



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE

DEFENCE SUBCOMMITTEE

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

FRIDAY, 19 SEPTEMBER 2008

CANBERRA

BY AUTHORITY OF THE PARLIAMENT



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

**Friday, 19 September 2008**

**Members:** Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Arbib, Mark Bishop, Cormann, Ferguson, Fifield, Moore, O'Brien, Payne and Trood 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 (*ex officio*), Payne and Trood and Mr Gibbons, Ms Grierson, Mr Hale, Mr Hawker (*ex officio*), Mr Ian Macfarlane, Mrs Mirabella, Mr Robert, Ms Saffin, Mr Bruce Scott and Mr Kelvin Thomson

**Members in attendance:** Senators Ferguson, Forshaw and Trood and Mr Baldwin, Mr Bevis, Mr Robert and Mr Kelvin Thomson

**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.

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**Subcommittee met at 9.04 am**

**CHAIR (Mr Bevis)**—Ladies and gentlemen, we will commence proceedings. Although this gathering at the moment has a few visitors added, I propose, with the indulgence of committee members, to have a resolution by the committee that submissions numbered 121, the joint submission by Defence and DVA, and 122, questions on notice from Defence, be accepted as submissions to the inquiry. There being no objections, that is so ordered. Is it also the wish of the committee that exhibits numbered 14, 15, 16 and 17 be accepted as exhibits. There being no objection, it is so ordered.

I declare open this public hearing of the parliamentary inquiry into the F111 deseal-reseal workers and their family by the Defence Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Today the committee will be taking evidence from a number of witnesses, the RSL, the Defence Force Welfare Association, the researchers involved in the Study of Health Outcomes in Aircraft Maintenance Personnel, SHOAMP, and Defence and Veterans' Affairs. As many of you will be aware, this is the third session of public hearings that the committee has held into this matter. We are hopeful that, following today's public hearing, we will be in a position to deliberate on a report.

For the information of those present, I also advise that we have informed the minister that we may require a little more time than originally planned to complete this inquiry, but it is still the committee's intention to provide a report before the end of the year. I am confident we will be able to meet that time frame, although as anyone involved in this inquiry will be aware, there are some pretty complex and difficult issues to unravel and work our way through.

[9.06 am]

**HODGES, Mr John Michael, National Veterans Affairs Adviser, Returned and Services League of Australia**

**TOWNSEND, Mr Raymond, Vice-President, Queensland Branch, Returned and Services League of Australia**

**QUINN, Mr Vivian Stanley, Queensland Delegate, National Veterans Affairs Committee, Returned and Services League of Australia**

**CHAIR**—Welcome. Do you have any comments to make on the capacity in which you appear?

**Mr Hodges**—Mr Quinn drafted the RSL's submission to this committee. Mr Townsend is a former RAAF member who, as a flight sergeant and later a warrant officer, was a senior supervisor at the deseal-reseal section at RAAF Base, Amberley, from January 1983 to February 1984.

**CHAIR**—Thank you for that. Although the subcommittee does not require you to give your evidence on oath, I advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as do proceedings before the respective houses. Would you like to make any opening statements for the benefit of the inquiry?

**Mr Hodges**—Thank you, Mr Chairman. The RSL welcomes the opportunity to appear before this committee and thanks the committee for its invitation. The RSL submission to the committee still stands, but after hearing evidence from both the Department of Defence and the Department of Veterans' Affairs, we would like to make further comments. In the matter of the ex gratia payments: in determining eligibility, the F111 lump sum payment team considered all available evidence, which falls into three categories. They are the primary evidence that has been sourced from official Air Force records, including medical records, individual service and personnel records, the airmen's trade progress sheet, Air Force record of training and employment, and Defence pay records. The secondary evidence has been sourced from statements made to the Air Force board of inquiry or in support of an individual's compensation claim or from the individual's application for inclusion in the interim or SHOAMP healthcare schemes. Tertiary evidence is usually in the form of a personal photograph, copies of their service records which may have been missing from the individual's personnel records, or a statutory declaration where the declaration is supported by primary or secondary evidence.

The RSL's position on this issue is that those people who can produce either statutory declarations or evidence that they were involved in the program should be supported by the ex gratia payment. As Mr Townsend can verify, many airmen who were not posted to the deseal-reseal team were rostered from general duties on a daily basis to work in the F111 fuel tanks. No entry was made in their service records that they undertook this duty.

I turn now to the tier system. As the committee has already heard from witnesses, there are difficulties in establishing that a person was part of the deseal-reseal programs and difficulties in establishing duration of exposure. The RSL position is that the beneficial approach should be taken to ensure that people are not unreasonably denied ex gratia payments. The barriers should be removed between short and long term exposure.

The RSL position on time-linked exposure under tier 1 and tier 2 is that there is no scientific or medical evidence to support such a proposition. Exposure is specific and we see this as an unjust distribution of the ex gratia payment. The RSL therefore would question the rationale of the decision as to the cumulative number of days for one group and so many cumulative days for another group. It should be noted that appendix two of the board of inquiry volume 2 part 1, *Statement on relationship between short-term exposure to deseal-reseal chemicals and possible health effects*, prepared for the F111 board of inquiry medical program by Professor Des Connell and Dr Greg Miller, describes for the board of inquiry that exposure to solvents in the deseal-reseal program was estimated to be in the high concentration in the confined spaces of the fuel tank.

This would represent acute exposures, generally well above workplace exposure limits. Their report also advised that the US National Library of Medicine defines an acute exposure as a single dose or a series of doses received within a 24-hour period. The RSL believes that exposure is exposure. The RSL would recommend that a nominal roll of F111 participants could become the basis for granting ex gratia payments. The board of inquiry volume 2 part 1 chapter 12 annexure A provides a list of potentially exposed personnel, and this list could be updated regularly. How accurate this list is has to be questioned.

The healthcare program: the RSL is concerned as to what criteria were adopted for the determination of the access and cessation dates for the program. Claims are still being determined today, but the claimants are denied access to the healthcare program. This program does not take into account the latency period for a medical condition to be diagnosed that may associated with the deseal-reseal program. The RSL would also recommend that if a deseal-reseal participant died as a result of being involved in the program, a claim should be determined, regardless of the date of death.

In conclusion, the RSL commends the government for establishing this inquiry and hopes that out of your deliberation a fair and, most importantly, a just outcome for all the personnel involved can be achieved. We have a duty of care for those who served our nation. We must support them in their time of need.

**CHAIR**—Thank you, Mr Hodges. Does either gentleman wish to add to that?

**Mr Quinn**—No, I do not wish to add to that, Mr Chairman, at this point in time.

**Mr Townsend**—No, not at this point in time for me either, thank you.

**CHAIR**—Mr Townsend, a comment was made about your experience and your being able to provide assistance to the committee about folk who were relocated, even temporarily to tasks involved with pick and patch or deseal-reseal. Can you give us some idea of how that operated?

**Mr Townsend**—Yes, Mr Chairman. When I first was transferred to 3AD, as they called it in those days, in January 1979, I was working in what they call the hydraulic section, which is the aircraft maintenance equipment section. Shortly after I arrived there, I was requested by my boss to send half a dozen people down to the deseal-reseal section; they were short-handed. That sort of surprised me a bit. However, it was a priority job. There was no alternative. They had to go.

So I just chose three or four people, or five or whatever it was—I do not even remember the number back in those days—and said, ‘Righto fellows, you’re off to deseal-reseal for the day.’ Their name had been marked off on the roll in the hydraulic section that moment, or in the aircraft equipment maintenance section, and away they went down to deseal-reseal, or wherever the hell that was. I did not even know where it was in those days—I had just been posted in there—and worked for the day, then came back that evening and knocked off from the hydraulic section.

This happened day after day after day—quite regularly. For me to remember who those people were, how many there were at this time, no—it was something we just did. They went off down there. No records were ever kept. They did not sign anything and they returned in the afternoon. A lot of those people were exposed to whatever they did down there: I would have no idea. But they were working in the deseal-reseal section for the day on a loan basis. Their names were not recorded down there—nothing at all. This happened quite regularly and it happened from other sections within the depot as well.

**CHAIR**—What years are we talking about?

**Mr Townsend**—In 1979 and 1980.

**Mr BALDWIN**—Mr Townsend, how do we discharge an onus of proof whether they were or were not rostered on or off, if there has been no record keeping of their work on the F111 deseal-reseal program?

**Mr Townsend**—The records? There were no records kept. I said, ‘Righto Joe, Harry, Bill and John, you’re off down to deseal for the day. They need you down there to do some work.’ And away they would go, and we would see them that afternoon when they came back to change their clothes to go home.

**Mr BALDWIN**—But short of giving the whole unit access to ex gratia payment, how do we know what members were and were not assisting?

**Mr Townsend**—We do not know, and we will never know because it is no good asking me who those fellows were now. That was a long time ago. I cannot even remember their names. They were just young. I was the senior NCO and they were young LACs and you just said, ‘You, you and you, you’ve nothing to do today, you’re off down there.’

**Mr BALDWIN**—I accept that, but looking at it from government’s perspective, because it has to be responsible with taxpayers’ money, how does it determine if indeed somebody had actually been on it? I mean, there are those that have obvious signs and symptoms.

**Mr Townsend**—Certainly. I know where you are coming from there. That is a fairly hard question to ask. What I am telling you is what exactly happened.

**Mr BALDWIN**—I accept what you say. I do not dispute that at all. But when a government has to write the cheque—

**Mr Townsend**—I know, I know.

**Mr BALDWIN**—There may be—I am not saying there are—people who just put their hand up and say, ‘Well, I was involved in that. Therefore I should get it’, whether they were or were not.

**Mr Townsend**—Look, there is possibly a lot of those fellows who have not even bothered to put in a claim. They may have only worked there for a few days, but there were people who did go on a fairly continual basis. I would like to say they went there for 30 days or 10 days or three days or something, but no-one can answer that question now. Of course there were no records kept.

I do know that when they did come back, they were quite upset about the state of their overalls. Back in those days, you could only exchange one set of overalls a year. They would come back with their overalls. They were not given the white overalls to work in during the day at that time. They would come back and say, ‘Look, my overalls are ruined.’ The only way they could get a new pair of overalls was to get your warrant officer or your flight lieutenant, whoever he was there, to sign a chit to say they were entitled to another set of overalls. That was one thing.

I would have no idea and I do not know where you are going to get standards of proof to say how long they were there or not, but they were exposed at that point. That is a good question for me. No, it is a question I cannot answer.

**Senator MARK BISHOP**—Mr Hodges, can I go back to your opening remarks. As I noted down, but correct me if I am wrong, you said proof of involvement in the deseal-reseal program should be sufficient for admission to the scheme and consequent access to payments and healthcare.’ Is that correct? Is that your submission?

**Mr Hodges**—Yes. I will read it again:

The RSL’s position on this issue is that those people who can produce either statutory declarations or evidence that they were involved in the program should be supported with the ex gratia payment.

The RSL firmly understands the problem that Mr Townsend has alluded to and to which the Deputy Chair has just alluded in trying to find out who was actually there. In a perfect world, no-one lies, and if they say they are there, they were there. But of course, it is not a perfect world, and how do you then need to ascertain the people who were truly affected by these incidents? The RSL’s position would be basically that it would hurt the whole system if we threw the baby out with the bathwater.

**Senator MARK BISHOP**—Okay, I get that. So proof of involvement in the program is sufficient for the scheme. I take it you also went on to say quite pithily at the end, ‘exposure is exposure’. From your organisation’s position, participation is sufficient and you do not need to establish, or should not have to establish, a causal link between participation and whatever complaints of a scientific or medical nature you complain of later. Is that correct?

**Mr Hodges**—That is correct.

**Senator MARK BISHOP**—On this proof of involvement, does your organisation regard a statutory declaration signed by the individual before a JP, but without any corroborating evidence or any other corroborating evidence of the nature of a statutory declaration, as sufficient? For example, my mere assertion, signed before a JP that I participated in the scheme on particular dates, is adequate?

**Mr Hodges**—Not quite, Senator. Not quite, no. We would see a statutory declaration supported by a co-worker—let us take for example someone who has been there and their records were annotated that they were in the deseal-reseal section—and all this time later he can vaguely remember Joe Bloggs working in that section, ‘Yes, I remember you.’ We feel that, or along those lines, is sufficient.

**Senator MARK BISHOP**—All right. And then you did not make any comment on the quantum involved in the ex gratia payments.

**Mr Hodges**—No.

**Senator MARK BISHOP**—You had your criticisms of the two-tier scheme and the rationale for cumulative days. You were critical of that. Is your organisation firstly satisfied with existing quantum to date? Secondly, in respect of those men who have made application and received a payment, have they received sufficient justice and are now out of anything that might occur in the future as far as your organisation is concerned?

**Mr Hodges**—It is an interesting point, Senator, because there is no precedence really in the Department of Veterans’ Affairs for paying ex gratia payments of this amount. The only time they have done it before was of course for the POWs.

**Senator MARK BISHOP**—Yes.

**Mr Hodges**—And that was the \$25,000 or \$40,000. The RSL’s position is that it is adequate.

**Senator MARK BISHOP**—Right. Okay. That has answered that. And the second part?

**Mr Hodges**—That is the just the ex gratia payment. There is the compensation for medical conditions.

**Senator MARK BISHOP**—Different issue. I am talking about the compensation. You say the compensation is adequate. The second part of my question was those men, and I think it was only men who have received payments to date. Are they done and dusted, so to speak, in terms of compensation?

**Mr Hodges**—In terms of ex gratia payment?

**Senator MARK BISHOP**—Yes.

**Mr Hodges**—Not in terms of compensation.

**Senator MARK BISHOP**—In terms of ex gratia payments—got you. Okay. Thank you.

**Senator FERGUSON**—Do you have any idea of the total numbers of people who are either recorded as having worked in the deseal-reseal or claim to have worked in the deseal-reseal?

**Mr Townsend**—No.

**Mr Quinn**—Senator, yes. According to the board of inquiry, they have at least 501 persons as potential participants that were involved in the program. That is in the board of inquiry's documentation. Of course, I think from recall that there have been other participants that have come forward since the board of inquiry to either claim compensation or the ex gratia payment.

**Senator FERGUSON**—The only reason I ask is that some time ago when we were looking at this same problem, it was suggested to us that there were far more people who were claiming to have worked in the deseal-reseal program than were ever likely to have worked in it.

**Mr Quinn**—And that is always going to be the case, Senator.

**Senator FERGUSON**—You say in regard to the two-tier structure of ex gratia payments that you are satisfied with the amounts.

**Mr Townsend**—No.

**Senator FERGUSON**—What did you say in answer to—

**Mr Hodges**—I am satisfied with the amount. I am not satisfied with the tiered system.

**Senator FERGUSON**—I see. You are satisfied with the amounts.

**Mr Hodges**—Yes.

**Senator FERGUSON**—But not with the tiered system.

**Mr Hodges**—With the one amount, the \$40,000. There should be no \$10,000 and there should be no tiered system. If you were there, the ex gratia payment should be the \$40,000.

**Senator FERGUSON**—Regardless of whether you suffered any adverse health effects or not.

**Mr Hodges**—Correct.

**Senator FERGUSON**—And at this stage, that could be 500 people or it could be 1,000.

**Mr Hodges**—At the moment we have given \$40,000 to tier 1 people who are probably as fit as a mallee bull.

**Mr ROBERT**—The Commonwealth has currently paid out about \$67.9 million in compensation over the four acts, the CCE, the VEA, the SRCA and the MRCA. I think 427 claims have been accepted, which is about 60 per cent of all that have gone through. Those claims all vary because they have all gone across the four various different pieces of legislation that one could claim under. My understanding is that the RAAF team that was working in Veterans' Affairs to assist that were working very hard to assist claimants through each of those four.

My question surrounds those four bits of different enabling legislation that claims come under. Do you think the current four different systems are working? Are your members happy with the four different systems? Do you have any recommendations about what the Commonwealth could do to address that?

**Mr Hodges**—I would like to ask Mr Quinn to answer that. He has been heavily involved in it.

**Mr Quinn**—Mr Robert, yes. We understand the four heads of compensation. Certainly for some participants, looking at it under the Veterans' Entitlements Act, which would cover them from 1972 up until now, there are difficulties for many participants in meeting the requirements of the statements of principles. That is evidenced by the number of claims that have been accepted under the VEA compared with the number of claims that have been accepted under the Safety, Rehabilitation and Compensation Act.

Under SRCA, of course they have made allowances under section 7 (2) to allow the participants further access based on specific medical conditions, which takes the onus off the claimant and places the onus on the department. Under the 1971 act, certainly there are some difficulties there in regards to the Commonwealth compensation act, based on the fact that if, for instance, you suffered a psychological injury or a psychological injury as a sequela to another medical condition, psychological conditions were not accepted under the 1971 act unless the medical condition was diagnosed post-1988. So there are some difficulties there. There could be some participants who could miss out if their condition was diagnosed prior to 1981.

The other aspect that could be invoked under the Veterans' Entitlements Act is the section 180A determinations whereby a group of people can be identified to come under section 180A. The difficulties there are associated with identifying the medical conditions and working with the Repatriation Medical Authority in regards to whether they have, or intend to, or have produced a statement of principles.

**Mr ROBERT**—Considering all that and hearing you rattle off different sections from different acts and different requirements, it strikes me as somewhat unsatisfactory that we have four different acts that depend on dates, principles, times of service and everything else to determine what you are entitled to. I am looking at the number of claims received. There were 628 claims received: 70 under VEA, 115 under SRCA, 443 under both as people start to cherry pick which act would provide them with the greatest benefit, and I have no problem with that. I have a problem with a system that forces people down that type of path. Do you have a recommendation on how the Commonwealth could improve this?

**Mr Quinn**—That is a difficult question. Other than invoking a 180A determination under the Veterans' Entitlements Act.

**Mr ROBERT**—It can do a lot more. It can just sweep them away and pass one bit of legislation, if it wanted to.

**Senator MARK BISHOP**—But you do not want that.

**Mr Quinn**—No.

**Senator MARK BISHOP**—You want to maintain a differential for effective engagement in overseas service.

**Mr ROBERT**—This is what I am coming to. What is it the RSL actually wants?

**Mr Quinn**—It is a very difficult question. Some people have been reasonably and fairly compensated under the various heads of legislation.

**Mr Hodges**—Correct.

**Mr Quinn**—Others, for whatever reason, may have missed out. It is a difficult situation dealing with the four heads of legislation.

**Mr ROBERT**—Well, 427 claims have been accepted, totalling almost \$68 million. I would assume some people have been very fairly treated. Knowing Defence and Veterans' Affairs, I would suggest that that very strongly is the case. But the question comes back to: What does the RSL want to see from the four bits of legislation?

**Mr Hodges**—Mr Robert, in a perfect world, we would suggest what you just suggested—a special act of parliament for deseal-reseal so that it all comes under one.

**Mr ROBERT**—That does not solve it.

**Mr Hodges**—That does not solve any problems.

**Mr ROBERT**—That does not solve the problem, sir.

**Mr Hodges**—It does not.

**Mr ROBERT**—Going forward, this committee can address issues of deseal-reseal, but in the final outcome we want to engender good public policy. We have four acts of parliament with a whole range of issues on dates and times. If you had a mental health episode diagnosed after a certain time, you are not able under to one piece of legislation to be compensated. Forget deseal-reseal for a second. The way forward for the Commonwealth in dealing with these issues is: What do you recommend?

