Submission 115

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

Name: **Herbertgeer Lawyers**

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

Quintus-Bosz, Donna (REPS)

From: Aimee Le Bherz [ALeBherz@herbertgeer.com.au]
Sent: Thursday, 24 July 2008 1:31 PM
To: Committee, JSCFADT (REPS)
Subject: F-111 Deseal Reseal

Dear Secretary,

We attach our correspondence to you dated 24 July 2008 together with our submissions.

<<Letter to the Joint Standing Committee (00356875).PDF>> <<Submissions (00356871).PDF>>

Kind regards,

Aimee Le Bherz
Secretary to Simon Harrison

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24 July 2008

BY EMAIL: jscfadt@aph.gov.au

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Department of the House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Secretary

F1-11 Deseal Reseal

We refer to previous correspondence in relation to this matter.

We **enclose** our amended submission in relation to the Parliamentary Inquiry into the Concerns of F-111 Deseal/Reseal Maintenance Workers.

We shall be pleased if you will confirm the date and time that Simon Harrison will be speaking to the committee.

We look forward to hearing from you.

Yours faithfully

Simon Harrison
Partner
HERBERT GEER

herbertgeer

Parliamentary Inquiry into the Concerns of F-111 Deseal/Reseal Maintenance Workers

These submissions are made to the Joint Standing Committee on Foreign Affairs, Defence and Trade by Herbert Geer Lawyers on behalf of clients who had been involved in the 4 De Seal Reseal programme(s) between 1977 and 1999.

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1. INTRODUCTION

These submissions are made to the Joint Standing Committee on Foreign Affairs, Defence and Trade (the committee) by Herbert Geer Lawyers (formerly Nicol Robinson Hallett Lawyers) on behalf of clients who had been involved in the 4 De Seal Reseal (DSRS) programme(s) between 1977 and 1999.

The submissions are made on behalf of persons who worked inside the fuel tanks as well as those who helped prepare the sealant and worked in immediate proximity to it.

Whilst our clients welcome the Federal Governments honouring of its Election commitments.

The results of, and lessons learned from, this Inquiry must result in the delivery of adequate compensation for injuries suffered.

Those involved in DSRS have waited an inexcusable length of time for justice to be done, it is hoped that this is now their time.

2. SUMMARY OF SUBMISSIONS

- It is submitted that the injuries sustained are entirely compatible with the findings of the Health Studies yet, overwhelmingly, clients are not being recompensed.

- It is submitted that the injured have been let down by a Statutory scheme which is not designed for the nature of these claims and that the common law alternative was in reality no alternative.

- It is submitted that the ex gratia scheme while well intentioned has not delivered and has had the effect of distracting attention from a proper examination of the processed which his now, belatedly, under way.

- It is also submitted that there is an alternative to the present impasse.

These Submissions are set out under the following sub headings, as follows:

A. Causation, injuries and the SHOAMP conclusions;

B. The Common Law process;

C. The Statutory election provisions;

D. The ex gratia scheme; and

E. A new settlement process.

A. Causation Injuries and the SHOAMP Conclusions

The medical sequelae suffered by those injured as a result of their DSRS involvement was caused by exposure to highly toxic chemicals used in DSRS.

The Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) was established to:

> "*Determine once and for all whether there was evidence to support anecdotal reports of adverse health problems in personnel involved in DSRS.*"

The study would look at:

> "*Any previous diagnoses particularly involving depression, psychological problems, central nervous system dysfunction toxic encephalopathy dementia, cancer, multiple sclerosis, reproduction, neuropsychological abilities and motor neurone disease; Olfactory and vibration sensation threshold shift, occupational asthma and mucous membrane irritation, dermatitis, multiple chemical sensitisation, haematological, kidney and liver function changes, sight and hearing changes, and altered clinical and immunological responses.*"

The hypotheses of the study stated that:

> "*Australian Defence Force and contracted civilian personnel involved in any of the F-111 Deseal/Reseal programs, will have, relative to an appropriate comparison group:*
>
> - *A higher rate of mortality;*
> - *A higher rate of incidence of cancer;*
> - *A higher prevalence of specific neurological disorders;*
> - *A higher prevalence of neuropsychological impairment;*
> - *A higher rate of reproductive outcomes;*
> - *A higher rate of genetic damage; and*
> - *Poorer general health and quality of life.*"

The SHOAMP reports observed that:

> "*The symptoms which included memory loss, fatigue, and other neurological problems had concerned some Staff since late 1998 but the medical centre had not supported these concerns until the officer in charge in 1999 raised concerns again.*
>
> *An initial medical investigation, conducted internally in 2000, into the F-111 DSRS program concluded that a significant number of personnel had presented with symptoms consistent with solvent or isocyanate exposure.*"

The SHOAMP conclusions and clients specific injuries are one and the same.

