

## 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.<sup>1</sup>

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.<sup>2</sup>

7.17 It is accepted that some trade areas were more likely than others to be involved in 'pick and patch' work.

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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 tanks<sup>3</sup>.
- 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.

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### **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.

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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.**

### **20<sup>th</sup> 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 20<sup>th</sup> 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.<sup>4</sup>

- 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.<sup>5</sup>

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<sup>4</sup> Department of Veterans' Affairs, *Submission* No. 89, p. 33.

<sup>5</sup> Air Vice-Marshal Brown, *Transcript*, 19 September 2008, p. 39.

**Recommendation 10**

**That the requirement excluding estates of those who died prior to 8<sup>th</sup> 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.<sup>6</sup>

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**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.

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<sup>6</sup> 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.<sup>7</sup>

- 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).<sup>8</sup>
- 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.

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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.<sup>9</sup>

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

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9 Air Vice-Marshal Brown, *Transcript*, 21 July 2008, p. 2.