

[10.28 a.m.]

McMAHON, Mr Gregory Michael, Representative, Defence Reserve Support Committee, Queensland Council of Unions

THOMPSON, Mr Terence Roche Bill, Representative, Defence Reserves Support Council, Australian Council of Trade Unions

CHAIR—Welcome. Are there any additional capacities in which you appear?

Mr Thompson—I am an industrial officer with the Australian services union. I am a former officer in the Regular Army and in the Army Reserve. My colleague, Mr Greg McMahon, is a past president of the Association of Professional Engineers, Managers and Scientists of Australia. He is also a major in the Royal Australian Engineers as an Army Reserve officer.

CHAIR—I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion, and the deliberate misleading of the subcommittee may be regarded as contempt. The subcommittee prefers that all evidence is given in public, but should you at any time wish to give evidence in private, you may ask to do so and the committee will give due consideration to your request. We have received the ACTU submission and it has been authorised for publication. Would you like to make any additions or corrections to that submission?

Mr Thompson—No, that stands.

CHAIR—Would you like to make a short opening statement before we proceed to questions?

Mr Thompson—The ACTU supports the defence reserves. It considers them an important part of Australia's defence. Indeed, Greg McMahon and I formulated the ACTU policy, and I believe that it is comprehensive to the extent of what we see is required and the inadequacies of the present system. We will go into some detail about that shortly.

There is clearly a matter of the civilian employment of reservists and the defence obligation where that employment will be, in some cases, contradictory to the military aim, and vice versa. We seek to minimise or eliminate those particular problems, and in that paper and a supplementary document, which I will circulate at your direction, Mr Chairman, we have set out what we think is the way to go in addressing those issues. So I will ask Mr McMahon to get under way with this particular matter.

CHAIR—Just before we do, if you would like that paper to be authorised for publication, then the committee, I am sure, will be happy to do that.

Mr Thompson—Yes, we are happy to do that.

Resolved (on motion by **Mr Hollis**):

That *ACTU policy — reservists called-out for the defence of Australia* be incorporated in the Defence Subcommittee's records as an exhibit to the inquiry into suitability of the Army for peacetime, peacekeeping and war.

Mr McMahon—The legislation has a couple of characteristics. It was passed by the parliament in 1965. At the time that we wrote to you with this submission, nobody had ever initiated an action under this legislation. We have compared its provisions with those of the United States, and we offer the opinion that the reason nobody has ever taken a matter to court under the legislation is that it is so fraught with problems for the reservist. An advantage that the American jurisdiction have over the Australian is that they had legislation that was semi-workable up until Operation Desert Storm. Both houses of parliament, the Senate and the House of Representatives in the United States, got together and reformulated the legislation as a result of the outcomes against reservists coming back from Desert Storm and their legislation is now quite workable.

They have a lot of case history decisions on the meanings of words and the meaning of phrases. They have things like reasonableness tests: what is reasonable in terms of warning that reservists should give to their employer; what is reasonable in terms of the amount of time. They have court decisions which establish things like quotas. Organisations that have got a small number of employees cannot afford to let them all go at one time; that was a practical problem that has arisen in the United States. They have case law regarding quotas. So they have a very mature set of rules which, when you look at the maturity of them, are no longer the legislative approach which I think every jurisdiction would seek to avoid. They have a mature approach where the HRM manager, the union officials and the reservists' advisers look at the case law and have a good understanding of something that has been worked out over previous cases, and so most of their matters are resolved administratively with the benefit of experience and good definition. In Australia, we do not have that, and the foundation that is not there is an effective piece of legislation.

I offer you the summary that, as the legislation exists, it is a win-lose-lose situation, or at least that is how it was thought until recently. The win is for the defence forces in extracting employees out of the workplace to meet some requirement—all commentators agree they have the power to do that. The two losers are with respect to the employee, who commentators say—and we are going back to official reports like the Standish report, to legal opinions that have been given to state branches of the DRSC, to in-house opinion within the defence forces—the legislation does not provide effective protection for. The lose that is not clear is that for the employer. You will notice that one of our submissions deals with exemptions for employer.

There are clearly situations—say, in a call-out—when the extraction of the employee from the employer for a defence situation would create undue hardship. In the United States that is the case; they have exemptions, they have clearly defined situations to deal with those types of undue hardship occurrences. In Australia, the exemption provisions are quite vague and, again, that understanding is not there. Whereas it was seen to be a win-lose-lose, I think now, with the realisation that our defence forces are strongly dependent and becoming increasingly dependent upon the reserves, it may be a lose-lose-lose. That is why we have advocated this concept to the authorities that to make it work it has to be managed out if you are going to get people managed back in.