The cocktail of chemicals produced a cocktail of presentations, each client suffering several injuries.

Some of the more common presentations were as follows:

1. Memory loss;

2. Dermatitis ;

3. Erectile dysfunction;

4. Depression/dysthymia, extreme mood swings & irritability;

5. Neurological deficit and neuropsychological injury;

6. Respiratory problems;

7. Tachycardia; and

8. General health problems

If we now compare just a few of these presentations with the SHOAMP conclusions it is self evident that the specifically reported injuries are borne out by the SHOAMP reports yet time and time again the claims are denied through the Statutory process.

1. Clients report suffering memory loss, the SHOAMP conclusions also state:

   "*There was a two- to three-fold increase in the odds of subjective sensory and motor neuropathic symptoms in the DSRS group relative to both comparison groups.*"

   ....Subjective assessments of cognition showed a strong, significant and graded decrease in function in the exposed group relative to the two comparison groups.

   ....In summary, there is a strong and consistent increase in self-reported cognitive problems among the exposed. This is supported by the objective tests to some degree, in that three of the five domains within cognition (executive functioning, new learning/memory, and psychomotor speed) consistently show poorer performance for the F-111 DSRS group versus the Richmond comparisons.

   This effect is independent of any mood disorder (i.e. depression or anxiety). There are unavoidable uncertainties in the interpretation of the study results, due to such factors as uncertain sampling frames, potential survivor bias, low participation rates, and multiple comparisons. Nonetheless, the results point to an association between F-111 DSRS involvement and poor physical and mental quality of life, erectile dysfunction, depression, anxiety, and subjective memory impairment"

2. Clients have presented with serious Dermatological injuries, the SHOAMP conclusions also state:

   "*Skin conditions of interest included lipoma, dermatitis, psoriasis, and pigmented or sun-related skin lesions, together with self-reported skin irritation, dermatitis, eczema, psoriasis, and previously-diagnosed malignant melanoma.*

   There was a strong and statistically significant two-to three-fold increase in the odds of dermatitis in the F-111 DSRS group.....There was a strong

and statistically significant two- to three-fold increase in dermatitis in the F-111 DSRS group, and this was consistent between the three methods of assessment: as self-report, previous physician diagnosis, and as observed in the health examination. This effect was more marked versus the Amberley comparisons than the Richmond group."

3. Clients have presented with Erectile Dysfunction, the SHOAMP conclusions also state:

"*The 15-item international index of Erectile Function (IIEF) for males identified significantly higher levels of erectile dysfunction in the DSRS group"*

....Using both ad hoc and validated questions, the current study showed that there was an average two-fold increased risk of sexual dysfunction, and particularly erectile dysfunction, in exposed males compared to either the Amberley or Richmond comparison groups."

4. Clients suffer Irritability, Disturbed Sleep/Insomnia, Depression/Dysthymia, Extreme Mood Swings and Irritability, the SHOAMP conclusions also state:

"*The DSRS group was approximately twice as likely to report a previous diagnosis of depression and/or anxiety, to use anti-depressant medications ..... results were strong and consistent in that they were significant in the overall analysis.*

Data from the Kessler and GHQ also indicated that the DSRS group was at higher risk of mental distress and social dysfunction than both the comparison groups and the Australian population in general"

5. Clients suffer Neurological deficit and neuropsychological injuries, the SHOAMP conclusions also state:

"*The exposed group scored significantly lower on all four tests of executive functioning. All three tests of psychomotor speed indicated a statistically significant decrease in performance for the DSRS group."*

6. Clients suffer respiratory effects, the SHOAMP conclusions also state:

"*There was an increase in self-reported respiratory symptoms and physician diagnosed obstructive lung disease in the exposed group relative to the Amberley and Richmond comparison groups."*

