

## Second Reading

**The Hon. RICK COLLESS** [4.44 p.m.]: I move:

That this bill be now read a second time.

There are approximately 850 reserves throughout New South Wales administered under trust boards, with about 6,000 volunteers contributing their time to manage Crown land reserves. Trust board membership is an honorary position appointed by the Minister administering the Crown Lands Act. Trust board members are expected to attend meetings and make an active contribution to trust affairs. They are not entitled to any financial benefit from the position, but they are entitled to recoup out-of-pocket expenses incurred in carrying out their trust duties. Trust board members are empowered to make decisions regarding the use and management of the land, and are responsible for the implementation of those decisions. As such, the trust must consider its employees, volunteers and assets, and obtain appropriate insurance cover to ensure protection for all.

These boards are responsible for the management and maintenance of publicly owned facilities such as community halls, recreation areas, showgrounds and a range of other community facilities. When one considers the broad range of activities conducted at these facilities, there is an almost limitless potential for accidental death or injury through circumstances that may not have been preventable, or even necessarily foreseeable, to administrators of any of these publicly managed facilities. Public uses of these facilities include show ring events, rodeos, bullock and bull riding, water sports on trust lands surrounding major water storages and motor vehicle sports. At times participation in any one of those sports has the potential for injury.

As the legislation currently stands, each person concerned with the management of a corporation is held liable for breaches of the Occupational Health and Safety Act should death or injury befall any user of that facility, be they a volunteer or not. Each person involved in the management of such a corporation is deemed to be guilty of breaching the Act and as such is open to prosecution by WorkCover. These volunteers also face the threat of being forced to provide compensation to the aggrieved party, despite the fact that they in no way profit from their efforts as a member of the public trust board. Last year I questioned the Minister about this issue, and the Minister acknowledged the importance of the question but pointed out that there had not been an inappropriate prosecution of a trust member by WorkCover inspectors.

The Minister also acknowledged that a review—I was about to say a "recent review" but it is now nearly two years since the review was initiated, and it is well over 12 months since it was completed—recommended that legislative changes needed to be made to the Occupational Health and Safety Act to remove any doubt about liability with respect to trust volunteers. The Minister tried to convince the House that any prosecution would be based on sensible discretion by the WorkCover inspectors. His response implied that as a consequence of that discretion by WorkCover inspectors no trust volunteer has been prosecuted. While that may well be the case, the real threat and possibility of prosecution remains.

However, I suggest that it is not good enough that the intent of these laws is understood; we must ensure that they cannot be misunderstood. Because it appears logical that volunteers should be exempt from prosecution under the Act, does not mean that in the future we will not be presented with a case in which a volunteer has been held liable and faces prosecution. It is apparent that once the bureaucrats had an opportunity to consider the review's recommendation for change, they could see that the threat of prosecution of volunteers would be removed, as would the power to prosecute—a power coveted by some in that inspectorial role.

Plans to amend this anomaly have been afoot from as long ago as May 2006, yet the Government has failed to implement the legislation needed to protect thousands of community volunteers from prosecution. At present, trust members are considered to be the same as directors and managers under section 26 of the Occupational Health and Safety Act. Section 26 (1) of the Act states that each director is liable in the case of an incident and that each director can be personally prosecuted. Paragraphs (a) and (b) of that subsection aggravate the situation even further by stating that directors must prove their own innocence. This same provision has been included in almost every piece of legislation introduced by this Government. It removes the basis of our legal framework, that one is considered innocent until proved guilty. The way the Act is worded, one is considered guilty until one's innocence is proved, and that is a fundamental problem.

Section 26 (2) allows for directors to be prosecuted even if the corporation is not prosecuted. A ridiculous situation could arise whereby trustees may be prosecuted even when the trust is not. Indeed, anecdotal evidence indicates the threat of prosecution under the existing occupational health and safety legislation is making otherwise willing volunteers reluctant to give of their time, effort and expertise to public trust boards for the benefit of wider communities. I have consulted with a number of serving trustees in various public facilities around New South Wales about this matter and the consensus among them is clear: the threat of prosecution that currently exists under these laws is a major disincentive for people to contribute in any voluntary capacity on trust boards in their local area. Indeed, people who are currently serving as trustees are greatly concerned.

