



Legislative Council
Criminal Procedure Amendment (Indictable
Offences) Bill Hansard
Extract

31/05/95

The Hon. J. S. TINGLE [11.19]: Mr President, I thank you and I thank the honourable members of this House for the many kindnesses and the helpful advice given me since I entered this Chamber as a solitary and very new member on 2 May. Why am I speaking to this bill? Perhaps I might be allowed to say a little about myself and the party and the people I represent to explain that. Although I have covered politics as a journalist for more than 45 years, my first hours in this Parliament made me realise how little I know about politics from this side. I am a journalist, Mr President. I served my cadetship in the then Australian Broadcasting Commission where I worked for 18 years in television and radio, and I was chief of staff of the news service when I moved to commercial radio in 1969.

Since then I have worked on eight capital city radio stations in Sydney, Melbourne and Brisbane, and on television in New South Wales and Queensland. Reflecting on your words of welcome on 1 May, Mr President, I recall that you welcomed us to a profession which, as you said, in the view of some is seen as ranking below that of used car salesmen. You were kind enough not to mention the level of public esteem in which journalists are held, but I have the distinct impression that, even though I am very proud of my first profession, I might be seen to have actually made a step up the ladder of social acceptance. That is, of course, if someone who is also one of those dreadful people who has taken up shooting as his recreation can claim a place on the ladder of social acceptance at all.

I am a shooter, Mr President, and have been since I was 10 years old on a farm at Taree where I had to fire guns into the air to keep birds off the maize crops and to scare the flying foxes out of the fruit trees. Today, my wife and I are both target, pistol and rifle shooters. She has supported me in that, as she has supported me in the campaign to become a member of this place, and indeed supports me while I am here. I would like to take the opportunity to thank her for that. The only animals I shoot are wild pigs, which are today a scourge to primary production nearly as great as rabbits were in the 1940s. I started shooting feral pigs when I owned a property near Bourke and was required to suppress them.

I am often asked why I shoot. It is not because of an obsessive love for guns, and not because I am a violent person or have Dirty Harry fantasies: it is because of the intensive self-discipline, the self-control and the perpetual challenge to do it better. I compete only with myself. Undoubtedly, many would call it strange, but many thousands of ordinary law-abiding citizens share my interests with me. Most shooters are not hoonos but very ordinary people like me who take their sport seriously and spend time and money and care on it. Our necks are not, usually, of a particularly red colour. In fact, I would point out that shooting is very much a working person's recreation, as was graphically demonstrated in 1988.

I rise to speak knowing that some honourable members might wonder what a representative of a party called the Shooters Party might have in mind - and, indeed, what his intentions might be during the years that lie ahead. Mr President, let me assure honourable members that I am unarmed, and that my preoccupation is certainly not to see the citizens of this State, or of this country, wandering around carrying guns. We are not about guns for all, despite reports to the contrary. We are about justice and the righting of injustice. And today I represent hundreds of thousands of outdoor enthusiasts, who increasingly find their activities limited and defeated by a muddle of laws and regulations that seem to produce no compensating benefit, and which make little sense.

I represent, as well as law-abiding firearms owners - who are a threat to nobody - law-abiding four-wheel drivers, frustrated fishermen and grumpy fossickers who do not understand why, when they strike their bonanza, they can take, say, only

Page 398

30 grams of gold every 48 hours, and many others who feel they have been unjustly deprived of some basic freedoms. My experiences over the years in things like talk-back radio, current affairs radio and television have given me a deep concern about the levels of real justice in our community, about the disparity between justice and the law, and about political expediency which sometimes seems to direct the creation of law. So I am speaking in support of this bill, Mr President, because it so accurately reflects the main reason for the existence of the party which I represent in this place. Incidentally, I am bemused to find this is a maiden speech. The title of "maiden" does not sit very comfortably on me, after what has been a very full and active life, but it serves to point out to me that real life may well give way to the realities of life in politics.

