




Speech by
Bill Byrne

MEMBER FOR ROCKHAMPTON

Hansard Tuesday, 27 November 2012

WEAPONS AND OTHER LEGISLATION AMENDMENT BILL

 **Mr BYRNE** (Rockhampton—ALP) (4.38 pm): I rise to contribute to the debate on the Weapons and Other Legislation Amendment Bill 2012. From the outset I wish to advise that the only substantive aspect of the bill that the opposition will be opposing is the mandatory minimum sentencing provisions. I would like to foreshadow that I will be moving amendments during the consideration in detail to retain the discretion on the part of the sentencing judge or magistrate in exceptional circumstances where it is in the interests of justice to do so.

I also place on the record that the Labor Party will not stand idly by and allow gun crime to spiral out of control. Gun crime is abhorrent, and I hold grave concerns about the future direction of crime statistics under this LNP government. The LNP has brought in a number of supposed 'get tough on crime' laws, and today those opposite must recognise that they are responsible for future crime statistics in this state. The minister and his new assistant minister are the ones responsible, despite the minister's habit of blaming enthusiastic bureaucrats, as was the case with the ill-fated Rural Fire Service announcement.

It is worth noting at this point that the Queensland Labor Party set up the Queensland Police Service's illegal firearms team. This team has taken over 60 guns off the street. I commend this team for their great work in making our streets safer. It was during the time that the Labor Party was in government that Task Force Resolve was set up. Those opposite will know by reading the action plan for Task Force Resolve that it was always going to transition into a serious and violent offender squad for the South-East region. I also commend these officers for their work in combating serious armed robbery and firearms offences.

We note that the LNP has continued these measures with the major and organised crime squad incorporating the illegal firearms team, which is effectively the rebadging of Labor initiatives. I assume this means that the LNP supported those Labor initiatives. We heard at the estimates hearing how the LNP was in the process of expanding this squad. We support the Commissioner of Police in his determination that this structure is required within the Queensland Police Service to target these offenders who cause such fear in our communities. I wish these officers great success.

In light of what I have said, I will listen intently to those opposite as we debate this bill, because it would be entirely misleading for them to say that Labor did nothing or little in relation to gun crime and it would be further misleading to say that Labor somehow condones gun crime by opposing the mandatory minimum terms of imprisonment in this bill. What this bill does, though, is provide for a mandatory minimum sentence for certain offences. The opposition does not oppose increasing penalties for these offences, but we do have real concerns, as I said, about mandatory minimum sentencing. It is important that judicial officers, to whom we must entrust the very important role of sentencing offenders in this state, retain some discretion in sentencing. There will always be exceptional circumstances. There will always be situations in which imposing the legislatively prescribed minimum sentence will result in injustice, unfairness and perhaps incredible hardship.

I take this opportunity to express the opposition's deep concern about mandatory sentencing which reflects the concern raised in the submission by the Queensland Law Society. The Queensland Law Society feels that mandatory sentences can lead to serious miscarriages of justice because the individual circumstances of the case cannot be taken into account. I will quote from the society's submission to the committee on this bill because I would not be able to express these sentiments any better than it has. The submission states—

The Society has long maintained its strong stance against any form of mandatory sentencing. In our view, mandatory sentencing laws are unfair, unworkable and run contrary to Australia's international treaty obligations.

The Society opposes the proposed legislation on the grounds that it unduly fetters judicial discretion. The removal of judicial discretion by the proposed mandatory sentencing scheme will greatly hinder the courts ability to bring about justice in individual cases. All cases consist of discreet facts and circumstances. There may be any number of contributing factors that lead to the commission of a crime. A mandatory sentencing scheme would be unable to take these factors into account. Mandatory sentencing laws are arbitrary, contravening the principles of proportionality and necessity because they do not allow consideration of either the seriousness of the offence or the circumstances of the offender. They have the potential to lead to serious miscarriages of justice, exacerbated by virtue of the fact that mandatory sentences, by definition, are not reviewable on appeal. It is our view that judges are in a better position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission. Therefore, the Society maintains that sentencing decisions should rest with highly trained judicial officers.