Whereas legally the defence forces, on the first occasion, might be able to force people to leave—whether the situation is undue hardship or not—and effectively tear them out of the organisation just through the legal power they have to meet a real need the defence forces might have in a real situation, that tearing out process will educate everybody: reservist, potential recruit, employer and HR manager. There will be papers about it in HRM conferences setting out the difficulties that they have caused for organisations and for individuals. So the defence forces will find, on the second occasion, that they are not getting the recruits and that the employers will be more educated in defending themselves against those situations.

We are therefore, in the proposals we put before you, advocating a ‘manage out, manage in’ approach. That will require the combined input not just of the defence forces in designing effective legislation but of other organs of government, such as labour and whoever is looking after veteran issues, so that what comes up is a package that meets the needs of the Defence Force but is, industrially and business wise, workable. You might see this as a paper that is strongly focused on legislation, but I have tried to describe to you that the legislative approach is just a foundation upon which a mature jurisdiction can be developed that emulates the American jurisdiction, where things are largely dealt with in a non-legislative manner. They involve not just the defence forces but also their equivalent of the department of labour and industrial relations and the issues are dealt with at the desk of the human resource manager of organisations, which is where they can best be worked out. It is a foundation for a mature process that is largely handled away from the courts and in which it is not just the employees’ situation that we are tending to. We acknowledge that, if the employer is not suitably looked after, it is the reservist who is going to suffer in that problem as well, because the employers are in a much better situation to look after themselves. Thank you.

CHAIR—Thank you both very much. We will come back to some specifics, but I would like to start off by asking you about the fact that we are seeing some difficulty in the reserves recruiting—in fact, the numbers have fallen significantly below the target. Would you have some comments from your experience about why it is that people are not as keen as they used to be to volunteer for the reserves?

Mr Thompson—There is a lot of competition for younger people, in terms of sporting clubs and various other activities, and maybe they do not see defence service as being attractive. Certainly if they look at some of the employment issues, if they consider that reserve service would impact adversely upon their employment, they might have second thoughts about it. There is certainly nothing in existence today which would encourage a person to join the reserve in terms of their employment.

Mr McMahon—Rather than an opinion, I will give you some figures. An increasing percentage of reservists are no longer telling their employers that they are in the reserves. The membership of unions by reservists is twice the national average. Those figures suggest that the reservist sees his or her status within their civilian organisation as an area of concern, of threat—something that has to be very carefully managed. One of the insights we are offering to the defence forces in dealing with the situation is to appreciate that the bulk of the situation is being dealt with by the reservists themselves, that they have worked out the strategies. The figures show that they are working for larger organisations. They are working for government. Forty per cent of employed reservists are in government. So they are using strategies to

minimise the dangers of being in the reserve, and we are suggesting to the defence forces that they tap into that knowledge and work with those schemes rather than against them.

Mr Thompson—The long-term reservist is essentially a self-manager.

Senator GIBBS—In previous inquiries we have heard about the reservists feeling that they are discriminated against—that they do not get enough training and that they are not regarded as part of the Army as a whole. How do you feel about that? Have you had a lot of people complaining about that sort of thing? People are leaving—

Mr McMahon—Discrimination from within the defence forces?

Senator GIBBS—Discrimination against reservists by Regular Army?

Mr Thompson—Particularly if it involves rank, it could be a question of people being envious of the rank and considering that they have been denied that opportunity. But there is discrimination in the workplace in the sense that anyone who is absent from the workplace on a defence call-out, on training or whatever, quite often that their workmates have to bear the workload for them in their absence, and that is sometimes resented. I am not up to date, I am afraid. It is nearly 10 years since I left the reserve, but my recollection is that there is certainly a problem in the various perceptions and aspirations of the regular service person and the reservist.

Senator GIBBS—What percentages of people would actually be in the work force? A few former witnesses have said, 'Of course, if anything did happen and we had to call out the reserves, they wouldn't be able to go because they are in the ambulance, the police force, the fire brigade and other essential services.' Is this correct? Do you have a higher proportion working in the essential services as opposed to working in an office, in a labouring job or in a trade?

Mr McMahon—The figures that I recall, which are two years old now, indicate that about 40 per cent of employed people are in government. That includes federal and local government. My understanding is that they are in government so that if something does happen, they can go. They believe that they have a better chance in a larger organisation of getting their jobs back.

