
COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

## DEFENCE SUBCOMMITTEE

**Reference: Royal Australian Air Force F111 workers and their families**

MONDAY, 21 JULY 2008

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**JOINT STANDING**

**COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

**Monday, 21 July 2008**

**Members:** Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Bartlett, Mark Bishop, Cormann, Fifield, Kirk, Sandy Macdonald, Moore, Payne, Stott Despoja, Trood and Webber and Mr Baldwin, Mr Bevis, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Mrs Mirabella, Ms Parke, Ms Rea, Mr Ripoll, Mr Robb, Mr Robert, Mr Ruddock, Ms Saffin, Mr Bruce Scott, Mr Kelvin Thomson and Ms Vamvakinou

**Defence Subcommittee members:** Mr Bevis (*Chair*), Mr Baldwin (*Deputy Chair*), Senators Mark Bishop, Cormann, Fifield, Forshaw, Payne and Trood and Mr Dale, Mr Gibbons, Ms Grierson, Mr Hawker, Mr Macfarlane, Mrs Mirabella, Mr Robert, Ms Saffin, Mr Scott and Mr Kelvin Thomson

**Members in attendance:** Senators Mark Bishop, Cormann, Forshaw and Trood and Mr Baldwin, Mr Bevis, Ms Grierson, Mr Robert

**Terms of reference for the inquiry:**

The committee will investigate and review claims for compensation from former F-111 deseal/reseal workers including the Commonwealth's response to the health and support needs of former F-111 deseal/reseal workers and their families. The Committee should ascertain whether the response was adequate, whether it was consistent with the findings of the Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP) and whether the overall administration and handling of the program was adequate.

The Inquiry will consider the adequacy and equity of the Health Care Scheme in meeting the health and support needs of participants and their families and whether this was consistent with the SHOAMP findings. Matters to be considered will include, but not be limited to:

- The differences, and transitional arrangements, between the interim health scheme and the final Health Care Scheme;
- The timing of cessation of access to the Health Care Scheme;
- The range of treatment and health benefits provided under the Health Care Scheme;
- Whether the current Health Care Scheme is consistent with the range of treatment and health benefits available to persons under other Health Care Schemes;
- The adequacy of arrangements under the Health Care Scheme affected family members (including widows) or serving members; and
- If the Health Care Scheme is not considered to be an adequate response to the health and support needs of participants and their families, consider and report on possible alternatives that are considered to be adequate in light of the findings of SHOAMP and other Health Care Schemes.

The Inquiry will consider the adequacy and equity of the financial element of the Ex Gratia Scheme and whether it was consistent with (i) the findings of SHOAMP, (ii) the Health Care Scheme response (iii) the Tier definitions, and (iv) one off payments to other veteran groups. The Inquiry will consider, but not be limited to:

- Whether the lump sums available under the ex gratia scheme were appropriate;
- Whether the lump sums available were appropriate given the findings of the SHOAMP;
- Whether the lump sums, when considered along with the benefits available under the Health Care Scheme, were appropriate;
- Whether the lump sums available under the ex gratia scheme were appropriate, when considered along with the full range of benefits and compensation available under other Commonwealth or State statutory schemes;
- Whether the lump sums were consistent with the definitions of Tiers of participants;
- Whether the lump sums were consistent with other one-off payments made to veteran groups;
- When assessing the question of adequate remedies 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.

The Inquiry will consider whether the overall handling and administration of ex gratia and compensation claims was appropriate, timely and transparent for both participants and their families. The Inquiry will consider whether, but not be limited to:

- Cross agency cooperation was effective;
- The documentation and records held by both Agencies as they relate to deseal/reseal activities was adequate;
- The standard of evidence required to substantiate a claim was reasonable and, if not, whether alternative standards of proof may be used when making an eligibility determination;
- There has been equitable treatment of service personnel, public servants, civilian employees and contractors involved in deseal/reseal activities;
- Staffing resources were adequate to produce a timely result;
- There were unreasonable delays in the process, taking into account the complex nature of issues; and
- The overall handling and administration of ex gratia and compensation claims was appropriate and timely.

## WITNESSES

**Subcommittee met at 9.02 am**

**BROWN, Air Vice Marshal Geoffrey Charles, Deputy Chief of Air Force, Department of Defence**

**GARDNER, Dr Ian, Functional Head/Senior Consultant, Occupational and Environmental Medicine, Department of Defence**

**GRZESKOWIAK, Mr Steven, Acting First Assistant Secretary Personnel, Department of Defence**

**LYSEWYCZ, Mr Michael, Defence Legal Division Director of Litigation, Department of Defence**

**SANDERS, Wing Commander William James (Bill), Deputy Director, F111 Deseal-Reseal Board of Inquiry, Department of Defence**

**CHAIR (Mr Bevis)**—I formally declare open this public hearing of the parliamentary inquiry into F111 deseal-reseal workers and their families by the Defence Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. This inquiry has been created on terms of reference referred by the Minister for Veterans' Affairs. It deals, as we all know, with issues that now go back some 35 years and more. It follows on from other work that was done principally seven or eight years ago by the board of inquiry and subsequently by the SHOAMP report. As we know, it deals with matters that are, for those directly affected, of very high importance. The committee takes the task at hand very seriously. The terms of reference are very broad-ranging and extensive, and we all hope that this process provides an opportunity to bring at least some of the complex matters upon we which we will touch to a satisfactory conclusion, or at least take them along the road to a satisfactory conclusion. Today, the committee will be taking evidence from the Department of Defence, from the Commonwealth Ombudsman and from the Department of Veterans' Affairs. Next week the committee will convene in Brisbane and will be taking evidence from a range of individuals and organisations, most notably a number of individuals who were involved in the F111 deseal-reseal program at one point or another. We will also be visiting the Amberley air base and looking at some of the facilities and inspecting some of the physical arrangements at Amberley.

I welcome the witnesses from the Department of Defence. Although the subcommittee does not require you to give evidence under oath, I should advise that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. Do you wish to make any opening statements to the committee?

**Air Vice Marshal Brown**—We are here because the Air Force hurt a large number of our people involved in F111 fuel tank maintenance between 1973 and 2000. We are grateful for this chance to look at what has been done to help them and we believe that more could and should be done. You have had a chance to read our submission, which sets out the history in detail. I would like to go briefly over some of that history. In 2001 an Air Force board of inquiry revealed the extent of unsafe work practices in the F111 deseal-reseal programs. These were maintenance programs to fix leaking F111 fuel tanks by firstly removing old and damaged sealant and then applying new sealant, hence the name deseal-reseal. There were four of these maintenance

programs over the years, each using different procedures and chemicals. These unsafe work practices occurred over many years. Personnel would enter F111 fuel tanks for long periods without using the appropriate protective equipment and be exposed to various potential toxic chemicals. The board of inquiry led to an overhaul of occupational health and safety practices throughout the Air Force and defence generally. When we visit Amberley next week, hopefully, you will be able to see the results of that and how it is enforced.

After the board of inquiry, Defence funded a number of measures to help look after people who had been affected by this inquiry and we will look at issues such as the interim health care and the health study. While these measures were funded by Defence they could not have been delivered without the advice, assistance and administration provided by the Department of Veterans' Affairs. This was not our area of expertise and we were and are grateful for the support, cooperation and advice provided by DVA. After the health study, the previous government authorised an ex gratia payment and the continuation of health care for health conditions identified by the study. Again, these measures could not have been delivered without the advice and support of DVA.

The group that has received the most focus so far are the core workers who were involved in the deseal-reseal programs. It is these personnel who were the focus of the board of inquiry, the health study and the ex gratia payment. They had the worst of the working conditions, spending long periods inside F111 tanks exposed to a variety of toxic chemicals. The budget that was approved by the previous government for the ex gratia payments was divided amongst this group in recognition of those working conditions. But we do not believe that the illness and medical conditions linked to deseal-reseal workers are confined to this group. Other personnel associated with F111 fuel tank repair were exposed to similar chemicals to varying degrees. Developing medical conditions may depend on an individual's tolerance to the chemicals involved. Our main concern is to do everything we can to ensure anyone who has been hurt by their involvement in F111 fuel tank maintenance is properly looked after. We are happy for all options to be examined to achieve this.

The measures that have been taken to date, such as the interim healthcare scheme and the ex gratia payment, are not a substitute for compensation or long-term health care. The principal means relied upon to help people affected are the safety net of military compensation and the veterans' entitlement legislation administered by DVA. We understand that many people have been able to prove their claims to the legal and policy standards required by DVA, and get appropriate compensation and health care. We acknowledge that DVA has done an enormous amount for the Air Force community. However, we believe that there are also people who genuinely need care as a result of involvement in F111 fuel tank maintenance and who have not been able to get access to the appropriate compensation and health care. We believe that there is more that can be done under the existing legal framework to make it easier for people with genuine claims.

This is not a simple issue. There are many variables. There are some things we know from the health study, but in other areas the science is far from certain. Former RAAF workers and public servants have access to Commonwealth compensation schemes, whereas contractors do not. In some cases, the records to show that a particular person was involved in a particular kind of work simply do not exist. In other words, achieving a fair outcome for everyone will not be easy.

However, we remain committed to doing everything that we can to help everyone who has been affected and to assisting the inquiry in looking at all options.

**CHAIR**—Thank you. I appreciate the sentiments expressed in your opening statement. We look forward to your assistance and that of Defence as we try to find an amicable outcome.

**Mr BALDWIN**—Could you detail to us how many Air Force personnel, how many defence personnel and how many civilians were involved in the deseal-reseal program?

**Air Vice Marshal Brown**—Over the four main programs—I might look to some of my experts behind me to give the exact numbers—the inquiry looked at around 400 or 500 people who came forward. I think there are difficulties in getting exact numbers of how many were involved because of the nature of the record keeping at the time. I will just look to somebody at the back who could maybe give me a better number.

**Mr BALDWIN**—That is all right; that can be provided on notice.

**Air Vice Marshal Brown**—Okay.

**CHAIR**—I think we may be able to get some more accurate advice. The board of inquiry, I think, did have an estimate.

**Air Vice Marshal Brown**—Yes. I ask Wing Commander Bill Sanders to come forward to give those numbers.

**Wing Cmdr Sanders**—I was secretary to the board of inquiry and I can provide some background information.

**CHAIR**—Thank you.

**Wing Cmdr Sanders**—The question was the number of people involved in the four programs. The total numbers are very hard to discern. I did an estimate for the Chief of Air Force some years ago, and we estimated there were approximately 460 in the four core programs. Because of the record keeping at the time, it is difficult to know precisely. Regarding the number of civilians and contractors, I cannot give you a figure right now but am happy to provide you with further detail.

**CHAIR**—I am sure the committee would appreciate that advice, so please take that on notice.

**Air Vice Marshal Brown**—We will.

**Wing Cmdr Sanders**—There were 460 Air Force personnel.

**Mr BALDWIN**—In addition to that, what are the numbers of people in general defence and the number of people who were civilian contractors and the total number?

**CHAIR**—We might need to define the nature of the work they were doing, though, because some of those people will be involved in the formal deseal-reseal and others will be involved in

cleaning, disposal, furnaces and transportation. If you are able to identify by type of work, that would be of some assistance. I am not sure whether that is possible because it appears that the records of the day were not that good.

**Air Vice Marshal Brown**—I will talk about the records—it probably gets to one of the core problems with this inquiry. While Air Force has maintained personnel records back that far and there is some identification of people being posted into that section, the maintenance records on each individual airplane, which would have detailed who was inside the fuel tanks, were really only kept from 1992 onwards. In fact, there was no requirement to keep records past five years until about 2000-01. That is one of the problems in defining how many people there were.

**Mr BALDWIN**—I asked that question because, in some of the background information, there have been claims of effect from those who were simply delivering and coming into contact with the drums of the materials, as well as the spouses who would be cleaning work clothes of those who were involved in the contamination. So, in looking at the total package, we are not confining it just to an exploration of those who were involved in defence and crawling inside tanks but are looking at the broader scope of the health detriment of those involved all the way through.

**Air Vice Marshal Brown**—What numbers do you want?

**Mr BALDWIN**—Just so they can understand the broader scope of all of the people involved, were there 100 defence personnel other than Air Force involved in delivering, maintaining, disposing, and cleaning?

**Air Vice Marshal Brown**—Yes.

**Mr BALDWIN**—Were there a hundred contractors, 500 contractors? What is the scope? As we embark on one area in relation to defence personnel, it may open up areas for others and other claims. I was trying to get a handle on the whole perspective.

**Air Vice Marshal Brown**—Sure. The board of inquiry looked at those main deseal-reseal programs, so we will go back and get the best estimate we can on that.

**Senator FORSHAW**—Sorry to interrupt: we are starting at a very important point—that is, to get, as accurately as we can, data on the total number of people. It is always an issue in any sort of inquiry into a public health issue to go back and work out how many people may be ultimately affected.

**Mr BALDWIN**—Are we dealing with 1,000, 2,000, 3,000?

**Senator FORSHAW**—You can go back to the board of inquiry and the other inquiries and dig out the figures and give them to us, but surely you also had people coming forward—did you?—to help collate those numbers as well—

**Air Vice Marshal Brown**—That is correct.

**Senator FORSHAW**—as distinct from just going to the records?

**Air Vice Marshal Brown**—Yes. Again, throughout the process there have been people who were involved in it who have tried to identify people who were involved in the different programs. But I think it goes to one of the other core issues here: there are different individual tolerances to these chemicals and different effects, and I think that is one of the problems. It is not a length of exposure time frame; it is an individual's predisposition, or that is one of the thoughts. The science is fairly inexact.

**Senator FORSHAW**—I think we appreciate that. There are different sets of circumstances of how much people were exposed to whatever chemicals and so on, but it is pretty important, I think, to get as best we can an overall set of figures broken up into the different categories of the scope of the numbers of people we are looking at.

**Air Vice Marshal Brown**—We will go back and do that.

**Senator TROOD**—It has just been pointed out to me that we have got an estimate here of approximately 2,000 people who could have been potentially exposed.

**Air Vice Marshal Brown**—We will go back and give you a better breakdown.

**Senator FORSHAW**—If you can break that 2,000 down into the different categories.

**Senator TROOD**—Can you tell us now how you have achieved that figure of 460—the categories those 460 come from?

**Air Vice Marshal Brown**—Again, it has a lot to do with the original board of inquiry that was set up to look at the four reseal-deseal programs. There was a fair bit of publicity over that initial inquiry, and it asked for people to come forward so that was the way a lot of the numbers were determined—Bill, is that correct?

**Wing Cmdr Sanders**—The board of inquiry estimated that in excess of 400 people were exposed and had their health damaged, and that was our starting figure. We then—

**Senator TROOD**—Sorry, Wing Commander: on what basis were the 400 exposed?

**Wing Cmdr Sanders**—These were people who were in the four formal programs for deseal-reseal programs as against the peripheral activities.

**Senator TROOD**—But you say that the records in relation to the maintenance of particular aircraft were not kept prior to 1992—is that right?

**Air Vice Marshal Brown**—That is correct.

**Senator TROOD**—So those figures that you are talking about in relation to the four programs relate to figures compiled as a result of records both prior to and subsequent to 1992?

**Air Vice Marshal Brown**—Again, it gets back to the records you are talking about. There were personnel records and medical records still available.

**Senator TROOD**—That is precisely the issue. You have given us a figure of 460 people. I am trying to get a sense of the categories by which you have created this group of 460 people. Are they largely determined to have been involved in relation to these aircraft after 1992 as a result of the records you have? Is there a group of people—say it is 20; maybe there are more—whom you assume to have been involved because, whilst you do not have the records in relation to the aircraft, they are included by association?

**Air Vice Marshal Brown**—It includes right back to 1977. People were formally posted into these sections, and they were identified from that. Where we have run into trouble is that some people worked on a part-time basis in a lot of these sections and were not necessarily—

**Senator TROOD**—I understand the profound difficulty you have in identifying the class of people with whom we are concerned here. Just to begin with, I would like to know how you have come up with the figure of 460.

**Air Vice Marshal Brown**—From the original board of inquiry, my understanding is, again, that they went out to people and had a look at the records they had. People who were involved in, say, the program from 1977 to—

**Wing Cmdr Sanders**—The final program was 1992.

**Air Vice Marshal Brown**—They helped in the identification of other people who were involved in the program.

**Senator TROOD**—But do you have them in classes of people—for example: 'There are 50 in this class, 25 in that and 140 in this'? Are they broken into any kind of recognisable groups of individuals who constitute the 460 because they fall into particular classes of people involved or assumed to have been involved with the aircraft?

**Wing Cmdr Sanders**—The board of inquiry, in volume 2 of its report, clearly names everybody who was potentially exposed. In so doing, it lists them by the program and the activities that they were involved in.

**Senator TROOD**—And that figure amounts to 460?

**Wing Cmdr Sanders**—No, it does not. I cannot tell you what that particular figure is off the top of my head. But, in addition to those formally identified, we were aware that there were a number of people who did not come forward to the board of inquiry for various reasons. The figure of 460 was an estimate on my part based on the available information of the names the board of inquiry had identified, the names of the people who went to the chief's advocate and the names of people who came forward to get interim health care. It was an amalgam of those names, because not everybody came forward to the board of inquiry. Subsequent to the board of inquiry we found a few more people, who we added to the list.

**Senator TROOD**—Did they take it beyond or up to 460?

**Wing Cmdr Sanders**—Up to 460.

**Senator TROOD**—So we know that there was a group of people prior to the board of inquiry or at the board of inquiry whom you identified and that there was a subsequent group of people who came forward after the board of inquiry whom you thought legitimately should be included amongst those who were affected. Is that right?

**Wing Cmdr Sanders**—Correct.

**Senator TROOD**—How many were in that latter group?

**Wing Cmdr Sanders**—Probably 60 at the most.

**Senator TROOD**—So we had about 400 up to the board of inquiry.

**Wing Cmdr Sanders**—Correct.

**Senator TROOD**—Of the 400, have you got some broad categories that can explain to us how you have compiled the 400?

**Wing Cmdr Sanders**—I do, but I would have to consult the second volume of the report.

**Senator TROOD**—I am happy for you to do that. Could you provide the committee with a breakdown of the groups into which these people fall so we can get a sense of where they have come from and of the basis upon which they have been included in the group of 460?

**Wing Cmdr Sanders**—Sure.

**Senator TROOD**—Could you then please include the 60, or whatever the number was, that came forward subsequently? I want to get a breakdown, at least in relation to these people, of how you have come to the conclusion that there are 460 people. We know there are more likely to have been affected—2,000 perhaps—

**Wing Cmdr Sanders**—Absolutely.

**Senator TROOD**—but I would like to know where you got the 460 from in the initial stage.

**Wing Cmdr Sanders**—I can do that for you.

**Senator TROOD**—Thank you.

**Mr BALDWIN**—So we can better understand the whole situation, broadly what were the scopes of the deseal-reseal programs? Were people inside compartments? Were things done with extended-arm tools? How was the work approached? I understand that the wing fuel tanks would be different from the body fuel tanks. I would just like you to give us a broader understanding.

**Air Vice Marshal Brown**—Very shortly after the aeroplane came into service, it started to leak fuel. The F111s are a little unusual in that, because of their role, they tried to put fuel in anywhere that they could in the aeroplane. In fact, if you look at the all-up weight, on a normal

take-off, nearly half of it is fuel. In a lot of other aeroplanes, they have bladders that they put inside the aeroplane, but in this one they just used the aircraft structure. So, to keep the fuel inside the aircraft structure, each seam had to have some sort of cylinder. When the sealant started to leak, in the same way as you would take silicon off a bathroom, all that sealant had to be removed and the whole surface had to be cleaned before you could actually put new sealant in. That was done in a number of different ways on a number of different programs.

The first one involved chemicals SR51 and SR51A, which was a chemical stripping of the aeroplane. On later programs they used high-pressure water picks inside there to get rid of the sealant. On the final program, they left the sealant in place with a light clean and sprayed over them. So in each program there were different ones. The wing one was a little different in that the top of the wing planks were taken off and the guys worked inside those tanks. I think there is a good description in the board of inquiry of the working conditions involved. I think somebody describes it as like wandering around inside your kitchen cupboards with two overcoats on and trying to do work. They are quite contained spaces inside some of those tanks.

**Mr BALDWIN**—Were the people working inside the tanks provided with an external air source for breathing?

**Air Vice Marshal Brown**—On some of the programs. I think in the final one they were. On the first lot, it involved respirators and PPE.

**Mr BALDWIN**—What was known about all the different chemicals—SR51, SR51A, milspec, PR148, MMS425, PR2911, PR1750, Q42187—and the fuel? What was known, prior to their use, about each of these products and the detriment to an individual's health and wellbeing?

**Air Vice Marshal Brown**—It changed over time. When the chemicals were first used the Air Force went to people to find out whether they were safe to use. The initial thoughts were that they were. Subsequently, it was found out that there was toxic—

**CHAIR**—And the people we sought advice from were the chemical manufacturers and USAF.

**Air Vice Marshal Brown**—That is correct. I think if you go through the board of inquiry there is good criticism of the Air Force regarding who it actually went to for that advice at the time.

**Mr BALDWIN**—Since the final resealing program—which, as you said, was spraying materials over the existing compounds—has there been any further breakdown in the tanks themselves?

**Air Vice Marshal Brown**—They are still leaking now and there is still a program of pulling that sealant up and redoing it. I think when we go to Amberley you will see the differences in the way that it is done. There are limitations on the amount of time that people spent in the tanks. There is very strict supervision over the use of the PPE. It is still a problem.

**Mr BALDWIN**—You said that other aircraft have bladder systems. Why was it not considered to simply instal bladders into these spaces?

**Air Vice Marshal Brown**—Because of the F111's role as a long-range strike aeroplane—which, again, it was very good at—and the shape of the aeroplane. A classic one is the A2—the aft tank between the two engines. In most normal aeroplanes you would not try to fit fuel in there. To maximise the amount of fuel that it carried, pretty much every nook and cranny in the aeroplane where fuel could be put was looked at, and that is where they put the fuel.

**CHAIR**—Air Vice Marshal, you have mentioned in passing the question of length of exposure. It might be an appropriate time for you or perhaps others to make some comment. That was one of the criteria in the ex gratia payment system and it has been the subject of quite a bit of comment by those involved in the program. I know, from other occupational health and safety issues, that you can work with a dangerous chemical for a year and be the lucky one and suffer no ill effect, or you can work with it for an afternoon and end up contracting illnesses and suffering impacts. You have made reference to the length of exposure as one of the factors. Is there a view or information on that which you can provide to the committee?

**Air Vice Marshal Brown**—I would like to ask Dr Gardner to come forward because he is our expert on occupational health and safety and I think he is in a better position to answer that question.

**Dr Gardner**—Could you ask me that question again, please?

**CHAIR**—It goes to the question of length of exposure as, if you like, a criterion for or an indicator of who might have a legitimate claim for compensation. The observation I made, from no medical or technical experience but from bygone days as a union official, was that you can have people exposed to a dangerous material for a comparatively short time and actually suffer ill effects. Others who could be exposed to the same material for much longer period of time may be lucky and appear not to be affected by it, or at least not in the same way. I am seeking advice, information or views that you may have in respect of that criterion of length of exposure as an absolute criterion for determining viability or authenticity of claims.

**Dr Gardner**—The length of exposure criterion is basically an administrative solution to enable a classification for payments of benefits and the ex gratia payment. There is no evidence in the SHOAMP that specifically relates length of exposure to health outcomes. In addition, subsequent to the SHOAMP we became aware that there were numbers of people who, in spite of minimal exposures, had quite serious health outcomes and conversely there were other people who had literally bathed in solvents and were well and fit. This has raised the issue, as you would know from your asbestos work, that maybe there are some genetic and other sensitivities that make some people especially sensitive to adverse working conditions. This is an area which Air Force has looked at and is continuing to look at and one which we in Defence are looking at as a whole-of-Defence issue because it raises very significant issues. If there are some people who are especially sensitive to hazard X, it is a very difficult issue, as an employer, to determine what the safe level is and provide protection for everyone. We do not have a clean answer to that as of today.

**CHAIR**—I was going to change to a question on protective clothing because it picks up on another point, but Mr Robert may have a question.

**Mr ROBERT**—I have a question on the wider SHOAMP.

**Senator MARK BISHOP**—Dr Gardner, did I understand you correctly? You said there was no relationship between the schedule of ex gratia payments and the length of exposure, and it was only an administrative solution devised at the time and thought relevant to the particular problem that had been identified?

**Dr Gardner**—That is not what I said. I am sorry if I gave that impression. I said that in the health study there was no clear relationship between length of exposure and health outcomes. Subsequently, the classification for administrative purposes for payments of moneys under the ex gratia payment was based on an estimate of exposure, and the closest you could get to how exposed people were was a time based estimate. However, I would point out that there is no basis for that in the SHOAMP itself.

**Senator CORMANN**—In the way you administer the ex gratia payments, there is no link to the level of health impact?

**Dr Gardner**—That is correct. Again, DVA would be able to comment fully on that. The ex gratia payment was a payment arranged by government basically as a recognition of exposure, not of health outcomes. This was an ex gratia payment basically based on exposure, with compensation completely separate and able to be proceeded with down the path through any of the three statutory schemes.

**Senator CORMANN**—But to pick up on the chair's example, if somebody was exposed for an afternoon and had serious health outcomes, he would be less entitled under that sort of system than somebody who had been exposed for years and had bathed in it, as you put it. Is that the way it works?

**Air Vice Marshal Brown**—The ex gratia payment was separate. I think it was in recognition of the working conditions that people were put in under the deseal-reseal programs. Rather than it being any particular health outcome or compensation, it was separate from the compensation that was available. When you are looking at those ex gratia payments, they were just in recognition of extremely poor working conditions.

**Senator MARK BISHOP**—But the issue of ex gratia payments is one of the most critical issues, if not the most critical issue, driving this inquiry. The level of ex gratia payments, the relationship to exposure, the non-relationship to health outcomes, the apparent inequity in the way people have been treated, the apparent way that some people have benefited financially while others have been denied—those are the key points. It might well be an administrative device determined by DVA as a solution after the event, but the thing that has been driving this for many, many years is the heart and soul of the problem.

