Submission No 21

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

Name: Mr Glen Corrie

16JUN08

[redacted]

Dear Sir / Madam

I'm writing in response to your reinvestigation of compensation and ex gratia payments made to the ex serving members who during their service did come in contact with the chemicals used by reseal deseal section at RAAF Base Amberley.I was employed as a firefighter and based at Amberley 1983-85 and did as many other firefighters come in contact with these chemicals on a regular basis whilst carrying out my duties.

In October 2004 I was diagnosed with Primary Adenocarcinoma of the Lower Oesphagus.In late 2005 I applied for compensation and in Jan' 2006 Dept of Defence admitted liability for my cancer as supported by document Att [annex C'].I was knocked back on the ex Gratia payments as they claimed I came under tier 3 as I was not employed as firefighter at the Fire Training School .They were only compensating firefighters who were at the school as they claimed they used the chemicals in their Fire Training pit and we did not use them in ours .the only problem there was through 1973- 89 the Fire Training School was located at Pt Cook in Victoria.I rang the evaluation team in Canbera and told them of this mistake and was told they could not change the terms of reference and my tier 3 remained their decision.

I then appealed that decision through the Commonwealth Ombudsmen in May06 as per Att Documented [Annex C].What I was basically told was that they recognised that I worked with the chemicals used by Reseal Deseal by collecting and disposing of them in our pit by burning it and in the process handling the liquid chemicals and getting all splahed over our uniforms and on our hands and facial areas and also breathing in the fumes and by products as it burnt in our fire pit ,all the time we were not issued with any safety equipment as at that time know one knew what these chemicals would do to our bodies.So what they told me then was that even though they recognised I worked with these chemicals I did not come under their terms of Reference in either Tiers 1&2 so I was not entitled to the ex Gratia payment.

They then tell me that they accept these chemicals caused my cancer for which has a survival rate of 6% and im currently in my 3rd year of remission and still have a strong possibility of not surviving, but becauseI did not qualify under Tiers 1&2 I don't get the ex Gratia payment as per Att Document [Annex A].So at this stage Im totally confused ,I did work with these chemicals long enough to cause my cancer but because I did not climb into the wing tank of an F1-11 I don't qualify,Im sorry but their reasoning on their decisions is not acceptable and from my experience since dealing with Dept of Defence this mentality is common place.

Recently I applied for compensation for 5 incision hernias located along the incision line on my stomach,I look like I'm 6mths pregnant and suffer a lot of pain . I was sent to be assessed by their doctor who was a gastroentrologist who determined liability as the hernias are a secondery condition related to the cancer.He stated in his report that surgery could possibly repair the hernias but because of the aggressive surgery I've already had this could cause complications.I then received a letter from military comp'stating that because the doctor stated my hernias could be repaired I was knocked back on my claim as they claimed the hernias are not permanent.I later spoke to my surgeon who told me that he would not under any conditions try to repair my hernias as the implications of the surgery could be life threatening due to infection or other complications.So I appealed their decisions on the grounds as stated to me by my surgeon.what the hell is a gastroentrologist doing making compensation decisions on surgical matters as he is not qualified to do so.They wrote back to me accepting my appeal but informed that I now must provide my own medical defence and legal assistance if I was to proceed with my appeal,upon further investigation I found that this would cost me thousands of dollars to do so.So hear we are again another decision made by a public servant with no medical background and me left no options.

In conclusion I must say I find it rather ironic that they determined the Reseal chemicals caused my cancer but because I didn't climb into a fuel tank I'm not entitled to their ex Gratia payment.I did receive some compensation for the cancer but compared to the amounts granted to civilian workers what I received was a joke. I read an article in the paper last week where a public servant was granted $68,000 compensation for a broken ankle , I received less than that for losing two thirds of my stomach and oesophagus and all the other complications as well. I find that very unfair and that's all I'll ask you for,is for you people to investigate our situation and be fair as we are the ones suffering and deserve better treatment from the government.

