

**Legislative Council**

**Thursday, 24 February 2011, Page 2080**

**DRUG PARAPHERNALIA**

**The Hon. A. BRESSINGTON** (14:45): I seek leave to make a brief explanation before asking the minister representing the Attorney-General questions about the sale of drug-using paraphernalia.

Leave granted.

The Hon. A. BRESSINGTON: In 2008, this parliament passed the Summary Offences (Drug Paraphernalia) Amendment Bill 2007 which inserted section 9B in the Summary Offences Act 1953 and which made it an offence to sell cannabis or methamphetamine pipes, water pipes and cocaine kits. Despite some reports of initial non-compliance, the law effectively closed several stores that predominantly sold such items and took pipes and bongs off the shelves of other retailers.

The business Off Ya Tree seemingly orchestrated being raided by the police to challenge the scope of section 9B, resulting in the judgement recorded in *Police v Koutsoumidis* [2009] SAMC 74. While the proprietor of Off Ya Tree was found guilty for selling some items contrary to the law, the magistrate was not satisfied beyond reasonable doubt that certain items fell within the scope of the law and parliament's intent.

Many of these items were variants of the traditional brass cannabis pipe, such as the numerous varieties of smokeless pipes, including 'bud bombs', glass open cone peace pipes and other more obscure, but nonetheless intended as, cannabis pipes. My advice is that they do fall within the definition of a prohibited pipe.

Another item that was found to be outside the scope of section 9B was a POURite water pourer, which looks like a typical glass water pipe but with the cone piece, which a user packs with cannabis, inverted and stuck to the stem. The following exchange on Off Ya Tree's online forum demonstrates that with a simple modification these water pourers are easily converted into functional bongs. Customer:

I just bought a water pourer from Off Ya Tree and it seems to be missing a piece of something, if it's not I'm wondering how to use it. Is it meant to come with a cone piece?

Employee:

Hi there, the POURites come with a pourer and nipple attached to clean the nipple unscrew it off and turn it around to sit in the spout. This should sort you out.

While the police were apparently unable to modify the particular water pourer seized from Off Ya Tree as the inverted cone piece was securely adhered to the stem, I suspect that the current water pourers on sale would not be so difficult.

I was recently provided with one of these water POURites from a concerned parent. This particular piece of paraphernalia was sold to a 14 year old. This model did not require modification as it came with two separate stem fittings: one for pouring liquids as per the promotional material and another that is clearly designed to be a cone piece. As the model provided to me demonstrates, despite the ruling in *Koutsoumidis*, the parliament clearly intended to prohibit the sale of paraphernalia like the POURite water pourers when it passed section 9B. The definition of a water pipe is:

- (a) a device capable of being used for smoking by means of the drawing of smoke fumes through water or another liquid; or
- (b) components that, when assembled together, form such a device; or—

The PRESIDENT: The honourable member should ask the question.

The Hon. A. BRESSINGTON: Yes—

- (c) a device that is apparently intended to be such a device but that is not capable of being so used because it needs an adjustment, modification or addition.

My questions to the Attorney-General are:

1. How many prosecutions have taken place for breaches of section 9B of the Summary Offences Act 1953, and what are the case citations for each?
2. Has a formal review been undertaken of the effect of the Koutsoumidis judgement on the operation of section 9B, and, if so, will the Attorney-General provide that to the house?
3. Has the Attorney-General himself sighted the pipes and POURite water pourers held not to be within the scope of section 9B and currently on sale at Off Ya Tree, and, if not, will he please do so?
4. Given that this parliament made it clear it intended to prohibit the sale of all pipes and bongs except for those traditionally associated with tobacco consumption, and section 9B of the Summary Offences Act 1953 specifically prohibits the sale of any item apparently intended for use or designed for use in smoking cannabis, on what reasoning has the Attorney-General concluded that the aforementioned items were not intended to be covered by section 9B?
5. In light of the information provided, will the Attorney-General review whether legislative change is necessary to cover the pipes and bongs that remain on sale?
6. Will the Attorney-General, if he chooses to do none of the above, release a public statement explaining to parents why this parliament will not enforce this law?

The Hon. R.P. Wortley interjecting:

The Hon. A. Bressington: You shut up.

The PRESIDENT: Order!

The Hon. R.P. Wortley interjecting:

The Hon. A. Bressington: You're not in the chair. Shut your mouth.

The PRESIDENT: Order! The Hon. Ms Bressington is not in the chair, either. Thou shalt give it and thou shalt take it.

The Hon. R.P. Wortley interjecting:

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:51): Yes; I will not ask for the question to be repeated. Obviously, the role of parliament is to legislate, and this parliament did that in relation to the drug paraphernalia issue, but it is the role of the courts to interpret legislation and when it applies. It is the police who enforce the law and the courts that determine how the law is interpreted in relation to whether or not a particular item falls within the scope of the legislation.

I certainly would not accept that the government has made some sort of decision that the law will not be enforced. Parliament makes the law and then other organs of the state are the ones that are responsible for ensuring that it is carried out. Of course, it is a court that will interpret how a particular statute applies in individual cases and, of course, it is very important that that be separate from the executive or government.

Certainly, I will refer the question to the Attorney-General in the other place and get information relating to the particular case that the honourable member has mentioned (and others) as to what effect this law has had and, in particular, to examine whether or not the law is applying in the way that parliament intended and I think in the way that we all would have hoped when we passed that legislation. Certainly, the government is committed to ensuring that the sort of blatant sale of equipment that is clearly intended for the use of illegal drugs will not be prevalently displayed and sold in the way that it used to be.

I will certainly refer that question to the Attorney-General in the other place to examine whether or not there is an issue in relation to the wording of the statute and whether we think there might be a problem in how that statute was constructed in relation to whether it is achieving its intended end.