7. Clients suffer Tachycardia, the SHOAMP conclusions also state:

"*In conclusion there was a statistically significant increase in all self-reported cardiac symptoms from light-headedness to palpitations to chest pain. This was consistent in subgroup analyses and showed a dose-response effect. However, there were no differences found during the physical examination"*

8. Clients suffer General Health problems, the SHOAMP conclusions also state:

"*The results point to an association between F-111 DSRS involvement and a lower quality of life and more common erectile dysfunction, depression,*

anxiety, and subjective memory impairment. There is also evidence, albeit less compelling, of an association between DSRS and dermatitis, obstructive lung disease (i.e. bronchitis and emphysema), and neuropsychological deficits.

There is a definite approximately two- to three-fold increase in subjective (self-reported) sensory and motor neuropathic symptoms in the DSRS exposed group, relative to both comparison groups.

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

B. The Common Law Process

The purported common law avenue available to plaintiffs in respect of DSRS injury was in practice a fiction: such an action was replete with limitation of actions difficulties to a much greater extent than any other type of Civil injury claim.

The Australian Government Solicitors asserted that they were restrained by Commonwealth legislation and so could not concede limitation and could not negotiate matters. Each and every point on limitation would be, and presumably in many cases has been, taken thereby ensuring that informal negotiating which is part and parcel of any other civil claim was not available in these cases.

This made, inter alia, any consideration of issuing proceedings a very high risk strategy compared to any other Civil claim such as motor vehicle, public liability or work cover type matters.

As to the importance of limitation periods the law prescribes that a Common Law action is commenced within 3 years of Injury.

The law also allows the Courts an exercise of discretion where that 3 year period has expired.

The discretion relates to where a material fact of a decisive character is only ascertained in the period commencing no more than one year prior to issuing proceedings.

This means that the plaintiff must establish that he did not learn of a material fact of a decisive character relating to his right of action until some date within a period of twelve months before he issued his Writ. It also requires that the material fact not be within the "*means of knowledge*" of the Plaintiff until that date.

Chemical poisoning however is a unique form of an insidious developing injury.

Everything hinges upon deciding at what point did the limitation period start to run:

If, as proved to be the case, it took previous and consecutive Federal Governments decades to investigate these matters and several SHOAMP reports along the way then at what point if any would limitation start to run?

- From the first presentation of illness?

If so would that have been shortly after an individual was involved in the programme and realised he was being made ill from the chemicals?

- From the first SHOAMP report?
- From the second SHOAMP report?
- From the third SHOAMP report?
- From the date of the initial Board of inquiry?
- From the date the client first saw his GP with depression, or the second time with a different presentation, or should it be the third time with a respiratory condition manifesting a few years later as a latent injury? Which GP visit for example, if any would put the GP and the client on enquiry and then make it in the persons interest to sue?
- Irrespective of appearance of injury would time have commenced from when there would there have been evidence available to justify the commencing of proceedings for an individual, if so when would that have been?

This is not therefore a question of assessing limitation from the date of a motor vehicle accident or the date of a workplace injury all of which can be date specific Nor indeed is it akin to an over a period of time WorkCover injury which can be the subject of medical evidence as to when for example a repetitive strain injury is likely to have commenced.

DSRS is uniquely different, at what date is limitation to run?

Unlike other claims the history of DSRS spans decades and chemical poisoning and its presentations by nature are a unique form of an insidious developing injury.

This brings up to the related consideration of '*election*".

C. The Statutory Election Provisions

Crucially if claimants issued common law proceedings they risked triggering the election provisions under the *Safety, Rehabilitation and Compensation Act 1988* the "*Act*".

This meant that claimants would have to abandon an avenue of statutory compensation if they pursued civil court remedies.

Therefore in many cases recourse to law was in theory an option but in reality was no option at all.

Election provisions meant that once claimants took common law steps they would lose their rights to proceed under the Act plunging them instead into a high risk strategy in terms of limitation actions.

Whilst any litigious action is fraught with difficulty these matters were exceptionally and unnecessarily "*fraught*".

The substantive conclusions of SHOAMP in terms of causation of injury would be of no import unless claimants firstly succeeded with limitation arguments which would disenfranchise claimants from the Statutory Scheme.