The empirical evidence against mandatory sentencing is well documented. There is a lack of cogent and persuasive data to demonstrate that mandatory sentences provide a deterrent effect. Furthermore, these schemes have consistently failed to achieve the stated objectives of deterrence and crime reduction in Queensland, New South Wales, other Australian State and Territory and international jurisdictions.

During her speech in the debate of the Criminal Law Amendment Bill the Leader of the Opposition set out many examples of where the members opposite when in opposition expressed their concern about mandatory sentencing. I do not intend to repeat all of them here but I just say that there were an ample number of them, including the now Attorney-General. There appears to have been a very substantial change of heart on the other side of the chamber about mandatory sentencing. But luckily, some LNP members are still prepared to express their concern about this issue. I was heartened to hear this morning comments made by the member for Yeerongpilly on ABC Radio when explaining the issues that have been of concern to his constituents. He said—

One of the things people have spoken to me about is mandatory sentencing and the importance of the judiciary having discretion.

Our position is pretty simple. Our position has been stated by our members in this House numerous times, and the LNP has not listened to our warnings and has ignored the experts in the field such as the Law Society and numerous academics, having dedicated their lives to understanding crime and punishment, who have pointed out the shortcomings of mandatory terms of imprisonment. We wish for our opposition to be recorded not only in terms of this bill but also in relation to all future bills that may be contemplated by those opposite incorporating mandatory sentencing.

It may be true that mandatory minimum sentencing makes a quick headline in the local paper, but there appears to be great disparity in the views of members opposite—wide-ranging views that would be difficult to reconcile. The path proposed by some of the members opposite, though, is concerning and dangerous. To see this you only have to look at the comments made in the Rockhampton *Morning Bulletin* on 20 November by the member for Keppel, Bruce Young, who was looking to introduce mandatory sentencing for juvenile offenders. He said—

I have discussed this issue with the Attorney-General ... and told him that if the penalties are not deterring our youth and not meeting what our community expects then we will legislate mandatory sentencing.

Clearly, the Attorney-General is on notice from members of his own backbench and they feel as though they can tell him what to do. The Attorney-General needs to come out today and indicate whether he supports the words of the member for Keppel or put him back in his box. We the ALP will vote for what we believe is right, while members of the LNP backbench, like the member for Keppel, should be concerned about some of the decisions being made by LNP ministers and how they will affect them at the next election. Mandatory minimum sentences, especially for children, will only dig the hole deeper and deeper. We will not support mandatory minimum terms of imprisonment because when the first offender is sentenced to an unjust term of imprisonment and something drastic happens to them in prison it will be on the heads of LNP members who vote for these provisions.

The LNP has been warned by the Queensland Law Society about the likelihood of 'demandatorising'. This is where prosecutors downgrade the seriousness of the charge because they know that they will get a guilty plea from the offender. Budgetary concerns in the DPP and prosecutions generally will only make this more likely, and it will be the fault of those who vote for mandatory terms of imprisonment. They will be responsible when prosecutors downgrade a charge because the offender will plead guilty to an offence that does not have a mandatory minimum sentence attached.

The community will be calling out for justice to be done when this person receives a lower than anticipated sentence and the community will only have to look to those opposite to see who has let it down. Sure, those opposite will blame the judges and magistrates for the nature of the sentences. They will demand that the sentence reflects community expectations, but it will be a smokescreen to deflect blame. The community knows that the Labor Party does not think that it can be the judge, jury and executioner. We value the independence of the judiciary and we trust judges and magistrates to make the right decisions when it comes to sentencing offenders to appropriate terms of imprisonment. The community should not trust anyone to determine a term of imprisonment on the basis that it looks good in the headline in the Rockhampton *Morning Bulletin* or the *Courier-Mail*, for that matter. That applies to every one of us, just as it does to the honourable member for Keppel. We have already seen the judiciary express grave concerns about these provisions in relation to hooning offences as demonstrated in Cairns, and that was only for a fine. The government will be in a difficult position of its own making if the judiciary starts to reject mandatory terms of imprisonment legislation because it views it as manifestly unjust. As I will discuss shortly, those opposite may be in bigger trouble if the judiciary actually embraces mandatory minimum terms of imprisonment.