Senator GIBBS—That makes sense.

Mr McMahon—I think where your concern is real is with the unemployed and students. It was not possible during Vietnam to pull students out of universities to put them in national service. The bulk of those units are students. They have deliberately embarked upon a recruitment policy of capturing students to get their figures. I do not believe that, in a real situation of fire they would be politically able to extract them out of the university, but that is only an extrapolation from national service days.

Senator GIBBS—Do you have complaints about people leaving the reserves en masse? We have been told by previous witnesses that a lot of them are just simply leaving. They are not interested because of different things. They are frightened of losing their job, discrimination by

the employer and that, if they do go away, their job will not be there. There were other things such as lack of equipment within the Army. They feel they are not treated properly. Do you have any evidence of this?

Mr McMahon—I am only aware of the figures that talk about the 30 per cent loss after the recruitment course. I am talking about the army; I am not familiar with the navy and air force. That is a situation where the figures reported to us, the Defence Reserve Support Committee, show that a very well-orchestrated and significant effort is put in from the point that the soldier or recruit enlists. They go through a fast and streamlined recruitment course process. After the recruitment course they go back to their units. What happens in the units is a subject of the issues that you have demonstrated. The priorities may be a lot less than equipping and providing resources for recruitment courses. I am only aware of the figures. I am not aware of mass walkouts with respect to particular units. I am just aware of the statistics that have been put into the public view.

Mr LAURIE FERGUSON—You gave the figure that, at the moment, 50 per cent of reserves are in a trade union movement.

Mr McMahon—Twice the national average, yes.

Mr LAURIE FERGUSON—On the surface that seems to substantiate the argument of lack of protection, essentially concerns of employer harassment toward building reserves. Just to clarify this in case it is a misleading figure: there has traditionally been a heavy dependence upon Telstra and railways. That kind of public service sector has always been fairly strong on reserves. Are those figures partly related to de-unionisation of the private sector as a proportion of the trade union movement? Is that possibly a factor in this? Have you got any longitudinal figures that go back and see the level of unionisation amongst reservists five or 10 years ago?

Mr McMahon—No, I do not. It is possible that, because they are joining the government, they are getting with the government culture in joining unions. But recently our experience in the government is that their level of membership is very low there too.

Mr LAURIE FERGUSON—In a relative sense.

Mr McMahon—It is higher than in private enterprise.

Mr LAURIE FERGUSON—I met with one of the interstate reserve support committees recently. One of the things they raised with me was a question of career prospects and reserves for people who were full-time reserves. I do not know if this is accurate. You may have some feedback. There was a view that, basically, Regular Army people were getting senior positions. This was having a morale problem amongst the reserves. Have you come across that at all?

Mr McMahon—With the shrinking of the number of units, there has to be competition. When you integrate a reserve and a regular unit, a decision has to be made as to whether the CO is going to be a reserve or a regular. I have heard the complaints. On my inspection, it seems to be even-handed.

Mr LAURIE FERGUSON—I do not know if I am getting into an area that is not really your emphasis, but you are both on the reserve support committee, are you not?

Mr McMahon—Yes.

Mr LAURIE FERGUSON—Another point raised by that interstate committee was the degree of these long training induction periods for reserves and the problem of interfacing that with employment. It was put that, part of what is done there is essentially the question of people's fitness et cetera, and that might be better dealt with at a local reserve level than being part of a long induction period. Have you got any comment on that?

Mr Thompson—It certainly presents as a problem. The Army requires reservists to attend a course of considerable length at Kapooka, outside Wagga. If you consider the travelling time from, say, North Queensland or Western Australia, you are taking that person, if they are in employment, away from their place of work for a considerable period. I think it is about 12 or 14 weeks. The employer and the employee obviously would have some concerns about that.

Mr LAURIE FERGUSON—They say that one of the particular things that should be looked at is that part of that relates just to fitness, and fitness should really be looked at at a local unit level.

Mr Thompson—I would agree, if that is the only reason.

Mr LAURIE FERGUSON—That is not the only reason.

Mr Thompson—Yes, there may be other reasons. But that particular aspect presumably could be sorted out before the actual training at Kapooka began.

Mr LAURIE FERGUSON—Finally, getting away from the ACTU, could you tell us about the efforts of the Defence Support Committee? I know you are not representing the Defence Support Committee, but could you give us some overview of what you are involved in and what you are doing?