**Mr Hodges**—You have it now, the Military Rehabilitation and Compensation Act.

**Mr ROBERT**—So the others should be dispensed with?

**Mr Hodges**—No.

**Mr Quinn**—No. Could I just say something there, Mr Robert. Under the current MRCA legislation, it also relies on the statement of principles in mainly accepting medical conditions. But on the other hand, since section 7 (2) of the Safety, Rehabilitation and Compensation Act was invoked with some 30-odd medical conditions, that certainly gives many claimants an opportunity, if they suffer from those conditions, to receive compensation without any onus of proof.

**Mr ROBERT**—Correct. The statement of principles currently does not cover the majority of ailments that people are affecting because, as the good doctor behind you will say, the medical conditions are, in medical terms, statistically not—what was the word, sir? Statistically not?

**CHAIR**—Significant. Go on.

**Mr ROBERT**—Significantly not relevant? That is the medical jargon. So you are saying that MRCA is the ideal, but you would like to go back to SRCA because it contains 30-odd stated conditions. Am I right in assessing, sir, that you are happy for the four bits of legislation to stay as they are? This needs to be one of the key recommendations from the committee. What do we do with four bits of legislation that cover compensation claims?

**Mr Hodges**—I feel the RSL policy would be if all claimants under the deseal-reseal could come under SRCA because of the problems with the Commonwealth employees act and specifically the mental conditions, which are covered under SRCA.

**Mr ROBERT**—The SHOAMP study came back to say that they could not categorise the medical conditions. They were statistically not significant. That was the phrase I was searching for. The SHOAMP study said that those involved in the deseal-reseal had cancer rates in some areas twice as much as in other areas, but because of the numbers and the way medicine is done, they were statistically not significant. Do you have a view on the SHOAMP study?

**Mr Quinn**—No.

**Mr Hodges**—No.

**Senator MARK BISHOP**—Mr Hodges, can I return to section 180A of the VEA. We asked some questions last time of the Department of Veterans' Affairs as to the origins, policy and impact of that. We received an answer in the last couple of days in response to that question. I will pursue it later on with DVA because I am not satisfied with the written response. Can you give us any evidence or information as to the original intent of section 180A? I say that because Repatriation Commission policy is now that 180A is to be interpreted to mean that if a claim is to be allowed, it is linked to a medical causation—scientific connection to the complaint and the outcome. That of course is no different from the SOPs and the RMA. I wonder why there is a different provision in the act that has an identical application and an identical outcome. Does your organisation accept that section 180A under the VEA is necessarily limited to that type of process, or that it has a different intent and meaning? Can you offer me any advice?

**Mr Hodges**—Yes. I will get Mr Quinn to do that.

**Mr Quinn**—Thanks, Senator. The intent of 180A is obviously to bring a group of participants, ADF people, together. The determinations that have already been made deal with Vietnam veterans and the four leukaemias or conditions that they may suffer from, based on exposure to herbicides in Vietnam. Of course at that particular stage when these were invoked, the RMA had the SOP system up and running. They made a determination on the factors included in the SOPs. Because there was no intent to change them, the commission, based on scientific medical evidence, determined that they could invoke section 180A of the Veterans' Entitlements Act.

**Senator MARK BISHOP**—But that is the critical point. On one application you apply to the RMA to get an SOP established. If it establishes a link between the complaint the individual has and the exposure, he has established sufficient to process a claim for compensation. On my understanding section 180A is in terms of exceptional circumstance, but the process seems to be you have to establish a link through the SOPs from the RMA. The process in both ways is the same. I am asking you: Do you accept that that process, now applied by the DVA and for many years, is the correct process to get an ex gratia payment? In other words, in exceptional circumstances for a class of people, you still have to establish causation between the event and the complaint through medical or scientific principles.

**Mr Quinn**—Yes, that is the intent of section 180A—that you have to establish it through scientific or medical evidence.

**Senator MARK BISHOP**—In that case, if you accept that and that is correct, the only avenue of redress then is for the committee to recommend and the government to accept an ex gratia payment without medical or scientific linkage.

**Mr Quinn**—No.

**Senator MARK BISHOP**—That is the problem we face, and that is why I asked you those questions.

**Mr Hodges**—No. When we start talking about the Veterans' Entitlements Act and section 180A, we are talking about treatment and compensation.

**Senator MARK BISHOP**—We are.

**Mr Hodges**—The ex gratia payment is already done and dusted.

**Senator MARK BISHOP**—Yes, I accept that. But we still have 500 or 700 people not satisfied in terms of ex gratia payment.

**Mr Quinn**—Yes, but we cannot link the two of them together. Section 180A is entirely separate compared to the ex gratia payment.

**Mr Hodges**—It has nothing whatsoever to do with it.

**Mr Quinn**—It has nothing to do with the Veterans' Entitlements Act. It has nothing to do with bringing this group of people under section 180A.

**Senator MARK BISHOP**—It has. Okay, thank you.

**CHAIR**—Can I go back to that ex gratia payment issue a little. In spite of the confusion from its inception through until the present time about what it was meant to cover and what it was for, when it is all stripped down, the official explanation is that it was a payment for working in unique or special environments.

**Mr Hodges**—Yes.

**CHAIR**—It had no regard to a health factor at all, although that was less than clear from day one. But if you strip it all away, that is the position. Given that it was, if you like, therefore a payment for working in difficult, unpleasant environments, your position that there should be no requirement for a certain number of hours in that unpleasant environment seems at odds with the normal way such a payment would be made. Typically you would be paid more money if you were in an unpleasant environment for a longer period of time than if you were in that unpleasant environment for a shorter period of time. But you are suggesting to us that it makes no difference whether you were in that unpleasant environment for four hours or 104 hours; you should get the same \$40,000. Is that right?

**Mr Hodges**—That is correct, Mr Chairman. Our cornerstone is that exposure is exposure.

**CHAIR**—But it is not exposure. The payment is not for exposure to anything. The ex gratia payment is not for exposure to anything.

**Mr Hodges**—It is for being in the tank.

**CHAIR**—It is for working in a very uncomfortable physical environment.

**Mr Hodges**—It is the working environment where you were and, by virtue of the fact that you are in the tank, you are exposed.

**CHAIR**—No. Exposure is irrelevant to the ex gratia payment. It would not have mattered if there were no chemicals, logically. I mean, if we are all sitting around discussing what you might do with an ex gratia payment, we might not have done it the way it was done, I suspect. But here we are looking back on it. The ex gratia payment has no linkage whatsoever to exposure to any chemical. So it is not exposure to anything. Exposure is irrelevant to the issue of whether or not you get the ex gratia payment.

This is unfortunate because I have to say the spin at the time, the way it was presented, and the way a lot of people naturally interpreted it and, indeed, the announcement of it was in response to the SHOAMP, which makes you wonder how the whole thing came together in the first place. But stripped back to its essence, it has no relationship to exposure to anything at all. It is a payment for working in an environment that was uncomfortable or difficult—I think the words were 'special or unique'—and we have had the opportunity to have a look over the aircraft and physically look at where people had to wriggle their way into crevices.

If it is a payment for that work environment, surely I would have thought that logic dictates that if you are in that uncomfortable environment for a longer time, you get more money than if you are in it for a shorter time.

**Mr Hodges**—You are right. A lot of the perception of the tier system is not the number of the 30 days or the 10 to 29, but that ‘I worked there, ergo I was exposed’. That is the problem we have. No matter what we say about the ex gratia payment really having nothing to do with exposure, it is to do with working in the tanks. The perception is that, by working in the tanks, you were exposed. That is the perception.

**CHAIR**—Yes. The difficulty with that is reconciling, as you correctly point out, that there are people who got \$40,000 as an ex gratia payment and who, to use your words, are ‘as fit as a mallee bull’, and that is great. But the reason they got the \$40,000 and are fit as a mallee bull is not because they were exposed to anything; it is because they passed the test that they were working in a special, uncomfortable and unpleasant environment that was made special and uncomfortable not because they were exposed to any particular chemical, but because they were in the confines of small crevices of an F111.

**Mr ROBERT**—But, Chair, over 50 per cent of those ex gratia payees have not submitted a claim to deviate.

**Mr Hodges**—Mr Townsend would like to make a comment, if he may.

**Mr Townsend**—The \$40,000 ex gratia payment or the \$10,000 for tier 1 and tier 2 did not apply to working in fuel tanks—as you say, to exposure. The firemen were paid it. The boiler attendants were paid it. They would not know what an F111 aircraft looked like unless they had a look at its picture on a wall. They were paid for being in that area and getting rid of the seals. There were people who worked in the deseal-reseal who were not fitters in the tanks. They were in that area and were exposed to the hardships that were there.

**Mr BALDWIN**—But there is still that confusion in the public eye about compensation as in medical disability, or whether this indeed is an ex gratia payment for working in a difficult site.

**Mr Townsend**—That is the way I saw the ex gratia payment—for the hardships experienced by those people working in that section. It applied from the top down. People who did not get inside the tanks still got the payment because they worked in that area. As I say, the boiler attendant, the fireman, and people like that who were dispensing with or burning the SR51, putting the blocks into the furnace. They were exposed, I suppose, to toxic chemicals in that area, yet there were people who worked in the area, who were exposed, and have been denied the payment.

**CHAIR**—I am glad we have behind you some people from both Veterans’ Affairs and Defence because when they come forward, they might like to explain to us the rationale that led to exactly the examples you have given.

**Mr Townsend**—If I may, I would like to go back to people and statutory declarations being accepted or not being accepted. I filled out a statutory declaration for a chap who took over from me when I left the deseal-reseal and went to another part in the squadron. This chap who took

over from me was there for seven months, or around about that. He came into the section, he ran the section, and we have photographs of him being in the section. I filled out a statutory declaration. He put in for the ex gratia payment and it was denied because there were no records in the Department of Defence of his ever having worked there.

He asked me to fill out a statutory declaration for him, which I did. I know the man very well. I still know him. He has been denied and is still being denied. The letter came back stating that 'Although Mr Townsend has filled out a statutory declaration, we are not calling him a liar.' I am a justice of the peace and I am not going to perjure myself by filling out a statutory declaration for a person. There are lots of people who knew he was there. There were stacks of people on the base knew he was there, but there is no documented evidence that he worked there so he is being denied that payment. I find that very unreal or unjust. He was there for seven months before he moved up to the main hangar and took over up there.

Another chap, an electrician, has had about three statutory declarations put in for him and I have seen the statutory declarations signed by people who worked in the deseal-reseal section. He was an electrician. When they brought these—I am not an electrician so I do not understand too much about this—pumps out from the United States to pump the solution through the aircraft to soften the sealant, the SR51, these pumps were 215 volt pumps hooked up to 240 volts. They kept overheating. He was asked to go over there and work in the rag hangar, getting these pumps and keeping these pumps going. He was sprayed with this stuff. He was sprayed and that has been documented by the people who worked there and filled out statutory declarations, but they said, 'No, you're an electrician. You're not eligible'

**CHAIR**—Okay.

**Mr Townsend**—They are things that need to be covered.

**Mr BALDWIN**—If indeed the government opened it up to all of those who had supporting statutory declarations, what of those who actually spent the time in the tanks who then think that that is unjust and that they should be afforded more of an ex gratia payment?

**Mr Townsend**—No, I do not believe that at all. We will go back to the people in the squadrons from 1973 to 1977 who worked on the initial program before the deseal-reseal program started. The tier 1 and tier 2 criteria say that those people who worked in the deseal-reseal section from 1973 to 1990 are eligible for an ex gratia payment, depending on the days they spent there. But there was no deseal-reseal section between 1973 and 1977. It just did not exist. They were pick and patch workers. These pick and patch workers did not work in the tanks between 1973 and 1977 because the whole 24 aircraft did not go down to the depot to be desealed and resealed at once, but only a couple at a time. Those people continued in the squadron right through the whole session and they were exposed in the tanks. They were not exposed to SR51 but they were in there with all the plumbing and pumps that were still in those tanks.

You have seen what is inside those tanks. They could not work with respirators or anything because it is fairly tight in the tanks and they had to guess where the leaks were, so it was the old job of sticking chewing gum in the hole and hoping the fuel did not run out so that they could get the aircraft in the air for the next flight. Those people worked around the clock to keep those

aircraft going and flying, and they have been denied anything at all. They may get compensation down the track, I do not know, but they were denied. They have been denied the ex gratia payment. I find that very unjust and very unfair.

**CHAIR**—Unfortunately, as we have on other occasions, we have run over time. I thank you very much for your evidence which has been helpful to the committee, and we appreciate it. You will be provided with a transcript of your evidence today, and if there are minor adjustments that you think are required for grammar and other reasons, you will be given the opportunity to make those changes to the *Hansard* record. Again, thank you for attending today.

**Mr Hodges**—Thank you, Mr Chairman and members of the committee.

[9.49 am]

**DOWSETT, Mr Michael Hutton, Honorary Medical Adviser, Defence Force Welfare Association**

**GRIFFITHS, Lieutenant Commander Richard David (Retired), National Secretary, Defence Force Welfare Association**

**JAMISON, Colonel David Keith (Retired), National President, Defence Force Welfare Association**

**CHAIR**—Welcome. Although the subcommittee does not require you to give your evidence on oath, I advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings in the respective houses. Would you like to make any opening comments?

**Col. Jamison**—First of all, we thank you for the opportunity to provide evidence to you. We realise that the terms of reference of this inquiry are restricted to the administration of the ex gratia payments made to personnel who worked on the F111 deseal-reseal program, but we feel that it is important in the interests of those personnel that the committee look beyond that particular matter, if it is to make an adequate report to parliament. We are most grateful for the opportunity to talk to you about this.

Our concerns are twofold: first the nub of this problem was occupational health and safety—the kinds of chemicals being used and the lack of protective clothing. That problem was not confined to personnel working inside the tanks, nor on just the F111 program. Many other personnel used the same chemicals with just as inadequate protective clothing and procedures while working outside the wing tanks and/or on other aircraft. They were working with chemicals that, from our understanding, Defence ought to have been aware of in relation to the toxicity of those chemicals and their likely effects on personnel who were handling them.

The committee should be aware that the SHOAMP study was set up as a result of the findings of the board of inquiry into the health of the F111 maintainers and specifically those involved in the deseal-reseal process. However, when it was published, it was titled the *Study into the health outcomes in aircraft maintenance personnel*, which is a very wide title. That is when other aircraft maintainers became aware of the study and realised that they may have been exposed to similar chemicals with similar exposure levels. We realise that the authors of the study changed its title because they also examined a control group other than the F111 maintainers, but in widening the subject of the study, other expectations have been raised. Therefore the issue is one of equity and we believe that this committee is entitled to ask why these other workers did not receive the same treatment.

The other issue is one of medical science and its relation to occupational health and safety in the Defence environment. The committee has heard evidence that the SHOAMP study of the F111 workers could not produce conclusive proof that particular cancers were caused by the deseal-reseal work because the sample size was too small. That was despite the fact that they

suffered rates of particular cancers well above those of the wider community. We submit that the committee should inquire whether all other Defence workers who had used similar chemicals, both outside the tanks and on other aircraft, would not have produced a more conclusive result, had they been included in this study. That would thereby have ensured that both F111 workers and those who worked on other aircraft received more equitable compensation treatment.

This really raises major concerns about dealing within the defence environment with occupational health and safety issues. While it is comparatively simple to identify and compensate for OH and S problems if someone is, say, run over by a tank, and while lessons learned from the broader community about hazards such as asbestos can be relatively easily transferred into the defence work environment, this deseal-reseal case demonstrates how difficult it is for a relatively few ADF personnel to obtain justice, if they are the only people handling particular chemicals, particularly if those chemicals have a long latency.

As this deseal-reseal program and indeed the handling of the claims of much larger sample sizes involved in the British nuclear tests have shown, medical science is being used by the Department of Defence and by Veterans' Affairs to shift the onus of proof. No single person can prove that any particular activity involving the workplace environment has led to any particular health problem if it has taken years for the problem to become manifest. It is thus necessary for the victims to band together in class actions, and that can happen only if they know that they suffer from common problems. That was possible for the F111 workers.

As this case shows, rather than did the case of cancer sufferers from the British nuclear did, the Department of Defence and the Department of Veterans' Affairs later demanded proof that in effect the disabilities can only be caused by a particular work environment. With such small samples of workers in many Defence work environments and with the long latency before effects can become manifest, proof beyond reasonable doubt will seldom be possible.

While this legalistic approach to occupational health and safety issues may save the Commonwealth money in the short term, the long-term effect is to increase the cost to the community and also increase the suspicions of ADF personnel about Defence being a good employer that is prepared to stand by its employees. That, of course, then has implications for recruitment and retention, particularly morale issues.

I am left with a couple of questions: How did Defence, as an employer, allow unsafe work practices to be put into place? Then, having realised the outcomes of some of those workplace practices, how did it fail to become proactive in seeking out those who may have been affected to ensure that those effects were examined, studied, reviewed, and that proper outcomes in the member's favour were then produced?

I did have one question on the act of grace payments. Mr Chair, I thought you had answered that question for me, but then I discovered that that is perhaps not the full story, either. I am left in a quandary in trying to understand exactly what were the purposes of the act of grace payments because conflicting statements and the differing ways in which those payments were meted out just leaves questions in my mind. I have a specific question on why Hercules workers, doing similar work in similar sorts of circumstances, were excluded. Of course the wider question is that of exposure to chemicals and why that was not recognised as the core of the issue, and why that did not drive the subsequent processes. Thank you, sir.

**CHAIR**—Thank you for that. I am tempted to comment in respect of the ex gratia that we all suffer because it was born of fuzzy logic, shrouded in misleading spin, and then administered in confusion, but we hope to be able to make some sense of that over the course of the next month or so. You touched on one of the areas that is also a bit of a quandary, which is drawing the link in most cases between those exposed and the F111 program. Do you have any advice or any views about how that should be handled? Are there particular provisions in any of the acts that you think better handle it, or is it something that you think we need to craft a new mechanism for?

**Lt Cmdr Griffiths**—Chair, I think there may be an opportunity to do this. There is going to be a review of the MRCA in the next few months. That may be where we can start to look at standards of proof. That seems to be one of the major issues of this whole question about work environment and long term effects of latent ill-effects. But that is the only avenue that we can see, apart from this committee recommending such a review by the government.

**Col. Jamison**—I keep going back to the basic, if you like, underlying philosophy or principles. It is a workplace safety and health issue. In other areas of the community, the employer is required to accept responsibility and do all in its power to rectify the issues. Some may argue that this is happening and they may argue that with some passion and force, but if that is the case, why have we got so many submissions to this particular inquiry from people who are disaffected, who obviously are suffering health problems, and who do not seem to have any avenue other than this hearing to have their issues looked at and redressed.

**CHAIR**—As there are no questions from other committee members, you are going to get off lightly.

**Col. Jamison**—That is good.

**CHAIR**—In terms of the quantum of the ex gratia payment, I suppose it is a bit difficult because you normally do the quantum after you have established those other criteria that I gave an unkind interpretation to a moment ago. Do you have any views about the quantum or about the tiers?

**Col. Jamison**—Given that it is unclear what the particular purpose is, it is hard to answer that question. It is neither a compensation payment nor, I suggest, because of the way it has been applied, a payment for work conditions. I am tempted to say that it had its genesis in other issues quite unrelated to what we are talking about today. Quite frankly, it is a figure that has been decided upon by somebody, probably from a budgetary point of view, and applied in a way that met that requirement, rather than met the requirement of the situation.

**CHAIR**—If you assume for a moment that it was for the core reason stated—so you strip out the spin and go back to the core reason stated which was, as I described earlier when the RSL was before the committee, for work in unusual or special environments, unconnected to exposure to health risks and unconnected to any complications of potential health, if indeed that is what it was intended to do—on that assumption, are you able to give any view as to the tier question or the quantum?

