

**CRIMES AMENDMENT (POSSESSION OR DISCHARGE OF FIREARMS IN  
COMMISSION OF OFFENCES) BILL 2012**

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**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Robert Borsak.**

**Second Reading**

**The Hon. ROBERT BORSAK** [9.51 a.m.]: I move:  
That this bill be now read a second time.

The Shooters and Fishers Party is pleased to be able to try again to have this bill voted into law. We have always believed that there should be a specific penalty for the use of a firearm in the commission of a crime, and for as long as our party has existed we have repeatedly introduced legislation to try to make it law. We have not succeeded because the Government of the day has always claimed that it amounted to imposing on judges mandatory sentencing. It does not.

I am delighted that when the Hon. John Tingle first introduced his Crimes Amendment (Firearms and Other Offensive Weapons or Instruments) Bill in September 1998—14 years ago—the Coalition did not oppose it; indeed, the Coalition supported it. The Coalition is now in government and it can now support this legislation, which embodies a concept supported by the Coalition in opposition. What we have done this time around is simply address the firearms crime part of the proposed legislation. We have removed from Mr Tingle's bill all other weapons and instruments so that there can be no real argument about what we want. Law-abiding firearms owners are fed up to the back teeth with the odium they must wear whenever a drive-by shooting or some other shooting incident occurs simply because they own a firearm and shoot targets or hunt. We want to send a clear message to criminals who do not get a firearms licence and who do not obey the law that if they want to use a firearm while committing a crime, they will be subject to a sentence for the core crime and for the use of a firearm in the commission of that crime. It is that simple.

In speaking to the bill, it is appropriate for me to go back to the words John Tingle used 14 years ago when he wanted the issue addressed. Those words are as valid today as they were then. We believe that the time has come when we must regard the present level of armed crime of all types as a matter requiring urgent attention and that we must implement laws to reflect community concern. Those laws should be aimed at placing a barrier between the offender and the implement he uses in the offence. It should be made clear that this community will not view with indifference the shootings that are becoming common place. We must make it clear in law that even the threat to use firearms during the commission of a crime is intolerable. We need laws to drive home those facts hard. The laws should reflect without equivocation that this Parliament believes that someone who carries out a crime while armed will be assumed to be prepared to use that weapon without compunction.

What does this bill seek to do? Its purpose is simple: It recognises the growing public concern about the increased use of firearms in the commission of crimes. It seeks to have the law regard the possession of a firearm during the commission of a crime as a separate crime in itself. It should be seen as a crime in addition to the actual crime committed and not an aggravating offence as the law sees it now. Rather, it should be a separate and additional crime to be dealt with separately by the law both in terms of judgement and the penalty that the court might impose. The central effect of the bill is to provide that in the event of a person

carrying a firearm while committing an offence the courts will be able to deal with the possession of a firearm as a separate crime. The court will be able to impose a separate sentence for that crime to be served cumulatively upon, not concurrently with, any sentence imposed for the crime itself. The overview of the bill states:

The object of this Bill is to make it an offence to be in possession of a firearm or imitation firearm at the time of committing or attempting to commit certain specified serious offences or to aid, abet, counsel or procure the commission by another person of a specified serious offence while that person is in possession of a firearm or imitation firearm. The Bill also imposes a further penalty if a firearm or imitation firearm is discharged or used at the time that either of the new offences is committed.

The bill will insert a new section 931A in the Crimes Act to make it an offence to be in possession of a firearm at the time of committing or attempting to commit certain specified offences or to aid, abet, counsel or procure the commission of such an offence. The offences include assault, robbery, breaking and entering and certain sexual assaults. Further offences may be added by the regulations to those already specified in proposed section 931A (1) of the Crimes Act.

Before I deal with the proposed penalty I will explain the thinking behind the proposal that the possession of a firearm while committing a crime should in itself be seen as a crime. When someone goes out to commit a crime and carries a weapon—any kind of weapon—one is entitled to assume that that person is prepared to use that weapon to ensure the intended crime is successful. After all, if that is not the intention, then why be in possession of the weapon? A person found to be in possession of a firearm while committing a crime should be regarded as having that weapon for the purpose of committing the crime. In the original drafting of this bill, John Tingle proposed a minimum penalty of 20 years imprisonment. This sentence was to be cumulative upon the sentence imposed for the commission of the core crime. That indicates how seriously he—and, indeed, we now—regard this type of crime. Over protracted negotiations seeking support for the bill, Mr Tingle was told repeatedly that the proposed minimum sentence was far too heavy and that it did not leave the judge with any discretion and that it would not be supported.

However, the principle of the bill—that being armed with a firearm is a separate, additional crime—is more important than the details of the sentencing, and the Shooters and Fishers Party is persuaded to amend the proposed sentence range for this type of crime. The bill now proposes that on conviction of the separate offence of being in possession of a weapon while committing a crime, the person so convicted will be sentenced to a period of detention not less than the period of sentence for the core crime. The extra sentence for being in possession of a weapon is to be served cumulatively, not concurrently. This leaves a judge with a great deal of latitude in determining the total of the main sentence and the cumulative sentence. However, it also establishes the important principle that a separate conviction has been recorded and a separate specific sentence imposed. The purpose of such a heavy penalty is to make it highly inadvisable for people even to carry firearms when they commit a crime. If they do not carry the implement, they can hardly use it.

The intention of the bill is to make it very risky for people to carry firearms when they commit a crime. The proposed new section also creates a separate offence of discharging or actually using a firearm during the commission of a crime and imposes a further five-year cumulative sentence if the weapon is discharged. The same argument applies as that used to justify the extra sentence. There is no point in imposing a slap-on-the-wrist penalty for such dangerous practices. The penalty should be sufficient to fill a prospective armed criminal

with dread. However, the bill has let-outs for those who are not guilty. Proposed new section 931A (7) allows a defence for accomplices if they can satisfy the court, first, that they had terminated their involvement in the commission of the relevant offence before the offence under proposed subsection (5) was committed or attempted; secondly, that they did not know and could not reasonably be expected to have known that the other person had a weapon in his or her possession; thirdly, that they took all reasonable steps to prevent the other person from taking the weapon with him or her; and, fourthly, that the other person had a lawful reason for having the weapon in his or her possession.

New section 931A (8) increases the minimum penalty if the weapon is discharged during the crime by proposing a penalty of an additional five years jail.

The entire point of the bill is to say to the criminal: Maybe you are the type of germ who does not think it matters that you commit crimes against other people. Just know that if you commit those crimes while you are carrying a firearm it will not only make that crime worse; it will make you guilty of a much worse crime and one that could put you away for twice as long—no arguments and no excuses. We must send the right message to the hoons, goons, home invaders, muggers and rapists. The message must be: Do the crime and you will do the time, but do the crime armed with a firearm and we will be so outraged that we will throw you in the slot and throw away the key. I believe this is the only message that the gun-toting criminal will understand. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Dr Peter Phelps and set down as an order of the day for a future day.**