It is reasonable to ask: Who in their right mind would expose themselves to the risk of prosecution, no matter how slight, by selflessly volunteering their time and energy to make a contribution to their local community? Very few, I would suggest. Quite apart from the harsh penalties that may be imposed against those deemed to have breached the Act, the financial and personal cost of contesting such a charge would be too much of a burden for people who are not being paid for such a contribution in any event. Until the potential for volunteers to be prosecuted under occupational health and safety legislation is removed, doubts will linger and fewer and fewer people will volunteer their time on these boards. The object of the bill is to amend the Occupational Health and Safety Act 2000 to exempt from prosecution nonpaid directors and those involved in a voluntary capacity on public trust boards or other such corporations when accidents occur on land or facilities managed by such trusts or corporations. The bill proposes a further provision, section 26 (5), which states:

A director or person concerned in the management of a corporation who is a volunteer is not liable to be prosecuted under this section for anything done or omitted to be done by the person as a volunteer. In this subsection, **volunteer** has the same meaning as in Section 60 of the *Civil Liability Act 2002*.

I have received widespread support for this bill. I wish to put on the record a number of responses I have received from local trust representatives in my area. Ian Davidson, secretary of the Myall Creek Hall Committee, wrote:

I am writing on behalf of the Trustees of The Myall Creek Memorial Hall and I would think the majority of other volunteers in this area who give their time and labour to community trusts and charity work in general.

The Myall Creek hall trustees give you their full support in your efforts to get protection for volunteers by your private members bill.

Ann Plumb, Secretary of the Inverell Speedway Reserve Trust, wrote:

On behalf of the trustees of the Inverell Speedway Reserve Trust (commonly known as the Inverell Motorsport Complex), I wish to express our concern about the present position whereby individuals working in a voluntary position as a trustee for a government department can be prosecuted under the Occupational Health and Safety Act 2000.

It is untenable to be at the discretion of some WorkCover inspector who may be out to impress by making prosecutions or just have a different interpretation of the law than another inspector. None of us wish to be in a position where we as volunteers giving our time and effort could be sued and lose everything we have worked for over the years. We are positive no politician would put themselves in such a position. We would certainly support any bill you can forward to change this legislation to give us protection and when necessary lobby other members of parliament to support it.

Janet Tonkin, Honorary Secretary of the Inverell Showground Trust, wrote:

Members of the Inverell Showground Trust wish to have verified the possible liability that might be incurred should some situation occur.

We feel that the lack of new Trust Members from members of the public is due to the fact that a huge liability might occur. We urge you and all politicians to consider this as a matter of urgency. Surely Volunteers should not be placed in a position where they might lose everything.

Phil Harris, Secretary, Copeton Dam State Park Trust, wrote:

Thank you for efforts in trying for a speedy resolution in the area concerning trust liability. I feel there are many people qualified that should be on trusts that won't be because of this possibility liability. The ones that should on trusts you would hope have had previous management experience and have been successful in what ever field they have been in. This I would think would place them at most risk because if they have been successful then they would most likely have the most to lose. Ask yourselves (all politicians) would you risk losing every thing that you own and have worked hard for to work in a voluntary position working to manage something for someone else. I suspect the answer to this is no so why expect everyone that is currently on a trust in NSW to do the same?

I thank Phil Harris for his assistance in the introduction of this bill. It is a simple bill with clear objects. It aims to protect the rights of volunteers who give of their time to participate in trust activities. The amendment will ensure that employees or voluntary workers of a trust are not impacted upon in the event of an accident. The trust is still required, however, to hold appropriate insurance cover for all people involved. Individual trust members will no longer be personally prosecuted and their personal assets will be no longer at risk as a result of contributing their time and efforts to the wider community. It will facilitate and encourage more community members to serve as trust members and make a worthwhile contribution to the management of local parks and community facilities. I commend the bill to the House.