The history of trying to get justice for DSRS personnel has involved Inquiries and exhaustive medical research and significant Federal expense.

The nature of the investigations and conclusions do not lend themselves well to a statutory scheme based upon statement of principles (SOP's).

It is submitted that the DSRS issues are too unique a set of circumstances to be addressed by a process set up for generic matter types and individual complaints as opposed to en masse chemical exposure claims.

The statutory process simply did not have the flexibility to recognise and then act upon the SHOAMP conclusions. Yet as we have seen above the injuries for which clients have been seeking recompense are consistent with the SHOAMP conclusions.

The strictures of the Statutory system are such that its design prevents it from accommodating any extra-statutory guidance or imperative.

There was simply no point of entry for the SHOAMP conclusions into the Statutory methodology and practice.

Statutory case workers follow the various Statements of Principles which worked against the conclusions of the SHOAMP and therefore worked against the claimants.

Once Comcare processes were commenced the overwhelming comment by frustrated claimants has been one of delay and/or alleged ineptitude by those administering the scheme as well as bafflement as to how the SHOAMP conclusions can be ignored In their individual cases.

One comparison would be trying to play a compact disk of SHOAMP conclusions in an eight track statutory process player.

The Statutory system is not configured for these unique set of circumstances.

D. The Ex-Gratia Scheme

The Ex-Gratia Scheme was perceived as, at best, well meaning but woefully inadequate.

It had the effect of drawing attention away from the real issue which was the failure to adequately compensate those who had suffered the exact same injuries as those detailed in the conclusions to the SHOAMP reports.

The scheme lost credibility with many due to its self imposed, or self interpreted, strictures in relation to evidence.

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 the RAAFs failure itself to maintain adequate records in the first instance.

The RAAF were quick to second workers to the programme on an ad hoc basis if they found themselves short staffed due to illness etc. but slow to then record such workers attendance (or exposure).

SHOAMP itself in 2004 stated:

> *"It has been difficult to ascertain exactly how many people have worked on the programs over the past three decades and especially difficult when trying to include personnel who may have been affected but were only peripherally involved in the programs. While the BOI had a high level of confidence that those identified represented the full complement of people involved across the four programs, this is still unconfirmed."*

This quote confirms that the records maintained were not properly kept yet Scheme administrators turned the tables on claimants by declining claims when claimants could not themselves provide corroborative material.

Indeed the indictment of the RAAF in maintaining records is further highlighted in the report which goes on to state:

> *"In addition the BOI also identified two other groups who may have been at risk from DSRS activities. The first group involved personnel employed on duties closely related to DSRS. These included tradespeople who carried out fuel tank repairs outside the formal DSRS programs. Because it was always an ad hoc program, it has not been possible to locate all the people who may have entered an F-111 fuel tank for "Pick and Patch" work. This activity was not recorded on individual service records or listed in any way that would allow a comprehensive list to be generated. Individuals whose only exposure has been in Pick and Patch outside the formal DSRS programs at Amberley have not been included in the study group. The exclusion of Pick and Patch individuals should enable the study group to be more tightly defined and maximise exposure and possible outcome effect. The findings of the study (particularly in relation to Deseal/Reseal Program 2) may well apply to them, however they cannot be included in the study without running the risk of introducing volunteer bias.*
>
> *The second group of potentially exposed individuals included personnel working in proximity to DSRS activities. The most obvious group considered to be at risk were the boiler attendants whose job it was to dispose of the used SR51 by incineration. Surface finishers who repaired the fuel tank paint as required, Electrical Fitters/Avionics Technicians who removed and then reinstalled electrical components within the fuel tanks, and Non Destructive Inspection Technicians who performed structural inspections before tanks were resealed were also part of this group. Immediately prior to application of both primer and sealant to fuel tanks a number of products first had to be mixed. This was performed using a mechanical mixer. Individuals who undertook this task were also considered to be potentially at risk of chemical exposure."*

A number of clients have requested that we quote from their correspondence to us which they wanted to be brought to the Committees attention.

The following extracts of client correspondence refer ostensibly to the Ex Gratia Scheme but over lap into other areas of concern (capitals and bold print are those of the clients).

