviewed the literature from the point of view of children. The reason for that is that the mitochondria are not inherited from their fathers. The mitochondria are inherited from their mothers. In mitochondrial disease, it is especially difficult for fathers to pass on the disease to a child.⁸²

- 5.128 It should be noted that the Committee, in Chapter 3, examined a study on the psychological functioning of the spouses and partners of former F-111 DSRS personnel.

Eligibility for health care schemes

Rationale for 20 September 2005 cut-off for SHCS

- 5.129 Chapter 3 outlines the fact that the eligibility for the SHCS would be restricted to those who had registered for the scheme by 20 September 2005. DVA advised the Committee of the rationale behind the 20 September 2005 cut-off date for entry into the SHCS:

81 Dr A Brown, *Transcript*, 19 September 2008, p. 30.

82 Professor F Bowling, *Transcript*, 16 April 2009, p. 9.

The Government decided on the cut-off date of 20 September 2005 for the following reasons:

- since 2001, a significant campaign was undertaken by DVA and the Air Force to ensure people were notified of the SHCS. Extensive communication on the health care scheme was provided by DVA via more than 1300 letters to known F-111 DSRS participants as well as those who had demonstrated an interest in the F-111 issue. This mailout was supplemented by advertisements in Air Force newsletters. As such, it was considered that after four years of advertising the SHCS, all relevant personnel had been notified of the Scheme;
- in light of the fact that the SHCS had been designed to support participants whilst awaiting the outcome of their compensation claim and once all avenues of merit based appeal had been exhausted, it was envisaged that the SHCS would come to an end in June 2008; and
- a media release was issued in August 2005 to notify of these changes and letters were sent to current SHCS Group 1 participants advising them to submit compensation claims before 20 September 2005 if they wished to receive treatment through the SHCS.⁸³

5.130 DVA advised the Committee that if this date was removed, there would be an additional 917 personnel who may have access to services as Group 1 participants.⁸⁴

5.131 The Committee acknowledges the efforts of both DVA and the RAAF in promoting the SHCS amongst former DSRS workers.

5.132 Whilst there may be some administrative simplicity in the existence of this cut-off date, it fails to recognise the latent nature of exposure to harmful environments, nor the individual circumstances of those who may otherwise be eligible for support. The existence of this arbitrary cut-off date has been a cause of concern to some involved in the F-111 fuel tank repair and their family members. The Committee believes that this cut-off date should be removed.

83 Department of Veterans' Affairs, *Submission* No. 89, p. 15.

84 Department of Veterans' Affairs, *Submission* No. 199, p. 17.

Government Agencies - Perceptions and Performance

5.133 The Department of Defence drew attention to the role of the Committee in reviewing the government response to the DSRS issue 'through the prism of the experiences of personnel affected'. From the Department of Defence's own perspective:

the most important issue is the delivery of equitable health care outcomes for personnel who have suffered illness or injury as a result of chemical exposure through Deseal/Reseal or related activities. Access to health care services should be a primary consideration in an overall response that also provides fair and appropriate compensation outcomes.⁸⁵

5.134 The Committee shares this view. Providing for the health care of those who have suffered as a result of service must be the primary obligation in matters of this kind.

5.135 Defence also noted that:

The principal means relied upon to provide compensation and long term healthcare for those affected **remains the existing safety net of military compensation and veterans' entitlements legislation** [emphasis added].⁸⁶

5.136 Chapter 4 of this report sets out details on these schemes and their impact on the F-111 community.

5.137 That said, Defence acknowledged the existence of significant hurdles within the existing military compensation and veteran's entitlement legislation to resolving concerns of F-111 claimants:

The health care and compensation issues stemming from the F-111 fuel tank maintenance programs present unique problems in achieving equitable outcomes. Deseal/Reseal workers who were military or Commonwealth employees have recourse to differing Commonwealth statutory health care and compensation regimes whereas contractors may only be able seek redress through State Work cover legislation or at common law.⁸⁷

85 Department of Defence, *Submission No. 83*, p. 2.

86 Department of Defence, *Submission No. 83*, p. 2.

87 Department of Defence, *Submission No. 83*, p. 2.

- 5.138 Defence advised that the administration of the IHCS program was provided by DVA, 'but Defence funded the scheme and Defence vetted applicants'.⁸⁸ Similar division of responsibilities and funding were in place for the SHCS.⁸⁹
- 5.139 DVA was also the agency responsible for administering the claims of DSRS personnel. Many submissions to the Committee draw attention to the difficulties involved in making claims to DVA under the existing legislative framework. They expressed frustration at the standards of documentary evidence which needed to be met in making claims and the delays in responses received.
- 5.140 For example, one submission draws attention to the disjointed nature of the shared response to healthcare between Defence and DVA:

As I was still part of the Air Force the differences, and transitional arrangements, between the interim health scheme and the final Health Care scheme didn't really affect me until now. While I was still serving, the Air Force paid all the medical expenses but refused to do the range of health benefits provided under the Health Care scheme and I was not entitled to access these treatments as a serving member of the defence force... The timing of cessation of access to the Health Care scheme is an absolute joke, there is a huge difference in age of the people who were involved in the reseal/deseal debacle. Our health has been affected in so many ways and will continue to deteriorate and cause further health problems as the mixture of dangerously toxic chemicals that we were all exposed to doing our jobs will affect us for the rest of our lives.⁹⁰

- 5.141 Mr Barry Gray told the Inquiry:

I stopped seeking compensation for my other illnesses/conditions from DVA as I was not recognized as working in F111 fuel tanks and did not comply with the SOP's even though the SHOAMP documents did state the causal link. Also the trauma I have been through to get to this

88 Department of Defence, *Submission* No. 83, p.16. This arrangement was detailed in a Letter of Agreement signed by Chief of Air Force and Secretary of DVA in November 2001.

89 Department of Defence, *Submission* No 83, p. 16. The arrangements were detailed in a Letter of Agreement signed by Chief of Air Force and Secretary of DVA in November 2005.

90 (Name Withheld), *Submission* No. 80, p. 5.

point was exacerbating my depression illness. Being rejected by DVA time after time is very depressing and frustrating. My personal thought is that there will be a lot of ducking and weaving between Agencies over this and we will still not receive recognition.⁹¹

- 5.142 The Commonwealth Ombudsman handled 87 complaints about DVA arising from the DSRS compensation scheme.⁹² With respect to the matter of DVAs requirement for evidential support and its use of such evidence in the process of deciding claims, the Ombudsman found:

In general, DVA was willing to accept a range of evidence. However there was no **guidance or policy on how information was to be gathered to support or deny claims** [emphasis added]. In particular, the scope of the assessor's responsibility to gather evidence to support or deny a claim was not clear.

Once evidence had been gathered, we found that there were some inconsistencies in the way that evidence was weighed. **DVA did not have guidelines for decision-makers in how evidence would be treated. There were also no explicit records in individual cases of how the evidence was considered** [emphasis added].

Where the claim was straightforward, the treatment of evidence did not become an issue. Where the evidence was unusual, and the matter was not straightforward, it was not always clear to our office what weight was placed upon different pieces of evidence, and how the evidence lead to the eventual conclusion. On reviewing the documents, it was not always clear that the decision makers knew what standard to apply in deciding whether the evidence was sufficient.⁹³

- 5.143 The Ombudsman's criticisms of DVA handling of these matters is cause for deep concern. The Ombudsman's comments are an indictment of the administration of these matters by DVA.
- 5.144 There has clearly been a serious failure of normal process in the administration of the special arrangements applying to F-111 fuel tank repair workers. This greatly compounded the problems created by the lack of clarity in the original Ministerial release. Indeed, that

91 Mr B Gray, *Supplementary Submission* No. 5a, p. 6.

92 Commonwealth Ombudsman, *Submission* No. 50, p. 1.

93 Commonwealth Ombudsman, *Submission* No. 50, p. 2.

lack of clarity may itself have contributed to some problems within DVA.

5.145 The frustration experienced by many claimants who provided evidence to the Committee can be traced to this failure at any level within Government or the Department, to provide adequate guidance on the implementation of the special F-111 arrangements.

5.146 One of the more worrying examples of administrative process which confronted the Committee was of a former ATECH from 482 Squadron. His wife told the Committee that in rejecting his claim for an ex-gratia payment:

They [DVA representatives] came to the hospital to let us know how we had gone with the ex gratia payment claim. They decided that it would be best to come to the hospital while David was on suicide watch to tell us personally. They informed us that we needed to have the psych staff present because they thought it would be needed when they told us that he was not successful.⁹⁴

5.147 DVA responded stating:

A decision had been made that the individual was not eligible. Given his mental state, the question arose as to the best means of informing this individual. We took advice from the treating psychiatrist as well as the Veterans and Veterans Family Counselling Service about the best way in which to advise the individual. The advice that was given to us was that this should not be done simply by sending a letter; it should be done in an environment in which his reaction to the news, which was bad news, could be monitored and managed... On the basis of that advice we did so while he was in hospital under the treatment of the psychiatrist. Before that action was taken the decision was carefully considered by senior levels within the department.⁹⁵

5.148 That DVA could give this matter such detailed consideration and conclude that the 'bad news' was best delivered whilst the veteran was on suicide watch displays a worrying lack of judgement. To ensure medical support was on hand is admirable. However, the decision to deliver the rejection whilst the veteran was on suicide watch, clearly at a dangerous low point, is hard to comprehend.

94 Mrs A Grady, *Transcript*, 29 July 2008, p. 22.

95 Mr E Killesteyn, *Transcript*, 19 September 2008, p. 66.

Reported Health and Other Issues

Introduction

- 6.1 This Chapter examines a range of issues relating to the personal circumstances of those in both the formal DSRS and squadron programs, particularly, the reported health issues.
- 6.2 Evidence before the Committee points to a wide range of health concerns amongst the F-111 aircraft maintenance community. Many attribute the causality of their symptoms to the use of chemicals within the formal DSRS programs and ad-hoc squadron maintenance. As outlined in previous Chapters, many also feel aggrieved at the way their health complaints have been handled by DVA.

Conditions suffered

- 6.3 Nearly all of the submissions received from affected individuals report health effects of chemical exposure associated with fuel tank leak repair work on F-111s. The range of conditions suffered include skin conditions, bowel problems, cancers, digestive tract disorders, sexual health problems, asthma, allergies, eye problems and a range of mental disorders. Although several of those making submissions suffered a similar range of health conditions, or had single conditions in common, the range of conditions mentioned in the evidence remains extremely wide.

6.4 As a first response to reported problems, the IHCS allowed for the admission of any personnel who had conditions that may have been linked to their work on the formal DSRS programs or ad-hoc maintenance squadron activities relating to the F-111. Following the SHOAMP study, this group was transferred to the SHCS at which point new entries to the scheme were limited to those in the formal DSRS programs. The scope of conditions covered by the SHCS was also reduced.

