

Hon Aaron Stonehouse; Hon Nick Goiran; President; Hon Robin Scott; Hon Michael Mischin; Hon Rick Mazza;
Hon Alison Xamon; Hon Stephen Dawson; Hon Charles Smith; Hon Martin Aldridge

SELF-DEFENCE

Amendment to Notice of Motion

HON AARON STONEHOUSE (South Metropolitan) [1.10 pm]: Madam President, pursuant to standing order 62(b), I seek leave to move my motion —

Point of Order

Hon NICK GOIRAN: What is the maximum time permitted for this debate, because I see on the clock that it is one hour and 20 minutes? I would have put it at two hours.

The PRESIDENT: It is two hours; you are correct, and that has just been adjusted. Thank you.

Debate Resumed

Hon AARON STONEHOUSE: Pursuant to standing order 62(b), I seek leave to move my motion in an amended form, as follows —

That this house calls upon the McGowan government to amend the Weapons Act 1999 to allow individuals to carry pepper spray for the purpose of self-defence.

By way of explanation, I have sought the approval of the leaders of the other parties in this place, and I understand that they are all in agreement with me seeking leave to move this amended form of the motion. It is my intention to narrow the scope, as I understand that some people were concerned about the vagueness of this motion, so I am narrowing it down and being much more specific with what I am calling for in this instance.

The PRESIDENT: Member, have you provided a copy of that version of your motion to all members?

Hon AARON STONEHOUSE: I have just signed it, and I think it will be circulated now, Madam President. By way of further explanation, I circulated an email copy of the amended motion to the leaders of the parties, so I hope everybody has a copy now.

Leave granted.

Motion

HON AARON STONEHOUSE (South Metropolitan) [1.11 pm]: I move —

That this house calls upon the McGowan government to amend the Weapons Act 1999 to allow individuals to carry pepper spray for the purpose of self-defence.

As a Liberal Democrat, it should come as no surprise to members that I support the right to self-defence. But as an elected representative charged with reviewing the laws of Western Australia as they pass through this place, I am also obliged to point out inconsistencies when I come across them, and that obligation has never been more obvious to me than in the case of an individual's right to use reasonable force to protect themselves from attack, loss of property or, in extreme cases, loss of life. The law as it stands here in Western Australia is a mess. The Weapons Act and its associated regulations allow that a person may, in the case of pepper spray, rely upon the defence that they were carrying it under circumstances in which they had "reasonable grounds to apprehend" that an attack upon them might take place. Regulation 7(2) of the Weapons Regulations 1999 states —

Section 7(3) of the Act does not apply to a spray weapon referred to in subregulation (1) if it is carried or possessed by a person for the purpose of being used in lawful defence in circumstances that the person has reasonable grounds to apprehend may arise.

That defence has been tested in the Supreme Court, where Justice Wheeler famously remarked —

It was plainly intended that women carrying sprays when they go out in the evening, or older and frailer members of the community carrying them in situations where they felt themselves to be in danger, would not be committing an offence under the legislation.

Yet the Western Australia Police Force continues to insist that the defence be tested in each and every case, effectively ensuring that victims, rather than the original perpetrators, are forced to defend themselves in court.

Point of Order

Hon ROBIN SCOTT: Madam President, I am having great difficulty hearing the member. I do not think the speaker is working.

The PRESIDENT: I must admit I am having difficulty as well. I do not know whether there is a problem with the microphone, or perhaps the member might just speak up a bit for the house.

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Debate Resumed

Hon AARON STONEHOUSE: I will certainly try, Madam President.

If the 2014 case of a pregnant immigrant carrying pepper spray to protect herself and her unborn child was not an obvious enough example of a systemic failure on the part of our police force to recognise and employ commonsense, then that of a lady in Wembley in recent months, who pulled out a key-ring sized canister of pepper spray to dissuade a persistent stalker, a man against whom she had previously taken out a restraining order, is surely a case in point. When police arrived at the busy restaurant outside of which the incident took place, they did not arrest the sex pest who caused it; they arrested and charged the innocent woman who had merely been trying to defend herself.

Even the Attorney General has conceded that the Weapons Act should be amended to offer clarity to the legislation in this regard. I will read from an article published in PerthNow on 17 October 2014. It states —

Shadow Attorney-General John Quigley said the Weapons Act should be amended.

“Parliament should offer further clarification to the legislation,” he said.

I am therefore hopeful that today’s motion will not be seen as a political stunt, because that is certainly not how I see it myself, but rather as a sincere attempt to gauge the mood of the chamber, and the views of our respective political parties, on the question of the rights of some of our most vulnerable citizens to take what are, in many cases, some fairly mundane precautions against the violence of others, without falling foul of the law themselves.