**Senator CORMANN**—How difficult would it be to have a medical condition type classification as part of the ex gratia system? The reality is that the ex gratia system is there to have a quicker response than the more complex compensation process. How difficult would it be to have an administrative process that also involved recognition of the level of medical impact?

**Dr Gardner**—As the deputy chief said, the ex gratia payment was not related to health outcomes. It was based on conditions of service—terrible working conditions—and basically a recognition that some people had been seriously adversely affected but were separate from

compensation. The answer to your question, though, is that it was impossible at the time and it is still impossible to relate health outcomes to any clear level of working exposure. In particular, at the time, in the seventies and even up to the late 1990s when the program was finished, there were no reliable estimates of atmospheric or personal exposures or urinary excretion of various chemicals that in any way related clearly to health outcomes.

**Senator MARK BISHOP**—How do you account for hundreds and hundreds and hundreds of people who worked in the program intensively or on the periphery in various years having all these terrible sets of health outcomes that are outlined in both the DVA and the Defence submission? What is the answer to that?

**Dr Gardner**—I am not surprised, actually, at the range and numbers of conditions that have been listed. I have worked in the occupational environmental medicine area for nearly 30 years, and a lot of that was in the chemical industry in relation to solvent exposures. Many of these people had quite high levels of respiratory and skin exposure to a range of complex solvents, many of which could very quickly penetrate protective clothing even if it was worn. Also underlying this is the fact that all these people have had varying levels of exposure to fuels. As you probably know, aviation fuel is basically a fancy kerosene, which, by itself, is not particularly toxic but some of the additives used to allow fuel to meet its requirements are quite toxic and they are based on the glycol ether family of chemicals. This is not new; this has been known for 30 years. The deputy chief mentioned information received from the US Air Force. A lot of work has been done by the USAF in recent years in relation to immune system problems caused by fuels. Mr Robert talked to me earlier about the issues of the SHOAMP and health problems. Of course, one of the big problems in the SHOAMP was that not only the people in the exposed group but also the people in the two control groups had exposures to fuels; therefore, if there was a specific effect due to F111 maintenance programs, it may have been masked by the fact that all the people who were studied had had fuel exposures.

**Senator MARK BISHOP**—So if it is perhaps inappropriate to have the ex gratia payment system related to exposure, are there particular problems with having a payment system, ex gratia or otherwise, related to health outcomes?

**Dr Gardner**—My understanding—and I have been involved in parts of this process since the end of 2001—is that that ex gratia payment had zero relation to health outcomes. It was recognition of—

**Senator MARK BISHOP**—We have 500 men and their families out of a possible 2,000 with the range of problems outlined in the submissions. This has been going on now from 1978 to 2008 at various levels. They are still campaigning for justice. You say that ‘exposure’ is inappropriate; it was an administrative solution. What would be the correct solution to give these men and their families financial justice? Would it be a recommendation from this committee to relate a payment to health outcomes, or is it by some other means?

**Dr Gardner**—I would like to defer on that to the deputy chief.

**Senator MARK BISHOP**—You are the head of—

**Air Vice Marshal Brown**—Again, this is a difficult area and I profess I do not have expertise in it. From an Air Force point of view, if people out there who were in the Air Force are suffering because of F111 fuel tank maintenance, we need them to be looked after in terms of health outcomes. I think the ex gratia payment is an issue that is a little different. From my point of view, I think that it is a better—

**Senator MARK BISHOP**—With due respect, with the ADL submissions from those men, the constant letters I have had over the last five years and the constant lobbying we have had over the last five years, the ex gratia payment and health are front and centre. It is not that one is major and the other is minor; they are both very, very important to this group of men and their families. We will come to health; however, what is the solution for obtaining financial justice for this group of men and their families? The head of occupational health and safety has told us that that exposure was inappropriate. What is the solution? What is your advice to us?

**Air Vice Marshal Brown**—Let us just go back and have a look at how the ex gratia payment was determined. An amount of money was put aside for ex gratia payments and at the time they tried to—

**Senator MARK BISHOP**—Was the amount of money finite?

**Air Vice Marshal Brown**—That is my understanding. It was a finite amount of money.

**Senator FORSHAW**—Who determined that? Was that a decision by the department or by government? I am looking at your submission. I can understand—I do not agree with it—why you are being a bit hesitant about some of this.

**Air Vice Marshal Brown**—To be honest, the only reason I am being—

**Senator FORSHAW**—There is a whole question of legal liability involved here, isn't there?

**Air Vice Marshal Brown**—Yes.

**CHAIR**—There have been a couple of questions asked of the Defence personnel and we should give them an opportunity to actually answer them.

**Dr Gardner**—Can I answer Senator Bishop's question? That question relates to the health outcomes and the ex gratia payment. From having attended many of the consultative forums, including the public meetings at Amberley and the scientific advisory committee meetings, I understood that affected deseal-reseal personnel said there would be some money as a temporary fix, unrelated to health outcomes, which was the ex gratia payment, and that ultimately all their claims would be assessed under existing programs available through DVA to serving men and women. At the time there was an expectation that the SHOAMP study would produce clear, unequivocal and good evidence that would then be able to be used, through the Veterans' Entitlement Act process, under the statements of principles, to develop specific SOPs that would relate to these processes and these exposures.

Unfortunately, the SHOAMP study, in spite of being very well done, brought out some factors, which we can discuss, related to the commonness of conditions, the timing and the fact that

some people had ceased work in the last couple of years and therefore may not have had time to get sick—a whole stack of those reasons—and statistical issues to do with what is known as power, which is basically the chance of finding a real result. Those factors and statistical issues led to the fact that the study showed a variety of health conditions that were more common in these groups but, with very few exceptions, they were not statistically significant.

On that basis, and there being no other appropriate studies globally, the Repatriation Medical Authority, the RMA, whose major function is to determine the medico-scientific evidence to develop statements of principles, basically said, 'We can't come up with a single SOP—and, by the way, some of the conditions that have been claimed by many of these people are already covered under the SOPs.' However, my understanding was that affected deseal-reseal personnel were hoping that there would be a clear 'A equals B' outcome, and that was not able to be delivered. We identified early, probably in 2003, that the health studies, based on these statistical reasons, were unlikely to be able to come up with a clear result. That has subsequently happened and therefore there has been a great deal of disappointment that, in the opinion of claimants, the existing processes were not able to adequately meet their needs.

**Senator MARK BISHOP**—So we have administrative shortcomings perhaps on the exposure side and we have problems with the process under the RMA. I understand both of those propositions that you have put to us. That being the case, we still have some 400 or 500 men, at a minimum, plus their families affected by exposure at varying levels and with consequent, we think, physical or bodily health problems. What do Air Force and Defence recommend to this committee in order to give these men and their families financial justice and closure, if possible? If you do not have a view or it is not possible, please tell us.

**Air Vice Marshal Brown**—Again this is a DVA area of expertise. However, from my point of view, we should be able to fit them under the existing legislation somehow so that they are compensated for the fact that they have been damaged in this process. In my view, we should also cover their health expenses. For many of the people, as you have pointed out, that is not happening.

**CHAIR**—Mr Robert has been waiting patiently to ask a question. I might just add that if between now and when we next get together you do have an answer to that question, please let us now and it will help us write one of our chapters.

**Mr ROBERT**—Dr Gardner, stated in our terms of inquiry is that the committee should ascertain whether the Commonwealth's response was adequate and consistent with SHOAMP. So central to this entire inquiry is: has the Commonwealth's response been consistent with the 2001 SHOAMP study? Without putting words into your mouth, I believe that you have just said that the health issues arising from SHOAMP were not statistically significant. Could you give the committee a brief synopsis of the findings of the SHOAMP study?

**Dr Gardner**—Yes. Just before I answer your question, could I correct words that were not exactly right which Senator Bishop has just put in my mouth. I did not criticise the process of the RMA, the Repatriation Medical Authority. Based on the limited available information, they came up with the right answer, which was, 'We can't develop statements of principles.' If the study had been different, they may have been able to do so.

**Senator MARK BISHOP**—I accept that.

**Dr Gardner**—Mr Robert, I go back to your question. As far as I am aware, the SHOAMP study was the first such complex study to be done in Australia. It was funded by Air Force, managed by Veterans' Affairs and undertaken by a research team from the University of Newcastle who call themselves TUNRA, the University of Newcastle Research Associates. It involved five stages. The first stage was a very comprehensive literature review. The second stage was a detailed cancer and mortality study, which looked at the death rates and the diagnosis rates for cancer in an exposed group compared with the control, which was the Australian population.

The third volume related to interviews with people. The fourth volume was a repeat—at the request of Defence and with the agreement from Veterans' Affairs, and at extra cost—of the cancer incidence and mortality study to basically say: the first one was well done but was not statistically nonsignificant, but also used data only up to the end of 1999 and 2000. In mid-2003 it was possible to get slightly updated data, so the direction to the researchers was to rerun the numbers but now using the updated 2000 and 2001 cancer and death data. The fifth volume was a general health study. These were released sequentially and all of the results, as they were released, were sent by Chief of Air Force to all the people who had registered.

Unfortunately, the results are exceptionally difficult to understand. For example, one of the findings in volume 4 was that there was a twofold increase in certain types of cancers. To the man in the street, that is very significant. The fact that within the study design and the confidence limits it was not statistically significant is a very difficult sell. Conversely, there was a significant finding, which was statistically significant, that once people did have diagnoses of cancer in Air Force they had much better health outcomes—they lived longer and deaths were less often—than the general community. They had one-third of the death rate from cancer that the general community had. Again, that is good news but it is also very difficult to understand and to sell.

So on one hand you have something which says 'a slightly higher increase but statistically not significant', but, if you do get cancer, 'significantly better health outcomes'. I do not necessarily believe that that is entirely the truth. In particular, it was pointed out by the researchers that there are a series of confounding factors in this, including that maybe not all the people who had died were identified prior to the study and that not everybody who was still alive had been identified, and therefore the numbers are a little bit fluid. This is why one of the recommendations in the SHOAMP study was that at some future stage these numbers should be looked at again against the updated cancer and death data.

**Mr ROBERT**—On that point, when is that future study slated by Air Force to begin?

**Dr Gardner**—I am not aware of any definite date yet. However, it has been discussed intermittently over the last few years and I have certainly seen a commitment, as the deputy chief said, to protect the health and safety of working men and women in Air Force and to do it again, but I do not have any date or agreed funding at this stage.

**Mr ROBERT**—Air Vice Marshal, can I turn the question to you as to what is Air Force's view of when the next study with up-to-date data, as of 2008, will be in?

**Air Vice Marshal Brown**—Again, I will have to take that question on notice and check exactly what has gone on with that. I am not aware of a follow-on study.

**Mr ROBERT**—If you would take that on notice and get back to the committee as to when that will begin, that would be tremendous. Dr Gardner, do you believe that there is value in a further inquiry using 2008 data, cognisant that the fourth paper used only 2001 data?

**Dr Gardner**—I can give an opinion—it is only my opinion; it is not based on evidence because I do not have the numbers. Yes, I think it is worth doing—not a full study a la SHOAMP—a statistical update of the existing data and using the new cancer and mortality data. It is usually at least two years old by the time you can access it through the Australian Institute of Health and Welfare. We have done similar work. For example, very recently we looked at some stuff to do with brain cancer in relation to Vietnam veterans. We were able to use updated data and updated lists to see whether there had been any change.

**Mr ROBERT**—Were the group used in the SHOAMP study just from 3AD or did they include all elements of 501 Wing, including 482?

**Dr Gardner**—In relation to the SHOAMP study, the people were predominantly the 501 Wing people. However, what is important is not just the people who were studied but the control groups, and the control groups involved people both from Amberley and from Richmond. Again, as I raised earlier on, one of the concerns identified by the researchers and by Defence and DVA personnel was that, if fuel exposure is one of the issues behind this, then all of the control groups also had moderately significant fuel exposures, and many of the workers in other programs involved in fuel system maintenance also had similar sorts of working practices but not involving some of the same chemicals that were involved in the deseal-reseal programs on the F111.

**Mr ROBERT**—Of the target group for the SHOAMP study, do you know off the top of your head what percentage were 3AD men as opposed to 482 Squadron men?

**Dr Gardner**—No, I do not, but perhaps Wing Commander Sanders may be able to answer.

**Wing Cmdr Sanders**—That information would not be available without going back to the study conducted by TUNRA. We would have to ask that question of them. I do not have that answer for you, but I can ask the question of them.

**Air Vice Marshal Brown**—Can I just put in a correction. On the follow-on study, that has been done, and DVA will address that in their submission.

**Mr BALDWIN**—In relation to the number of claimants, how many of those claims have been settled? How many of those claimants have been recognised now as TPI? How many contractors have made claims against Defence? How many contractors or Defence persons other than Air Force people have had ex gratia payments made to them?

**Air Vice Marshal Brown**—Can I leave those sorts of details to DVA when they come up, because they have more data on that?

**Mr BALDWIN**—But is DVA settling disputes and claims with contractors, or is Defence?

**Air Vice Marshal Brown**—I will just go to my colleague Michael Lysewycz on this.

**Mr Lysewycz**—I will try to answer Mr Baldwin's question, but I will have to ask you to repeat it, please.

**Mr BALDWIN**—I will save the TPI part for the DVA this afternoon. In relation to the contractors that have made claims against Defence, how many claims are there? How many have been settled? Are they entitled to the same ex gratia payment, or has WorkCover deemed them to have a higher rate of payment entitlement under the relevant Queensland WorkCover authority?

**Mr Lysewycz**—There are a lot of criteria there that you have mentioned that probably are not relevant to each other. We have had a number of claims by contractors, but their claims—

**Mr BALDWIN**—What is the number—one, 10, 15, 30?

**Mr Lysewycz**—Two, possibly three. They are claims brought in the Supreme Court of Queensland, essentially seeking common-law damages.

**Mr BALDWIN**—These are the employees of Hawker de Havilland; is that correct?

**Mr Lysewycz**—That is right. Two of them have been settled—when the insurers intervened—and one continues. Under the Queensland law, the proceedings were instituted under the PIPA legislation, the Personal Injuries Proceedings Act. That act requires a prelitigation process to be engaged in which is a sort of conciliatory alternative dispute measure. If I could just go down that track for a moment, we have 31 current claims—

**Mr BALDWIN**—If we can go back one step: you talked about two being settled by insurers. What were the terms of their settlement?

**Mr Lysewycz**—I cannot tell you that; I was not privy to them.

**Mr BALDWIN**—Are you able to find out?

**Mr Lysewycz**—I could make an inquiry.

**Mr BALDWIN**—Could you take it on notice, find out and report back to the committee—through you, Mr Chair. What I want to ascertain is: are individual contractors achieving a better financial outcome than those that were in Defence?

**Mr Lysewycz**—It is a bit early to say. I was going to say that we have 31 other claims, and there is no basis for comparison at the moment. Because of the early intervention of the insurers and their lawyers when they settled those claims, they are miles ahead of where we are with the remaining claimants. What we are doing with them is engaging in a series of negotiations and discussions through their lawyers to try to bring their claims to a position where we can actually assess them. They are pretty broad claims. There is still a lot of supporting material that has to be brought forward for us to be able to assess them, and at this stage we have not even got to the

serious stage of trying to put a value on any of those claims. That is quite separate to any entitlement that these people may have under the MCRS or the SRC Act. Those claims they would make to DVA.

**Mr BALDWIN**—What rights does an individual contractor have to make claims to the DVA?

**Mr Lysewycz**—That is a question I would rather leave to DVA. It is not my area of expertise.

**Mr BALDWIN**—When I look at the ex gratia payments, there is a sum of $40,000 for those who spent more than 30 days continuously inside tanks and $10,000 to those who spent a time in and around the aircraft. The question that I am asking is: are contractors who are taking common-law provisions or settlement through WorkCover achieving a better financial outcome than those that were in Defence?

**Mr Lysewycz**—I refer you to what I said before. I cannot give you the details at this stage of the settlement—

**Mr BALDWIN**—I look forward to you finding out and getting back to us.

**Mr Lysewycz**—but I should point out that the ex gratia amount bears no relation whatsoever to what any claimant will achieve in a common-law action.

**Mr BALDWIN**—I am not asking about that. What I am asking you is: what financial outcomes are civil contractors achieving, as against the outcomes that defence personnel are achieving?

**Mr Lysewycz**—I am sorry, I cannot advance the position I put before. I will take those on notice and provide the committee with an answer in due course.

**Mr BALDWIN**—And, if you are able to find out, in that summary: what provisions are made for ongoing health costs in that settlement they had?

**Senator FORSHAW**—I will just to go back to a question that I threw into the mix when Senator Bishop was asking his questions, and that was in relation to the ex gratia payment. You have made it very clear that this was not a health compensation payment. It sounds to me like it was in the nature almost of an industrial award type of payment, an allowance, for working in a dangerous environment. For those of us who had previous careers in unions or industrial relations there was always the dilemma between whether you give people extra money for it or you try to ensure that they do not have to work in it. Taking on board how you have clearly defined that ex gratia payment, is it the case, however, that those people who received the ex gratia payment—from their observations or comments to you—treated it as some form of payment or understand it to be health related? One of the things that is clearly coming through here is how this payment stood alone, and how does it relate to the general belief that people are entitled for current or future medical problems, or even for nervous shock or whatever?

**Dr Gardner**—I can answer that question. 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.

**Senator FORSHAW**—That is my understanding.

**Dr Gardner**—I believe that is a misunderstanding. I attended nearly all of the relevant meetings and was aware that this was in no way related, but I certainly I get the feeling from having read nearly all of the submissions on your website that a lot of people still have this incorrect belief that it was to do with health care.

**Senator FORSHAW**—That may be to their advantage, but you never know.

**Dr Gardner**—Yes.

**Senator FORSHAW**—But it also raises for everybody the issue of how far that pay is seen as an admission of some form of liability.

**Senator CORMANN**—Just on that point, which goes back to what we discussed earlier, the reason people would have that perception would be if there is nothing else that does actually compensate for the health component of it. What else have you done and what else have those men received in terms of recognition or compensation? What has happened with alternative processes beyond the ex gratia payment?

**Dr Gardner**—Again, DVA would probably be able to give you a fuller answer, but I can say that from the earliest days when it was recognised by the Chief of Air Force that there were large numbers of people with strange symptoms and complexes, the interim healthcare system was set up. This system was funded by Air Force and administered through DVA, which basically looked at a whole range of conditions which had been claimed. There was a medical panel made up of three specialists, of which I was one, who looked at these claims to see whether a claimed condition in the first stages could be conceivably related—and very shortly after that, it was realised that it was the wrong test. The term was 'reasonably related' to the claimed working conditions. We looked at all those conditions, and health care was provided on a 'without liability' basis for all those people. With the release of the SHOAMP study and the government's response to it, the interim healthcare scheme was turned into its own SHOAMP healthcare scheme. My understanding is that people who had an entitlement before still have an ongoing entitlement under the SHOAMP healthcare scheme. This is separate from and in addition to anything else that might be available under white cards, gold cards or any other sort of card.

**Senator CORMANN**—If that process has been effective in hitting the mark in terms of responding to health needs, where do you think the confusion comes from about the ex gratia payment and how it relates to future health costs?

**Dr Gardner**—I cannot answer that. I do not know. I would just point out that, when Wing Commander Sanders mentioned earlier that there were around 460 definite deseal-reseal people, in late 2004 and early 2005 we already had over 1,000 people registered in the interim healthcare scheme. So even earlier on there was a wide acceptance that the healthcare scheme was a way to get 'without liability' coverage while everything else was being determined.

**Senator CORMANN**—Did Air Force ever consider including a health outcomes component into the ex gratia payment formula and, if so, why did Air Force ultimately decide against it?

**Air Vice Marshal Brown**—This, again, is an area in which Air Force has no real expertise, as you would understand. A lot of these decisions on the boundaries that were set up were done pretty much on the advice of the DVA at the time—and that is pretty much it.

**Senator FORSHAW**—That refers to my second question, which I asked some time ago. I will put it another way now. You might be able to answer it; but it might be a question for Defence or PMC, I am not sure. How was the decision arrived at to make the ex gratia payment? Was it a recommendation out of the board of inquiry or SHOAMP? At page 14 of your submission it says, 'The government accepted responsibility for the health outcomes from the deseal-reseal programs and announced that compensation arrangements' would be made. I am trying to understand where this ex gratia payment proposal came from. Who determined it?

**Air Vice Marshal Brown**—I would like to introduce Steve, who was involved in that process.

**Mr Grzeskowiak**—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 sump payment scheme should be enacted.

**Senator FORSHAW**—I know what your answer is probably going to be when I ask you this question but I will ask it anyway. Was the ex gratia payment one of the options that was put to government? I understand the restrictions on policy advice, but—

**Mr Grzeskowiak**—I am not supposed to comment on what was in the submission.

**Senator FORSHAW**—I know you are not. That is the dilemma I now have. But your answer at this stage is that it was a decision of government.

**Mr Grzeskowiak**—That is correct.

**Senator MARK BISHOP**—Since the program commenced in 1978, has Defence acknowledged in any forum a breach of its duty of care to the affected workers?

**Air Vice Marshal Brown**—I think fundamentally the result of the BOI is that acknowledgement that we have breached our duty of care in respect to these—

**Senator MARK BISHOP**—So Defence acknowledges it has breached its duty of care.

**Air Vice Marshal Brown**—Yes.

**Senator MARK BISHOP**—What obligations does that impose upon Defence, it having acknowledged breach of its duty of care?

**Air Vice Marshal Brown**—Again, I would have to look to—

**Senator MARK BISHOP**—That is also a legal question.

**Dr Gardner**—Yes. From an occupational health medicolegal perspective I would ask that Michael Lysewycz might comment. My understanding is that Defence has not formally admitted liability; however, it has admitted through the Chief of Air Force that large numbers of people were affected and that there are programs in place—

**Senator MARK BISHOP**—And that it was a serious case and there was a lot of harm done. But my question was clear: has Defence acknowledged a breach of its duty of care to relevant workers in the programs from 1978 until the program ceased?

**Mr Lysewycz**—The short answer is no, in the legal sense. In none of the claims in Queensland have we filed a defence as yet, and that is when one would expect the admission to be made. Having said that, in the broadest sense, the then Chief of Air Force, now Chief of the ADF, did make certain comments about his observations as to the program, and that is very much at the forefront when we are considering the question of admission of liability. Senator, as you would appreciate, we take each claim as it is filed. There are certain admissions that one can make as to deficiencies in a scheme. When one is defending a tortious action, liability goes a little bit further than the broad nature of the scheme.

**Senator MARK BISHOP**—Has the likelihood of significant fines been a consideration in Defence's decision not to admit a breach of care to date?

**Mr Lysewycz**—No, the question of fines has not arisen. It might arise should Comcare decide to conduct an investigation of breach of OH&S law. In the sense of being wary about a sizeable compensation payout in, say, settlement of a common-law claim: no, we have not had regard to that. As I mentioned before, at this stage we are not in a position to reliably quantify any of the claims.

**Senator MARK BISHOP**—Understood. That is okay. Has Comcare been requested by Defence to do, or of its own motion done, an investigation into alleged breaches of duty of care and consequent harm to affected workers?

**Mr Lysewycz**—I cannot answer that. Not on my watch.

**Senator MARK BISHOP**—You are not aware of it? Is anyone aware?

**Wing Cmdr Sanders**—Comcare were present throughout the inquiry. We briefed them subsequent to the inquiry. They have not indicated at any time since that they want to take any action. But I would have to take that on notice on your behalf.

**Senator MARK BISHOP**—Do you mind taking that on notice and confirming for us the exactness of any decision that Comcare has made to carry out, conduct, inquire into alleged health and safety breaches from the inception of the program in 1978 to the cessation of the project? I would appreciate that advice.

**Mr Lysewycz**—Yes.

**Senator MARK BISHOP**—In terms of limited liability schemes, either Commonwealth or state, being utilised effectively to bring cases to conclusion—the various workers compensation acts, the MRCA, the SRCA—is the problem the same as was outlined at the beginning: an inability to find medical or scientific linkage from exposure to the chemicals and resultant harm alleged by the affected workers? Is that the crux of the problem?

**Mr Lysewycz**—It is not the crux; it is part of the myriad problems, actually. Problems that we have encountered so far are that some of the claimants' participation in various parts of the program traverses different legislative schemes. Some, for example, were engaged in these schemes pre 1988, which is when the SRC Act started, so it is a straight common-law claim. Others are in the period straight after that, so there may be a limit on the amount that they can recover should they elect to go for a lump sum payment. Some traverse both periods, so that brings an added complication. That is a structural problem in the way in which the pleadings are put forward. Proof of injury and its causal connection back to the program is a real source of concern for us. The claimants are not restricted to former members of the Air Force. They do, in one or two cases, include spouses, so that raises the question of scope of duty of care that is owed beyond the immediate worker into the family.

**Senator MARK BISHOP**—Perhaps if we just leave the issue at this stage, as I framed it, in terms of relevant affected workers and we can come back to the spousal situation later.

**Mr Lysewycz**—What we are trying to do is not repeat what was done in SHOAMP or any other study, and part of the reason for seeking to meet lawyers and plaintiffs in an alternative dispute resolution setting is to try to agree on the nature of the medical examinations and who will conduct the medical examination so that both parties can work from a common set of findings and facts. That is a process we are engaged in right now. As to whether there will be adequate connection ultimately between work in the deseal-reseal programs and the injuries now that are being presented is something I can speculate about because the range of injuries that have been pleaded are enormous. They range from psychological through to physiological through to—who knows?

**Senator MARK BISHOP**—So you have got a whole host of workers who are affected in various degrees. You have got complicated structural problems with different and successive acts of parliament at Commonwealth and state levels, you have got problems of linkage, of medical causation and scientific proof, and you are trying to negotiate through some sort of framework with some of the people who have lodged claims. In your mind, in Defence's thinking, is there a case for mandated group mediation to bring this thing to a conclusion within a reasonable period of time as opposed to it going on almost ad nauseam, a bit like the *Melbourne-Voyager* cases, 30 years on, still being litigated in various tribunals? Is there a sensible argument for doing that?

**Mr Lysewycz**—Not in the common-law regime. There would be scope, I would have thought, under the SRC Act or a scheme administered by DVA on Defence's behalf. Common law is really the plaintiff's making; they create the claim and we have to deal with what is put on the table.