Client 1 notes as follows:

> "*... this reply ... describes what the RAAF did to people, people other than De sealers working as De sealers, the different situations that occurred to get the De sealers back on track as they were always behind with their contractual obligations.*
>
> *Many groups of RAAF tradesman of various trades would be tasked with picking out the old goop, even non F111 people. The aircraft would be either down at the de seal area or be towed to a squadron hanger area.*
>
> 1. *When an F111 had reverted goop, F111 flight line people would be tasked with scrubbing off the goop with their bare hands, rags and MEK solvent. No warning was given to us at all, we were just given drums of the MEK and done as we were told. OH&S, what OH&S and now no responsibility accepted whatsoever. This was a TASK signed off by the Flight Line SNCO, not the troops who carried out the task.*
>
> 2. *In preparation for the De seal process, the fuel tanks had to be emptied. After the tanks were open, there was still puddles of fuel in the tanks. Whilst this fuel was still inside the tanks, RAAF (NON DESEAL) people were required to remove certain items to allow the de sealers to carry out their job.*
>
> 3. *During the reassembly stage, if there were insufficient de seal trades people, other RAAF members were tasked to help the de seal trade people. When those tasks were completed, the de sealers would sign for the work, not the other trades people. (AGAIN, NO SIGNATURE TRAIL FOR THE RAAF NON DESEALERS!!!)*
>
> 4. *In the final stages of assembly. There were insufficient De sealers to carry out the tasks required to finalise all the work necessary to test fly the F111. The F111 would be towed into the 3AD/501 Wing hanger, whereby RAAF trades people would enter the main F1 tank to refit Pitot Static lines for the Spike System. This required hours of work inside the tank. As this task was classified as a CMO, it required at least three people to carry out the task, usually an LAC, a CPL and either a SGT or a FLIGHT SERGEANT. This work was actually signed for in Hanger maintenance sheets but the ex-gracia investigation team obviously only looked in the De seal sheets to see who was exposed. I was actually refused access to look at these sheets to prove my involvement, also my advocate was deigned access as well, the ex gratia team would not agree to look for the paper work, saying that they did not have the time or resources, A BIG FAT (**COVERUP!**).*
>
> 5. *As part of the **WORK I DID INSIDE THE F111 TANKS**, normally you were required to do a confined space entry course, due to time constraints, this was over looked and you were just told to get in the tank without the proper training. (**THIS OF COURSE DID NOT HAPPEN!**)*
>
> *... the ex gratia team refused to believe that the points listed above were indeed a fact! They refused even to look in the paperwork when I told them it would be to prove I worked inside the tanks during the de seal process."*

Client 2 states as follows:

> *"The Health care scheme was inadequate. When I requested treatment for my erectile disfunction and skin rashes as was proven by many medical tests. I was told that any ongoing treatment may or may not be covered and that if I paid for it, I may be reimbursed. As this was going to cost many thousands of dollars I could nto afford to pay with this uncertainty. The skin tests alone cost me over $200 & the erectile disfunction treatment about $2000 per year. ...*
>
> *As pointed out to you before, MCRS have already processed a claim out of spite. This claim was for skin problems (RASHES). They accepted that I had been exposed but that it was temporary exposure that caused temporary aggravation to an already present Sebhoric Dermatitis. When I first started working on the F111 I had no such dermatitis noticeable, however after many hours inside the F111 tank, rashes became very evident but medical refused to link these to the F111. I think medical knew but did not want the RAAF to accept the liability. The thing is, if you persisted going to medical regularly, you were advised the this will affect you RAAF career!"*

Client 3 comments:

