

Agreement in Principle

Mr KEVIN HUMPHRIES (Barwon) [10.02 a.m.]: I move:

That this bill be now agreed to in principle.

The Occupational Health and Safety Amendment (Liability of Volunteers) Bill 2008, which has gone through the upper House, amends the Occupational Health and Safety Act 2000. It is my pleasure to have carriage of the bill in this House on behalf of the Hon. Rick Colless in the other place. The bill specifically targets volunteers. The Government is interested in volunteers, given that currently the Department of Education and Training is trialling a project to look at ways to encourage young people into volunteer services. This bill specifically refers to section 26 of the Occupational Health and Safety Act 2000, which provides for offences by corporations and the liability of directors and managers. This bill seeks to insert new subsection (5) in section 26 of the Act. New subsection (5) 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*.

So it means volunteer in the true sense—those good people who give up their time to make our communities a better place. No doubt communities across New South Wales, and indeed across the country, rely on the goodwill and spirit of those who provide volunteer services. One way of encouraging volunteers in our community is to ensure that they are not liable in terms of insurance, accidents and so on, which I will refer to shortly. The Occupational Health and Safety Act 2000 is important because it has a number of objectives that relate to safety in the workplace and in our community. The objects of the 2000 Act are:

- (a) to secure and promote the health, safety and welfare of people at work,
- (b) to protect people at a place of work against risks to health or safety arising out of the activities of persons at work,
- (c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs,
- (d) to provide for consultation and co-operation between employers and employees
- (e) to ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled,
- (f) to develop and promote community awareness of occupational health and safety issues,
- (g) to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices,
- (h) to deal with the impact of particular classes or types of dangerous goods and plant at, and beyond, places of work.

Section 26 of the Act, which deals with offences by corporations and the liability of directors and managers, states:

(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:

- (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
- (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

(4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the

purposes of this section.

The issue of volunteers' liability is contentious. While many members of the community are covered under the Occupational Health and Safety Act 2000—indeed, some are obviously accountable and made responsible—no provision in the Act relates specifically to volunteers. We have been approached by members of the community concerned about people who are acting in a volunteer capacity and who are helping to manage trusts and reserves throughout the State. We are seeking to include new subsection (5) in the Occupational Health and Safety Act 2000 to ensure that a person who acts in a volunteer capacity is not liable for prosecution under the Act.

There is a discrepancy in the system. Discrepancies have also been acknowledged by the member previously responsible for occupational health and safety. Indeed, three years ago a review of the 2000 Act was undertaken and there was community consultation. While a report of that review has been tabled, it has not been released. Support for this amendment has been acknowledged by the Government, and particularly by Labor members in the other place. The Hon. Helen Westwood, in her reply to the second reading debate in the upper House, said:

The Government is supportive of the principle behind the bill.

We need to debate this bill in this House because negotiations are currently underway about harmonising occupational health and safety issues around Australia. Those negotiations have been going on for three years, which the Coalition believes is too long, and demonstrates that the Government has been sitting on its hands in terms of releasing the review of the Occupational Health and Safety Act. The Opposition wants to bring this one discrepancy forward and it seeks the support of the Government in light of the fact that the Government, through the Department of Education and Training, has developed a pilot program for years 9 and 10. That 2007 election commitment which will be rolled out 2009—and it is something that the Opposition looks forward to—was meant to encourage volunteering by high school students in years 9 and 10. The Department of Premier and Cabinet has a volunteering unit. If we are going to encourage volunteers in our communities we need to make sure they do so under the protection of the Government.

There are approximately 850 reserves throughout New South Wales that are administered under trust boards, and about 6,000 volunteers are affected by the Act. Those volunteers contribute their time to manage Crown land reserves. Trust board membership is an honorary position and the Minister who administers the Crown Lands Act appoints members. They are not entitled to any financial benefit from the position, but they are entitled to recoup out-of-pocket expenses. The trust boards are responsible for the management and maintenance of publicly owned facilities such as community halls, showgrounds, recreation areas and other community facilities. According to the Minister's second reading speech, 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. In essence, they involve many of our recreation facilities, in particular, dams and waterways. At times participation in any one of those sports has the potential for injury.

The Minister for Lands acknowledged that a review commenced two years ago recommended that legislative changes to the Occupational Health and Safety Act to remove any doubt about liability with respect to trust volunteers. Mr Speaker, would be interested that the Opposition has been contacted by many members of trusts around the State, in particular Mr Phil Harris, who is a trustee of the State park at Copeton Dam near Inverell. He wrote to the Hon. Rick Colless and stated:

Thank you for your 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 possible liability. The ones that should be 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?

Yours truly,
Phil Harris.

The Opposition has had plenty of representations from around the State. In reply to Mr Richard Fraser, Secretary of the Bathurst Showground Trust, the Minister for Lands, Mr Kelly, stated:

I have been considering this issue for some time and have referred the matter to Cabinet and other agencies for comment.

The Government acknowledges the discrepancies and the Opposition wants to reassure the community that its volunteers will be protected. The trust's handbook contains a guideline for trust members but unfortunately not all activities are covered under the Occupational Health and Safety Act or under section 121 of the Crown Lands Act. Activities of volunteers that are not covered and that take place on trust and reserve land are: all professional sporting fixtures, all equestrian activities, including horse racing and training, trotting, rodeos, equestrian skill events, gymkhanas and cross-country rides, all greyhound racing and training, all motor racing and practising, all amusement rides other than playground equipment provided by the trust, water slides, abseiling, rock and mountain climbing, bungee jumping and similar activities, all aircraft activities, powered or

unpowered, including gliding, parachuting and hang gliding, all organised bicycle racing including mountain bike races and trials, show days, boat and watercraft racing and training, restaurants, cemeteries, and any activities whose objective is to make personal or business profit, except fundraising activities to benefit the reserve trust.

At times accidents occur and nothing can stop insurance companies from claiming costs against those volunteers, and that is the important discrepancy the Opposition is aiming to discuss. I am sure the Government would also support our sending a very clear message to our young people and the 6,000 volunteers who provide a valuable service in our community acting in their capacity on trusts. I hope to debate the matter next week.