



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 11 June 1999

STATE PENALTIES ENFORCEMENT BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (10.31 a.m.): I move—

"That the Bill be now read a second time."

This Bill will establish the State Penalties Enforcement Registry, to be known by the acronym SPER. A flow chart and an explanation of the flow chart appear in the Explanatory Notes to this Bill and give an overview of the various collection and enforcement stages of the SPER model. I will not repeat that overview in this speech.

Like the FINDER model proposed by the Opposition when last in Government, this Bill will establish a new regime to replace the current SETONS registry and it will be responsible for the collection and civil enforcement of most penalty amounts due and owing to the State, including—

- court ordered fines;
- infringement notice penalties and charges;
- compensation or restitution; and
- amounts forfeited under undertakings and recognisances.

But there the similarities virtually end. The former Government's legislation is out of date, as the various department stakeholders have, since the development of the FINDER model, taken part in the new interdepartmental committee—which I will refer to as the IDC—chaired by my department, which developed the SPER model in accordance with the policies of the Beattie Government. SPER will be more cost and outcome efficient.

A proactive call centre will be established. This was not part of the Fines Bill model. The call centre will engage a staff of approximately 20 full-time equivalents to conduct skip tracing and to make phone calls to debtors to remind them of overdue payments. The call centre will offer to assist people to make alternative arrangements to pay or discharge the outstanding amount via instalments or fine option orders. The call centre will also receive and process incoming calls with requests for such assistance. An enforcement officer network will be deployed around the State. Officers will go out and interview fine defaulters and obtain their cooperation to assist with the discharge of the amount by instalments or community service. Alternatively, they will obtain information necessary for the further enforcement of the fine by garnishee, direct debit of accounts at financial institutions, or by the seizure and sale of goods. The officer may also serve a notice of intent to suspend a driver's licence.

Fine option orders will still be available, but only people who genuinely cannot afford to pay will be able to obtain a fine option order. The orders will be available early in the enforcement stages but not at the ticket issue stage or at the end after arrest on warrant. The SPER model will allow fine option orders in Stages 2 and 3 of the four-stage enforcement model. Under the Fines Bill model, fine option orders would be available in Stages 1 and 2. While superficially attractive, the FINDER implementation business process redesign exercise, and the departments involved in the IDC development of the SPER model, found that to offer fine option orders as soon as an infringement notice is issued would simply encourage many offenders to try to elect this option instead of making payment, even if they could afford to do so—in full or by instalments.

In turn, as the FINDER implementation team found, the FINDER proposal would have been difficult and more expensive to administer in that it required the then Queensland Corrective Services

Commission— QCSC—to obtain a statutory declaration from every applicant for a fine option order stating matters designed to enable the QCSC to financially assess the applicants to see if they could actually pay in full or by instalments. Under each model, fine option orders would no longer be available at the watch-house door upon arrest—a common delaying tactic— unless the person had previously applied for and been refused a fine option order but can show that his or her financial circumstances have become significantly worse.

In relation to court imposed fines, this Bill will not affect the ability to obtain a fine option order from the court. Instalment payments will be available from Stage 1 as in the Fines Bill proposal. However, again, the FINDER implementation business process redesign exercise, and the departments involved in the IDC development of the SPER model, found that to offer instalments without a minimum threshold penalty amount and without a minimum payment would have encouraged people who can, and these days do, pay in full to elect to pay by instalments, thereby affecting cash flows and raising administrative costs.

Garnishee of wages—in this Bill called regular redirection of earnings—is, again, common to the SPER and Fines Bill proposals. However, under the Fines Bill it was available only with the consent or at the request of the offender. Under SPER, once the matter reaches Stage 3, the civil enforcement stage, the registrar will be able to issue a notice to the employer without the consent of the offender, as long as the registrar is able to obtain the relevant information necessary to issue the notice. The garnishee provisions have been modelled on the Commonwealth child support garnishee provisions so that employers will be familiar with the requirements.

Attachment of debts owed to the offender is a power common to the SPER and Fines Bill proposals and will not be any different in scope for it would be rarely used under either model. The equivalent of the old warrants of execution for real and personal property are, again, common to the SPER and Fines Bill proposals. The execution of such warrants would be the exception rather than the rule. However, under the Fines Bill the potential existed for enforcement officers to attempt to seize property in many more cases because the issue of such warrants was an automatic step with no conditions placed on the enforcement officer to attempt other methods of enforcement or collection such as will occur under SPER.

