

# Chapter 6

## Committee view and recommendations

### Introduction

6.1 The first part of the committee's inquiry has been directed to PFOS/PFOA contamination from RAAF Base Williamtown. However, other Defence facilities where firefighting foam was extensively used have, or are likely to have, similar issues. In particular, the situation at Army Aviation Centre Oakey (AACO), Queensland arising from firefighting foam contamination has been raised with the committee.<sup>1</sup> The committee does not have sufficient evidence to address the other Defence facilities in this report and intends to explore this aspect in the second part of its inquiry.

6.2 However, the committee emphasises that this does not imply that the situation at AACO is less serious than RAAF Base Williamtown. It is clear from the submissions received that many residents in Oakey have been living with the uncertainty created by possible PFOS/PFOA contamination for a significant period. The Queensland authorities also appear to be less involved in assisting the community than their New South Wales equivalents.<sup>2</sup> This is a concerning situation and the committee will be seeking further evidence.

6.3 Similarly, due to the timing of the inquiry, the committee has not been able to fully complete its consideration of the contamination at RAAF Base Williamtown. There are several significant matters where questions remain. The committee acknowledges it may need to include further examination of the situation at RAAF Base Williamtown in the second part of its inquiry.

6.4 The immediate impact on the communities around RAAF Base Williamtown has been profound. The shadow of uncertainty regarding the spread of the pollutants has created fear and concern, but it has also had real and concrete impacts for these residents and businesses. This is a crisis for those people who have been told they have been drinking potentially contaminated water, that they cannot work or that their property may be worthless. Unfortunately, this situation has not received a crisis response from government agencies.

### Community notification

6.5 A number of submitters and witnesses requested the committee inquire into the process of community notification regarding the contamination. As the summarised timeline in Chapter 2 indicates, there is a confusing picture as to what was known when by various government agencies regarding PFOS/PFOA contamination at RAAF Base Williamtown. Evolving scientific knowledge of the contaminants and improved technology for detection meant that an understanding of the extent of the contamination emerged gradually.

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1 For example, Shine Lawyers, *Submission 88*.

2 For example, Mr Cain Gorfine, *Committee Hansard*, 22 December 2015, p. 35.

6.6 The committee does not consider it productive to attempt to pinpoint exactly when action should have been taken by Defence and other authorities regarding possible PFOS/PFOA contamination in water leaving the site. The focus now should be on providing assistance to those affected by the contamination and developing policies to ensure this event and future contamination incidents at Defence sites are effectively managed.

6.7 With hindsight, it is clear notification of the community should have occurred earlier. Further, delays in notification and advice have contributed to a sense of mistrust in the affected communities regarding the approach of Defence and other government agencies to the contamination. More importantly, the lack of timely notification has also prevented members of the affected communities from taking precautionary measures against drinking water or consuming products with potentially harmful levels of PFOS/PFOA.

6.8 The committee acknowledges that the decisions regarding when to commence notification of the community were made in an environment of scientific uncertainty. However, Professor Mark Taylor's interim assessment was that the Stage 1 Report results indicated that a 'pathway into the human food chain was highly likely or imminent' and this should have prompted 'field sampling of waters, soils, biota and domestic livestock to understand the community and socio-economic activities at risk'. He concluded that the actions of NSW EPA and other NSW Government agencies were 'responsive, timely and appropriate' in notifying the community and taking precautionary steps when the draft Stage 2 report was eventually received from Defence.<sup>3</sup>

## **Recommendations**

6.9 The community expects Commonwealth Government agencies, such as Defence, to be responsible custodians of the environment and exemplars in protecting public health. While there appear to be many points of failure in the response to PFOS/PFOA contamination at RAAF Base Williamtown, the most acute problem appears to be a lack of Commonwealth Government leadership and a reluctance to take full responsibility. The approach of Defence to this issue has been criticised, but also the unsatisfactory engagement of other Commonwealth Government agencies, including the Department of the Environment and the Department of Human Services and Centrelink.

6.10 In this context, the committee has made a number of recommendations to Defence and to the Commonwealth Government more broadly. The first recommendations focus on access to water issues, the provision of mental health and counselling services, initial compensation of the fishing community and the coordination of the response of government agencies. Later recommendations focus on providing certainty for affected residents and commercial fishermen in the longer term. Finally, the committee makes recommendations on some related issues – blood testing and the application of environmental regulations to Defence.

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3 Professor Mark Taylor, *Interim report*, 2015, p. 25.

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## **An urgent response to immediate need**

### *Access to water*

6.11 The first priority, clearly, should be the health of affected residents of Williamstown and Fullerton Cove. Access to uncontaminated water is important to ensure that there is no further exposure to contaminants for both residents and their property. The committee welcomes the NSW Government's commitment to connect affected properties in the investigation area to town water. This is an important development which will assist residents in the longer term.