I turn now to the consultation period. This bill was introduced in the House on 31 October. The report from the committee was tabled on 22 November. The Legal Affairs and Community Safety Committee was also required to table four other in-depth and complicated reports on the same day. I can only hope that something did not slip through the cracks in that process. The whole process has been slightly shambolic from the start, and the fact that we are talking about life and death matters like gun crime and safe firearms handling only makes it worse. The announcement of the ministerial weapons advisory panel caused so much concern in the community about the apparent overrepresentation of gun enthusiasts it required Queensland Police Union President Ian Leavers to speak out against it, resulting in the Police Union being represented on the panel. I stated at the time that we would not support any watering down of legislation that makes it easier or quicker for someone to get a weapons licence or a firearm. I said that we would be happy to look at other issues and ways to provide a more timely response to legitimate gun owners and shooting club members but that we would not risk public safety. We must understand the principles and objectives of the Weapons Act 1990, which states—

- (a) weapon possession and use are subordinate to the need to ensure public and individual safety;
 - (b) public and individual safety is improved by imposing strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons.
- (2) The object of this Act is to prevent the misuse of weapons.

I acknowledge that farmers and other recreational shooters have legitimate needs for firearms, and I support them. We would never stand in the way of legitimate and responsible firearms owners accessing firearms and do not propose to put unneeded barriers in front of them. We all must acknowledge that in 2011 alone the Queensland police suspended 259 weapons licences and revoked 377 for things like domestic violence, committing violent offences or not being a fit and proper person—for example, having a diagnosed mental health problem. These checks and balances in the system benefit us all.

With regard to weapons licensing amendments in the bill, I want to bring to the attention of the House the amendment contained in clause 9 to section 10A(1) inserting subsection (4) which recognises an interstate or international firearms licence to prove that a person has adequate knowledge of a firearm so they can apply for a Queensland firearms licence. The legislation appears to indicate that a licence will be compared on the basis of the type of weapon handled previously, not the quality of the weapons handling course or requirements of the country in question. Obviously New South Wales and Victoria will have similar requirements to that of Queensland, but the key point that the minister needs to explain to the House is how international standards will ensure the safety of Queenslanders and how these changes will comply with the principles and objectives of the Weapons Act.

The facts are that our kids are backpacking through Third World or even First World countries and they can lob up to a local shooting range and fire a modern assault rifle and get a licence in a foreign country to do so. Will a firearms licence obtained at a shooting range or similar event overseas allow someone to prove that they can handle a weapon safely? Those opposite will no doubt be surprised to know—and I hope that I am not giving them any ideas—that police in Cambodia, for example, actually deputise local businesspeople, including Australian citizens, who own businesses as police officers. They can get an official ID and make arrests. If they can be police with no training, how hard do members think it would be to get a firearms licence? Other countries may have less robust processes than our own. I am sure that if someone desires it they could probably arrange to get an authentic international weapons licence by paying an official in another country without leaving Australia. The act makes no mention of discriminating against such particular countries whose processes may not be acceptable. It is difficult to support this clause with so many questions not being answered that appear to go against the objectives of the act.

I want to raise another concern with the bill. The bill provides that to be sentenced to a mandatory term of imprisonment the person must at least unlawfully possess a firearm to commit or facilitate the

commission of an indictable offence. I want to first highlight the words quoted in the committee report in the letter which the footnote states is from the Minister for Police and Community Safety dated 15 November 2012 which states—

A person need not be found guilty of committing the indictable offence to be liable to a mandatory minimum term of imprisonment.

