Submission No 91

Inquiry into RAAF F-111 Deseal/Reseal Workers and their Families

Organisation: **F1-11 Reseal/Deseal Support Group Inc**

Joint Standing Committee on Foreign Affairs, Defence and Trade
Defence Sub-Committee

SUBMISSION FOR CONSIDERATION

FOR INCLUSION IN THE

TERMS OF REFERENCE

FOR THE

F-111 DESEAL/RESEAL PARLIAMENTARY INQUIRY

1. PREAMBLE

1.1 Australia ordered 24 F-111 Strike and Reconnaissance Aircraft in 1963. Significant modifications, for compliance to Australian standards and requirements, were undertaken on the Aircraft prior to arrival in Australia in 1973. Fuel for the F-111 Aircraft is stored directly in its fuselage, wings and tail in extremely confined spaces, with the airframe metal exposed to extreme temperature changes. There are no fuel bladders. All joints, mating surfaces and interior surfaces were coated with a sealant to prevent fuel leaking from seams.

1.2 The original sealant was not adequate and the F-111 Aircraft fleet constantly leaked fuel. Prior to delivery, RAAF workers were sent to Sacramento, California USA to prepare for delivery and undertake training by US Air Force personnel on the process and methods of desealing and resealing the fuel tanks. The Aircraft were delivered to No 482 Maintenance Squadron, RAAF Base Amberley and immediately Deseal and Reseal methods were applied to keep each Aircraft serviceable. These constant daily repairs involved entering "wet" tanks and repairing leaks on all 24 Aircraft to ensure their flight availability. The Squadron was unable to satisfactorily resolve the problem of sealant reversion and effectively provide a long term solution to the leakages of fuel.

1.3 By the mid 1970s the Aircraft were reaching major overhaul flying hours and the fuel leak problems were becoming critical. RAAF overhaul facility No 3 Aircraft Depot, which was responsible for all major Aircraft maintenance and overhauling duties at Amberley, was tasked with undertaking a full Deseal and Reseal of each Aircraft during overhaul, to remove all sealant within the airframe and replace it with new compounds to prevent future leaks.

1.4 Four formal programs were established at No 3 Aircraft Depot. The first program commenced in late 1977, ramped up, and concluded in 1982. The Wing Program began in 1985 and concluded in 1992. The Second Program began in 1990 and finished in 1993. Prior to and during these formal programs, Squadron maintenance workers continued to enter the tanks and

conduct repairs necessary to maintain flying commitments. The Spray Seal Program was conducted from 1996 to 1999.

1.5 In 1992, No 482 Maintenance Squadron was merged with No 3 Aircraft Depot and became No 501 Wing. No 1 Squadron and No 6 Squadron took ownership of the Aircraft from No 482 Maintenance Squadron, and maintenance workers from this squadron were also transferred to the flying squadrons. These workers continued daily fuel tank repairs on the fleet.

1.6 In 1999 a visiting Medical Officer noticed similar symptoms from members reporting to Medical Section for treatment. He investigated where these personnel worked and reported to their Officer in Charge. The Spray Seal program was immediately suspended and an on-base inquiry was instigated.

1.7 The on-base inquiry found evidence of chemical contamination of F-111 Aircraft Maintenance Workers, not just on the Spray Seal program but going back to 1973 at No 482 Maintenance Squadron, No 1 Squadron, No 6 Squadron, at No 3 Aircraft Depot and at the merged No 501 Wing. Due to the magnitude of the problem, it immediately recommended a full Military Board of Inquiry be instigated to fully investigate the issues.

1.8 In July 2001 the largest ever Military Board of Inquiry handed downs its findings into the F-111 Deseal/Reseal processes. The inquiry acknowledged the RAAF had placed "platforms over people" and had failed at all levels to ensure the environmental, procedural, physical and medical safety of personnel and their families. It also acknowledged that records of involvement in F-111 Aircraft Maintenance had not been maintained or kept nor had records of work undertaken. It further acknowledged that long term health damage had been caused to workers and required a full health study of the workers, their next of kin and dependants. It also required that all health conditions be identified and the long term health of member's be taken care of.

