



NSW Legislative Assembly Hansard

Firearms Amendment (Good Behaviour Bonds) Bill

Extract from NSW Legislative Assembly Hansard and Papers Thursday 8 June 2006.

Second Reading

Mr RICHARD TORBAY (Northern Tablelands) [10.05 a.m.]: I move:

That this bill be now read a second time.

This is not a large bill—indeed, it has only three pages—and this will not be a long speech. However, although the bill is small, it has significant potential to rectify a large basic injustice visited on a particular group of citizens and, in fact, burdening them with a double jeopardy of punishment under illogical and bizarre circumstances. The bill is the work of the Hon. John Tingle, MLC, in the other place, and I am happy to have the job of presenting the bill to this House. It is worth noting that in the other place both the Government and the Opposition supported the bill—it was carried 28 votes to 4.

The bill seeks to amend the Firearms Act 1996 to reduce the conditions under which the issuing of a good behaviour bond automatically—the key word is "automatically"—means that a licensed firearm owner is automatically deprived of the licence, and of legally owned firearms. This applies even if the offence that led to the bond may have absolutely no relationship, connection or relevance to ownership or use of firearms.

It has been astonishing to see the negative spin put on this bill by some sections of the media, but I will deal with that later. It is an oddity of the Firearms Act that it includes this reference to good behaviour bonds, which is normally dealt with under the Crimes Act. This effect of the Firearms Act, in the case of good behaviour bonds, is not widely known, and I have heard of a number of cases where firearms owners, before a court on quite minor matters, have been happy to accept a good behaviour bond, only to discover quickly that their firearms licence is gone.

The first case that came to my attention some years ago was that of an elderly farmer on the South Coast. This man was described as a quiet living, almost reclusive person who had never had as much as a parking ticket in his life and was a very moderate drinker. One afternoon he went to a nearby town to shop, met some old friends and had a few drinks at the club. On the way home he was breathalysed and he came in with a medium range prescribed concentration of alcohol [PCA]. As he had never been in trouble before he went to court and was given a 12-month good behaviour bond. He was surprised when the next day local police came to his farm and told him his firearms licence was revoked and he had to dispose of his firearms immediately.

What seems to me to be unbalanced about this provision is that when a court issues a good behaviour bond in lieu of a tougher penalty it is effectively stating, "Well, you've done the wrong thing and committed an offence. But the court feels it was probably an isolated incident, and so we're going to give you a chance to demonstrate that you are normally a law-abiding citizen. So the court is giving you a bond to be of good behaviour for a set period of time. The bond should be a reminder to you, during that time, that you did commit an offence; but it's also an opportunity for you to show you can behave and observe the law at all times." Yes, the bond is a punishment, but it is also an opportunity to demonstrate rehabilitation. So, when that person was given the bond, he accepted that as his punishment for being silly enough to drink more than he should have drunk. Then, lo and behold, a day later he discovered that there was a second punishment—the revocation of his firearm licence. In his case, it deprived him of the firearm he had used until then to control rabbits, foxes and other vermin on his farm—a firearm that is not, and never has been, a threat to anyone else.

Mr Richard Amery: Ironically, they did not take his car.

Mr RICHARD TORBAY: As the honourable member for Mount Druitt said, they did not take his car! If this is not a case of double jeopardy—two punishments for one offence—what is it? Given that his offence did not relate in any way to a firearm, or improper use of a firearm, or any act that gave cause to believe that he might do something wrong with a firearm, the imposition of a second punishment is utterly illogical. I take the view that it is even worse, because it applies to only one category of citizen: the law-abiding, normally inoffensive, legal firearm owner. Firearm owners are bound by many restrictions, covenants, expensive licences, tight storage requirements, suspicion that they are all potential homicidal maniacs, and a media-generated public suspicion and disapproval which applies to no other legitimate sport. The honourable member for Mount Druitt might interject on this point, but imagine a motorist who, given a bond for medium range PCA, was told the next day that his golf clubs were to be confiscated as punishment, and his fishing licence was being revoked, just for good measure!

Mr Richard Amery: Or his lawn bowls.

Mr RICHARD TORBAY: Or even his lawn bowls. The golf clubs of the Deputy Leader of the Opposition might also be in trouble in that case. What a public outcry there would be then; but it would be no less illogical than the effect the current law has on firearm owners. That is the serious point that I am making. Firearm owners are regarded with instant and abiding suspicion by legislators, the media and the public, so it seems whatever is done to them must be for the public good. What an appalling injustice that is. I know many people would say that double jeopardy is not only necessary but also a good thing; and that golf clubs and fishing licences are not a potential danger to the community, and so the allegory does not hold up. Well, people are welcome to their opinion, but it is ill founded when natural justice is taken into account.

