



Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 25 March 1999

FINES BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (10.17 a.m.): I move—
"That the Bill be now read a second time."

The coalition has taken the initiative to reintroduce the Fines Bill 1998, because we have become seriously concerned at the inaction of the Government. This Bill was originally introduced into Parliament in April last year by my colleague the honourable member for Indooroopilly as a much-needed and responsible measure of fine enforcement reform. It is my privilege to reintroduce this necessary measure as a private member's Bill and in that way provide the Parliament with an opportunity to speedily introduce significant and community-friendly and responsible changes to the justice system in Queensland.

The coalition has taken this step because of the inaction of the Government, which has taken nine months to come up with a new name for the fines collection system and has only now promised to introduce this legislation in three months' time, to be debated some time thereafter. However, this Fines Bill can speed up this process tremendously. It required only minor changes as a result of changes to the Traffic Regulations that postdate the original Bill's introduction last April.

These changes, and any other minor changes that the Legislature might require, can be debated in this place and should be capable of debate in a spirit of cooperation designed to enhance justice for all Queenslanders. We on this side would certainly listen to the Government on the question of amendments. The Attorney-General can be assured of that.

The Fines Bill represents progress and better justice, because it will keep fine defaulters out of jail. The coalition believes serious offenders, violent offenders, should be locked away. We believe the law should be tough. But we also believe that fine defaulters should not be incarcerated, for their own sake as minor transgressors and because it is expensive and counterproductive to lock up people when they can pay for their mistakes in other ways.

In response to our opponents' claims that a financially pressed single mother would be disadvantaged by this Bill, this is a fallacy. The Bill allows time to pay—exactly the same provision as that within the proposal that they have promised to introduce in their Bill. Contrary to some claims, the Bill does not automatically and immediately suspend a defaulter's driver's licence. A person, in effect, has 56 days from the date of receipt of the infringement notice to take steps to pay the amount either outright or in instalments, or apply to do community service before their licence is suspended.

This is all about self-responsibility. A person has a choice—a reasonable choice—following ample notice. Further, it will immediately increase the flow of funds into the public purse from people who quite wrongly, under the present lax system, can simply thumb their nose at the community. When my colleague the honourable member for Indooroopilly introduced this Bill the first time, he made a short second-reading speech and sought permission to table the remainder. To assist the House and honourable members in their business today, I seek leave to table and have incorporated in Hansard the remainder of my second-reading speech.

Leave granted.

FINDER will replace the current SETONS registry and will be responsible for the collection and enforcement of all penalty amounts due and owing to the crown, including:

court ordered fines;
infringement notice penalties and charges;
compensation or restitution under the Penalties and Sentences Act 1992; and
amounts forfeited by sureties and under bail and good behaviour recognisances.

FINDER will be a fine collection and enforcement system and not just a central bureaucracy. It is a whole-of-Government solution to the problems associated with the collection and enforcement of fines and other penalties, exacerbated by years of inaction and a growing debt. The enforcement of fines has become a growing problem in all Australian jurisdictions in recent years. In Queensland approximately \$52m remain uncollected since (and including) the 1994- 95 financial year. I will now set out a brief explanation of the new FINDER model.

Infringement Notices

On receipt of the infringement notice the offender is given 4 choices as to how to settle the matter.

- (a) payment in full to the appropriate issuing authority;
- (b) application by the offender to have the fine commuted into hours of unpaid community service (without incurring further court costs).
- (c) application by the offender to have the matter paid by instalments (without incurring further court costs); and
- (d) election by the offender to have the matter heard in a Magistrates Court.

To encourage offenders to make some payments, rather than none, an incentive will be offered. If the offender elects to apply to have the matter paid by instalments he or she will not incur further fees or costs. If the offender elects to apply to have the penalty commuted into unpaid community service (again, without incurring fees or costs), the Queensland Corrective Services Commission will be responsible for assessing the offender's suitability for a fine option order.

Once an infringement notice is more than 28 days old, (and none of the actions described above have been chosen) the infringement notice will be registered at FINDER. Registration attracts a \$42 fee (as it does already at SETONS).

FINDER will then send to the offender, by ordinary post, a notice of intention to suspend driver's licence. Experience shows that certified mail articles are too easily avoided.

If, after 28 days have elapsed since the issue of the notice of intention to suspend driver's licence, the amount remains unpaid and no application is made to pay by instalments or to do community service, FINDER will automatically suspend the person's driver's licence until full payment or discharge of the outstanding penalty. An enforcement warrant to seize and sell property may also be issued with a fee of \$66 (as SETONS does already for issuing a warrant).

The enforcement warrant will be sent to a bailiff. It must be emphasised that it is only those people who do nothing to take responsibility to discharge the penalty who will be affected by licence suspension or other enforcement action.

FINDER will give people every encouragement and assistance to do something to discharge their debt. As long as people do something, like pay by instalment or do community service, they will not have property seized or licences suspended.

Besides the warrant to seize and sell property, FINDER will have other collection and enforcement tools available to use at the discretion of the registrar. These include garnishee orders, direct debit facilities and recording an interest on any register of property interests such as land titles and motor vehicle securities.