If any further information is required I can be contacted on 0439982882 or at the above address

Thanking You

Mr Glen Corrie

REF N° 2006-103627

COPY ONLY

PO Box 21 Woden ACT 2606

ANNEX "A"

Australian Government
Department of Veterans' Affairs

Mr Glen Corrie
[redacted]

Dear Mr Corrie

I refer to your claim for a one off ex-gratia lump sum payment, as a part of the F-111 Deseal/Reseal program. After carefully considering the information you provided and details of your service, I find that your duties do not satisfy the definition of a F-111 Deseal/Reseal participant as either you:

- did not undertake your duties for the requisite 10 to 30 cumulative days; or
- did not undertake any of the duties or occupations specified in the Tier 1 or Tier 2 Deseal/Reseal definitions.

You have been assessed as a Tier 3 F-111 Deseal/Reseal participant for the purposes of a determination under s7(2) of the *Safety, Rehabilitation and Compensation Act 1988*. You will need to complete a separate form if you wish to claim compensation relating to your F-111 Deseal/Reseal work.

For assistance in obtaining the correct claim form or if you need additional information regarding such a claim, please contact the most appropriate agency listed below. If you were:

- a member of the Australian Defence Force, you should call your DVA State Office on **133 254**, or your local Veterans' Affairs Network office on **1300 55 1918**; or **1300 366 979**; or

ANNEX "B"

COPY ONLY

Australian Government
Department of Veterans' Affairs

Telephone: (07) 3223 8616
Toll Free: 1300 550 461

File Reference: COR0030-03

Military Compensation and
Rehabilitation Service
Department of Veterans' Affairs
GPO Box 651
Brisbane QLD 4001
Wednesday, 25 January 2006

Mr Glen Corrie
[redacted]

Dear Mr Corrie

SAFETY, REHABILITATION & COMPENSATION ACT 1988 (SRCA)

As you are probably aware, consideration of claims such as yours have been held pending the Government's announcement of its response to the SHOAMP (Study of Health Outcomes for Aircraft Maintenance Personnel) report.

The Government's response indicated that it is satisfied, on the basis of the SHOAMP report, that a number of medical, psychological and neurological conditions showed a significantly greater incidence in those personnel actually involved in the F111 Deseal/Reseal Programs than in the Defence community generally. It was determined therefore that special consideration would be given in those circumstances.

You have claimed a cancer of the oesophagus condition as a result of exposure during the F111 Deseal Reseal Program at RAAF Base Amberley. This condition was identified in the SHOAMP report and a review of your service records confirms that you were involved in the Program to the extent detailed above. Consequently, in accordance with sub-section 7(2) of the SRCA, I determine that the Commonwealth is liable for your ***Primary Adenocarcinoma of the Lower Oesophagus*** condition.

I further determine that, for the purposes of the Act the date of injury is 17 July 2004 as this is the date that you first sought medical treatment for the claimed condition.

OTHER INFORMATION

Although the Commonwealth has admitted liability for your condition, payment of money to a client is not automatic. There is a range of benefits for which you may qualify, depending on your circumstances. I have enclosed a leaflet to help you identify what benefits you may be entitled to receive. If you believe that you may have an entitlement, I encourage you to complete the enclosed form and return it to me. I also strongly encourage you to contact me to discuss how these benefits might be applicable in your case.

ANNEX "C"

COPY ONLY

Commonwealth
OMBUDSMAN

Ground Floor, 1 Farrell Place ▪ Canberra
GPO Box 442 ▪ Canberra ACT 2601
Fax 02 6249 7829 ▪ **Phone 02 6276 0111**
Complaints 1300 362 072
ombudsman@ombudsman.gov.au
www.ombudsman.gov.au

Our ref: 2006-103627

24 May 2006

Mr Glen Corrie
[redacted]

Dear Mr Corrie,

Further to my letter of 22 March 2006, I am writing to advise you of the action I have taken to consider your complaint about the F111 Deseal Reseal (DSRS) ex-gratia payment scheme. After carefully considering the material you provided to our office, information obtained from the Department of Veterans' Affairs (DVA) and detailed discussions with senior DVA staff involved in the DSRS ex-gratia scheme, I have decided that I will not further investigate the issues that you raise in your complaint.