The State Penalties Enforcement Bill specifically provides that the issue of an enforcement warrant to seize and sell property may be made conditional on the enforcement officer first interviewing or attempting to interview the fine defaulter and obtaining information necessary for the further enforcement of the fine by garnishee, direct debit of accounts at financial institutions, or by fine option order. The officer may also serve a notice of intent to suspend a driver's licence. Like the Fines Bill proposal, this Bill includes a power for the registrar to impose a charge on property, which may be coupled with a restraining order. However, under this Bill it will extend to land, prescribed interests or shares and other securities whereas under the Fines Bill it did not extend to land. It is envisaged that it would be rarely used under either model but it could be useful for recovering large fines.

Like the Fines Bill proposal, this Bill will allow the registration of interest on any register of title or dealings—for example, the Registrar of Titles or the Motor Vehicles Securities Registry—for fines over \$1,000. However, unlike under the Fines Bill, registration of the outstanding amount by SPER will also attract an appropriate rate of interest such as that under the Supreme Court Act 1995—formerly the Common Law Practice Act—which is currently set at 10% a year. Again, it is envisaged that it would be rarely used under either model but it could be useful for recovering large fines.

Another major difference between this Bill and the Fines Bill is that driver licence suspension under the SPER Bill will not be an automatic, universal step for all motor vehicle related offences. It will be one of the tools in the enforcement armoury available to the registrar of SPER at his or discretion and subject to strict criteria. Under the Fines Bill, driver licence suspension would have an impact on the employment prospects and mobility of many more members of the driving public and their families than the SPER model. Warrants for the arrest and imprisonment of fine defaulters—the old warrant of commitment—will still be available, but only as a true last resort. This power is common to the SPER and the Fines Bill proposals. SPER is a fairer model because through the call centre and added discretions of the registrar and team of enforcement officers, SPER will be able to offer debtors much more assistance and encouragement to find a method to pay or discharge the debt without going to prison.

The Explanatory Notes to the Fines Bill 1998 state that it—

"... has been projected that the potential start up costs, together with the operational costs for the first year, will be around \$9.4m and annual recurrent expenditure of around \$4.79m with forecast additional revenue/savings of around \$6.8m per annum in excess of present collection rates. These figures do not include the money which will be collected during the amnesty."

This statement does not take into account changes that have occurred to the time frame within which the courts computerisation program, upon which any roll-out for FINDER or SPER would be dependent,

can be finalised. Nor does it take into account the fact that FINDER would probably be implemented in a different financial year and in a different part of the year to that originally proposed. No amounts were budgeted by the previous Government for the around \$9.4m said to be required to establish FINDER. For the SPER proposal, a whole-of-Government submission to fund the implementation of SPER has been prepared, including the costs of the administering agencies, and is being considered by the Cabinet Budget Review Committee in June as part of the 1999-2000 process.

For the sake of completeness I would like to add, in relation to the costings shown at page 7 of the Explanatory Notes to this Bill, that my department is continuing its efforts to identify cost reductions and further savings that can be made in the implementation of the SPER model. Also, a recalculation of a Queensland Transport component of the costings has identified the fact that the recurrent costs are likely to be approximately \$600,000 per annum less than the figure estimated in the Explanatory Notes.

The objects of the Bill—as stated in clause 4—include—

- maintaining the integrity of fines as a viable sentencing or punitive option for offenders;
- maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and
- reducing the cost to the State of enforcing fines and other money penalties.

These objects are to be achieved in accordance with the SPER charter—as stated in clause 9—which includes the following—

- maximising the collection, for victims of offences, of amounts payable under the Penalties and Sentences Act 1992 by way of restitution or compensation;
- maximising the amount of fines and other money penalties paid before enforcement action is taken;
- promoting a philosophy that community service work is for the needy in the community and not an alternative to payment of a fine for those who can afford to pay the fine;
- reducing the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms; and
- promoting public education about the obligations of offenders and the consequences of not satisfying the obligations.

SPER will be a fair, and a cost-effective and efficient enforcement model which will serve the people of Queensland well, and well into the next century. I commend the Bill to the House.