**Senator MARK BISHOP**—Let me put the question in a different way. If all of the claims, both statutory and common law, could be brought under one mandated mediation system by some senior retired judge or other person of status and stature so as to put all claims on the table,

bring them to a head, establish a framework and have the negotiations go through in a mediation sense, would that be acceptable to Defence? And is that not a better solution to the myriad problems we have here than allowing this to go on and on for another 10, 15 or 25 years?

**Air Vice Marshal Brown**—I will just jump in there and look at it from a different perspective to the legal one. I think the last thing we want, from Defence's point of view, is another long, ongoing *Voyager* saga. If we could find some way of wrapping this up and if the one that you are describing is a way through this complex area, I think that that is probably a reasonable way to go.

**Senator MARK BISHOP**—So you would invite the committee to give consideration to that?

**Air Vice Marshal Brown**—Yes.

**Senator TROOD**—Mr Lysewycz, in relation to these 31 actions that you have referred to—which I understood you to say are in the Supreme Court of Queensland—are these proceedings begun largely by contractors?

**Mr Lysewycz**—No. They are, in the main, actions by former members of the Air Force.

**Senator TROOD**—I see. I understood you to say in answer to Senator Bishop's question that perhaps some of them are actually spouses. Is that correct?

**Mr Lysewycz**—That is right. There are one or two spouses.

**Senator TROOD**—They presumably fall into various categories of individuals. There are people who worked on the aircraft and there are spouses involved as well. Is that correct?

**Mr Lysewycz**—The spouses were not involved in the programs but were providing support and suffering various things as a result of the husbands working in the program.

**Senator TROOD**—I see. These are individual actions? It is not a class action; there is no class action involved here at all, is there?

**Mr Lysewycz**—No. There were two class actions attempted, and they failed. This was part of what I was going to raise with Senator Bishop. Part of the problem in bringing them all together is the sheer scale of this exercise. You have four programs traversing over 30 years. The details of work undertaken and exposure to chemicals over that time are different. It is very hard to clearly and neatly define a class into which people will group, and that was one of the reasons the two actions that were commenced back in 2006 were discontinued. They were not drafted well enough to actually attract people into the class.

**Senator MARK BISHOP**—They were out of time, too.

**Mr Lysewycz**—Yes, they were out of time.

**Senator TROOD**—Those actions were discontinued by the plaintiffs—is that correct?

**Mr Lysewycz**—That is right.

**Senator TROOD**—I see. These were all in the Queensland Supreme Court. Is there any other jurisdiction where claims are likely to be commenced that you are aware of?

**Mr Lysewycz**—No. In fact, we have actually encouraged any claims to be brought in Queensland. That is the place of the tort. That is the applicable law.

**Senator TROOD**—Indeed. When was the most recent of the actions commenced?

**Mr Lysewycz**—If you just bear with me, I will be able to tell you. The last one was commenced in February 2006. The earliest was in 2002.

**Senator TROOD**—So we have a four-year time span, more or less. But, as I understood your response to Senator Bishop, they are all in a similar state, where you are going through the preliminary process of discussion over not the determination of damages but the effects, as mandated by the court system. Is that right?

**Mr Lysewycz**—That is right. We are applying normal Australian law. Some of the claims are more advanced than others. They are not all brought by one firm of solicitors. Some are very diligent; they have prepared their matters and are further advanced. The majority of them, however, are not floundering but really do need some TLC—some pretty hard work, actually, to get the data in.

**Senator TROOD**—Are any claims near to trial?

**Mr Lysewycz**—No. Just last month the Attorney-General issued some amendments to the legal services directions that are administered by the Office of Legal Services Coordination. There is exhortation on agencies such as us to avoid litigation. The encouragement is for us to seek alternative means to resolve disputes. This one really cries out for a resolution around a table, not in a court. We would think that if we could not resolve these matters by negotiation we will have failed. We have set ourselves a fairly high hope that we can resolve all of these claims without the need for a formal hearing of any kind.

**Senator MARK BISHOP**—All those claims?

**Senator TROOD**—The 31?

**Mr Lysewycz**—The 31 common-law claims.

**Senator TROOD**—So none is close to trial. Is any close to resolution?

**Mr Lysewycz**—We have a mediation possibly in the next two months, depending on how the other side is positioned. After that there will a long gap.

**Senator TROOD**—In relation to how many of those claims?

**Mr Lysewycz**—Just one.

**Senator TROOD**—Is that likely, in your view, to serve as a kind of benchmark that it can be resolved?

**Mr Lysewycz**—On some issues, not necessarily on the quantum finally awarded because each claim is for different amounts of money.

**Senator TROOD**—Yes; I understand. You made the point.

**Mr Lysewycz**—The breakdown usually is pain and suffering, out-of-pockets for medicals; but also there is economic loss that people claim, and that is very personalised and peculiar to each individual claim.

**Senator TROOD**—Some of the individuals who are claimants in these common-law actions are also recipients of ex gratia payments. Is that right?

**Mr Lysewycz**—That is quite possible, and they also could be receiving benefits from the DVA system. We will try to ensure that all of that is brought to account at the negotiation table. Having said 'brought to account', the one thing we do not do is try to offset the equivalent of an amount received by way of ex gratia in any settlement payment. That is quite separate and distinct.

**Ms GRIERSON**—Following up on that point, you are saying that some of those original claims go back six years. I would think that on Defence salaries most people would not be able to continue litigation for six years. That would be an incredible cost. How many of the claimants just disappear for those sorts of reasons?

**Mr Lysewycz**—None of the claimants has disappeared. I do not want to be unkind but, judging by some of the work that has been done on the plaintiffs' behalf, I do not think they would have been charged too much to date.

**Ms GRIERSON**—That is very disparaging of the legal profession.

**Mr Lysewycz**—That is unkind. As I said before, there is a lot of work to be done. The approach that we have adopted is a collaborative one. We are not expecting plaintiffs to bear all these costs on their own, and that is part of the reason for reaching out and trying to get people around the table. If we can agree on the nature and identities of experts who are going to examine people, come up with reports and share them, that will be a considerable saving both in time and cost.

**Ms GRIERSON**—You are saying that none is resolved at this stage. There have been no settlements offered at this stage?

**Mr Lysewycz**—Not on the current group, putting aside the two contractors that I mentioned before, the details of which I do not have.

**Ms GRIERSON**—But you would project that some settlements would be achieved.

**Mr Lysewycz**—At this stage I would like to think that we will resolve them all. Yes, we will settle them somehow. I do not want to sound trite but a settlement can be a walk-away. If it turns out that the claim has no substance the other party might walk away, discontinue the claim, and we might agree not to press for costs.

**Ms GRIERSON**—If it did come to a situation where you were making offers that included a settlement or payment of an amount of money, I very much wonder what that would be based upon because the ex gratia payment, to me, did not seem to have a baseline or parameters fixed when it was originally started. Can you give me some more information about the baseline and parameters for qualification for the ex gratia payment, because any further actions in terms of compensation or settlement payments would, I would have thought, have to be based on some sort of exposure parameters or health outcome parameters perhaps.

**Mr Lysewycz**—The criteria we would use to assess the value of a common-law claim bears no relation to the criteria for an ex gratia payment.

**Ms GRIERSON**—No, but when putting a claim forward it would have to be based on risk, exposure, negligence, failure of duty of care and I think it would have to be based in some way on the health outcomes and experiences of the person putting it forward.

**Mr Lysewycz**—That is right.

**Ms GRIERSON**—So are there guidelines or parameters written down that are readily available to you and your people in those negotiations to use?

**Mr Lysewycz**—I do not know whether they are written down, but the common law has a checklist, if you like, that we go through. When we are looking at a claim—put aside liability; assume we have lost or conceded liability—it comes down to assessing the quantum. We would be looking at an amount for pain and suffering past and future and out-of-pocket expenses past and future. Then there would be the broad category of economic loss past and future and calculations of interest on each of those amounts. If one goes to a standard torts textbook and gets all of the calculations, that is a formula we just work through.

**Ms GRIERSON**—It has been a long time since I did that.

**Mr Lysewycz**—We just do that with every case. The plaintiff will particularise his or her losses and we will just work our way through them.

**Ms GRIERSON**—So if some people were successful in a claim, a payment settlement, for compensation for those areas, has anyone in Defence done a projection of the exposure the government may have for this sort of settlement?

**Mr Lysewycz**—Every year.

**Ms GRIERSON**—What was the last annual projection then?

**Mr Lysewycz**—It is a guess referenced to the threshold amount that one needs to claim to legitimately get into the Queensland Supreme Court. We are assuming that the minimum claimed is $750,000. If you multiply that by 31, that is the current projection.

**Ms GRIERSON**—And is there then a projection of additional cases that may occur?

**Mr Lysewycz**—We cannot forecast that. In fact, our hope is that one of the outcomes of the work of this committee will be a successful resolution such that people will not have to go into the common-law area to seek redress.

**Ms GRIERSON**—So therefore Senator Bishop's scenario—and I think other people have put that scenario forward—may be one that mitigates the ongoing risks for the government and Defence as well as for the people so sorely affected. Do you have a view on that?

**Mr Lysewycz**—I do not know. As the deputy chief put our position some time ago, we are really concerned about ensuring that our members are adequately looked after health wise for the rest of their lives. We do not know whether injuries have manifested yet or whether they are latent and may manifest 15 or 20 years down the track. We do not know whether the exposure that they have suffered is akin to injuries suffered in the area of asbestos. Our concern is that, if an injury were to manifest 15 years down the track, that member can be looked after properly. As to whether they are also entitled to a sum of money, that is a different issue. But if we can focus on the health care provided to them initially, that would be a great outcome.

**Ms GRIERSON**—We would all like that. In members of parliament's offices we see the consequential damage that seems in some cases to have no end, so we would very much like to know that there was ongoing care that was flexible and responded to the needs of individuals. In terms of the recommendations and some of the findings of previous studies, there is a suggestion that it is a cultural problem, that what is required is that Defence put as much effort and energy into its administrative and maintenance cultures as it does into its front-line or military operation so that they are as good and as efficient and that that will ensure this does not happen again. Are there any measures of improvements in those cultures that would avoid these sorts of situations happening?

**Air Vice Marshal Brown**—I think it goes to the core of an air force culture. We have a relatively small aircrew population for the number of people. At its core an air force is an intensive engineering and logistics organisation and, to achieve an air force's mission, it looks at getting serviceable aeroplanes out the line; in fact, that is the fundamental metric of its capability. So everybody that is involved in an air force organisation takes a great deal of pride in getting those aeroplanes serviceable out in the line.

I think one of the things from an Air Force point of view is that we always looked at aircraft accidents as being our high-risk area and we put a lot of time into the safety measures that we put around the flying operation. I do not think we realised we were at risk inside that engineering and logistics side. One of the things that has come out of this board of inquiry and one of the big advances that has been made inside the Air Force culture is that whole exposure; in fact, Ian's position was established after the BOI. I do not say it is fixed yet; it is an ongoing work. But I know commanders out there in the field certainly look at what is happening inside their maintenance organisations just as carefully as at the flying aspects. To highlight that now, the

OH&S side within Defence is now tied up in exactly the same way that our flying safety organisation is. So that has been one of the big changes.

**CHAIR**—The board of inquiry made a very long list of observations and recommendations, some of which go to procedure, some of which go to culture, some of which go to positions. It would assist the committee if Defence could provide us with a comprehensive analysis of what action has been taken with respect to each of those BOI findings and recommendations. And can that be more than just 'met', 'partially met' or 'not met'? We would like to get some explanation of precisely what has occurred in addressing the matters that the BOI raised in its recommendations and findings.

**Ms GRIERSON**—Just following up on that, a risk management culture that filters right through to the bottom cannot just be written down on a piece of paper, generally, so I am very interested in measures of that in terms of performance on the ground at different hierarchies. Also, on the 'lessons learned': has that been documented, who by and is it available?

**Air Vice Marshal Brown**—Again, I think it came out of those recommendations, and when we give you what is in place you will see that. I think you will very much see that on the ground at Amberley. Fuel tank entry and repair is still an ongoing issue with the F111, and when you look at the differences in the way that is handled today compared with what happened previously you will see there is a significant difference.

**Ms GRIERSON**—You talk about wanting equitable healthcare outcomes for people, even people who were in related activities. The people exposed to risk through related activities: are they defined?

**Air Vice Marshal Brown**—I think they were in terms of the board of inquiry. I will hand over to Wing Commander Sanders.

**Wing Cmdr Sanders**—Could I hear the question again, please?

**Ms GRIERSON**—I am asking about people who were involved in related activities who would perhaps be making payment claims. Do you have a list of those sorts of people who are putting forward claims or seeking ex gratia payments because of related activities not direct activities?

**Wing Cmdr Sanders**—Could I take that on notice, please?

**Ms GRIERSON**—Yes. Thank you very much.

**Mr ROBERT**—Air Vice Marshal, those who were eligible for the ex gratia payments were those in the four programs. The first program began in October 1977, which was almost four years after the aircraft were delivered. Submission No. 60 to this inquiry is from Mr Melvyn Funk, and I am cognisant of you not having it in front of you. At the time, 1973, then Flight Lieutenant Funk, engineering officer, was in 482 Squadron when the aircraft were delivered. His submission goes through a whole range of issues with the F111—leaks to fuel tanks, defects of structure and other things—and talks about using the same chemicals and doing similar work many times over to repair the fuel tanks and keep the aircraft flying for four years before the

aircraft finally went to 3AD for the first program. Cognisant that the men of 482 Squadron, for four years, were doing many of the same tasks as 3AD—not as intensively but certainly patching fuel leaks and so on—do you have any comments as to why the ex gratia payments specifically excluded them?

**Air Vice Marshal Brown**—When you have a look at the four particular programs—and there were differences between the fuel tank repairs; in the first program you had SR51; I do not believe that that was used in the patching—the aeroplanes were first delivered to us, I think, in 1973. They had spent five years in storage, from 1968 onwards. Before that first program went on, the aeroplanes would have been leaking. So what would have happened is that guys would have had to identify where those leaks were, got in, removed a certain section of sealant and repaired that sealant. The formal programs—and I think this is a differentiation that they tried to make during the board of inquiry—involved bringing these things in and a complete stripping of all the sealant out of the tank rather than just a small section. That is a differentiation, I think, that they made at the time.

**Mr ROBERT**—Dr Gardner, are you aware of any health issues raised by members of 482 Squadron who worked in the aircraft during those four and subsequent years?

**Dr Gardner**—Not specifically, apart from what I have read in these online submissions. However, I am aware of not only the 482 Squadron but also other people from Richmond and other people who are basically saying, 'We've done similar type programs but we haven't been looked at.' So I am aware of the general issue but not the specifics in relation to that group.

**Mr ROBERT**—And I believe you or somebody else is coming back to the committee with information with respect to the target group in the SHOAMP, as to how many of those were from 482 Squadron, if any.

**Dr Gardner**—Yes, I think Wing Commander Sanders is doing that.

**Mr ROBERT**—Tremendous. Thank you.

**Senator FORSHAW**—You might have to take this on notice. What is the age profile for all of these 460-odd people?

**Wing Cmdr Sanders**—I think we will take that on notice.

**Senator FORSHAW**—Yes, that would be good if you could give us that the detail. Sorry, were you—

**CHAIR**—If you have got an answer now, that is good.

**Wing Cmdr Sanders**—I was saying that the ages we have come across are from approximately 75 and down. So the oldest would be approximately 75 years old.

**Senator FORSHAW**—And the youngest?

**Wing Cmdr Sanders**—In their 20s.

**Senator FORSHAW**—Okay. Thank you.

**Wing Cmdr Sanders**—I can be more precise on notice.

**Senator FORSHAW**—Give us a break-up in groups spanning five or 10 years of age; that would be good.

**CHAIR**—There are a couple of things that I have made notes on to go back to, so it is bit disjointed. Dr Gardner, you referred to something in terms of the SHOAMP—which was picked up in one of the briefing notes provided to the committee—about the second phase, involving mortality and cancer, which estimated that on balance the probabilities were that there was a 50 per cent increase in cancer in the F111 deseal-reseal group. The next words in the sentence in our brief are 'which was a borderline statistical significance'. You referred to that as well. The last thing I would claim to have any knowledge of is statistical analysis, but, as a layperson, when someone tells me there is a 50 per cent increase in the probability of my getting cancer if I do this rather than not doing it, then it is pretty clear to me that it is best not to do it. How do you have a 50 per cent increase in the likelihood of cancer found in the SHOAMP report and then have that dismissed as not statistically significant?

**Dr Gardner**—I thought that I addressed that in my answer before, but maybe I was not quite clear. In any large scale health study, one needs to work out in advance what the chance of finding a real result is. Based on the condition that you are looking for and its prevalence in the Australian community and in the group that you are looking at, you can work out in advance how many extra cases you would need to find to meet the standard statistical tests of significance. That basically means: could this result have arisen by chance less than five times in a hundred—in other words, with a 95 per cent probability? Even then, there is a chance it could be wrong, but internationally that five per cent is accepted as the right thing.

I do not have the exact figures in front of me, but from recollection even though that appeared to be increased by 50 per cent it was still within the confidence range of the estimates of that number. Therefore, yes, it was increased, and we have never said that it was not. But what we say is that we do not have any statistical evidence that this is a true result. This is one of the reasons the scientific advisory committee and the people from TUNRA who did the study recommended that this material should be looked at a future stage. It was also the reason the initial interim cancer and mortality study was repeated with the updated data from 2000 and 2001.

**CHAIR**—If there is a very small sample, I can comprehend why you might arrive at that conclusion. Why else might a study arrive at that conclusion with a 50 per cent increase?

**Dr Gardner**—If we are assuming that exposure to the processes, including chemical exposures, have a latency period—which in occupational health many things do—the short answer is that maybe many of the people had not yet had time to get sick or to develop adverse health outcomes. Therefore, in the analysis there would be large numbers of apparently healthy people, which would skew the results.

**CHAIR**—On that point, that would be with large numbers of healthy people in the control group—that is, not in the deseal-reseal folk but in the folk who are in Richmond. But to arrive at

that conclusion with that reasoning the people who concluded that would be saying that the folk in the study in Richmond showed a much lower incidence of cancer, but statistically we think that they might get it anyway in the years ahead.

**Dr Gardner**—The issue is among the exposed people at Amberley. Many of the people who were exposed and were in the study group were apparently well. They did not show up as having died or as having cancer at that time. I believe, and the researchers point this out, that if there is a latency effect then those people who are in the exposed group but are still well in effect swamp the numbers of those who were sick. This is not to do with the control group; it is to do with the people who had done the F111 deseal-reseal work and at the time of the study had not got sick.

**CHAIR**—Now I am more confused. When it says a 50 per cent increase in cancer in the F111 deseal-reseal group, how do I reconcile that with what I understood you to say then, which was that there are a large number of people in that deseal-reseal group who did not have it?

**Dr Gardner**—Both statements are correct.

**CHAIR**—That is why I do not like statistics.

**Dr Gardner**—The problem here is this. Yes, there was an increased finding. If there had been 10,000 people in the study then you would be able to have a much narrower estimate of the likely outcomes. If you had 10,000 people and a 50 per cent increase, you could guarantee that that would be statistically significant. But because there are only a few hundred the confidence limits were very wide. Therefore, even a two-fold increase was not statistically significant.

**CHAIR**—Thank you. The small sample—

**Dr Gardner**—The small sample and the shortness of time and the fact that many people were still well.

**Ms GRIERSON**—Can you assume that there is a latency factor?

**Dr Gardner**—We have no clear evidence that there is in relation to F111 issues. However, in the whole breadth of occupational health issues there are many examples of where there is a latency period. That is why in our projections and in our discussions with DVA and with the researchers we assume that there will be an increased number of people in future years who may come down with exposure related problems.

**Ms GRIERSON**—Can I just put the next question on notice. What do international comparisons tell us in terms of our performance in dealing with this and the incidence level? There must have been some comparison with international experience around the F111 deseal-reseal and similar situations. Has that been analysed and what does it tell us about our performance in terms of the original causes, the management of this process and the ways that other international air forces or whatever have dealt with this?

**Air Vice Marshal Brown**—I think the F111 was a rather unique case. The only other air force that operated the F111 was the United States Air Force. I will take it on notice, but I believe that

we really have not been able to get any solid data on how they handled the situation. But we will go back and check.

**Ms GRIERSON**—Thank you.

**CHAIR**—You might also just get advice on how they handled any claims.

**Ms GRIERSON**—Yes, and if there is any scheme.

**CHAIR**—By 'claims', I mean claims for compensation, injury and that sort of thing.

**Mr ROBERT**—They were doing the same work in 1981 in Sacramento, so I would have thought there would be some—

**Air Vice Marshal Brown**—They were, and my understanding is that they have been very reluctant to release any information on that.

**Mr ROBERT**—Dr Gardner, just following up on the chair's point of view, with respect to the statistics that the chair enjoys so much: considering that latency increases over time, that would, from my point of view—and I am not a statistician, lawyer or doctor—seem to indicate that a further review of the SHOAMP results, using data up to 2008, would be even more crucial.

**Dr Gardner**—Yes. I would not disagree with that. It may be open to the committee to recommend that. It is something we have considered. I am not aware of actual plans at the moment for further work, but it certainly would be seen as part of the natural process for this. Can I just get back to a question that Senator Bishop raised. He raised the issue of diagnosis of conditions related to exposures. I would just like to point out that, where people claim multiple, apparently strange, symptoms, including musculoskeletal, neuropsychiatric, erectile dysfunction—all sorts of things—this is exceptionally difficult to assess. If they have a named disease, preferably with an ICD code number attached to it, then it is relatively easy. Where you have these vague symptoms complexes, it does not fit neatly into any of the statements of principles, it does not fit neatly under any of the three compensation schemes and, even more difficultly—and our lawyer raised the issue of mediation et cetera—there are very few occupational health toxicology medical experts in this country who have any real understanding of workplace chemical exposures and health outcomes. That is an ongoing issue.

**CHAIR**—That is a valuable point you make.

**Ms GRIERSON**—There is a great person from Britain at Newcastle university. She is quite exceptional.

**CHAIR**—As I say, it is a valuable point you make, Dr Gardner. I think we will want to revisit that point. We appreciate your making it.

**Mr BALDWIN**—Dr Gardner, during the SHOAMP, only Air Force personnel at Richmond and Amberley, I think you said, were included. Were any contractors included? Were spouses or family members of the people involved in the process studied as well to see if there was an increased incidence?

**Dr Gardner**—There were certainly no spouses. In fact, there were no female participants in the SHOAMP, which was again one of the issues. Although not many women were involved in deseal-reseal programs, the women who expressed interest were not considered because the numbers were too small. I am not aware of any family members. There were certainly no family members involved in the control groups. I cannot give a definite answer on the contractors, but my understanding is that, no, they were uniformed members.

**Mr BALDWIN**—From your broad experience in occupational health, are the claims being put forward by family members of a higher incidence rate than with other exposures or other forms of contamination, through not just defence but other industries?

**Dr Gardner**—That is a very difficult question to answer because we do not really know what the denominator is. We know of the spouses and family members who have put up their hands, written in submissions and spoken to the chief at the various public meetings—we know all those cases—but we do not know what the real baseline number is. In other chemical industry type exposures that I have been involved in there would appear to be fewer spouses than in this case.

**Mr BALDWIN**—I am thinking back to the agent orange issue and the family members, particularly children of those that were exposed to agent orange. That is why I am asking if you have looked at those numbers and effects as a comparative analysis to those that suffered from the agent orange exposure?

**Dr Gardner**—I have no knowledge specifically of the agent orange issues but I can give some similar things within Defence where we have looked recently at issues to do with lead, for example, or beryllium, depleted uranium, tritium and a variety of others, and in those cases the family side is minimal. This is not abnormal but it certainly appears to be much higher on the F111 side of things. But, as I said, I do not really know what the denominator is; therefore it is difficult to judge.

**Mr BALDWIN**—Could that be because the family members were exposed on a daily basis, with the partner coming home each night with the exposure and materials on their skin and their clothes, as against those who came back from tours of duty after an extended period away?

**Dr Gardner**—In the submissions to your committee from the affected members and their spouses and support, there is certainly a suggestion of workers bringing home workplace exposures—chemicals both on their clothes and in their skin. But the other thing is that the vast majority of spouses have been in the very difficult role of long-term care for disabled, previous healthy, mostly husbands, and that has taken a big emotional, psychological and physical toll on them.

**CHAIR**—One final question from Mr Robert and then we are close to time.

**Senator MARK BISHOP**—Chair, I have questions I want to pursue. I have been trying to get your attention for half an hour.

**CHAIR**—We are going to have another session with Defence, I am sure. I can assure you that I have a long list of questions as well.

**Mr ROBERT**—With respect to the sample study for those affected by chemicals, why wasn't everyone part of that target study? Why only a sample? The other part of that is, we are currently doing a few more studies on servicemen exposed to chemicals—Bougainville is one that I am aware of and, of course, those targets by 'smoid'—smoke oil and dust—after the 1991 Gulf War. Why is only a target amount—a sample and not everyone—a part of the health check, and also, what is happening with subsequent ones from Bougainville and from the 1991 Gulf War? Are they only partial targeted groups or is everyone filling out the questionnaires and going through the study? I accept that last part will be on notice for you.

**Dr Gardner**—Just in relation to chemicals, I would point out to the committee that the F111 study—the SHOAMP study—was not specifically related to chemicals; it was basically looking at exposures to the processes—plural—and whether that work had resulted in significant adverse health things. We believe that chemicals were part of it, but which chemicals they were, in what concentrations, how much, when and in whom is still an unknown.

**Mr ROBERT**—But why only a small sample? Why isn't everyone part of the SHOAMP study?

**Dr Gardner**—In relation to the SHOAMP study, of all the people who put up their hands, who were contacted by the researchers, who filled in the forms and who took part and had the blood tests, if you look in the SHOAMP report it actually shows the dropout rate at those various points. Everybody who wanted to be involved and who was prepared to go through all the medical examinations, have the blood test and do the psyche tests et cetera was included. However, less than half of the people who were eligible to be in the control groups at both Amberley and Richmond actually went and took part in volume 5—the general health and medical study program. That is, unfortunately, a big problem in any volunteer based study. It had to be volunteers; these people could not be directed by the chief to take part. They were volunteers. In many cases people had left the service years before, so it was difficult to contact them. That is why there was, roughly, a 50 per cent success rate in the control groups, whereas amongst the SHOAMP people—the actual people who claimed exposure—I think 78 per cent was the figure; so nearly 80 per cent. Again, this is also a problem; you get differential response rates between the group who were exposed to something and their control groups. In other words, you are getting a potentially very biased sample. You are not exactly comparing like with like.

