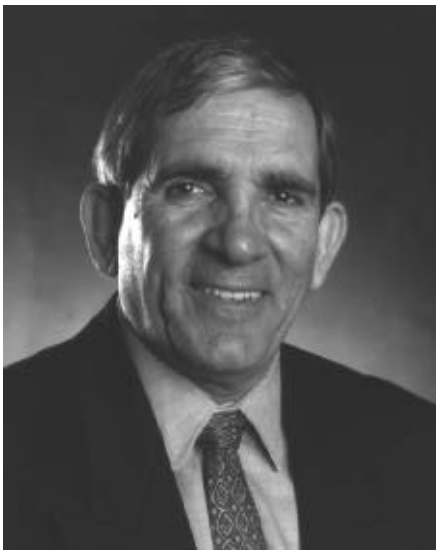

Speech by

Hon. J. FOURAS

MEMBER FOR ASHGROVE

Hansard 19 June 2002

PERSONAL INJURIES PROCEEDINGS BILL

Hon. J. FOURAS (Ashgrove—ALP) (10.08 p.m.): I am pleased to take part in the Personal Injuries Proceedings Bill debate in the House today. Shared risk provides the underlying basis for all human social organisation. It not only enhances the security of individuals but also provides the foundation upon which specialisation and progress are built. It does not matter if we are referring to the public granaries of ancient Egypt, the olive oil stores of ancient Greece or Lloyds of London. When there is a threat to the structures in which society shares risk, it becomes a matter of concern for us all. The collapse of HIH and FAI and the stress on other sectors of the insurance industry cannot be looked at as just isolated failures of management. Their problems are part of a bigger problem, a social problem, a matter for government.

While government has a responsibility to provide a viable framework within which insurers can operate, it also has a responsibility to ensure that claimants, particularly those affected by injury and illness, have full and proper access to entitlements which properly reflect damage and losses. We must not throw the baby out with the bathwater. We must not unduly limit the hard won rights of legitimate claimants as part of a short-term response, a knee-jerk reaction, to the current so-called insurance crisis. What does the government do? We have two protagonists. In a corporate society, on the one hand we have the doctors and on the other the lawyers. Unfortunately, in our corporate society each group acts in self-interest. As Socrates said, we cannot see the common good unless we remove ourselves from self-interest. Therefore, it is up to the government to be the referee, to weigh up and balance what the AMA in Queensland is telling us and what the lawyers are telling us. The Attorney-General has done a very good job in doing this. Doctors are telling us—and nine doctors have seen me in my office—that they want damages to be capped and that they want mandatory structured settlements. I will talk a little more about that later.

The government has responded to capping claims for economic loss only. The Attorney-General said that, unlike courts in New South Wales, Queensland courts do not have a record of awarding large compensation payments. Some of the material I was shown by doctors depicts the spike, particularly in 2001, of claims in New South Wales and the level of payments. It was really quite extraordinary. Really, the problem state for UMP has been New South Wales. As the shadow Attorney-General said in his speech today, Queensland has 13 per cent of the premiums but only 8 per cent of the payments. That really is the proof of the pudding.

We also have the situation that we must accept this is a form of long tail insurance, and we have had a period of very large returns on investments—in some years 18 per cent and 20 per cent—and now we have had a couple of years with no returns. We have noticed that today where the $13 billion that the Queensland government has in net assets had an unrealised loss of more than $1 billion last year. We also have the situation of substantial losses by UMP—I think something like $66 million from HIH premiums. I think that the AMA wants structured payments to be mandatory.

Mr Seeney: What did you say?

Mr FOURAS: The member has made his speech.

Mr Seeney: You lost $1 billion on $13 billion? What are you talking about? The Treasurer said you achieved a zero return. You have contradicted him.

Mr FOURAS: We had on our books the prospects of a return of over $1 billion that we did not get. We did not lose that money, but the budget figures showed that we were to get $1 billion from returns on that $13 billion. We got a zero return. We did not make that $1 billion. The member has made his speech and I suggest that he goes back to sleep.

I think that the AMA wants statutory payments to be mandatory. I have some sympathy for that view, but I am aware that the Attorney-General has said that there is potentially second tranche legislation in September and I think that this issue should be reconsidered. Where I disagree strongly with the AMA is that it argues that the merits of these amendments are just too little. They have compared the capping in New South Wales, which they have to do, and the capping here, which we do not have to do. The government is acting pre-emptively to prevent a blow-out in the future. It is capping claims for economic loss, it is excluding juries from civil actions, it is facilitating periodic payments through structured settlements as well as introducing procedural reforms in this bill that are modelled on those that were implemented successfully under the Motor Accident Insurance Act and that have proved to be very, very successful. The proof of the pudding is in the eating. I am sure that the AMA will find that these amendments are not as weak as it is saying.

The bill will reduce the costs of legal proceedings through mandatory early notification and exchange of information as well as through mandatory offers of settlement. These procedural changes are very, very important. There is no doubt that there are serious problems with the processing of personal injury claims. After many years of pursuing commercial settlements, lawyers have inadvertently created an environment in which every child wins a prize. Claimants expect to get something just by submitting a claim. An artificial floor price is now built into the system that is not significantly influenced by the worthiness or technical merit of a claim or the actual and reasonably expected losses.

I hope that, when a review is undertaken in consideration of tort law reform, we will end up codifying negligence, because the belief, the culture—whatever we call it in our society—is that if someone suffers an injury someone else must be responsible and, therefore, the person who suffered injury has the right to be compensated irrespective of their role in the situation. I think that is very important. But there is also a serious problem with the lack of consistency in medical assessment and reporting, particularly in the assessment of causation and the assessment of disability and loss. There can be an astonishing range of medical opinion on any single health matter. Often there are marked differences between the opinions of treating doctors and those of the assessing doctors. Sometimes the courts are left to try to find the middle ground rather than the right answer. We need the right answer. The area of medical reporting produces some of the most extraordinary distortions of the process of litigation. I have a friend who works in this area. He told me that the gaps between the advice being given to courts is just so wide that it is frightening. Although there has been much criticism of lawyers, what has not been mentioned is that even the most enthusiastic lawyer can do little without the medical opinion that supports his objectives for his client. This bill will help the system to function more effectively. In particular, through this legislation structures will be put in place to provide the court with access to properly structured and technically sound information to balance the excess of claims by the plaintiff and of the defence. The problem of ambulance-chasing lawyers is best addressed by better defence. It is the role of the government to ensure that we assist in the resolution of disputes without contributing further to the problem. I think that is very, very important.

In conclusion, I congratulate the Attorney-General on his work in bringing this bill before the House. I firmly believe that this legislation will prevent a further blow-out in the future. However, it is essential that tort law reform be introduced, that the federal government through APRA regulate the insurance industry and that the ACCC ensure that premiums truly reflect the legislative changes. I commend the bill to the House.