1.9 The RAAF Board of Inquiry devolved the Health Study responsibilities to DVA to undertake the health study and worked with the University of Newcastle and University of Sydney to undertake a Cancer and Mortality Study and a Health Study of affected personnel.

1.10 The Cancer and Mortality Study found increases in cancers 40 – 50 percent higher than the cohort, and stated Mortality was marred by "survivor bias" and explained that both RAAF and DVA did not keep records of those personnel who had already died as a result of Deseal activities. They recommended a further study be undertaken in 3 to 5 years and the results were expected to be released in March 2008. SHOAMP Forum Minutes reflect that only one or two deaths would create a significant swing in the data and show a significant Mortality rate.

1.11 The Health Study selected only personnel who had handled SR-51 (only one chemical in the cocktail of over 200 used for desealing, cleaning and resealing the Aircraft) at No 3 Aircraft Depot and who were involved in one of the four

formal "programs". It did not include all "ground crew" as required by the Board of Inquiry. The Study selected a number of areas of effect: mental health, cardiac, respiratory, skin conditions, sensory and motor neuropathic, sexual dysfunction, anxiety and depression, cognitive dysfunction and compared the Deseal group with RAAF Richmond workers and RAAF Amberley workers who had not worked on F-111 Aircraft. The study did not investigate the immunological effects on personnel, even though over 1700 conditions have developed because of the assault on the immune system by toxic chemicals. The study did not investigate chemical exposure or link chemical exposure to the symptoms. The study did not investigate time-dose relationship of exposure to symptoms. A study of the next-of-kin and dependants has long been requested but consistently denied by DVA and the previous Minister.

1.12 The Government response to the SHOAMP Health Study and Cancer and Mortality Study was announced on 20 December 2004 and included an ex-gratia for affected members. The Government clearly reiterated that the payment was not an admission of liability, it was not for exposure to toxic chemicals, it was purely *"in recognition of the unique circumstances of the working environment"*. The Government also clearly stated the ex-gratia payment was in addition to and had no effect on any statutory rights for compensation or claims against the Commonwealth.

1.13 Also announced was a five year ongoing health study of affected personnel to the value of $2.1Million. The study was to undertake annual bowel screening because of the high risk of bowel cancer within the group. The study was to undertake cancer monitoring, annual review of mental health conditions to monitor deterioration, and an annual overall health review. The Expert Advisory Panel was asked if immune system compromise would be included in the study and the official response was that this study was not going to look at anything they cannot fix. The original intention was never carried out and now the study amounts to one bowel cancer screen every 5 years (which is readily available through Medicare to the Australian public), a melanoma screening, education leaflets on alcohol abuse (even though there is no risk and the Health Study showed a lower tolerance to alcohol for the affected workers), sexual dysfunction, and healthy eating.

1.14 On 19 August 2005, the Government again announced that DSRS workers could test their eligibility for a lump sum payment of $10,000 or $40,000 *"in recognition of the unique circumstances of the working environment"*. The ex-gratia payment had criteria established which linked payment to time-dose exposure even though this has never been investigated. The payment excluded widows of persons who died prior to the handing down of the Board of Inquiry findings even though the RAAF and DVA admitted to not having records of deaths. *'"it was not possible to identify DSRS participants who had died before the start of the study, leading to a falsely low mortality in the exposed group."* (TUNRA & HMRI, 2004a, p.56-58). The criteria required official documentation as evidence of involvement even though the RAAF admitted no proper records were maintained, and yet has accepted one claim

on the basis of owning a Deseal/Reseal Stubbie Cooler. *(Sharon Sinclair DVA at F-111 Deseal/Reseal Support Group Meeting 9 September 2007).* Statutory Declarations were not accepted to substantiate a claimant's involvement. *(Barry Telford DVA at RAAF Amberley 5 September 2005).* Squadron personnel who undertook repairs from 1973 to 2000 were excluded because DVA determined their time-dose exposure was for shorter periods of time than those on the program, even though there is no substantiating evidence to support this exclusion, and in fact that SHOAMP reports actually contradict this statement. "*It is recognised that some individuals may have spent more time working on Pick and Patch than on the formal DSRS programs.*" *(*SHOAMP Health Study *1.2.1.2 page 9).*