**Senator MARK BISHOP**—On this issue of ex gratia payments and the development of the policy, DVA make it quite clear in their submission, at pages 5 and 12, that responsibility for developing the policy with respect to the ex gratia payments was with Defence and that DVA were simply the implementation or administration arm. Does Defence agree with that assertion or do you have a different take on the development of policy with respect to the ex gratia payment?

**Dr Gardner**—I will hand that to the deputy chief.

**Air Vice Marshal Brown**—Again, the expertise for this in Air Force or Defence is fairly limited. My understanding of it was that it was developed in consultation with DVA. We knew what the programs were. We knew the kinds of numbers of people involved. There was an

amount of money set aside. But the fact that you needed tiers and needed to put boundaries around this to make it work meant that it was done very much in consultation with DVA.

**Senator CORMANN**—But who made the call? They may have provided technical advice, but who made the ultimate call: 'This is in and this is out'? Going back to my earlier question, who made the decision—if indeed it was considered—that health outcomes were not a relevant consideration whereas length of exposure was?

**Air Vice Marshal Brown**—Again, I will defer to somebody who was there at the time.

**Wing Cmdr Sanders**—The whole thrust of the board of inquiry and the health study was the guys who were doing the deseal-reseal. When government came to us and said they recognised the exposure and what had been done to these people, again, the concentration was very much on the deseal-reseal people, those core workers involved in the four formal programs. Those were our written instructions, and we provided advice subsequent to that.

**Senator CORMANN**—But who made the decision on how to structure the ex gratia payment? I recognise that DVA might have provided technical advice on how to structure these things administratively, but who made the decision on the scope and extent of it?

**Wing Cmdr Sanders**—It was very much a collegiate affair. We worked with DVA.

**Senator CORMANN**—But somebody has to make a call somewhere along the line.

**Wing Cmdr Sanders**—We put together the advice and provided that to government, so the ultimate decision was very much a government one.

**CHAIR**—We are now a little over time. I would appreciate it if you could also take on notice any information you can give the committee about the operation of the incinerator—you will be aware of submissions we have received from folk involved in the incineration of waste and related material—and the question of how those incinerators were constructed and what design they had. There are some issues associated with the extent to which they would have complied with occupational health and safety requirements for the disposal of those chemicals. So anything you can tell us about the incinerators—

**Ms GRIERSON**—The location of the incinerators.

**CHAIR**—Indeed, as Ms Grierson points out, also their physical location. Before I formally conclude this session, I will just make a note of what has been an important part of our discussion today in respect of the purpose of the ex gratia payment. I think it is clear enough from the evidence that has been given—if it was not clear before today, and I suspect it was anyway—that the payment was very much structured more as a workplace hardship allowance, if you like, than as a causal link with health problems, although I suspect that it was seen by many as a response to health concerns. One of the reasons, I think, that we are in the position we are in is that those two things became very confused, and indeed they were confused from the very first announcement. Following the announcement of the scheme, the press release was headed 'Lump sum payments announced following health study findings', and in the body of the document it then referred to the payment to those involved in the work, identifying it as being to

those who ‘experienced a unique working environment’—hence the, if you like, hardship allowance—but, immediately preceding that in the same paragraph, it said that it was in response to the SHOAMP, which of course was an analysis of health related issues. So the confusion that has existed was, I think, something that has been with us from day 1 with this, and part of our task, I suspect, will be identifying how those two things are intertwined and, perhaps, disassembling them or at least reconciling them.

There will be, I am sure, a range of other questions. Indeed, I know I have a range of other questions that time does not permit me to pursue here, so we will arrange another time. I think that will also be appropriate after we hear, next week in Brisbane, from a number of those affected who were working in the program and after we have an opportunity to visit Amberley. We will find a mutually suitable time to reconvene to take further evidence from Defence, but I would like to thank you very much for your presence here today, gentlemen. Thank you for the important evidence which you have given us and also for the spirit with which Defence has approached this issue. I think the way the Chief of Defence, in his then capacity as Chief of Air Force, established the board of inquiry and the way that was conducted was very commendable; some might even say courageous. I think it does provide a very useful platform for the work that we are doing. You will be provided with a copy of *Hansard*. There are matters that you have been asked to take on notice. You should provide that information to the committee secretariat. Once again, thanks.

**Proceedings suspended from 11.07 am to 11.19 am**

**CLENDINNING, Ms Anna, Senior Assistant Ombudsman, Office of the Commonwealth Ombudsman**

**THOM, Dr Vivienne, Acting Commonwealth Ombudsman, Office of the Commonwealth Ombudsman**

**CHAIR**—I welcome representatives of the Office of the Commonwealth Ombudsman, who are here to assist the committee in giving evidence in its inquiry into the F111 deseal-reseal effects on their workers and their families. Although the subcommittee does not require you to give evidence on oath, I advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. Would you like to make any opening comments?

**Dr Thom**—I would, thank you. Thank you for the opportunity to appear before the committee. The Commonwealth and Defence Force Ombudsman, Professor John McMillan, is currently on leave and I am here acting in his position. We made a written submission to the committee on 25 June 2008, and I would like to correct a slight error in that submission. In the submission we stated that 87 complaints had been received by us since August 2005. However, a re-examination of our records means that we need to alter that figure. To date, the office has finalised 95 complaints made by people who have unsuccessfully sought access to the Department of Veterans' Affairs ex gratia and compensation schemes relating to the deseal-reseal program. The office has a further seven complaints that have not been finalised and therefore has received a total of 102 deseal-reseal complaints.

In the submission we stated that the Department of Veterans' Affairs responded fully and openly to observations made by the Ombudsman about the administration of the claims. While the department has addressed the issues, I will now outline briefly the key points made in our submission about the handling of the claims. My comments are focused on the third group of considerations in the committee's terms of reference—that is, overall handling and administration of ex gratia and compensation claims. Our investigations led us to identify particular issues that complicated the department's management of the veterans' applications—I would like to talk in broad terms today and I will take any questions about individual complaints on notice. These areas were in terms of the documentation. Often the Royal Australian Air Force or departmental records were not sufficient to sustain a claim and/or members considered that the official records did not fully reflect their service.

The second area was in obtaining evidence. While the department would accept a range of evidence, there was little or no guidance on the collection or use of information. In addition, the process of weighting different types of information relating to cases did not appear to be clear-cut and it may have appeared to be inconsistent. Also, it seems that similar evidence was treated inconsistently at times. Staffing resources: it appears that the team dealing with claims had technical rather than administrative skills when a mix of both of those skills might have led to a more efficient process. People working on the matters might also have had a greater understanding of our role had they been more familiar with the concepts and practices of public accountability processes.

Delays: some claims were more difficult to investigate, and it appears that cases were given an initial assessment to see which could be handled quickly and easily dealt with, which seemed to be an effective way to manage average processing speed. However, unfortunately that had the consequence that sometimes the more complex cases were delayed. The record keeping on claims files was also a concern. Claims files contained limited information and it was not always clear from the files how a particular decision had been made. For example, where the department advised that a claim had been reconsidered, the files had little or no record of such reconsiderations.

Lastly, the guidelines for assessing claims: the department did not have full written policies for assessing and determining claims, apart from the tier definitions—the wording of which was sometimes ambiguous. That situation led to inconsistent interpretations and therefore on occasion to inconsistent decisions. That is all I have to say to the committee by way of introduction.

**Mr BALDWIN**—In relation to your investigation of the 95 complaints, have you issued any specific instruction to DVA to address those complaints?

**Ms Clendinning**—No specific instructions.

**Mr BALDWIN**—Or guidelines?

**Ms Clendinning**—We pointed out in correspondence to the secretary of the department matters to do with those headings that we just discussed. The department responded positively, in that they acknowledged that there had been some difficulties in the matters. We do not issue instructions; the Ombudsman can only make recommendations.

**Mr BALDWIN**—Do you have a record of the recommendations?

**Dr Thom**—I think there were 104 individual complaints.

**Mr BALDWIN**—It was 95 a moment ago.

**Dr Thom**—There were 95 that had been finalised and a further seven that have not been finalised. We are up to 102. In terms of the individual complaints, quite often when we investigate a complaint, during the process of investigation the matter is resolved, because the agency provides further information, has further conversations with the complainant or might provide a better explanation. In, I think, a total of eight cases, we actually asked the agency to provide a remedy. Those remedies could be to expedite the action, to reduce the delay, to reconsider the matter—in five cases—and to provide a better explanation. Those are the eight. That is not to say that our intervention or investigation in the other 95 did not lead to some changed outcome for the complainant.

**CHAIR**—You have commented that DVA did not have a written policy document for assessing or determining claims. That strikes me as a pretty fundamental omission. Given your experience in pursuing matters with a range of federal government departments, is that something that you would find commonplace? If it is, I would be even more worried.

**Dr Thom**—In executive schemes such as this we would think it would certainly be a better practice to have detailed policy and procedural guidelines as to how claims like this could be managed or assessed. Is it commonplace? We do not often come across executive schemes such as this, so it would be hard to say whether it is commonplace. But we would certainly consider it to be a better practice.

**CHAIR**—The corollary of that, I suppose, is one of the other points you made: that having any clear idea of the criteria that was being weighted was difficult to identify. Can you elaborate on that? This goes to the core of some of the concerns that have been raised with the committee in submissions about how some applicants were dealt with perhaps differently to other applicants.

**Dr Thom**—I do not want to go into particular cases, but I could perhaps provide some further information about that later if that is okay.

**CHAIR**—I am not necessarily seeking information on a particular person or a particular case. You say in your submission:

Once evidence had been gathered, we found that there were some inconsistencies in the way that evidence was weighed.

**Dr Thom**—We confirmed that at least one firefighter received tier 2 while other firefighters with directly comparable service histories received tier 3. I think we were notified by DVA later that nobody had been disadvantaged by these inconsistent applications and, in fact, some people may have been advantaged. But we could find some inconsistencies. Similarly, we noted that a metalworker in the second program received a tier 1 determination while his co-worker received tier 3.

**CHAIR**—Just to be clear: DVA's response was that they acknowledged their inconsistencies but assured us that any inconsistencies erred on the side of generosity to the claimant?

**Dr Thom**—I am not sure that it was quite as categorical as that. Perhaps that is a question you could ask DVA.

**CHAIR**—Sorry, I thought that was the advice that they gave you.

**Dr Thom**—No.

**Mr ROBERT**—Dr Thom, the chair, as always, is being very charitable, to take a term from Senator Bishop. The Ombudsman's report, courtesy of Professor McMillan, who is the author, appears to me to be quite damning of DVA. If I could just read some key points out.

... 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.

… … …

... it appeared to this office that individual claim files viewed contained limited information ...

… … …

- it was unclear on what basis decisions were made if no ‘technical assessment’ had been prepared ...

… … …

- where DVA had advised a claim had been reconsidered, there was little or no evidence on file that this had occurred ...

… … …

- records of conversation were not evident on file ...
- 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.

… … …

Poor record keeping also made it more difficult for the Ombudsman’s office to investigate complaints ... DVA did not have a written policy document for assessing and determining claims, apart from the tier definitions.

… … …

In our investigations we found a reluctance to re-visit decisions which had been made by an individual personally.

What is going on in DVA, Dr Thom?

**Dr Thom**—They have responded to all of our comments and assured us that they will make improvements in the areas that we have identified. In terms of the individual complaints, generally as a result of our investigation the matters were resolved.

**Mr ROBERT**—Are you happy that the issues that the Ombudsman’s office have raised here have been resolved by DVA?

**Dr Thom**—We are happy that they have paid serious consideration to all of the issues we raised and have resolved them or are seeking to make improvements to their processes. Unfortunately, in terms of record keeping, you cannot recreate records that have not been kept properly in the first place.

**Mr ROBERT**—Again, a charitable answer. These issues—and I will certainly chase this up with DVA—appear on the surface to be extreme cultural issues, that there is a culture of poor record keeping, a culture of not putting signatures and names on handwritten documents, and a culture of not informing claimants. Have DVA explained to you how they intend to rectify the culture?

**Dr Thom**—This is a small team of people working on the deseal-reseal complaints. By ‘culture’, I am not sure whether you are indicating you think it is a culture systemic in the department or in that particular team.

**Mr ROBERT**—By culture, I mean the way we do things around here.

**Dr Thom**—They certainly acknowledged the deficiencies and were seeking to make improvements. I cannot point now exactly to the improvements they were going to make. Again, perhaps that is a question for DVA.

**Mr ROBERT**—Thank you.

**Senator FORSHAW**—When you say they were resolved, do you know how they were resolved by DVA?

**Dr Thom**—We have tracked a large number of these claims through and, in many cases, we have been able to assure the complainant that we believe that eventually DVA assessed their claim according to the tiers in a way that we could not criticise. We do not necessarily look for the preferred outcome; we look to see that an agency has not acted unreasonably. With the majority of these complaints, we reached the conclusion that the agency had not acted unreasonably. We are not a review body and we do not look for the preferred outcome; we look to see that they have not acted unreasonably.

**Senator FORSHAW**—When you say 95 complaints were finalised, does that statement and your other comment about having raised concerns that were resolved mean that they were resolved to the satisfaction of the complainant?

**Dr Thom**—No. That is not the test we apply.

**Senator FORSHAW**—That is what I am trying to understand.

**Dr Thom**—In many of these we reached the outcome that we should close the investigation; we decided there was no further merit to investigating. That definitely might not be to the satisfaction of the complainant in many cases.

**Senator FORSHAW**—So your statement is focused purely on the role of the Ombudsman's office in assessing, 'Were there problems? Yes. Were there deficiencies et cetera? Yes. Have they been addressed? Yes. Have the complaints being finalised? Yes,' but you make no judgement about the satisfaction or attitude of the complainant.

**Dr Thom**—I think that is a good point. We are not acting as an advocate for the complainant. We do not—

**Senator FORSHAW**—That does not necessarily follow that you would be but rather whether or not in the Ombudsman's office closing the file, if you like, in terms of the role of the Ombudsman's office, that the matter has been resolved between the complainant and the department?

**Dr Thom**—No. It may not indicate the matter has been—

**Senator FORSHAW**—You understand what I am trying to—

**Dr Thom**—Absolutely, and it may not indicate that the complaint has been resolved to the satisfaction of the complainant and they may feel they have ongoing matters to resolve. But from

our point of view, if we decide there is no remedy that can be achieved or the department has not acted unreasonably, we will close the complaint.

**Senator FORSHAW**—Thank you.

**Senator MARK BISHOP**—I must say this really is a most remarkable submission. The language is extraordinarily strong. There is no ambiguity. The words are blatant, and you identify seriatim six or eight significant issues in terms of process under your various headings. I cannot recall in 12 years where I have read such a damning commentary on the administration of a benefits program established by government. I want to cut to the chase because I understand the point you are making. You are not a review agency. You do not substitute your judgement, but we might have to in due course. Two points: 102 complaints to your agency from a very definite and limited group of aggrieved people, bearing in mind hundreds and hundreds have been compensated, settled and have gone away, strikes me as being enormously high. Firstly, could you comment on that? Secondly, how are we to be satisfied that justice generally, health justice and financial justice, has been given to this limited group of affected workers when you say up until May 2007—you don't say my words—that administrative process was so bad that you had to call in the secretary of the department? Can you answer both of those?

**Dr Thom**—Yes, I can. The first one relating to the number of complaints to our office, I think, may be high but it may also be indicative that DVA were very proactive in letting people know that they could complain to our office. It might have been of greater concern had we in fact received only three or four complaints. One would expect that most of the people whose applications were rejected would have been quite concerned or aggrieved and for them to come to our office is not in itself a bad thing. So the number of complaints we do not see as necessarily indicative that administration has gone wrong. That is the first point.

The second point: can we be assured that justice has been done? We cannot really comment on the broader objectives of the deseal-reseal program and whether it achieved those broader objectives. Whether it was administered properly by DVA: we think, notwithstanding perhaps the litany of errors we found along the way, that only in a small minority of cases do we believe that they should reconsider the claims. I would also point you to the fact that when we raised these issues with the secretary, I think it was in fact the deputy secretary who responded fully and openly acknowledging some areas for improvement and explaining the process in more detail. It is not unusual for us to write directly to the secretary of a department—and I think I was acting at the time—and this was following a meeting with the deputy secretary about this and other matters. So again, it was not to highlight it as being serious; it was serious but it was not an extraordinary step for the Acting Ombudsman to write to the secretary.

**CHAIR**—Can we be supplied with a copy of that correspondence?

**Dr Thom**—Yes.

**Senator MARK BISHOP**—In arriving at that response, Dr Thom, is it within your proper role in terms of the objects of the scheme, the purpose of the scheme as determined by government, to assess the outcomes that have been provided by the relevant department in terms of whether the aggrieved claimants have received justice or not?

**Dr Thom**—We would expect the guidelines and the tiers to define what was appropriate in terms of people receiving justice. We look to see whether the scheme has been well administered. Unfortunately, if the tiers, in this case, or the guidelines are not defined with sufficient rigour, even with the best administration in the world it is hard to achieve the right outcomes. Because it is hard until you actually test a case, test the scheme, I think in this case we felt that there was not absolute clarity in the way that some of the things were defined up front.

**Senator MARK BISHOP**—In fact, you go stronger than that. Would you say that the scheme has not been well administered?

**Dr Thom**—Parts of it. Parts of the administration have been faulty, but again I would have to say that, in the majority of the cases that we investigated, we did not find that the department had acted unreasonably.

**Senator MARK BISHOP**—All right then. In the scheme of things, you have written us a four- or five-page submission. You have six headings in your submission, each of which has numerous paragraphs and each of which identifies a whole range of administrative and process complaints and poor outcomes. In the scheme of things, are those six sets of complaints minor, inconsequential, of substance or of major concern?

**Dr Thom**—Certainly not minor or inconsequential. In particular cases they would have been of major concern. Looking at them across the scheme, they would have been substantial issues. Not to downplay them, I think it would be rare that we would write a report dealing with a scheme like this where we would not have to note that there were delays and record-keeping problems, which is not making the department look any better and perhaps saying something about the general administration, but it would not be unusual for us to make observations such as these.

**CHAIR**—Why should there be delays? Delays are one of the matters that have been raised with the committee as well, and they are referred to in your submission. Why is it acceptable, or should it be acceptable, to the parliament, to the people, much less to the claimants, that there should be a system with delays in it?

**Dr Thom**—We agree that delays are not acceptable. Our understanding is that it is partly caused by resource problems, having a limited number of people with the specialist expertise actually working on the issue, but again I think that might be a question for DVA rather than us.

**CHAIR**—One of the things I noted that was picked up in your report in looking at the way it was administered was that documents on file were not folioed. Given that that is one of a number of shortcomings in standard administrative practice, how could you be confident that there are not missing documents? One of the problems that has existed in this is that people have said they were involved in activities for which there is no record. It may be that there is no record because records were badly kept, but when there is actually no folio notation, frankly, anything could have happened.

**Dr Thom**—That is precisely the reason why we are concerned when records are not folioed. If the records are not folioed, you would be looking for other evidence that material had been on

the file and was not on the file. It certainly can lead to some doubt about the integrity of the records when they are not folioed.

**CHAIR**—After listing a series of concerns, some of which Mr Robert also read out, the submission points out:

Our concern about poor record keeping is that it is not clear how a decision was reached.

There is also reference to the fact that there were no guidelines and so on. Then, I suppose as a response from DVA, it notes:

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 …

It seems to me that on the one hand DVA have asserted to you that, in the absence of a manual, in the absence of procedures, in the absence of normal administrative folio activities, record keeping, it is not a problem because there is only a small group so they got it right anyway, but in fact the evidence that you yourself uncovered demonstrates that that is not the case. Obviously, DVA are going to come before us later today, and they will no doubt be asked questions and want to make comment about it, but it just seems to me to be a conflict of advice.

**Dr Thom**—We are observing here that they commented in that way, but we would still assert that, even when there are a small number of people making a decision, it is not just that they all know what is going on; it has to be transparent to people who review the files later. So we would say again that it would not be better practice to rely on the shared expertise of a small team; it would be much more preferable to have written guidelines.

**CHAIR**—How do I reconcile the DVA's advice, which is recorded in your submission, that these things are not a problem because they had a small team, for example, with the comments earlier in your own investigations that identified people in identical work, ostensibly with the same degree of exposure, being categorised as getting different level outcomes? Surely those two cannot stand together. You cannot reconcile those two. One of them is right; one of them is wrong. Either DVA are right, and it did not matter that they did not have any record keeping and normal processes because there was only a small group and they all knew what one another was doing and they were all on the same wavelength, so they came up with consistent and proper answers, on the one hand; or, on the other hand, the other evidence that we have got and the other findings that your office has made, which are to the contrary, are right—that in fact they were not providing similar findings for people in similar situations.

**Dr Thom**—I will comment that in some particular cases we did ask them to reconsider and they did reconsider them, but we did not take all the 102 complaints and map them to check for consistency; it was only on particular individual cases that perhaps we asked them to reconsider. We did not do a broad, own motion investigation of this, looking to see how the whole scheme was investigated. All of our comments on the scheme are based on individual complaints, which is a different kind of sampling.

**CHAIR**—You had a pretty decent sample of the cohort, I would have to say.

**Dr Thom**—Yes.

**Senator MARK BISHOP**—From 100, out of even 1,000, you must be able to identify common points and trends and similar outcomes.

**Dr Thom**—Yes.

**Senator MARK BISHOP**—Even if you do not do a sort of group cohort study, you can—

**Dr Thom**—That is how we can observe on an apparent lack of consistency.

**Senator TROOD**—Dr Thom, it seems to me that your report provides a damning assessment of DVA's performance—an absolutely damning performance—but you have told us that you regard them as having not acted unreasonably. Perhaps you could just explain to me how you have reached that conclusion, when your report says things, just in relation to the gathering and using of evidence in claims, such as: there were no guideline policies as to how claims were to be accepted or denied; assessors' responsibilities were unclear; evidence was weighted inconsistently; it was unclear that decision makers understood what standard of proof to apply in deciding if the evidence was sufficient; and there was inconsistent treatment of similar evidence—for example, statutory declarations. That seems to me to add up to a damning indictment of the way in which the DVA has dealt with these claims, so how can you sit there and reach the conclusion that you regard the DVA as acting reasonably—or not unreasonably?

**Dr Thom**—There are a number of different aspects to any particular investigation of a complaint. One is to look at the outcome, and that is where we would make a decision as to whether the decision by the department was not unreasonable, but there is also looking at the process that the department followed. It can oftentimes be, for example, that the folioing is not good, it appears to be inconsistent, and there is no record of telephone conversations, but when we look at all the material on hand and speak to the people who are actually doing the investigations we reach the conclusion that the outcome for the complainant in terms of their interaction with the department was not unreasonable. In this case, we gathered together all these observations to inform the Department of Veterans' Affairs, in particular if they ever had a similar scheme in the future, that they could learn from these observations. But that is not to say that, in any particular case, these faults led to an incorrect assessment. There were eight cases at least that we referred back to them, and there may have been others along the way where we drew problems or issues to the attention of the department and they reassessed the case themselves and changed the outcome for the complainant, but sloppy administration does not always in itself lead to a bad outcome in every single case.

**Senator TROOD**—But how do you make that judgement when, because there has been sloppy administration, you are really struggling to get a full understanding of the nature of the case that has been put before the DVA?

**Dr Thom**—I think that is a very good observation. Certainly, our staff had to spend an inordinate amount of time investigating each one of these complaints and had to have a lot of interaction with DVA, looking at original files, looking at original material. In many cases, they may have done a similar amount of work to that done in the initial assessment itself.

**Senator TROOD**—That suggests to me that the DVA has not done its work properly in the first place. If you had to spend as much time trying to investigate individual cases as the DVA was spending in relation to them—and they are the agency of first instance—then how is it that you cannot reach the conclusion that they have acted poorly?

**Dr Thom**—Because we arrived at the conclusion at the end of our investigation that there was no further remedy for the complainant—that the outcome for the complainant was not an unreasonable outcome.

**Senator TROOD**—I understand the point you are making, that there may not have been a further remedy, but we are seeking to make a judgement here on the way the DVA has performed in relation to the performance of its responsibilities. And everything you tell us, it seems to me, leads to the logical conclusion that the DVA has acted very badly in relation to the exercise of its responsibilities.

**Dr Thom**—We are saying the administration had faults, or there were errors in the administration.

**Senator TROOD**—But they are not just trivial—

**Dr Thom**—No, they are not.

**Senator TROOD**—They are profound failures and shortcomings, are they not?

**Dr Thom**—Yes, some of them are. But, in the individual cases, when we followed them up—

**Senator TROOD**—Okay, we can look through the 102 cases and say, in relation to some of them, that they were perhaps trivial. But the quantum of the evidence is that the DVA acted very badly in relation to the whole of the range of cases that was put before it. Is that not a reasonable conclusion to be reached from the evidence you have provided us with?

**Dr Thom**—I would say that, in the complaints we investigated, the administration was not of a standard that would have guaranteed the integrity of the outcome in all those cases.

**Senator TROOD**—But you are mincing words, aren't you, Dr Thom?

**Senator MARK BISHOP**—If you have a hundred cases, and there are only a thousand applicants, you have a 10 per cent sample. When you have these sorts of comments, Senator Trood is inviting you to come to the conclusion that, as a process of logic, the other 900 have been similarly poorly treated. That strikes me, on a 10 per cent sample, as a reasonable conclusion.

**Dr Thom**—And that, I suppose, is why we wrote to the department in general terms, rather than just looking at the individual complaints, and, in general terms, drew their attention to these shortcomings.

**CHAIR**—I am trying to reconcile this issue. Is it possible that, whilst the administrative procedures were clearly wanting, you believe that in those cases you investigated there was,

nonetheless, a generous treatment, a sympathetic treatment, by DVA staff within the confines of the rules of the scheme?