If the bailiff returns a warrant to seize and sell property as "nulla bona" (that is, no property available to seize), the warrant is cancelled and a warrant of commitment for the total outstanding amount (including bailiff's costs) may be issued. The default term of imprisonment is calculated using a statutory formula. After a warrant of commitment has issued, no application for a fine option order will be entertained unless the person can show that he or she has previously applied and been refused and that the offender's financial position has become significantly worse.

If the warrant is executed, and the offender cannot make full and immediate payment, the offender is to be taken into custody to serve the default term of imprisonment. Cut out rates for default imprisonment will be set at \$60 per day compared with \$120 per day for doing community service. This will deter people from taking imprisonment as a "soft" option to payment of infringement penalties.

Court Imposed Fines

When a court has imposed a fine on an offender, the sentencing judge or magistrate will usually impose a term of default imprisonment and, in the vast majority of cases, the offender will be given time to pay the fine and such other monetary penalties as ordered (that is, costs of court, restitution, professional costs etc). Under FINDER, the courts will retain full control of the imposition of fines and such other orders. However FINDER will provide for the collection of those fines which are unpaid. If the fine remains unpaid after the time allowed by the court or registrar, it will be passed from the court to FINDER. The court will only pass on the amount that remains outstanding. FINDER will not impose any further costs. FINDER will then send a notice of intention to suspend driver's licence to the offender giving a further 28 days to pay or make an election.

Fine option orders will still be available at time of sentence. However, a much simpler breach mechanism will be used if the person fails to comply with the requirements of a fine option order. If the total fine remains unpaid then the offender's driver's licence will be suspended and FINDER will issue any one or more of the enforcement warrants (such as a warrant to seize and sell property, or garnishee).

If the enforcement warrants are not successful, FINDER will issue a warrant of commitment for the arrest and imprisonment of the offender. The cut out rate will simply be the period of default imprisonment set by the court at the time of passing sentence.

Compensation and Restitution

As well as other debts owed to the State such as forfeited bonds and sureties, the FINDER model will apply to the enforcement of orders for the payment of compensation and restitution to victims under the Penalties and Sentences Act 1992. By removing automatic default imprisonment for non-payment the chances of the victim recovering all or a substantial part of the order will be enhanced. FINDER may retain a prescribed fee or prescribed proportion of the sum recovered to recoup expenses once enforcement action is commenced. This will be appropriate given that victims could otherwise still take civil recovery action at their own expense or with the assistance of Legal Aid.

Amnesty

There will be a well publicised amnesty on all outstanding warrants, limited to two months from the commencement of this Bill. During the amnesty all enforcement costs will be waived. No fresh warrants will issue during the amnesty. All warrants of commitment remaining unpaid at the end of the amnesty will go directly to the enforcement warrant stage rather than a notice of intent to suspend licence.

This will avoid a large number of drivers suddenly becoming unlicensed drivers due to the end of the amnesty and because enforcement warrants to seize and sell property can go immediately to bailiffs for execution. The speedy follow up of the amnesty with a highly visible bailiff's exercise should produce payments.

Juvenile Offenders

The enforcement of money penalties against juvenile offenders will not come under the FINDER system and will remain, as it is today, under the Juvenile Justice Act.

Prison Numbers

The number of fine defaulters admitted to prison has increased from 5% of the total admissions per month (16 admissions per month) in March 1994 to 33% of the total admissions per month (about 150 admissions per month) at last count in 1997.

The Queensland Corrective Services Commission annual report for 1995/ 96 does not show the fine default prison population to be over-represented by Aborigines and Torres Strait Islanders. For all groups the figure is about one-third of all admissions. However the figures do show that fine defaulters, as a class, are, at that rate, very much over-represented as a proportion of all admissions. It should, however, be noted that the above figures do not account for the people who serve the whole of their time-in-default in watch-houses.

The CJC report on police watch-houses in Queensland (August 1996) found that on any given day in 1996, the State's prisons hold about 150 fine defaulters, while the State's 11 major watch-houses held an average of 36 fine defaulters, a total of 186. Because the SETONS warrants are for small amounts, many defaulters end up serving the whole of their default period in watch-houses.

It is estimated that with the implementation of FINDER the daily state of fine defaulters serving default imprisonment in prisons will be reduced substantially.

Insurance implications

The FINDER model will have minimal implications for compulsory third-party insurance and for the Nominal Defendant in relation to personal injuries relating to fault, or for comprehensive motor vehicle and other insurance policies relating to property damage. Under this Bill compulsory third-party insurance in relation to personal injuries relating to fault, and comprehensive motor vehicle and other insurance policies relating to property damage, are not voided if the insured has an accident causing loss or damage to property or personal injury to another person while driving under licence suspension.

In conclusion, FINDER will be a fine collection and enforcement system and not just a central bureaucracy. It is a whole-of-Government solution to the problems associated with the collection and enforcement of fines and other penalties, exacerbated by years of inaction and a growing debt. Under FINDER, the fine option order will no longer be a soft option to be exploited to delay the inevitable. Fine option orders will still be available to those, and only to those, who genuinely cannot afford to pay. Fine option orders will be an alternative to enforcement or imprisonment, not an easy alternative to payment of the penalty.

A whole-of-Government solution to the growing debt due to years of inaction will present a win-win-win situation to the people of Queensland. It will increase the rate of collection of fines and other penalties without the necessity for enforcement action; it will reduce the costs of any necessary enforcement action; and it will radically reduce the number of fine defaulters in our jails and watch-houses. I commend the Bill to the House.