6.12 However, this NSW Government program will take significant time to complete.<sup>4</sup> While the program is being undertaken, many residents will continue to rely on bottled water and their existing domestic water systems. The committee was concerned to hear that some residents were finding it necessary to drive to local parks to fill containers with town water. There also appeared to be misunderstandings and unclear advice provided in relation to the provision of replacement water tanks to affected residents.<sup>5</sup>

6.13 The committee welcomes the commitment of Defence to follow up all the concerns of affected residents which have been raised during the inquiry, such as the collection of water bottles once they are used.<sup>6</sup> However, in the view of the committee, Defence should reassess its provision of water to affected residents to ensure their needs are being adequately met.

### **Recommendation 1**

**6.14 The committee recommends that Defence immediately review its provision of water and replacement of water infrastructure to affected residents to ensure it is sufficient to meet their needs.**

### *Initial compensation to commercial fishermen*

6.15 Many parts of the fishing industry reliant on access to Fullerton Cove and Tilligerry Creek have been financially damaged by the fishing closures. These are members of the community who are in urgent need of financial assistance, having received reduced or no income since the closures were announced. The fact that some of the affected fishermen are being forced to rely on local charities and food vouchers is an indication that the current financial assistance package is inadequate and unsustainable.<sup>7</sup>

6.16 The Commonwealth Government, with the advice of the NSW Department of Primary Industries, should use previous catch take and income records to adequately compensate commercial fishermen for the interruption to their businesses caused by

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4 Sam Norris, 'State govt announces \$4 million for reticulated water to make good on Williamstown contamination', *Port Stephens Examiner*, 23 December 2015.

5 For example, Mrs Kim Smith, *Committee Hansard*, 22 December 2015, p. 44.

6 Mr Steven Grzeskowiak, Defence, *Committee Hansard*, 22 December 2015, p. 68.

7 Ms Walker, *Committee Hansard*, 22 December 2015, p. 22.

the fishing closures. This initial compensation should cover the period of the precautionary closures – currently September 2015 to June 2016.

6.17 The Commonwealth Government has multiple avenues to provide discretionary financial assistance to the affected commercial fishermen including through act of grace payments, ex gratia payments, the Compensation for Detriment Caused by Defective Administration Scheme or through another specifically established compensation scheme.

6.18 A pragmatic approach should be taken to providing this initial compensation. Given the unique characteristics of the fishing industry, any compensation program should be undertaken with the input of local relevant stakeholders such as the Professional Fishermen's Association, the Commercial Fishermen's Co-op and the Wild Caught Fishers Coalition.

## **Recommendation 2**

**6.19 The committee recommends that the Commonwealth Government, with the advice of the NSW Department of Primary Industries, develop an initial compensation package for the commercial fishermen affected by the closures of Fullerton Cove and Tilligerry Creek.**

### *Additional counselling and support services*

6.20 While this has been a slow-moving disaster, it nonetheless has been a disaster for those affected. The stress caused by the contamination and its effect on the mental health of residents and local business people was frequently raised with the committee. It is natural that people fearing for their health, employment or financial future due to events beyond their control to have deep feelings of stress, anger, depression and anxiety. All affected residents and business people should be able to access counselling and assistance if they need them.

6.21 The committee welcomes the NSW Government's commitment to 'establish dedicated local engagement officers in the Williamstown area to provide ongoing support to residents'. Further, some additional mental health support services have been established for affected Williamstown residents by Hunter New England Health.<sup>8</sup> The NSW Department of Primary Industries has also outlined the mental health assistance and other support services it has provided to members of the local fishing industry.<sup>9</sup>

6.22 The emergency management of natural disasters, such as bushfires, often include additional and specialised mental health support services for those impacted. Defence, together with other Commonwealth Government agencies, should examine how it can effectively provide further counselling and mental health support services to those people affected by the contamination from RAAF Base Williamstown.

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8 Dan Cox, 'Williamstown residents welcome mental health service following air force base chemical contamination', *ABC News*, 29 January 2016.

9 *Submission 108*, p. 1.

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### **Recommendation 3**

**6.23 The committee recommend that Defence examine providing additional mental health and counselling support services to those affected by contamination at RAAF Base Williamtown.**

#### *A taskforce response*

6.24 While some praised the communications approach of the NSW government agencies, the evidence received by the committee was sharply critical of Defence's approach to community engagement.<sup>10</sup> The Expert Panel and the Committee Reference Group appear to be working effectively, but a single accessible point of contact appears to be missing. Affected community members referred to 'getting the run around', having difficulty finding advice as well as receiving different advice from different agencies.