Of course, revocation of a firearm licence in some circumstances is not only justified but also inevitable. When a person has used a firearm to threaten or wound someone other than in self-defence, or to rob or assault someone, his licence should be taken away—indeed, we would expect his firearms be removed. In severe and deliberate cases, perhaps the person should never be allowed to own a firearm again. But, of course, someone given to that sort of firearm violence is hardly likely to be bothered or deterred by the law from obtaining a firearm illegally. By definition, firearm laws bind only law-abiding people. That sort of penalty is justified in some other instances, including a case of deliberate physical assault without a firearm or a weapon of any kind other than the human fist, which is one of the most used weapons. The perpetrator of that offence should not have access to firearms.

In the drug trade, which is closely linked to the criminal use of illegal firearms, a person convicted of an offence involved with that who for some reason is given a good behaviour bond should certainly not have legal access to firearms. Although, again, it is doubtful that anything would deter such a person from obtaining and using a firearm illegally. The bill seeks to limit the automatic disqualification of persons subject to good behaviour bonds from holding licences or permits and from dealing in firearms. The bill will disqualify only a person who has been convicted of an offence involving the possession or use of firearms or other weapons, or an offence involving a serious assault, or a drug-trafficking offence.

I turn to the detail of the bill. Schedule 1 limits the disqualification of persons subject to good behaviour bonds from holding firearms licences or permits, or from dealing in firearms. Schedule 1 [1] amends section 4 of the Firearms Act, by inserting in section 4 (1) the definition of "drug trafficking offence" for the purposes of the Act. Honourable members will notice that the definition specifies eight offences as provided in the Drug Misuse and Trafficking Act 1985 relating to a prohibited plant or a prohibited drug. The section is quite specific.

Schedule 1 [2] inserts into section 11 (5) (d) of the Firearms Act 1996, relating to general restrictions on the issue of licences, the additional definition "as a result of being found guilty of an offence relating to the possession or use of a firearm, or any other weapon, an offence involving the infliction (or attempted infliction) of actual bodily harm on another person or a drug trafficking offence". Schedule 1 [3] makes a similar amendment to section 29 of the Firearms Act in relation to general restriction on issuing permits. Schedule 1 [4] amends section 44A of the Firearms Act by inserting similar provisions to those just mentioned. I am well aware that some honourable members of this House will see that as a softening of the Uniform National Firearms Laws brought in after the Port Arthur massacre. That is not the case at all; and it is not what some of the media chose to present, as an extremely distorted view of this bill, after it passed in the other place, by 28 votes to 4, with both Government and Opposition support.

The media made a number of extraordinary and inaccurate claims. It claimed that the bill "would give guns back to convicted criminals". That is rubbish and untrue. The bill specifically deals with bonds given for minor offences—not for major crimes—and it does not propose giving guns back to anybody. The bill proposes not taking firearms away as a double punishment when it is not justified. The media claimed also that the bill would allow someone who had breached an apprehended violence order [AVO] to apply for a firearms licence for the first time. A quick check of the law would have shown that people who have had an AVO taken out against them are disbarred from holding a firearm licence for 10 years. There was much more in the same extraordinary vein in the public debate, but it seems obvious that some journalists who wrote those stories had not read the bill. I urge them to read the bill.

The bill is not about the sorts of things claimed in those misleading stories. It is an attempt to remove the injustice of a double jeopardy from the Firearms Act—a double jeopardy that applies selectively to a specific group of citizens, as I mentioned previously. The intention of the bill is to remove that double jeopardy where it occurs because of a minor offence or an offence quite unrelated to the ownership and use of firearms. An obvious injustice of this type brings all law into question. It is not unreasonable to try to correct such an injustice.

I emphasise that nothing in the bill affects the discretion of a court to order the revocation of a firearm licence as it sees fit. That is a very important point. At present, the court has no discretion, no say in the matter; it is an automatic revocation, taken out of the court's hands regardless of how the court might view the legal seriousness of the offence. I understand that the Government has foreshadowed some amendments to the bill designed to clarify the wording of some definitions of the offences mentioned in it. The Government has discussed those with the author of the bill, the Hon. John Tingle, and he has agreed to them. I indicate on his

behalf that I will not oppose these amendments. I commend the bill to the House.