**Dr Thom**—We thought there was a thorough treatment; I am not sure 'sympathetic' is what we are looking for. We are looking for thorough and adequate treatment—sufficient treatment.

**Mr ROBERT**—With the greatest respect, Chair, from the comments here I have no confidence that the DVA files have all of the documents that claimants may have sent through, or that all of the telephone calls that may have included important information are actually on the files. From your comments, ma'am, I have zero confidence that all of the information available for an assessor to make a judgement is there.

**Dr Thom**—Certainly, if files are not folioed and telephone conversations are not recorded, that is a conclusion you could draw.

**Senator MARK BISHOP**—But how can you say it is thorough when you have listed, in 100 files—10 per cent of the sample—this whole list of serious or profound complaints? How can you come to the conclusion that it is thorough? It is not—it is sloppy; it is poorly noted; it is ill-considered; it is not thorough. With due respect, how can you say it is thorough?

**Dr Thom**—It is not at a standard that one would expect, no.

**Senator MARK BISHOP**—'Not at a standard that one would expect'—it is at a standard one would be aghast at! Don't you agree, Dr Thom?

**Dr Thom**—I agree that their standard of administration was not adequate.

**Senator MARK BISHOP**—Was it one per cent below standard or 50 per cent below standard?

**Senator TROOD**—It falls well below the standard that would be expected of a department administering a scheme of this nature—well below the standard.

**Dr Thom**—It is a very hard thing to set a benchmark for that.

**Senator TROOD**—You would have had a lot of experience with this, Dr Thom. You have looked at a lot of agencies and their work. You have looked at a lot of administrative processes. Would you say it is a reasonable supposition or a reasonable conclusion to be reached in relation to this matter that this performance falls well below many of the other examples that you have investigated?

**Dr Thom**—Executive schemes of this nature are difficult to administer. Complexities arise during the administration that may not have been seen to start with. I would not say it is well below. I would say that there are problems here that we find repeated, unfortunately, in many government agencies.

**Ms GRIERSON**—Each year you report on these findings in your work. If you aggregated across DVA all the complaints outside this program and in the other program, is it systemic? Are you seeing the same thing in other cases, or was this a particular case?

**Dr Thom**—I think this was a particularly challenging scheme to administer. As far as I can recall, we certainly have not noted these problems in other schemes that DVA have administered.

**Ms GRIERSON**—If you are concerned—and you said that you took it up with the head of the department—do you also take it up with the head of PM&C, the Public Service Commissioner or whoever, or does it just rest with the department itself?

**Dr Thom**—We can of course issue public reports on the matter. That would have been a step that we could have taken.

**Ms GRIERSON**—But you did not in this case.

**Dr Thom**—We noted these issues in our annual report last year.

**Senator TROOD**—Is it a challenging scheme to administer because the scheme, as conceived in the first place, was badly conceived?

**Dr Thom**—I could not comment on how it was conceived in the first place.

**Senator TROOD**—I am not asking you to comment on the way it was set up. But you went there, looked at the scheme and had to assess individual's concerns in relation to the scheme. You say there were no guidelines in relation to policies, for example. That suggests to me that the scheme was poorly conceived in the first instance.

**Dr Thom**—We have commented in the past that one of the common concerns that people have with executive schemes is that the criteria or entitlement is not necessarily as clear or as ascertainable as in a legislatively based scheme. That is an issue with these executive schemes.

**Senator TROOD**—This is a particular example of that problem. Is that a fair conclusion?

**Dr Thom**—Yes.

**Mr ROBERT**—You have indicated that the complexity of the scheme may have resulted in a range of these inadequacies. Is that a fair summary of what you have said?

**Dr Thom**—Issues such as record keeping, regardless of the complexity of the scheme, should just be—

**Mr ROBERT**—Correct.

**Dr Thom**—Correct.

**Mr ROBERT**—That is where I am going. Regardless of the complexity of the scheme, I would have thought that certain things—such as informing claimants of progress; making sure that files are updated and evidence is all on file; records of conversations are kept and signed; how decisions are reached is recorded, with written policy documents for assessing and openness to revisit decisions—transcend any degree of difficulty of a case and are the standard means for administrative and investigative officers to follow.

**Dr Thom**—They should be. However, having, as I understand, a small team of people working with tight time frames to try to implement a scheme that may not have been defined initially with perfect clarity adds to the pressure of the workplace and these things sometimes fall by the wayside. They should not and there is no excuse for it, but that is sometimes what happens.

**CHAIR**—I think it is pretty fair to assume from the questioning that there will be the odd pursuit of this with DVA this afternoon.

**Ms GRIERSON**—Dr Thom, you said that you passed on those concerns to the department.

**Dr Thom**—Yes, we did.

**Ms GRIERSON**—Did you see any actions, responses, improvements or diminishing of complaints?

**Dr Thom**—Yes. This was towards the tail end of the complaints anyway. We wrote to them at the end of May last year. We did get a full response from the department, and we were assured that they have put in place some of the measures. But this was at the tail end of the complaints.

**Ms GRIERSON**—Do we have a copy of that full response?

**CHAIR**—No.

**Dr Thom**—You might want to ask the department.

**Ms GRIERSON**—I would be interested to see what a full response looks like.

**CHAIR**—That is advice you received from DVA?

**Dr Thom**—Yes.

**CHAIR**—We can ask DVA for that this afternoon. There being no other questions, Dr Thom, I thank you and Ms Clendinning for appearing before us. The observations of the Office of the Commonwealth Ombudsman are actually particularly useful, I think, to the committee. They are very important for us in gaining an insight into the way the scheme has been administered in quite a substantial number of cases that you have had cause to investigate. They do go to one of the matters that has been an area of concern for many of those involved. Clearly there are questions of the structure of the compensation and things associated with how that was designed, but there is also the mechanics of how people were treated in the process, and that did involve interacting both with Defence but particularly with DVA. It is clear on any reading of the

submission from your office that there were a number of shortcomings that people should not reasonably expect when they are dealing with a Commonwealth government agency. And, given the previous history of this matter, which had dragged on for many years before it got to this point, I think the frustration many felt in their dealings with DVA just exacerbated what had been a long and painful process. That is unfortunate. The purpose of our inquiry, frankly, is not to be pointing fingers at laying blame particularly at anybody from the past; it is to try to identify the facts and truth of the matter as best we can and try to arrive at a fair and decent outcome for all those affected and hopefully make some recommendations to that effect. But in doing that it is important that we comprehend what has happened, and your submission has given us an insight into that. You will receive a *Hansard* of your evidence and you will have the opportunity to make any adjustments. Once again, I thank you for your evidence today and that of your office.

**Proceedings suspended from 12.02 pm to 1.10 pm**

**DOUGLAS, Mr Kenneth James, General Manager, Service Delivery, Department of Veterans' Affairs**

**FARRELLY, Mr Sean, National Manager, Compensation and Income Support Policy Group, Department of Veterans' Affairs**

**KILLESTEYN, Mr Ed, Acting Secretary, Department of Veterans' Affairs**

**SPIERS, Ms Carolyn, Principal Legal Adviser, Department of Veterans' Affairs**

**TELFORD, Mr Barry, General Manager, Policy and Development Division, Department of Veterans' Affairs**

**CHAIR**—I welcome the representatives from the Department of Veterans' Affairs. Although the subcommittee does not require you to give evidence on oath, I advise that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. The session that we are now going into with DVA, as the administrators of the scheme, is an important part of our inquiry. For the committee to have a clear and comprehensive understanding of how claims are processed, both in terms of the ex gratia payments and what other benefits or claims those affected may be able to make, is important. And clearly some of the submissions and the earlier session with the Ombudsman have raised a number of questions that you may also wish to comment on or that may come up in questions from the committee along the way. With those opening remarks, I would now like to invite you to make any opening statements you may wish to make.

**Mr Killesteyn**—Thank you, Chair. I certainly do wish to make some opening comments. I perhaps should start with an apology because I think some of my opening comments may traverse some of the issues that were discussed with Defence and the Ombudsman, but perhaps you will allow me to do so for the sake of clarity.

**CHAIR**—By all means, yes.

**Mr Killesteyn**—The deseal-reseal story has never been brought together in a way that entirely represents the situation from all sides. This inquiry is an opportunity for all parties to bring together all of the elements of the process in a way that allows government to reflect on what was delivered and ask whether anything else should or could be done.

By way of general comment, bringing the story together for all and in a way that deals with the needs of those who were involved in deseal-reseal activities is no easy task. It involves a group of dedicated service personnel, many of whom are sick and initially looked for an explanation of their illness but now seek some form of redress and/or support for the consequences of a job acknowledged as having potentially serious health outcomes. It involves complex legal and technical issues that impact on the form and scope of redress that might be possible, against the background of needing to distinguish between formal and informal work programs to maintain fuel tanks. And it involves decisions having to be made about who was to

be provided with redress and in what form, which ultimately leads to some not falling within the definitions decided by government.

Such decisions are always difficult in their impact on individuals, but the need for equity and transparency requires such distinctions to be made. Applying those distinctions and decisions in practice is never, however, a perfect process. In the case of deseal-reseal activities, distinctions about who will be included in the forms of redress and who will not need to be made against the background of sometimes imperfect information and recollections of events that occurred more than 30 years ago. Our role in DVA has been to take that information and apply it against the rules provided by government, and in that respect I believe the department has done a good job.

Turning to the specifics, after the board of inquiry into deseal-reseal delivered its report in September 2001 the Air Force and the Department of Defence publicly acknowledged that they had been party to a serious occupational health and safety concern. They were ready to respond immediately. The response of Defence and Air Force, and later the Department of Veterans' Affairs, focused on making sure that those who were possibly affected had access to a comprehensive scheme of health care as soon as possible. I cannot emphasise enough the importance of that response to the health needs of those requiring care. Answers to questions such as, 'Who was actually affected and how much?' would have to wait for more detailed epidemiological work, on which government could provide an evidence based response.

In the meantime, those who needed treatment received it through the interim healthcare scheme. This scheme provided medical check-ups and sympathetic advice and treatment to F111 aircraft maintenance personnel who may have suffered adverse health effects. The interim healthcare scheme was not a comprehensive response. It was intended to provide non-liability services to assist the affected groups, as broadly defined as possible, while awaiting the results of the study. Entry to the scheme required a compensation claim to be lodged. Decisions were taken not to reject any claim for compensation under the Veterans' Entitlements Act or the Safety, Rehabilitation and Compensation Act pending the government response to the SHOAMP. This approach was designed to ensure that no individual was disadvantaged due to the absence of information at the time of their claim. Claimants were advised of this approach and given the choice to have their claim determined as soon as possible. Almost all claimants chose to have their decisions on their claims deferred. Nevertheless, this approach was inevitably perceived as a delay in claims processing by some parties. In processing claims, the specialist Deseal/Reseal Compensation Team established inside the department looked beyond deseal-reseal service to find reasons to accept claims.

The SHOAMP report was released in September 2004. It found that, on average, personnel involved in the four formal deseal-reseal programs self-reported nearly twice the number of poor health symptoms as, and had a higher incidence of some conditions than, the control groups. By its nature, the study could not comment on causation but only indicated correlations between reported conditions and deseal-reseal service. This is an important distinction. Causation and exposure are not the same.

The government responded to the SHOAMP in three distinct ways: first, access to ongoing healthcare schemes and better health programs; second, a lump sum ex gratia payment related to the unique working environment and according to definitions agreed to by government; and, third, making compensation and treatment arrangements more accessible under existing

legislation. I should emphasise that the three responses are not mutually exclusive. A person can be in receipt of benefits under all of the three schemes and, in respect of compensation under the VEA or the SRCA, there is no time limit. While lump sum compensation payments and treatment for conditions caused by service are available under existing legislation, the two healthcare schemes, the Better Health Program for F-111 Deseal/Reseal Personnel and the ex gratia payment are in addition to those entitlements. The lump sum ex gratia payments are paid to both military and civilian personnel and in recognition of the unique working conditions experienced by different groups who participated in the four formal deseal-reseal programs to varying degrees, and the payments do not relate to health conditions in the same way as compensation. It is possible to receive both an ex gratia payment and compensation in relation to deseal-reseal service. It is also possible to receive an ex gratia payment and not exhibit any deseal-reseal related conditions that would attract treatment benefits or compensation. The healthcare schemes provide government funded treatment for specified conditions, regardless of eligibility for compensation, and also continuing cancer screening and monitoring services.

Questions have been raised about the evidence used by the Department of Veterans' Affairs and the Department of Defence in reaching decisions in a number of areas relating to eligibility for various entitlements for deseal-reseal participants. The Department of Veterans' Affairs has always used objective and scientifically supported evidence as a basis for decisions in relation to entitlements. Deseal-reseal entitlements are no different. SHOAMP was a study based on scientific evidence and methodologies. Following completion of the SHOAMP study, eligibility for the SHOAMP Health Care Scheme was based on scientific results of that study, taking into consideration the expert advice of a doctors advisory committee. As is standard practice, compensation decisions relating to deseal-reseal participants were based, firstly, on diagnoses from relevant medical professions. Decisions under the Veterans' Entitlements Act 1986 were then finalised by comparing medical diagnoses with the requirements of the relevant statements of principles. Statements of principles are produced by the independent Repatriation Medical Authority and are based on sound scientific evidence. Decisions under the Safety, Rehabilitation and Compensation Act were also guided by the RMA statements of principles but only where use of the statement of principles would result in a favourable outcome.

Decisions relating to eligibility for ex gratia payments were based on objective evidence such as personnel records from the Department of Defence. Statutory declarations from claimants and witnesses were also accepted, in conjunction with available objective evidence. That said, the department is open to considering other information in a decision-making processes.

The assessment team often went to great lengths to secure evidence in support of applications. The department has, throughout the process, also worked closely with the Commonwealth Ombudsman to resolve any issues as quickly as possible. Within the boundaries articulated by government, including the tier definitions, all issues have been approached with a mindset of inclusion rather than exclusion. For example, during the board of inquiry a claimant submitted a statement regarding his claimed involvement in a program. He had no supporting documentary evidence whatsoever. Due to the specific nature of the detailed information provided in his statement, the F111 lump sum payment team contacted the claimant in order to seek more information and suggested that he obtain a statutory declaration that supported his claimed activities from the supervisor whom he stated he had worked with in the program. The subsequent receipt of a supporting statutory declaration from that supervisor as well as information obtained from other supervisors by the lump sum payment team was considered to

be of sufficient strength to demonstrate his participation in the formal deseal-reseal program and to have his claim approved.

To the extent that the committee is concerned about the processing of individual cases, the department is more than willing to take any question of this nature on notice and report to the committee in confidence, as it may wish. In this respect, I think it is worth noting that the Ombudsman provided advice that they have investigated some 86 claims—that was at a time before Dr Thom gave her evidence—but 195 individuals. I think she recorded that, in most of those cases, the department had been found to act reasonably. We welcome this opportunity to engage with the deseal-reseal inquiry and offer whatever support we can.

**CHAIR**—Thank you for those opening remarks.

**Mr BALDWIN**—Mr Killesteyn, you were here during the Ombudsman's evidence. You made a statement, which I find rather interesting, that you think your department has done a good job with this, yet the Ombudsman said that you did not even have a written policy document for assessing and determining claims. Moreover, there was a list of things in relation to record keeping. My colleague went through them earlier, but I will go through them again. The list read:

- 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.

Do you still stand by your statement that you think your department has done a good job?

**Mr Killesteyn**—I do, Mr Baldwin. Given that this issue has arisen this morning, I would seek the committee's indulgence to perhaps provide a further submission in relation to the process for dealing with ex gratia claims, which I think is the particular reference that the Ombudsman was making.

**CHAIR**—It was.

**Mr Killesteyn**—In summary, however, there may be a few things that I can say at this point. Firstly, we put together a specialist team to deal with all ex gratia payments. It was a team of four people. It was quite clear in that team who did the work. The team was composed of a flight sergeant with some 32 years technical experience—a current serving member—who had been involved in personal records for some 12 years. The team also included a warrant officer who did the technical assessment against the tier definitions. That warrant officer had 32 years of technical experience. The team involved a group captain, who made recommendations. That group captain had some 35 years experience as an administrative officer, including experience in technical trades. On the basis of those findings from those people a recommendation was made to the delegate about whether the person fitted one of the tier definitions. In excess of 100 years of experience was composed in a team. Towards the end of the process when the bulk of the

decisions had been made we conducted a further what might be called gross error check—that is, we looked at all of the cases that had been assessed, looked at all the decisions as to whether a person had been provided with an ex gratia payment, and checked them against the others which had not had a decision made in their favour to see whether there was any difference in the way the decision making was processed.

I should also like to comment on some of the aspects which we have engaged quite significantly with the Ombudsman on. In doing so, again with your indulgence, Mr Chair, I would like to quote from some elements of the letter which I think the Ombudsman suggested they would provide to you. I have it here, if you will allow me.

**CHAIR**—Please.

**Mr Killesteyn**—Thank you. The Ombudsman says:

Firstly, I want to acknowledge that the consultation between DVA and our office about the ex gratia scheme has generally functioned well. We particularly appreciate DVA providing a background briefing to our office in October 2005 before we received a significant number of complaints. The early contact between DVA and our office was important for our investigation officers, who had limited knowledge of the scheme and the technical subject matter associated with the deseal/reseal process. Staff engaged by DVA to assess claims have been helpful in assisting with our investigations ... While there have been delays in DVA responding to some inquiries from our office, particularly where matters of DVA assessment policy was concerned and more recently as a result of reduced staffing, we appreciate the generally open and responsive approach by the assessment team.

The administration of the scheme presented a number of challenges for DVA, including:

- relevant records being destroyed by the RAAF (eg aircraft maintenance records)
- relevant records not having been made (eg records of RAAF unofficial attachments to 501WG/3AD)
- the similarity of the deseal/reseal work performed during a formal program and work performed outside of a formal program, and resulting views and expectations of claimants who performed deseal/reseal 'like' work
- difficulty in estimating the cumulative number of days a claimant worked on a program when a claimant was not part of the primary trade involved in deseal/reseal
- new information becoming available during the assessment process revealing additional deseal/reseal work not reflected in the Tier definitions for the ex gratia payments or Board of Inquiry Report
- the relatively inflexible nature of the Tier definitions
- the requirement for accurate information about different trades, programs and locations over a 25 year period
- a widely held perception that all those with involvement in a deseal/reseal program would receive a payment.

I will go on but leave some bits out. Just to finalise, the penultimate paragraph reads:

We are interested in any feedback or discussions that DVA might have had with Air Force or Defence following the DVA's administration of deseal-reseal scheme. We note that Air Force record keeping of personnel duties and movements over a 25 year period has resulted in considerable difficulty for DVA and it would appear that in the absence of significant record-keeping changes, DVA may face similar challenges in obtaining accurate records in the future.

My point is simply the point I made in my introductory remarks: the ex gratia scheme had particular definitions about inclusion as to, firstly, who would receive the payments and, secondly, who at the tier 3 level would receive facilitated access into the Safety, Rehabilitation and Compensation Act. We applied those schemes against the best information we had available, knowing that the information was imperfect, and we went to extraordinary lengths to uncover it, with a focus on inclusion rather than exclusion.

**Mr BALDWIN**—Well, that is—

**Mr Killesteyn**—If you would just allow me to finish, Senator. On the issues about process—and, again, this may be part of our further submission—each case was approached on the basis of a checklist. The checklist has some dozen items that the four members of the team were required to progress through. It included airmen's evaluation reports, records of employment, task authorisations et cetera. All those were then checklisted to determine whether there was supporting documentation available to make the decision, and all of those records were then tagged. Again, it goes to the process of looking for as much information as possible to determine whether a person fitted the tier definition.

**Mr BALDWIN**—That is wonderful! I am glad the Ombudsman's office said they have a great working relationship with you and the board of inquiry discovered that record keeping was an issue! But you have not answered even one of the questions that I asked you about the statements by the Ombudsman in relation to your operation and interaction with the people that you actually serve, those being the claimants. You have not answered anything that I asked you.

**Mr Killesteyn**—With respect, Senator—

**Mr BALDWIN**—I am not a senator.

**Mr Killesteyn**—Sorry; my apologies—

**Mr BALDWIN**—Thank you.

**Mr Killesteyn**—I get used to confronting these situations in Senate committees!

**Mr BALDWIN**—It is a bit defamatory!

**CHAIR**—Some of us work for a living!

**Senator FORSHAW**—I apologise that they are not senators!

**Mr Killesteyn**—I think the process and the background that I have articulated go to how this ex gratia scheme was administered. While the Ombudsman quite rightly points to some areas lacking best practice, we were involved in a situation where best practice might not have been open to us because of the nature of the situation that we had: the tier definitions, requiring very accurate interpretation, and imperfect records. Against that sort of background, going through the niceties of the process was not open to us.

**Mr BALDWIN**—Would you say that things like files not being folioed, records of conversation not being kept on files and the identity of people putting comments on files not being apparent are all excusable in the administration of the job that you are there to do?

**Mr Killesteyn**—No, I am not suggesting that. What I am saying is that there are alternatives. If we look at the folioing issue, as we will detail in our further submission, there was a process: a checklist, which is on every case, which identifies the information that was being used to make a

decision about whether a person met the tier definition, and based upon this checklist you can track back to the documentation that was used as evidence for the decision.

**Mr BALDWIN**—Well, I am glad it went in the direction it went in, because in your explanation in response to the complaints to the Ombudsman that were levelled at the operation that you were conducting, you did not satisfy the Ombudsman, and that was clear in the evidence that they gave this morning. The Ombudsman has got no axe to grind for one side or the other; they are there to make sure that you are doing a fair and reasonable job.

**Mr Killesteyn**—That is correct, and I think it is also worth noting that the Ombudsman suggested that, in the 95 cases that they had examined, the department had been found to act reasonably. So is it a question of outcome or is it a question of process? In relation to a question of outcome, we are satisfied that all the people that should have got a payment got one.

**Mr BALDWIN**—But, just as for government and transparency, process is equally as important—do you not agree? Or do you intend to run the department on an ad hoc basis?

**Mr Killesteyn**—No, I agree entirely with the statement. Again, if you look at the process that was adopted, one can track back on the basis of the evidence that was there to determine how a decision was made to grant status under one of the tiers.

**Mr BALDWIN**—You do not include the Ombudsman as one of those to track back. Obviously, they could not. That is why they listed these things in their submission as things of concern.

**Mr Killesteyn**—Now you are putting words in my mouth. We have worked very closely with the Ombudsman on this whole process. I am not surprised that the Ombudsman has been heavily involved in this because with the ex gratia scheme there was only one recourse for a person who was denied access to one of the ex gratia payments and that was the Ombudsman. There was no appeal mechanism available to any individual. We made a lot of effort to ensure that a person who felt as though the department had made the wrong decision—to encourage them to go to the Ombudsman so that there could be an independent process to examine whether they ought to have received a payment.

**Mr BALDWIN**—Can I assume you have now put together a detailed written policy document for assessing claims?

**Mr Killesteyn**—We have responded to the Ombudsman against all of the issues.

**Mr BALDWIN**—That is not the question I asked you.

**Mr Killesteyn**—I will check with my colleagues.

**Mr BALDWIN**—Take that on notice then, thank you.

**Mr ROBERT**—I assume you have come with a whole heap of statistics.

**Mr BALDWIN**—Oh, no!

**Mr Killesteyn**—We have.

**Mr ROBERT**—I know the chair enjoys these. Can we get a feel for where we are up to with outcomes for DVA claims, not ex gratia claims. How many claims has the department received from reseal and deseal claimants?

**Mr Douglas**—We have 628 claimants so far, with claims still coming in. In fact, we have received three claims in the last month. Of those 628 claimants, 70 are claims lodged within the VEA only, 115 are lodged with the SRCA only, and 443 are claims lodged under both VEA and SRCA.

**Mr ROBERT**—Out of those claims, how many have been finalised—approved or otherwise?

**Mr Douglas**—There are seven claimants awaiting liability determination of nine conditions.

**CHAIR**—Are those statistics you just mentioned, 629—

**Mr Douglas**—No, 628.

**CHAIR**—There is some information on page 25 of your submission to us—which I assume is the statistics we are now talking about—and I am trying to reconcile what I think I heard you say with what I am reading on page 25.

**Mr Douglas**—This is as of last Friday, Chair.

**CHAIR**—But in the breakdown of that 626 you said how many had applied under the SRCA?

**Mr Douglas**—Under SRCA, only 115; under both the VEA and SRCA, 443.

**CHAIR**—How does that gel with what is in the written document, which tells me that 556 members lodged claims under the SRCA?

**Mr Douglas**—I will have to take that on notice, Chair.

**CHAIR**—It says 512 lodged them under the VEA. I think you have a very different figure for that as well.

**Mr Killesteyn**—We will take that on notice, but for the moment I think the statistics provided on page 25 are reasonably close to the final figure.

**CHAIR**—I think the figures we were just given in oral evidence were about one-quarter of the number.

**Mr Douglas**—If you look at the 626, that is now 628.

**CHAIR**—Yes. That is not a problem, nor is the 442 becoming 443, or something of the kind.

**Mr Douglas**—Correct.

**CHAIR**—But 100 and something becoming 500 or vice versa presents me with a bit of a dilemma.

**Mr Douglas**—Correct.

**Mr ROBERT**—Cognisant that it is on notice, Mr Killesteyn, with 628 claims received, am I right that in the previous answer all but seven have been processed?

**Mr Douglas**—I am sorry; I did not hear that question. But I have an answer for you on a previous matter. If you add the 443 and 70, in my numbers, that gives you 513, which are VEA claims. Bear in mind that I have given you VEA only, SRCA only and then VEA and SRCA. So, if you add 443 and 70, you get 513. The 512 becomes 513. And the 556 has become 558.

**Mr ROBERT**—So the crisis is over?

**Mr Douglas**—We have resolved the difference in the statistics. There is no difference. It is just a matter of the way that we have presented them.

**CHAIR**—Hence my love of statistics!

**Mr ROBERT**—Of the 628, how many have been finalised?

**Mr Douglas**—As I said, we have finalised all bar seven.

**Mr ROBERT**—So you have finalised—let us call it 621. Of those, how many have been approved and how many have been not approved?