6.25 In this context, the committee considers there may be value in considering the establishment of a joint NSW-Commonwealth Government taskforce to coordinate assistance and to be a 'one-stop shop' for communication and engagement with the affected community.

### **Recommendation 4**

**6.26 The committee recommends that Defence and the NSW Government examine establishing a joint taskforce to coordinate the response of government agencies to the contamination from RAAF Base Williamtown.**

#### **Providing certainty**

6.27 A safe level of human exposure to PFOS and PFOA will be established through the Human Health Risk Assessment. However, this is unlikely to assist the affected residents and fishermen in the short term. As further contamination has not been prevented from leaving the RAAF Base Williamtown, further movement of the PFOS/PFOA contamination in the ground water or surface water may exceed whatever safe level of consumption is determined. It is possible that adequate remediation of the RAAF Base Williamtown could take many years, or may prove impossible.

6.28 In the view of the committee, it is important Defence take a proactive position on the issue of compensation to provide reassurance to those impacted by the contaminants. It is not acceptable that Defence intends to wait for a class action for compensation to be arranged by affected residents and commercial fishermen. A long drawn out legal process will be wasteful and damaging for all concerned. Defence and the Commonwealth Government should not wait until the 'the science is in' before committing to providing adequate compensation to affected communities.

6.29 To provide certainty to affected residents and fishermen, the Commonwealth Government should publicly commit to compensating for losses caused by PFOS/PFOA contamination from RAAF Base Williamtown. The principle of 'polluter

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10 For example, Commercial Fishermen's Cooperative, *Submission 27*, p. 2.

pays' should be upheld by the Commonwealth Government in the same way it should be expected apply to a private company which caused contamination on neighbouring properties or waterways.

### ***Property***

6.30 The committee is of the view that the Commonwealth Government should commit to the voluntary acquisition of properties which are not longer fit for purpose due to contamination from PFOS/PFOA arising from the use of firefighting foam at RAAF Base Williamtown. For example, if a farm relies on bore water, and that water is found to exceed (or be likely to exceed) safe levels of PFOS/PFOA the Commonwealth Government should commit to acquire it. If soil on a residential property is found to be contaminated beyond safe levels, the Commonwealth Government should commit to acquire the affected property to allow the owners to relocate, if they wish.

6.31 The committee acknowledges that a commitment to adequate compensation could be costly for the Commonwealth. However, when contamination issues are resolved, either through remediation of the land or the degradation or dispersal of the relevant pollutants, the Commonwealth will be able to sell or utilise the property acquired to recover this cost. Potentially, this process could take years to complete. Nonetheless, the Commonwealth Government is best placed to manage the risks of ownership of land which it has played a key role in contaminating.

### **Recommendation 5**

**6.32 The committee recommends the Commonwealth Government commit to voluntarily acquire property and land which is no longer fit for purpose due to PFOS/PFOA contamination from RAAF Base Williamtown.**

### ***Fishing closures***

6.33 During the inquiry the precedent of the contamination of Sydney Harbour and the subsequent buy-out of fishermen was raised several times. The committee agrees with the recommendation made by Mr Buffier from the NSW EPA that 'if the results of the human health risk assessment indicate levels which exceed contemporary health standards, particularly for fish, the Commonwealth should undertake a buyout of the licences of affected commercial fishermen by the end of 2016'.<sup>11</sup>

6.34 The committee also broadly agrees with the Professional Fishermen's Association's suggestions for 'three programs to provide economic relief to fishers: an unemployment compensation program (loss of income), a voluntary Fishing Business (gear) buyout program, and a voluntary retraining program'.<sup>12</sup> Again, these compensation programs should be undertaken with input from the NSW Department of Primary Industries, the Professional Fishermen's Association, the Wild Caught Fishers Coalition and other relevant local stakeholders.

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11 *Committee Hansard*, 22 December 2015, p. 47.

12 PFA, *Submission 28, Supplementary Submission*, p. 2.

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## Recommendation 6

**6.35 The committee recommends that if PFOS/PFOA contamination from RAAF Base Williamtown causes permanent or long-term fishing closures, the Commonwealth Government should:**

- **commit to compensate and purchase the relevant rights of fisherman affected; and**
- **establish an industry transition program for affected commercial fishermen to assist them relocate or transfer to other industries.**

## Remediation and management

6.36 There were conflicting views expressed during the inquiry regarding options for remediation of RAAF Base Williamtown and the surrounding area. Based on the evidence received, the committee does not consider it is in a position to make specific recommendations regarding remediation or management at this time. The committee notes that Defence has committed to follow-up remediation strategies as a priority.

