



Submission No 50

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

Organisation: Commonwealth Ombudsman

**Address: GPO Box 442
Canberra ACT 2601**

Our ref: 2005-2532114

25 June 2008

Committee Secretary
Joint Standing Committee on
Foreign Affairs, Defence and Trade
Department of the House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2 600

By email: jscfadt@aph.gov.au

Dear Committee Secretary

Submission to the inquiry into RAAF F-111 Deseal/Reseal workers and their families

Thank you for the opportunity to make a submission to the Committee's inquiry into the compensation of RAAF personnel involved in the Deseal/Reseal activities. Since August 2005 my office has received 87 complaints about the Department of Veterans' Affairs (DVA) arising from the Deseal/Reseal compensation scheme.

I have limited my submission to the third group of considerations in the terms of reference. These relate to the overall handling and administration of the ex-gratia and compensation claims.

On 21 May 2007 my office raised our observations about the administration of the claims with the Secretary of the Department of Veterans' Affairs. The Secretary responded fully and openly, acknowledging some areas for improvement and explaining the process in more detail. We were satisfied with the Secretary's response, and did not take any further action. The comments in this submission have therefore been raised with, and addressed by, DVA. However I believe these observations will still be of assistance in the inquiry's retrospective assessment of the Deseal/Reseal claims process.

Deseal/Reseal documentation

The complaints made to my office highlighted several deficiencies in the original records created in relation to the involvement of ADF personnel in the Deseal/Reseal process. Many complaints arose from situations where the records held by the RAAF or the Department were not sufficient to support a claim, and/or the member felt that the records did not accurately reflect his or her service.

From the complaints made to us, the following appear to be the two main causes of insufficient documentation:

- informal placement of an individual onto a Deseal/Reseal process, without adequate official recording of their movement
- the destruction of technical maintenance records in the R5 process.

The nature of the Deseal/Reseal work done by an individual, and the time he or she spent doing it, were critical to the decision on the claim. Therefore any dispute as to what an individual did in a particular case was central to the grant or refusal of an ex gratia payment. It is clear that in some cases there were not adequate documents to support a person's contention that they qualified for a payment.

Gathering and using evidence in claims

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. 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.

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.

There also appears to have been inconsistent treatment of similar evidence, for example statutory declarations provided by concurrently serving personnel. In some cases this evidence appears to have been given considerable weight, and in others discounted. While this may be appropriate in the individual case under consideration, it should be possible for a review body to be able to look back at the decision and see a clear statement of how the evidence was weighed and how that contributed to the final decision. This was not always possible, leading to a view that similar evidence had been inconsistently treated.

Staffing resources

From our investigations it seems that there were some problems with the staffing of the handling of compensation claims, although it may not be as straightforward as lack of sufficient staff. It appears that the team dealing with the claims had technical rather than administrative skills. Our view is that a mix of technical and administrative skills might have produced a more efficient result.

For example, the concerns we note around the treatment of evidence, the recording of decisions, the lack of sufficient guidelines, and inadequate documentation in individual case files (e.g. no file notes or emails kept on file) may have been avoided if experienced administrative personnel had established and controlled the process. We also found that, at least initially, there was an inadequate understanding of the role of the Ombudsman's office which may not have occurred if people with more knowledge of the system of public accountability had been involved.

Delays

Some claimants who approached this office had not had their claims finalised in a timely manner. We appreciate that difficulties in evidence gathering, especially as a result of the passage of time, made some claims more time consuming to investigate and assess.

We understand that DVA's practice was to conduct an initial assessment to see which claims could be quickly and easily dealt with, which seems an effective way to optimise average processing speed. However, it does mean that the more problematic claims were sometimes delayed. From our examination of files of specific claims, it also seems that DVA did not always regularly update claimants on the progress of the claim; nor did it always advise claimants that their claim may take some time to finalise.

There was some delay associated with claims from personnel who conducted minor fuel leak repairs ('pick and patch'). These personnel were not employed in one of the four Deseal/Reseal programs, and therefore were excluded under the eligibility requirements. This matter was put forward for consideration by the Minister, and the finalisation of these claims was delayed as a consequence.

Record keeping of claim files

When investigating complaints about claim files, it appeared to this office that individual claim files viewed contained limited information. In general:

- it was unclear on what basis decisions were made if no 'technical assessment' had been prepared and placed on file
- 'technical assessments' did not always reference the source of the information relied upon and were undated
- where DVA had advised a claim had been reconsidered, there was little or no evidence on file that this had occurred, such as a recorded assessment of the material supplied forming the basis of a request for reconsideration, the action taken and the outcome of the reconsideration
- documents on file were not folioed
- records of conversation were not evident on file when it is understood that telephone conversations with claimants, former supervisors, and our office took place
- the identity of the author of handwritten comments on file documents was not apparent.

Our concern about poor record keeping is that it is not clear how a decision was reached. DVA have advised that in all cases both the recommendation and the delegate's decision were placed on file. If there was no technical assessment, it means that sufficient evidence was available to easily link a claim to a tier definition. DVA agree that records of all telephone conversations should have been made, however given the staffing resources available this would have been a significant drain and would have led to delay in assessing and finalising claims.

Poor record keeping also made it more difficult for the Ombudsman's office to investigate complaints. DVA staff were helpful in further explaining matters, however it would be preferable for case information to be in the written record.

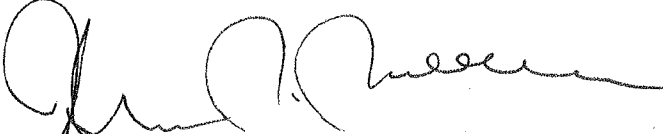
Guidelines for assessing claims

As mentioned above, DVA did not have a written policy document for assessing and determining claims, apart from the tier definitions. The tier definitions were in some areas ambiguous and poorly worded. This led to differing interpretations. In areas where problems arose, it may have been useful to establish upfront guidelines in those areas to guide future decisions.

DVA advise that because the claims were made in a small team environment, with a limited number of delegates who could make a decision, there was consistency in the decision making despite the lack of guidelines. This is true, though there are disadvantages with having such a small pool of decision makers. In our investigations we found a reluctance to re-visit decisions which had been made by an individual personally.

My office would be happy to elaborate further on any of the points raised in this letter. Please do not hesitate to contact Ms Anna Clendinning, Senior Assistant Ombudsman, on tel: 6276 0156 if we can be of any further assistance.

Yours sincerely



Prof. John McMillan
Commonwealth and Defence Force Ombudsman