I support this bill fully, and without reservation, because it is an honest attempt to correct something in the justice system that is not working properly. This bill would streamline justice, without reducing justice. It seeks to make sure justice is done more simply; and done without wasting the time or the resources of the courts that have for so long been so heavily taxed. I might say, Mr President, that the overloading of the court system, and the perceived cumbersome nature of it, along with some puzzling sentences, have, I believe, affected public confidence in the justice system. That is, to say the least, undesirable, and anything that tends to change that perception is to be welcomed, which is why I welcome this bill.

Its provision for the defence or the prosecution to elect whether a case will be dealt with summarily or on indictment is an important step forward in sensible, democratic justice; as are many of its other provisions. They should produce more effective justice. Mr President, the point is that my party is about justice, not about guns. Since the introduction of the 1992 Firearms Legislation (Amendment) Act, members of my party have come to feel that, so often, the gap between the law and justice is a yawning chasm into which the intentions of the law and the function of justice can so easily disappear. The fact that something is law, Mr President, does not automatically guarantee that it will produce justice in all cases and at all times.

Honourable members spend their time trying to be good lawmakers. The intention is good, but sometimes, as a former Prime Minister once admitted, the consequences can be unforeseen. The problem is that laws tend to be set in concrete once they have been proclaimed, unless they are successfully challenged in a court. On a welcome occasion such as that provided by this bill, when laws are looked at, found not to be working the way they should, and corrected, justice has a much greater chance. The law ought to be the handmaiden of justice. It ought to bring to justice the ideas and the means to make sure that justice can function properly. But over a period of time a law brought in in good faith can continue on its straight and narrow path, while the needs and wishes and the practical working of the community it serves drift off at a tangent.

How many laws are there on our books, unchanged since the dawn of time, as it were, that no longer serve the community as it was intended they should. As an obvious example, Mr President, look, if you will, at the old law about public bathing. That law required bathers to wear neck-to-knee bathing costumes for decades after they were rejected as ridiculous by most swimmers. The Shooters Party has a policy in this regard: it would like to see a new type of sunset clause attached to all legislation. This type of sunset clause would require that all new legislation passed by this Parliament should be required to be re-examined after a set period of time. It should be re-examined to see whether it was working properly and actually serving the ends for which it was intended, whether it was actually serving the ends of justice. If it were found not to have achieved a worthwhile end, or found to have produced unforeseen consequences, that law should be modified, changed, or, if a total failure, repealed.

I put it to you, Mr President, that the 1992 Firearms Legislation (Amendment) Act would not survive such a re-examination. It has not produced any reduction in firearms crime or the use of firearms in violence. It has not prevented another massacre with firearms. Indeed, it was futile from the first to expect that it would because it is clearly impossible to legislate against insanity, or to legally predict the course of human behaviour. The firearms Act embodies law that can be unjust, which reverses the onus of proof in some instances, and which abandons the presumption of innocence. It ignores that tenet of justice that it is better that 10 guilty men go free than that one innocent man be unjustly punished. This Act leaves a huge gap between law and justice. It provides Draconian penalties for even the most unwitting offences - goal terms of up to 14 years!

That penalty, Mr President, is for being in possession of a prohibited firearm, yet the only definition this Act gives of a prohibited firearm is a firearm that "substantially replicates the appearance of a military firearm." I am sure every honourable member knows that all firearms substantially replicate the appearance of military firearms. We all understand that submachine guns and machine guns are prohibited. No sensible person would have it any other way. But for three years and one month, Mr President, the 99.9 per cent of firearms owners who have done nobody any harm, and are unlikely to do any harm, have lived with the confusion of not knowing whether that Act, interpreted literally, means they could unwittingly own prohibited firearms.