Section 248 of the Criminal Code recognises the right to self-defence. It has its basis in our common law, and goes much further back than that. In fact, it can be traced back to the Roman law principle of “dominium”. Although limitations may be placed upon our right to self-defence, there can be no doubt about the existence of an inherent right to self-defence. In 2008, changes were made to self-defence in the WA Criminal Code. The changes were in response to criticisms that self-defence operated unfairly in that it excluded women disproportionately. During the debate on the Criminal Law Amendment (Homicide) Bill 2008, then Attorney General Jim McGinty said —

Another important change contained in this bill is that the harmful act that the person believes it is necessary to act against in self-defence will not have to be imminent. The Law Reform Commission noted that the concept of imminence is currently a barrier for women, particularly in domestic violence situations, relying on self-defence because women do not necessarily respond to an imminent attack, as to do so may place them in even more danger. The commission also noted that imminence is hard to reconcile with the constant nature of domestic violence.

That might not be pertinent to the motion itself, but I mention it because it illustrates that this Parliament is willing to grant defences for vulnerable people to act in self-defence in extraordinary circumstances. The defence was written into the Criminal Code in 2008, specifically to protect women and provide them with a defence when acting in self-defence. Such a defence presumably also exists in the Weapons Act, but it is unclear when it does and does not apply, and it is currently being tested in court by the WA Police Force. We are a society that abhors violence against women and the vulnerable. We provide these legal protections for women to defend themselves, yet we still continue to fine women for carrying practical, nonlethal means for exercising their right to self-defence.

Let me return to the lady in Wembley whose case I mentioned a few moments ago. In fact, she is sitting in the public gallery watching this debate unfold. Members will recall that she was reacting to a threat she perceived as being very real, in the form of a sexual predator against whom she had already had reason to take out a restraining order. She sat down with me some weeks ago and discussed her case in detail. In short, the man, who was known to her, had threatened to rape her in the past, and had then stalked her over a considerable period. When he started banging on the window of the restaurant in which she and her partner were dining, making lewd gestures through the glass, she, perhaps foolishly in hindsight, went outside to confront him. As she came face to face with the man, she realised her mistake and, fearing for her safety, pulled out a small, key-ring sized canister of pepper spray and used it to drive him back. It was an effective deterrent—he shuffled off down the street, and she was able to go back inside and call the police to report the incident.

As I have already related, for her trouble, she was arrested and charged with assault. That outcome brings me to an important point in this debate. The police charged her with possession of a controlled weapon, but they also charged her with assault, because she used that weapon. Frankly, that charge is a separate matter in this case, and the court will determine whether she used that weapon appropriately. But the charge for the mere carrying of that weapon in the first place, when she had previously had a restraining order against a potentially dangerous person who had made threats of sexual violence against her, I think is unacceptable, and should cause great concern for all members of this place.

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As I noted when I first rose, the Attorney General is on the record as saying that he believes the Weapons Act and the Weapons Regulations should be amended to bring greater clarity to the law. To be clear, he made this statement when he was in opposition. I have always found him to be, and I am sure he will continue to be, an honourable and consistent man, so I look forward to the government confirming that it intends to bring forward at least that level of change in the near future.

I understand that some people are concerned that criminals may obtain pepper spray and use it in the commission of a crime. My motion is not about the proliferation of pepper spray. It is legal to purchase pepper spray over the counter. It is merely illegal to carry it unless the carrier meets the defence that I outlined earlier. Criminals who plan to commit an offence with pepper spray do not need to rely on a defence to carry it; they already intend to carry out a crime. Despite the fact that the carrying of pepper spray is somewhat criminalised under our current regime, from time to time crimes are carried out with pepper spray. The last one I am aware of was in 2016 when a gang of youths attacked a man outside a shop. In my view, providing further clarity on the defence for law-abiding citizens to know when they can and cannot carry pepper spray for their own defence is far separate from the proliferation of prohibited weapons used by criminals. Criminals can already obtain these if they like. They can already obtain far worse weapons. There is no defence in the Weapons Act to carrying a blade or an edged weapon, yet criminals continue to carry them. In my mind, providing clarity on the defence for carrying pepper spray will not pose a further threat to public safety.

The rights of all people, but, most importantly, the rights of the most vulnerable people in our society, to protect themselves must be made clear and there must be clarity at law. Pepper spray is certainly no panacea or silver bullet for violent assaults. It may or may not help somebody break away from an attacker, but it is long overdue that we provide much-needed clarity to members of the public about when they can and cannot carry this nonlethal means of self-defence.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [1.22 pm]: I commend Hon Aaron Stonehouse for raising this important matter in this place. Although we have an enormous amount of sympathy for the point that he is making and the way that he is making it, regrettably, we are not in a position to support the motion as it is framed, and I will come to the reasons why. I will propose an amendment to the motion he has brought to the house, which I think, with respect, would be difficult for other members of the house to oppose, and I will come to that in a moment.