1.15 On 5 September 2005 DVA stated that the criteria could not be changed, yet the criterion has been changed twice. Firstly to include Fuel Tanker Drivers and secondly to include Fire Fighter students who burned the waste chemicals and fuel.

1.16 The Minister also announced Section 7.2 of the SRCA would be enacted to allow F-111 Aircraft Maintenance Workers access to Military Compensation provisions. However, DVA linked acceptance and payment under Section 7.2 only for those who received ex-gratia recognition. All other claimants were denied compensation solely because they did not meet the Tier criteria. This is outside the scope of the Act because it is not up to the Department to determine who is or is not a "particular person or group of persons", nor is it the function of the Department to determine if the condition claimed exists, it is the function of the Department to determine if the condition can be linked to military service. Therefore, although the Government stated the ex-gratia payment had no effect on any statutory rights, it has been used to deny many their rights.

1.17 Compensation is dependant upon the date which DVA determines that the condition onset. The 1971 Act (MCS) allows recognition of the condition but no payment for compensation for personnel from 1973 to 1986. The SRCA (1986 – 1994) allows recognition of the condition and a lump sum payment or taxed fortnightly payments until retirement age then all compensation ceases. The MRCA (1994 – 2006) allows recognition of the condition and a higher lump sum payment or taxed fortnightly payments until retirement age then all compensation also ceases. The Veterans' Entitlement Act (VEA) allows recognition of SoP determined conditions and untaxed fortnightly payments until death. WorkCover Queensland allows recognition of the condition and a maximum of five years weekly payments or a lump sum payment. ComCare uses the SRCA and later acts.

1.18 The VEA allows recognition of SoP determined conditions only. DVA have received applications for over 1700 conditions attributable to toxic chemical exposure while working on F-111 Aircraft due to either central nervous system or systemic immune system compromise. Section 180(A) provisions allow for recognition of a "person or particular group of persons" to be accepted for VEA entitlements where there are no SoPs and the Repatriation

Medical Authority (RMA) do not intend to create SoPs for the conditions. Although they have stated they will not create any new SoPs for Deseal conditions, and all the prerequisites for acceptance of instigation of Section 180(A) have been met, the RMA will not enact Section 180(A) provisions for all affected personnel. Again the Department appears not to be complying with the beneficial legislation to assist Veterans' with their health issues, yet there is already precedent for this provision for F-111 Aircraft Maintenance Workers. The SoP for Prostate Cancer includes a particular group referred to as Vietnam Veterans. Also, provision is made in SoPs for "Prisoners of War" for beneficial acceptance of conditions.

2. QUESTIONS

2.1 Given the history, acknowledgements and findings of the On-Base Inquiry, the Military Board of Inquiry, the SHOAMP Health Study, and the TUNRA Cancer and Mortality Study, who should be included under the definition of an eligible Aircraft Maintenance Worker for the purposes of the ex-gratia lump sum payment? In investigating this question, it is requested that particular attention be paid to:

i. the moral and legal defensibility of the ex-gratia criteria given that:

a. all F-111 Aircraft Maintenance Workers from No 3 Aircraft Depot, No 482 Maintenance Squadron, No 1 Squadron, No 6 Squadron were recognised and included in the RAAF Board of Inquiry as affected personnel and offered Group 1 status and inclusion in the F-111 Health Care Scheme established by the RAAF;

b. deceased F-111 Aircraft Maintenance Workers were not identified and next of kin sought out by DVA or RAAF to investigate if the death could be related to Deseal activities. Instead a blanket exclusion was made to all widows even though some have formal documentation from DVA stating their partner's death was caused by Deseal activities;

