Speech by

BILL FELDMAN

MEMBER FOR CABOOLTURE

Hansard 25 November 1999

STATE PENALTIES ENFORCEMENT BILL

Mr FELDMAN Caboolture—ONP) (10.50 p.m.): Although my comments tonight will be somewhat brief, they will be to the point. I am sure that all members of this House are aware of the fact that keeping fine defaulters out of jail has always been a One Nation policy. I am pleased to see that that was taken on board by the coalition earlier in the year and now by the Government. As such, I agree wholeheartedly with the purpose of the State Penalties Enforcement Bill. I believe that the establishment of the State Penalties Enforcement Registry, although at first appearing to be another costly bureaucracy, will be of great benefit and will result in a net cost saving to the State in the long term.

I support completely the State Penalties Enforcement Registry charter. I can see that it will reduce greatly the number of people who are in our prisons as a result of fine defaulting. The 1998 Queensland Corrective Services Commission annual report shows that, in the 1997-98 year, over 2,700 fine defaulters, that is 37.6% of Queensland prisoners, were jailed, costing Queenslanders roughly about $23m. Redirecting fine defaulters makes good commonsense. Why incur expense in locking up someone because they owe money? It results in a double whammy to the taxpayer, who will have to pay indirectly the fine for the debtor and then pay for that debtor to be kept in jail. So this issue actually affects people other than the fine defaulters.

It is good to see that the Government is finally seeing some sense on this issue. The procedures outlined in this Bill, from infringement notices, enforcement orders to civil enforcement and/or imprisonment give the debtor ample opportunity to rectify the situation. Even if those people are unable to pay, they are able to put forward their case. I believe that to be very important.

In the case of civil enforcement, community service orders, the suspension of driver's licences, fine collecting through redirection of earnings or searching or seizing property, it is important that a balance is found between being fair to the individual concerned and receiving payment for the fine. Let us face it: in most cases a fine defaulter is by no means a criminal.

I refer to Proverbs, which states that it is far better to live in an isolated corner of the house than to live with a nagging wife. If the fine defaulter is being punished through his wages being garnisheed, he will certainly be paying a lot more if he is in a house where he is hearing constant whingeing about what has happened to the money than if he is living free and easy inside prison. If they have to cop it at home rather than live it easy in jail, I think that that is a far more effective means of ensuring that fine defaulters pay their fines.

When it comes to the searching and seizing of someone's property, the Government needs to be sure that, by achieving their aim, they are not taking away the rights of the individuals. Yes, if they have a proper approval according to a strict set of guidelines, they should be able to enter a person's premises. However, they must never be able to do so without adherence to those guidelines. Should that be allowed to occur, democracy and freedom would be at stake. It appears that this Bill deals appropriately with this situation through the use of the enforcement warrants approved by the registrar and the requirement to adhere to the guidelines of Part 5.

The amount of power vested in the enforcement officer is of concern to me, and I bring that to the notice of the Honourable the Attorney-General. The enforcement officer seems to have excessive discretionary powers, and clause 69 is an example of this. That clause deals with conditional

enforcement warrants and, in this clause alone, the enforcement officer has the ability to decide, for example, whether or not he believes the debtor is willing to take part in the interview. It is important that a Bill that enables the seizure of property specifies property to which the Act does not apply, such as necessary personal items —beds, a car vital to that person maintaining their employment or tools of trade. Items such as those listed in the Commonwealth Bankruptcy Act as property excluded from being seized would be a necessary ingredient in a Bill such as this one. I notice that in the South Australian legislation, the Criminal Law Sentencing Act 1988, section 62 also limits what can be seized. It states—

> "The goods that may be seized pursuant to a warrant under this section are those that could be taken in bankruptcy proceedings."

Perhaps credence should be taken of that matter, especially when we are dealing with someone's livelihood or circumstances that might exist within a family, such as a sick or deathly ill child who needs a motor vehicle to get to or from a hospital or to or from some sort of medical expertise that that child or somebody in that family may need.

I notice also that no such clause exists in this Bill. This Bill leaves it to the regulations to list the items that cannot be seized. I trust that the Government will ensure that their regulations in relation to that issue are well balanced. Perhaps the Minister might be able to clarify that situation in his reply.

The definition of an enforcement officer also causes me a little concern. According to the Schedule of the Bill, an enforcement officer includes the sheriff, deputy sheriff, bailiff of the court and a commercial agent. The definition of "commercial agent" is defined as—

> "... a commercial agent under the Auctioneers and Agents Act 1971, section 2."

The Auctioneers and Agents Act has quite a large definition of "commercial agent" and in no way excludes private individuals working for private companies, such as perhaps a debt collection agency. This certainly is an issue that I would like to raise with the honourable the Attorney-General. Perhaps in his reply he will allay any fears that there might be some sort of bounty raised on chasing these people down and perhaps causing some sort of angst out there in relation to debt collecting.

Currently, debt collectors can access residential homes to seize mortgaged goods if they have a court order. However, the execution of a warrant by police is required for the seizure of property in lieu of payment. Is this definition of "enforcement officer" then too broad? Why are commercial agencies included in this definition? I ask the Minister for clarification on this issue and express my dissent at anyone representing private sector interests being included in this definition. That raises the issue of where these officers will be working, and in what areas. Will they have sectional areas? Will they be allowed to go outside those areas? Can they go anywhere in Queensland? These are the same issues that were raised by the member for Warwick.

There is an error in the Schedule under the definition of "enforcement officer", because it states that they are engaged under section 10(2)(a), yet section 10(2)(a) does not exist within the Bill. I assume that this is simply an error and that the Schedule is referring to section 10(3). I point that out to the Minister. I have not had a look at the amendments, but I presume that the Honourable the Attorney-General may be moving an amendment in these terms.

Generally speaking, I support thoroughly the aims of the Bill. I believe that the concerns that I have pointed out have been, if not perfectly, at least adequately addressed and I trust that the Government considers or amends what issues I have raised that require such an amendment.

I reiterate my support for keeping fine defaulters out of jail and finding alternative, more sensible and more positive means with which to collect payment for fines. As the honourable member for Warwick has already said, we do not want to lock up people unnecessarily, thus further overcrowding our jails. The amount of money that it costs to keep such people in jail often far outweighs the fines that they were given, considering that fines are cut out very meekly under the current law. When one considers that those people could be pushed to a harder life of crime, it is obviously not in the best interests of the community or the families involved. Indeed, it is not what the community expects of this Government or its legislation.

I again point out that it is One Nation policy to keep fine defaulters out of jail. I thank the Government and the coalition for adopting that policy. However, if the same legislation had been introduced into the House as a One Nation Bill, I wonder whether it would have received the Government's support. Sadly, I truly doubt it.

One Nation supports the State Penalties Enforcement Bill 1999 in the belief that it will make a positive long-term contribution to Queensland. I am sure that when the Honourable Attorney-General alleviates the fears that I have with respect to the few issues that I have raised, we will have no problems whatsoever with the way that the Bill has been structured or the way that it will be administered. This is probably one of the better pieces of legislation that has been introduced into the House. It will go a long way to alleviating some of the financial burdens that are placed on the

taxpayers of this State. It will also help to alleviate the problems faced by the overcrowded corrective services facilities in the State. Again I indicate to the Honourable Attorney-General that I will be looking for answers to my questions. We will support the Bill.