The issue of self-defence, of course, goes very much to the heart of people who are confronted with not only the actual risk of crimes being committed against them, but also their apprehension that they will be the victims of crimes. I note that prior to the last election, the then shadow Attorney General, Hon John Quigley, facebooked comments that would raise people's fears of the crimes that were prevalent in the community at that time, and he did it for political advantage; there is no question about it. It is a legitimate concern by members of the community, but on 27 February 2017 he messaged —

Crime is out of control, our community is not safe!

...

Only WA Labor and I will keep our community safe!

The figures that were released afterwards suggested in fact that crime was on the decline overall over previous years, but be that as it may. I thought that was a promise; in fact, it seems to have been an election commitment. The only people in the community who seem to be safe now, or who feel themselves to be safe, are the ones who brazenly commit offences such as wandering into corner stores, taking things off the shelves and pocketing them, starting fights in stores, threatening shopkeepers and staff, and then walking out. They do not seem to have a problem; they feel safe in the community. But that is a debate for another day.

The point that has been raised is a very important one and, as I say, we have an enormous amount of sympathy for it. There are complications, however. There are restrictions at a commonwealth level on the importation of what are called pepper sprays. As I understand it, they can be imported into this country only for the purposes of law enforcement. Other jurisdictions prohibit the carriage of pepper sprays and other instruments, whether for self-defence or otherwise. There is a legitimate concern by law enforcement authorities because, of course, something that can be used as a defensive weapon can also be used for offensive purposes, whether it be a firearm or other weapon. There is that wonderful scene in *The Terminator* when the Arnold Schwarzenegger robot goes into a gun store and is shown an array of weapons, including rocket-launchers and all the rest of it, and is advised by the weapons salesman that these are all ideal for home defence. That sort of weapon can also be used for offensive purposes; likewise, so can things like batons, extendable or otherwise, and sprays. I think that the incident that Hon Aaron Stonehouse mentioned involved the lady in question carrying not only a pepper spray, but also a taser.

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Hon Aaron Stonehouse: To clarify, that was the 2014 incident.

Hon MICHAEL MISCHIN: Yes, the 2014 incident.

As I say, I have an enormous amount of sympathy for the idea that people ought to have some instrument, whether at home or otherwise, in case of a burglary or home invasion or if they are attacked on the streets, but there are complications and difficulties with that because of the potential for someone to use or to be provoked to use these things not in self-defence, but in the case of offence. Restrictions on the sale and availability of these articles are very important for that purpose. What I would suggest, however, is an amendment that is less restrictive than what has been proposed, but before I get to that, I will point out some of the complications that this motion intends to address. It starts with the Weapons Act 1999 that Hon Aaron Stonehouse has already mentioned. Section 7, “Controlled weapons”, states —

- (1) Except as provided in section 10, a person who, without a lawful excuse, carries or possesses a controlled weapon commits an offence.

Penalty: imprisonment for 2 years and a fine of \$24 000.

- (2) Except as provided in section 10, a person who has a lawful excuse to carry or possess a controlled weapon commits an offence if the person carries or possesses it in a manner that could reasonably be expected to cause someone —

(a) to be injured or disabled; or

(b) to fear that someone will be injured or disabled.

A similar penalty is prescribed. It continues —

- (3) In this section a lawful excuse to carry or possess a controlled weapon does not include the excuse that the weapon is carried or possessed for defence.

So, carrying it in self-defence does not help the person. Just to make it more complicated, subsection (4) states —

Subsection (3) does not apply to a controlled weapon of a kind prescribed for the purposes of this subsection as long as it is carried or possessed in such circumstances, if any, as the regulations may prescribe.

Then we go to the regulations. If that is not complicated enough, the definition of “spray weapon” is provided in the regulations. Regulation 5 states —

An article described in the third column of Schedule 2 is prescribed to be a controlled weapon.

In schedule 2, item 17 is a spray weapon—oleoresin capsicum—and is described as a spray weapon made or modified to be used to discharge oleoresin capsicum. So far so good. Then we go to regulation 7. Subregulation (1) states —

A spray weapon made or modified to be used to discharge oleoresin capsicum is prescribed for the purposes of section 7(4) of the Act.

Subregulation (2) states —

Section 7(3) of the Act does not apply to a spray weapon referred to in subregulation (1) if it is carried or possessed by a person for the purpose of being used in lawful defence in circumstances that the person has reasonable grounds to apprehend may arise.