6.5 Concurrently, eligibility for the ex-gratia payment, which was also limited primarily to those in the formal DSRS programs, also provided participants with access to s7(2) of SRCA. Access to this section provided compensation for the conditions covered by the scheme.

6.6 Dr Gardner told the Committee:

the background to that list arose from the early days of the interim health care scheme, where a group of doctors, of which I was one, looked at the list of conditions claimed and looked at the literature in the occupational medicine to say, 'Is there any evidence that would support looking at these cases further?' In those days, the test was whether it could conceivably be linked. You might notice from that list, from memory, that cardiovascular is not there. In the earliest version, cardiovascular was there because there were links in some of the literature, but it was not supported by the SHOAMP study. So this list was refined from an earlier version based on the outcome of the SHOAMP study.¹

6.7 The Department of Veterans' Affairs stated:

The following diseases are accepted as meeting the requirements of subsection 7(2) of the SRCA and ss31 of the *Commonwealth Government Employees (C(CGE)) Act 1971* for all ADF personnel involved in the DSRS programs at RAAF Base Amberley with a Tier 1, 2 or 3 employment classification:

- Skin Rashes and associated systemic conditions (Dysplastic naevus, Eczema/dermatitis);
- Neurological conditions (Multiple sclerosis, Parkinson's disease, Peripheral neuropathy, Spinal muscular atrophy, Erectile dysfunction, Cauda equine syndrome, Neurogenic

1 Dr I Gardner, *Transcript*, 17 April 2008, p. 55.

bladder, Non-alcoholic toxic encephalopathy, Acquired colour vision deficiency);

- Mental disorder and personality changes (Depression, Sleep disorders with neurological basis, Bi-polar affective disorder, Vertigo, Memory loss, Anxiety, Panic disorders (including Agoraphobia with panic disorder), Impaired cognition;
- All malignant neoplasms and myeloproliferative disorders
- Liver disease (Liver disease and pancreatic disease, excluding diabetes);
- Gastrointestinal problems (Irritable bowel disorder, Ulcerative colitis/Crohn's disease, Diverticulitis, Bowel polyps); and
- Immunological disorders - Mixed connective tissue disease, SLE (systemic lupus erythematosus), Sarcoidosis.²

6.8 This list of conditions corresponds closely to those complained of in the majority of submissions to the Inquiry from affected service personnel and their families. Many of those who made submissions worked only within the maintenance squadrons and were therefore not eligible for treatment under this scheme.

6.9 In evidence, Dr Gardner made particular reference to the fact that those affected may suffer from a complexity of conditions which could be difficult to diagnose, or directly attribute to a particular cause:

I would just like to point out that, where people claim multiple, apparently strange, symptoms, including musculoskeletal, neuropsychiatric, erectile dysfunction – all sorts of things – this is exceptionally difficult to assess. If they have a named disease, preferably with an ICD code number attached to it, then it is relatively easy. Where you have these vague symptoms complexes, it does not fit neatly into any of the statements of principles, it does not fit neatly under any of the three compensation schemes and, even more difficultly – and our lawyer raised the issue of mediation et cetera – there are very few occupational health toxicology medical experts in this country who have any real understanding of workplace chemical exposures and health outcomes. That is an ongoing issue.³

2 Department of Veterans' Affairs, *Submission* No. 119, pp. 5-6.

3 Dr I Gardner, *Transcript*, 21 July 2008, p. 31.

- 6.10 Dr Gardner's comments accurately pin point one of the principal difficulties encountered by the F-111 workers. Put simply, the various compensation schemes are not structured to respond to symptoms, no matter how widespread or well documented, in the absence of an ICD code number.

Latency of onset of health conditions

- 6.11 Another important characteristic of chemical exposure injury drawn to the attention of the Committee is the latency of conditions. Sometimes conditions take years to appear as distinct symptoms, adding to the complexities of identification and the establishment of causal links. Mr Malcolm Wheat, on behalf of the Queensland Branch of the Vietnam Veterans Federation, told the Committee:

There seems to be a unilateral agreement that the effects of the deseal-reseal chemicals may have a varying period of effect, and that was borne out on the first day of the inquiry. The science has also been stated as to be uncertain; that no evidence is available as to when the onset of a disease might happen as a result of the exposure. ⁴

- 6.12 A witness, Mr Greg Craven, told the Committee that his respiratory problems were not evident when he worked as a non-destructive technician, however soon afterwards:

In 1975... I saw the doctor on several occasions. I had occasions where I would just faint to the ground and hit whatever was on the way down. They gave that pretty short shrift and said that I had low blood pressure, something I had never had in my life. I never ever had asthma, and I have full-blown asthma now. I have attempted suicide. Some people who know me here knew me as a pretty fun-loving sort of guy. I am now totally the opposite. I sit in the dark at home at night just watching television, just crying. When my wife comes out and asks, 'What's wrong with you?' I say, 'I don't know.' ⁵

- 6.13 Mr Barry Gray told the Committee that although he had a blood test in 1986 on discharge after 20 years in the Air Force which showed no problems:

4 Mr MJ Wheat, *Transcript*, 29 July 2008, p. 50.

5 Mr GS Craven, *Transcript*, 28 July 2008, pp. 24-5.

But here you are' – and it was then 2005 – 'you've had another blood test as part of the deseal-reseal and, coincidentally you've got leukaemia, so it should have shown up before then. It is evidence that has been thrown around before that it is going to take some time for all this to come out. DVA people, the delegates in there, do not understand that; they really do not. ⁶

- 6.14 The Department of Defence acknowledged that latent effects were an ongoing possibility:

Some Deseal/Reseal personnel may not be experiencing health affects now but they may experience chemical exposure related health problems in the future. The overall response should take account of these latent health issues in a similar manner to the Commonwealth approach to potential asbestos exposure. Personnel who have been exposed to potentially toxic chemicals should be provided with the means to be registered and identified now so that access to health care for anticipated health conditions is simplified and guaranteed. ⁷

Health effects on families and support provided

- 6.15 A common theme in the evidence received by the Committee was the concern about flow-on effects on their families. These concerns were not simply confined to the immediate difficulties involved with treating their own identified illnesses or those of their partners, but to the possible intergenerational effects of their chemical exposure.⁸
- 6.16 The range of health problems identified by those providing evidence to the Committee included a large number of debilitating conditions referred to above, including skin disorders, asthmas, cancers and sexual function disorders. In addition, those affected often suffer debilitating mental disorders which affect cognitive ability (including memory loss) which impair their ability to engage socially and which have severe adverse consequences for family relationships.

⁶ Mr B Gray, *Transcript*, 28 July 2008, pp. 42-3.

⁷ Department of Defence, *Submission No. 83* p. 2.

⁸ The following Submissions draw attention to the concerns of affected individuals to the health issues suffered by their families included stress related issues suffered by spouses and carers: Nos 3, 11, 13, 17, 22, 26, 35, 36, 37, 40, 49, 52, 63, 74, 77, 85, 86, 88, 91, 108, 110, 114, 116.

- 6.17 The evidence of some of the witnesses who appeared before the Committee is a compelling illustration of the complexity of conditions suffered by those affected and the associated effects on their lives:

I retired after 20 years and 17 days as a corporal, so my promotion prospects were destroyed. I have suffered lung damage. I tend to be a bit self-destructive in my employment. The effects that I had in the Air Force with insubordination and generally mood issues have continued through into my civilian employment. It is a struggle from day to day dealing with that. With the lung issue, it takes away a lot of the enjoyment of life that I participate in. I am an avid landscape photographer and I enjoy bushwalking to do that, and it limits the scope of what I can do. I still try to do it, but it takes me weeks to recover from a good bushwalk. My family life is a juggle of indifference, I suppose is the best way to put it. I have an inability to go to public events with my children because there are too many people. I just cannot go anywhere where I am enclosed or in crowds. ⁹

- 6.18 Mr Stan Lawler, an Airframe Fitter, noted the physical and mental issues affecting him and his family:

I do not think I would have been the only one going through some pretty bad mood swings and things like that. To give you an example, I would go home and my wife would know to leave me alone because I would be out in the yard for two hours hosing. That was my way. I was quite explosive at anything. The slightest thing would set me off. ...I have some skin issues, psychological problems, some gut problems, and my daughter has had medical problems. ¹⁰

- 6.19 Speaking on behalf of the DSRS Support Group Inc, Mr Ian Fraser told the Committee in answer to a question about affects on families:

If you talk to any families, we all have children that have strange illnesses. My daughter is one of those. Other people have children that have problems. For us, it is anecdotal. We talk to each other and, as a cohort, we all seem to have problem children, which is why, when SHOAMP was being planned, we were very keen for a study into our children. ¹¹

9 Mr I Fraser, *Transcript*, 28 July 2008, p. 9.

10 Mr S Lawler, *Transcript*, 29 July 2008, p. 10.

11 Mr I Fraser, *Transcript*, 28 July 2008, p. 10.

- 6.20 Mrs Amanda Grady told the Committee about the direct effects on the family of the complex of conditions affecting her husband:

With the physical problems with the lungs, bowel, rashes and eyes there is something that can be done relatively easily about it, but it is the mood swings and the depression that the families have to live with that is very difficult.¹²

- 6.21 The DSRS Support Group Inc summarised members' fears for their families:

The family is responsible for the financial burden of these diseases and illnesses. Most are also suffering major psychological conditions... There is much anecdotal evidence of the effects on the next generation; however the required study of children has not been undertaken. This has remained a major concern for the F-111 Aircraft Maintenance Workers and their partners who are fearful for the future of their children and believe a study would prove statistically significant increases in birth defects and the ability of the next generation to conceive and carry live births.¹³

- 6.22 The Department of Defence also noted that 'the effects on families from chemicals associated with the DSRS processes remains an issue. There was no evidence found during the Health Study of any association between DSRS exposure and miscarriage or still births, but the original concerns could not be addressed during SHOAMP.'¹⁴

- 6.23 Speaking on behalf of the many family members and particularly spouses involved with the F-111 DSRS Support Group Inc, Mrs Kathleen Henry told the Committee:

We definitely need group counselling. Part of the difficulty of this for the first 10 years has been isolation – that one of the spouses has been handling it at home in isolation. We need to be provided with the ability to meet together and have psychologists who are versed on partners of veterans – the Vietnam veterans is a possibility – to assist us with coping skills for dealing with the effects on these members. We need to have respite. We desperately need to have respite. It is not forthcoming. That should also be a group respite as well so that we can just get away even for two to three days. We can

12 Mrs A Grady, *Transcript*, 29 July 2008, p. 21.

13 F-111 Reseal/Deseal Support Group Inc, *Submission* No. 91, p. 12.

14 Department of Defence, *Submission* No. 83, p. 12.

get away from our environment and have our partners cared for in that time so that we can just get some time out and get some space to recharge our batteries. I think they are the first two priorities.¹⁵

- 6.24 Chapter 3 noted the findings of the *Study into Psychological Functioning of Partners and Spouses of Deseal/Reseal Personnel*. The study confirmed the impact on family members' health and wellbeing. The evidence cited here is a reflection of the individual human face of those problems.