It is no use their asking the police. They are just as confused about this Act as everyone else. That is the point; the Act leaves far too much to the individual decision of police officers. It leaves far too much to the police commissioner to determine what the Act means. For instance, this Act brought in three years ago required firearms to be kept safely stored in an approved cabinet. But it did not define what was an approved cabinet. Specifications for such a cabinet became available only this year.

Page 399

Mr President, I do not intend to belabour the shortcomings of this Act much further. But I would wish honourable members to know that we believe it is an unjust Act which can punish the wrong people, and which does virtually nothing to deter the criminal or the violent. Were I given the chance, my party would draft a firearms Act much tougher than this one. But it would be tough on the criminal and violent use of firearms. It would not seek to punish the legal ownership of firearms by peaceful citizens as this Act so often does. My legislation would punish the bad guys not the good guys.

Let me add only that one of the most spectacular failures of the current Act has been the use of apprehended violence orders. They were a good and necessary idea; an essential device to try to protect women and children from violence, and we totally applaud their intention. But we have known, for some time - and this has come to public notice only recently - that the AVO, instead of being only a shield, has become a weapon. It is used frequently as a tool for vindictive action against spouses - spouses of both genders, let me stress. When an AVO can be issued against a person living in Sydney because a spouse living in Perth claims to fear violence from that person, when the AVO leads to the seizure of legally owned property on such a slim but unquestioned claim, the AVO is itself a victim of abuse.

There are other laws: the Wilderness Act so eagerly entered into by many of us is a top idea, but in a curious way it is also an instrument of abuse. I totally support the idea of protecting important tracts of land that can be saved from the inroads of even unintentional vandals, but the Wilderness Act can be used to abuse that land. If wilderness areas had been proclaimed in 1788, they might have had guaranteed success. But today, because of their effect of total exclusion, they can end up ruining good land. They have come too late to be successful in their present form. They become a festering breeding place of noxious weeds, feral pigs, feral goats, feral cats, feral foxes, feral rabbits and some pretty feral people! That bushfire hazard reduction cannot be carried out in wilderness areas makes them an even greater threat to surrounding lands.

Just as we are deliberating on the Criminal Procedure (Indictable Offences) Amendment Bill it would also be fruitful for someone to take a look at the 1994 Fisheries Management Act - another curious dissonance between law and justice. I mention just one curious provision of that Act: the requirement, to paraphrase it somewhat, that recreational fishermen must not drive their boats on water in a manner which is likely to disturb fish! I would suggest that in practice it would be very difficult to prove who or what had disturbed a fish, or even that it had not been a disturbed fish beforehand. I mean, there must be neurotic fish too! So, while wholeheartedly supporting this bill and welcoming its intentions, I make the simple point that law is often far from perfect in its application and effect. It means well, but far too often it reflects mores and needs that have long passed, yet the law will insist, in effect, on their observance.

The recent controversy arising from the killing of home invaders has exposed an area where existing law is in conflict with major public sentiment and again with justice. I thank the Attorney General for his consideration of my own representations in that direction and for his offer of the assistance of counsel to draft a private member's bill. I intend to take up that offer and seek to redress the ludicrous situation where a person illegally entering the home of another, by force, can sue the householder for an injury the intruder suffers during the commission of a crime. In apparently trying to protect the intruder we are denying justice to the householder, who is a victim of a crime against what ought to be, what used to be, the

sanctity of the home.

I believe that all law ought to be required to be reviewed at set intervals. It might be time and effort consuming, but what is that cost against the greater cost of a particular law no longer delivering justice? When a law merely serves to give any government the right to intervene unnecessarily in the lawful private lives of citizens, the law is serving the wrong end. My party is committed to a reduction in interventionist government where that intervention is a pointless interference with the freedom of people. I repeat that the law should be the handmaiden of justice, but so often it is a barrier to real justice - even the thief of justice. When the law is seen to be an ass, it is justice which becomes the laughing-stock. Let us not be afraid to ask the vital question: "Yes, this is the law, but is it justice?" I thank honourable members for the courtesy with which they have heard me speak.