**Col. Jamison**—In terms of the tier question, I think there is probably too big a step from tier 1 to tier 2, but then those same criteria need to be applied to people who are working in the wing tanks of other aircraft; perhaps in the Army sense, those who are working inside petrol bladders that they habitually use; and I am not quite sure what the Navy does—they probably have fuel tanks in their boat things, and may require those people to get in there too.

**Senator FERGUSON**—Can I say, Mr Ferguson, that surely one of the problems for this being such a long drawn-out process as well is the fact that there just simply are not adequate records. That is the real problem. There just are not adequate records. We heard Mr Townsend say previously when he was in charge he would just say to two or three blokes, ‘You go down to the deseal-reseal.’ No-one anticipated that we were ever going to need to know who was involved in that project because it was not ever anticipated that there would be any dangers. The problem with trying to rectify it some 30 years later is the fact that there are no records for many people, and those in the Department of Defence and the government have tried to come up with a formula that satisfies to some extent people who may or may not have even been involved.

The chair is right: the criterion is that you have to have gone down there and worked. They could have spent 30 days down there not using chemicals at all, wandering around outside the property as firemen and all these other things, but there has been an attempt to try to come up with what is a reasonable process, which nobody is ever going to be satisfied with. We will never satisfy everybody who claims to be involved in this case.

**Col. Jamison**—My criticism there, Senator, is that I do not think Defence has shown itself to be proactive in this to widen the scope of its search for those who may have been involved far enough to provide, if you like, reasonable records of who conceivably could have been working in that sort of environment. I find it difficult to understand that personnel records were in that much of a state that Defence cannot come up with at least a reasonable listing of those who worked either directly in the organisation that did this work or were working in related organisations, and therefore had exposure to those sort of work tasks themselves.

**Senator FERGUSON**—But in answer to that, Mr Jamison, I mean, Mr Townsend actually worked on this project and he cannot remember the names of all of those people, and no records were kept for many of the people. There were no written records, as I understand it. If someone who actually worked with these people cannot remember who they all were, how on earth is the Department of Defence going to find out who was sent down to those areas?

**Col. Jamison**—Senator, I guess they have to ask the Mr Townsends and the other people whom they have identified who may well have been working there, who had been part of the organisations and related organisations, and collectively you may well have got a better answer.

**Mr BALDWIN**—You have raised the issue of the C130s and the work that was done there. I am not aware of the chemicals that they used on the C130s. Were they the same chemicals used in fixing and repairing fuel tanks and so on?

**Col. Jamison**—My advice is that they were the same and similar.

**Mr BALDWIN**—So they were using SR51?

**Col. Jamison**—The advice I have is that that was part of the process.

**Mr BALDWIN**—From the people working on the C130s, how many of those have suffered the dermatitis and the other medical afflictions by comparison? Is there a greater of those on the F111s as against those on the C130s?

**Col. Jamison**—Mr Baldwin, that is a question you need to address to DVA and to Defence. I do not have those figures.

**Mr BALDWIN**—Okay. You raised it in your submission, which is why I had to ask the question.

**Col. Jamison**—Yes.

**Lt Cmdr Griffiths**—If I could add something, about two years ago I was in Western Australia at our Western Australian branch there. One of their members came up to me and said: 'I see we're trying to do something about the C130s. I was working in the C130s et cetera, and we were working in exactly the same conditions with the same protective clothing, et cetera, as the F111s.' I was then later in our New South Wales branch and several people were talking about this issue. One of the advocates, who are the people who assist veterans, et cetera, to put through claims, said, 'Oh, I've been in contact with somebody on Norfolk Island who was in the C130s, but he's dying of one of these cancers right now.' I said, 'Is he going to put in a claim?' He said, 'No, he's going to die within six months. He's not interested.' We have those sorts of issues with this sort of thing.

**Mr BALDWIN**—You have also raised in your submissions another area of those involved in fuel tanks on helicopters. Do you have any idea what chemicals they used? These were the Navy Seahawks. Do you have any idea of what chemicals they were using on theirs that would lead you to raise the same concerns about toxicity exposure?

**Col. Jamison**—No, I do not have that information with me, I am sorry.

**Lt Cmdr Griffiths**—I could possibly add something. We did get an email from a Rob Jeffrey, who is in Tasmania, about some of the similar work he was doing on other aircraft. If I can just read this, perhaps, Chair?

**CHAIR**—Sure.

**Lt Cmdr Griffiths**—He said:

Just a short note to let you know a little about my time in fuel tank maintenance on C-130E and H models, Canberra Bomber integral fuel tanks and Orion P3C.

I was employed with No 2 Aircraft Depot RAAF Base Richmond, between March 1980 and Mar 1986. There I worked on the C-130E wing program, some C-130H model fuel tank maintenance and on the Canberra Bomber integral fuel tank reseal within the depot. From my knowledge, the chemicals and equipment used, were pretty much the same as F-111 except for a water pick and one other chemical that we did not use ...

I remember often, that we had no PPE [protective clothing] and would have our arms and our overalls covered in sealant and or soaked with fuel or chemical vapour. I always came out of the fuel tank feeling light headed and a little nauseous. After finishing for the day and cleaning up, it was common practice to use a green scouring pad to scrub the sealant off our skins with a little MEK solvent. We also used to use a preparation table called a goop table to hand mix the sealant and catalyst. Once we had mixed it sufficiently, we then scooped it into an application tube and used our mouth to suck the goop to the bottom of the tube ready for use. As a young apprentice at the time my supervisors taught me this. I know now, that the catalyst, was cyanide based.

He then goes on:

The Canberra tanks were another repairable item, perfectly clean when they arrived for maintenance at the depot, but were very restrictive for maintenance purposes. Still we had no PPE and used the same chemicals.

And then he goes on:

The chemicals were products were Selleys products—

and he then quotes these; I do not know what they mean:

PR-148 CLEANER SOLVENT PRIOR TO APPLYING SEALANT, MIL-S-8802(PR-1436) B2 or A2 Sealants, MEK (Methylethol/Keton) Solvent and Bekathane, A SEALANT coating.

Then he finishes up saying:

During the early 1990's I worked on the Orion aircraft at RAAF base Edinburgh, 492 Sqn. While the RAAF—

I think by that he means that particular squadron—

were better with the OH&S and PPE there were times when we were still exposed to the same chemicals and solvents.

That may be of some help.

**Mr BALDWIN**—Thank you. From your submission and your concerns for people who worked in all of these situations, are you advocating that the ex gratia payment be expanded to all people of all services that worked in relation to any of the fuel deseal-reseal programs, whether that involved the C130s, the Seahawks, the Orions or, indeed, any aircraft?

**Lt Cmdr Griffiths**—I suppose it gets back to what was the ex gratia payment for. But the other side of it is the occupational health and safety side, which has not been properly looked at.

**Mr BALDWIN**—On my understanding, the ex gratia payment is because of the occupational health and safety for working in a difficult environment, but I just want to know on the record that you are advocating for an expansion of the program.

**Lt Cmdr Griffiths**—If Canberra Bomber fuel tanks were similarly restrictive, although the C130s tanks were bigger, it is still not exactly a nice environment to go into, and I would suggest that those two at least should be looked at.

**Mr BALDWIN**—I guess it comes down to the argument of exposure as against a restrictive work space. We have seen inside the F111s, where somebody of my physical stature would not fit too well, nor of Senator Bishop's, but some of our smaller members of the committee might have been able to get into some of those places.

**CHAIR**—I think we all would have been physically challenged.

**Mr BALDWIN**—I was trying to be kind, Chair! I suppose your argument has a great deal of validity if you are exposed to chemicals, regardless of where you are. Then it is a chemical exposure issue for ex gratia payment as against a confined work space ex gratia payment.

**Col. Jamison**—Yes. There are those two issues. If the payment is for confined work spaces, we ought to define what that is, and any compensation for exposure to harmful chemicals.

**Mr BALDWIN**—My next point would be then that if indeed it is for exposure to chemicals, which have had a detrimental effect on health, that is an avenue for medical compensation rather than an ex gratia payment for a confined work space or indeed exposure to a substance which may or may not have been having an effect on your health. As we have seen, the ex gratia payment is for everybody who fitted the criteria, whether or not they had a detrimental effect on their health in the short or the longer term.

**CHAIR**—We are doing our best to find more questions rather than answers, so we are going well. If there are no other questions, I thank you for your evidence today. You will be provided with a transcript of your evidence today and an opportunity to make appropriate adjustments, should they be necessary. Thank you again for your attendance.

**Proceedings suspended from 10.15 am to 10.28 am**

**ATTIA, Professor John, Professor of Medicine and Clinical Epidemiology, University of Newcastle**

**BROWN, Dr Anthony Maitland, Conjoint Associate Professor, University of Newcastle, Study of Health Outcomes in Aircraft Maintenance Personnel Study Team**

**CHAIR**—Welcome. Do you have any comments to make on the capacity in which you appear?

**Prof. Attia**—I was one of the four chief investigators on the SHOAMP project.

**Dr Brown**—I work for the Greater Western Area Health Service and I was one of the principal investigators on the SHOAMP study.

**CHAIR**—While the committee does not require you to give your evidence on oath, I advise you that these hearings are legal proceedings of the parliament and therefore have the same standings as proceedings of the respective houses. I now invite you to make any opening comments you wish.

**Prof. Attia**—I guess both Tony and I appear here mainly to answer your questions, but perhaps I will give you a bit of background. It sounds like there have been a few questions asked about why the study was set up the way it was. This is the original question we were given: Was there a specific increase in adverse health events in people who worked on the F111 project? It was not all aircraft maintenance. It was specifically targeted to that. The major problem, as Senator Ferguson pointed out, was the lack of records. So it was very difficult to identify who had worked on the deseal-reseal program. There were some concerns that people had not been identified, or that we should talk to people to help identify their colleagues. That sort of thing was done through various methods, and I can talk to those.

The board of inquiry had got some names together. We placed advertisements in major newspapers and in all the Defence newsletters. People who called in were asked to identify friends who had also worked on the project. We even went back to things like squadron photographs and Christmas photographs to try to identify people who had worked on the project. So we tried to get as complete a picture as possible of who had worked on the program, but it was imperfect because the records did not have any notation about who did and did not work and whom we should pick as a comparison group.

The original idea was to pick people on the same base but, being non-technical trades, it was thought that maybe it was not quite the right comparison because the technical trades are exposed to things other than the F111. So if we saw an increased risk of adverse health events in that group we would not be sure whether it was the F111 doing it or there were other exposures due to just being part of a technical trade. So the idea was to have two control groups: the Richmond group, which was another technical trade group not exposed to F111 but who had other aircraft maintenance kind of work, and the Amberley group, which was the same base but non-technical trades. That way, if we saw an increase in the exposed group and the Richmond group we would know it was a general aircraft exposure that was causing the problem; if we saw

it only in the Amberley but not in the Richmond then we would know it was specifically an F111 problem. So that is why we had the two control groups, to try to tease out whether it was specifically F111 or just all general aircraft maintenance or technical trade kind of work.

There were actually two studies. One was the cancer study, and what we found there was that there was a 40 to 50 per cent increase in the risk of cancer compared to both the Richmond and the other Amberley controls. That meant it was probably something linked to the F111 specifically, not general aircraft maintenance. On the question of the significance, it was just on the borderline of significance. I think part of what we were asked here to do is to help interpret what 'borderline significance' means. Statistical significance is just one of the things that you look at to judge whether a result is robust, if you will. But there are about five other things that we noticed in the data in terms of the consistency that made us feel that this was a very robust result—and if you want I can go over them in detail at another point. That was the first part of the study.

The second part of the study was a general health survey which looked at all sorts of domains: cardiovascular disease, respiratory disease, skin, neurological, mood disorders—we measured over 100 different outcomes. The main things that came out of that were that there was a statistically significant increase in depression, in anxiety, in erectile dysfunction, in quality of life and in memory. Those were all statistically significant and solid. Then, to a lesser degree, there seemed to be some problems in neuropsychiatric outcomes—things like new learning and executive function—and in things like dermatitis and obstructive lung disease. So those were statistically significant. There were other domains that were not. Again, there are a few things I can go over later, if you want, that show that that was quite a robust and specific result.

**Senator MARK BISHOP**—For the Amberley people

**Prof. Attia**—Yes, the Amberley people—the exposed group, the deseal-reseal group.

**Dr Brown**—There is another group that we call Amberley which is one of our control groups.

**Senator MARK BISHOP**—Sorry, I meant the deseal-reseal group.

**Dr Brown**—We refer to that generally as our exposed group or the deseal-reseal group, but one of our control groups was other people at Amberley who were not in technical musterings, and the Richmond group was the control group.

**Senator MARK BISHOP**—Got you.

**CHAIR**—In relation to the control groups, how did you satisfy yourself that those people you had in the control group had not been exposed to the Amberley pick and patch or deseal-reseal activity, given that people outside, from various musterings, were drawn in as demand required it? Similarly, how did you satisfy yourself that the control group in Richmond was not exposed to doing similar fuel tank repair work on other platforms?

**Dr Brown**—To some extent, we wanted the Richmond control group to be doing similar work because we wanted to see whether there was actually some difference about F111 deseal-reseal over and above the general maintenance work that was done on aircraft. That was why we chose

the Richmond control group. We wanted them to be representative of general aircraft maintenance people because the hypothesis was that there was something over and above that which was affecting the F111 deseal-resealers.

**CHAIR**—I understand that logic, but there is another question that seems to me to lay over the top of that, which is whether or not the work, required to be undertaken by Defence, by their employer, exposed them to a health risk over and above you and me.

**Prof. Attia**—That is why we had the second control group. The Amberley group were non-technical trades.

**CHAIR**—Yes, but—

**Prof. Attia**—There is no chance that they would have had even contamination by pick and patch people.

**CHAIR**—When you say non-trades, let us just define that. How did you positively satisfy yourself that they had not been dragged in? As we have heard in evidence today and on other occasions, it was commonplace for people who had nothing to do with maintenance to be told: ‘They’re short up at the hangar. Go up there for a while.’

**Prof. Attia**—No, with the trades it was purely by rank and technical category.

**CHAIR**—But was there a positive vetting to ensure that the control group at Amberley had not been exposed to the chemicals, or was there an assumption that, because they were not in the mustering, they had not been exposed?

**Dr Brown**—We made that assumption.

**Prof. Attia**—But the other thing that speaks to your question is that we also did comparisons to the Australian population for the cancer study.

**CHAIR**—Tell me what that illustrated.

**Prof. Attia**—The cancer rates in the exposed group were higher than in the Australian population.

**CHAIR**—What about the control group?

**Prof. Attia**—The control group had about a 30 per cent less cancer mortality rate and about the same cancer rate as the general Australian population.

**CHAIR**—That was so for both control groups?

**Prof. Attia**—Both control groups.

**CHAIR**—Does it concern you that there may have been people in the Amberley control group who had in fact spent time working on the F111?

**Prof. Attia**—Not really because, if there were, if that control group had been contaminated by people who had been exposed and by mistake they were in the control group, that would have had the effect of biasing towards the normal, meaning decreasing any potential effect that we would see—making it harder for us to see, in effect.

**CHAIR**—Correct.

**Prof. Attia**—The fact that we still saw this 40 to 50 per cent increase meant to us that it was a very robust result.

**CHAIR**—So the 50 per cent increase in incidence of cancer was presented to us in a submission with the additional words ‘however, not seen as statistically significant’.

**Prof. Attia**—Yes. Can I speak to that?

**CHAIR**—Please.

**Prof. Attia**—Statistical significance is one of these things that has to be interpreted in the context of what the data is showing, it is a convenient threshold. This threshold has a P value of 0.05. It does not matter what it is. In fact, if you have a P value of 0.051, it does not mean it is not significant and suddenly if you go to a P value of 0.49, it is significant. It is actually a spectrum of significance, and for convenience people have put this threshold at 0.05. The fact that it was right on the threshold means that you then look at the rest of the data and see what it is telling you to try to interpret that. If you want, I can go through the five other different things in the data that told us that that was probably significant.

**CHAIR**—If you could.

**Prof. Attia**—The first one was that we saw exactly the same result in the two control groups. Whether we compared to Richmond to the Amberley controls, the result was the same. If there were other things influencing the rate of cancer, they would normally have been different between the two control groups and you would not see the same result with both. The fact that they were both the same told us that this is a strong result.

The second thing was that we know that we missed some cancer deaths. The cancer incidence in the exposed group was about 70 per cent less than in the Australian population. Whereas in the two control groups it was 30 per cent less. So that told us we missed some cancer deaths. Because of this problem with records, there were people who had died of cancer before the study began and, despite asking and looking at pictures and squadron photographs, we just could not identify them. So, in fact, that 40 per cent to 50 per cent increase is conservative. If we factor in those extra cancer deaths that are clearly missing then the number would be even higher.

The third thing is that you have to be careful that people who are exposed to something like deseal-reseal, which is a pretty nasty experience, might present to a doctor and be diagnosed with cancer earlier. So we are seeing a shift in diagnosis rather than a true increase in diagnosis.

The way to pick that up is when you analyse you not only look at the fact that the cancer has happened but also at the time the cancer was diagnosed. When we do that sort of analysis we do not see any difference in the time of diagnosis between the exposed group and the control group. That tells us that that sort of diagnostic bias is not happening and reinforces the strength of that increase.

**Senator MARK BISHOP**—I would like to go back to the second point. I did not quite get the increase in the number. Could you go over the second point you were making about the increase in cancers above 50 per cent? I did not quite understand what you were getting at.

**Prof. Attia**—About the missing cancer deaths?

**Senator MARK BISHOP**—Yes.

**Prof. Attia**—When you look at the two control groups, who were not affected by this problem of records, you see that the cancer rate is exactly the same as that of the Australian population and the mortality rate is about 30 per cent less. When you look at the exposed group, their cancer rate is 70 per cent less. You would have expected them to be the same as other Air Force people, which would be about the same as the general population. So we know that we are missing some people who died before the study and just could not be identified. There is no other reason that their cancer rate should be so much less than that of their fellow colleagues in the Air Force.

**Senator MARK BISHOP**—Because they have already died.

**Prof. Attia**—Their death rate and their cancer—

**Senator MARK BISHOP**—Because they have already died?

**Prof. Attia**—Yes. The only way we can explain that pattern in the data is that they died before the study started and we could not identify them.

**Dr Brown**—The difference is that we know that most of the study group were alive because they had self-reported; they put up their hands and said, ‘I worked in deseal-reseal.’ When we went to get the other records, we got details off the system about people who were at Amberley or Richmond. They actually had the names of all of those people. If they had died, as people would have done in that time frame, they would have been included in our deaths. But we had no objective way of identifying the desealer-resealers. It is more likely that people who had died were not able to say they were a desealer-resealer before they died. We had lost them out of that group.

**Senator MARK BISHOP**—Understood.

**CHAIR**—Can you go back and complete the five?

**Prof. Attia**—The last one is something called ‘volunteer bias’. Another thing that you worry about in a study like this is that because people are self-reporting, perhaps only the ones who are sick or who have had adverse events are coming forward. What we can do is some modelling to see how many healthy people would have had to fail to participate to bias a result that far away

from zero, if you will. We identified about 900 people who were exposed. You would have to postulate that there were at least another 800 people who were perfectly well and who had worked who did not come forward to participate in the study to nullify this, which is quite a lot.

**CHAIR**—So, combining those analyses with the standard statistical variation that you would apply, the incidence of cancer amongst the exposed group is at a higher level that would give rise to a conclusion that, yes, the group has been exposed and it has produced that outcome. Something was going on in working with the F111s that meant they were more likely to get cancer.

