

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 sum 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.