Mr Thompson—My role in the national committee and Greg's role in the Queensland committee are similar in the sense that we are providing a bit of human resource and industrial relations input to the committees. I have been with the national committee since 1996. Things such as the removal of defence service leave from industrial awards with the introduction of the Workplace Relations Act 1996 came as a bolt from the blue. There were considerable concerns expressed, certainly at the level of the national body, regarding the introduction of that law and the reduction of industrial awards down to 19 or 20 allowable matters. Our paper suggests that the Australian government is a model employer in these matters. If the Australian government were to become a model employer in terms of reserve service, I believe that some similar provisions in employment law would have to be reinstated to ensure that the government is a model employer—that it does release its employees for defence reserve service.

Mr McMahon—We would say there is a lot to be done and that there is not enough being done with respect to the role that is seen for the DRSC by the government. I would point to the

budget that they were given and the inferences that one should draw from that. But it is a venue for some progress. The most notable aspect that I would refer to is the opportunity afforded in Queensland to get unions, government and industry together to talk about the issue of what would be fair compensation for employers when a reservist is taken out for small periods of training or for a major call-out. Those three groups were able to come together and agree to a figure, and that provides a lead for the rest of the community. The three parties got together to resolve all the issues associated with reservists and the contribution which reservists make to the defence forces. We would just like to see more happen, much more rapidly.

Mr HOLLIS—Thank you very much for your paper. This is an issue that is constantly being brought up. I do not think any topic has been brought up more often than the role of the reserve and the reservists. In Canberra recently, a doctor who had been in Timor had to resign from his position in a hospital because of the length of the period that he was away.

The other issue—and I know we have dealt with this in parenting, so I do not think it is an impossible one—is that there is a difficulty with the very small firms. It is all very well for government and very large firms, and I think you have said yourself that often just as a measure of protection, if you like, people from government and very large firms tend to join. But as someone—I think it was Senator Gibbs—sharply reminded a witness once when they put this to us about very small firms, that argument was also being used for maternity leave, and that has been dealt with. With a little bit of constructive thinking, there must also be the possibility to deal with that in the case of reserves.

Mr Thompson—Of course there are existing provisions under the Workplace Relations Act for such things as jury service and family leave. Whether you can stretch the bow to encompass defence reserve leave is questionable, but they are similar forms of leave.

Mr McMahon—That is a very good analogy. We are talking about two groups of people who on two occasions, on average, in their life have to be taken out of the workplace for six to 12 months, and the organisation has to be geared up for replacing them temporarily and then giving them their job when they come back. The analogy is very strong. Can I again refer you to the United States, where they have a quota system with regard to taking matters to court. They now have a case law on when an organisation can establish a quota. In Australia a situation can develop for a small organisation in the country where all the members are from the one unit and when that unit has to go everybody goes out of the work force. There is a case where a quota might be a practical solution so that the organisation, after it has hired its quota, can refuse people employment on the basis that they are members of the reserve. It is a win-win situation. In the United States the quota issue arose with a police department. Somebody spoke before about the reserves working in government and those people being of restricted service. That problem was anticipated in the United States, and they resolved it by allowing that police department to have a quota so that when the call-out was necessary, they were only going to be affected to a manageable degree.

If our future in the defence force is going to be based on the reserve then we have to be serious about what that means. I think that somebody should be going over to the United States and looking at it from all three aspects. Over there, where there is an army dependent upon reservists, we could look at what is a reasonable period for a reservist to be taken out of the

work force. In Australia, it is two to four weeks; in the United States, it is 90 days. It is just a case of establishing that level. Our defence forces are peacetime defence forces, and once that level is established then everybody who is affected by it—the HR managers, the employment people in organisations, the reservists and financial institutions—can gear up to it, and the United States can give a lead as to how that can occur.

Mr HOLLIS—You should talk to Minister Moore and get him to suggest that this committee go over and have a look at that.

Mr McMahon—Are there any unionists here?

Mr Thompson—If I could just add a point to pick up on what Senator Gibbs mentioned. I can recall going to a workplace when family leave was introduced to the workplace and the CEO of the organisation wringing his hands—it was a male—and saying, ‘What are we going to do? It is going to be a dreadful business having people absent on maternity leave,’ as it was then called. I said, ‘Five years from now I think we will look back on it and say that it is just another administrative procedure.’ I think that is what we have to cultivate; that it is, in fact, just another administrative procedure. Some would call it an administrative burden, but if we are to have an effective reserve I believe those sorts of measures need to be in place.

CHAIR—How long has that quota system been in place in the United States?