**Dr Brown**—That was our conclusion.

**Prof. Attia**—Our conclusion in the report was specifically that although it did not reach formal statistical significance, taking all this extra data into account, it was a very robust result and on the balance of probabilities there was a real increase in cancer.

**CHAIR**—And the exposed group covered what years of activity? Was it people who were involved in the formal deseal-reseal only, or did you pick up people with pick and patch? What cohort did you select from?

**Dr Brown**—We matched people who got into the control groups at the same time as people got into the exposed group. Some people entered the exposed group as their starting date because they started in program 1 the 1970s, and some people were into it when they started on the wing program or other ones. We actually selected from the Amberley group and the Richmond group people who were at those other places at the same time so that we were matching their exposure and the two groups were aligned.

**CHAIR**—I understand that you have matched the time exposure between a control group and the exposed group. Were people in the exposed group engaged in pick and patch as well?

**Dr Brown**—No, they were not.

**Prof. Attia**—It was program 1, program 2, wings and spray seal.

**CHAIR**—Was that a decision you took doing the research?

**Prof. Attia**—There was extensive discussion—

**CHAIR**—or was there some constraint?

**Dr Brown**—We looked at it and had an extended discussion about pick and patch. In the end we decided that we could not include that group. It was largely because we could not reliably identify those who did it. There was no objective way of doing it. Some people had reported and said, 'We did pick and patch.' That was one reason, because we could not actually include them. We also wanted to give ourselves the best chance of getting a significant result. We wanted to look at what we believed was most exposed group—that is, those people in the formal programs. Although some of them had done long periods of time in pick and patch, some had done only one aircraft.

We thought that if we restricted ourselves to the formal programs, we would have the highest exposure and the best chance of identifying that significant effect. However, we always recognised that there were many common factors between the formal programs and pick and patch, particularly program 2. I think we said in the report that we thought that the results may apply to them.

**CHAIR**—Right.

**Mr ROBERT**—It has been said to me a few times that perhaps the root of all evil on this issue is a genetic disposition to gasoline, as in to avgas. Am I right in assuming that because there is a 40 per cent increase in cancers in the exposed group compared to both control groups that we can discount this as being indeed a specific F111 issue?

**Prof. Attia**—Not completely. This is probably a case where you need the environmental factor as well as the genetic disposition to get a bad result, if you will. In the end, out of the group of 900, we are looking only at 27 cancers in all. That is why it is so difficult to get a tight confidence margin around that. Why is it that only those 27 out of 900 exposed got the cancer? It is possible that some of them are genetically predisposed. One of the things we found in our literature review is that there is a lot of work being done around genetic markers for cancer. That is why blood was stored. In the future, if there were interest, that blood has been stored and genetic studies could be done to help.

**Mr ROBERT**—Of the 900 you chose, they are all in the four formal programs. Is it reasonable to say that those four formal programs all included that chemical SR51?

**Dr Brown**—No.

**Prof. Attia**—No. Our understanding was that only the first program did that. But all of the results we found were consistent between program 1 and program 2. They were the two subprograms where there were enough numbers to do a subgroup analysis. We never saw a pattern where there was an adverse event just in program 1 and not in program 2. So, whatever is causing this effect, it does not appear to be a chemical that is specific to program 1.

**Mr ROBERT**—If I can summarise, what you are suggesting that it is a not an SR51-specific issue.

**Prof. Attia**—This is not an SR51-specific issue.

**Dr Brown**—SR51 was a very difficult chemical. Because it smelt so much and it was really clear, people can remember it. It is not unreasonable that people can remember that more than they can remember the other things. But we were not able to show that there was a specific thing for program 1.

**Mr ROBERT**—That presents a slight issue in that we have had evidence from those working in incineration and the firies, or airfield firefighters. They were solely responsible for working with burning containers of SR51 and they have given evidence about a whole range of adverse health impacts.

**Prof. Attia**—That applies to them. When we quantified the exposure, it was not just working in the tanks. We also captured whether people incinerated or were involved in transport and those ancillary things and whether they were in the same hangar. The results are for that group as a whole; they are not just for the ones who went into the tanks.

**Senator MARK BISHOP**—Are you saying that in terms of the control group, of those who were exposed to the chemical SR51 there is no statistical linkage between the incidence of cancer and exposure; no connection at all?

**Prof. Attia**—The increased risk of cancer applies to SR51, but not just SR51. There are people in program 2 who did not work with SR51 who have showed the increased rates. The increased rate applies to both program 1 and program 2.

**Senator MARK BISHOP**—So the conclusion is that exposure in isolation to SR51 is not a causative factor.

**Dr Brown**—We have not seen that program 1, which included SR51, was any different from the other programs.

**Prof. Attia**—All the programs have the increased risk.

**CHAIR**—Did the exposed group include private contractors or were they all RAAF personnel?

**Prof. Attia**—There was a very small number of private contractors. I think it was only 20 out of the 900 people.

**Senator MARK BISHOP**—I guess it is difficult with such a small number, but is there any discernable difference in what you noted between the private contractors and the RAAF personnel?

**Dr Brown**—We did not treat them any differently and did not look differently. There were also 22 women in our exposed group. We excluded them from our mortality and cancer incidence data because the group was far too small to be able to make some meaningful statement about them. There is no reason to believe that women are particularly different from men in this situation.

**CHAIR**—Is there any work that you are aware of that has been done in respect of families—not the person who was there but their partners and children?

**Dr Brown**—We did try to look at some issues about fertility and birth defects in the general health and medical study. We did not look at any of the other broader health things about mental health or a whole range of other symptoms. One of the questions that was raised for us at the beginning was that there may have been some issues with reproductive health and fertility. We made an attempt. We asked those people fronting for the medical examination and that part of that study to give a questionnaire to their partners. We tried to get information about pregnancies that may have occurred, difficulty getting pregnant, fertility specialist consultations and those

things. We were unable to show any differences between them and the partners of the control group. The women were actually included in that particular bit.

**CHAIR**—And you had a sufficient number of people involved in that to produce a result that you would be confident with?

**Dr Brown**—The numbers were down a bit because not everyone wanted to do that and the partners did not necessarily want to do it. Some people did not have current partners or were not in a position to be able to get their partners to fill in those particular forms. But we were happy that there was nothing to suggest there was a problem there.

**Prof. Attia**—But it would not be what you would call a robust negative. The numbers are small enough that perhaps a larger study could show something. But there was no indication from the size that we had.

**CHAIR**—Right.

**Mr ROBERT**—Considering we have just knocked out SR51 in itself and by itself as a stand-alone product—that is, it is not responsible for the increased levels of cancers and other diseases by virtue of the fact that you have said that there is no difference in program 1 and program 2—can we take that as a statement?

**Prof. Attia**—Yes.

**Mr ROBERT**—Great; we have knocked that out. Your health study was on the four formal programs. The pick and patch went on ostensibly from 1973 right the way perhaps through to the late 1980s. Considering that they never used SR51 but they used the same concoction of other chemicals and they were in the same environment, is it reasonable to assume on the basis of probability that your outcome for the four formal programs would also be the outcome if you had done it on the pick and patch people? Or is there an issue of the four formal programs being in there for a continued period and pick and patch was just ad hoc?

**Prof. Attia**—I guess what you are asking me for here is a subjective interpretation of the data.

**Mr ROBERT**—That is why you are a professor, sir, and I am a politician.

**Prof. Attia**—I can answer that as a general physician, but I will ask Tony to answer it as an occupational health physician. I guess the problem we had methodologically—that is my expertise as an epidemiologist—was how you measure exposure. We talked about whether you measure this chemical or that chemical. Again, with no records, it was very difficult even to start teasing out. It is just this combination of organic solvents that they used, the fact that they were in 40-degree heat, it was very volatile and they were in confined spaces. That is really the exposure; it is that combination of solvents, heat and closed spaces. To try to define it further is almost impossible.

The subjective judgement is whether that mix of circumstances also applies to the pick and patch. I guess I do not know enough about the process itself. It sounds like sometimes they were getting into the tanks and would have had the same exposure as the others. Sometimes it sounds

like it would have been like the wings program, where it was more exposed and more ventilated. I guess as a methodologist I cannot give you a definite answer to that. If you think that they are exposed to that same combination of solvents in the same closed space and the same hot conditions, I would say, yes, they would qualify as exposed.

**Dr Brown**—There is actually an issue of dose here. We thought the people involved in the formal programs were actually there for a long period of time, most of them for weeks, months or longer, doing that because the planes were decommissioned for the time of a whole program to work on this particular plane and then the next one. So people were involved in the program for a longish period of time. Pick and patch tended to be for ad hoc program—the plane was leaking and needed to be fixed operationally now, and so it was a matter of doing that. So it is likely that the pick and patch people were not exposed to the same intensity. They may have done it in the same sort of environment, going in there and doing that, but they may have done a day here, two days, and other things. That probably reduces their exposure to some extent and lessens their probability of getting some effect because of that.

**Mr ROBERT**—So are you adding a fourth dimension to the definition of exposure. You have said a cocktail of solvents, closed spaces and heat. Are you adding now time—that is, intensity?

**Dr Brown**—I think time or intensity is always an element of exposure. For most situations we can show that people who are more exposed are more likely to get the outcome. In some of our things we tried to do that within the deseal-reseal, and in some analyses we showed that, but not in all of them. We would expect that pick and patch actually represented another level, and probably lower, though not always.

**Prof. Attia**—In fact, that was one of the things we set ourselves as the criterion to call something significant. For the ones that I mentioned before—the depression, the anxiety, the erectile dysfunction, quality of life, memory problems—one of the criteria for calling those findings significant was that we did see a dose response curve for all of those. So a small exposure gives you slightly increased risk; higher exposure, a higher risk. All of those observed the dose response curve, so it would be fair to say small doses at that level would give you increased small—

**Mr ROBERT**—Run that past me again.

**Prof. Attia**—What I am trying to say is that all of these significant findings that I mentioned observed a dose response effect. So even a small exposure carries a small increase in risk; large exposures carry a large increase in risk.

**CHAIR**—Is this something you discerned from the study because you have records of the hours or days that people were exposed?

**Dr Brown**—We asked people that question. For people in the exposed group we provided them all with a questionnaire about their exposure, the tasks that they did and the length of time that they did it. It was largely based on the total length of time that they were in the program that we classified them into different levels of exposure, of how long they had been in it.

**CHAIR**—And you were able to correlate the various illnesses and problems with that exposure, and the sample for each exposure was sufficient to make you feel confident about that assessment?

**Prof. Attia**—We looked for the trend. We classified people who worked less than nine months on the program, 10 to 29 months and then 30 or more months. As we went across those three groups we saw a gradual increase in the risk.

**CHAIR**—How does the committee deal with the situation where we have had evidence that people worked on this program for extended periods of time, they qualified to get the \$40,000, so they were there for at least 30 days and, to use the description someone used earlier today, and they are as fit as a mallee bull? I can think of the high profile example of people who worked with asbestos or in that industry, some of whom spent years in the industry and, at least to this point, have been fortunate not to contract related known illnesses and others who were there for a very short time and have been unlucky enough to contract life-threatening illnesses.

**Prof. Attia**—I think that is just the conundrum of biological variability. You see that everywhere in biology. You can have people who smoke until they are 94 and never get lung cancer versus the ones who get lung cancer at 20. Biology in every field just shows that variability.

**CHAIR**—So in dealing with a raft of illnesses that you were describing before and that others have described as not neatly fitting into the categories where you can say that if you smoke a packet a day for 10 years and end up with lung cancer or throat cancer there is a fair bet you can draw a link between the two. Here we are dealing with quite diverse symptoms, the sorts of things you described earlier, without easily identifying a causal effect to any one of them, but recognising from the incidence of it—the statistics—that there is in fact something happening here, even if we cannot put our finger on it. How much weight then can be given to the observation that exposure is a determining factor? We cannot even identify what it is that is causing it, other than we know that something has happened there that has caused a much greater incidence of these ill-health effects.

**Dr Brown**—We have not identified a single factor. We have identified an environment of working with F111s, whether it is chemicals, heat, confined spaces or whatever. We have actually shown that the more of that you work with the more likely you are to get some of these effects.

**CHAIR**—Yes.

**Dr Brown**—I think the issue is that we cannot say it is chemical X or factor Y. But we can say that somewhere in this is one factor or a combination of factors that produce it. We have some evidence that the more of that you are exposed to the more likely you are to have that effect.

**Senator MARK BISHOP**—And at the same time you have evidence that a large number of people who were exposed for long periods of time and regularly to the identified environment have had no adverse effect.

**Dr Brown**—For individuals, yes. We have this difference between looking at a group. If you look at the group, we can say as a group they are more likely to have cancer or some illness. But for any individual, they can only have it or not. We can say this group of highly exposed people are more likely to have cancer, but any individual either has cancer or has not. If you start looking at individuals, there would be some people who have gone through this whole process and had no effects and other people who will have suffered varying effects.

**Prof. Attia**—The analogy of smoking helps clear this up. The more packs you smoke and the more years you smoke, the higher the risk of lung cancer. But when you look at it overall, 90 per cent of smokers never develop lung cancer. You are looking at a risk, but that risk is in those people who are predisposed for whatever reason.

**Senator MARK BISHOP**—But in generality the risk is small. There are millions of people who smoke for varying periods in their life. Whilst 10,000 or 20,000 per annum might die of lung cancer, in the scheme of things, if five million are smoking—

**Dr Brown**—However, this was a small group of people and quite a lot of them reported symptoms across a range of things.

**Senator MARK BISHOP**—In terms of those four factors that you identified in the environment—the combination of solvents, closed space, hot conditions and the time and intensity of exposure—does your data show that any one is stronger than the others, or do we need to look at the total environment?

**Dr Brown**—We were unable to break down things to get enough people who were exposed to this chemical or that chemical to be able to say it was a particular factor. Our best description of exposure is actually working in deseal-reseal rather than any particular things. They were just the characteristics of deseal-reseal.

**Senator MARK BISHOP**—Why is excessive heat or hot conditions one of the factors?

**Dr Brown**—That was part of our description as to the environment of deseal-reseal.

**Senator MARK BISHOP**—If they had been doing the work in the Antarctic, for example, would there have been the same result?

**Dr Brown**—It may have been different because some of the chemicals are volatile and there is more likely to be more vapour present in hot situations than there is in colder situations. But we do not know that. This is just part of our description as to what the environment was like.

**Prof. Attia**—That is based on the biology of the solvents, not anything that we found.

**Mr ROBERT**—While we are discussing your professional opinions on a range of issues, the majority of people with time intensity in the tanks have not submitted a claim—that is, over 50.1 per cent have not. That is evidence from the Department of Veterans' Affairs. That would indicate that not everyone is equally impacted by this in the same way. Therefore, there would need to be something else in play—a genetic predisposition, age tolerance, fair skin, red hair. I

do not know. Is there anything you found that also contributed to or explained why some people were adversely impacted more than others?

**Prof. Attia**—Not really. There is not anything in the study that would speak to that question. We did do standard blood work on everyone to see if there were liver function abnormalities or something else, but nothing showed up.

**Mr ROBERT**—Previous evidence also pointed to a latency impact. Some people have reported abnormalities, health issues or cancers at a very early stage. You have indicated that some may well have died, although you are unsure, of course, and some have more recently reported such instances. Is it reasonable to conclude that this environment has caused a latency of illness; that illnesses could occur in people later on in life at a heightened level as per your study?

**Prof. Attia**—There is nothing here that talks to a shift. As I said before, when we looked at the time of diagnosis there was no difference between the groups. But from what is generally known about the biology of cancer, it is not unusual for some people to have accelerated rates for whatever genetic reasons that are unknown. It is also not unusual to have 10 to 20 years of latency before the first mutation and the clinical cancer being detected.

**Mr ROBERT**—Did your study bring that out, or is it just that general science or epidemiology states that as fact?

**Prof. Attia**—That is the general science of epidemiology, not specifically this.

**Mr ROBERT**—Likewise, in your evidence you referred to the 40 per cent increase in cancers for the exposed groups as compared to the two control groups. When you looked at the cancer rates in the control group compared to the general population, they were the same. That would indicate that your control groups are indeed working. But the mortality was 30 per cent less. Is that because the good air vice marshal keeps the troops fit, and we would see that in the Army and Navy as well?

**Dr Brown**—We would. It is actually a phenomenon that occurs in most working populations. If you are well enough to get a job to start with, then your mortality subsequently is probably going to be less than the general population, which includes people who have never been fit enough to get a job. That is particularly the case with the armed services, where there is a selection process. We select people going into military services who we hope are fitter than the general community. We would expect that their mortality subsequently, particularly in the first 10 or 20 years after that point, will be much less than the general population of the people, which would include people who would not have got into the services.

**Mr ROBERT**—Are you satisfied that that explains why the rate in the control group is 30 per cent less than in the general population—that is expected—and we should discount that anyway?

**Prof. Attia**—That is why we feel that the results are so strong. The exposed group had a cancer rate 50 per cent greater than in the general Australian population. That was statistically significant. Despite the fact that they should be fitter and that their colleagues at Amberley and Richmond have the same rate of cancer as the general population and less mortality, they

actually had 50 per cent more cancers, despite the fact that we were missing some people with cancer.

**Mr ROBERT**—Statistically it is not significant because it is on the line, but your professional opinion is that, based on all of this, it actually is significant?

**Prof. Attia**—It is significant.

**Dr Brown**—Yes.

**Prof. Attia**—It is clinically significant, even though it is not statistically significant. There is more than statistical significance that you need to look at to interpret the data.

**Senator MARK BISHOP**—You identified a range of afflictions that different people in the program encountered over their life. Some of them were mental or emotional and some were physical. Have you done any work, particularly in the past few years, which shows that the affliction that those people suffered or identified earlier in their life naturally healed itself or repaired itself in terms of perhaps, say, emotional dissonance or stress and those types of things? As they remove themselves from the program and get on with their lives, do they naturally come back to normal? Or, once having become afflicted, they remain afflicted for the rest of their life?

**Prof. Attia**—That follow up was not part of the scope of the study.

**Dr Brown**—We do not have data on that. We have an assessment of people at a single point in time and not subsequent data to make a statement one way or the other.

**Senator FERGUSON**—Please tell me if this question has been asked before. I am sorry I was out doing something else. Have questions been asked about the comparison groups that were involved in similar work on other aircraft? Do you know what I mean? We are looking at the F111s. Has your group been compared to people who did similar types of work on other types of aircraft?

**Prof. Attia**—I can answer that again if you want.

**CHAIR**—Please.

**Prof. Attia**—We explained that we specifically wanted the two comparison groups to know whether the effect that we might see in the deseal-reseal people was specific to the F111 work or whether it was part of an effect due to general aircraft maintenance work. So we specifically picked the Richmond group because we knew they had done other aircraft maintenance work. But most of the effects we saw were significant against both the Richmond and the Amberley controls. Our interpretation of the data is that the effects that we see are due to something specific to deseal-reseal of F111s.

**Senator FERGUSON**—Thank you for that.

**CHAIR**—I thank you both for appearing. Your appearance has helped the committee to address a number of issues which have been on our minds and which have been raised over the

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course of earlier submissions and in public hearings. We appreciate your capacity to shed some light on both the methodology and the findings of the SHOAMP report. You will be provided with a copy of the transcript of your evidence and given the opportunity to make any minor adjustments that may be necessary. Again, thank you for your attendance.

