



NSW Legislative Council Hansard

Firearms Amendment (Good Behaviour Bonds) Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 2 March 2006.

Second Reading

The Hon. JOHN TINGLE [11.23 a.m.]: This is not a large bill—only three pages in fact—and this will not be a long speech. But although the bill is small, it has great potential to rectify a large basic injustice visited on a particular group of citizens who are burdened with a double jeopardy of punishment under illogical and bizarre circumstances. The bill amends the Firearms Act 1996 to reduce the conditions under which the issuing of a good behaviour bond automatically means that a licensed firearm owner is deprived of his licence and his legally-owned firearms, even though the offence which led to the bond may have absolutely no relationship, connection or relevance to his ownership of firearms. It is an oddity of the Act that it provides this reference to good behaviour bonds, which would normally be dealt with under the Crimes Act.

This effect of the Firearms Act in the case of good behaviour bonds is not widely known. I have heard of a number of cases where firearm owners, before a court on quite minor matters, have been happy to accept a good behaviour bond, only to discover very quickly that they will lose their firearm licence. The first case that came to my attention, some years ago, was that of an elderly farmer on the South Coast. This man was a quiet living, almost reclusive, fellow who had never had as much as a parking ticket in his life, and was a very temperate drinker. One afternoon he went into his nearby town to shop, met an old friend and had a few beers at the club.

On the way home he was breathalysed, had a medium range prescribed concentration of alcohol, and, because he had never been in trouble before, went to court and was given a 12-month bond to be of good behaviour. The next day local police came to his farm and told him his firearm licence was revoked, and that he had to dispose of his firearms immediately. What seems to me to be unbalanced about this provision is that a court issues a good behaviour bond in lieu of a tougher penalty, stating in effect: "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 certain number of years. The bond should be a reminder to you 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 this farmer settled for his bond he accepted that as his punishment for being silly enough to drive when he had had more to drink than he should have. Lo and behold, a day later he discovered that he also had a second punishment—the revocation of his firearm licence. In his case it deprived him of the firearm he had used to control rabbits, foxes and other vermin on his farm—a firearm which was not, and never has been, a threat to anybody else. If this is not a case of double jeopardy, 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 he might do something wrong with a firearm, the imposition of a second punishment is utterly illogical. It is selective and discriminatory.

I take the view that it is even worse, because it applies to only one category of citizen, the law-abiding, inoffensive legal firearm owner. We firearm owners are bound by restrictions, covenants, expensive licences, tight storage requirements, suspicion that we are all potential homicidal maniacs, and a media-generated public suspicion and disapproval which applies to no other legitimate sport. Imagine a motorist given a bond for medium range PCA being told the next day that his golf clubs were being confiscated as punishment, and his fishing licence was being revoked just for good measure. What a public outcry there would be!

But firearm owners are regarded with instant and abiding suspicion by legislators, the media and the public, so it seems that whatever is done to us must be for the public good. What an appalling injustice this is. I know there are members of the crossbench at least who would say that this double jeopardy is not only necessary but 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, they are welcome to their opinion, biased and ill-founded though it be.

Of course there are cases where the revocation of a firearm licence in these circumstances is not only justified but inevitable. Where someone has used a firearm to threaten, wound or kill someone, other than in self-defence, or to rob or assault someone, their licence should be taken away, their firearms removed and, in severe and deliberate cases, perhaps they should never be allowed to own a firearm again. But, of course, someone that is given to firearm violence is hardly likely to be bothered or deterred by the law from obtaining a firearm illegally. By definition, firearm laws bind only the law-abiding.

There are other instances where this sort of bond is justified. In a case of physical assault without a firearm, or even without a weapon of any kind other than the human fist—which is one of the most used weapons,

incidentally—the perpetrator should not have access to firearms. Somebody convicted of an offence related to the vicious drug trade, which is so closely linked to the criminal use of illegal firearms, who for some reason is given a good behaviour bond should certainly not have legal access to firearms. Again, it is doubtful that anything would deter such a person from obtaining and using a firearm illegally.

So the bill seeks to limit the disqualification of persons subject to good behaviour bonds from holding licences or permits or from dealing in firearms. The effect of the bill would be that a person will be disqualified only if the person has been convicted of an offence involving the possession or use of firearms or other weapons, an offence involving a serious assault, or a drug-trafficking offence.

I turn to the bill in detail. 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 (1) of the Firearms Act by inserting the definition of "drug trafficking offence" for the purposes of this Act. Honourable members will notice that it specifies offences as outlined in the Drug Misuse and Trafficking Act 1985, relating to a prohibited plant or a drug. The section is quite specific.

Schedule 1 [2], inserts into section 11 of the Firearms Act, relating to general restrictions on issue of licences, the definition of the offence of 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 Parliament will see this as a softening of the uniform national firearms laws brought in after the Port Arthur massacre. It is not that at all. Rather, it is an attempt to remove the injustice of a double jeopardy from the Firearms Act—a double jeopardy which applies, selectively, to a specific group of citizens who are trying their best to deal with the difficult and restrictive laws which bind their sport. The intention of this 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 an unreasonable thing to try to correct such an injustice. On that ground, I commend the bill to the House.