I think that members of this house would have enough difficulty trying to work out where the end point is of all of that and whether, if one legitimately buys a spray can of oleoresin capsicum lawfully over the counter, they can carry it to or from their car or their home or out to Northbridge after hours or anywhere else.

Hon Aaron Stonehouse mentioned an incident that was reported in an article in PerthNow on 17 October 2014. The lady in question was carrying a taser disguised as a mobile phone. We will leave that bit aside for a moment. She was also carrying a canister of pepper spray. Through her lawyer, she told the court that they were given to her by her boyfriend after the home she was sharing with a flatmate was burgled. At the time, the then shadow Attorney General, now Attorney General, said that the Weapons Act should be amended. The article stated —

“Parliament should offer further clarification to the legislation,” he went on to say.

Here is his chance. Having told us before the last election that crime is out of control and we are not safe in the streets, his prediction—rather, his policy—on that has come true. It is out of control. We are not even safe in our shops. Now that he has predicted that, and his election commitment has been fulfilled, and before that, he said that the Weapons Act needs to be fixed up, so let us give him the opportunity to clarify where the lines

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should be drawn in self-defence using oleoresin capsicum spray. I propose an amendment to the motion moved by Hon Aaron Stonehouse. The motion currently reads —

This house calls upon the McGowan government to amend the Weapons Act 1999 to allow individuals to carry pepper spray for the purpose of self-defence.

The problems that I have outlined, I think, means that we need to look into this a little more carefully because there are implications for these things being used as offensive rather than defensive weapons—as weapons rather than shields. There are implications for their importation and how we get these articles into the country in the first place. Maybe there is an industry for manufacturing them here in WA; it would create a few jobs. I propose to delete the word “amend” and replace it with the following words —

examine and report to the house on amending

The motion will read —

This house calls upon the McGowan government to examine and report to the house on amending the Weapons Act 1999 to allow individuals to carry pepper spray for the purpose of self-defence.

That will allow the government and the Attorney General, in liaison with the Minister for Police and other agencies, to fully assess the issue, identify to us what issues need to be addressed and hopefully come up with some solution to them if there is merit in them.

As I said, I have sympathy with what Hon Aaron Stonehouse has proposed but I do not think we can go so far as to endorse it without some opportunity for the government to look into it and for us to be properly informed of its implications so that we can decide what to do.

Amendment to Motion

Hon MICHAEL MISCHIN: I move —

To delete —

amend

and substitute —

examine and report to the house on amending

I commend my amendment to the house. I hope it will satisfy Hon Aaron Stonehouse and allow him to get the information to be able to consider and perhaps bring something back in due course, but at the same time allow members and the government the opportunity to look into this issue that has been around for several years.

HON AARON STONEHOUSE (South Metropolitan) [1.35 pm]: I wish to speak to Hon Michael Mischin’s amendment. I thank him for providing a compromise that I think most members of this chamber will agree with. It is a very reasonable amendment and does not detract from the point that I am trying to make. Some people have legitimate concerns about pepper spray being used offensively. I do not think there is anything I can say now that will address those concerns. Calling on the government to examine and report to the house on what is a rather nuanced issue, which is access to pepper spray for self-defence purposes, is much more reasonable, and I am happy to support this motion. I urge all members to support this amendment to my motion.

HON RICK MAZZA (Agricultural) [1.36 pm]: I also support the amendment to the amended motion that the McGowan government look into this matter of self-defence. One of the biggest issues surrounding self-defence and protecting one’s wellbeing is the uncertainty within the community about what people can and cannot do. It is a very subjective situation. The suggestion that the government look into this is a very good idea. There may be some way of shaping the focus on what people can do to defend themselves, which would be desirable. I support the amendment.

HON ALISON XAMON (North Metropolitan) [1.37 pm]: I rise to indicate that I will be supporting the amendment to the amended motion. I think we now have quite a practical motion in front of us. Should it pass, we will be able to debate and discuss it. If the house were to pass this amendment, I think it would be helpful to the community at large to know that the government is trying to seek a more fulsome discussion around this issue that comes up fairly frequently. I will have more to say in a moment. I think the amendment before us is sensible.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [1.38 pm]: I have a great deal of sympathy for the amendment that has been moved by Hon Michael Mischin, given that the amendment has come before this house at this late stage and that our parliamentary party and indeed our cabinet made a decision on an earlier motion that was moved by Hon Aaron Stonehouse, which was much broader, relating to recognising the inherent risk of individuals to defend themselves from attack in a timely and measured manner. It called upon the McGowan government to criminalise the sale and possession of nonlethal means of self-defence such as pepper spray. As Hon Aaron Stonehouse said yesterday, he talked to us behind the Chair and indicated that he was going to change that. We were able to make a decision based on what he was proposing. I have not had the

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opportunity to consult with the Attorney General or indeed the Minister for Police on the amendment to the motion moved by Hon Michael Mischin today.

