Speech by

Peter Wellington

MEMBER FOR NICKLIN

Hansard Friday, 21 April 2006

LIQUOR (EVIDENCE ON APPEALS) AMENDMENT BILL

Second Reading

Mr WELLINGTON (Nicklin—Ind) (10.26 am): I move—

That the bill be now read a second time.

I present this bill in response to concerns expressed by a group of my constituents. Not long ago they opposed the opening of a detached bottle shop next door to a kindergarten. After the licence had been granted, they belatedly discovered that as well as the kindergarten, there was another subcommunity potentially affected by the application—an Alcoholics Anonymous group which used a neighbouring community centre not more than 200 metres from the bottle shop for its meetings. This information possibly should have been provided to the chief executive of the Department of Tourism, Fair Trading and Wine Industry Development by the applicant under section 116(3) of the principal act, and it certainly should have been considered by the chief executive under section 116(4). However, this information had not been provided by the applicant and was not considered by the chief executive.

When the group tried to bring an appeal to the Commercial and Consumer Tribunal, they were told that the tribunal could not hear the overlooked evidence or consider its possible impact, because section 34 of the act provides that the appeal will be 'by way of rehearing on the evidence that was before the chief executive'. In other words, if some evidence is uncovered that should have been before the chief executive but was not brought to her attention, that was just too bad as far as the appeal provision goes.

The current legislation deals with this situation by requiring the new evidence to be submitted to the chief executive for consideration and then possibly another appeal back to the Commercial and Consumer Tribunal or to the Supreme Court under the Judicial Review Act 1991. To me, this process is unnecessary, possibly expensive, and contrary to the intent of the legislation to allow a speedy and simple method of hearing appeals against decisions made by the chief executive.

I do not know whether there was much chance of eventual success in opposing this particular application, but the case brings to light a defect in the act that may also apply in other situations where the information that was not disclosed may weigh heavily against the granting of the licence. It could be that in some circumstances the evidence pertinent to the granting of the license was deliberately not disclosed by the applicants. To grant a right of appeal only on evidence that was before the chief executive, and to rule out other evidence that should have been before the chief executive, is illogical and potentially unjust.

I understand that the current section 34 of the Liquor Act 1992 is out of line with other acts that provide for a right of appeal from a departmental decision to the tribunal. Most of them, like the Residential Services (Accreditation) Act 2002, provide that an appellant may seek the tribunal's leave to introduce new evidence. The general pattern then is that the tribunal can decide whether to admit the new evidence in the course of hearing the appeal, or to adjourn the hearing of the appeal while the chief executive reconsiders the matter in light of the new evidence. I understand that if the appellant is dissatisfied with the chief executive's new decision, the appeal is still on foot and the payment of further fees is avoided and all the

matters would be considered together by the tribunal. All in all, this seems a much more sensible procedure than the one under the current Liquor Act.

I therefore present this bill to bring the appeal provisions into line with those in other acts in Queensland drafted more recently. I commend the bill to the House.

Debate, on motion of Ms Keech, adjourned.