



Speech by

**Hon. J. FOURAS**

**MEMBER FOR ASHGROVE**

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Hansard 21 August 2002

**PERSONAL INJURIES PROCEEDINGS AMENDMENT BILL**

**Hon. J. FOURAS** (Ashgrove—ALP) (3.16 p.m.): At the height of the AMAQ's campaign on personal injury proceedings, a number of my constituents came to my electorate office expressing serious concern. In fact, they were shaking at the thought that they would never again be able to visit their doctors because all the surgeries would be closed. I am not complaining that they came to my office, because it is my job to deal with such issues. I was concerned about the trauma being experienced by those elderly patients and the way they were being used politically. Prior to that some very serious amendments had been introduced to the legislation. As a result of that decision we insisted that we would bring retrospectivity to the Personal Injuries Proceedings Act. I believe that this bill will ensure a more immediate effect on alleviating the pressure on insurance premiums. I believe that the AMAQ should be doing a lot more to express its disappointment that the insurance industry has not yet indicated a willingness to pass on these savings to consumers. Furthermore, the AMAQ should insist that the federal government protect the interests of the general community to bring insurance companies to account.

The Attorney-General has indicated that there will be a second stage of reforms. I did not caucus with the member for Cairns who also addressed the impact of diverse opinions from medical practitioners in relation to personal injury claims, which I believe contain some mammoth distortions. I believe that the system tends to treat doctors' opinions as roughly of equal validity. The same applies to scientific validity. Therefore, doctors' opinions can create tremendous distortions. I know of one example regarding an MRI. One particular treating doctor interpreted from the MRI a serious injury arising from an accident. Another doctor interpreted the MRI as normal for a person of that age. So a divergence of opinions was put before a court: one that said that the MRI indicated a serious condition and another that stated there was no abnormality. Defence lawyers and judges do not have the necessary skills to distinguish where the truth lies, and that is the issue I am trying to address. In another case a judge awarded a man \$450,000 for neck pain in the absence of any demonstrable physical pathology but on the basis of what that person had said before the court. I think that is called illness conviction. There is no doubt that people who are convinced that they have an illness behave that way and can be very persuasive in a court.

In another example, a woman who was involved in a motor vehicle accident was hit from behind at five kilometres per hour. For two years she thought that she had a brain injury. She worked for only two hours per day three days a week for two years, believing that she had brain damage. Finally, she obtained a proper analysis of her condition and was told that she had no brain injury. She got better immediately. This happened because a doctor previously reported and misrepresented an MRI.

Courts could work better if they had a way of dealing with these distortions. There is a solution. When there is a gross discrepancy in the arguments put before the court and either side has the opportunity for independent assessment, it should be provided. There is no doubt that doctors who give opinions to courts report in favour of the side that employs them. So-called expert opinions are provided, but those expert opinions favour those who seek them. So it could be the case that two experts say what they are being paid to say.

The system is not aware of the extent of this distortion. We are not talking about just a few percentage points. There are mammoth distortions. I have been told that opinions on one set of X-rays can vary extremely. A nurse actually claimed \$800,000 for a minor occurrence in which her arm was pulled by a patient. Because the courts need to settle sometimes, she was offered \$250,000. I was told that Larry Adler's firm, FAI, would settle out of court for anything under \$30,000. It is no wonder we are now faced with this sort of problem in relation to personal injury insurance.

I note that recently both the Attorney-General and Chief Justice De Jersey indicated support for a panel of doctors to whom judges might refer. I see problems with this suggestion. A panel of doctors would provide just another medical opinion, with the further complication of the right of the defence to cross-examine. The court would become a party to the litigation—involved in the nitty-gritty of the litigation. We do not want that.

I suggest a legislative structure, propped up by regulation, through which the parties to litigation resolve serious or extreme divergences in medical opinion. Case studies note that the courts currently do not resolve these divergences very well at all. The regulation would allow any party to apply to have a comprehensive review of the medical situation. Sure there would be costs, but I think the costs would be recovered through the normal litigation process. This would lead to a more accurate analysis before opinion is presented to the court. We need to have a system which provides much better and structured guidelines, otherwise it is left to a judge to make sense of divergent opinions. The judge would have to look at two fantastically divergent opinions from so-called experts and decide which of those he subscribes to.

For example, recently in the Magistrates Court a neurologist and an orthopaedic surgeon gave very divergent opinions on a WorkCover issue. What could the magistrate do? He had to judge whose evidence he preferred. Quite often the truth is in the middle of two divergent opinions. Just as important is the structure under which reports are given. The whole process needs definition. Consequently, the regulation would need to outline a defined process.

I am pleased to note that the Attorney-General is looking at other issues, such as the recognition of waivers for dangerous activities, a new definition of 'injury' and who can take responsibility for an injury. I commend the Attorney-General for responding in a timely way to the AMAQ. It is unfortunate that the AMAQ still sought to go on strike. It is unfortunate that it terrorised some of its patients. I do not support that at all. Ultimately, I think we are putting in place a system to relieve the pressure on insurance premiums. The insurance companies and the federal government need to respond in a meaningful way to the great steps taken by this great Attorney-General. I commend the bill to the House.