Hon Nick Goiran: Notice was given on 6 December.

Hon STEPHEN DAWSON: We got an answer on the original but not on the amendment. As I am not the minister responsible for this portfolio, I cannot say that the government supports this amendment. Having said that, it does seem like a sensible amendment. I understand the will of the house. Certainly, members who have spoken thus far have indicated that they support it, but given the lateness of Hon Michael Mischin's amendment, we are not in a position on this side of the house to support it. If members want government to participate in conversations or to support such amendments in the future, by all means do talk to us behind the Chair and give us an indication. If members opposite are serious about participating and getting government onside, they should give us an indication behind the Chair and we can certainly try to go through the approvals process or at least try to talk to the Attorney General and the Minister for Police whose portfolios this affects.

Hon Michael Mischin interjected.

Hon STEPHEN DAWSON: I am being genuine, honourable member.

Hon Michael Mischin interjected.

The PRESIDENT: Order! The minister has only a couple of minutes left to respond to the amendment.

Hon STEPHEN DAWSON: This is an absolutely important conversation to have. I understand that some of my colleagues may also agree with me that dealing with this amendment is an important way forward, so I am now at liberty to say that we will support the amendment moved by Hon Michael Mischin, but what I said earlier still stands. If members opposite intend to do such things in the future, please give us some notice.

Several members interjected.

The PRESIDENT: Order! It is really difficult to hear what the minister has to say when everyone else is trying to contribute at the same time. Please listen to what he has to say in silence.

Hon STEPHEN DAWSON: Thank you very much, Madam President.

Although Hon Nick Goiran may question my motives, I am being genuine. If members of other parties want us to consider late amendments, give us the heads-up and I can certainly talk to my colleagues in the other place and the ministers with responsibility for the relevant portfolio. Having said that, we will support the amendment moved by Hon Michael Mischin.

Amendment put and passed.

Motion, as Amended

HON ALISON XAMON (North Metropolitan) [1.43 pm]: We have a bit of a moving feast in front of us but we are now dealing with a motion that, as I just mentioned, will hopefully achieve a positive outcome. I will say from the outset that I have a great deal of sympathy for the Minister for Environment who was expected to stand up and reply, bearing in mind that the minister responsible, or ministers if we want to talk about the Minister for Police as well, are not in this house. It is very difficult to ascertain the best way to respond on the run when the motion is not about one's portfolio area. I also saw this amendment at exactly the same time as the government. It is the nature of this place that we often have to make decisions on the run, but I certainly have great sympathy for the minister needing to reply on an area that is not his to respond to. Nevertheless, we have a consensus by this house to at least consider the amended motion in front of us and we will then see whether there is support from the house as a whole to move this motion forward. I am glad it has been amended.

To be very clear from the outset, the Greens were not supportive of the original motion put in front of this place. I even had concerns about the amended motion, which was put at the beginning of proceedings today. However, the Greens are well able to support the third version of the motion. One of the reasons that the Greens were absolutely not supportive of the first motion was that it was not narrowed down to pepper spray. It talked about nonlethal means of defence, which includes tasers and a whole range of other things. If we had been talking about that, I had plenty to say about the lethal nature of tasers and the concerns around that particular weapon, and it is a weapon. I am really glad that we are not having to discuss whether we realistically want to have people walking around the streets with tasers who are not our police, bearing in mind that we have already had enough problems with the misuse of tasers by the police force itself. Why on earth would we want to aggravate that situation?

It is important that when we talk about pepper spray, we are clear on where the law actually lies on this matter. I have carried pepper spray in the past. When I was a student at university, there was a serial rapist on campus. If people go back some decades, they may recall a problem with a number of rapes that occurred on a particular