**Mr Douglas**—These figures are prior to the additional numbers that I have reported on today. So on page 30 of our submission you will see that, of the 556 SRCA claimants, the number with at least one condition being accepted due to deseal-reseal is 302, and those with at least one condition being accepted for other reasons is 323. Under the VEA, of the 512, those with at least one condition accepted due to deseal-reseal are 110; those with at least one condition accepted for other reasons number 318.

**Mr ROBERT**—And what was the average time taken to process the claims?

**Mr Douglas**—In 2006-07, under the SRCA, 1,060 days. In 2007-08, it was 863 days. But I would go back to Mr Killesteyn's opening statement, where requirement for entry to the interim healthcare scheme was the lodgement of a compensation claim, and we then said we offered to claimants not to determine their compensation claim in the absence of the SHOAMP study. Hence, it severely inflated the days.

**Mr ROBERT**—And, of the claims that were processed, you haven't an average payment—be it a disability payment from a fortnight through to whole-of-life disability? Is that a type of statistic, Mr Killesteyn, you collect? Or would you have some highs and lows—just to give the

committee an idea of the sorts of payouts that the 323 in the SRCA and 318 in the VEA have received?

**CHAIR**—Can I just suggest that a variant of that also would be the following. Obviously, confidentiality of claimants is important. But, with confidentiality protected, is it possible to identify a couple of actual, or close to actual, case studies, so we have some idea of what actual benefits and value of benefits individuals may be currently receiving?

**Mr Killesteyn**—Under compensation claims? Yes. I think averages can be a little bit misinformative because it really does depend upon the extent of injury of a person, so an average really may not help you. But I can give you ranges of payments and perhaps even some case studies that we have de-identified as much as we can. You just have to be careful with that.

**CHAIR**—And if you want to provide those to us on a confidential basis then so be it—although it is obviously better for the committee to take as much evidence in public as possible. But you may be able to provide it in a format that protects the anonymity of those involved but would still inform us as to the level of support individuals may be receiving.

**Mr Douglas**—We would also have to treat that information with some care, given that they have clearly a future obligation to meet the full health treatment costs, which we cannot tell in advance, of course. What we would be able to give, in some of the individual cases, would be illustrations of healthcare costs incurred to date.

**CHAIR**—And you might, in those circumstances, note that there is an expectation that there may be a continuing cost with the treatment.

**Mr Douglas**—And those costs will differ, given that, for example, under the VEA, someone could have a gold card, in which case healthcare costs are covered for all conditions, not just the deseal-reseal condition.

**Mr Killesteyn**—We can give you some global figures at this point. Payments under the Veterans' Entitlements Act so far have totalled $16.1 million.

**Mr ROBERT**—Is that the whole-of-life payment?

**Mr Killesteyn**—That is payments made so far to this point. Payments made under the Safety, Rehabilitation and Compensation Act have totalled $19.6 million. Just to give you some context, the total amount incurred so far in the government response is $67.9 million, of which $60 million has basically been payment of benefits. There is another $22 million that includes payments to the ex gratia scheme.

**Mr Douglas**—Mr Robert, I would remind you too that, as Mr Killesteyn iterated in his opening statement, there is no time limit to claims. So it is quite conceivable that people will come back to us at a subsequent date and claim either a new condition not yet manifested or aggravation of a previous condition.

**CHAIR**—Is that under all schemes?

**Mr Douglas**—Yes.

**Mr ROBERT**—That $67.9 million is claims to date. You may have explained this, and I apologise if you have, but does that include cash paid out or, for example, say, someone is on a fortnightly pension and that is the actuarial length of life for what you expect to—

**Mr Killesteyn**—No. It is payments made to date. It does not include future payments, the accrued liability, if you like

**Mr ROBERT**—What is the accrued liability?

**Mr Killesteyn**—I do not think we have that figure. We can try to estimate, but it would be difficult to estimate given that it is such a small sample of people and you are actually trying to make predictions about their life expectancy and so forth.

**CHAIR**—I find it difficult to translate the $67 million meaningfully into the individual cases of people who come before us. As with my earlier question, is it possible to identify a case study? That $67 million is made up of all of the schemes—the ex gratia scheme, the SHOAMP and the two compensation acts. It is an interesting figure, but it is not particularly helpful in addressing the human concerns that are raised with us by the same people you are dealing with. Is it possible to get some indicative case studies?

**Mr Killesteyn**—Yes.

**CHAIR**—If you could take that on notice, it would be appreciated.

**Mr ROBERT**—I would also be interested if you could produce an idea of the liability to government based on standard actuarial tables as to what the amount of money, given expected life expectancies for those who are currently receiving pensions, would be. That would give the committee the view of the total cost, not just cash payments to date but also the payments through fortnightly benefits and so on.

**Mr Killesteyn**—Okay.

**CHAIR**—Are there people who straddle both the compensation schemes because of their service?

**Mr Killesteyn**—They can be eligible under both the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act. Indeed, we do have—

**Mr Douglas**—In fact, two of the three acts. None of them would have eligibility under the Military Rehabilitation and Compensation deseal-reseal service unless it became evident that there had been activity after 1 July 2004. As I have indicated, we have quite a number who have sought coverage under both the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act.

**Mr ROBERT**—Considering the figures of those who have been accepted—and I note that there are a range of conditions—how many people have been knocked back completely?

**Mr Douglas**—As I have indicated to you, 323 of the 556 claimants have had a condition accepted for either deseal or some other reason.

**Mr ROBERT**—So that would be 233 that have been knocked back?

**Mr Douglas**—That is correct—233 who have been unsuccessful on this claim. Of the 512 who lodged a claim under the Veterans' Entitlements Act, 318 had a condition accepted for either deseal-reseal or another reason.

**Mr ROBERT**—So that is about 194.

**Mr Douglas**—Correct—at this stage.

**Mr ROBERT**—That would indicate that 60 per cent of claims have been knocked back by the department to date, which is 427—

**Mr Douglas**—No, it is the other way around. So a person could lodge more than one claim over this time frame.

**Mr ROBERT**—So how many claimants does the knocking back of 427 claims equal?

**Mr Douglas**—I think your question is: how many people does that relate to?

**Mr ROBERT**—Absolutely.

**Mr Douglas**—I do not have that information to hand and I would need to see where we could get that from. Given that we are talking in total roughly 1,068 claimants, as I have said, 641 have been accepted for some reason.

**Mr Killesteyn**—Using the figures there were provided in our submission, I think you could actually deduce that about 60 per cent are being accepted. I make that point because, if you look generally at our acceptance rate at primary level for all claims that are made, not only under deseal-reseal but any other service related injury, we are at about the same level of acceptance, at about 60 per of primary—

**Mr ROBERT**—That was my next question. Does this differ in any way? You are saying that no, it does not.

**Mr Killesteyn**—No, it does not.

**CHAIR**—This may be in your submission and I just have not come across it, but does it contain the list of diseases that have been endorsed by the Military Rehabilitation and Compensation Commission with respect to deseal-reseal? Perhaps it is here and I just have not caught up with it; if not, can you tell me where it is?

**Mr Killesteyn**—It is not included in our submission, but we can provide a separate list for you, if you would like. It is quite extensive. Would you like me to give you some broad indication of what the list is?

**CHAIR**—Yes, I would.

**Mr Killesteyn**—It is separated into a number of categories, with multiple conditions underneath each of them. I will start with the categories and, if you wish, you can take me into further detail. The categories are: skin rashes and associated systemic conditions; neurological conditions; mental disorders and personality changes; malignant neoplasms and myeloproliferative disorders; liver diseases; gastrointestinal problems; and immunological disorders.

**CHAIR**—Cancers are not listed?

**Mr Douglas**—That is cancers.

**Mr Killesteyn**—Malignant neoplasms.

**CHAIR**—Okay, sorry. Your submission refers to the fact that, when someone is diagnosed with any one of those conditions and they belong to at least the third tier, their work is deemed to have significantly contributed to that disease; therefore, it becomes compensable and that person is entitled to whatever benefits subsequently accrue. Is that right?

**Mr Killesteyn**—That is correct. That decision was made under section 7 of the Safety, Rehabilitation and Compensation Act. In a sense, the impact of that is that the claimant is relieved of any onus to prove, on the balance of probabilities, which is the test we normally use, that his or her deseal-reseal participation contributed to the contraction of the disease or liability.

**CHAIR**—So step me through what compensation or benefits a person would then be entitled to. A person who has been involved in the deseal-reseal program is listed at least as a third tier participant; they have one of those diseases. As I understand it, that would automatically entitle them to the protection of the SRCA.

**Ms Spiers**—It is if the Safety, Rehabilitation and Compensation Act applies to them. The group that do not have that coverage are those civilian contractors, whom you discussed earlier today, because they are covered by WorkCover Queensland. But all the other Defence Force members who served in this program have coverage under SRCA or its predecessor.

**CHAIR**—Let us for a moment set aside those not covered. Those who are covered benefit by the provision of what?

**Ms Spiers**—The 7(2) provision, as Mr Killesteyn has indicated, relieves them of the causal duty. You still have to establish a diagnosis, so you have to have the disease. If you have tier 1 to 3 coverage, the causal issue has been determined. The 7(2) determination works to say that it is substantially—

**CHAIR**—I understand that. You then qualify for what, though?

**Ms Spiers**—For the benefits under SRCA.

**CHAIR**—Step me through that.

**Mr Douglas**—We would accept an initial liability and then provide any treatment that was required to support the condition. Once the condition had stabilised, we would undertake an assessment of the extent of permanent impairment and, if necessary, make a payment in relation to such impairment and continue to provide a full range of medical—broadly defined—treatment to support that condition.

**CHAIR**—You may need to step me through this or even correct me. Are all Defence personnel eligible for SRCA?

**Ms Spiers**—Yes.

**Mr Douglas**—They all would be. Perhaps I could make a correction. The other entitlement that these people would have is if their employment was affected by their condition. That would mean there was an inability to work, so they would receive incapacity payments.

**CHAIR**—Would you please say that again?

**Mr Douglas**—In the event that the illness or condition that they have presented with affects their ability to continue to work, they would be entitled to incapacity payments.

**CHAIR**—Is recourse for the contractors through the Queensland government workers compensation system?

**Ms Spiers**—WorkCover Queensland; that is correct.

**CHAIR**—Obviously you are not the best people to talk to about that and we need to have a chat with the folk in Queensland.

**Ms Spiers**—I think there is a point to note. We did a lot of work on understanding who these contractors were. A number of them were former RAAF employees who then became contractors and, obviously, they have SRCA coverage. My memory suggests that about 25 were purely contractors and had no previous defence service, so WorkCover Queensland is their only coverage for the purpose of compensation.

**Ms GRIERSON**—Has this program ever been audited by the Audit Office?

**Mr Killesteyn**—When you say ‘this program’, are you referring to the compensation program or the ex gratia payments?

**Ms GRIERSON**—The specific work of the four people in setting up the specialist team to deliver these programs.

**Mr Killesteyn**—There were two teams. One was the compensation processing team, located in Brisbane, and the second was the ex gratia payment team; neither of those teams have been subjected to any ANAO process. However, the ex gratia payment scheme has been extensively reviewed by the Commonwealth Ombudsman, as we heard earlier this morning.

**Ms GRIERSON**—We have just had information on rejected claims. Do you do random audits and revisit and check any of them? Do you have checking processes? If you do, could you tell me what those processes are, who exercises them and what their outcomes have been?

**Mr Killesteyn**—In this particular example, the ex gratia payments scheme, there was a complete review of all decisions that had been made until December 2006, which was when the bulk of the decisions had been made.

**Ms GRIERSON**—Was it done by people who were independent of the original process, or was it done by people who were involved in the original process?

**Mr Killesteyn**—I understand that it was by the team itself, so it was not independent. However, the process essentially started from scratch and tried to make an assessment of whether there were inconsistencies in the decision making process. I repeat that the process that we looked at was one of inclusion rather than exclusion.

**Ms GRIERSON**—I would suggest that it would be worthwhile to have some independent random auditing against particular procedures or protocols.

**Mr Douglas**—In relation to the compensation claims, there are of course quite extensive internal and external review and appeal mechanisms open to the claimants, depending on the legislation. Under both acts, for example, the claimant could seek a reconsideration of the original decision, which would be done by an independent person. In the case of the Veterans' Entitlements Act, that is then subject to review by the Veterans' Review Board and the Administrative Appeals Tribunal through to the Federal Court. Under the SRCA, there is no VRB but, of course, there is the AAT and the Federal Court.

**Ms GRIERSON**—But I, of course, am thinking more about DVA being comfortable with their own processes and having confidence in their own processes.

**Mr Douglas**—On top of that, there is a quality assurance program in which a percentage of the decisions that are undertaken, whether to accept or reject, are reviewed by an independent QA team inside the department.

**Ms GRIERSON**—Could you give some information to the committee about that and what their findings were?

**Mr Douglas**—We will give you some information.

**Ms GRIERSON**—That would be very worth while. For general operations in DVA, are there protocol manuals for all staff?

**Mr Killesteyn**—There are very extensive procedural manuals. Bear in mind that all of the compensation decisions that we have are dictated by the need for scientific evidence. There are statements of principles that are provided by the independent authority, the Repatriation Medical Authority. The Repatriation Medical Authority provides these statements of principles, and they are part of the legislative basis upon which compensation decisions are made.

**Ms Spiers**—Maybe I could add to what Mr Killesteyn has said. They have been extensively interpreted by the Federal Court and the High Court, and as a result of those interpretations we actually issue a lot of guidance to decision makers in that area. A high level of issues have to be determined to determine a compensation claim.

**Ms GRIERSON**—So you have to be ready to respond to change quite constantly. There was one issue that came up in the evidence—I think it is one that any MP will have seen when they have helped people with cases—that suggested that DVA medical experts were rejecting claims made by family doctors in relation to some ailments suffered by deseal-reseal participants. One submission stated:

I was disappointed when I received the MLCOA Reports to find that my Reports had been passed from Doctor to Doctor within their organisation. Subsequently each and every one found in favour of DVA (who was paying them after all!!) and most used information from the other reports (cut and paste) to supplement their own reports.

The person's submission suggested:

By having access to each others Reports there is very little chance that they would contradict another specialist in reaching their own conclusion.

I would suggest that there would also be very little chance of them doing a proper and independent assessment and appraisal if that were a pattern. Could you just give us some more information about how that does happen in terms of medical advice and it differing from the original advice given by families' own medical doctors?

**Mr Douglas**—I will start, and perhaps my colleagues may wish to add to my answer. In all cases, as Mr Killesteyn has said, what we require is medical evidence of the diagnosis and the extent to which the diagnosis may have been caused by the particular exposure or action, and also information about the extent to which the diagnosis is presenting difficulties at the moment which require some form of compensation—what impact is it having on the claimant's life? In many cases, there is often a lack of clarity about the original diagnosis or the impact, or that information may be at odds with similar types of cases. The department retains medical advisers. If an assessor is uncertain as to the information contained in a report, the adviser can help with the interpretation of that information. In other cases, given the specialised nature of the illness or condition, it is usually more appropriate to ask the claimant to have an examination by a medical specialist.

**Ms GRIERSON**—Those two opinions often differ quite markedly. When the opinion of the GP—who is dealing with that person, who has the confidence and trust of that patient and to whom, perhaps, the patient will reveal more intimately the information about the impact on their life—differs from that of the specialist who is, as you say, employed by DVA to do some sort of additional check, what do you do?

**Mr Douglas**—It is very hard to be too generic about it, but in essence we will try to resolve that difference, either by seeking a third opinion from another specialist or by seeking the intervention of an independent medical adviser that we have on contract.

**Ms GRIERSON**—How long do those contracts last for, by the way?

**Mr Douglas**—It depends, but it is of the order of a two- to three-year timeframe. I would have to take the specific period on notice.

**Ms GRIERSON**—With automatic renewal?

**Mr Douglas**—There are different provisions in the contracts. There are provisions for renewal. As you would be aware, under Commonwealth procurement guidelines we are required to retest the market regularly.

**Ms GRIERSON**—Do you think that the implied accusation that there is a cosy network of specialists who just support DVA's case or protect the DVA is at all reasonable? Is it unreasonable, possible or impossible?

**Mr Douglas**—I guess it is as reasonable to assume as is the corollary. It is a very difficult and fine line to walk. But, as I have said, what we have is a quality assurance program, internal review and external appeal rights available. The claimant, if dissatisfied, can seek to test that arrangement further. Obviously, the clear instructions are for our assessors to make decisions on the basis of the information and facts that can be supported by the legislation and the procedures. That is what we are looking to do.

**Mr Killesteyn**—The other thing that I would add is that both the SRCA and the VEA are beneficial pieces of legislation. They are weighted in favour of the claimants, particularly in relation to the evidence that is provided. That goes in particular to the way in which the Repatriation Medical Authority constructs the statements of principles. The probability in relation to those with some sort of service is weighed in favour of the claimant getting up rather than the alternative. The onus is on us, in a sense, to disprove rather than on the individual to prove their claim.

**Ms GRIERSON**—Good. But you did say earlier that exposure does not necessarily equal causation. But it could.

**Mr Killesteyn**—It could, but it could not be. This is one of the inherent difficulties.

**Ms GRIERSON**—There was just a concern that you might already have a mindset that is cautious rather than generous.

**Mr Killesteyn**—I would not accept that, primarily because we are driven by the legislation, which is weighted in favour of the individual. The only issue around the studies is that you are very unlikely to find a health study of any kind which goes to the question of causation. The nature of most of these health studies is that they are essentially about self-reported conditions and give a correlation but do not necessarily prove anything about the causation. That is the difference between exposure and causation.

**Ms Spiers**—I want to add to a point that Mr Douglas made. The other area where we would seek clarification from a specialist—and this is something that Dr Gardner raised this morning—is to do with the claimants' symptoms. Often the claimants claimed symptoms with no specific condition. The GP might be supporting that and saying that they have these symptoms. Therefore, we need a specialist to try and figure out what the disease or condition is.

Underpinning both compensation systems, you have to have a disease. We do not treat symptoms as a rule.

**Ms GRIERSON**—We recognise that patterns of symptoms can be reflective of a disease.

**Ms Spiers**—Exactly. That is what the specialist would look at.

**Senator TROOD**—What are you doing with those cases where people are claiming symptoms rather than a specific disease?

**Ms Spiers**—Generally, as Mr Killesteyn has mentioned, our effort has been with compensation claims to find a positive outcome for people. Some of the submissions talk about going to multiple specialists because we have had to see if a cluster of symptoms has a neurological base, a psychological base or a physiological base. That requires different specialists. I am not sure of the current situation with any of those people with clusters of symptoms.

**Senator TROOD**—Can you help us on that, Mr Douglas?

**Mr Douglas**—A claim lodged is for a condition rather than a disease per se. Our claims assessors review whether there is a diagnosis supporting that condition and whether the condition could be reasonably attributed to service. If that is the case then of course there is compensation offered, depending on the nature of the debilitation. In particular, people will receive health treatment for that particular condition. There is also, of course, for the tier category people, the fairly lengthy list of conditions that were accepted as a result of SHOAMP and, on a non-liability basis, people have access to treatment for those particular conditions.

**Mr Douglas**—If you read the list of conditions, you see that some are quite specific and can be diagnosed without any problem. They go from multiple sclerosis, which can be diagnosed through spinal muscular atrophy. I know that can be diagnosed. Issues like memory loss and anxiety and mental conditions are a bit harder, obviously, but you have quite an extensive range of conditions which are clearly manifest in a way in which a person presents themselves.

**Senator TROOD**—I see that there may well be manifestations of mental or physical illness which can be relatively easily diagnosed and an appropriate nomenclature given to them. What I am interested in is whether or not there are people who have conditions where it is very difficult to identify those conditions as being a specific disease or a recognisable condition. Are there people in that category whose claims are not accepted?

**Mr Killesteyn**—I cannot answer your question directly, but the process of reaching a list of conditions has been one that has been guided by the experts. Right from the very time that the board of inquiry established its recommendations, a doctor's advisory committee was established—quite an extensive doctor's advisory committee—to go through all of the possible conditions and diseases that might in some way be associated with the work of the deseal-reseal core group, and I can give you a list of those doctors. They are quite well known, quite extensive, with considerable experience in service related matters. That has been the guiding process right from the beginning.

**Senator TROOD**—Perhaps I can put this the other way around: those people whose claims have not been accepted, why generally have those claims not been accepted? Is it because they do not have a manifest condition that is on the list?

**Mr Douglas**—That would mainly be because there is no connection between the condition claimed and the service rendered.

**Mr Killesteyn**—It is not the condition per se; it is the connection to service.

**Senator TROOD**—So they may have a condition but your conclusion is that whatever condition they have is not related to this particular problem?

**Mr Douglas**—It is not related to their service, for which the legislation provides coverage. If you take the deseal-reseal claims, it would be because the condition is not related to the service. If you take their eligibility more generally, it goes beyond the deseal-reseal. The greatest likelihood is that they have a condition but that it is not related to service—it would have emerged, perhaps, independently of service, either prior to or subsequent to service.

**Senator TROOD**—Are there any people in the category of people who have served in relation to these aircraft and whose claims have been rejected because your doctors are not persuaded that they have a condition?

**Mr Douglas**—Yes, I am advised there would be.

**Senator TROOD**—Do we have a—

**Mr Douglas**—We would have to take that on notice, Senator. I think I know your next question: to give you some information about those conditions

**Senator TROOD**—I would like to have those figures, if you can provide them please.

**Senator MARK BISHOP**—Has the eligibility for access to the health scheme and hence health benefits by relevant affected workers changed over time? At page 7 of your submission the original board of inquiry referred to ‘may have workers who may have been exposed’, then back at page 3 it referred to workers ‘possibly affected’ and, at page 13, with different phrasing, ‘shown to have been associated with DS/RS activities. Have those different phrases been used over time? In terms of the IHCS, do they have different meanings?

**Mr Killesteyn**—The simplest answer to your question is yes. The first interim healthcare scheme, established immediately after the board of inquiry, took a very broad view of the possible conditions that may need treatment as a consequence of the deseal-reseal work. A recommendation of the board of inquiry was that that should be reviewed once we had further information as a consequence of the SHOAMP. The SHOAMP led to a considerable number of conditions, again, being associated with that work but fewer than those initially put in place for the interim healthcare scheme. I cannot give you the difference between the two—sorry, we can; we have them here.

**Ms Spiers**—Those conditions that were covered under the interim healthcare scheme that are excluded under the SHOAMP Health Care Scheme included a general category of neoplasms—and we have moved to malignant neoplasms—and the three disease categories: coronary heart disease and its precursors, chronic infections and chronic respiratory conditions. Those conditions would have been covered under the interim healthcare scheme but, when the SHOAMP Health Care Scheme was announced as a result of the SHOAMP report, there was not a link to the deseal-reseal work.

**Senator MARK BISHOP**—There is a repetition of chronic respiratory problems in the submissions we are going to see next week, isn't there?

**Ms Spiers**—Potentially. I have not read all the submissions, but the SHOAMP Health Care Scheme list of conditions arose as a result of the SHOAMP report.

**Senator MARK BISHOP**—That is understood, but there has been a limitation or clawback on—

**Ms Spiers**—I am focusing on the conditions relevant to work on the deseal-reseal project.

**Senator MARK BISHOP**—Different phrasing, but I understand.

**Mr Killesteyn**—But it is important phrasing because it is based on the scientific evidence. It was not an administrative decision simply to claw back or remove conditions; it was based on the evidence as a consequence of the SHOAMP.

**Senator MARK BISHOP**—I understand that. Secondly, deriving from that—and this is probably a question for you as the senior man, Mr Killesteyn—the original ex gratia payment scheme, as determined by the government of the day, related, as it was explained this morning, to exposure, not to health outcomes. If you add the cumulative set of days, arguably, you have the benefit of either the 40 grand or 10 grand or whatever. In your professional assessment, is that test of exposure—which clearly relates back to the discussion I have just had with Ms Spiers about the original BOI way forward, later revisited—and that structure the optimal outcome that could have been decided then and, if you were similarly advising government now, would you have a different recommendation as to how liability should be attached?

**Mr Killesteyn**—Let me start by perhaps suggesting a slightly different word than 'exposure'. 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. In consultation with the Department of Defence, which was the lead organisation here in establishing the varying degrees under which payments were made, because those programs did tend to vary over time, according to the mustering, you had to reach some point at which you made a distinction between those who had intensive engagement in the formal deseal-reseal work and those where the engagement was of a lesser kind but nevertheless was still part of the formal deseal-reseal program. So I think the answer to your question is that it inevitably guides you or leads you down to the point where you are drawing a line in the sand in making the distinction between people's involvement.

**Senator MARK BISHOP**—From where you started the journey led to a certain inevitable, logical outcome. I understand what you have just explained to me, and that is of value. Let us separate ourselves from what we did decide and the origin point. My question to you is this: in your professional assessment was that the optimal scheme recommendation made to government at the time and accepted by government? Secondly, if you were now advising government on the optimal scheme to provide benefit protection—whatever the word is—to this group of people, would you make the same recommendation now?

**Mr Killesteyn**—Essentially, I think you are talking about the time frame, the 30 days.

**Senator MARK BISHOP**—I am.

**Mr Killesteyn**—I am probably not going to answer the question directly. Really, that was the basis of the advice that we were getting from the Department of Defence—that that was a reasonable point in time at which you make a distinction between those that were intensively engaged and those that were engaged to a lesser extent. The 30-day period is similar to the numbers of days that exist in other statements of principle—for instance, exposure to Agent Orange, where there is a 30-day period—and seems to be a fairly standard time frame that is often used to make a distinction.

**Senator MARK BISHOP**—I do understand those arguments and other schemes and drawing lines in the sand and points of commencement. That is not my question. My question is: was it the optimal scheme recommended at the time and, in the light of all the new evidence and discussions you have heard today and in other places, would you make the same recommendation for a scheme of redress to the current government?

**Mr Killesteyn**—Putting aside the 30 days, I think the nature of this scheme, which is trying to make a distinction between people's intensity of engagement, is the optimal way to do it. The difficulty that we all have in this particular situation, and the difficulty that the committee will have, is: if it wishes to change the definition of the tiers, where does it move it to? Is it 30 days? Is it something less than that? Do you change the level of payment? If so, does that apply to everybody? Does it apply to—

**Senator MARK BISHOP**—We are talking about a completely different test—health outcomes, as opposed to what I call exposure and you call something different.