Access to health care initiatives

- 6.25 The overwhelming weight of submissions to the Inquiry points to the confusion and frustration felt by claimants when trying to pursue some relief for their plight from the existing healthcare schemes. This section considers some of these matters.

- 6.26 As has been discussed earlier in this report, perceptions of unfairness began to arise on the part of individual claimants and groups of claimants when different eligibility criteria were applied to access the compensation schemes and the ex-gratia payment.

- 6.27 The effects on claimants of the accumulation of programs with different criteria for access are clear from evidence to the Inquiry. For example, Mr Ian Fraser, of the DSRS Support Group Inc told the Committee:

It was identified that the 482 Squadron workers during the BOI had met a lot of the criteria and had spent as much time in the tanks as many of the core desealers had; again, evidence from the BOI supporting their position and all of a sudden after the BOI, their positions have been reversed and they have been excluded.¹⁶

- 6.28 In response from an observation from the Chair that 'there are different laws relating to the RAAF personnel because of the time frames we are talking about', Mr Fraser replied:

I think we all need to be considered equally, and that is the problem that we face today. Military people are treated across different acts differently. Civilians are treated differently.

15 Mrs K Henry, *Transcript*, 17 April 2009, p. 21.

16 Mr I Fraser, *Transcript*, 28 July 2008, p. 4.

What we need is a response that treats everybody with equity.¹⁷

6.29 Mr Fraser described the effects on claimants of the perceived difficulties of accessing health care under the programs:

One of the real issues that we face is health. Many of our members find themselves rejected for claims, so they currently have no access to health care. I am on a white card, but we all suffer from conditions that get no name. We all feel ill. We all suffer daily from things that nobody can diagnose. They have the healthcare scheme but it tends to be a mire to navigate.¹⁸

6.30 Another witness, Mrs Amanda Grady told the Committee about the effects on claimants of what was seen as a complicated process to access the available compensation:

What I wanted was to fix the way they are handling the claims with the men, because the way they have handled it and what they have made the men go through has only made the problems worse. That is what needs to be fixed. When we put the claim in for the ex gratia payment we would follow it up: 'Yes, that is fine. Very good. Not a problem.' Then months down the track there is a problem. There was a constant seesawing. People in that state of mind are being given ...hope and then having it taken away.¹⁹

6.31 Defence also pointed out two issues identified in the range of evidence to the Committee and discussed in the above paragraphs. These were:

- Members of the Support Group commented on the reduced number of conditions covered by the SHOAMP Health Care Scheme and the cut off date for registration of new claimants.
- The families of affected personnel were not eligible for health care under either scheme, except for counselling covering genetic issues and broader lifestyle issues.²⁰

6.32 The Defence Force Welfare Association in its evidence to the Committee summed up the nature of the difficulties experienced by

17 Mr I Fraser, *Transcript*, 28 July 2008, p. 11.

18 Mr I Fraser, *Transcript*, 28 July 2008, p. 11

19 Mrs A Grady, *Transcript*, 29 July, pp. 23-4

20 Department of Defence, *Submission* No. 83, p. 4

claimants, taking into account the complexity of symptoms, the latency in their appearance and the existing legislative and administrative frameworks restricting access to health care:

No single person can prove that any particular activity involving the workplace environment has led to any particular health problem if it has taken years for the problem to become manifest. As this case shows... the Department of Defence and the Department of Veterans' Affairs later demanded proof that in effect the disabilities can only be caused by a particular work environment. With such small samples of workers in many Defence work environments and with the long latency before effects can become manifest, proof beyond reasonable doubt will seldom be possible. While this legalistic approach to occupational health and safety issues may save the Commonwealth money in the short term, the long-term effect is to increase the cost to the community and also increase the suspicions of ADF personnel about Defence being a good employer that is prepared to stand by its employees.²¹

Financial issues affecting families

6.33 In addition to the many health effects documented in submissions to the Inquiry, there is much evidence in relation to the financial losses experienced by families supporting members through long term debilitating illnesses. The Defence Force Welfare Association made this point:

In addition to pain, suffering, quality of life and impact on family members and structure, those affected by this program will also face for the rest of their lives, a significant decrease in their earning capacity and career prospects. Underemployment is a punishment in itself and information available to DFWA makes clear that this outcome exists in varying degrees for all affected by the exposure to toxic chemicals that is at the centre of F-11 and C-130 maintenance programs.²²

6.34 The Defence Force Welfare Association also notes that the financial losses are cumulative:

21 Col DK Jamison, *Transcript*, 19 September 2008, p 17.

22 Defence Welfare Association National Office, *Submission* No. 62, p. 3.

It is also reasonable to suggest on the basis of anecdotal evidence, that: the vast majority of affected families have already experienced income losses well in excess of the maximum compensation that has been paid. Moreover, these losses will continue throughout their working lives, with associated impact on superannuation incomes on retirement.²³

- 6.35 Some of the 'anecdotal evidence' of the kind referred to by the Defence Force Welfare Association is also to be found in submissions from affected individuals. For example, one submission states:

As of 30 June 2008 I'm still on an invalid pension waiting for a decision on what level of pension I will be paid from the Department of Defence. My conditions haven't changed since my medical discharge and I still require treatment for these conditions. The invalid pension doesn't even come close to paying for the cost of these treatments while I'm waiting for compensation for some of the conditions. I went from earning close to sixty thousand to only nineteen thousand and will soon have to sell my house as I don't have enough money for mortgage repayments while waiting for a medical pension.²⁴

- 6.36 Another submission notes that after acquiring a number of health disorders, 'On retirement at my own request after twenty years service I could not handle full time employment. It was an unbelievably difficult task to just keep working part time for the next ten years.'²⁵ Other submissions also draw attention to the financial problems as a consequence of the inability to undertake regular work experienced by former DSRS personnel and their families.²⁶

- 6.37 Another states that:

Since leaving the RAAF I have had four jobs and a total of approximately two and a half years out of work. I feel socially isolated. I have been on a Disability Pension for almost two years and the prospects of my return to work are very poor. My ability to realise my full potential regarding earnings and promotions has been reduced by at least 25 years.²⁷

23 Defence Welfare Association, National Office, *Submission* No. 62, p. 4.

24 (Name Withheld), *Submission* No. 80, p. 5.

25 Mr D Sayer, *Submission* No. 82, p. 2.

26 (Name Withheld), *Submission* No. 58 and Mr Kenneth Carey, *Submission* No. 59.

27 Mr D Treleven, *Submission* No. 3, p. 2.

- 6.38 The Committee understands the financial burden which this issue has placed on many families. Statutory schemes may provide relief for some. Some may have recourse to civil law actions where negligence can be established. Many will not. Some who may wish to pursue civil law remedies may not have the means to.

Litigation

- 6.39 This section discusses the progress of current common law claims against the Commonwealth.

Class Actions

- 6.40 There were two separate class actions launched on behalf of DSRS claimants commenced in the Queensland Supreme Court in December 2006 and January 2007. Because of a number of significant flaws, and the fact that they would be time barred under the operation of the *Limitation of Actions Act 1974 (Qld)*, the claims were struck out after negotiations with the Commonwealth, on 11 April 2007.²⁸
- 6.41 With respect to the failed class actions lodged with the Queensland Supreme Court noted above, Defence told the Committee:

There were two class actions attempted, and they failed... Part of the problem in bringing them all together is the sheer scale of this exercise. You have four programs traversing over 30 years. The details of work undertaken and exposure to chemicals over that time are different. It is very hard to clearly and neatly define a class into which people will group, and that was one of the reasons the two actions that were commenced back in 2006 were discontinued. They were not drafted well enough to actually attract people into the class.²⁹

Common law claims

- 6.42 The Department of Defence provided details of the litigation regarding the DSRS issue to which the Commonwealth is a party:
- There are 31 common law claims seeking damages against the Commonwealth arising out of the F-111 Deseal/Reseal

28 Department of Defence, *Submission* No. 83, p. 13.

29 Mr M Lusewycz, *Transcript*, 21 July 2008, p. 22.

programs. The claims are before the Queensland Supreme Court and commenced between 2002 and 2006.³⁰

6.43 The submission noted that between 1991 and 1993, the second DSRS program 'involved contractor staff from Hawker De Havilland and some RAAF personnel involved in training and contract supervision.'³¹

6.44 The plaintiffs are:

The plaintiffs are either former RAAF members who participated at various times between 1975 and 1999 in the Deseal/Reseal programs, or employees of sub-contractors used by the RAAF for the second program between 1991 and 1993. They are seeking compensation for loss and damage, past and future economic loss and past and future medical expenses.³²

6.45 The submission notes that the two further claims from ex-employees of Hawker de Havilland had been settled by Workcover Queensland. In further evidence to the Committee, Defence noted that in addition to the two claims (above) which had been settled:

We have four current claims by private contractors that we are defending in the Supreme Court of Queensland – six in total. At this stage we have sought information from the solicitors representing them to establish how they wish to proceed.³³

6.46 The Committee wrote to WorkCover Queensland and asked for statistical information in relation to the numbers of claims that have been handled by that organisation on behalf of private contractors. WorkCover Queensland have advised the Committee that they are unable to provide the Committee with this information.³⁴

6.47 Herbertgeer Lawyers, on behalf of clients involved in the DSRS programs between 1977 and 1999, argued that the pursuit of claims through common law actions was never a realistic possibility:

It is submitted that the injured have been let down by a Statutory scheme which is not designed for the nature of

30 Department of Defence, *Submission* No. 83, p. 12.

31 Department of Defence, *Submission* No. 83, p. 10.

32 Department of Defence, *Submission* No. 83, p. 13

33 Mr M Lysewycz, *Transcript*, 19 September 2008, p. 68

34 WorkCover Queensland, *Correspondence*, 3 April 2009.

these claims and that the common law alternative was in reality no alternative.³⁵

- 6.48 Herbertgeer claimed that common law actions were ‘replete with limitation of actions difficulties to a much greater extent than any other type of Civil injury action.’³⁶ Further that the Commonwealth’s Solicitors declined a mediated solution:

The Australian Government Solicitors asserted that they were restrained by Commonwealth legislation and so could not concede limitation and could not negotiate matters. Each and every point on limitation would be, and presumably in many cases has been, taken thereby ensuring that informal negotiating which is part and parcel of any other civil claim was not available in these cases.³⁷

- 6.49 Because the chemical poisonings associated with DSRS claims are ‘a unique form of insidious developing injury’, determining the date for the onset of the limitation period was in many cases impossible.³⁸ In addition, claimants covered by the SRCA, ran the risk of having to abandon claims if they also pursued damages under common law.³⁹

- 6.50 This point requires clarification. If an applicant applies under SRCA and fails, there is no barrier to a subsequent common law action. However, if a common law action fails, it is generally not possible to then apply for the same injury under SRCA.