So that you can understand how I have come to this decision, I have attached a detailed explanation for your consideration. In addition to discussing your individual circumstances, I have included information about:

- our understanding of ex-gratia schemes in general and this ex-gratia scheme in particular,
- the development of the ex-gratia scheme and its relationship with the Interim Health Care and Study of Health Outcomes in Aircraft Maintenance Personnel Health Care Schemes,
- the role of the Ombudsman's Office and the legislative limitations which are placed upon us in investigating the actions or decisions of Ministers, and
- the assessment process used by DVA and what remaining options are open to you to consider in relation to your concerns.

From the outset, I acknowledge your firm view that you should be eligible for payment under the ex-gratia payment scheme. Unfortunately, based on my understanding of the criteria in place to determine eligibility under the scheme, and your documented employment history, I have formed the view that DVA's decision to not grant you a payment under the scheme is not unreasonable in all the circumstances.

If you would like to contact me to discuss my decision, please telephone our Canberra office on (02) 6276 0111 and quote the reference number 2006 -103627. Alternatively, you may wish to call 1300 362 072, for the cost of a local call, and ask to be transferred to me or have me return your call.

Yours sincerely,

David Robertson
Senior Investigation Officer

Ombudsman's role

Before I discuss my reasons in detail for deciding not to investigate your complaint further, I would like to reiterate any previous advice, which you may have been given about the function of the Ombudsman's office. The Ombudsman's role is to investigate complaints about the administrative practices of government departments and agencies. The Ombudsman does not represent either party in a complaint and investigations are carried out impartially, at no cost to the complainant and, generally, using informal methods. At the conclusion of an investigation the Ombudsman may make recommendations to the department or agency, but has no power to substitute a decision or decisions.

Importantly, s5(2)(a) of the *Ombudsman's Act 1976* states that the Ombudsman is not authorised to investigate actions taken by a Minister. As the ex-gratia scheme was established at a Ministerial level, our office initially approached DVA to obtain a better understanding of how the scheme was established and operates.

What this means then is that we cannot investigate the decision of a Minister or Ministers, to limit the ex-gratia payment scheme to those people who satisfy specific qualifying criteria. Our Act limits our investigation to DVA's administration of the scheme. This includes the processes used to investigate, assess and approve claims and the documentation upon which such decisions were based.

Action taken in relation to Deseal Reseal cases

Staff from our office have met with DVA on several occasions to discuss the DSRS ex-gratia payment scheme generally, and to also discuss individual cases referred to our office. I have also closely considered the material you sent to us in relation to your complaint. I would like to provide you with an explanation of my understanding of the key elements of the ex-gratia scheme, and my views about how these considerations relate to your complaint.

The ex-gratia payment scheme

From our discussions with DVA it is clear that considerable research and analysis, professional medical opinion, and health data, were assessed before Cabinet determined the tiers used in the ex-gratia scheme. We understand that this assessment phase alone took over two years to complete. Additionally, we were advised that much of the material included as evidence in the 501 Wing Board of Inquiry (501WG BOI) was also considered. This is particularly relevant to the assessment of individual claims.

The DSRS ex-gratia scheme is intended to provide an additional payment to core DSRS personnel subjected to prolonged and/or continuous significant exposure to substances used as part of the DSRS programs at specific DSRS hangars or sections. This is in keeping with the general principle of granting payments under an ex-gratia scheme where provision can be made for a group of people subjected to an adverse set of circumstances or conditions and where there is no other legal, statutory or administrative avenue of assistance available. Ex-gratia payments may be made to a group, irrespective of whether the Commonwealth has any direct moral responsibility for the losses the group may have sustained.

It is important to note that a Cabinet level approval of payments to a group under an ex-gratia mechanism is not a common occurrence. It follows then that consideration of payment under an ex-gratia mechanism reflects the exceptional nature of core DSRS work.