[11.15 am]

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

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

**LYSEWYCZ, Mr Michael, Assistant Secretary, Legal Services, Department of Defence**

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

**DOUGLAS, Mr Ken, General Manager, Service Delivery Division, Department of Veterans' Affairs**

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

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

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

**CHAIR**—I again welcome you to the Defence Subcommittee. The subcommittee does not require you give evidence on oath, although I do advise you that these hearings are legal proceedings of the parliament and therefore , have the same standing as proceedings of the respective houses. Also, at the outset, I thank both departments for agreeing to participate in what is not the normal arrangement. I thought that a roundtable discussion might produce some useful exchange of information and enable us to examine some of the more difficult questions. Having both departments before us at the one time hopefully will enable a freer exchange of those thoughts. Would you like to make any opening remarks?

**Air Vice Marshal Brown** —As stated at the outset of the inquiry, the Department of Defence is committed to helping the committee find solutions that will assist those whose lives have been adversely affected by their involvement in F111 fuel tank maintenance. That remains our focus. This inquiry has provided a unique opportunity to help provide resolution to those affected. Defence is determined that people who have been harmed by military service should be looked after.

Defence also believes that the mechanisms for long-term care and compensation exist and intends to work with the Department of Veterans' Affairs and other government agencies to see that this care and compensation is delivered. The solution to this problem will take time and money and expectations need to be realistic. However, defence owes it to those who have served and their families to ensure they receive the care that they need for their continued wellbeing.

The previous response to SHOAMP focused on the very poor working conditions of the personnel who were employed in the four formal deseal-reseal programs. The ex gratia payment was recognition of those working conditions. The focus on this group of workers was driven by the board of inquiry, which was concerned with the deseal-reseal programs and the SHOAMP, which studied the health outcomes of this group.

The ex gratia payment scheme led to disillusionment and disappointment for many. The scheme was designed to recognise adverse working conditions, not health outcomes. While the scheme acknowledged the working conditions of deseal-reseal workers, it led to payments being made to many people who were not sick and, hopefully, will remain unaffected by their work on F111 aircraft. At the same time, other personnel involved in F111 fuel tank repair who did not receive the ex gratia payment have become seriously ill, possibly as a result of exposure to the same or similar chemicals involved in the deseal-reseal process. The focus on potential solutions should be on providing health care to those who are sick and financial compensation to those whose lives have been adversely affected by their work on F111 fuel tank repair. The supplementary submission that we have provided concentrates on the possible responses and solutions to provide additional support for that group of people affected by their service with F111 fuel tank maintenance.

While the Department of Veterans' Affairs is the lead agency in relation to providing health care and compensation for those injured through military service, defence is the other major stakeholder and has a significant role to play. Identifying the parameters of the group that have been involved and the unique working environment of the F111 fuel tank will require significant technical advice and support from defence. This task is complicated by the absence in some cases of documentary records that prove that personnel were involved in fuel tank repair. Defence will work to identify F111 fuel tank maintenance workers who performed work similar to that performed by those in the formal deseal-reseal programs. Defence and DVA have jointly looked at options for expanding the group of people who can get access to health care and simplified access to financial compensation. Defence and DVA will work closely to ensure that the enhanced response is targeted at those most in need.

While the focus now should be on health care and compensation, the committee should also consider the previous ex gratia scheme, which has been the source of contention for so many. The committee might consider whether there is any benefit in continuing to pursue this strategy. The committee should also give consideration to removing at least one of the constraints on the previous ex gratia scheme. I refer to the criteria of the scheme that prevented spouses of personnel who were involved in deseal-reseal who died prior to 8 September 2001 from making a claim. This condition should be subject to fresh consideration

I would like to emphasise that we have presented a number of options to the committee. This is a departmental position, but I understand that it is ultimately up to the committee to recommend and government to decide what should be done. Thank you.

**Mr Killesteyn**—The needs and expectations of F111 workers involved in fuel tank maintenance and their families are complex. Perhaps that is an understatement—the first of many, no doubt. Their experiences as we understand them are unique in the modern RAAF. The Department of Veterans' Affairs remains committed to helping the committee find solutions

The department's role has been to administer the health care schemes, the compensation provided under existing legislation and the ex extra payments system against the rules and policies provided by the former government, but in the face of imperfect information and records of events dating back up to 30 years ago.

Our administration of the ex gratia scheme has been a particular source of criticism. We acknowledge that we may not have got every decision right the first time or dealt with every de-seal-re-seal workers' claim as quickly as we would have liked, and we have been seen as insensitive in the case of some. This is disappointing. Nevertheless, I commend the efforts of the team that has worked so hard under difficult circumstances.

The department has acknowledged the Ombudsman's observations about our administration of the scheme. It is important to note that claimants were advised of their recourse to the Ombudsman. The Ombudsman reported 102 complaints from the 1,215 ex gratia decisions and concluded that in many cases, they—the Ombudsman's office—had been able to assure the complainants that eventually DVA assessed their claim according to the tiers in a way that they could not criticise. In other words, outcomes were in accordance with government policy, albeit that the process was in some instances less than perfect.

There were some difficulties with the use of statutory declarations. We understand that individuals always expect to be taken at their word, even at a distance of 30 years. Unfortunately, in a small proportion of cases, the available records or supporting evidence did not support the declaration. As is normal administrative practice, statutory declarations provided a line of inquiry, which was followed assiduously and energetically. Our intention, as I stated before, was to find a basis for inclusion wherever possible. In this regard, I note that 662 individuals were identified in the board of inquiry as being possibly exposed. In the end, some 726 people have been accepted into one of the three tiers, with the largest number being at tier 1.

The department has been criticised for its insensitivity, such as when two of its staff visited a very ill man in hospital in the company of his wife to tell him that his ex gratia claim had been unsuccessful. An alternative interpretation of this action is that, rather than being insensitive, it demonstrates a mark of the concern of the staff in circumstances where a letter might have been easier. Knowing the staff involved, this is my preferred view. I can assure the committee that we did not act capriciously but on the advice of the treating psychiatrist and counsellors from the veterans and veterans' family counselling service.

As to the administration of compensation schemes, we are ready to provide the committee with an outline of the Veterans' Entitlements Act and the Safety, Rehabilitation and Compensation Act schemes, including the benefits under each at an appropriate point, and can do so immediately after my opening remarks, if the committee wishes.

However, I want to provide the committee with a summary of compensation outcomes so far. There have been 626 individual complainants; 70 claims have been made under the Veterans' Entitlements Act only; 114 have been made under the Safety, Rehabilitation and Compensation Act only; and 442 have been made under both acts. Of 626, 500, or around 80 per cent, are now in receipt of a disability pension or have received a lump sum permanent impairment payment or a widows' benefit. Of the 500, 378 are receiving benefits under the Veterans' Entitlements Act, the 373 disability pensioners consist of 67 totally and permanently incapacitated, three each of

extreme disablement allowance and intermediate, 77 at the 100 per cent rate, 223 at rates varying from 10 per cent to 90 per cent and five receive a war widows' pension. The remainder of the 122 have received benefits under the Safety, Rehabilitation and Compensation Act. Of that, 113 people have received lump sum permanent impairment payment of between \$10,000 and \$370,000, with the majority receiving between \$30,000 and \$40,000, and nine have received the widows' benefit.

It is important to note that this includes all those who have claimed compensation for conditions caused by de-seal-re-seal service, whether or not their condition was accepted as due to that service. Our records show that a small number of people—around 30—had conditions accepted but received no additional compensation. This was because they were already receiving pensions at the maximum—for example, the TPI rate—or their accepted condition was not great enough to move them to the next higher level of compensation. The department is still working hard to provide the committee with whole-of-life estimates of the cost of these benefits. But we have provided five case studies in our answers to questions taken on notice on 21 July.

The Department of Veterans' Affairs and the Department of Defence have worked together on a joint submission to the committee that outlines some of the options that the committee might wish to consider. These focus on enhanced health care, streamlining access to compensation under the Safety, Rehabilitation and Compensation Act and potential future health studies. We are, of course, happy to discuss them in detail to assist the committee in its consideration of the merits of options in and resolving the issues of concern that have been raised by the fuel tank maintenance workers and their families. Thank you.

**CHAIR**—Thank you.

**Senator FERGUSON**—What was the figure of 1,200 that you mentioned earlier?

**Mr Killesteyn**—It was 1,215 claims for the ex gratia payment.

**Senator FERGUSON**—Yet the Air Force's estimate was that 600 were involved and 727 were being considered.

**Mr Killesteyn**—I think one of the difficulties we are find here is that the numbers of people exposed jump around quite a bit. There are quite a few figures. The board of inquiry, which was established back in 2001, had a figure of some 600. We have just heard, for instance, that the University of Newcastle had a figure of some 900 exposed. They move around a bit.

**Senator FERGUSON**—In fact, you really do not know, do you?

**Mr Killesteyn**—The records are such that we cannot provide an accurate figure. But I think ballpark figures are illustrative.

**Senator FERGUSON**—If you said that you err on the side of inclusion rather than exclusion, do you think there is a likelihood that more people will now be included even though their claims were initially not assessed as eligible?

**Mr Killesteyn**—We are not receiving anymore claims for ex gratia payment. Most of those claims that have come forward have done so on the basis of the policies that were set down. So it is unlikely that we will receive more claims unless the policy is altered. That said, we have done a 100 per cent quality assurance on all of the 1,215 claims to ensure that the decisions we made, either to accept or reject, were correct and substantiated on the basis of the evidence that was provided.

**Senator FERGUSON**—I understand that a number of the claimants have suggested that the department is prepared to expend a much greater amount defending a claim than the actual claim would be in payout anyway. Is that a fair comment?

**Mr Killesteyn**—I would reject the assertion and the allegation. Firstly, we are talking about different claims here. There is the ex gratia claim, but there are also claims for compensation.

**Senator FERGUSON**—I am referring to ex gratia claims.

**Mr Killesteyn**—There is no recourse at all for legal matters. The only recourse that a person has for taking that matter forward if it is rejected is a complaint to the Ombudsman, and there is no other legal recourse for us to take. So the whole issue of the department wanting to spend more on legal costs is entirely irrelevant.

**Mr ROBERT**—Mr Killesteyn, when you first came before the committee, 427 claims had been settled. That figure is now 500, which is fabulous. Before it was about sixty per cent, which you said was on par with your normal claims. It is now at 80 per cent. That is well and truly acknowledged. It is certainly acknowledged that the 80 per cent of claims fulfilled and paid is higher than the 50 per cent average. You said 30 had accepted conditions but were already necessarily receiving benefits and no more could be paid. Does that mean that you had accepted 500 plus 30, or was that 30 included in the 500? I just want to clarify that.

**Mr Killesteyn**—I will turn to my statisticians for advice.

**Mr ROBERT**—A wise decision.

**Mr Killesteyn**—I am told they are included.

**Mr ROBERT**—Can you comment on the 126 that have not been accepted? Is that because of lack of documentation or that statutory declarations were not accepted? I just want to get a feel for the 126 that were not accepted and if there were any general trends as to why they were not.

**Mr Killesteyn**—Essentially these are claims for compensation. Presumably the evidence that was provided was not sufficient to enable the person's defence service to be associated with the particular conditions, or that the conditions were not establish in the first place through diagnosis. There could be a range of conditions.

**Mr Douglas**—Generally there are four elements that must be established before a claim can proceed. Firstly, you have to establish that the person is a veteran or a serving member; secondly, that they had some particular service that is eligible under the act; thirdly, that they have some particular injury or disease that they believe relates to that particular service; and, finally, that it

is confirmed in a diagnosis as to the extent of limitation. Those who are not successful in establishing a claim would not have been successful in establishing all four of those elements.

**Mr ROBERT**—Do you have the information, Mr Douglas, on each of those four points? For example, with the 126, did we establish that they were all veterans and serving?

**Mr Douglas**—I am not aware that we have any analysis of that 126.

**Mr ROBERT**—It would certainly be useful if the committee could actually have it to understand what were the issues. For example, if you cannot prove they are veteran or a serving member or, indeed, that they served with RAAF, there is not a lot you can do about that. However, if the issue was a confirmation of diagnosis, that perhaps might be a different ballgame.

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

**Ms Spiers**—Mr Roberts, I suspect, knowing the nature of the sort claims involved, that it is not the first three issues that Mr Douglas has referred to. It might be that we cannot establish a diagnosis because of the nature of that particular condition. I think we have mentioned before multiple chemical sensitivity. That is not in the International Statistical Classification of Diseases. On the other hand, because of the compensation scheme they were applying under, they might not have been able to satisfy the statements of principle. The purpose of those couple of pieces of paper is to explain how the two compensation schemes operate.

**Mr ROBERT**—We take that as read, and we know, of course, that the statements of principle do not include many of the effects that have been experienced. I want to follow on from Senator Ferguson's point that there had been some reports. Submission No. 13 from William Knilands states that reports were passed from doctor to doctor and subsequently each found in favour of DVA to repudiate claims regarding health conditions. We have heard that a number of times in evidence. This is where the senator was coming to in respect of doctors coming back and saying, 'Well, no, we repudiate that claim. We do not believe you.' We now have a doctor representing a serviceman who says it is and the commonwealth saying that it is not. Out of that 126, it would be interesting to know how many of those cases exist. In how many cases is the medical profession at odds with itself over the confirmation of diagnosis?

**CHAIR**—While I am happy to for us to work on the assumption that your advice is roughly the ballpark for today's purposes, if we can get a breakdown of that on notice that would assist us all.

**Mr Douglas**—Yes.

**Senator MARK BISHOP**—Mr Killesteyn, various sets of figures show that there has been something like 1,200 or 1,300 people involved in the program over the years. There were 1,200 claims for ex gratia payments and you have processed to finality some 626 claims under the VEA or the SRCA, 500 of which have been accepted to some extent. That 500 out of 626 strikes me as being enormously high from a further set of workers that is only 1,200 or 1,500 men. Is that figure of 500 claims relating to disability out 626 highly disproportionate or the norm in

your experience over the years in the DVA when you have claims for disability compensation, or am I just going down the wrong path?

**Mr Killesteyn**—As I mentioned in earlier evidence, the average acceptance rate for claims across many, many years and across all claims that we get for compensation is generally around 60 per cent.

**Senator MARK BISHOP**—Right.

**Mr Killesteyn**—Perhaps what is happening here is that the Military Rehabilitation and Compensation Commission has made a determination under the Safety, Rehabilitation and Compensation Act for facilitated access into the compensation schemes. In other words, it is the section 7 (2) determination. I think that is potentially at work here in making the acceptance rate higher because of the presumption under section 7 (2) that the work that has been done by the people involved in the deseal-reseal and their injuries and conditions are associated with that work. It makes the process easier, if you like.

**Senator MARK BISHOP**—With that explanation, are you then talking about the beneficial aspect of legislation?

**Mr Killesteyn**—That is correct.

**Senator MARK BISHOP**—But the beneficial aspect of the two acts applies to all claimants.

**Mr Killesteyn**—It does, but I am also talking about the beneficial aspect of the section 7 (2) SRCA determination. That is the key. It is beneficial legislation irrespective across the board, but the decision to apply section 7 (2) to all of those people who are defined as being included in one of the tiers enables facilitated access into the compensation scheme.

**Senator MARK BISHOP**—Got you.

**Mr Douglas**—The normal 60 per cent figure that tends to be used is one that is associated with conditions claimed. These figures we have given you relate to people who have claimed. The number of conditions they have claimed will be higher than the 500.

**Senator MARK BISHOP**—Yes.

**Mr Douglas**—I do not believe that we have given you the figures on conditions claimed.

**Senator MARK BISHOP**—I take that point. I might return to that Mr Douglas, because that will give a different set of figures. Taking the two sets of figures, roughly 500 disability claims admitted out of somewhere in the ballpark of 1,200 or 1,300 workers in the program over the relevant time is something in the order of 40 per cent of the work force ending up on disability claims. Is that normal or abnormal with your exposure to vets and defence industries, Mr Killesteyn?

**Mr Killesteyn**—I would find that very difficult to pass judgement on because, first, you are talking about a benchmark figure of 1,200 or 1300 where that figure jumps around; and,

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secondly, I am talking about the benchmark of the number of people who have actually claimed—that is, those people who have reached a view that the conditions that they are experiencing are associated with their fuel tank maintenance work. To establish a benchmark against a potential 1,200 or 1300 or whatever is not a fair indicator of whether the 40 per cent rate is common or not. That benchmark is somewhat illusory, I think.

**Senator MARK BISHOP**—Why do you say it is illusory if 500 workers exposed in a program out of 1,200 or 1,300, give or take, say, 10 per cent, are then years afterwards admitted for various disability pensions? Why is it illusory?

**Mr Killesteyn**—Because I have no way of suggesting how I contrast deseal-reseal work with any other type of work within defence.

**Senator MARK BISHOP**—All right.

**Mr Killesteyn**—I could give you a figure. We have 17,000 compensation claims a year. If I take 17,000 compensation claims out of the total number of people who are serving, that is essentially another similar measure that you are suggesting. Again, I do not know whether that is good, bad or indifferent. The contrast you are asking me to make is a difficult one to draw any conclusions from.

**Senator MARK BISHOP**—It may well be a meaningless conclusion. I understand where you are going. Have you or your officers in your experience over the years noticed such a high proportion of workers in the defence industries being accepted for disability claims? I accept your point, but 500 out of 1,200, or 40 per cent of workers, strikes me as objectively a very high proportion. There is a lot of experience here at the table. Have you identified such a high figure in other areas?

**Mr Douglas**—I think the difficulty is that people have service outside of their deseal-reseal experience.

**Senator MARK BISHOP**—Yes.

**Mr Douglas**—Some 30 years down the track, the numbers we are giving you represent their claims against total service issues. Some of these people may have even had operational service experience.

**Senator MARK BISHOP**—Yes.

**Mr Douglas**—Therefore, they have issues arising from other factors of service. It is a very difficult benchmark to form a judgement about.

**Senator MARK BISHOP**—Right. But that 500 who have been admitted for disability claims relates to disability of whatever degree suffered from exposure in the deseal-reseal program.

**Mr Douglas**—No, these are people who have claims accepted under either piece of legislation.

**Senator MARK BISHOP**—Yes, relating to—

**Mr Douglas**—Including at least one condition related to deseal-reseal.

**Mr Killesteyn**—Of itself, the contention that you are putting that this particular work has perhaps driven conditions at a higher rate is acceptable. I would not necessarily disagree with that. But I find it a bit difficult to draw a distinction between this work and other work and claims generally across board.

**CHAIR**—Listening to the evidence, this is somewhat confusing to me at the moment. We have had evidence in the past about difficulty of establishing a direct causal link between the exposure and particular illnesses and the fact that the range of symptoms and conditions is apparently unconnected and diverse. However, as we have just heard from researchers with the SHOAMP, the incidence is high enough to come to a conclusion that something is happening here. Which aspects of the legislation have enabled you to determine that such a high percentage of workers engaged in the F111 deseal-reseal program had a causal link? I assume you had to determine that somewhere along the line. It seems a bit counter-intuitive to a lot of other evidence we have heard.

**Ms Spiers**—It is actually all in how the schemes operate. That is why you will see a higher rate of success under the Safety, Rehabilitation and Compensation Act. It is because of the way the section 7(2) determination operates contrasted to the Veterans' Entitlements Act, which has statements of principle based on sound medical and scientific evidence.

**CHAIR**—Give me the quick idiot's guide to that difference.

**Mr Killesteyn**—This is compensation 101.

**CHAIR**—Good.

**Ms Spiers**—You will have two pieces of paper in front of you. One is headed 'Processing of veterans' entitlements claims' and one is headed 'Processing SRCA claims'. I will take you very quickly through the VEA claims process. It is very high level, so I am using concepts here. I am happy to expand on any particular issue you might have.