- 6.51 At the centre of the difficulty was the fact that:

The statutory process simply did not have the flexibility to recognise and then act upon the SHOAMP conclusions. Yet as we have seen above the injuries for which clients have been seeking recompense are consistent with the SHOAMP conclusions. The strictures of the statutory system are such that its design prevents it from accommodating any extra statutory guidance or imperative.⁴⁰

- 6.52 The Department of Defence noted with respect to the common law damages claims, that the matters raised in the Hebertgeer submission had been the subject of careful consideration:
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35 Herbertgeer Lawyers, *Submission* No. 115, p. 1.

36 Herbertgeer Lawyers, *Submission* No. 115, p.5.

37 Herbertgeer Lawyers, *Submission* No. 115, p. 5.

38 Herbertgeer Lawyers, *Submission* No. 115, pp. 5-6.

39 Herbertgeer Lawyers, *Submission* No. 115, p. 6.

40 Herbertgeer Lawyers, *Submission* No. 115, p. 7.

any settlement of the common law claims takes account of the long-term impact on the plaintiffs' statutory entitlements. In each case, careful consideration will be given to obtaining a balance between the general proscription against 'double compensation' and the need to provide for long-term medical treatment for former RAAF members who have been injured in the course of their employment.⁴¹

- 6.53 With respect to progress with the 31 outstanding Common Law damages claims mentioned above at paragraph 6.42, the Department of Defence told the Committee:

What we are doing with them is engaging in a series of negotiations and discussions through their lawyers to try to bring their claims to a position where we can actually assess them. They are pretty broad claims. There is still a lot of supporting material that has to be brought forward for us to be able to assess them, and at this stage we have not even got to the serious stage of trying to put a value on any of those claims. That is quite separate to any entitlement that these people may have under the MCRS or the SRC Act. Those claims they would make to DVA.⁴²

- 6.54 Whilst common law claims are separate from the legislative compensation schemes, any payment from a common law case may create an obligation to repay some of the compensation already paid under MCRS or SRCA. It is not possible to 'double dip'.

- 6.55 Defence outlined for the Committee some of the particular complexities which had been encountered with the cases and which were also alluded to by Herbertgeer:

Problems that we have encountered so far are that some of the claimants' participation in various parts of the program traverses different legislative schemes. Some, for example, were engaged in these schemes pre 1988, which is when the SRC Act started, so it is a straight common-law claim. Others are in the period straight after that, so there may be a limit on the amount that they can recover should they elect to go for a lump sum payment. Some traverse both periods, so that brings an added complication. That is a structural problem in the way in which the pleadings are put forward. Proof of

41 Department of Defence, *Submission* No. 83, p. 14.

42 Mr M Lysewycz, *Transcript*, 21 July 2008, pp. 16-17.

injury and its causal connection back to the program is a real source of concern for us. The claimants are not restricted to former members of the Air Force. They do, in one or two cases, include spouses, so that raises the question of scope of duty of care that is owed beyond the immediate worker into the family.⁴³

- 6.56 Defence explained in evidence to the Committee that with the current 31 cases under litigation they were trying not to repeat the mistakes of the past under the SHOAMP:

part of the reason for seeking to meet lawyers and plaintiffs in an alternative dispute resolution setting is to try to agree on the nature of the medical examinations and who will conduct the medical examination so that both parties can work from a common set of findings and facts. That is a process we are engaged in right now.⁴⁴

- 6.57 Defence told the Committee that the earliest common law action of the 31 currently the subject of litigation had commenced in 2002 and the latest in 2006, no action was as yet advanced to the trial stage.⁴⁵ However Defence hoped that lengthy litigation could be avoided:

Just last month the Attorney-General issued some amendments to the legal services directions that are administered by the Office of Legal Services Coordination. There is exhortation on agencies such as us to avoid litigation. The encouragement is for us to seek alternative means to resolve disputes. This one really cries out for a resolution around a table, not in a court. We would think that if we could not resolve these matters by negotiation we will have failed. We have set ourselves a fairly high hope that we can resolve all of these claims without the need for a formal hearing of any kind.⁴⁶

- 6.58 Mr Lysewycz provided the Committee with an indication of the Defence Department's approach to the proposed mediation:

The approach that we have adopted is a collaborative one. We are not expecting plaintiffs to bear all these costs on their own, and that is part of the reason for reaching out and trying

43 Mr M Lysewycz, *Transcript*, 21 July 2008, p.21.

44 Mr M Lysewycz, *Transcript*, 21 July 2008, p.21.

45 Mr M Lysewycz, *Transcript*, 21 July 2008, p. 23.

46 Mr M Lysewycz, *Transcript*, 21 July 2008, p. 23.

to get people around the table. If we can agree on the nature and identities of experts who are going to examine people, come up with reports and share them, that will be a considerable saving both in time and cost.⁴⁷

6.59 Defence's evidence of a desire on their part to settle bona fide claims through negotiations is at odds with the evidence of Hebertgeer. The Committee is not in a position to reconcile those alternative views.

6.60 The Committee accepts the assurance of Mr Lysewycz that whatever may have been the past situation; Defence now pursues a 'collaborative' approach in dealing with common law claims.

6.61 The Committee enquired about the baseline parameters involving exposure or health outcomes being considered in any proposed mediation. Defence replied:

the common law has a checklist, if you like, that we go through. When we are looking at a claim – put aside liability; assume we have lost or conceded liability – it comes down to assessing the quantum. We would be looking at an amount for pain and suffering past and future and out-of-pocket expenses past and future. Then there would be the broad category of economic loss past and future and calculations of interest on each of those amounts.⁴⁸

6.62 Further, in response to a question about possible settlements where a claim is successful, Defence added:

It is a guess referenced to the threshold amount that one needs to claim to legitimately get into the Queensland Supreme Court. We are assuming that the minimum claimed is \$750,000.⁴⁹ The Department of Defence provided further insights into its approach to the cases currently proceeding:

One of the advantages of approaching the current cases as we are is that we are able to tailor the approach to the individual and to the firm of solicitors representing that individual and come up with a process that is amenable to progressing the claim to a point where we can formally mediate it. Each of them comes from a different point in time, different

47 Mr M Lysewycz, *Transcript*, 21 July 2008, p. 24.

48 Mr M Lysewycz, *Transcript*, 21 July 2008, p. 25.

49 Mr M Lysewycz, *Transcript*, 21 July 2008, p. 26.

employment circumstances and different sets of medical conditions. We are accommodating all that.

We are at the stage where, with the agreement of solicitors representing these claimants, we have six at a stage where we expect to be in a position to start negotiations at the end of November (2008). Basically, it is a paste program. Pre-litigation there is such a degree of exchange of information between parties around the table that we should have sufficient information to evaluate each claim, put a value on it and resolve it. That is emerging to be a fairly standard approach that we are adopting within defence in litigious claims. Currently that draws its inspiration from the Attorney-General's drive to have the Commonwealth appearing less often in courts.⁵⁰

- 6.63 As with any common law claim, ultimately it is a matter for the parties and the court to determine, based on the specific facts of each case under consideration.
- 6.64 For completeness, the Committee did seek information on any similar cases that may have occurred in the USA involving workers undertaking similar duties on their F-111 aircraft.
- 6.65 Neither of two Defence reports – *The Board of Inquiry into the F-111 (fuel tank) Deseal/Reseal and Spray Seal Programs (1977-1999)*⁵¹ or the *Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP)*⁵² examined the issue of litigation.
- 6.66 A search based on Sacramento Air Logistics Center, McClellan AFB, where the USAF and RAAF F-111 underwent DSRS did not identify any litigation. Nor did a search based on relevant unions covering employees there who carried out the DSRS program.
- 6.67 Similarly, examining material relating to El Dorado Chemical Company and to General Dynamics, the manufacturer of the F-111, produced no evidence of litigation.
- 6.68 The dearth of available information may not indicate absence of litigation. However it has not been possible to establish this conclusively because the databases of US courts which can be

50 Mr M Lysewycz, *Transcript*, 19 September 2008, pp. 69 – 70.

51 *F-111 Deseal/Reseal Board of Inquiry*.

52 SHOAMP Report

accessed may not cover all courts; and/or may not extend far enough back in time.

- 6.69 The Committee was advised of some media reports in the USA on these issues. For example a 1988 *New York Times* article announced that the USAF would “hold a conference on health complaints by aerospace workers who handle plastic-based composite materials”.⁵³ This article also mentions that:

Workers at Lockheed Corporation plant in Burbank, Calif., have gone to court with contentions that the composites have caused health problems ranging from headaches to cancer. Results of a health inspection of the plant last month have not been made public. Workers at Boeing plants in the Seattle area have made similar complaints.⁵⁴

- 6.70 It was not possible to definitely identify these cases in searches of US courts. However, the Center for Justice & Democracy reported as follows:⁵⁵

“Skunkworks” Facility. From the 1940s through the 1990s, workers involved in building top-secret military aircraft at Lockheed’s “Skunkworks” facility were exposed to toxic chemicals during the manufacturing process. Employees began to suffer illnesses ranging from cancer and brain damage to rashes and mild congestion, with one-third severely injured or killed. Under the fraud exemption in California’s workers’ compensation laws, 650 victims were able to sue Lockheed and various chemical manufacturers, eventually reaching a \$33 million settlement with Lockheed in 1992. That same year, failure to warn and wrongful death cases were starting to be tried in groups of 15 to 40 plaintiffs, ultimately resulting in five jury verdicts totaling over \$800 million. The Court of Appeals upheld three of the five

53 New York Times (13 November 1988) *Illnesses of Aircraft Workers to be Discussed* viewed 17 May 2008 at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=940DE6DF123FF930A25752C1A96E948260>.

54 New York Times (13 November 1988) *Illnesses of Aircraft Workers to be Discussed* viewed 17 May 2008 at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=940DE6DF123FF930A25752C1A96E948260>.

55 *Center for Justice & Democracy, Environmental Tort Lawsuits: Holding Polluters Accountable Mass Torts and Class Actions* at: http://www.centerjd.org/archives/issues-facts/stories/MB_envirocases.php

judgments, sending two back for retrial because of judicial error. Horvitz, Ellis and Stephanie Rae Williams, "Unpublished State Toxic Tort Ruling Offers Valuable Guidance," *Legal Backgrounder*, October 6, 2000; "The Big Numbers of 1998," *National Law Journal*, February 22, 1999; "Winning Justice for Poisoned Workers," *Trial Lawyers Doing Public Justice* 1996."⁵⁶

56 *Trial Lawyers Doing Public Justice* deals with cases brought by lawyer Thomas V Girardi against chemical manufacturers for providing inadequate warnings about toxicity of chemicals *Public Justice*, Fall 1996, at http://www.girardikeese.com/assets/docs/girardi_1996-12-20-ladailyjournal.pdf

Pathways to Fairness

Introduction

- 7.1 This report has canvassed a range of issues in relation to the workers and families of those engaged in or associated with F-111 fuel tank repair work. This has focussed on workers in the formal DSRS program and those in the maintenance squadrons - 1, 6 and 482. The preceding Chapters of this report provide a summary of the key issues canvassed.
- 7.2 These issues cover more than 30 years, involving different work procedures, different compensation laws and a changing knowledge of relevant OH&S considerations. All of this has been accompanied by inadequate or non-existent records and inadequate or inconclusive medical research. It is little wonder this matter has been in the 'too difficult basket' for years.
- 7.3 This Chapter looks at changes to systems and schemes to provide fair and reasonable support for disadvantaged workers. Some are comparatively simple and straight forward, such as improved counselling for affected families. Others require a fresh approach to modify existing schemes.
- 7.4 The Committee is most concerned to ensure that personnel whose health has been adversely affected as a result of their work on F-111 fuel leak repairs are fully cared for.
- 7.5 It is clear from submissions to the Inquiry that many are also looking to receive lump sum payments as financial compensation for injuries and/or pain and suffering. The existing VEA and SRCA act provide a level of compensation based on established causal links between defence work

and illness or injury suffered. This Chapter includes recommendations to extend access to those payments.