c. the RAAF admitted to not maintaining official evidentiary records of F-111 Aircraft Maintenance practices or involvement and DVA has relied on Record of Training and Employment as a full curriculum vitae of duties undertaken when this document was never created for such purposes, and in fact the SHOAMP Health Study reported *"There is no definitive list of DSRS participants compiled at the time that the work was carried out, and DSRS activities were not comprehensively noted in participant's personnel files. Only 40 individuals from the list of 719 classified as having been involved in the F-111 DSRS (according to DVA F-111 list) were found to have such a notation in their file".* (TUNRA & HMRI, 2004a, p.57), yet personnel have been rejected because they cannot provide formal documentary evidence and Statutory Declarations were not accepted to substantiate a claimant's involvement; and

d. Civilian contractors were only required to provide a Certificate of Employment to receive ex-gratia recognition, however RAAF personnel have been required to substantiate their daily involvement for recognition when tank entry work as part of their routine daily employment.

ii. **given that the intention of the Government in awarding an ex-gratia payment was "*in recognition of the unique circumstances of the working environment*":**

a. why was a tiered criteria established based on exposure;

b. who were the personnel who decided to limit this recognition to the four formal programs only after the RAAF had included Squadron and peripheral workers;

c. if exposure was to be used, why was the criteria established for days rather than the internationally accepted exposure hours;

d. the RAAF admitted their failure to provide occupational health and safety training in safe work practices and procedures, appropriate personal protective equipment for all personnel, and medical monitoring of health effects. The RAAF failed to provide a safe *working environment*. Why have these admitted shortcomings not been considered in the determination of eligibility for the ex-gratia payment; and

e. no occupational health and safety monitoring was undertaken to determine airborne concentrations of chemicals in the surrounding work environment at any time from 1973 to 1999, and no time-dose criteria was established identifying safe limits or limiting or reducing exposure for F-111 Aircraft Maintenance Workers in any buildings on RAAF Amberley, yet time-dose exposure is the basis of the ex-gratia acceptance and workers who were in the vicinity of the Deseal work have been excluded for compensation as a result.

2.2 **Given that this is the largest industrial disaster in Australia's military history, are the current provisions for compensation sufficient to recognise and compensate for the physical, mental, emotional, financial, and lifestyle damage and shortened life expectancy of F-111 Aircraft Maintenance Workers? In investigating this question, it is requested that particular attention be paid to:**

i. **the inequity and inadequacy of the current compensation schemes:**

a. Military Compensation can be awarded under four different Acts for military and commonwealth employees. These Acts provide for lump sum payment or fortnightly taxed payments until retirement age when all payments cease. However these Acts differ greatly in compensation amounts and therefore provide no equity to workers;

b. Veterans' Entitlements Act can be awarded for conditions which meet Statements of Principles only and provide fortnightly payments until death;

c. WorkCover Queensland provides for a maximum five years of taxed payments and a lump sum payment to a ceiling threshold including any payments already awarded;

d. No compensation schemes provide for loss of income or superannuation for after retirement age provisions. Given that the age pension is being wound down, it is anticipated that many affected personnel will be destitute after age 65;

e. No compensation schemes provide damages for loss of income, loss of lifestyle, and loss of opportunities suffered by the workers and their families as a result of performing their duties; and

f. Has the Australian Government Solicitors Office been "a model litigant" in dealing with individual legal claims which it has delayed since 2001? Have they offered mediation similar to HMAS Voyager claimants? Did the subcontracted Clayton Utz Lawyers act reasonably with the Class Action applications when they demanded PIPA forms for the Class Action even though these are not required for any such Action under Queensland law, and were their tactics considered acceptable by the AGS? Their stated intention was to instigate a very costly High Court Appeal to ensure PIPAs were used which effectively removed the opportunity of natural justice through the courts.