As Mr Douglas mentioned before, there are four key elements you need once you are looking at a claim. Under the Veterans' Entitlements Act, they have to be a veteran or a defence force member. I am not talking specifically about the deseal-reseal group. This is genetically how the act operates. They have to have eligible service. The key on eligible service is that it determines the ability of a person to claim under that particular act. If you want me to I can expand on that.

**CHAIR**—They are date specific?

**Ms Spiers**—Yes, they are date specific. The other key bit about eligible service is that the standard of proof that is applied to your claim is dependent on the nature of your service. I will speak very generically here. If you have war or war-like service, you will have the more generous standard of proof, which is that the commission has to be satisfied beyond reasonable doubt that the claim cannot succeed. If you have just peacetime service or defence service—if I

can use those concepts—then the more common balance of probabilities or reasonable satisfaction concept of proof is applied. That is the key in terms of eligible service. You then have the claimed injury disease and you need a diagnosis. Both acts operate with the concept of needing a diagnosis for the condition.

Under the VEA, you then have to apply the relevant statement of principle. You will see that I have mentioned in the sidebar that they are prepared by the Repatriation Medical Authority. The authority has five eminent specialists in the field of examining medical and scientific evidence and looking at causal connections with service. We have statistics provided by the RMA that 94 per cent of all the conditions claimed are covered by a statement of principle. You can see that it covers the field.

There are always two statements of principle for each condition. I mentioned the fact that there were those two standards of proof. You will get the two statements of principle, and the one for beyond reasonable doubt has a more generous view on what factors need to be satisfied to have that condition accepted as service related. The statement of principle has the causal link. You have to satisfy one of those factors to succeed with a claim under the VEA.

I will come back to the situation where there is no SOP in the use of section 180A. I want to continue through the process. If someone can satisfy a factor within the statement of principle relevant to the condition they have claimed then we determine the condition to be war caused or defence caused, depending on their type of service. We must then immediately assess a rate of pension payable as a result of accepting that condition. You will see I have mentioned the Guide to the assessment of veterans' rates of pension (GARP) and the lifestyle questionnaire. We look at a combination of the social impact of that condition, self-reported, and also the physical impact of that condition to determine a rate of disability pension.

You will see that we pay 10 per cent to 100 per cent of the general rate. I have given those ranges of fortnightly pension in the sidebar. If we determine that the rate of pension will be 70 per cent or greater, we are obliged to consider the above general rate payments. You have heard of the TPI and the special rate. They are earnings-related pensions. We have to consider that as part of the decision-making process.

As a consequence of making those decisions, we then issue person with a DVA health care card. It will depend on the level of impairment they have as to whether they get one specific to the condition they have—that is, a white card—or a more general card that covers all conditions, which is the gold card. Obviously the gold card is the one that regardless of whether the condition is war caused you can go to the doctor and get treated using the card. I think the committee would be aware of the significance of the gold card. There is also access to health and related care services. We have mentioned just three of programs: veterans' home care, the rehabilitation appliances program and counselling.

Not directly related to what I have just mentioned, but depending on the nature of the person's service, they might also be entitled to claim a service pension. They obviously have to satisfy an income and assets test. If they are applying for an aged service pension they must obviously satisfy the age requirement. If it is invalidity pension then they are unable to work. That is the simplest way I can put to you how this works.

**CHAIR**—You have done well.

**Ms Spiers**—I will go back to a case where you do not have a statement of principle. As I said, six per cent of those claimed conditions do not. They are ones where either the Repatriation Medical Authority has not established a statement of principle or it is such a rare condition that the medical evidence means that the authority is not in a position to form a statement of principle. We then go back to the old section 120 of the legislation, which provides that the commission has to be satisfied—let us assume that this person has service that gets the highest standard approved—beyond reasonable doubt that the condition is not related to service. It would rely on independent medical evidence from the person's treating doctor, or perhaps specialist-level evidence. You can see given the numbers that those cases are very rare and for rare medical conditions as a rule that is in effect how it operates.

I can talk about section 180A in the context of this or I can talk broadly about how SRCA operates. I do not know which way the committee would wish me to go.

**CHAIR**—Why not run us through SRCA very quickly.

**Ms Spiers**—Okay. You will see it is a slightly different arrangement. You do have the concept of defence force member and you need defence service. You have to have a claim condition and a diagnosis. Once again, you need something that satisfies the ISCD classification. The requirement then is to look at determining liability. The legislation requires us to determine the liability to accept the condition as being service related if there is a significant contribution of service in developing that condition, and it must be a material contribution. There is case law to support what that means.

To assist the commission delegates who make these decisions, you will see that we have mentioned as a sidebar the Military Rehabilitation Compensation Commission, which is the policy arm responsible for defence claims under the SRCA legislation. The policy arm has agreed to the use of statements of principle that do not appear in the Safety, Rehabilitation and Compensation Act, but only where it will result in a positive outcome for a claim under SRCA.

If there is a statement of principle, for instance, ischemic heart disease, and the medical evidence that you would normally gather for the particular SRCA claim is not working, but you can look at the factor and see that the individual can satisfy it in the statement of principle then the policy says accept the claim. You have satisfied the significant contribution element of it. So it is a supportive element. But that is using the different schemes' causal instruments for the purposes of establishing causation under the SRCA legislation.

Section 7(2) is in the Safety, Rehabilitation and Compensation Act. We have heard quite a bit of discussion today and on other days about what it is. It is a determination that can set a list of conditions, injuries, diseases and particular work environments and say that if you are in this sort of work environment and you have this sort of condition then you have satisfied the significant contribution test and you do not have to get a medical opinion to satisfy that. You have your diagnosis and service, tick, liability is accepted. That is how section 7 (2) operates.

I will now deal with what immediately hangs off a liability determination. You will see that I have mentioned 'severely injured'. That is an automatic entitlement. It is for extreme cases with

extreme injuries. But the liability decision operates quite separately then to what can happen after that. You can see we have quite deliberately drawn it as three elements: permanent impairment, rehabilitation and treatment, and incapacity payment to age 65. That is quite different from the Veterans' Entitlements Act. Once you start a claim, we accept liability and pension or health care follows as a matter of course.

Here you have permanent impairment. That looks at the potential for a lump sum. It is the non-economic loss, it is based on the level of impairment and it is non-taxable. It is for the inconvenience of the impairment and you have rehabilitation and treatment. There are vocational, living skills and aids and appliances elements under rehabilitation.

In terms of treatment, there is not a health card under SRCA. It is the reasonable cost of treatment paid for the accepted injury only. The nice little comparison here is that you may have a truckload of conditions accepted under the SRCA legislation and you will be accepted for treatment costs for each of those. You might have a similar person who has entitlements under the Veterans' Entitlements Act and, because they have had this cumulative bunch of conditions accepted, they are entitled to a gold card. It is not just their accepted conditions that are covered, it is all of their health care. That is quite a distinction between the two schemes.

To the right you will see there are the incapacity payments to age 65. If there is a loss of income as a result of the incapacity, then it is periodic payments. It is economic based and cuts out at age 65. What can flow from that also is access to related care, being household or attended care. As you can see, the schemes operate quite differently.

I will apply some of the knowledge of the particular group we are dealing with. Many of the group have entitlements under both acts, and they are not mutually exclusive. A claimant can claim the same condition under both acts. As you can see, they will not follow the same path. If they are successful under both acts then we use the provisions of compensation offsetting to adjust for the fact that they have been previously compensated under the former act. That is a different discussion that I could entertain you with if you wish.

**CHAIR**—Going back to my earlier question, under what provisions will most of the people who have been processed who have this raft of difficult to attribute causal relationship be compensated?

**Ms Spiers**—They will satisfy the SRCA rate. With the exception of the pure contractors, all of the defence force members have coverage under the Safety, Rehabilitation and Compensation Act but not all of them have coverage under the Veterans' Entitlements Act. That is why that act has some attraction.

**CHAIR**—Just to tidy up our paperwork, we will take these documents as exhibits. It is resolved. Thank you.

**Mr ROBERT**—Mr Killesteyn, previously when you were here you indicated that the total cost to the commonwealth so far was about \$67.0 million, which tended to break down into the SHOAMP study at \$5.3 million, the interim health care program better health program at \$1.9 million, the ex gratia payments at about \$22 million and \$38.1 million in compensation. You

indicated in your opening statement that you are working on the whole-of-life costs that we asked for. We accept that. Is the \$67.9 million figure still correct, or has that changed?

**Mr Killesteyn**—It might have varied marginally with a number of additional compensation cases. I think we have processed the last of all the ex gratia claims now, so it has probably moved up marginally. But I do not think I would say it has doubled or anything like that.

**Mr Douglas**—It will continue to increase for those people, for example, in receipt of incapacity payments and for those people who may not have accepted a lump sum.

**Mr ROBERT**—They are the whole-of-life costs. But the \$67.9 million is in accounting terms the cash that the commonwealth has paid out.

**Mr Killesteyn**—So far.

**Mr Douglas**—Thus far.

**Mr Killesteyn**—And it can only escalate.

**Mr ROBERT**—Of course.

**Mr Killesteyn**—With the exception of the ex gratia payments at this point, because all of those decisions have now been made.

**Mr ROBERT**—And you are coming back to the committee with respect to what will be the total cost over time.

**Mr Killesteyn**—Which will move as a consequence now of the compensation decisions.

**Mr ROBERT**—Of course.

**Mr Killesteyn**—But I suspect that it will be very significant.

**Mr ROBERT**—This is a gypsy question. Does the department know the average cost of a gold card per annum? What does a gold card cost the commonwealth per annum?

**Mr Killesteyn**—It is \$16,000.

**Mr ROBERT**—What does a white card cost the commonwealth?

**Mr Killesteyn**—We have a little statistics card. Perhaps we should all have it at our disposal. It is one of those things you keep in your wallet. This time it did not work.

**Mr ROBERT**—You have a statistics card in your wallet?

**Mr Douglas**—Yes.

**Mr Killesteyn**—I apologise, it is not \$16,000. The estimated average gold card cost for 2006-07 is \$14,500. This is at March 2008. For a white card, it is \$1,400.

**Senator MARK BISHOP**—Ms Spiers, I presume it was you who provided a fairly detailed response on the discussion we had last time about section 180A of the VEA. Thank you for that. I now understand where the department is coming from. Could you also take on notice and provide to the committee the relevant extracts from the explanatory memorandum and the minister's second reading speech so that I can go back to the original source material? I do not think you provided the results.

**Ms Spiers**—If it will assist the committee, I actually have those with me.

**Senator MARK BISHOP**—That would be useful. I refer to the parts you rely upon in coming to your construction of that section of the act. Secondly, can you explain to me now why the Repatriation Commission's interpretation of section 180A of the act is to take the same approach to ex gratia payments as it does to the application of the SOPs by the RMA? I ask that because I would have thought, prima facie, that if there is an ex gratia mechanism in the act to give a benefit to a worker, a group of workers or a class of workers in exceptional circumstances, the exceptional circumstances will, by their nature, vary over time. It is indeed a safety valve. Why is it limited to the link between the outcome and medical science or medical causation? Why is the same process applied in both sections?

**Ms Spiers**—I think I can clarify the issue for you now. The ex gratia scheme is not covered in the legislation; it is an administrative scheme. So the rules that have been explained in this forum and others have been the government's policy in terms of how the administrative scheme would operate.

**Senator MARK BISHOP**—Right.

**Ms Spiers**—Section 180A of the legislation deals with what the Repatriation Commission is allowed to do. The words in the section are clear in terms of when it can operate, but it is still at the discretion of the Repatriation Commission. It is in keeping with the legislation to allow the commission to exercise its discretion to use section 180A determinations where it considers appropriate, once it has met those conditions precedent. That is, that there is either a statement of principle in place from the Repatriation Medical Authority or the authority has declared that it will not make a statement of principle and that the Repatriation Commission considers, given the existing statements of principle, that the claims cannot succeed. Then at its discretion, if it has evidence before it that allows it to look at a particular group for acceptance of any particular condition—that is, injuries or diseases—it can do a section 180A determination.

I will clarify the operation of section 180A. If the Repatriation Commission were minded to do section 180A determinations, it would have to do determinations, not a single one. It would be for every condition it wished to cover for a particular group. It is the range of those health conditions mentioned in the SHOAMP report.

**Senator MARK BISHOP**—Right.

**Ms Spiers**—I do not think it is in conflict because one is an administrative scheme and one operates under the legislative banner of the Veterans' Entitlements Act. But it is a subsequent discretion.

**Senator MARK BISHOP**—Right. With regard to section 180A in the VEA, you have determined the policy in terms of its application and you derive that, you say, from the act. What is this administrative scheme you are referring to?

**Ms Spiers**—You mentioned the ex gratia scheme.

**Senator MARK BISHOP**—Yes.

**Ms Spiers**—That is an administrative scheme; it is not covered by the Veterans' Entitlements Act or the Safety, Rehabilitation and Compensation Act.

**Senator MARK BISHOP**—What is the section 180A? How do you refer to that?

**Ms Spiers**—It is a legislative provision within the act resulting in legislative instruments. However, it is still at the discretion of the body that determines those instruments, and that has been the Repatriation Commission.

**Mr Killesteyn**—Section 180A is entirely related to the issue of determining compensation. The ex gratia scheme has absolutely nothing to do with compensation; it relates to the work circumstances. The ex gratia scheme is an executive scheme determined by the rules and policies laid down by the former government. That is what has been applied. The rules are taken, we look at the evidence in terms of a person's involvement in the programs against the rules, and we administer that in the absence of legislation. It is an executive scheme and we are guided simply by the decision of cabinet.

Section 180A is really about whether there can be a way of, again, giving facilitated access for people in terms of their claims for compensation in a similar way to the section 7(2) determination under SRCA. That is why the issue keeps being raised. People are looking to make claims under the Veterans' Entitlements Act rather than the Safety, Rehabilitation and Compensation Act, generally because they have believe the Veterans' Entitlements Act is more generous than SRCA. They are therefore looking for exactly the same facilitated access as far as their compensation claims are concerned.

**Senator MARK BISHOP**—All right.

**Mr Killesteyn**—We do not believe that that makes sense, because all the workers have eligibility under the Safety, Rehabilitation and Compensation Act. The section 7(2) determination has already been established. However, it is a question of whether more people should be given access to section 7(2) —that is, more than those who are currently defined in terms of the three tier definitions. I guess that is the issue that defence would particularly have a view about whether that needs to be expanded

**Senator MARK BISHOP**—Thank you. Indeed, you submit that section 180A of the VEA is part of a legislative scheme that has limited application in particular circumstances. Indeed, there is no legislative provision in the act for an ex gratia payment.

**Mr Killesteyn**—That is correct. Indeed, the advice in relation to the use of section 180A from all of our legal advisers, including external legal advice from Attorney-Generals, is that there still needs to be scientific evidence about the conditions and the causes of those conditions before you can execute a determination under section 180A. The advice I have is that it would be difficult in the circumstances that we are currently facing with the desal-reseal workers.

**Senator MARK BISHOP**—Thank you Mr Killesteyn and Ms Spiers. That has helped me a lot.

**Mr ROBERT**—I refer to ex gratia payments. The SHOAMP study professors indicated that the cause of the issue, whilst not a single factor, is best described as an environment cocktail of solvents, closed spaces, heat and the time and intensity. This led to the government's decision to have the ex gratia payments for time in the tanks for the four programs. Air Vice Marshal Brown and Mr Killesteyn, was that also your view? Was that the reason why government went there?

**Air Vice Marshal Brown**—I would have trouble answering that question because I was not around at the time when those sorts of determinations were made. I think that was why government went down that path. In my view it is still a flawed approach to the problem.

**Mr ROBERT**—What would defence rather have seen in that respect? Did it have a view?

**Air Vice Marshal Brown**—I think at the time there was a view about trying to grab everybody who had some sort of disease or sickness as a result of that. From that point of view probably a more targeted approach would have been better. The problem is that when you put together an ex gratia payment like that you have to try to put a boundary around it. I think that is where we have run into difficulty with that scheme.

**Mr ROBERT**—Mr Killesteyn, do you have anything else to add in that respect? I am assuming that government went there because of those four things in the SHOAMP, especially that time intensity. The SHOAMP guys were saying that the longer the time the higher the rate of illness. It showed a direct link.

**Mr Killesteyn**—Hindsight is a wonderful thing, as you well know, Mr Robert.

**Mr ROBERT**—It is a perfect thing.

**Mr Killesteyn**—I think there was an element that there was much more potential clarity around the people who were involved in the formal programs than there was around those who were involved in the informal fuel maintenance work. To that extent it was a useful place to start once a decision had been made to provide an ex gratia payment. That was a useful place to start to determine who would be eligible for that payment. Hindsight tells us that it appears that others were involved in fuel tank maintenance work who did work of a similar nature.

I think that is where the whole issue is now vested. I guess that defence would have a particular view about who those people are and whether they should now be part of the tier definition for access to section 7(2)(i) of the Safety, Rehabilitation and Compensation Act, or whether it needs to be extended to an ex gratia payment. But that is a difficult judgement.

**Mr ROBERT**—In the pick and patch program is it reasonable to say that we have?

**Air Vice Marshal Brown**—There were guys in squadrons 482, 1 and 6 who spent considerable time in the tanks doing pick and patch work. I think the F111 was a unique aeroplane. Fuel tank leaks were a problem throughout its service. You had the four formal programs and you could identify people that were involved in those four formal programs. At the squadrons there would have been people who worked inside the tanks, but they would have also done other work. They might have rigged flaps, done ramp servicing, and things like that. The whole time they were in the squadron was not spent inside the tanks.

**Mr ROBERT**—Of course.

**Air Vice Marshal Brown**—But they certainly would have spent a week, two weeks, or some period doing that. It is very difficult to identify that group of people.

**CHAIR**—Under the SRCA provisions what is the qualifying service or years of service?

**Ms Spiers**—It is straightforward. Basically, with the exception of those contractors that were not employed by the Defence Force, anyone that worked on the F111 program, because of the nature of their defence service, would be picked up by the Safety, Rehabilitation and Compensation Act.

**CHAIR**—Is that in section 5?

**Ms Spiers**—Serving member, or former serving member.

**CHAIR**—I turn for a few moments to the ex gratia scheme. The submissions we received from the departments at the earlier public hearing in Canberra, and again today, reiterate that there was no connection between entitlement to ex gratia payment and questions of health—exposure to things that would create health problems. That has certainly been the basis upon which I have been functioning during the course of this inquiry.

The definition of those who qualify for tier 1 and tier 2 payments has a range of folk undertaking very different activities. How was that put together? For example, on what basis was it determined that 30 days working on the reseal-deseal program was equal to 30 days working as a boiler or plant attendant?

**Dr Gardner**—I can answer some of that. You may recall from my initial evidence on 21 July that I said there was zero relation between health and outcome, et cetera. This morning, Professor Brown mentioned in his evidence that in general there is an exposure matrix in measuring health outcomes and that it usually relates both to time and to intensity of exposure. What he did not say was that in relation to the SHOAMP study, apart from the rough estimates of time, and self-reported estimates of time, during various jobs there were no actual

measurements, in most cases, of days of work, and certainly no actual measurements of personal dosimetry with exposure, breathing zones, skin absorption, urinary excretion, et cetera. So they are very 'soft'.

It is important to mention that there may be a misunderstanding, which Mr Robert picked up on. Of the conditions that appeared to be related to time of exposure and/or intensity of exposure, these were almost exclusively the self-reported symptoms. There was no evidence relating to things objectively measured by Dr X at Health Services Australia—things that could be related—nor was there a link to the cancers. The other problem here—again we had a long discussion over a period of many years while the SHOAMP study was being developed and reported on by the researchers—is whether those findings are significant. I said previously that I believed them to be of borderline statistical significance, but today they have said that they believe they are significant.