**Mr Killesteyn**—That is a separate scheme. Health outcomes is driven by the compensation system under our acts. The ex gratia payment is entirely separate. Schemes inevitably draw distinctions; this is basically how those schemes operate. You are making the distinction, and the difficult question of course is where you draw that line.

**Senator MARK BISHOP**—This discussion is not in the context of current administrative arrangements or current legislative arrangements or current schemes. The question I have put to you is in the context of appropriate reward or compensation for those people who have been through this most heinous situation. That is why I am asking you for the optimal recommendation, not the optimal recommendation considering a whole range of legislative arrangements.

**Mr Killesteyn**—I think what I am saying is that I cannot think of an alternative approach, where you are seeking to make an ex gratia payment related to the unique working conditions for the individuals involved, where those unique working conditions did vary according to the mustering that happened at the time and over time. You need to make distinctions.

**Senator MARK BISHOP**—Understood. Thank you. I want to go to another topic, Chair. May I?

**CHAIR**—I was going to give the call to Mr Robert. He has been waiting for quite a while.

**Mr ROBERT**—So patiently, too, Senator Bishop.

**CHAIR**—I am sure, Mr Robert.

**Senator FORSHAW**—Is it following on from what Senator Bishop said?

**Mr ROBERT**—No. I defer to you, sir.

**Senator FORSHAW**—Sorry. It follows from that discussion. What I have some difficulty trying to understand is why the decision was made to have an ex gratia payment. If it was not related to concerns about health impacts as a result of exposure, why was the decision made to have an ex gratia payment? We discussed some of this earlier with other witnesses. Quite a few of us here have had experience in industrial relations prior to coming to this parliament. Take an industry like building and construction. You often negotiate a site allowance for all the workers on a site because of a unique or difficult working environment—because of a whole range of different things. It would be related to the nature of the working environment; it would have nothing at all to do with potential health outcomes. It seems to me that the ex gratia payment that was made here was in that sort of category but worked out after the event. Going back to my example of what would happen with site allowances in industries, you would see what the conditions of work were and the claim would be settled and backdated. The dilemma I have is that this issue arose because of people's concerns about exposure, about their working environment potentially causing health effects, not about cramped or dirty conditions, unusual hours or whatever, but you have come up with a scheme that says, 'Here's X amount of money as a lump sump payment.' Why was that approach adopted?

**Mr Killesteyn**—The ex gratia payment was not to compensate for the lack of what you describe as a site allowance. In fact—

**Senator FORSHAW**—I am trying to use the example—

**Mr Killesteyn**—Those people that were employed in both the formal programs and incidental, or pick-and-patch, activities also received a formal deseal-reseal allowance as part of their normal fortnightly pay. So that was part of the process. Again, that is Defence policy, so if you want to explore that I think it is a matter for Defence. But they were receiving an allowance which recognised the difficulty of the work.

**Senator FORSHAW**—That actually makes my question even more pertinent. Where did this idea come from? What were you actually trying to do? Were you trying to make sure the problem went away or what?

**Mr Killesteyn**—I think what the government was seeking to do was to recognise that the working conditions that these people had been subjected to were poor occupational health practice. It was making a financial payment to acknowledge that those working conditions should not have happened.

**Senator FORSHAW**—With a view to that putting an end to the matter? I would think that may well be what was behind that approach.

**Mr Killesteyn**—It was with a view to acknowledging to those individuals that had been involved that this was not an appropriate way to ask them to perform their duties.

**Senator FORSHAW**—These were substances that they should not have been exposed to in that particular way—isn't that a better way to put it?

**Mr Killesteyn**—The working conditions which involved the use of chemicals, cramped conditions and all those sorts of things, which we know about.

**CHAIR**—We did not do it for people who worked with beryllium.

**Mr Killesteyn**—Again, I am treading into areas which are not my expertise, but I think if you seek the views of Defence they will say there was a clear distinction between those people who were working in the F111s and other workers who were handling chemicals. Here was a difficult and cramped environment.

**CHAIR**—When you talk to some of the people involved in ships working with beryllium they will tell you they were in pretty cramped environments as well, but I suspect that is a matter we should be dealing with with Defence rather than you.

**Senator FORSHAW**—I think I now know the answer to Senator Bishop's question that you have not been able to give us, Mr Killesteyn.

**Mr ROBERT**—Mr Killesteyn, previous Defence evidence indicated that the Department of Defence put a briefing paper on options to the government. As you quite rightly point out on page 20 of your submission, on 19 August 2005 the Minister for Defence and the Minister Assisting the Minister for Defence announced the $20.8 million lump sum. Your submission says on page 21:

A definition of a DSRS participant was established by a joint working group led by Defence with representation from Defence, Air Force and DVA.

The fifth paragraph says:

The ultimate decision in respect of payment amount and eligible personnel was made based on a recommendation by the Department of Defence ...

and agreed to by the then ministerial line. So it was quite clear, working on the premise that what you have written here is indeed correct, that the Department of Defence made the recommendation, government followed it and Defence made a recommendation for payment amount and eligible personnel.

My question has to do with eligible personnel. The only people who were eligible for the ex gratia payment were those who were working in one of the four treatment areas. The first started in October 1977. The question is: why was it simply limited to those people? There is a question with respect to the SHOAMP that goes with that as well. I refer to 3.3.2 on page 10 of your submission. My previous question to the Department of Defence was: who was involved in this SHOAMP study? The answer was: those that put their hands in the air, about 600-odd, and those from 501 Wing. Your evidence would appear on the surface to contradict that. Part 3.3.2 says:

The SHOAMP was a formal epidemiological study that examined the health of 659 personnel involved in the four formal DSRS programs against two comparison groups ...

That would seem to indicate that people from 482 Squadron were doing pick-and-patch work from when the aircraft were received in mid-1973 until the first of the formal programs in mid-1977. Your paragraph here would seem to indicate that they were excluded from the SHOAMP and that only those people who were part of those four formal programs were included. Is that correct, sir?

**Mr Killesteyn**—First I will get some advice. I was not involved in the SHOAMP study.

**Mr Telford**—The four formal programs involved in the study and then those others outside—the ones you are talking about, 482 and 106—were picked up, or some of them were picked up, in the control group.

**Mr ROBERT**—Granted, which makes a very odd control group. The control group is all about saying, 'Here is a normal section of the population compared to the target group.' So, Mr Telford, are you saying to the committee that people who could have spent four years cleaning out or being involved in deseal-reseal pick-and-patch were actually in the control group?

**Mr Telford**—Yes.

**Mr ROBERT**—I am not a doctor, but I find that extraordinarily strange. I am just looking again at the good doctor two rows back. For four years after 482 Squadron received the aircraft they were regularly in the fuel tanks picking and patching, using a whole range of chemicals to get them flying, and it was four years before the first program started. Can I confirm again that you are saying that those people who were involved in that work were part of the control group?

**Mr Telford**—Yes, that is correct, Mr Robert. Can I take this on notice? Quite a complex epidemiological response is required to both the questions you are asking, and I would rather get to the science of it and give you the correct answer on notice.

**Mr ROBERT**—Yes. I would rather that you come back and let us know if people from 482 were in the target or the control group.

**Mr Killesteyn**—I want to make a point about this, and I guess it goes to the integrity of the study that you may be testing.

**Mr ROBERT**—I actually did not intend to test it until—

**Mr Killesteyn**—I think you are testing it, and so I want to mention a couple of things about the study per se. Firstly, you are probably aware that the study was carried out by the University of Newcastle Research Associates and the Hunter Medical Research Institute with assistance from Health Services Australia, the Australian Institute of Health and Welfare and the Queensland Medical Laboratory. It had a normal process to ensure the rigour of these studies, which included a scientific advisory committee—

**Mr ROBERT**—I have no problem with the study. All I want to know is—

**Mr Killesteyn**—I want to make sure that that was part of the—

**Mr ROBERT**—I have no drama with the study. I am not a doctor. I would just like to know if members from 482 Squadron were involved in the target group—that was the original question—because your paragraph here indicates they were not, whereas Defence previously indicated that all of 501 Wing were eligible to be in the target group.

**Mr Telford**—You mean the study group as opposed to the control group, not the target group?

**Mr ROBERT**—Yes, the study group. Defence previously said, I believe—and I could be wrong, although I do not think that I am—that all of 501 Wing was able to be in the study group, whereas you are saying that only those in the four formal DSR programs could be in the study group.

**Mr Killesteyn**—We will take that on notice.

**Mr ROBERT**—Moving back on to the ex gratia payments, a decision was then made that only those who were in the four formal programs were eligible for the ex gratia payments, which would indicate that those from 482 Squadron and others who were not part of the four programs were therefore ineligible for that. If I look at the list of how many people were eligible, 489 claims for the ex gratia payment were rejected. I suggest that a lot of those would be in the pick-and-patch areas. Do you know why only people in the four programs were eligible for ex gratia payments and not others from 482 Squadron, for example, who for four years had done a lot of pick-and-patch work?

**Mr Killesteyn**—Essentially, that was the decision that government took: to focus on the people within the four formal programs. If you look at the history of this issue, the board of inquiry focused on the formal programs, the SHOAMP, by and large, focused on the formal programs and the resulting responses primarily focused on the four formal programs—with the exception of the healthcare schemes, which are much more liberal in terms of access. The whole process has been one that has focused on the four formal programs. Ultimately, that was the decision that government made about drawing a distinction between those people who were involved in the more hazardous aspects of the program in comparison—and I need to be careful here—and relative to the others who were involved in pick-and-patch. I am not saying anything

about the pick-and-patch activities or trying to in any way assuage how onerous that particular job was.

**Mr ROBERT**—One of the things that we heard this morning in evidence from Defence was that latent health problems emerge over time. Someone who received a $40,000 ex gratia payment may be fit as a fiddle, whereas someone who received $10,000 or nothing may have debilitating impacts on their health. The response that came forward was that certain people are more at risk from exposure than others. Someone who was exposed for 10 minutes may have egregious health issues; someone who was exposed for 30 days may have nothing. You bring this out well on page 25 when you note that of the 554 tier 1 ex gratia recipients, around 300 have never lodged a claim for compensation. Over half of those who received ex gratia payments have never lodged a claim, so we can assume on face value that they are fit as a fiddle. That would seem to back up Defence's evidence that different people are impacted differently by different levels of exposure.

The challenge with that is that there are those from 482 Squadron, and others, who worked on pick-and-patch who were not eligible for the ex gratia payments. Yet the number of people making compensation claims—I think it was 600 or something—clearly indicates that there are those doing pick-and-patch from outside those four programs who are clearly being compensated because of the impact of the deseal-reseal.

**Mr Killesteyn**—I can only agree with those conclusions. Essentially, the schemes—the ex gratia payment, the better health scheme and the compensation system—operate independently in accordance with the requirements set down by each. None of them is mutually exclusive. Those people who were involved in pick-and-patch activities are entitled to lodge for compensation and we will compensate if we can find a relevant diagnosis and service relation.

**Mr Telford**—Related to their service, not necessarily related to their pick-and-patch activity per se.

**Mr ROBERT**—I understand the differences. Perhaps this might help us go some way to understanding some of the deseal-reseal community's issues, in that you have many getting compensation but who are unable to get ex gratia payments and many getting ex gratia payments—in fact 300; the majority; 55 per cent—yet having no compensation claim in. While the two are separate—quite rightly, and that was quite well explained—this might go some way to explaining the concern.

**Mr Telford**—Some of those who may have got an ex gratia payment and not claimed may already be in receipt of some form of compensation already.

**Mr ROBERT**—Or they may well claim in the future.

**Mr Telford**—We cannot hypothesise that they are all exclusively fit as a fiddle, to use your expression.

**Mr ROBERT**—Correct; or latency may kick in and they may claim somewhere down the track.

**Mr Douglas**—Nor can we similarly make conclusions about the composition of the pick-and-patch population.

**Mr ROBERT**—Of course. And the last question is on the 30 days, regarding a person who spent 30 days accumulative. This is in attachment B on page 38. This is for entitlement to tier 1—the $40,000 ex gratia. Could you give the committee some background information as to how the 30 days was chosen? I know you need a line in the sand, but how did this particular line get drawn?

**Mr Telford**—I think Mr Killesteyn mentioned earlier that the 30-day threshold relates to other activities rather than the other conditions that are in SOPs in other areas. For example, one of those is the exposure to Vietnam estuarine waters in respect of desalination processes. That is just one example of that process. The threshold that was accepted fairly generally—and I cannot give you examples off the top of my head except for that one—was that 30 days is a period which is generally understood to be an exposure of the level which can potentially cause some damage.

**CHAIR**—But hang on: this ex gratia payment was not intended to be linked to health problems.

**Mr Telford**—No, that is right.

**CHAIR**—But you are saying the 30 days is based on a yardstick which is linked to a health problem.

**Mr Telford**—Not necessarily; the payment was not made in respect of health.

**CHAIR**—Exactly my point. Your explanation of the 30 days, though, went to another comparison, not with respect to deseal-reseal.

**Mr Telford**—That is right. It went across a threshold which is generally used in other areas is the point I was making.

**CHAIR**—The other area you chose as the example was one that linked it to a health problem—

**Mr Telford**—That is right.

**CHAIR**—which causes me to go back to the original question. It would seem that it is not a very useful benchmark against which to pick your 30 days. Is that an unfortunate example that just came to you first or is that the actual reasoning that was adopted?

**Mr Killesteyn**—It is on the basis of advice that we had from a range of medical specialists as well as the use already of a 30-day test by the repatriation medical authorities in determining outcomes from exposure to chemicals.

**CHAIR**—So the 30 days was based on a medical linkage?

**Mr Killesteyn**—It is based on advice from medical people; it is not something that we administratively plucked out of the air, if I could put it that way. It is based on scientific evidence as best available in determining chemical exposure.

**Mr ROBERT**—Is it fair to say, Mr Killesteyn, that the 30 days is a standard SOP that is used in a range of other instances and it would appear on the surface to have made some sense to use it?

**Mr Killesteyn**—It is certainly used in limited circumstances. There is not a lot of other precedents here but certainly, in relation to chemical exposure, the 30 days has been used in the past and particularly in relation to Agent Orange.

**Proceedings suspended from 2.43 pm to 3.00 pm**

**Mr BALDWIN**—Can you please advise me how many of the claimants are now TPI or extremely disabled?

**Mr Douglas**—Sixty-three TPI.

**Mr BALDWIN**—Any EDs?

**Mr Douglas**—I will take that on notice, but I do not believe there are any EDs.

**CHAIR**—On page 30 of your submission there is a table that talks about the total number of claimants under the SRCA and the VEA, the number of conditions claimed and at least one condition accepted due to deseal-reseal. Then there is another column which has conditions accepted for other reasons. Given that in this inquiry we are focusing on the deseal-reseal, I just want to get clear what that is meant to be telling me. Can you elaborate on that?

**Mr Douglas**—Yes. They would have lodged a claim.

**CHAIR**—Who would have?

**Mr Douglas**—In these cases, these are claimants who claimed a condition related to deseal-reseal. In the process of lodging that claim they could very well have lodged a claim for another condition caused by another part of their service, or they may have claimed that the condition they had was caused by their service, broadly defined, without being specific as to it being deseal-reseal or another part of their career. What this is saying to you is that this condition that we have accepted was accepted for reasons other than the participation in the four deseal-reseal programs.

**CHAIR**—Just so that I am clear then, the figure of 556 that is listed against the SRCA is talking about 556 people.

**Mr Douglas**—No. Five hundred and fifty-six claims.

**CHAIR**—By how many people?

**Mr Douglas**—That is my point; it is claimants. That means that a person could have lodged more than one claim over that time frame and it would be counted twice, I believe.

**CHAIR**—I am not quite sure of the terminology that you are accustomed to but I want to make sure that we are all on the same song sheet here. I understand we have the number of individuals who lodge a claim, who I would have called claimants. We then have the number of claims they have lodged, but the terminology that I would use may not be what you would use.

**Mr Douglas**—I will check and confirm for you, but my understanding is that this number represents claimants. Therefore, if I lodge a claim this year I am counted once. If I lodge another claim next year I would be counted twice.

**CHAIR**—So 'claimants' represents claims submitted irrespective of how many individuals may have submitted it.

**Mr Douglas**—Yes, and we earlier took on notice an undertaking to find out the number of individuals who have lodged claims, which we would come back on, because a claim is often then misinterpreted as being a condition. In other words, depending on the circumstances each assessor would generally look at particular conditions, so there is an average of something in the order of nine conditions claimed per claim.

**CHAIR**—I do not propose to try and redefine the definitions. I am happy, for the purposes of this inquiry, to go with your definitions as long as we are clear as to what they are.

**Mr Killesteyn**—I have just confirmed that the 556 are unique individuals.

**CHAIR**—That would make sense to me, and in laypersons' terms, the word 'claimant' would mean that to me. So there were 556 human beings.

**Mr Killesteyn**—Yes.

**CHAIR**—And they lodged claims covering 3,769 conditions.

**Mr Douglas**—Correct.

**CHAIR**—Were all of those 556 people in the deseal-reseal program?

**Mr Douglas**—No. They regarded themselves as being in the deseal-reseal program.

**CHAIR**—Elaborate on that.

**Mr Killesteyn**—I think the best you could say is that it was not a requirement to be in the formal deseal-reseal program to lodge a claim for compensation.

**CHAIR**—We are talking here about the VEA and the SRCA, and of course that covers any service. For the purpose of this inquiry, we have a big enough job trying to sort through the stuff associated with deseal-reseal; I have no desire for us to try and do a full audit of the vets' department and all of your claimants. So let us just stick with those claimants who would claim

to have been in the reseal-deseal program and be seeking some benefit because of their involvement in reseal-deseal. For the purposes of our inquiry, if they had prior or post service in Darwin, Laverton or anywhere else for which they are submitting a claim, it seems to me that that does not relate to our inquiry. If you think it does, tell me how.

**Mr Killesteyn**—We will have to take that on notice and do a reconciliation between the 556 individuals named here and those who have been included under one of the tier definitions—the tier 1 or tier 2—because they are the ones who have been formally assessed against the formal deseal-reseal program. I cannot tell you that now, but we will take it on notice.

**CHAIR**—Okay. Certainly, if we can get those first few columns at least—the last column seems to me to be telling us about claims that are not relevant to our inquiry and may well be telling us about claims that are not relevant to our inquiry made by people who were never involved in the deseal-reseal.

**Mr Killesteyn**—They were all involved in some form of deseal-reseal activity. Whether they were involved in the formal program or not we will take on notice—

**CHAIR**—Okay, fine.

**Mr Killesteyn**—because they are all claiming some condition as a consequence of deseal-reseal activity.

**Ms Spiers**—You would expect some of those people to be in that ancillary group because, if you recall, to get into the interim healthcare scheme, they had to lodge a compensation claim, and the entry into that group 1 of the interim healthcare scheme was anyone who considered they were part of the process.

**CHAIR**—Okay. You will re-examine that and give us updated information as it relates specifically to claimants arising from the reseal-deseal?

**Mr Killesteyn**—As I understand your question—if I can get clarity—

**CHAIR**—Yes, please do.

**Mr Killesteyn**—we will do a reconciliation between the 556 individual people and those that were involved in the formal deseal-reseal program. We can do that by looking at the people who have been included under our tier 1 and tier 2 definitions.

**CHAIR**—In fact, if you can break them up into the tiers—

**Mr Killesteyn**—The logic then is that those who do not reconcile are people who would have been involved in some other ancillary activity but nevertheless associated with deseal-reseal work.

**CHAIR**—I think that would be of more use to table for us than the one we have got here. Also, in relation to the ex gratia payment scheme, you would have seen the evidence the committee received from the Ombudsman's office. Amongst that evidence was advice that

people from the same occupations with ostensibly the same exposure received different payments. I think that characterises the advice we got from the Ombudsman's office. How is that possible?

**Mr Killesteyn**—I would have to check, but I think we are talking about two cases, not a large number of cases. I think the two cases involved one where a firefighter was assessed as a tier 1 incorrectly. This was prior to the establishment of the very experienced team that I explained at the beginning of my evidence. Sorry—my apologies—the firefighter was incorrectly granted tier 2 status. The second case we do not believe is an error, because we were able in subsequent examination of the case to determine that there was evidence which linked this individual to the formal deseal-reseal program. If there are other cases which the Ombudsman is referring to, I am more than happy to go back and have a look at those.

**CHAIR**—The incorrect classification of the firefighter was by virtue of what error—length of days exposure?

**Mr Killesteyn**—I am advised that it was on the basis of advice from Air Force that the individual was involved in the formal deseal-reseal program, so it was an error on the facts, as distinct from an error in relation to the decision-making process.

**CHAIR**—I am just trying to get some idea of the nature of the error, given the concern that you would have heard expressed in the session before lunch. Firefighters are eligible for tier 2, so I am just trying to clarify what it was on which poor advice was provided or an error of judgement was made or whatever it was.

**Mr Killesteyn**—Again, I am advised that, to be eligible for tier 2 as a firefighter, you had to be involved as an instructor, and in this particular case the advice that we had received from the Department of Defence was that the individual was an instructor. That was subsequently found to be incorrect.

**CHAIR**—Can I suggest that you might want to take that on notice, because attachment B to your submission, which I am using as the reference for this on what constitutes tier 2, says:

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 …

It actually does not talk about him being an instructor or her being an instructor, so you may want to take that on notice.

**Mr Killesteyn**—Yes. We will do that.

**Ms GRIERSON**—Can I just request some more information from the previous discussions. We were talking about the roles of your medical advisory committee. Can you please provide us with the specific role or definition, the defined role and purpose, of the doctors' advisory committee, its composition, the regulations that cover the doctors' advisory committee and how its decisions and actions are reviewed, please. I am happy to take that on notice too.

**Mr Killesteyn**—I can answer it now, if you wish.

**Ms GRIERSON**—It is up to the chair.

**CHAIR**—If you can answer it now, that is good.

**Mr Killesteyn**—The doctors' advisory committee was a joint advisory committee comprising doctors from Defence and DVA. It included expertise in the areas of occupational health and environmental health in the Air Force. It was established in 2001 and was tasked with identifying a list of conditions for access to treatment under the interim healthcare scheme. The doctors advisory committee was composed of officers from the Department of Veterans' Affairs and a number of defence service personnel at squadron leader and warrant officer level, including people from the health information payment systems from the Department of Defence. The doctors included the principal medical adviser from the Department of Veterans' Affairs, Dr Graeme Killer, with RAAF experience; Dr Keith Horsley, the director of studies at DVA; Dr Helen Hanson, the senior medical adviser at DVA; and Dr Ian Gardner, who gave evidence this morning, from Defence Health Services. And then there were a number of other individuals, again primarily from the Department of Defence, involved in the F111 healthcare scheme. I can go through them individually, but I do not think it would add much to the evidence.

**Ms GRIERSON**—My impression is that that is very much an internal body.

**Mr Killesteyn**—That is true, but I should indicate that these were individuals who had substantial experience in relation to not only DVA matters and health service matters but also the F111 maintenance tasks.

**Ms GRIERSON**—And what is the regulation of that advisory committee—its term of contract, who it answers to et cetera?

**Mr Killesteyn**—It did not have a term of contract. It was a body brought together initially to advise on the list of conditions that were to be included under the interim healthcare scheme. Once the board of inquiry reported then the formal SHOAMP commenced with the scientific advisory committee, and that included a number of people external to the department. Again, I can go through those, if you wish.

**Ms GRIERSON**—So are you saying it was a sunset body that ceased operations? Is that what you said?

**Mr Killesteyn**—That is correct. It was specifically devoted to dealing with the list of conditions to be determined initially under the interim healthcare scheme and then subsequently under the final healthcare scheme that was put in place.

**Ms GRIERSON**—So they would have made recommendations. Who made the final decision on their recommendations? Were they changed, were they accepted?

**Mr Killesteyn**—Ultimately, I think they would have been decisions made by the Department of Defence and the Department of Veterans' Affairs as to what the conditions should be that

would be accepted for the interim healthcare scheme. They were an advisory body. I would have to go back and check whether—

**Ms GRIERSON**—Could you get us the advice and then the final outcome. It would be interesting to compare. Has there been any review of the final parameters that were set by that?

**Mr Killesteyn**—Once the board of inquiry made a recommendation to establish the formal Study of Health Outcomes of Aircraft Maintenance Personnel, SHOAMP, the SHOAMP report, which was a scientific study, then determined a range of conditions that could be associated with work on deseal-reseal. That was then referred to the doctors' advisory committee, which examined the initial list of conditions that had been determined for the interim healthcare scheme, to finalise the conditions that would be accepted for the final healthcare scheme. But it was based on the scientific evidence that emerged from the SHOAMP. The SHOAMP, as I said before, was guided by a scientific advisory committee, which included Professor Judith Whitworth, who was the chair and Director of the John Curtin School of Medical Research at the ANU; Professor Michael Moore, Director of the National Research Centre for Environmental Toxicology at Queensland university; Professor Bruce Armstrong, Head of School of Public Health at the University of Sydney; Professor David Roder, Consultant Epidemiologist at the Cancer Council of South Australia; Dr Deborah Glass; and emeritus professor Scott Henderson from the Centre for Medical Health Research. They were all external parties involved in that scientific study. The whole science and process started with what was known at the time from the board of inquiry but was subject to the more formal SHOAMP with this scientific methodology.

**CHAIR**—Reference was made this morning to the follow-up study to the SHOAMP, and Defence advised that they understood that that had been completed. But there seems to be some passing reference to it in respect of the mortality and cancer incidence monitoring study that is referred to in your submission to us. I would appreciate any advice you could give about that study and maybe some background: when it was conducted, how it was conducted, what it looked at and what it found.

**Mr Killesteyn**—The follow-up study on cancer incidence commenced in 2006 and is complete. The report from that follow-up study is in draft form and our intention is to release that once completed, so it will be in this calendar year, 2008.

**Ms GRIERSON**—You gave us information earlier about how many people had moved onto TPI. Is there any analysis of that available in terms of whether they were people who presented very early or people who had a particular involvement or participation? Have you done any analysis?