ii. whether the Department of Veterans' Affairs (DVA) have been transparent and applied the beneficial provisions of their statutory Acts in their dealings with affected F-111 Aircraft Maintenance Workers:

a. Although DVA management stated the ex-gratia criteria could not be changed from the guidelines which were established in August 2005, the criteria has since been changed twice;

b. When the F-111 Health Care Scheme administration passed from RAAF to DVA the list of recognised conditions changed. Affected personnel were not advised of these changes and were therefore left out of pocket for medical expenses. DVA stated the new list of conditions was in line with the SHOAMP Health Study findings yet several conditions (such as Mixed Connective Tissue Disease – an immune system disease) were never included in SHOAMP;

c. Also when the F-111 Health Care Scheme administration passed from RAAF to DVA and was renamed to SHOAMP Health Care Scheme, the date for acceptance of new conditions was set at 20 September 2005. No new illnesses or diseases which have developed since that date are included for reimbursement of

medical expenses. Also, sound international scientific advice agrees that toxic chemical contamination can take up to decades to manifest. This further negates true compensation and equity for F-111 Aircraft Maintenance Workers; and

d. Section 7.2 provisions of the SRCA Act have been enacted to allow recognition of a particular person or group of persons to receive beneficial compensation for the conditions attributed to their F-111 Aircraft Maintenance Work. However, DVA is determining who is and is not eligible for this compensation based on receipt of the ex-gratia payment. This is not the intention or provision of the Act and the "interpretation" denies members their statutory rights to compensation; and

e. Section 180(A) provisions are available under the VEA, and the F-111 Aircraft Maintenance Workers meet the criteria for provision under the Act, however, Section 180(A) provisions have been denied, even though a precedent has been established for Prisoners of War and Vietnam Veterans.

iii. whether the Department of Veterans' Affairs (DVA) have complied with the intentions of the RAAF in ensuring the provision of ongoing assistance for the health effects of F-111 Aircraft Maintenance Workers and their families:

a. the RAAF required a full health study of the effects of chemical contamination on its workers, their dependants and next-of-kin. Has the RAAF or DVA actually complied and undertaken these studies?; and

b. Is provision being made for payment of medical expenses for all conditions attributable to F-111 Aircraft Maintenance Work rather than reimbursement of expenses for a select list of conditions?

2.3 Given that it is the acknowledged that this disaster has long term health and financial implications for the affected F-111 Aircraft Maintenance Workers and falls outside the scope of current compensation schemes, would the Government consider enacting special considerations for compensation for these workers? In investigating this question, it is requested that particular attention be paid to:

i. the resolution of current and future health concerns :

a. the issue of a DVA Gold Card or equivalent to all affected personnel both military and civilian would ensure that the cognitive, psychological, neurological and emotional conditions experienced by these workers would not be further exacerbated by the currently gruelling process of seeking recognition and reimbursement of out of pocket expenses;

b. the issue of a DVA Gold Card or equivalent to all affected personnel both military and civilian would ensure that all current and future long term effects of chemical contamination including the sequale conditions caused by immune system compromise are taken care of as was the intention of the RAAF; and

c. the issuing of a DVA Gold Card or equivalent to all affected personnel both military and civilian would eliminate the current additional costs to the Government of administration of the SHOAMP Health Care Scheme, the Better Health Program, F-111 Deseal/Reseal Military Compensation and VEA F-111 Deseal/Reseal administration cells and centralise funding back to general DVA administration. This could have the potential of saving hundreds of thousands of dollars per year in wages alone and reduce duplication of record keeping and storage and alleviate the need for Deseal specific programs.