This is truly a new frontier in criminal justice for Queensland—the person need not be found guilty of an indictable offence to be sentenced to a minimum mandatory term of imprisonment. Minister, I would love to hear how this is going to work and I thought I had misread the intention until the committee report went on to reveal—

... the offence requires elements of the commission of the indictable offence to be proved, but it does not require a guilty finding or conviction to take place as suggested by the Queensland Law Society.

Again, not being required to be found guilty and being sentenced to a mandatory term of imprisonment! I await the explanation as to how that is possible.

The mandatory sentencing provisions affect people who unlawfully possess weapons and appear to include people whose licence expired more than 12 months ago or people who do not have weapons licences but have in their possession a rifle of their deceased grandparent or parent. A person charged with this type of offence is presently unlikely to go to prison and would likely receive no more than a fine of some sort. Another offence for which people are unlikely to go to prison is an indictable offence such as supplying cannabis. It is even possible and common that a conviction be recorded against someone for supplying cannabis on the lower end of the scale, with the person receiving a fine or a period of good behaviour. Allow me to indulge the hypothetical. Say there is an 18-year-old kid in the country who has his grandad's gun lying around the house while he is dealing small quantities of cannabis to his friends. I am not condoning any of that, but the minister needs to let the House know if this kid would go to jail if found in that circumstance. The prosecution could argue that the kid has the gun in the house because it lets customers and other drug dealers know that this kid is not to be messed with. The gun in effect facilitates or assists his drug dealing venture as it provides protection to enable him to deal drugs so that customers do not rip him off.

Mr Dempsey: Come on!

Mr BYRNE: I said it was hypothetical, but we have to think through this a bit.

Mr Dempsey: You could have found a better hypothetical than that. You don't even believe that!

Mr BYRNE: He does not have to point it at anyone, but the word is out there on the street.

Mr Dempsey: So you're standing up for the people who are drug traffickers now?

Mr BYRNE: I am not standing up for drug traffickers; I am talking about the reality of what is going on out there. From what I discussed previously, the prosecution does not have to prove the offence, but to what standard they have to prove the link between possessing the gun and the facilitation of an indictable offence is not clear and they do not even have to get a conviction.

No way would a magistrate or judge ordinarily send a cleanskin committing these sorts of offences to jail. The minister needs to explain that this young man is going to jail because of mandatory sentencing. Those members who represent regional communities need to have a long hard think about the types of things that might happen to their friends' and associates' sons and daughters. They need to have a long look to see how joint possession of both drugs and weapons works in criminal law. They need to think of 18-year-olds in the country going shooting with their grandfather's or father's gun and then doing something stupid. Let us take section 69 of the Criminal Code, which is the offence of going armed so as to cause fear. Currently, the offence is classified as a misdemeanour with a maximum of two years of imprisonment. Misdemeanours are indictable offences. Young people make bad decisions at times and it is pretty easy to cause fear with a firearm. Are those young people going to automatically go to jail for a first offence for being silly?

The bill also includes category A weapons, which includes air rifles. I look around the House at some of the members representing regional areas. It might be time for them to think back to what they did with air rifles during their misspent youth. I also must inform the members that the old days of the experienced local country cop giving these kids a size 12 up the backside are long gone. What we are about to see is an 18-year-old police officer, keen as mustard, wanting to impress.

I want to stress that I have no problems at all—in fact, I welcome—serious and habitual offenders being sent to jail. It is important that those in society who are dealing in drugs and terrorising people on our streets go to jail. People who are shooting up the neighbourhood in drive-by shootings, people who are shooting at the police, people who are becoming increasingly brazen in committing armed robberies, need to be sentenced to lengthy terms of imprisonment. But what I support, and what the Opposition supports, is for the experienced judiciary to make the decision on the appropriate term in the context of the seriousness of the offence committed and all of the facts associated with the offence and the history of the offender. Quite simply, if people need to be sent to jail, they should be sent to jail. I for one will not be supporting mandatory sentencing as it is really the Minister for Police deciding what the term will be for those so convicted.