- 7.6 Separate to any compensation available under the VEA and SRCA, some people are also seeking common law damages. These are matters for the parties and must be based on the specific facts of each case. This Chapter includes a recommendation concerning monitoring of these claims.
- 7.7 Whatever the policy the actual processing of claims is the day to day interface between the system and the personnel. Accordingly, a recommendation dealing with that is included.
- 7.8 There are some issues that have arisen in this Inquiry that have implications beyond the F-111 community and indeed, potentially beyond the ADF. Recommendations concerning these matters, focussed on workplace health matters, are also included.

The ex-gratia payment scheme

- 7.9 The ex-gratia payment scheme was one of the most controversial elements of the assistance given to former F-111 workers. The restricted eligibility that excludes those who worked in the informal 'pick and patch' programs within 1, 6 and 482 Squadrons is also a source of frustration and anger for many.

Eligibility

- 7.10 Earlier in this report, we noted:

There can be no dispute that F-111 fuel tank repair work was not limited to the formal DSRS programs run at 3AD and 501WG. While these areas were responsible for larger and more complex maintenance on the fuel tanks, the personnel in 1, 6 and 482 Squadron were responsible for the day to day operational requirements to keep the fleet flying. In fact, fuel tank leak repair (or "pick and patch" as it is more commonly known) was conducted solely by 482 Squadron up until 1983 after which it was also carried out at 1 and 6 Squadron.

- 7.11 Air Vice-Marshal Brown noted:
- In reality there was no real difference between the 'pick and patch' work done at Squadrons 1, 6 and 482 and what was done in the reseal-deseal section.¹
- 7.12 Whilst excluding workers in the squadrons who unquestionably worked inside the fuel tanks, the scheme included boiler and plant attendants, fire fighters, truck drivers and rag hangar maintenance workers who did not.
- 7.13 Inexplicably, it defined access to those performing 'pick and patch' duties as between 1973 and 2000 attached to a DSRS program, even though there was no DSRS program until 1977. In fact the only 'pick and patch' work undertaken from 1973 to 1977 was in 482 Squadron, yet those who did it are specifically excluded from the scheme.
- 7.14 Leaving aside the range of other concerns about the inadequate policy underpinnings for aspects of the ex-gratia scheme canvassed in Chapter 5, it is clear that if the ex-gratia scheme is to have any credibility or consistency, access to it must be made available to those regularly engaged in 'pick and patch' work in the squadrons.
- 7.15 Regrettably the complete absence of meaningful records for many of the years in question makes it difficult to identify all participants to a level normally required. The Committee notes that the incomplete state of the records is due to Commonwealth archival policy at the time.
- 7.16 Chapter 5 provides commentary on this problem.
- DVA has addressed this in respect of those currently eligible by accepting statutory declarations as relevant in making determinations on eligibility. . In the absence of any primary or secondary evidence, a statutory declaration may be used...The decision to grant an entitlement to an ex gratia lump sum payment is made on the balance of probabilities. Therefore, where the information outlined in a Statutory Declaration conflicts with evidence from either a primary or secondary source, the Delegate will give less weight to the Statutory Declaration in reaching a decision.²
- 7.17 It is accepted that some trade areas were more likely than others to be involved in 'pick and patch' work.

1 Air Vice-Marshal Brown, *Transcript*, 19 September 2008, p. 61.

2 Department of Veterans' Affairs, *Submission* No. 89, p. 23.

- 7.18 Defence advised that the main occupation of those engaged in squadron-level 'pick and patch' was Airframe Fitter (AFFITT) (later renamed Aircraft Technician or ATECH).
- 7.19 Chapter 2 includes a commentary on the various trades involved in this work. As noted there:
- While it is accepted that AFFITT and ATECH classifications spent most time in the fuel tanks, it is apparent that there were other staff in occupational categories that entered fuel tanks³.
- 7.20 In particular, evidence to the Committee identified electrical fitters and surface finishers as two trade groups who also regularly undertook work inside F-111 fuel tanks during 'pick and patch' activities.
- 7.21 In evidence, Defence advised that there are approximately 1,700 AFITT and ATECH personnel who worked at the F-111 squadrons and depots and who did not work in the formal DSRS program. They have therefore not been eligible to access the ex-gratia scheme. Unfortunately there is no similar estimate for electrical fitters or surface finishers.
- 7.22 In addition, some personnel in 3AD and 501WG who undertook fuel tank entry and 'pick and patch' work outside of the formal DSRS program have been denied access to the ex-gratia scheme.

Recommendation 1

That the definition of eligible personnel for the purposes of Tier 3 of the ex-gratia scheme be extended to include personnel posted to one or more of the F-111 maintenance squadrons 1, 6 and 482 who carried out Sealant Rework ('pick and patch') work during the period 1973 to 2000 and personnel who served in 3AD or 501 WG and who undertook fuel tank entry and Sealant Rework ('pick and patch') work outside of the formal DSRS program.

- 7.23 The above recommendation reflects the existing requirements for Tier 3 in respect of 'pick and patch' work undertaken in the DSRS section.
- 7.24 Given the evidence cited in this report, the Committee anticipates that a significant number of AFFITT and ATECH F-111 workers will satisfy this requirement together with many electrical fitters and surface finishers.

3 Department of Defence, *Submission No. 123*, p. 4.

- 7.25 The report cites concerns that previous statutory declarations have been given little consideration by DVA, notwithstanding the evidence from DVA to the contrary. This needs to be addressed, particularly in light of the above recommendations.

Recommendation 2

In absence of evidence to the contrary and where usual documentary evidence is not available or is inconclusive, a statutory declaration by the applicant confirming:

- They were posted to 1, 6 or 482 Squadron between 1973 and 2000, or 3AD or 501 WG and
- That they were required to undertake Sealant Rework ('pick and patch') or fuel tank entries, and
- Accompanied by a second corroborating statutory declaration from a commanding officer or superior officer or person who has already had a claim under the scheme approved

be accepted as evidence of qualifying service.

Recommendation 3

That the definition of eligible personnel for the purposes of Tier 2 of the ex-gratia scheme be extended to include personnel posted to one or more of the F-111 maintenance squadrons 1, 6 and 482 who spent between 20 and 59 cumulative working days carrying out Sealant Rework ('pick and patch') during the period 1973 to 2000 and personnel who served in 3AD or 501 WG and who undertook fuel tank entry and Sealant Rework ('pick and patch') work outside of the formal DSRS program.

- 7.26 The above recommendation reflects the existing requirements for Tier 2 in respect of 'pick and patch' work undertaken in the DSRS section.

Recommendation 4

In absence of evidence to the contrary and where usual documentary evidence is not available or is inconclusive, a statutory declaration by the applicant confirming:

- They were posted to the squadron between 1973 and 2000, and
- That they undertook Sealant Rework ('pick and patch') work for between 20 and 59 cumulative working days during the period 1973 to 2000 outside of the formal DSRS program, or 3AD or 501 WG and
- Accompanied by a second corroborating statutory declaration from a commanding officer or superior officer or person who has already had a claim under the scheme approved

be accepted as evidence of qualifying service.

Recommendation 5

That the definition of eligible personnel for the purposes of Tier 1 of the ex-gratia scheme be extended to include personnel posted to one or more of the F-111 maintenance squadrons 1, 6 and 482 who spent 60 or more cumulative working days carrying out Sealant Rework ('pick and patch') work during the period 1973 to 2000 and personnel who served in 3AD or 501 WG and who undertook fuel tank entry and Sealant Rework ('pick and patch') work outside of the formal DSRS program.

7.27 The above recommendation reflects the existing requirements for Tier 1 in respect of 'pick and patch' work undertaken in the DSRS section.

7.28 Given the evidence provided in this Inquiry, the Committee anticipates that very few 'pick and patch' workers would qualify for Tier 1.

Recommendation 6

That where usual documentary evidence is not available or is inconclusive, a statutory declaration by the applicant confirming:

- They were posted to the squadron between 1973 and 2000, and
- That they undertook Sealant Rework 'pick and patch' work for 60 or more cumulative working days during the period 1973 to 2000 outside of the formal DSRS program, or 3AD or 501 WG and
- Accompanied by a second corroborating statutory declaration from a commanding officer or superior officer or person who has already had a claim under the scheme approved.

Recommendation 7

That a review be undertaken of those cases in which a statutory declaration has been rejected by DVA in determining an F-111 ex-gratia application. That the committee be provided with a copy of that review.

VEA and SRCA or C(CG) Act

- 7.29 Access to the ex-gratia scheme provides a lump sum payment for Tier 1 and Tier 2 personnel. However, of greater importance to the Committee and many former F-111 workers is the improved access under all tiers to medical support and compensation under s7(2) of SRCA. It is therefore important that the proposed extension of the scheme as recommended provides adequate and comparable medical support and compensation.
- 7.30 As the work in the squadrons covers three decades, there are added complexities in respect of this matter.
- 7.31 As noted in Chapter 4, the current SRCA Act was introduced in 1998, some fifteen years after 'pick and patch' work commenced in the squadrons. The compensation provisions contained in that are significantly better than the earlier Act. This raises the prospect of personnel undertaking identical work in identical circumstances being

treated differently. Such an outcome, whilst not unique, is undesirable and should be avoided if possible.

- 7.32 This is further complicated by the failure of administrative and occupational health systems to recognise the risks to F-111 workers for some twenty-six years.
- 7.33 For all practical purposes, it was not until the findings of the BOI in 2001 that many of the illnesses and health problems of F-111 workers were diagnosed and recognised.
- 7.34 Accordingly, it seems appropriate that claims for health care and compensation under the F-111 ex-gratia scheme be based on the provisions at the time of acceptance of the related health problems.

Recommendation 8

That the healthcare and compensation provisions made available under the F-111 ex-gratia scheme be in accordance with s7(2) of the SRCA or the VEA and this apply to the widened group in accordance with the recommendations in this report.