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campus. At the time, I was the guild president on that campus and my boyfriend—now my husband—bought me pepper spray because I was often having to work very late at night in the guild and attend late lectures, and there was a genuine fear. Members, I am not a big person. I am planning on one day hitting five foot—that is an ambition to which I hold—but until such time as I receive my much-desired growth spurt, I am someone who is easily able to be physically overcome. I have mentioned in this place before that in the past I have been a victim of assault and robbery committed by strangers. I am one of these people who is very conscious of my physical limitations and that means that I become fearful of how I can best defend myself, and my loved ones fear for my safety as well. It is also important to listen to the stories, as outlined by Hon Aaron Stonehouse, about the experiences of others, particularly women, who have also felt fear and taken action to try to prevent or stop disgraceful and dangerous behaviour. When we hear about those people subsequently being charged, there is outrage over their treatment, and rightly so, because it offends the average person's sense of justice in the sense of the way we want the world to be. For that reason alone, it is useful to properly examine the laws of self-defence. Is it the case that the police are erroneously charging? Is it the case that the defence is not wide enough? I would have thought that we would want to look at whether the law is actually meeting community expectations or, in actual fact, is effectively penalising, criminalising, people who one would expect should have every right to protect themselves? It does raise broader issues. Is the solution to simply make a weapon like pepper spray more widely available, and then what are the implications for that?

The current legality around self-defence in Western Australia was outlined in a particular article put out by Lorraine Finlay of the School of Law at Murdoch University. She pointed out that currently in Western Australia, pepper spray is a controlled weapon. She pointed out also that in Western Australia, unlike the situation in other states and territories, it is legal for a person to carry pepper spray provided they have a lawful excuse. It is important to understand that. It is not currently illegal to carry pepper spray. However, it depends on the circumstances under which people do that. The article states that a lawful excuse for carrying pepper spray is if it is “for the purpose of being used in lawful defence in circumstances that the person has reasonable grounds to apprehend may arise.” This would cover a woman who was walking home alone late at night after work, and elderly and vulnerable people. However, it would not generally be considered to cover a person who was walking home in broad daylight with no history of having been a victim of assault. The article goes on to say that the law needs to be clarified. The article also cites Kellie Toole from the School of Law at Adelaide University, who specialises in self-defence law, as saying that self-defence items can create risk for users and others through accidental or deliberate misuse. This is a similar dilemma to the ongoing issue in the United States with gun laws. The issue is that victim safety can easily balloon into vigilantism, and opening the door to one type of force may open the door to other forms of force.

I still have a pepper spray canister somewhere, but the cap has come off, so it cannot be used. I am making the point that for a while I was carrying around a weapon, and I could have ended up spraying myself in the face because the nozzle has gone out of whack. There are also issues around what it means to have these sorts of implements. If the police want to knock down my door and try to take my dead pepper spray away from me, I look forward to seeing them.

The article goes on to cite both Ms Finlay and Ms Toole as saying that the main issue is to try to prevent crime. That is ultimately where we need to go. The solution is not to increasingly weaponise people but to try to prevent crime in the first place.

In considering whether it is useful to allow individuals to carry a weapon such as pepper spray for personal safety reasons, one concern is whether it will have the effect that we want it to have. We need to remember that we are talking about private citizens being armed with what are dangerous weapons. Pepper spray is not safe. Sometimes people do not respond to pepper spray. I have seen footage of people who are pepper sprayed and are hardly affected. However, other people have died from the use of pepper spray, primarily people suffering from respiratory problems or severe asthma. Therefore, it is not true to say that pepper spray is a nonlethal weapon in all instances, because it may cause death. The problem is that it is impossible to ensure that pepper spray is used only for self-defence. How can it be ensured that a person's attacker will not also use pepper spray? The victim of a bag snatcher may end up being pepper sprayed as well. How can it be ensured that once purchased by a person, the weapon is only ever made available for use by that person? How can it be ensured that the weapon is not lost or stolen or accessed by another person? How can it be ensured that children cannot get hold of it? How can it be ensured that if the owner tries to use it for self-defence, it cannot also be used by their attacker? That is a particular concern that I have. How can it be ensured that the owner will only ever use it for self-defence against the risk of serious physical injury and not for vigilantism? How can it be ensured that the owner will not use it in retaliation for being provoked but not threatened? I am sure some members have had occasions in their lives when they wished they could have pepper sprayed someone. There have been cases even in Perth, such as the recent case of the woman who went to a Greek restaurant in Northbridge and pepper sprayed all the people in the outside area. That happened not long ago. In fact, I believe a member of Parliament was dining there at the time. There have also been instances over east with people in train carriages being pepper sprayed. In fact, in 2016 at Sherwood railway

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station in Armadale, two groups of people got into a fight and pepper sprayed each other. That affected bystanders as well. I also think about the broader messages it may send to women who do not use pepper spray. If a woman is walking home alone from the Fringe Festival and does not have pepper spray and is subsequently assaulted, will it be suggested that she did not adequately defend herself? This is the sort of nonsense that may arise. Bear in mind that women are already being told that they are not supposed to walk alone anywhere.

Hon Samantha Rowe interjected.

Hon ALISON XAMON: I will take that interjection. The interjection suggested that women would be better by themselves, to which I say, tongue in cheek, that a curfew for men is something that is suggested. It is a joke!

