



## The New South Wales Bar Association

7 September 2006

00/506

Mr Allan Shearman MP  
Chairman  
Legislation Review Committee  
Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr Shearman

### *Good Behaviour Bonds*

The Bar Association opposes the proposition that an offender not be required to formally enter a Good Behaviour Bond (Bond) in the Court Registry after a magistrate or Judge has imposed the order.

Under the Crimes (Sentencing Procedure) Act 1999 Bonds can be imposed under Sections 9, 10 and 12. The breach of a Bond can have a significant impact upon an offender.

A breach of a bond under section 10 can lead to a conviction for the offence proved. In many cases this can have serious consequences to the person involved. The conviction being entered can lead to problems with obtaining employment and certain licences, such as a security licence for example, or it can prevent a person being able to travel overseas if a visa is refused.

A breach of a section 9 bond can lead to the imposition of a gaol sentence, periodic detention or a community service order.

A breach of a bond under section 12 will, unless the breach is trivial or there was good reason for the breach, lead to the sentence which was suspended being imposed. The sentence may be full time gaol, periodic detention or home detention.

As a breach of a bond can, and in most cases does, lead to severe punishment by the Courts it is important that a person who has had a bond imposed upon them fully understand, not only their obligations under the bond, but also the serious consequences that may follow if the bond is breached.

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It is not uncommon when leaving the courtroom after a bond has been imposed to be asked by a client, "What happened?" The difficulty is that many people do not understand what was said in the court, even if the magistrate or Judge does their best to explain the order imposed. This can be caused by such factors as difficulties with English, inexperience with Courts and the law, and the stress of appearance in court at risk of imprisonment. Members of the Bar Association would always explain to their clients after a bond is imposed what is expected of them under the bond and more importantly, what can happen to them if the bond is breached. However, many people who are before the courts do not have a lawyer to advise them. Some may have access to a Legal Aid lawyer but the lawyer may have a large number of urgent matters and little time to explain to the client the importance of a bond.

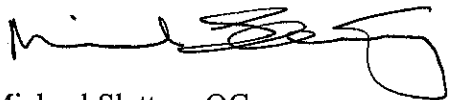
Under the current system, even if an offender is not represented, they will have the bond explained to them by the clerk in the court registry. The clerk takes the offender through the bond, explains it, gets the offender to sign it and then gives them a copy when it is fresh in their mind. This greatly assists in the understanding of the Court's order.

Requiring the offender to sign the bond reinforces that the bond is enforceable against them. The Court keeps a signed copy of the Bond with the Court papers so that later on, if the Bond is breached, the Court knows that the offender received a copy of the bond and that the bond was explained to the offender. This process circumvents challenges as to the accused's knowledge of the Bond and provides conclusive evidence that the accused entered into the Bond. If the system is to change then there will be more challenges to breach of Bonds leading to greater demands upon the Court's time.

The proposed system of allowing a person to leave the Court without receiving a copy of the Bond will lead to injustice. Offenders will end up leaving the Court without understanding the bond or its consequences. Some are illiterate and will not be able to read it when it arrives in the mail. Some may not receive it in the mail due to a change in address, failure of the Bond to be mailed by clerical error, the bond going astray in the mail, and so on. The offender will lose the benefit of having the Bond explained and so may breach the Bond due to ignorance.

For the above reasons the Bar Association's view is that the current procedure of having a person remain at Court to receive a copy of the bond and have it explained away from the pressure of facing a Court, as well as signing the Bond before being allowed to leave the Court, should be maintained.

Yours faithfully



Michael Slattery QC  
President