**Mr Douglas**—No, no further analysis. The number of 63 refers to the number of people who have lodged a claim under the deseal-reseal program who, by dent of that claim or other claims they may have with us, now have become TPI status. Their conditions may have been caused by other service.

**Ms GRIERSON**—You can understand our interest in seeing the progression of people through this experience, if they are going to become more dependent.

**Mr Douglas**—It is a difficult one to do. Obviously if someone was already TPI status prior to this matter becoming public, we would not necessarily know, because they would already be in receipt of maximum compensation, they would already have a gold card and already be receiving treatment. Similarly, people who may have had some involvement in deseal-reseal may have also had some other service.

**Ms GRIERSON**—That is right.

**Mr Killesteyn**—I can provide some basic information in relation to the results of the second study. Bear in mind it was a study that focused on cancer. The results reflect those found in the original SHOAMP—that is, that the cancer rate was found to be 41 to 48 per cent higher in the deseal-reseal group compared to that in the comparison groups. However, these elevations were of borderline statistical significance—and we go back into the discussion we had this morning. But I would describe it in this way: if the chance of getting a cancer was one per cent then a 50 per cent increase makes it 1½ per cent, and that is why it is still statistically not significant.

**CHAIR**—I know which group I would rather be in.

**Mr Killesteyn**—Yes. The mortality rate in the deseal-reseal group was also similar to, if not lower than, the rate in the comparison groups in the general population. That will basically be the results from that study, which will essentially confirm the SHOAMP.

**CHAIR**—This is a matter I may have misunderstood, arising from a question Mr Roberts asked earlier. With the control groups that were part of the SHOAMP, is it possible that someone in either control group—in Richmond or in Amberley—could have previously been involved in the pick and patch or in other work on the deseal-reseal?

**Mr Killesteyn**—My advice is that there was quite a rigorous process of determining who should be in the study group.

**CHAIR**—I thought it was a volunteer arrangement.

**Mr Killesteyn**—Yes, but it was still focused on people involved in the formal programs. It was on the basis of trying to ensure that the study was around those people who were in the formal programs rather than around anybody else.

**CHAIR**—So that means if you were not in the formal program but you were otherwise exposed to the chemicals you could be in a control group?

**Mr Killesteyn**—It is possible you would be in a control group.

**Ms Spiers**—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.

**CHAIR**—Has that point never been thoroughly examined before this?

**Mr Killesteyn**—It has not been an issue prior to this, Chair, because—

**CHAIR**—I would have thought it goes to the credibility of the SHOAMP period.

**Mr Killesteyn**—I think, as I said, the SHOAMP was focused on those people who were in the formal deseal-reseal programs.

**CHAIR**—Yes, but based on a normal arrangement control group who had none of the attributes of the thing against which you were testing.

**Mr Killesteyn**—This is getting into an area which is certainly well beyond my expertise on the methodology of conducting these studies. I would prefer, Chair, to take that on notice and to give you a much more expert opinion on the control groups in the scientific study.

**CHAIR**—A secondary school student who put up a proposition that you were going to test a hypothesis by having a control group that included people that were actually exposed to the agent that you are trying to test against would do very poorly in a year 10 exam. I do not think this is a matter of high skill and expertise.

**Mr Telford**—Another important point that has just been pointed out is that the two control groups were actually looked at separately in terms of the comparison against the study group. As I said to Mr Robert earlier, I think it is better if we provide on notice for you some of the technical background and epidemiological thinking behind some of these things and give it to you correctly.

**Senator MARK BISHOP**—Can you also take on notice whether any persons from 501 Wing and 482 Squadron were employed at the base between 1973 and 1978 when the F111s were first delivered and whether any of those persons—and how many—were later involved in either of the control groups that were used in the test against the deseal-reseal people?

**CHAIR**—Given the paucity of records for the time in question, determining that beyond reasonable doubt might be a challenge.

**Mr Killesteyn**—We will have a look. I do not think we can provide that, Senator, but we will look at that.

**Mr Telford**—We will look at what we can do, but it was a de-identified study.

**Senator MARK BISHOP**—You would have records of 501 Wing and 482 Squadron between 1972 and 1978.

**Mr Killesteyn**—We do not; the Department of Defence does.

**Senator MARK BISHOP**—I take your point.

**Mr Killesteyn**—We will confer with the Department of Defence.

**Senator MARK BISHOP**—Can you pass the question onto Defence?

**Mr Killesteyn**—Yes, absolutely.

**CHAIR**—The time frames in my mind might be incorrect but, in respect of the other control group based at Amberley, there are a number of people who have come forward for whom there is no formal record—and indeed I think some have been included and compensated or given ex gratia payments—that they were involved in work with reseal-deseal but, as things happen on a base, a warrant officer says, 'Go there,' so they go there. I was interested in your confident assertion, Ms Spiers, that whilst it was possible for someone in Richmond maybe to have been in a previous posting where this may have happened, that it is not possible at Amberley. How so?

**Ms Spiers**—Chair, I am relying on the details in the SHOAMP report so that is my confidence in terms of the statements of the medical, scientific analysis done.

**Mr Telford**—We will have a look and report back as we have suggested. One or two might have slipped in; I do not know. But it may have made no difference anyway in terms of the quantum of the individual, so we need to just get back to you with some confidence on that.

**CHAIR**—A fair bit has flowed on the basis of what the SHOAMP report found. It is a fairly pivotal document in the whole thing.

**Mr Telford**—That is why I want to get it right.

**Ms GRIERSON**—This may not be yours to answer but the idea of informal postings where you are not actually posted but you are working at that position—has the documentation of that improved or changed as a result of this?

**Mr Killesteyn**—I think you are right, Ms Grierson: that is a Defence issue, not one for us.

**CHAIR**—There is just one other matter I wanted to raise with respect to the ex gratia payment because I think for many people getting that into the context of something other than a payment linked to health issues may only have been crystal clear today. Given that the ex gratia payment was for experiencing a unique work environment, does it follow that any consideration that government or this committee should give to compensation for health impairment should have no regard at all to the ex gratia payment—that is, it should not be taken into consideration at all because it is not related?

**Mr Killesteyn**—That is correct. The entitlement to compensation exists under the various statutes—the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act. That pays no regard at all to whether a person receives an ex gratia payment, and so you have those odd situations where a person may not be sick but receives a payment, but a person who is sick does not receive a payment. They are clearly designed to be separate streams of benefit, if I can use that description.

**Ms Spiers**—If I can just clarify: the payment was quite deliberately non-taxable and quite deliberately not characterised as compensation to ensure that it did not impact on the individual's rights to claim compensation under a statutory scheme or make a claim against the Commonwealth under the common-law action—or be offset.

**Mr Killesteyn**—That goes to the earlier discussion we had in relation to the use of the 30-day time limit. While there is some connection to the other evidence in relation to exposure, essentially it was simply a recognition that 30 days was a sufficient accumulated time frame for people to warrant a payment that recognised those working conditions. Bear in mind that it is fairly low standard as well, because if you look at the statistics you will see that a large majority of people have fallen into the tier 1 definition and got a higher payment.

I know it is in the submission, but the other thing that is worth pointing out is that the level of the payment is one that obviously may exercise the minds of the committee. That payment was at least in part taken into account as a consequence of other ex gratia payments that had been made by government, particularly for prisoners of war. Prisoners of war, both in the Pacific and Japan and also more recently in Europe, have received a $25,000 ex gratia payment. So you see some ballpark amount for the ex gratia payment being struck.

**Senator MARK BISHOP**—What is the relationship between POWs and—

**Mr Killesteyn**—The only relationship is that the government has in the past made decisions to provide ex gratia payments. The examples that I am pointing are the ex gratia payments for prisoners of war, which were struck at $25,000. The $25,000 mark is in some way a primary benchmark for the establishment of further ex gratia payments in relation to the deseal-reseal activities. That was part of the considerations that we provided in advice to government about how this thing might be structured.

**Senator MARK BISHOP**—The justification for the original POW payments and subsequent extensions was because of the exceptional abuse and mistreatment that a range of those men had suffered in being made virtual slaves or physically abused—that sort of thing.

**Mr Killesteyn**—That is correct.

**Senator MARK BISHOP**—What is the connection between the proposition that justified that ex gratia payment and the deseal-reseal people?

**Mr Killesteyn**—The connection is only one of the quantum as distinct from the circumstances.

**Senator MARK BISHOP**—But the quantum of the POW payment related in turn to the way that they were mistreated and abused.

**Mr Killesteyn**—I am not making any other point other than saying that, in terms of reaching a view about what the quantum of the payment should be in relation to the formal deseal-reseal programs, the only other examples of ex gratia payments that had been made were in relation to prisoners of war, and that had a figure of $25,000. That is the only point that I am making.

**Senator MARK BISHOP**—All right; I have got you. I want to go down that path, if I may. You have an extended discussion in your submission on ex gratia payments and section 180A of the act. From my reading of your submission, the department appears to be reading down the meaning of that section in that your interpretation now is that, to qualify for an ex gratia payment, the MRA has to establish under the SOPs some sort of causal link between the incident

and the damage claimed. That being the case, does that not negate the intent of having ex gratia payments?

**Mr Killesteyn**—Could I ask for the reference in the submission that you are pointing to so that we understand the context.

**Senator MARK BISHOP**—It is part 5.2, page 33, use of 180A determinations under the VEA.

**Ms Spiers**—The 180A provision in the Veterans' Entitlements Act is mutually exclusive of consideration of the ex gratia payment. The ex gratia payment, as we discussed today, was based on the circumstances of the individual being in a particular location for a particular time and their environmental circumstances. The 180A is a provision under the Veterans' Entitlements Act gives SOP-like coverage for compensation claims. They are quite distinct, so any 180A determination does not impact on consideration of an ex gratia issue.

**Senator MARK BISHOP**—I do understand that, but the test of application of the 180A determination appears to be a very similar test in that it requires the MRA to establish, under an SOP or a like-SOP, causal linkage between the incident and the damage claimed. That interpretation being correct, the provision has been read down in legal terms and has identical meaning to the rest of the act. My questions are these: firstly, what is the authority that the department has for putting that interpretation before us; secondly, has it changed since it was first determined in 1998; thirdly, was that interpretation made by the department or by the minister of the day; fourthly, has the original determination since been reviewed by senior counsel or Queen's Counsel; and, finally, can you provide to the committee the legal authorities for the proposition advanced in your submission, which I have characterised as 'reading down the interpretation of 180A'? I understand that is a lot, so please take it on notice and come back to us with a considered response.

**Ms Spiers**—That might be useful.

**Senator MARK BISHOP**—I do not expect you to do that now, but it is a critical point here.

**Ms Spiers**—Okay.

**Senator TROOD**—Mr Killesteyn, in relation to the ex gratia payment, did you undertake any financial modelling as to the likely cost to government from where you drew these lines in relation to entitlements?

**Mr Killesteyn**—Obviously, we would have had to provide advice to government in the context of framing the forward budget estimates. There was a budget of, I think, some $20.8 million provided initially for the ex gratia payments, but that was primarily around an estimate of the likely number of people that would be eligible for the tier payments. That was based on numbers that were included in the board of inquiry in relation to people who were involved in those activities and then the simple arithmetic of multiplying those numbers by the amount that had been decided. That gave us a budget. But in no way is it a cap. In fact, we have now exceeded the original budget that was set. We are now at some $22 million—I think I can get the

precise figure. We will continue to provide or make decisions to grant payments if people satisfy the conditions, irrespective of what—

**Senator TROOD**—You are talking about all of the people who might be eligible for an ex gratia payment; you are looking at the quantum rather than where people might fall in relation to tier 1 or 2.

**Mr Killesteyn**—That is correct. We made an assessment and they are best estimates, I guess. That is all you could do in this case. That was the budget that was provided.

**Senator TROOD**—Did you have any expectation that most people would fall within tier 1 or 2? Did you know that at the time you were making these assessments?

**Mr Killesteyn**—I would have to go back and have a look at the estimates. But I think, when you look at the amount that has currently been paid out of $22.6 million against the original estimate that was made in the budget of $20.8 million, we were pretty close.

**Senator TROOD**—Perhaps you could look at that and tell me if you had any expectations as to whether people were likely to be tier 1, 2 or 3—

**Mr Killesteyn**—As I said in my earlier evidence, I think that the tier 1 definition was a relatively low benchmark. It was certainly designed, I believe, to capture as many people as possible in the highest level of payment.

**Senator TROOD**—I see. Did you subsequently give any consideration to a tier that might relate to the pick-and-patch people, who were more remote from the actual—

**Mr Killesteyn**—The focus, right from the time of the establishment of the board of inquiry, was those people who were involved in the formal programs, and that has flowed right through to the definitions.

**Senator TROOD**—I understand that; we have heard that evidence. Did you subsequently give any further consideration to whether or not the actual categories of people who might be entitled to ex gratia payment were perhaps too narrowly drawn and that there might be an argument, for example, for including some of the pick-and-patch people who might now be arguing entitlements?

**Mr Killesteyn**—The previous minister did consider whether the definition should be broadened to include those people in the pick-and-patch activities. Ultimately the decision of government was not to broaden the definition and to keep it to the original people involved in the formal programs.

**Senator TROOD**—It occurs to me that perhaps some of the anxiety that exists within this community might have been obviated if there had been a category for those people in that particular relationship to the work.

**Mr Killesteyn**—As I mentioned before, I think that is an option that is always open—to move the definition around. But, as I also cautioned before, invariably it still means drawing a line at

some point. Whether or not it involves all pick-and-patch people, we would be in the same process of going through personnel records. Some are not there, and so we are likely to still see a level of dissatisfaction, I believe. But certainly it is an option.

**Senator TROOD**—I am sympathetic to the need to draw lines. Part of the reason for the committee being here is to at least open our minds to the possibility that the lines might not have been drawn in precisely the right places, in particular with regard to the ex gratia payments. Maybe that is an issue that needs some closer inspection than it has hitherto received.

**Mr Killesteyn**—I agree with you, Senator. There are a number of choices that are open, at least in terms of the recommendations that can be made about where that line is drawn.

**Senator TROOD**—Does the department have any views as to whether or not there is a line of compensation or an area which perhaps needs closer investigation? In all your creativity in addressing this challenging policy issue, can you give us any guidance as to whether or not—if you were seeking, as we are, to address some of the problems that have arisen—there is some area of policy activity that might be useful to explore and that you have not thus far been able to either implement or explore successfully yourselves?

**Mr Killesteyn**—I have to be careful here because essentially the issue of ex gratia payment was about the Department of Defence acknowledging that this was a poor working environment. So on any view about where you might shift the line it is really something that needs considerable input from the Department of Defence. Having said that, I think there are options that are available to you as a committee. I could describe none of them as a panacea for this issue; it is a difficult one, and I tried to elucidate on what the difficulties are in my opening remarks. The ex gratia payment is one thing which could be increased. That may not necessarily change the level of dissatisfaction, because you still have people who are outside the definition. You can change the tier definitions; that could simply be on the basis of access to the ex gratia payment. Again, that would be around finding a relevant level which recognised the working environment that people were subjected to. Some, again, will fall outside that.

You could look at the healthcare scheme and essentially determine whether there may be some individuals—and I need to check this; in fact, I will provide further information on this—who, for one reason or another, are not getting access to healthcare treatment. I suspect the number is relatively small, if any at all. That may be another option that is open to you in terms of recommendations.

**Senator TROOD**—I have a follow-up question. Is there a case for us to investigate the extension of the entitlement in relation to the SHC scheme, the closing date for which has well passed? Is that a relevant policy consideration that deserves our attention?

**Mr Killesteyn**—That could be another area. As I said, it is access to the healthcare schemes. We are currently doing some work to examine whether there are individuals who, for one reason or another, do not have access to those healthcare schemes. Bear in mind that it was a very wide and broad application of the interim healthcare scheme. At the time we asked people to ensure that they had a compensation claim lodged before they could get access to the interim healthcare scheme. We encouraged as many people as possible to lodge those claims so that they could get access. All of those people that had access to the interim healthcare scheme continue to have

access to the Health Care Scheme, as it is now defined. There were some original decisions that were changed by government. The original decision was that they would have access to the Health Care Scheme until all of their avenues for appeal for compensation had been exhausted. That was subsequently changed by the former minister to allow those people to continue to have access to the Health Care Scheme irrespective of whether they were subsequently found to be eligible for compensation. As I said, I will do some further research to see whether there are those individuals and let the committee know.

**Senator TROOD**—That would be helpful.

**Mr Killesteyn**—So it is a question of whether changing the date would have any impact.

**Senator TROOD**—Indeed, that is the question. There may be some anecdotal evidence to say that if some people have been excluded improperly or inequitably as a result of the closing date, there might be an argument that the closing date needs to be opened until such time as those people and any others might be included.

**Mr Killesteyn**—But bear in mind—I know I keep making this point—that access to compensation is always there; there is no time limit on it; and, once liability is found, any of the healthcare costs are covered.

**Senator TROOD**—Thank you.

**CHAIR**—One of the many dilemmas I think we confront in this inquiry is that those people involved in the deseal-reseal can apply for their normal veterans entitlements, and that is processed in the normal way and it provides medical cover and other benefits. A lot of the debate and certainly many of the submissions we have received from individuals, which you also would have seen, go to the question of the ex gratia payment. When people refer to the ex gratia payment in their submissions, they do not say, 'I worked in a terrible, stinking environment and I really should have got some more money because it was a terrible place to work.' Invariably they say, 'I worked with these terrible chemicals and they made me sick.' Therein lies a bit of a dilemma, it seems to me. For whatever reason—and I think with some justifiable reason given the confusion that this has had from day one—they saw the ex gratia payment as linked to the health issue. Indeed, the original announcement of it by the government was that it was in response to the SHOAMP. Do you have any advice you can give the committee as to how you see that issue being reconciled or pursued? It is one of the things we as a committee are going to have to grapple with in the weeks ahead.

**Mr Killesteyn**—I understand it is a difficult issue. This is one of those problems where expectations have been created by things that have been said and rumours have been created about things that have been said. Our attempt has been to labour, as much as possible, the difference between causation and exposure, and compensation and an ex gratia payment, to stress that if a person is suffering ill effects from their work, irrespective of the level of engagement with deseal-reseal activities, they have every entitlement to claim compensation from the department under the beneficial legislation that exists under the Veterans' Entitlements Act or the Safety, Rehabilitation and Compensation Act. We have a special processing team to process those as quickly as possible, consistent with the medical diagnoses and advice that we receive. This is an issue where the overlap between ex gratia payment and compensation tends to

be confused. There are not a lot of options here other than to keep assuring people that compensation is available, and it is available all the time. It is not time limited; it is available at any point in time.

**CHAIR**—Do you know of any other example where defence personnel have been afforded an ex gratia payment, not because of hazard or because of any impact on health but just because the work environment was pretty uncomfortable? We have allowances in the system for people serving, and mention was made that there were allowances for people working with deseal-reseal, which I think we will be seeking some further information on, but I cannot think of another example.

**Mr Killesteyn**—No, I have no knowledge of any other precedent that has been set. Indeed, I would have thought that if a precedent had been set it would have been part of the advice that was provided to government in structuring this particular policy.

**CHAIR**—I was hoping someone had already invented the wheel for us.

**Mr ROBERT**—Mr Killesteyn, just going back to the dates, the board of inquiry report was in July 2000. Looking at your evidence on page 7 under 3.1, in September 2001 the Chief of Air Force introduced the interim healthcare scheme. The eligibility criteria at the bottom of page 7 show group 1 participants as being serving members, ex-serving members and civilians who were engaged in maintenance, which includes personnel who worked on the four formal programs as well as those involved in general F111 maintenance work. So in September the IHCS came into place; group 1 was the four programs as well as those for 482 and other squadrons. On 8 September SHOAMP was commissioned—that is on page 9 at 3.3.1—at the direction of the minister, and at 3.3.2 you made it very clear that SHOAMP only involved personnel in the four formal DS-RS programs. So it would appear that in September the interim healthcare scheme was set up and literally within the same week the minister called for SHOAMP to be put in place—but SHOAMP restricted the target group to only people from the four programs. On the surface, this would seem contradictory. Are you aware of any reason why in the space of a week we would set up an interim healthcare scheme for everyone but have a specific medical program—the SHOAMP—which would specifically exclude everyone other than the four programs?

**Mr Killesteyn**—The sequence of events is a bit hard to untangle at this point—so many years after.

**Mr ROBERT**—I just refer you to—

**Mr Killesteyn**—Yes, I understand that, and I think that part of the issue really has to go to the board of inquiry, which was particularly focused on those people who were involved in the formal programs.

**Mr ROBERT**—I have just gone through the recommendations of the board of inquiry. Recommendation 2.8—

**Mr Killesteyn**—Which I was about to quote.

**Mr ROBERT**—We can quote it together.

**Mr Killesteyn**—It states:

The Air Force should ensure that all personnel who may have been exposed to toxic chemicals, in any of the programs, are provided with medical checkups and sympathetic advice and treatment … This approach should be refined as the results of the DVA study become known.

**Mr ROBERT**—Granted. The next thing they did was to make the interim healthcare scheme available not only to anyone in the programs but to anyone at all who had been impacted. Then SHOAMP got in place and went back to just the four programs again. There is something incongruous about this recommendation allowing access to interim health care to everyone who was even involved in any maintenance but only targeting those on the four programs for SHOAMP. There is an inconsistency there. That inconsistency then flowed on to the ex gratia payments. Somewhere here it was decided that just the four programs would go into SHOAMP—that would eventually lead to only those involved in the four programs getting ex gratia payments—yet at the same time the interim healthcare scheme was set up for all of group 1 because there was clearly a concern that not only those in the four programs but others who had access may have had some health concerns.

**Mr Killesteyn**—I think this is an issue that I would have to take on notice to give you a better explanation of the sequence of events.

**Mr ROBERT**—I understand that.

**Mr Killesteyn**—As I said before, I think the board of inquiry was always focused on those in the formal programs. Whether or not it is an inconsistency I will not conclude at this point, but that is the sequence of events. There was a view that those who are most likely to have suffered ill effects would be those in the four formal programs, but at the same time there was a cautious approach to establish healthcare treatment for anybody who may have been exposed, albeit in an incidental way.

**Mr ROBERT**—Whilst I understand that, my challenge is about taking a cautious approach for those who may have been impacted for the interim healthcare scheme but, in the same week, deciding that only those in the four programs would be in the SHOAMP study. They both occurred in September 2001, and SHOAMP was set up by the minister on 8 September—or am I missing something?

**CHAIR**—I think it is a fair question.

**Mr Killesteyn**—I think this goes to the nature of the scientific methodology that is established to undertake the study, and we are getting better advice in relation to that matter. But, as I understand the methodology, the Scientific Advisory Committee was the one that recommended that the study group comprise those involved in the four formal programs because that group is more likely to show ill health effects than a more disparate group which includes everybody. So it was not about excluding anybody; it was about designing a study which was more likely to deliver some view on whether there was an association between the activity and their ill health effects.

**Mr ROBERT**—I accept and understand that, but when, probably an hour ago—and I appreciate that you have been here a while—I asked about why the ex gratia payment excluded those outside the four programs, your response, which I will not quote because my memory is not that good, was that all the way along, from SHOAMP forward, it was all about the four programs. It would be terrible to assume that the ex gratia payments were decided because all the way along it was all about the four programs and that the four programs were decided because it would make a good health methodology.

**Mr Killesteyn**—That is correct.

**Mr ROBERT**—It would be difficult to see if, suddenly, the University of Newcastle is setting our policy for us.

**Mr Killesteyn**—To re-emphasise, the ex gratia payments were about a view as to what was considered an onerous and unique working environment. That was the clear issue—to provide a payment for those people for what they had suffered in that working environment.

**Mr ROBERT**—Granted, but I refer you—and you may not have it—to submission No. 47, from Mr Laurence Carpenter. He says:

> As we [ground maintenance crew] were at the flying squadron … I did not qualify for a lump sum … payment because we were not officially on the "F-111 Deseal/Reseal Programme", even though we worked in the same F-111 fuel tanks and were exposed to the same chemicals and fumes …

He goes on to say:

> … I estimated that my fuel tank occupancy was well in excess of the qualifying time period for the Ex Gratia time period.

So, whilst I understand everything you are saying, the bottom line was that ex gratia payments were made to those in the four programs; the four programs were probably chosen because, all the way from SHOAMP forward, it was all about the four programs; SHOAMP chose the four programs because of the methodology; yet the interim health care included everywhere.

**Mr Killesteyn**—The SHOAMP was selected in that way because it was the most propitious way to get a successful outcome in terms of examining whether there was any impact from the activity on their health outcomes. It was not designed to exclude anybody.

**Mr ROBERT**—But the research methodology may have unwittingly led to government just paying the ex gratia payments to those in the four programs and ignoring all of those others in group 1 for the IHCS. That is only a contention.

**Mr Killesteyn**—That is speculation, which I cannot confirm.

**Mr ROBERT**—Of course it is.

**Mr Killesteyn**—But the minister did consider whether those people involved in the pick-and-patch activities should be included in one of the tier definitions and have the ex gratia payment extended to them. Ultimately the government decided not to do that.

**Mr Telford**—The board of inquiry only focused on the four core groups.

**Mr ROBERT**—Yet, of course, when they set up the interim healthcare scheme, it included everyone.

**Mr Telford**—That is right, to make sure everyone was covered.

**Ms Spiers**—It was a cautious approach.

**Mr Telford**—It was generous in being able to make sure that anyone who was ill had access to some health care.

**CHAIR**—I think the point Mr Robert raised is understood. It will be investigated and we will get some advice back. I want to take this opportunity to thank the representatives from the Department of Veterans' Affairs. It is a difficult and complex issue that we are all grappling with, and you have had to deal with it on a daily basis more than most. We appreciate that. Your advice to us, as a committee reviewing the whole shebang now, is very important, so I thank you for that. You will be provided with a transcript of today's evidence in which you were involved and be given the opportunity to make any minor or technical corrections.

I would encourage you to take some interest in the committee's hearings in Brisbane next week. You are aware that we will be taking evidence from a number of individuals. I would anticipate that, following that, the committee will want to have a further session with the Department of Veterans' Affairs and possibly with Defence. Indeed, we might have them both together and try and tie up some loose ends, but we will deal with that when we get to it. Again, thank you for your evidence.

**Subcommittee adjourned at 4.02 pm**