'Fire Fighters whose usual place of duty was a Unit at RAAF Base Amberley and who spent at least 60 cumulative working days actively involved in the burning of by-products from the F-111 DSRS process during the period 1976 – 1994;'

This change was made to acknowledge that prior to the RAAF School of Fire and Security (SFS) being established, some Base Squadron Amberley fire fighters were involved in the disposal of DSRS by-products. The effect that this change has is to allow DVA to consider non-SFS fire fighters claims more beneficially. The wording under tier three remains:

'Fire Fighters whose usual place of duty was a Unit at RAAF Base Amberley and who were actively involved in the burning of by-products from the F-111 DSRS process during the period 1976 – 1994;'

DVA's view is that there are no documents available to support your claim that you were employed for more than 60 cumulative days in the disposal of DSRS by-products. Based on my understanding of the material considered, this view does not seem unreasonable. However, DVA has advised us that they considered that you:

- were an appropriate mustering (a fire fighter),
- were posted to a unit at RAAF Amberley, and
- served during a relevant period.

Although DVA was not able to quantify your service, in terms of recognition under tier two of the scheme, DVA viewed your claim in light of the probability of you being involved with the disposal of DSRS by-products to some degree. Accordingly, because your eligibility under tier two could not be established with any certainty, DVA decided it would be practical to recognise you under tier three of the scheme. In all the circumstances, considering what material was considered, I am of the view that DVA's decision was a reasonable one.

Other avenues open to consider

The limitation of our investigative powers under our Act does not remove your option of continuing to press your case through such avenues as your local member of parliament, or directly to the Ministers of the Department of Veterans' Affairs or Department of Defence. In addition, you may wish to consider obtaining assistance, which might be offered by such groups as the F111 Deseal/Reseal Support Group. I acknowledge that you may have already approached this group.

Access to benefits through other relevant legislation

I note that DVA has advised you that, while you were found to be ineligible for an ex-gratia payment, you may be entitled to claim for benefits under the *Veterans' Entitlement Act 1986,* the *Safety, Rehabilitation and Compensation Act 1988* or the Queensland *Workers' Compensation and Rehabilitation Act 2003.*

I note that you have also been advised that your possible eligibility for benefits under these Acts is independent of the ex-gratia payment scheme and, depending on your circumstances, may require a separate application form to be lodged. While you may have already been provided with this advice, for the sake of completeness, I have taken this opportunity to include contact details for the appropriate agencies below.

Material and evidence assessed by DVA

Our office is satisfied that in individual cases, DVA has considered a significant amount of relevant material in attempting to establish the eligibility of claimants under the ex-gratia scheme. Examples of information considered include, but are not limited to:

- personal service records,
- medical records,
- pay and related allowance records,
- aircraft servicing records,
- performance reports and duty statements,
- statements and submissions made to the 501WG BOI,
- incidental evidence such as photographs or media articles, and
- where other evidence exists but is not conclusive, corroborative statements.

DVA has advised that, where the evidence presented did not automatically support an applicant's claim, claimants have been approached to provide additional information if this exists. It is our view that DVA has considered a wide range of material, which might support an application for payment, rather than narrowly assessing individual claims. From the Ombudsman's perspective, there does not appear to be an administrative deficiency in the process used by DVA to gather and assess supporting evidence.

I also understand that, although no direct review mechanism exists under the ex-gratia payment scheme, DVA has indicated a willingness to reconsider a decision if new material comes to light.

Individual considerations of your case

As I indicated previously, we have met with DVA to discuss individual cases and have discussed your case with DVA DSRS staff. From the material available to me it is apparent that DVA's decision to recognise you as a tier three claimants was based on:

- an understanding of the fire fighter role at the time you served at RAAF Amberley, and,
- the nature of your duties as they are described in documents such as your annual reports and duty statements.

When we discussed your case with DVA it became clear that your annual reports for 1984, 1985 and 1986 specifically indicate that you were employed in watch room duties or 'domestic' fire fighting roles. The reports also specifically mention that your supervisors at the time employed you in this manner to allow you the opportunity to care for, and assist with treatment being given to, a seriously unwell dependant. Your reports do not mention any involvement with DSRS by-products. DVA has also advised us that there are no other documents available, which indicate that you were involved in the handling or disposal of DSRS by-products.