There are a couple of things that they did not bring out, that is, that there are some internationally accepted criteria that have been around for about 30 years known as the Bradford Hill criteria that determine whether things are likely to be real. A couple of the conditions that were not mentioned today relate to whether there is other evidence to support a particular finding and also whether the finding has biological plausibility. In other words, is this likely to be possible? Again I point to the fact that there were problems relating to the SHOAMP outcomes. For example, some bowel cancers were found. There is zero evidence in the literature relating to solvent exposures and bowel cancer.

I do not doubt that people had bowel cancer—that was a confirmed diagnosis—but I am at a loss to explain how that relates to occupational exposures. There are other important things to understand. I believe, even today, having been involved almost from day one in the SHOAMP program and subsequent programs, that there is nothing that relates to exposure that we can find from the statistically valid outcomes in the SHOAMP study other than the self-reported neurological and neuropsychiatric problems. I do not doubt that they are real but we have no way of independently confirming time or intensity.

**Mr ROBERT**—Can I challenge that for a second, Dr Gardner?

**Dr Gardner**—Yes.

**Mr ROBERT**—Just going back to what Professor Attia said, he agreed that statistically it was not significant, but he said that it was clinically significant. He also said that in the cancer study there was a 40 per cent increase in the exposure group than the control group, which was a confirmed medical diagnosis, and that the control group's cancer study was exactly the same as the general population, except apparently they were a little healthier, so there was a 30 per cent decrease in mortality. Would that not be at odds with what you just said?

**Dr Gardner**—Unfortunately, this comes back to the fact that I believe both of us are correct.

**Mr ROBERT**—Of course, clearly.

**Dr Gardner**—The reason for that is that what he said is not incorrect. It is important to understand that there are a small number of cancers, which he did mention. In fact, of those cancers, and I mentioned bowel cancer—

**Mr ROBERT**—Twenty-seven in the group of 900.

**Dr Gardner**—That is a remarkably small number. I would have expected a lot more than that. The other problem is that with some of these cancers, for example, the bowel cancers, from my 30 years in this field I am aware of no other industry studies to do with solvents and working in chemicals that would relate to that.

**Mr ROBERT**—What are the odds of getting a 40 per cent increase—albeit 27 of the 900—and getting similar numbers in the control groups at two different bases? They were exactly the same as the general population. Statistically, at a maths level, the odds of that happening are somewhat remote.

**Dr Gardner**—No. In fact he acknowledged—and you may wish to follow it up with him—that this is at the five per cent statistical level. In other words, when you do these studies you have to say, ‘What is the likely chance of this arising just by chance?’ Unfortunately, in this study the figures came out right on that border of the five per cent statistical significance level. So, yes, you would go maybe tick-flick of a coin, or maybe not.

**Mr ROBERT**—He also acknowledged, Dr Gardner, that that five per cent is an arbitrary level. If there were an assumption that there had been other cancers and deaths, or people that had not been picked up by putting their hands in the air, the rate of cancers would have increased or gone up.

**Dr Gardner**—Absolutely. I fully acknowledge that. That is one of the reasons why I believe it is very important at a future time to keep looking at cancer incidence mortality studies to ensure that the denominator number is known.

**Mr ROBERT**—Do you support his contention when he said it is not statistically significant but it is clinically significant?

**Dr Gardner**—I would like to sit on the fence on that because—

**Mr ROBERT**—Wouldn’t we all?

**Dr Gardner**—For example, in relation to melanoma, there were increased cases of melanoma. Apart from exposure to the sun before the age of 16 and latitude issues, for example, at Amberley, I am aware of no other issues where there is clear statistical evidence in relation to occupational exposure and melanoma.

**Mr ROBERT**—The issue the committee has is that you obviously are the number one guy in the Air Force who wants to sit on the fence. I respect that as the fence can be pleasant at times. The SHOAMP guys are calling it clinically significant. How should the committee treat the range of medical opinion that has been put before it today?

**Dr Gardner**—The SHOAMP report addresses this issue. As I said, this was robustly discussed in its development, including by the Scientific Advisory Committee and by the consultative forum. I acknowledge that the SHOAMP investigators think it is significant. I think it is on the cusp, but I am prepared to accept that this needs to be followed further. Some of the recommendations that we have made in our submission today suggest that it should be followed up.

**Mr ROBERT**—Thank you.

**CHAIR**—I suspect that we will explore a number of issues after lunch. I go back to my earlier question about how we got to the definition of who gets what under the ex gratia payment system. How was a determination made that working for 30 days in the fuselage was the same payment, for ex gratia purposes, as working for 30 days with the incinerator, for example?

**Mr Killesteyn**—Chair, I am not sure whether I can give you a definitive answer to that. This is one of those areas of judgment that was made at the time that the rule had been put together. Essentially, I think we have discussed before in previous evidence that the 30 days had some precedent—if I can use that word without being too strong on it—in relation to chemical exposure as a consequence of service in Vietnam. This payment recognised a unique working environment and it drew a distinction between those who were involved in that work in an intensive way versus those who had some lesser level of involvement. Conclusions were drawn, lines were drawn, and a 30-day rule popped out. I suspect that it could have been less than that and it could have been more than that; it just depended at the time. Unfortunately, I cannot give you more on that.

**CHAIR**—Assuming that there was some logic in its creation, and that is a pretty brave assumption, it was also then said that there was a 60-day exposure for people involved in pick and patch. Is that meant to tell us that they were there for half the length of time, that it was half as uncomfortable, or what?

**Wing Cmdr Sanders**—I was part of the team that helped to put this together. You drew an inference that 30 days was significant. We had to put a boundary around particular activities. The inference that 60 days was half the effort and half the effect is incorrect; it was a means of putting a boundary around it.

**CHAIR**—This is what worries me. In the answer you just gave you referred to half the effect.

**Wing Cmdr Sanders**—That was in response to—

**CHAIR**—I may have misinterpreted what you meant by ‘effect’. If by ‘effect’ you meant the effect of being in that environment and being exposed to something, that opens up confusion, or it is part of the ongoing confusion. Part of our task is to try to make some sense of this ex gratia payment. It has been the core of a lot of angst amongst people, and I think understandably so. I am trying to get a grasp on how it came to be created and whether any methodology, logic, or rationale underpinned it. I look at that from the premise that these payments have nothing to do with exposure to dangerous chemicals, health implications or anything of the sort. We know that to be the case because it has been paid to people who have not even submitted a claim for any health impairment.

So, clearly, there is no connection with health. If it is to do with an environment that is unpleasant or difficult I am trying to comprehend that rationale if that is what it is about. If that is not what it is about then set me straight. For example, 30 days gets you \$40,000, which is better than \$1,000 a day. That is a pretty decent allowance; not too many people get an allowance of \$1,000 a day for working in a hardship environment. That is one level of rationale. Leaving aside the ratio of money I am trying to figure out how it was put together, why some people are in, why some people are out, why some people get \$40,000 and why others get \$10,000. If you are there for 30 days at the furnace you get \$40,000, but if you are there for 30 days doing pick and patch you get \$10,000.

**Mr ROBERT**—None if you are pick and patch.

**CHAIR**—I might have given a bad example. Nothing appears to me to give me an answer. Where is the underlying threat of logic or rationale in that?

**Dr Gardner**—I answer that partially to reinforce what Mr Killesteyn said, that is, that this is an administrative solution because no clear information came from the SHOAMP study that related time, dose or anything to outcomes. I think the SHOAMP people alluded to that in their evidence. Nearly all the health outcome studies have some relation to dose and response. In other words the more the dose the more the response. This was a proxy in the absence of valid environmental and personal monitoring samples. It is reasonable in general to say that the more exposure the more likely the outcome and, therefore, you have had more in the way of bad working conditions.

**CHAIR**—That would make some sense to me if the payment was to be linked to health outcomes, health exposure, or health threat, but it is not.

**Dr Gardner**—It is not.

**CHAIR**—It is not, which to me makes that answer hard to reconcile.

**Mr Killesteyn**—We may all be accused of ex post commercialisation or something. Another way of looking at this is that the 30-day rule is a relatively low benchmark. One of the objectives was that once a decision had been made in principle to pay an ex gratia payment associated with the working environment that should avoid a situation where those people who have only a casual association with the work should not get the payment. The payment should go to those who are more intensively engaged in that work.

**CHAIR**—Was this constructed with any regard whatsoever to the stated reason that it was for a unique work environment and it was not health-related? I do not know who created this document. I assume that the list was finally ticked off by the cabinet of the day. Do we have any information? Can you give us any information about the parameters, the guidance for those who created that classification of who is in tier 1 and who is in tier 2?

**Wing Cmdr Sanders**—The decision that we were given was that there was to be a lump sum payment. We then had to set about trying to put a boundary on who would be the recipients. The recipients would be those who had been most greatly affected by their working conditions, hence the potential exposure.

**Senator MARK BISHOP**—Who gave you that decision?

**Wing Cmdr Sanders**—It was a government decision.

**Senator MARK BISHOP**—It was a cabinet decision. Cabinet made a decision and you then had to fix an administrative arrangement to give effect to that cabinet decision.

**Wing Cmdr Sanders**—That is what it amounts to, yes.

**Senator MARK BISHOP**—A political decision was made to have a solution, and you were instructed to have an administrative solution to give effect to it?

**Wing Cmdr Sanders**—I do not have an opinion on the motives, but I can say that this was the consequence.

**CHAIR**—That explains the process. Whether or not logic is running through it is another question. I guess we sorted out the process. I want to clear up one matter that was raised earlier in evidence talking about this point. One of the people at the table made a point about the ex gratia payment and said that firemen were getting a payment. At the time I said that, with people from DVA and Defence behind, no doubt they could shed light on how that came to be. Now is the time to shed light on it.

**Mr Killesteyn**—In the questions that were taken on notice we included some explanation of the firemen. I can go through that now.

**CHAIR**—If you could do so quickly, yes.

**Mr Killesteyn**—This is the situation. In a number of cases I think the department made an error in accepting that a person was eligible for an ex gratia payment. On our assessment, after a 100 per cent quality check of all the 1,215 decisions, we came to the view that three errors were made, two of which were firemen and there was one other error. Essentially, the basis for the firemen was that at the time we started making the decisions we had advice that particular individuals were involved in activities as defined under tier 1, I think it was. We were subsequently advised that they were there simply on a training program, which would not have involved them in doing the incinerator work. So it was a question not of the rules themselves but rather of the information we had about the activities of those two individuals.

Chair, can I take a moment to clarify something in Senator Bishop's question relating to that decision? I want to ensure that the committee is not left with the impression that the detail of the tier definitions was made up by the administration or the departments—defence and/or DVA. There was a decision in principle to provide an ex gratia payment and then, as has been given in evidence, some rules were designed that they were effectively signed off by government. It was not something that the administration or the Department of Defence and DVA made up and then applied; it was signed off by government.

**Senator MARK BISHOP**—Cabinet made a decision in principle and, as part of that decision-making process, did it endorse or determine a set of guidelines?

**Mr Killesteyn**—We were given the task of providing options about how the ex gratia payment would apply. That was put to government and government ultimately made the decisions on who would be eligible for the ex gratia payment under the various definitions.

**Senator MARK BISHOP**—So you made it. Cabinet made a decision that an ex gratia payment would be made and the departments were asked to provide options on how that could be administered and determined. You gave cabinet or government a set of options and they made a decision on which option from the options that the two departments provided?

**Mr Killesteyn**—Yes.

**CHAIR**—Thank you for that. We might adjourn for lunch now.

### **Proceedings suspended from 12.36 pm to 1.32 pm**

**CHAIR**—We will resume the hearing. Before lunch we were exploring a couple of things relating to the ex gratia payment. I go back to some of the questions associated with the ex gratia payment and refer to pick and pay folk. What do we know about their access to the ex gratia payment? How many have applied for the ex gratia payment, how many have received either tier 1 or tier 2, and how many have been rejected? What is the standard of proof that is used?

**Mr Killesteyn**—Referring to the number of claims that we got, I said this morning that we had 1,215 claims. As I understand it, 489 of those claims were refused. While I cannot give you a precise answer, our view is that more than 90 per cent of the claims that were refused would have been involved in—if I can just make it clear—the informal pick and patch activities as distinct from those pick and patch activities that were defined as part of the formal program.

**CHAIR**—Could you elaborate on that a bit?

**Mr Killesteyn**—I think there was a description in tier 1 that used the term ‘pick and patch’. There is also a generic description that people use to describe those who were outside the formal programs, particularly those who were in squadrons 482, 1 and 6, as involved in pick and patch activities. I guess that that group of pick and patch workers are the ones who are concerned about whether further benefits should be extended to them.

**CHAIR**—How did that other group fail to meet the tests?

**Mr Killesteyn**—Because they were not involved in the formal programs.

**CHAIR**—What constituted the formal programs?

**Mr Killesteyn**—I turn to my colleagues in defence—the four formal programs.

**CHAIR**—What was the pick and patch formal program? What constituted your access to that as opposed to informally doing pick and patch?

**Air Vice Marshal Brown**—There was always a section called the reseal-deseal section. If you were posted to that section and you were involved in pick and patch you came in underneath the tier 1 definitions.

**CHAIR**—And that goes back to 1973?

**Air Vice Marshal Brown**—Yes.

**Mr Killesteyn**—I think this is another area of confusion in terminology, in language, about which we have to be careful.

**Air Vice Marshal Brown**—In between the formal programs aeroplanes would be sent down to the reseal-deseal section to have some work done on them.

**CHAIR**—It seems from the evidence that enough people have come forward to say that they were involved in pick and patch work and that they have been denied access. It now seems that roughly 90 per cent of the 489 who were refused fit that category. How do you distinguish between the two? The pick and patch work was being done as the aircraft had to be serviced. I assume defence does not dispute that the work was carried out? The planes would not have flown if it were not carried out. The nature of the planes is that if you did not do the work they would not get off the ground.

**Air Vice Marshal Brown**—That is right. In reality there was no real difference between the pick and patch work done at squadrons 1, 6 and 482 and what was done in the reseal-deseal section.

**CHAIR**—The delineation that has been made in the past might be convenient from a paperwork perspective, but on the ground it could not be said that there is much to distinguish it?

**Air Vice Marshal Brown**—No, I do not believe that there is.

**Mr Killesteyn**—The delineation I make is for clarification. Of the 489 people who were refused, greater than 90 per cent of those cases were pick and patch activities not involved in the formal programs—in other words, those people who were more than likely posted to squadrons 482, 1 and 6. I think that is where there is a lot of concern.

**Air Vice Marshal Brown**—I suppose you could make one delineation. If you were down at that reseal-deseal section all you did was pick and patch, whereas if you were part of 1, 6 and 482 squadrons you did other maintenance activities.

**CHAIR**—That is understood, but in relation to reaching a threshold at 10 days, 30 days, 60 days, or whatever the threshold might be, it is conceivable that you would be in the unofficial pick and patch activity, you would accumulate that many days, but you would be excluded. They would fit into the category that we just identified as being the 90 per cent of those 489 unsuccessful applicants for ex gratia payment? Is that correct?

**Mr Killesteyn**—That would be my understanding.

**CHAIR**—Thank you. When we took evidence in Brisbane on the ex gratia payment, a couple of witnesses said at various meetings that had been held that they had been led to believe that a substantial amount of money was coming their way. I specifically recall evidence that at one such meeting the then Chief of the Air Force advised people to get financial advisers. That was interpreted by a number of people there—they did not put a figure on it but I would say that they were probably thinking about six-digit figures—and that created an expectation that clearly was not fulfilled, or probably was never likely to be fulfilled. Could you give the committee any advice about whether information of that kind was provided?

**Air Vice Marshal Brown**—I will hand over to Wing Commander Bill Sanders. He was at all those meetings so he can probably give you some information.

**Wing Cmdr Sanders**—I was at that meeting. The one you are referring to was in December 2004 when the CDF went to Amberley to explain what the government decision had been. It was a private and closed meeting. People who were there were there only by invitation. During the meeting people started to ask questions about when they could expect the payment and how much, and people started to speculate on the amount. There were some pretty wild guesses as to what it might be.

At the time the CDF said, ‘Before you make any decisions about what you are going to do with whatever it is that you get, get some financial advice.’ His motives, from memory, were to dampen down speculation and no more. People drew an inference from that that the amount was going to be quite substantial. The advice was followed up soon after by the support group which put out a sheet of advice that said, amongst other things, ‘Without knowing the amount of money, get some financial advice as to what you are going to do.’

**CHAIR**—Looking again at the groups that are identified for tier 1 and tier 2, for example, if you were not involved in any tank entry but your usual place of work was the rag hangar, you qualify for the ex gratia payment. I am trying to reconcile how that measures up on the hardship and convenience type scale with spending days inside the F111 in the unofficial pick and patch. The former group qualifies for the ex gratia payment but the latter group does not. I have great difficulty comprehending any fair basis for coming to that conclusion. Could you shed any light on that?

**Air Vice Marshal Brown**—I think you have to commence where it all started. I am only giving an explanation as the inquiry was about the formal deseal-reseal programs. I think that is how a lot of the compensation, or the basis for it, started to grow. I will hand over to Bill. He can probably give you a better explanation about why that related to the rag hangar.

**Wing Cmdr Sanders**—A number of people were included as a means of being inclusive. Fire fighters were another group of people and incinerator operators were another group. It was a case of being inclusive and offering that as an option to government. It was part of the options that we offered up.

**CHAIR**—Another way of interpreting ‘inclusive’, is erring on the side of generosity in those cases. I do not know whether that is quite the right way of putting it.

**Wing Cmdr Sanders**—I do not believe it was generosity. Possibly it was generosity, but it was to try to cover all the groups that had been involved to the same degree.

**CHAIR**—People in the unofficial pick and pay were excluded from the ex gratia payment. I assume that because they were excluded from ex gratia payment they also missed out on access to section 7(2) SRCA support?

**Mr Killesteyn**—I cannot answer that question.

**CHAIR**—It is probably an issue for DVA.

**Mr Killesteyn**—That is correct. If you are not part of one of the four formal programs you do not get access to any of the tiers, including tier three, which does not provide you with an ex gratia payment but which gives you section 7(2) access.

**CHAIR**—That helps to put the finger on some of the causes of angst. Apart from that group of pick and pay folk who were not part of the official group, and whom I suspect constituted a large number of individuals who have provided submissions to the committee, are you aware of other similar groups whose circumstances have prevented them gaining access either to the ex gratia payment or to the section 7(2) SRCA provisions? Earlier mention was made, for example, of those who had passed away before the date. We are fully conversant with that. Are you aware of any other identifiable groups?

**Mr Killesteyn**—I do not mean to be confusing in this instance but it is the description—the label that we are giving these groups of people. One label is pick and patch, another label, which may be a little easier to deal with, is people who were posted to squadrons 482, 1 and 6. In those postings people would have been involved in pick and patch activities as well as a range of other activities. You would have had submissions from those individuals, for example, the photographer. Broadly speaking, we think we are talking about 2,300 people in squadrons 482, 1 and 6.

**CHAIR**—Did you say 2,300?

**Mr Killesteyn**—Yes. 2,300.

**CHAIR**—What are the records for those people like? Do we know?

**Mr Killesteyn**—Let me just clarify. The photographer was not in squadrons 482, 1 and 6. The large majority of people—or 99.7 per cent of the group that we are talking about—would have been in squadrons 482, 1 and 6. The photographer would be representative of the dlibs and drabs of others in the original question that you posed.