20th September 2005 claims deadline

- 7.35 F-111 squadron workers are required to have lodged a claim for compensation prior to 20 September 2005 to access benefits from the IHCS or SHCS as part of the ex-gratia scheme.
- 7.36 DVA advised the Committee that if this date was removed, there would be an additional 917 personnel who may have access to services as Group 1 participants.
- 7.37 As noted in Chapter 5 the Committee sees no reason for this arbitrary date preventing support to otherwise qualifying personnel.

Recommendation 9

That the cut off date requiring applicants for the SHCS to submit claims prior to 20th September 2005 be removed. That all claims for SHCS received by DVA and rejected because of the September 2005 date be reviewed.

- 7.38 The Committee notes that following the removal of the September 2005 date the requirement to submit a claim for compensation will still exist.

Deceased Estates

- 7.39 The situation of deceased estates was discussed in Chapter 5. DVA told the Committee:

The Government decided to grant payments to the estate of an individual who died and would have otherwise satisfied the Tier 1 or Tier 2 definition of an F-111 DSRS participant... where the DSRS participant died on or after 8 September 2001 on the basis that this was the first time that the ADF had publicly admitted possible liability.⁴

- 7.40 The Committee agrees with the view expressed by Defence that:

The committee should also give consideration to removing at least one of the constraints on the previous ex gratia scheme. I refer to the criteria of the scheme that prevented spouses of personnel who were involved in deseal-reseal who died prior to 8 September 2001 from making a claim.⁵

⁴ Department of Veterans' Affairs, *Submission* No. 89, p. 33.

⁵ Air Vice-Marshal Brown, *Transcript*, 19 September 2008, p. 39.

Recommendation 10

That the requirement excluding estates of those who died prior to 8th September 2001 from accessing the ex-gratia scheme be removed. Those estates of former personnel with qualifying service in accordance with the scheme and these recommendations be eligible for support under the ex-gratia scheme.

Claims Processing

- 7.41 The processing of claims was a concern to many former F-111 workers. It is important that the DVA staff involved in this task have available to them support and advice from an appropriately qualified person with a detailed knowledge of the nature of work undertaken and the various units, squadrons and personnel involved.
- 7.42 Given the history of this matter, especially since the BOI, it is also desirable for the Minister for Veterans Affairs to be briefed on developments in implementing these recommendations.
- 7.43 The decision of the CAF to appoint a person to act as his advisor on these matters and to assist F-111 workers was a positive step for both the ADF and the individuals involved. A similar appointment would be beneficial to facilitate the smooth progression of these recommendations.

Recommendation 11

That the Minister for Veterans Affairs appoint a person with suitable qualifications and background knowledge of the F-111 workers claims to oversee the implementation of these recommendations and to provide expert assistance to DVA in processing claims. The person should be appointed for a minimum of two years and also provide periodic advice to the Minister on progress in handling claims.

Spouse/Partner Support

- 7.44 The *Coxon Study into Psychological Functioning of Partners and Spouses of Deseal/Reseal Personnel* confirmed that many partners suffered due to problems associated with their partner's work on F-111's.
- 7.45 Chapter 4 notes that Group 1 participants under the SHCS can receive unlimited general counselling sessions through the Veterans and Veterans

Families Counselling Service (VVCS) for issues and conditions associated with the DSRS programs.

- 7.46 Mrs Kathleen Henry gave evidence referred to in Chapter 6 identifying the value of group counselling and respite. Whilst some individual counselling has been provided, there is a strong case for group counselling to support former F-111 workers and their families. Mrs Henry also drew attention to the need for respite for partners who are in many cases, effectively carers.

Recommendation 12

That group counselling be made available to F-111 fuel tank repair workers and their families. That initially, participation in up to five group counselling sessions be made available to all who have access to funded individual counselling. That the Minister review whether further group counselling sessions should be made available, based on outcomes from these group counselling services.

- 7.47 The Committee understands that the issue of respite care directly affects many Australians, not only those subject to this Inquiry. The Committee is not in a position to provide a detailed recommendation that may have implications beyond both F-111 workers and Defence. However, the issue is clearly of importance to those directly affected.

Recommendation 13

That the Government give consideration to expanding respite care for partners of seriously ill former F-111 workers who are principal care providers.

Litigation

- 7.48 Approximately thirty-one common law cases seeking damages from the Commonwealth have commenced arising from the F-111 work. The Committee was pleased with the views expressed by Defence wishing to resolve these by negotiation.

This one really cries out for a resolution around a table, not in a court. We would think that if we could not resolve these matters by negotiation we will have failed. We have set ourselves a fairly

high hope that we can resolve all of these claims without the need for a formal hearing of any kind.⁶

Recommendation 14

That Defence provide a briefing on the progress of litigation to the Committee in March and September of each year.

Communication

- 7.49 Evidence to the Committee has shown that many in the wider F-111 maintenance community received conflicting messages about the Government response to the SHOAMP. In moving forward, Defence and DVA have outlined several measures which could potentially be used to ensure more open and effective communication.
- 7.50 The first of these measures is a dedicated website. The Committee notes that currently, DVA have separate areas on its website dedicated to SHOAMP, the ex-gratia payment respectively, and studies such as that into toxicology. Defence also has a separate section on its website dedicated to the Board of Inquiry. It is also noted that the F-111 DSRS Support Group Inc has an excellent website and forum which has played a key role in keeping its members informed of relevant issues.

⁶ Mr M Lysewycz, *Transcript*, 21 July 2008, p. 23.

Recommendation 15

The Committee recommends that Defence and DVA establish a dedicated website in relation to F-111 aircraft maintenance issues. Such a website should be comprehensive and include:

- **The Board of Inquiry Report and recommendations**
- **The complete SHOAMP study reports**
- **Complete information on the ex-gratia payment including application forms**
- **A link to this report and recommendations**

Contact details and role descriptions of all relevant personnel including the Defence Force Advocate, Ex-gratia processing team, DVA compensation processing team and other support mechanisms such as the F-111 DSRS Support Group, counselling support and the Commonwealth Ombudsman.

System Wide Issues

DVA client procedures

- 7.51 Chapter 5 includes a stinging criticism of the DVA administrative procedures by the Ombudsman in processing claims. Whilst some of this problem may be due to the vagaries surrounding aspects of the ex-gratia scheme, the submission from the Ombudsman can not be ignored.
- 7.52 Chapter 5 also highlighted the sad situation in which DVA deliberately chose to advise a claimant his application had been rejected whilst he was in hospital on suicide watch.
- 7.53 There is a need to review staff training and procedures to ensure a more compassionate and client focussed service is provided to Veterans. Whilst making that comment, the Committee also acknowledges the very good work so often performed by DVA. As with similar departments and agencies providing support to those in need, their task is sometimes very difficult. However, the Australian people quite rightly expect the support and assistance given to our veterans to be of a high standard.

Recommendation 16

That a review of DVA staff training be undertaken to ensure a regular high standard of client focused delivery of services occurs. That policies for handling cases of seriously ill patients, especially those in vulnerable circumstances, be reviewed.

ADF Medical Occupational Specialists

- 7.54 In considering how the problems with the F-111 workforce could occur and continue for so long, and in examining developments since the BOI in 2001, the Committee sought information on the number of medical occupational specialists in RAAF and the ADF.
- 7.55 The Committee is concerned to learn that there are only two ADF officers full time, who are occupational medical specialists. Neither of them is employed in that capacity. In fact the full time ADF capability in this important field rests on one civilian. The Committee understands there is a small number of RAAF reservists who may also have qualifications in this field.
- 7.56 If people are indeed our greatest resource, as is so often mentioned, it is a major shortcoming that our capability in looking after them in the workplace is so limited. It is doubtful whether there are sufficient resources in this important area to even administer private service providers.
- 7.57 The ADF needs at least adequate skills in occupational medicine to conduct strategic reviews of workforce activities in the wide range of environments personnel undertake duties.
- 7.58 The systemic problems identified by Professor Hopkins and quoted in Chapters 3 and 5 have contributed to the problems faced by the F-111 workers. These problems will recur unless greater effort is given to occupational medicine.
- 7.59 This exact problem was identified by the BOI in 2001. The BOI said:
- Recommendation 2.2 Defence should specify certain medical positions as requiring qualifications in occupational medicine....
- Recommendation 2.5 The Air Force should reconsider its policy of outsourcing medical services. If it continues to employ doctors on a contractual basis, contracts must be written so as to afford

doctors the time to familiarise themselves with workplaces and time to do any research necessary for diagnosis.⁷

- 7.60 Eight years after those recommendations, there is no sign the underlying problems have been addressed. Nor is there any sign that the specific recommendations from the BOI have been funded and implemented.
- 7.61 One full time occupational medical specialist is clearly inadequate.

Recommendation 17

That the ADF expand its internal capability in occupational medicine as a matter of some urgency. That a review of current practices in handling OH&S matters within the ADF be conducted to amongst other things, respond to the structural and cultural issues identified in the BOI and by Professor Hopkins.

Aviation Turbine Fuel

- 7.62 Professor Bowling's research, whilst still in its early stages, raises some potentially important health issues that require close scrutiny (see Chapter 3).
- 7.63 Professor Bowling informed the Committee:
- It is my opinion that the mitochondrial changes seen in these pilot studies are an indication of disruption of stem cells in the bone marrow (and possibly in other tissues)... and
- One individual who demonstrated a similar pattern had not been exposed to F111 DS / RS solvents but only to Aviation Turbine Fuel (significant accidental ingestion). This indicates that the damaging agent is a constituent of the fuel and not the solvents (used for Re-Seal/De-Seal).⁸
- 7.64 This raises the prospect that aviation turbine fuel, used widely in the ADF and the commercial airline industry, may be harmful to humans in certain situations. Whilst the case referred to by Professor Bowling involved the ingestion of a large amount of fuel, clearly a rare event, the findings are sufficiently worrying that further research needs to be undertaken.

7 *F-111 Deseal/Reseal Board of Inquiry*

8 Professor F Bowling, *Submission No. 126*, p. 6.

Recommendation 18

That the ADF fund further research into the mitochondrial changes identified in Professor Bowling's research. That as part of that research, further wider study be undertaken into the health implications of working with aviation turbine fuels and the results of these studies be reported back to the Committee at least annually.

Conclusion

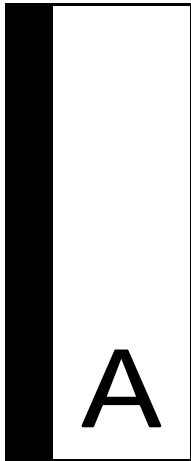
7.65 As noted in Chapter 1, the Committee is pleased by the cooperation of both RAAF and DVA through the course of this Inquiry. The willingness of RAAF to engage in this process positively and openly was perhaps best summed up in the first public hearing when Air Vice-Marshal Brown said:

The Air Force hurt a large number of our people involved in F111 fuel tank maintenance between 1973 and 2000. We are grateful for this chance to look at what has been done to help them and we believe that more could and should be done.⁹

7.66 Whilst the Committee's inquiry and deliberations has been long and at times difficult, we too are grateful for the chance the Inquiry has provided to help the F-111 workers and their families who have suffered because of their work for the ADF and our nation.