> *"...THE TIER DEFINITION These were only directed at the Specific De seal workers who were actually signed up on the de seal team. No other persons who were exposed were included in any section of the tiers. People who informed the Ex Gracia team of their involvement were told they did not do any de seal work as no signatures were found in the de seal paperwork. (A bit hard when you were not allowed to sign for your own work).*
>
> *As far as I know, no other person received a payment if they were not a de sealer or that they were required to participate but actually got to sign for the work and that work was found by the investigation team. Forget it if they did not fine your name. Oh but how could they find you name if your not allowed to sign or a de sealer signed for the work **YOU** did.*
>
> *For trades people who know what work they did over the many years involving the de seal process, the handling of the ex gracia payment was very unfair and not forthcoming at all. For those same people, no compensation was paid at all. Even though MCRS accepted that I was exposed, they go tout of any compensation by tagging it **TEMPORARY AGGRAVATION**. The timing was disgusting as I still have had no payment some ten or more years down the track.*
>
> ***MY DEFENCE FORCE ADVOCATE***
>
> *The advocate assigned to my case at the time of the initial investigation was ORDERED (OFF THE RECORD IN NOT SO MANY WORDS) to do the following:*
>
> 1. *NOT ANSWER MY QUESTIONS FULLY.*
> 2. *NOT ADMIT THAT IF THE F111 WORKSHEETS THAT I MENTIONED WHEN THEY WERE LOOKED AT, MY NAME WAS IN THERE.*

3. *COULD NOT ALLOW ME TO VIEW THE WORKSHEETS I HAD SIGNED TO PROVE MY INVOLVEMENT IN THE DE SEAL PROCESS.*

4. *WOULD NOT ADMIT THAT I WAS ORDERED TO ENTER THE F111 TANKS WITHOUT THE PROPER TRAINING.*

5. *FINALLY, MY ADVOCATE WAS ORDERED TO DUMP MY CASE AND ALL OTHER CASES DUE TO LEGAL IMPLICATIONS.*

I would hope that the outcome is fair and just, but I do not think this will be the case. I hope that the outcome will be in favor of people in my group of claimants and that this outcome carries some weight ot finally properly compensate us. I would also hope that you intend on asking why certain paperwork was excluded, why the advocates were silenced and finally why the advocates were ordered to dump all clients, probably due to the legal ramifications."

Client 4 states:

"*Being one of the "Pick and Patch" workers at squadron level I have been excluded because I was not attached to a particular deseal/reseal squadron. The facts are that we were the deseal/resealers in the formative early period and as such did the work with no protective gear whatsoever let alone the inadequate apparatus issued to latter workers.*

The fact that we were excluded and deemed not worthy of even the pitiful ex-gratia payments given to some sectors adds insult to injury and demeans the sacrifices we made in terms of our health.

We feel so silly for having trusted the system under the guidance of Angus Houston – believing their lies of <u>just compensation</u> just around the corner after so many years of uncertainty and turmoil.

Sadly while this was stalling us the powers were constructing their processes and SOP's with the sole purpose of exclusion of the majority of personnel.

I just don't know what to add."

Client 5 states

"*This Health Care Scheme is tailored too specific and does not truly accommodate the people it is meant to assist, by this I mean that if your issues do not fit within a specific area, no assistance is offered or given. The remuneration of the personal involved is poor, taking into consideration the statements made on the reduced life expectancy and increased risk of cancer.*

Prior to the announcement of the Ex-Gratia payment a group of ex RAAF employees, all of which were involved in the F1-11 Deseal Reseal project had an appointment with the then Minister for Veteran Affairs Diane Kelly at her office in Mackay QLD. At this meeting the three of us voiced our disappointment at the lack of action by her department, in view of the SHOAMP findings. The Minister informed us that there was an Ex-Gratia payment coming and we would be surprised at how generous this would be.

Taking into account the severity of the health repercussions involved, all caused by doing what we were told as a member of the Australian Defence Force, with the officers in charge Knowing the potential risks involved with using the chemicals used, the financial element was pathetic.

I personally have several health issues that are directly attributed to the exposure to the chemicals I was ordered to deal with.

If I was a detainee in a government facility as a Australian or non Australian person I would be given a substantial sum as compensation for nothing, but as a Australian Serviceman who was made to work in a dangerous environment, some times even as punishment, I have had to fight for $40,000.

These issues I have are common with my peers from the RAAF and in some instances they have been emitted from any payments or remuneration due to the criteria that they do not quite fit in. Once again this is a reflection of the lack of flexibility in the system as it is."

Client 6 states

"...

1. *The Health Care Scheme was flawed as the promise to pay medical fees were constantly not honoured by Vetrans Affairs. There is a need to cover future health problems.*

2. *The Ex-Gratia scheme was a promise that the V/A had no intention of honouring, knowing well that I had been in the F-111 fuel tanks over many years.*

3. *The amount of lies I was told was very painful. I have no faith in Vetrans Affairs and now refuse to have any dealings with them.*

4. *In 1975 at RAAF Richmond I was jailed for refusing to use deadly chemicals. I complained constantly about the effects they were causing my health."*

Client 7 states

"*Re: ReSeal Deseal F1.11*

My comment is the handling of ex-gratia payments (Personnel NOT ON Criteria for PAYMENT).