ii. The consideration of an equitable and adequate compensation payment:

a. a stand alone untaxed compensation payment which recognises the long term financial, lifestyle, and shortened work and life expectancy of F-111 Aircraft Maintenance Workers and which also acknowledges the abject negligence of the RAAF in failing to provide and maintain a safe working environment payable to survivors and widows of deceased personnel. Also to be considered is that when the RAAF failed in its responsibilities to provide full occupational health and safety for its workers, it prejudiced the Commonwealth obligations for the workers under Section 53 of the SRCA;

b. this stand alone untaxed compensation payment should have no bearing on any other statutory rights or obligations because no other current scheme, including DVA, ComCare, WorkCover, Centrelink or personal insurance has consideration for negligence; and

c. the HMAS Voyager resolution included mediation for those personnel seeking legal action and had the benefit of saving the Government an estimated $25Million in legal costs. Prior to the mediation, the HMAS Voyager survivors suffered unspeakable trauma for over 25 years at the hands of uncaring Departments in their attempts to seek compensation. It is understood that mediation is currently under way for HMAS Melbourne/HMAS Evans survivors also. This could be an additional consideration for F-111 Aircraft Maintenance Workers and would give quick resolution to the issue and avoid a repeat of the horrors of the HMAS Voyager compensation fight.

iii. The consideration of enacting Section 180(A) of the Veterans' Entitlements Act:

c. to recognise and acknowledge Toxic Chemical Contamination as both the cause and effect of F-111 Aircraft Maintenance Work. This provision would acknowledge the long term, irreversible health effects caused by the negligent exposure of workers and does not require SoPs or sound scientific medical evidence for each particular condition. As previously stated, precedent already exists to allow for this consideration;

d. to recognise and acknowledge that the ability to undertake full time work as a result of this contamination is being supported by the beneficial provisions of the VEA;

e. to provide an equitable pension for the remaining life of all affected workers, regardless of current age, rank at discharge, year of onset, and military or civilian involvement; and

f. allow for provision of funeral benefit on the event of the death of the worker.

3. CLOSING STATEMENT

3.1 The RAAF acknowledged a complete failure of duty of care to the F-111 Aircraft Maintenance Workers from 1973 to 2000. In 2001, at the handing down of the Board of Inquiry, 53 recommendations were made to ensure the same disaster was not repeated within the Service and that the health of workers, their partners and children would be taken care of.

3.2 The Department of Veterans' 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.

3.3 During the twelve months prior to processing of F-111 Aircraft Maintenance Worker claims, the beneficial provisions of the VEA were subject to a policy change and DVA Brisbane confirmed "the pendulum had swung the other way" and advocates whose claimants would normally have no difficulty in receiving beneficial decisions were receiving rejections leading to Section 32, VRB and AAT appeals.

3.4 This had a compounding effect on F-111 Aircraft Maintenance workers who then began receiving a flurry of rejections for their claimed conditions and further exacerbated the long held perception of injustice meted out to them.

3.5 Over the five years of waiting for compensation and pension decisions, the F-111 Aircraft Maintenance Workers were consistently promised that they would be "taken care of" by the RAAF, their health issues would be addressed, their fears and concerns of financial security would be allayed, and their families would be looked after.

3.6 Five years of waiting for compensation while mental and physical health deteriorated had an incredibly damaging effect on relationships and lifestyle implications for many. Some lost their businesses, others lost their homes, and relationships broke down because of the pressure of living on the knife edge of fear and misinformation. Several attempted suicide and many succeeded because of the overwhelming stress of uncertainty and the attitude of unbelief and mistrust directed at them.

3.7 Many partners have lost their income and superannuation also as a result of the F-111 Aircraft Maintenance Workers failing mental and physical health and the burdens placed upon the partners to support and care for their affected partners and suffer the onslaught of effects to their family unit of cognitive damage and "living in limbo" then rejection of claims.

3.8 These partners are also suffering damaging health effects, many, like their partners, are "rare" cancers and diseases and do not respond to normal treatments. The family is responsible for the financial burden of these diseases and illnesses. Most are also suffering major psychological conditions which the RAAF started to investigate but the study has not been concluded. All they have received so far is the offer of five counselling sessions through the VVCS Counsellors.

3.8 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.

3.9 It is hoped that this Parliamentary Inquiry will do justice to these personnel and their families and offer a just and dignified compensation package to all personnel so that their remaining life can at least be eased by the knowledge that they no longer have to "fight" for recognition, compensation and the security of their families.