Senator Michael Forshaw
Chair
Joint Standing Committee on Foreign Affairs, Defence and Trade

9 Air Vice-Marshal Brown, *Transcript*, 21 July 2008, p. 2.



Appendix A – List of Submissions

1. Mr Paul McCulloch
2. Mr Gerard Murray – Confidential
3. Mr Daniel Treleaven
4. Mr Ron Seymour – Confidential
5. Mr Barry Gray
- 5a. Mr Barry Gray – Supplementary Submission
6. Mr K D Fisher
7. Mr Gregory Andrew
8. Name Withheld
9. Name Withheld
10. Mr Doug Steley
- 10a. Mr Doug Steley – Supplementary Submission
11. Name Withheld
- 11a. Name Withheld and Confidential – Supplementary Submission
12. Mr Stanley Lawler
13. Mr William Knilands
14. Mr Phillip Moon

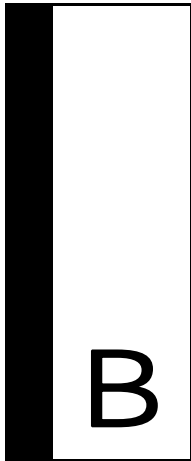
- 14a. Mr Phillip Moon and Mr Peter Flannery – Supplementary Submission
- 15. Mr David Stenzel
- 16. Mr Peter Wuoti
- 17. Ms Amanda Grady
- 18. Mr David Grady
- 19. Mr Brian Fuller
- 20. Mr Anthony Soper
- 21. Mr Glen Corrie
- 22. Mr Alan Aburn
- 22a. Name Withheld – Confidential
- 23. Mr Raymond Evershed
- 24. Mr Andrew Macqueen
- 25. Mr Clive Cust
- 25a. Mr Clive Cust – Supplementary Submission
- 26. Name Withheld
- 26a. Name Withheld – Supplementary Submission
- 26b. Name Withheld – Supplementary Submission
- 27. Mr Robert Tarrant
- 28. Name Withheld
- 29. Name Withheld
- 29a. Name Withheld – Supplementary Submission - Confidential
- 29b. Name Withheld – Supplementary Submission - Confidential
- 30. Name Withheld
- 31. Mr Colin Host
- 31a. Mr Colin Host – Supplementary Submission
- 32. Mr Stephen Adams – duplication of Submission No. 53
- 33. Mr Geoff Ohmsen
- 34. Mr Barry Willis

35. Mr Dennis Lambert
36. Name Withheld
37. Mr Daniel Logan
38. Mr Jeff Holland
39. Mr Alan Hall
40. Mrs Eileen Bate and Mr Malcolm Bate
41. Mr Neil Clark
42. Mr Mark Baker
43. Mr Brian Cottrell
44. Submission Withdrawn
45. Mr Michael Crowley
46. Mr Denis Pommer - Confidential
47. Mr Laurence Carpenter
48. Mr Raymond Bennett
49. Mr Lex Woods
50. Commonwealth Ombudsman
51. Vietnam Veterans' Federation of Australia
52. Mr G P Kent
53. Mr Stephen Adams
54. Mr Colin Host
55. Mr Geoffrey Maher
56. Mr Geoffrey Fellowes
57. Mr Andrew Morrell
58. Name Withheld
59. Mr Kenneth Carey - Confidential
60. Mr Melvyn Funk
61. Name Withheld - Confidential
62. Defence Force Welfare Association

63. Mr Garth Steinhardt
64. Mr Derek Bannister
65. Mr Mark Fenech – Confidential
66. Name Withheld
67. Name Withheld – Confidential
68. Submission withdrawn
69. Mr Van Gent
70. The Returned and Services League of Australia Ltd
71. Mr Anthony Ramsden
72. Mr Rudolf Agerbeek and Mrs Elizabeth Agerbeek – Confidential
73. Mr Tony Brady
74. Ms Susan Coss
75. Mr A J Walsh
76. Name Withheld
- 76a. Name Withheld and Confidential – Supplementary Submission
77. Name Withheld
78. Mr Ian Dunkley – Confidential
79. Mr Rodney Gilbert
80. Name Withheld
81. Mr Glen Bowman
82. Mr David Sayer
83. Department of Defence
84. Name Withheld
85. Mr Ian Fraser
86. Name Withheld
87. Mr Ray Hutchinson
88. Name Withheld
89. Department of Veterans' Affairs

90. Name Withheld
91. F1-11 Deseal/Reseal Support Group Inc
92. Name Withheld
93. Name Withheld
94. Ms Kylie Stoneman
95. Mr George Hatchman
96. L T Lawler
97. Name Withheld - Confidential
98. Mr Shaun Major
99. Mr Roger Lancaster
100. Name Withheld - Confidential
101. Name Withheld - Confidential
102. Name Withheld - Confidential
103. Name Withheld - Confidential
104. Mr Jason Griffiths
105. Mr Ian Richards
- 105a. Mr Ian Richards - Supplementary Submission
106. Name Withheld - Confidential
107. Name Withheld - Confidential
108. Ms Leigh Woods
109. Mr Andrew Morris
110. Mr Trevor Allen
111. Name Withheld
112. Mr Peter Manning
113. Mr Bevan Victor
114. Name Withheld
115. Herbertgeer Lawyers
116. Mr Barry Mallett

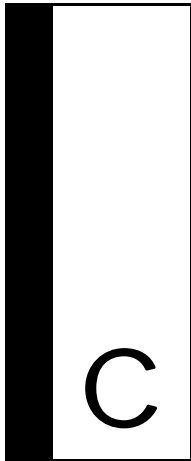
117. Name Withheld – Confidential
118. Name Withheld – Confidential
119. Department of Veterans' Affairs – Answers to Questions on Notice
120. Mr Peter Boucher for Mr Christopher Lanser
121. Department of Defence and Department of Veterans' Affairs –
Joint Supplementary Submission
122. Department of Defence – Answers to Questions on Notice
123. Department of Defence
124. Department of Veterans' Affairs – Answers to Questions on Notice
125. Mr John Cockburn, Cockburn Legal and Consulting.
126. Professor Frank Bowling
127. Professor Frank Bowling
128. Professor Frank Bowling
129. F1-11 Deseal/Reseal Support Group Inc
130. Name Withheld – Confidential
131. Department of Defence – Answers to Questions on Notice



Appendix B – List of Exhibits

1. Mr Phillip Moon – Confidential
2. Mr K D Fisher
3. Mr and Mrs Ron Seymour – Confidential
4. Confidential
5. Vietnam Veterans' Federation of Australia
6. Confidential
7. Mr Melvyn Funk
8. Confidential
9. Mr Ian Fraser
10. F1-11 Deseal/Reseal Support Group Inc
11. Mr Phillip Moon – Confidential
12. Mr Gerard Murray – Confidential
13. Mr Alan Aburn
14. Confidential
15. Mr Barry Gray
16. Commonwealth Ombudsman
17. Dr Roy Beevers

18. Mr Barry Mallett
19. Confidential
20. Confidential
21. Mr Christopher Lanser
22. WOFF Peter Hind
23. Envirotest
24. Department of Defence
25. Ms Leonie Coxon
26. Confidential
27. Mr Phillip Moon - Confidential
28. Mr Denis Pommer – Confidential
29. Department of Defence – Confidential
30. MMI Maintenance
31. M. Moscovia, D.J. Oakes, J.K. Pollak, W.S. Webster
32. Australian Institute of Health and Welfare
33. Drs D. Oakes, H.E. Richie, P.D.C. Woodman, E. Narup, M.Moscova,
K. Picker and W.S. Webster
34. Royal Australian Air Force
35. WorkCover Queensland



Appendix C – Witnesses appearing at public hearings

Canberra

Monday, 21 July 2008

Department of Defence

Air Vice-Marshal Geoffrey Brown – Deputy Chief of Air Force

Mr Steven Grzeskowiak – Acting First Assistant Secretary Personnel

Dr Ian Gardner – Functional Head/Senior Consultant Occupational and Environmental Medicine

Mr Michael Lysewycz – Director of Litigation, Defence Legal Division

Commonwealth Ombudsman

Dr Vivienne Thom – Acting Commonwealth Ombudsman

Ms Anna Clendinning – Senior Assistant Ombudsman

Department of Veterans' Affairs

Mr Ed Killesteyn – Acting Secretary

Mr Barry Telford – General Manager, Policy and Development Division

Ms Carolyn Spiers – Principal Legal Advisor, Business Integrity Division

Mr Sean Farrelly – National Manager, Compensation and Income Support Policy Group

Brisbane

Monday, 28 July 2008

Mr Ian Fraser – F1-11 Deseal/Reseal Support Group Inc

Mr Gerard Murray

Mr Phillip Moon and Mr Peter Flannery

Mr Barry Gray

Mr William Knilands

Tuesday, 29 July 2008

Mr Doug Steley

Mr Stanley Lawler

Mr David Stenzel

Ms Amanda Grady and Mr David Grady

Mr Melvyn Funk

Mr Glen Corrie

Mr Ray Webster

Vietnam Veterans Association of Australia

Mr Peter Johnson

Mr Alan Aburn

Canberra

Friday, 19 September 2008

Returned and Services League of Australia

Mr John Hodges – National Veterans' Affairs Advisor

Mr Vivian Quinn – RSL National Veterans’ Affairs Committee (Queensland Branch) Delegate

Mr Raymond Townsend – Vice President, RSL (Queensland Branch)

Defence Force Welfare Association

COL (Rtd) David Jamison – National President

LCDR RAN (Rtd) Richard Griffiths – National Secretary

Mr Michael Dowsett – Honorary Medical Advisor

SHOAMP

Professor John Attia, MD, PhD, FRCPC, FRACP – Professor of General Medicine and Clinical Epidemiology - Centre for Clinical Epidemiology and Biostatistics, University of Newcastle Academic Director of General Medicine – John Hunter Hospital

Dr Tony Brown – Director, Population Health, Greater Western Area Health Service, Dubbo, NSW

Department of Veterans Affairs

Mr Ed Killesteyn – Acting Secretary

Mr Sean Farrelly – National Manager, Compensation and Income Support Policy Group

Mr Ken Douglas – General Manager, Service Delivery Division

Mr Barry Telford – General Manager, Policy and Development Division

Ms Carolyn Spiers – Principal Legal Advisor, Business Integrity Division

Department of Defence

Air Vice-Marshal Geoffrey Brown – Deputy Chief of Air Force

WGCDR Bill Sanders – Deputy Director, F1-11 Deseal/Reseal Board of Inquiry

Mr Michael Lysewycz – Acting Assistant Secretary, Legal Services

Dr Ian Gardner – Senior Consultant in Occupational and Environmental Medicine

Canberra

Thursday, 16 April 2009

Professor Frank Bowling – Director, Biochemical Diseases Unit, Mater Children's Hospital