Mr McMahon—Because of what happened in Desert Storm, 25 per cent of reservists lost their jobs and both houses initiated their own bills to deal with the matter. Realising they were both doing it, they came together and devised a joint bill. That came in shortly after Desert Storm. But their case law existed prior to that. They had legislation going back to about the time of our Defence (Re-establishment) Act. A lot of the problems that developed were dealt with by cases. Desert Storm showed up extra problems, which they all sought to deal with by a review of the legislation.

Mr LAURIE FERGUSON—We commissioned some work from the Parliamentary Library months ago. It is not as detailed as Mr McMahon supplied to the committee. There is a Parliamentary Library document on the US alternative.

CHAIR—Thank you. Did you give it to the committee last week?

Mr LAURIE FERGUSON—No.

CHAIR—Coming back to your submission, you talk about the protections needed. I noticed there is quite a long list there—protections for reservists and their families. Amongst those you have included bankruptcy. I am just wondering why you specifically put that in there? It is on page 4 of your first submission.

Mr Thompson—We were attempting to be all things to all people and to have as much of the basics covered.

Mr McMahon—From my recollection, that came out of material that we got for protection of national servicemen that allowed for a real case or cases that arose where people were declared bankrupt. I do not think they are able to keep their position in the defence forces if they are—certainly if they were officers I do not think at that time they were allowed to continue. But if they were in proceedings associated with bankruptcy there had to be a moratorium established because in those days you were in for two years and were destined to be going overseas.

CHAIR—So you would not be encouraging someone who is facing a problem suddenly to zip in.

Mr McMahon—You have reminded me of a particular issue that has not been covered. If an employer goes for an exemption because losing his or her employee would cause problems, what happens to the employee? Do they get an exemption automatically? There is that kind of practical problem. It should. The employee should be given the opportunity to claim exemption as well, otherwise what is happening is that the employer gets the exemption and the employee gets pulled out. It is those kinds of practical problems we are not getting any information on, because nobody is going out there and getting anecdotes. They are shying away from them because of the volume of problems that are out there. We do not have a workable legislation to give us case law. If we did, we would be getting a lot of these—not bankruptcy ones, but some of these problems.

CHAIR—Talking about experiences, what about the case of East Timor? Have you had any examples of people having come back and faced problems or discrimination?

Mr Thompson—I am not aware of any.

Mr McMahon—I do not think the number of reservists over there is large yet. I understand that part of the planning may involve a greater number of reservists. Currently there are not a lot of them. Most of them are on a volunteer basis. There are probably a lot of reservists who are getting into difficulties because they are backfilling positions.

Mr Thompson—There is a considerable void in the information on this area. Defence Reserve units cannot provide that sort of information. Personnel administration and their records do not throw this information back through the system. There is a considerable problem in trying to assess precisely what those problems are.

CHAIR—Can I thank you very much indeed for coming before the committee and coming all this way too, because Townsville is almost as far away as I am. Also, thank you for your submission. You will get a copy of your evidence so if there is anything there you see is incorrect, please let us know. If there is anything further that the committee wishes to take up with you, I am sure that you will be happy to respond. Thank you very much.

Mr HOLLIS—If you get any more examples like you have of the states we would be quite interested in those. You are obviously doing some work in this area. What you have put here about the states is quite extensive. If you had any other examples—even from other countries—we would be quite interested in having a look at those.

Mr McMahon—I have a presentation that I give on the comparison of the Australian and the United States legislation. If there were interest in that—it is just 20 overhead slides—I would be happy to send a copy to the committee through Bill.

CHAIR—Yes.

Mr Hollis—We might talk to the military attache at the embassy as well. I think it is most unlikely that the minister will send us over there to personally look at it but maybe we could talk to the attache.

Mr McMahon—I think that somebody from the Defence Force, government, union and employers needs to look at it, and not just go and talk to reservists in those other countries but talk to the people who are administering the problems—the Department of Labour. I have contacted them recently and they hold us in very high regard because of what we are doing in East Timor. I happened to ring up on the day that East Timor was on the front page of the *Washington Post* and they are very receptive people—they are the ones who are managing it—and you could talk to the veterans organisations and to the unions over there.

Mr Thompson—I would like to make one final point. The essential message that we are emphasising here is that if there is to be an army reserve then the management of the reservist into the service and out of the service needs to be done properly. Right now we are suggesting that there are inadequate legal and administrative provisions. That is the core of what we are saying. That has to be addressed if there is to be an effective management of that situation. Thank you.

CHAIR—Thank you.