There are questions about how it will affect policing if police are called to incidents in which the offender is armed with pepper spray. I hope that would not mean that the police would then be likely to resort to other means such as tasers or, even worse, firearms.

I think there is great sympathy for the idea that people who do not possess the physical capacity to defend themselves in the same way as other people—such as people with a disability, slightly-built women and the elderly—should not be prosecuted or penalised for taking measures that they believe they need to take to defend themselves and ensure that they are not subject to violence. The issue is how to ensure that the increasing amount of weaponry within our community does not have adverse effects and gets into the wrong hands and effectively escalates our community into becoming even more violent than it is now. I believe that the motion as amended at least gives us an opportunity to explore these inherent tensions and ensure that the people whom the community would not expect to be subject to legal proceedings are not subject to legal proceedings, and at the same time we do not effectively open a door that could create an even more violent and dangerous society. I hope this motion as amended is passed, and I look forward to hearing the response from the Attorney General. It would be even better if the Attorney General wanted to take some submissions on this matter, because a lot of experts in the area of mitigating crime could probably make a valuable contribution to this debate.

HON RICK MAZZA (Agricultural) [2.00 pm]: I rise to support the motion, as amended. I wish the McGowan government well on examining this issue and reporting to the house, because what is defence and what is offence is such a vexed question, as Hon Michael Mischin pointed out. Anything that can be used in defence can, of course, be used in offence. It is about trying to work our way through that to get a clear path for what is reasonable to defend oneself.

As Hon Alison Xamon pointed out, for someone whose stature is not burly there can be times when it is quite frightening if an aggressor is threatening them. I had a meeting this morning with some senior police on another matter and I raised this issue to find out their attitude towards the use of pepper spray. The way they explained it to me is that with prohibited weapons such as pepper spray, it depends on the context. It was explained to me that if a young woman was attending university and there had been a series of assaults and she was making her way back to the car park and had pepper spray in her bag, that would be a reasonable reason to possess that pepper spray. However, someone lurking in the shadows in Northbridge on a Friday night possessing pepper spray might be a completely different scenario. There is uncertainty and quite often people will be charged for possessing something such as pepper spray when they might have a fairly good reason to possess it. They have to go to court and spend money on defence, so a lot of people will not bother going through that.

Pepper spray has been mentioned here and talked about, but anything can be a weapon. A baseball bat was mentioned earlier to me. A baseball bat can be a lethal weapon in the wrong hands, without a doubt. Something as simple as a pen in the right hands could be a lethal weapon. I was going to give a demonstration of that, but Hon Aaron Stonehouse would not participate, so I will not be able to do that! There are many ways in which people can defend themselves. It is a matter of having some certainty and comfort so that if someone is threatened, they know what they can and cannot do. This debate has been swirling around for a long time and people get nervous and paranoid that if we pass laws about certain things, will someone get injured or hurt because of that when normally they might not have been? More and more in society we are finding that people are threatened. In recent times there was a lot of media about the supermarket owner in Armadale and the things that they have to go through. People have a lot of issues surrounding their wellbeing. To use a term that was used last year in a bill, to defend oneself is a fundamental human right.

As the saying goes, when seconds count, the police are only minutes away. There has to be some means whereby people can defend themselves lawfully. How we wade through that, I do not know. The McGowan government will have a very difficult task in trying to unravel that conundrum. Overall, I think it will be a good thing to look into this matter. I think the community would appreciate having a little more certainty about what they can do. There are a lot of myths out there about what we can and cannot do to defend ourselves. I think people are unsure about what they can and cannot do. We talk a lot about people going to car parks or walking down the street and being able to defend themselves. It is a more difficult thing to try to legislate for, but it has been suggested to me that if there is

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a home invasion, reasonable force can be used to defend oneself. Quite frankly, if someone breaks into someone's house when they are home, particularly after dark, I reckon they can use whatever means they deem necessary to defend themselves. It will be interesting to see whether the McGowan government finds that in its examination. I look forward to that report. Hopefully, we will have more of a debate surrounding what people can and cannot do around self-defence to get more clarity on it. I think times are changing and there is certainly more of a requirement for people to be sure and to know what they can and cannot use when they are defending themselves.

HON CHARLES SMITH (East Metropolitan) [2.03 pm]: I thank Hon Aaron Stonehouse for bringing another interesting motion to the house. I also thank him for bringing forward this area of self-defence. As has been noted, it is due for a sensible conversation. I support the original motion and I thank Hon Michael Mischin for his amendment to the motion to call upon the McGowan government to examine and report to the house on the Weapons Act 1999 to allow individuals to carry pepper spray for the purpose of self-defence. We support that amended motion. Given the McGowan government's apparent softness on crime and the nightly news being one long crime report, it is perhaps time to endow the individual with greater powers with which to defend themselves.