In relation to the tier definitions which discuss fire fighters, I can advise that the Minister has changed the wording of the tiers. Under tier two the definition relating to fire fighters now reads:

It is also a reasonable and commonly held view that not all personnel associated with F111 aircraft, or employed at RAAF Base Amberley, experienced the same level of exposure to DSRS chemicals. In my mind it is reasonable then to suppose that not all claimants could or should be eligible for the same level of payment under the scheme.

The quantitative nature of the definitions used in each tier is seen as an objective measure of the varying degrees of exposure to DSRS chemicals by personnel. For example, professional medical opinion suggests that incidental contact with DSRS chemicals via the skin poses a significantly reduced risk to a person compared with the risks associated with regular and extended tank entry, or the prolonged exposure to the by-products of disposal of DSRS chemicals by incineration.

A body of professional medical opinion supports each of these objective measures of degrees of exposure. In keeping with the principles of payments under an ex-gratia scheme, the Government's view is that only those core personnel who can demonstrate a prolonged and/or continuous significant exposure to DSRS chemicals through having worked at designated DSRS hangars or sections, should receive a payment under the scheme. In addition, it should be remembered that individuals involved in DSRS, both directly and indirectly, are able to claim for compensation if they consider their health has been adversely affected, regardless of the period of exposure. The decision to refuse an applicant an ex-gratia payment does not suggest that the applicant may not qualify for other forms of compensation, which I will discuss further in this letter.

Relationship between the Interim Health Scheme and the ex-gratia scheme

The Interim Health Case Scheme (IHCS) was introduced on 8 September 2001 in response to recommendation 2.8 of the 501WG BOI. It was replaced by the Study of Health Outcomes in Aircraft Maintenance Personnel Health Care Scheme (SHOAMP HCS) on 19 August 2005. Personnel who registered with the IHCS were automatically transitioned to the SHOAMP HCS. Each scheme specified two 'groups' and each 'group' was given access to a different level of service.

My understanding is that participation in the IHCS and now the SHOAMP HCS enables personnel to access a range of medical treatment at Commonwealth expense, which would otherwise require payment by the individual. Examples of treatments available include:

- medical and hospital treatment,
- pharmaceuticals, radiology and physiotherapy,
- occupational and speech therapy,
- access to psychological counselling or services, and
- dietetics, household and other respite services.

It is perhaps unfortunate that some DSRS personnel may have formed the impression that the 'groups' identified in the health care schemes bore a resemblance to the tiers expressed under the ex-gratia payment scheme. Indeed, we understand some claimants believed that a direct relationship existed. While this may have been confusing, and perhaps generated an expectation of eligibility under the later scheme, there is no direct relationship between either health care scheme and the ex-gratia payment scheme. Eligibility under one or both health care schemes does not confer eligibility for the ex-gratia payment scheme. The latter is related to a period and type of exposure, rather than to a specific medical condition.

Department of Veterans' Affairs
Veterans' Affairs Network
Tel: 1300 551 918

Comcare
Tel: 1300 366 979

Queensland Workcover
Tel: 1300 362 128

Conclusion

I can appreciate that my decision to not to investigate your complaint further is not the outcome you were expecting or might have hoped for. However, I confirm that our office has considered the assessment of personnel under the ex-gratia payment scheme both generally, and individually, in some detail. I also ask you to remember that as the definitions used in assessing DSRS claims for an ex-gratia payment have resulted from a Ministerial level decision, our office is unable to investigate that decision.

Within the limits of the ex gratia payment scheme, I have not identified any deficiency in DVA's assessment or processing of your application I have therefore decided that further investigation of your complaint would not shed better light on the issues you raise or, importantly, provide you with a different outcome.

As stated in my covering letter you are welcome to call, or write to me, to discuss my decision. Should you be dissatisfied with my decision, you may elect that I reconsider my original response to you. If you would like me to do this, you may wish to call one of the numbers given at the beginning of this letter to discuss your reasons for a request of a reconsideration with me.

Yours sincerely,

David Robertson
Senior Investigation Officer