Canberra

Friday, 17 April 2009

Australian Institute of Health and Welfare – Third Study into Mortality and Cancer Incidence

Mrs Julie Roediger - Deputy Director

Mr Mark Cooper-Stanbury – Cluster Head, Population Health Unit

Mrs Ilona Brockway – Research Analyst

Mr Robert Van Der Hoel – Project Manager, Population Health Unit

Researchers – Various reports on chemicals used in the F1-11 Deseal/Reseal Program

Dr Diana Oakes – Lecturer, Discipline of Biomedical Science, University of Sydney

Professor Bill Webster – Reproductive Toxicology, University of Sydney

F1-11 Deseal/Reseal Support Group Inc

Mr Ian Fraser – President

Mrs Kathleen Henry – Vice President

Department of Defence

Air Vice-Marshal Geoffrey Brown – Deputy Chief of Air Force

Group Captain Robert Lawson – Officer Commanding SRSP0

Mr Michael Lysewycz – Acting Assistant Secretary, Legal Services, Department of Defence

Mr Stefan Danek – Danek Report (Deseal/Reseal Board of Inquiry)

Department of Veterans' Affairs

Mr Gary Collins - Acting Deputy President

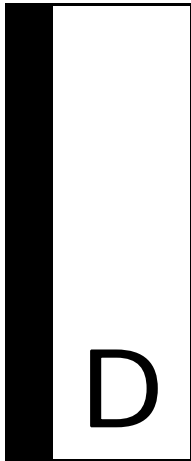
Mr Barry Telford - General Manager, Policy and Development Division

Mr Ken Douglas - General Manager, Service Delivery Division

Mr Sean Farrelly - National Manager, Compensation and Income Support Group

Mr Roger Winzenberg - National Manager, Rehabilitation, Research and Development Group

Ms Eileen Wilson - Epidemiologist, Strategic Research and Development Section



Appendix D – Definition of a Deseal/Reseal Participant for the purposes of the lump sum payment scheme

Tier 1 - \$40,0000

A person who meets any one of the following criteria can test their eligibility to receive a lump sum payment of \$40,000:

1. A person who spent at least 30 cumulative working days on the Fuselage Deseal/Reseal or Respray Programs during the period 1977 – 1982, 1991 – 1993 and 1996 – 2000, whose duties involved working inside F-111 fuel tanks; **or**
2. A person who spent at least 30 cumulative working days on the Wing tank program during the period 1985 – 1992; **or**
3. A person who spent at least 60 cumulative working days carrying out Sealant Rework (Pick and Patch) during the period 1973 – 2000 while attached to an F-111 deseal/reseal section; **or**
4. Boiler and Plant Attendants whose usual place of duty was the Base Incinerator as an Incinerator operator and who spent at least 30 cumulative working days undertaking these duties during the period 1976 – 1986; **or**
5. A person who can demonstrate that they would have met one of the above criteria except for the fact that they:
 - had an immediate physical reaction; **and**
 - required medical treatment or intervention; **and**
 - were given a work restriction or medical fitness advice (PM 101) stating that they should not return to that working environment.

Tier 2 – \$10,000

A person who meets any one of the following criteria can test their eligibility to receive a lump sum payment of \$10,000:

- 1 A person who spent between 10 and 29 cumulative working days on the Fuselage Deseal/Reseal or Respray Programs during the period 1977 – 1982, 1991 – 1993 and 1996 – 2000, whose duties involved working inside F-111 fuel tanks; **or**
- 2 A person who spent between 10 and 29 cumulative working days on the Wing tank program during the period 1985 – 1992; **or**
- 3 A person who spent between 20 and 59 cumulative working days carrying out Sealant Rework (Pick and Patch) during the period 1973 – 2000 while attached to an F-111 deseal/reseal section; **or**
- 4 Boiler and Plant Attendants whose usual place of duty was the Base Incinerator as an Incinerator operator and who spent between 10 and 29 cumulative working days undertaking these duties during the period 1976 – 1986; **or**
- 5 Fire Fighters employed as Instructors whose usual place of duty was the Fire Training School fire pits and who spent at least 60 cumulative working days actively involved in the burning of by-products from the F-111 DSRS process during the period 1976 – 1990; **or**
- 6 Personnel who were **not** involved in tank entry and whose usual place of duty was the Rag Hangar for 60 cumulative working days during the period Dec 1977 - Nov 1983; **or**
- 7 Personnel who were **not** involved in tank entry and whose usual place of duty was Hangar 255, 260, 277 or 278 for a continuous period of 60 cumulative working days during the period 1977 – 1982, 1991 – 1993 and 1996 – 2000; **or**
- 8 A person who can demonstrate that they would have met one of the above criteria except for the fact that they:
 - had an immediate physical reaction; **and**
 - required medical treatment or intervention; **and**
 - were given a work restriction or medical fitness advice (PM 101) stating that they should not return to that working environment.

Note: Only one ex-gratia payment may be made regardless of how many times a person may be eligible. Where a claimant is assessed as eligible for both payments, the higher amount will be paid.

DEFINITION OF A DESEAL RESEAL PARTICIPANT FOR THE PURPOSES OF A DETERMINATION UNDER s7(2) OF THE SRCA

Tier 3

The following personnel should be considered for inclusion in any determination under s7(2) of the SRCA:

- 1 Personnel who worked on the Fuselage Deseal/Reseal or Respray Programs during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000, whose duties involved working inside F-111 fuel tanks; **or**
- 2 Personnel who worked on the Wing tank program during the period 1985 - 1992; **or**
- 3 personnel carried out Sealant Rework (Pick and Patch) during the period 1973 - 2000 while attached to an F-111 deseal/reseal section; **or**
- 4 Boiler and Plant Attendants whose usual place of duty was the Base Incinerator as an Incinerator operator during the period 1976 - 1986; **or**
- 5 Fire Fighters whose usual place of duty was a Unit at RAAF Base Amberley and who were actively involved in the burning of by-products from the F-111 DSRS process during the period 1976 - 1994; **or**
- 6 Personnel who were **not** involved in tank entry and whose usual place of duty was the Rag Hangar during the period Dec 1977 - Nov 1983; **or**
- 7 Personnel who were **not** involved in tank entry and whose usual place of duty was Hangar 255, 260, 277 or 278 during the period 1977 - 1982, 1991 - 1993 and 1996 - 2000; **or**
- 8 Motor Transport Drivers involved in the first deseal/reseal program who came into contact with aviation fuel contaminated with deseal/reseal by-products during the period 1977-1982;**or**
- 9 Maintenance personnel on the air transportable ('rag') hangar who were involved in removing/replacing canvas or dismantling the Hangar during relevant periods in 1978, 1980 and 1984; **or**
- 10 Personnel employed in Engine Test Cell No 1 during the period 1976 - 1986; **or**
- 11 Personnel tasked with entering the Warrill Creek Settling Pond for the purpose of maintaining the physical barrier during the period 1977- 2000.

EXCLUSIONS

This definition should not include others indirectly involved in the DS/RS procedures such as:

1. K Group and 7SD personnel; **and**
2. Dept of Housing and Construction Staff; **and**
3. ADG (or other personnel) who entered Warrill Creek for any other reason; **and**
4. Security Personnel; **and**
5. Work Experience students.

Note:

- *Some personnel have been employed on more than one task giving them different levels of exposure. These personnel should be assessed for the highest level of exposure – for example a member employed on both the Wings Program and one or more of the fuselage programs be assessed for having worked in the fuselage programs.*

Details of Exposure**DIRECT INVOLVEMENT**

- 1** Personnel who worked inside body fuel tanks of the F-111 aircraft for extended periods of time for a cumulative period of not less than 30 working days, removing sealant and / or resealing the tanks. This category is exclusive to personnel employed in the F-111 Deseal/Reseal and Respray programs over the period 1977 to 1982, 1991 to 1993 and 1996 to 2000. The personnel involved include those involved in aircraft preparation, chemical deseal/ water-pick, hand cleaning, barrier application, sealant application, plumbing in, air (dry) checks and fuel (wet) checks. This does not include Motor Transport Drivers who employed as Fuel Tank Drivers who may have been responsible for de-fueling F-111 aircraft prior to Deseal/Reseal activities being undertaken.
- 2** Personnel employed full time on the wing tank program actively removing and replacing sealant for a period of not less than 30 cumulative working days between 1985 and 1992.
- 3** Personnel working on sealant rework (pick and patch) inside fuselage fuel tanks of the F - 111 aircraft for a cumulative period of not less than 60 working days while attached to a Deseal/Reseal section of 501 WG, over the period 1973 to 2000, **plus** those six personnel posted to Sacramento who completed training in deseal/reseal procedures.
- 4** Personnel regularly disposing of Deseal/Reseal products by burning, in particular the Sealant Remover SR51 and SR51A, at the RAAF Base Amberley incinerator for a cumulative period of not less than 30 working days between 1976 and 1986.

INDIRECT INVOLVEMENT

- 1 Personnel who worked inside body fuel tanks of the F-111 aircraft for extended periods of time for a cumulative period of between 10 and 29 cumulative working days, removing sealant and / or resealing the tanks. This category is exclusive to personnel employed in the F-111 Deseal/Reseal and Respray programs over the period 1977 to 1982, 1991 to 1993 and 1996 to 2000. The personnel involved include those involved in aircraft preparation, chemical deseal/ water-pick, hand cleaning, barrier application, sealant application, plumbing in, air (dry) checks and fuel (wet) checks. This does not include Motor Transport Drivers employed as Fuel Tank Drivers who may have been responsible for de-fueling F-111 aircraft prior to Deseal/Reseal activities being undertaken.
- 2 Personnel employed full time on the wing tank program actively removing and replacing sealant for a cumulative period of between 10 and 29 cumulative working days between 1985 and 1992.
- 3 Personnel working on sealant rework (pick and patch) inside fuselage fuel tanks of the F - 111 aircraft for a cumulative period of between 10 and 59 cumulative working days while attached to a Deseal Reseal section of 501 WG, over the period 1973 to 2000.
- 4 Personnel regularly disposing of Deseal/Reseal products by burning, in particular the Sealant Remover SR51 and SR51A, at the RAAF Base Amberley incinerator for a cumulative period of between 10 and 29 cumulative working days between 1976 and 1986.
- 5 Fire fighters permanently posted to a Unit at RAAF Base Amberley and who were actively involved in burning bi-products from the F-111 DS/RS process (including the Sealant Remover SR51 and SR51A) at the fire pits for training and/or disposal purposes, for a cumulative period of not less than 60 working days during the period 1976 to 1994.
- 6 Personnel indirectly involved in DS/RS, for whom their normal place of work was the DS/RS air transportable ('rag hangar') Hangar or Hangars 255, 260, 277 and 278 and who provided direct support to those staff entering F-111 fuel tanks for a period of 60 cumulative working days. This does not include those personnel who may have regularly visited these hangars in the course of their duty.