## Voluntary blood testing

6.37 There appears to be an evolving Defence approach to blood testing for PFOS/PFOA. While Defence funded blood tests for affected residents of Oakey, it now relies on NSW Health advice that blood tests are 'not recommended because they don't predict level of health risk'.<sup>13</sup> Witnesses from NSW Health were not available to be questioned regarding this position at the Newcastle public hearing.

6.38 While there may not be a strictly medical reason to undertake blood testing of affected residents, in the view of the committee that should not be the only factor considered. Voluntary blood testing of affected residents, tracked over time, could provide other valuable information. For example, the results of testing could lead to evidence regarding pathways of exposure. It could also be important in determining subsequent entitlements to compensation for health outcomes in the future.

6.39 If further exposure is avoided, it is understood that these contaminants will naturally leave the human body over time. It is important that this is tracked to ensure this process is occurring for the affected residents. Consequently, the committee's view is that that Defence should fund a program to offer annual blood testing of those affected residents in the investigation area who wish to be tested.

6.40 The committee acknowledges that blood testing for levels of PFOS/PFOA, when medical knowledge regarding the impact of these contaminants is incomplete, could possibly cause additional anxiety for those persons tested. Nonetheless, the arguments put by Defence against blood testing were not convincing. Uncertainty regarding levels of exposure is also causing anxiety for affected residents. Furthermore, people interested in blood tests are likely to obtain them privately

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13 NSW Health, 'PFOS and PFOA - Williamtown RAAF site contamination', *Fact Sheet*, September 2015.

regardless. As a matter of fairness, when affected residents are interested in blood testing for PFOS/PFOA, they should not have to arrange and pay for it themselves.

### **Recommendation 7**

**6.41 The committee recommends that Defence arrange and fund a program of blood tests for residents in the investigation area on an annual basis.**

### **Environmental regulation of contamination**

6.42 One of the main issues to surface in the evidence to the committee is the lack of clarity in the application of environmental regulations when contamination spreads from land controlled by Defence to non-Commonwealth land. This was illustrated by the evident problems of the NSW EPA in its dealings with Defence and the apparent absence of involvement of the Department of the Environment. The committee agrees with the view of Professor Mark Taylor that '[i]t needs to be clear and transparent to whom the Department of Defence is accountable for contamination caused by it on non-Commonwealth land'.<sup>14</sup> The committee intends to explore this issue thoroughly in the second part of its inquiry. Initially, Defence should publically clarify its own view on the extent of its obligation and responsibilities to comply with environmental regulations.

### **Recommendation 8**

**6.43 The committee recommends that Defence release a policy statement to clarify its environmental obligations and responsibilities for contamination which spreads to non-Commonwealth land. In particular, it should clarify the capacity of State and Territory environment regulation to apply to its activities.**

### **Conclusion**

6.44 Many people affected by the contamination stated that the worse part of the situation was the uncertainty regarding the level of contamination and the impact this contamination would have on their lives. The response of government agencies, particularly Defence, to this crisis should have been to mitigate this uncertainty where it could be effectively managed. Unfortunately, an apparent lack of appreciation of the severity of the situation and a reluctance to commit to appropriate compensation has meant that Defence, and the Commonwealth Government, have further damaged the affected community.

6.45 The response of Commonwealth Government agencies can be contrasted with the response of the NSW Government. In particular, the announcement by the NSW Government that affected residents will be connected to town water, that new testing equipment will be acquired and additional mental health services will be provided indicates an understanding of the situation and community concerns which has been lacking at the federal level. It is difficult to disagree with Premier Mike

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14 Professor Mark Taylor, 'Stage One of Review of NSW EPA's Management of Contaminated Sites', *Interim Report*, December 2015, p. 27.

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Baird's assessment that this can be seen as the NSW Government addressing a 'void' which should have been filled by the Commonwealth Government.<sup>15</sup>

6.46 There are likely to be many other military and civilian airports, firefighting training sites and as well as other facilities which will have legacy PFOS/PFOA contamination through the use of firefighting foams. Establishing an effective policy and legislative framework for resolving this issue should be a key objective to prevent the crisis which has impacted the community around RAAF Base Williamtown from being repeated. The committee is concerned that, if the mistakes made regarding contamination at RAAF Base Williamtown are not addressed promptly by Defence then they will almost certainly be repeated at other sites in the future. The committee will continue to examine these issues in the second part of its inquiry.

**Senator Alex Gallacher**  
**Chair**

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15 NSW Government, 'NSW Government help for Williamtown residents', *Media release*, 23 December 2015, p. 1.