**Mr ROBERT**—Having said that, not all those 2,300 would have done pick and patch.

**Mr Killesteyn**—That is exactly right, yes.

**Mr ROBERT**—That is part of the difficulty.

**CHAIR**—What is the state of the records in respect of that?

**Air Vice Marshal Brown**—Let me clarify the records for you as I think there is a bit of a wrong impression. If any maintenance was done to an F111, if you had gone inside a tank and done any sort of repair on an E-500, which is the record of maintenance for that aeroplane, you would have put your name there to show that you had done it and a supervisor would have signed it. The problem we have is that under the legislation those records were required to be kept for about only seven years, so they were all destroyed. That detailed record keeping is no longer available to us because of the length of the program. From about 1990 we were a little lucky in that there was a decision to keep F111 maintenance records until the present time. The real problem is that you do not have that detailed knowledge of who worked on the aeroplanes.

**CHAIR**—Where records have not been available but claims have been approved, either for ex gratia payment, health support and so on, what test has been applied to satisfy DVA?

**Mr Killesteyn**—It is the balance of probabilities. As we explained in our submission, we have tried to tier the evidence that would be used to make a decision. It starts from evidence of records, if they were available, through to corroborating evidence from people who may have been involved in musterings, right through the lower level to statutory declarations. So you build up that profile. At the end of the day, when you have collected that evidence, you make a decision on the balance of probabilities.

**CHAIR**—Is there a requirement that somebody is able to attest to your presence when the person doing the certification is known by record to have been there, or is it adequate just to have a couple of statutory declarations from people who say, ‘I was there and I know that this person was also there with me’ when neither of them have separate identifiable documentation of their involvement in the program? I am trying to get some idea of the minimum threshold.

**Mr Douglas**—You have to look at each case on its merits. In essence, the generic description that Mr Killesteyn has given is correct. You start with the service record from defence, which may indicate that a person was posted to a particular unit at a particular time, and relate it to the claim that that person would be making. To the extent that that confirms or establishes a link between the condition being claimed and the service being rendered, clearly you grow in confidence with the level of granularity that is available in the evidence. To the extent that you do not yet satisfy it, you look at each case on its merits and spread your wings to gather additional evidence.

**CHAIR**—Spread your wings a bit for us now and give us an example. If the records show that you are in Darwin at the relevant time and you claim to have been in the program, obviously that is the end of the game?

**Mr Douglas**—Correct.

**CHAIR**—I am talking about records not absolutely confirming your involvement in the program.

**Mr Douglas**—You might go to something like a statutory declaration which is perhaps supported by a statutory declaration from a colleague, a mate, who was posted at the same unit at

the same time. You might interview a number of people to determine whether or not the claims being made by the individual agree with the claims that that individual is making. It really is horses for courses. You might look for photographic evidence. Somebody might have kept souvenirs of particular events or occasions and produced them. It is a matter of going as broadly as you can, bearing in mind, at the end of the day, the high standard of proof on the part of the commission.

**Mr Killesteyn**—Included in our submission are two case studies. I can go through those now with you if you wish. I refer, for example, to case number 1:

During the Board of Inquiry (BOI), **Claimant A** submitted a BOI [Board of Inquiry] statement regarding his claimed involvement in a program. He had no supporting documentary evidence whatsoever. Due to the specific nature of detailed information in his BOI [Board of Inquiry] statement the F-111 Lump Sum Payment Team contacted **Claimant A** in order to seek more information, and suggested that he obtain a statutory declaration that supported his claimed activities from the supervisor who he had stated he had worked with in the program. The subsequent receipt of a supporting statutory declaration from this supervisor, as well as information obtained from other supervisors by the Lump Sum Payment Team, was considered to be of sufficient strength to have his claimed approved.

The second example I have is as follows:

During the process of investigating an unrelated ex-gratia claim, further information was received concerning the nature and depth of participation of **Claimant B** in the 2nd F-111 Fuselage Fuel Tank Deseal/Reseal Program. This verbal information came from proven reliable sources who were supervisors in the 2nd Fuselage Deseal/Reseal Program.

These are two examples of where we were looking for supportive evidence from alternative sources. As I said in my opening remarks, a statutory declaration of itself from a claimant provided a line of inquiry but of itself it did not necessarily represent a determining piece of evidence.

**CHAIR**—Thank you.

**Mr Douglas**—The concept is similar to a proof of identity issue. You are establishing primary and secondary evidence.

**CHAIR**—Thank you. Mr Killesteyn, in your opening remarks you might have been referring to a case that I am about to mention, which was evidence given in Brisbane involving a RAAF employee who was in hospital on suicide watch who had put in for a claim. The evidence given to us was that the letter advising of the failure of his application was delivered to him in hospital whilst he was there on suicide watch. I am not sure whether that is the case to which you were referring in your opening remarks. For the record, to be clear about this, can you shed some light on what happened?

**Mr Killesteyn**—It was the case that I was referring to in my opening remarks. A decision had been made that the individual was not eligible. Given his mental state, the question arose as to the best means of informing this individual. We took advice from the treating psychiatrist as well as the Veterans and Veterans Family Counselling Service about the best way in which to advise the individual. The advice that was given to us was that this should not be done simply by

sending a letter; it should be done in an environment in which his reaction to the news, which was bad news, could be monitored and managed.

On the basis of that advice we did so while he was in hospital under the treatment of the psychiatrist. Before that action was taken the decision was carefully considered by senior levels within the department. As I suggested in my opening remarks, the alternative of simply sending a letter would have been even more insensitive, given the individual's mental state.

**Ms Spiers**—In order to assist the committee we have cases, not necessarily deseal-reseal cases, where we became aware of a person's mental health. We often release information via their doctor or, in this case, when they are in a supported environment. It is a practice we adopt when the circumstances dictate, and only on expert medical opinion.

**Mr Killesteyn**—Such as yours?

**Ms Spiers**—Yes.

**CHAIR**—I think it is fair to say that the process caused substantial distress to the former RAAF member and his wife. It might be argued that they could have suffered even greater distress had it been provided in a different way or at a different time. Perhaps none of us will ever know the answer to that. Given the distress that it clearly caused—I heard what you said about the advice that was taken—I think DVA would be well advised to review its practices in that respect and look at a range of other options and timings. It struck me that the timing could barely have been worse.

In a sense, the acknowledgement that it would produce or was likely to produce an adverse reaction that required medical attention should have rung alarm bells that another way or another time would have had merit. I certainly do not propose to try to pass judgement as it is not something that this committee or I are competent to do. In fairness to the family and because of the clear distress that they suffered I think it would be a wise thing for the DVA to review those practices. That is a bit of gratuitous advice from the Chair.

**Mr ROBERT**—Mr Killesteyn, you said earlier that 500 of the 626 claims had been finalised. Of those 500 can you outline how many received a white or gold card? You reeled off a whole swag of numbers, for example, 60 were TPI, et cetera. Do you have those numbers to hand?

**Mr Killesteyn**—We will take that question on notice so that we can give you precise figures. Generally, you can take it that war widows would have got a gold card, so that is five; and 67 were granted TPI status, if I can use that terminology, so they would have got a gold card.

**Mr Douglas**—A maximum of only 378 could be getting a card of any kind because that is the number of people who are receiving benefits under the VEA.

**Mr Killesteyn**—A maximum of 378. We will take that question on notice. Broadly, the gold card and the white card attach to the status.

**Mr ROBERT**—That will be great. My next question is to the Air Force. You said that there were approximately 2,300 personnel in squadrons 482, 6 and 1. However, we noted that not all

of them would have been doing pick and patch work, especially from 1973 to whenever that pick and patch work stopped. Do you any idea of how many people might be involved? I understand that it is a subjective question.

**Air Vice Marshal Brown**—I think there would have been more than 2,300 in those squadrons over that time. The predominant trade that got inside the tank were airframe fitters or ATECHs, and that is what the figure is based on. We had a look at the records to determine how many airframe fitters or ATECHs we had in those squadrons. Having said that, only a percentage of those ATECHs were probably involved in pick and patch activities or fuel tank repair. Again, that would be a fair body of work to try to—

**Mr ROBERT**—You think there were about 2,300 airframe fitters and ATECHs between 1973 and 1990?

**Air Vice Marshal Brown**—Yes, that is the information we have.

**Mr ROBERT**—I suggest it would be almost impossible to find out from the records base what number went into the tanks.

**Air Vice Marshal Brown**—From the records that we have at the moment, yes.

**CHAIR**—I wish to ask about private contractors. Can we define how many there were and what tasks they performed?

**Air Vice Marshal Brown**—We have that information in our questions on notice. If you give me a second I will get to it.

**CHAIR**—I apologise; I have that here as well.

**Air Vice Marshal Brown**—We had a total of 48 civilian contractors. Sorry, they were the ones who were involved in the SHOAMP study. If you go to question No. 2 and to the responses that we have provided you will find a breakdown of programs 1 and 2—the wooden tank and spray seals.

**CHAIR**—Thank you. Is there a reason for the distinction between former RAAF's and contractors, and civilian contractors?

**Air Vice Marshal Brown**—Former RAAF's have entitlements under the DVA legislation, whereas civilian contractors do not. That is the reason for the break up. Former RAAF's basically have the same entitlements that serving members have. They are entitled under the DVA legislation, whereas purely civilian contractors do not have that mechanism.

**CHAIR**—That is in the four formal deseal-reseal programs. Were any civilian contractors involved in the informal pick and patch?

**Air Vice Marshal Brown**—I do not believe there were because that was done out of squadron resources. We did not have any contractors involved with squadrons 1, 6 and 482.

**CHAIR**—Are we looking at only at nine individuals?

**Air Vice Marshal Brown**—That is what I believe.

**CHAIR**—Do you know how many of them have lodged claims of one sort or another?

**Mr Killesteyn**—I can give you ex gratia claims, if that is what you are after.

**CHAIR**—Any claims?

**Mr Killesteyn**—We have had 77 tier 1 successful claims.

**CHAIR**—Sorry, just in relation to civilians?

**Mr Killesteyn**—Yes, ex gratia civilian contractors.

**CHAIR**—Now I am confused. I thought we were talking about nine people.

**Air Vice Marshal Brown**—We have broken up civilian contractors, former RAAF verses purely civilians, so you have the entire number.

**CHAIR**—All right.

**Mr Killesteyn**—Including former RAAF.

**Air Vice Marshal Brown**—Including former RAAF.

**CHAIR**—Referring to the group that does not have access to veterans affairs, presumably it would have recourse to the Queensland workers compensation system?

**Ms Spiers**—Correct.

**CHAIR**—Referring to those people, do we have any knowledge of the claims that they have made?

**Wing Cmdr Sanders**—It has been some years but we work closely with Queensland WorkCover to assist them with this particular group of people. As to numbers, I would have to take that question on notice and contact them. We have not been talking to them for quite some time.

**CHAIR**—Okay.

**Mr Lysewycz**—On the previous occasion, on 21 July, reference was made to two claims by private contractors which have been settled. We have four current claims by private contractors that we are defending in the Supreme Court of Queensland—six in total. At this stage we have sought information from the solicitors representing them to establish how they wish to proceed. We are just awaiting details on that.

**CHAIR**—That is four outstanding common law actions?

**Mr Lysewycz**—By private contractors. That is four of the 31 that we mentioned before.

**CHAIR**—Sorry, what was your last point?

**Mr Lysewycz**—There are 31 common law actions in Queensland.

**CHAIR**—And four of them are from civilians?

**Mr Lysewycz**—That is right.

**CHAIR**—Four of the outstanding ones are from civilians. One of the things that was mentioned at that first hearing was a desire to try to find a way of dealing with those claims more expeditiously, or in a less formal and legal sense. Am I right about that? Eyebrows are being raised. Did I walk away with the wrong impression?

**Mr Lysewycz**—We are doing more than trying.

**CHAIR**—Thank you.

**Mr Lysewycz**—We are well advanced.

**CHAIR**—That is good. Given that desire, I was going to ask whether procedures are already in place, or whether you have views about procedures or mechanisms that the committee might consider recommending to parliament and to government, that would facilitate a resolution of those matters, where that is able to be done. Obviously it takes two to tango. If people want to exercise their full rights in the courts they are entitled to do so. Is there a process in which you are currently engaged, or a way of handling these issues that you think is worthy of consideration?

**Mr Lysewycz**—I do not think there is anything that we would like to suggest be recommended to government as a way ahead or, if you like, a template for the future. One of the advantages of approaching the current cases as we are is that we are able to tailor the approach to the individual and to the firm of solicitors representing that individual and come up with a process that is amenable to progressing the claim to a point where we can formally mediate it. Each of them comes from a different point in time, different employment circumstances and different sets of medical conditions. We are accommodating all that.

We are at the stage where, with the agreement of solicitors representing these claimants, we have six at a stage where we expect to be in a position to start negotiations at the end of November. Basically, it is a paste program. Pre-litigation there is such a degree of exchange of information between parties around the table that we should have sufficient information to evaluate each claim, put a value on it and resolve it.

That is emerging to be a fairly standard approach that we are adopting within defence in litigious claims. Currently that draws its inspiration from the Attorney-General's drive to have

the Commonwealth appearing less often in courts. As a last resort we might have to go to a hearing, but that will be very much a last resort.

**CHAIR**—Thank you.

**Dr Gardner**—Can I comment briefly, not from a common law perspective but from a workers compensation-occupational medicine perspective. Reinforcing what Wing Commander Sanders said earlier, in the early days there were significant issues with the workers compensation system in Queensland, in that the sole exclusive access of a relatively small number of civilian contractors was through that workers compensation system in Queensland. The statutory authority there was not particularly interested, in that this was a small number of their 70,000 plus claims each year. They had no experience in it; they had no specialist staff; and they did not know what to do. In particular, under their legislation there were some time things.

When the claim was accepted there were time limits to have it resolved. It was all very difficult. In fact, the Chief of Air Force at the time made a call to encourage them to be more flexible. But again, because the numbers were small, it was a difficult issue. I suggest that while that is not part of our formal submission the committee might think this issue could come up again, not just in relation to defence but also in relation to any Commonwealth employer where civilian contractors are subject to state law. There must be a system that recognises and treats all people equitably and fairly. Relying on the state system is not necessarily the right way to go.

**CHAIR**—Do you think claimants have encountered difficulties in the state system over and above the difficulties that we have been talking about in the federal system?

**Dr Gardner**—Yes, absolutely. They had significant issues because the system had no experience of how to cope with this. Because they were waiting and WorkCover in Queensland did the right thing, basically they made a decision to the effect that if someone lodged a claim but asked them not to determine it they would put it on hold. In that way they got around the two-year limit. When that was done the expectation was, as it was in the Commonwealth system, that the SHOAMP study would provide a way forward. Of course, it did not.

**Ms Spiers**—I wish to comment on schemes that were in operation that informed people that when the government proposal had been settled and announced, members of the Department of Veterans Affairs would meet with Queensland WorkCover and explain how the scheme would operate. We offered any assistance we could and expert knowledge if they got any claims. That offer was made very early on.

**CHAIR**—Do those civilian contractors have access to the ex gratia payment?

**Ms Spiers**—Yes.

**CHAIR**—Thank you. Your submission makes reference to possible areas of future health study. I thought we might try to explore that a little. I have in the back of my mind somewhere that the SHOAMP report—I could be wrong about this—was about a \$6.5 million exercise. Sometimes I wonder whether we would not be better off just dealing with the concerns rather than spending money on these other things. That said, if there is an ongoing benefit for other employees, or it is a substantial issue anyway, it makes some sense. The issue of partners which

was raised earlier today was mentioned by some of the families in evidence in Brisbane. Do defence or veterans affairs have a view about the need for and desirability of further examination of impacts on family?

**Dr Gardner**—Chair, I can address your questions. In preparation for today's sessions and at the request of the deputy chief we put together a list of options of possible future health-related activities. Our submission recommends three of those. One would be that, at a time that is agreed—and probably in the next few years—there should be a further repeat of the statistical mortality and cancer incidence study. Two were done as part of the SHOAMP program.

Subsequent to that, Veterans' Affairs commissioned an updated report, which will be called the third cancer mortality incidence study. Currently it is being finalised in draft form and it is expected to be released later this year. The interim report basically shows the same results as the second cancer and mortality incidence study. However, if this is further repeated in another five to 10 years time with larger numbers of people and a longer period for exposure, there may be statistically significant figures, although at the moment the study still shows borderline statistical significance.

**Mr ROBERT**—Could I jump in quickly, Dr Gardner. You said that this third study, though not released, points to statistically not significant. However, does it point to clinically significant as did the SHOAMP study?

**Dr Gardner**—Thank you, Mr Robert. I have seen this draft report only very briefly and I have seen it only in summary form. Basically, it shows the same numbers and the same cancer. Again, it would come down to a matter of interpretation. We have not become aware of large masses of people who have diseases.

**Mr ROBERT**—If the numbers were exactly the same, Professor Attia's comment of 'clinically significant' could not hold true?

**Dr Gardner**—It could hold true. In fact, I mentioned this in my testimony back on 21 July. One of the problems is that some people in the latter programs were working on desal-reseal programs up until a year before the SHOAMP study started. Therefore, if they are going to get sick—and we hope that they do not but if they are—they do not have to get sick or to show up in the statistics.

**Mr ROBERT**—I interrupted you. You were talking about the first of your three recommendations.

**Dr Gardner**—The first recommendation is on pages 13 and 14 of our report. The second one is to address the issue that the chair raised earlier relating to psychological health issues. A study was commissioned by the Air Force through Professor Leonie Coxon at Murdoch University in Western Australia to look at the psychological health, mostly of women, who were caring for chronically invalided spouses. The numbers were small; it was a very select group; and basically it came up with fairly predictable findings. That is, that people who look after chronically disabled and/or depressed spouses tend themselves to have higher rates of a whole range of psychological ill health indicators.

**Mr ROBERT**—Does that compare also with a non-military group?

**Dr Gardner**—In the study that Leonie Coxon did there was reference to external examples. But there is an exact comparison and there were no non-military people in her group.

**Mr ROBERT**—Granted, but did she do a literature review as part of the study?

**Dr Gardner**—Yes, she did an extensive literature review. It is summarised in the back of the report, which has been attached to our submission on questions on notice. The third thing—we again mentioned this in passing on 21 July and it has been alluded to today—is that there is a growing body of evidence, not just in the Air Force but also in a whole range of other occupations, that some people are genetically sensitive to chemicals and processes at levels that are safe for the vast majority of employees. We believe that this area is worth exploring. In discussion with DVA that would be looked at. Some preliminary work has been done in this area but it must be looked at, properly evaluated and expanded. This area could have significant benefits for the whole Australian population and not just for defence.

**Mr Killesteyn**—Mr Robert, if it would help, we can provide you with the penultimate draft of the third cancer incidence and mortality study prior to its formal publication and release.

**Mr ROBERT**—That will be good, although from the committee's point of view I think Dr Gardner made the point that the third study shows almost identical results to the second and first studies. We will take that as read. That would be great.

**CHAIR**—If it happens to identify any markedly different outcomes we would want to know that before we concluded our findings. If we are talking about conclusions that are basically along the same lines it does not materially alter what we are on about. There might be some matters that we want to pursue with you in writing—issues to clarify arising out of today's transcript. You will be provided with a copy of the transcript of the evidence for any adjustments that are required to be made.

Today we have managed to address a number of issues that had been left hanging from both the earlier session in Canberra and arising out of evidence that we took in Brisbane. I take this opportunity to thank both departments for the cooperative approach that has been adopted today and for their willingness to explore potential alternatives. I think that is a good and healthy thing.

I understand that the recommendations you have provided to the committee are not formal positions that have the endorsement of ministers, government or the like, but they will assist the committee in looking at potential ways forward. I am grateful for your cooperation in that.

**Subcommittee adjourned at 2.18 pm**