I was responsible for the disposing of the SR51 in liquid form also with the Contractors (name withheld) Also decaning from the 200LTR Drum to more Rusty Drums e.g: No Protection was given only medical face MASK this was done for a period of 12-16 months and it was my responsibility to dispose of this SR51 from RAAF Amberley Till. (name withheld) Brisbane City Council stopped me disposing the SR51 at Willawong Dump (Toxic) it was 25c per Ltrs and risen to 15-6LTR in 1985, I was not on the Selection Criteria for Payment of the Exgratia Payment of $40,000 in which I would have been entitled to if the criteria was done in considering all that dealt with SR51.

NON DESEALERS being employed to help catch up the work.

The people who did this work, were not allowed to sign for their own work, DESEALERS signed for it.

As an LAC I was given MEK to scrub off the REVERTING GOOP to make the plane look nice for public displays and always was done by the Squadron prior to being taken down for the start of the process; (This practice went on all the time, not just during the process schedule).

We were not given any gloves, liquid proof coveralls, breathing masks, no protection what so ever, after washing off the goop for some 4 hours per plane, sometimes two in one day, 8 hours exposed to MEK and not just breathing it in, your hands and bottom drenched in it. Yes bottom, you had to sit on top of the plane and the MEK would run down where you were sitting.

Separate worksheets were raised "HANGER WORKSHEETS" so as 1SQN, 6SQN, 482SQN, 3AD, 9SQN, 501WG and pretty well whoever they could get to help catch up with their work was hidden. These sheets were not looked at by the Ex Gracia team, they told me they were only allowed to look in the DESEAL/RESEAL paperwork, MMMM, I wonder why?

It can safely be said that clients experience of the ex gratia scheme has not been as it was portrayed "appropriate, timely" or "transparent".

Notwithstanding that scheme applicants would swear affidavits or statutory declarations confirming they worked with the sealant the absence of records was used by the Scheme to attempt to defeat claims.

If similar matters of evidential proof were to come before any Civil courts it is most likely that such sworn testimony would be accepted irrespective of documented evidence in support, not so it appears with the Scheme."

E. A New Settlement Process

The Inquiry is asked as part of its terms of reference to review whether another Scheme could assist in these cases.

Specifically the Inquiry is asked:

> *"...whether regard should be given to the establishment of a dedicated administrative assessment and settlement scheme, and*
>
> *If the lump sums available under the ex-gratia scheme are not considered to be financially adequate, discuss what compensatory payment would be appropriate in light of the SHOAMP findings, other one-off payments made to veteran groups, and the full range of benefits and compensation available under other Commonwealth and State statutory schemes or common law damages available under Australian law."*

We submit that there has to be "*third way*" as the common law and existing statutory scheme are not delivering justice.

We have seen Schemes become established in other "*unique*" circumstances.

The recent Queensland experience for example in the so called "*Patel cases*" saw the State Government establish a specific arbitration process to streamline settlements and bring a finality to matters.

Any settlement process would involve the appointment of independent arbitrators or Mediators from Senior ranks of Counsel, Consideration would have to be given to meeting the claimants legal costs as was the case in the Patel matters.

Herbert Geer make ourselves available to provide whatever advice and assistance we can to the Government to help devise an appropriate scheme in early course.

3. CONCLUSION

Having worked in relation to these matters for some 8 years we share the frustrations of those who seek justice in relation to these matters.

Quite simply the full extent of these claims have at worst been ignored and at best have been a casualty of a paucity of process

Many would say that the DSRS is already synonymous with 'Voyager' nevertheless claimants will enter into this Inquiry in good faith. Time however is against them.

Clients are tired by a system which we believe they feel has woefully failed them.

They are tired of seeing former colleagues pass away from injuries they believe were caused by chemical poisoning.

Most of them are tired of having to continue to press their case to receive proper compensation.

They welcome this inquiry upon which the quality of their futures rely.

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