Week in, week out constituents contact me via email, letters, and social media, offering support for my raising the issue of crime and antisocial behaviour. At the moment, in suburbs in our south east, they are suffering terribly with crime and antisocial behaviour, particularly by juveniles. Suburbs such as Maddington, Gosnells, Thornlie, up into Midland, and further up into Ellenbrook. Yes, member —

Hon Matthew Swinbourn: I live there, mate, so I know what is going on there.

Hon CHARLES SMITH: So do I.

Hon Matthew Swinbourn: You don't live in that area.

Hon CHARLES SMITH: People contact me and tell me what is happening.

Hon Matthew Swinbourn: You don't live in that area. I live and work in that area.

Hon CHARLES SMITH: You cannot bury your head in the sand and hope it will go away.

Hon Matthew Swinbourn: I'm not burying my head. My children go to school in that area and you are causing as much mischief as you can for political purposes, driving fear into the community.

Hon CHARLES SMITH: I am raising the issue of what is happening.

The ACTING PRESIDENT (Hon Adele Farina): Order, members! Order!

Hon Matthew Swinbourn: You are just a political animal.

Hon CHARLES SMITH: It is the truth.

The ACTING PRESIDENT: Order, members! When the Chair calls the house to order, members engaged in debate across the chamber are required to stop that debate and listen to the Chair. Only one person has the call and that is Hon Charles Smith.

Hon CHARLES SMITH: I warned this government two years ago in my inaugural speech about issues such as vigilantism rearing its ugly head. Back then, there were murmurs in Ellenbrook. Last month, a small group of people in Gosnells took matters into their own hands, and they smashed up the house of someone whom they thought was responsible for criminal activity. That was widely reported in the media. People do this out of sheer frustration and the police's lack of the ability to carry out their job properly and sometimes because of the incompetence or perceived incompetence of the court system and other supporting government agencies such as the Department for Child Protection and Family Support. I agree that it is high time for new more robust laws to be introduced to force parents to become responsible for their kids who are running amuck. We need to get them to be responsible for the behaviour of their children. That is an overriding issue in those suburbs.

People want action taken on these serial pest criminals because they are fed up. This issue will not go away, and it certainly will not be resolved by the Minister for Police sticking her head in the sand and hoping for the best. Action has to be taken. A recent example, which has been mentioned, is the IGA shopkeeper in Kelmscott whose store was trashed by a horde of people who were upset that the owner detained a juvenile defender. He ended up being charged. This alone supports the view that this motion has put forward; that is, people should be allowed to defend themselves and avoid being criminally charged for doing so. Self-defence is permitted under section 248 of the Criminal Code. The focus of this section is proportionality, which is the amount of force used in a circumstance that is sufficient to prevent the attack and/or enable an escape route. In practice, proportionality is much harder to establish in the heat of the moment and there is little one can use but one's fists and maybe one's wits to protect oneself. What chance does an unarmed person have against someone armed or a group of attackers, or if they are cornered, such as a motorist stuck at lights? There is this new craze of window washers, and some have been

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reported as being very aggressive in their dealings with drivers. I was a victim of one of those people. I had to get out of my car and deal with them in the middle of the road. This motion supports the fact that responsible people should be entitled to a level playing field. The use of pepper spray is a good example of this. Western Australia is the only state that permits an individual to carry pepper spray for self-defence—that is, on paper, at least, although it is technically a controlled weapon, as we have heard. This was noted in the case of *Hall v Collins*, in which section 7(3) of the Weapons Act does not apply if it is carried as pepper spray or possessed by the person for the purpose of being used in lawful defence in circumstances that the person has reasonable grounds to apprehend may arise. One must ask: what are those reasonable grounds to apprehend? Would taking a stroll through the suburbs of Perth be a reasonable ground? There is, unfortunately, little case law on the subject. Realistically, a person is more likely to be charged with possessing such an item, even if the only intended use is for self-defence.

Pepper spray is used by police around Australia and is used worldwide for subduing criminals or deterring attackers. Pepper spray is a quite effective deterrent when the person is hit directly in the face. I have been pepper sprayed on more than one occasion, and it is pretty effective. It incapacitates by causing temporary blindness and it can, as we have heard, cause shortness of breath. It stops people from attacking someone, if that is their intention. It allows the police to subdue people, so it can be an effective, nonlethal weapon.

Some jurisdictions permit pepper spray for individuals for self-defence, and I agree with Hon Aaron Stonehouse that it is time for Western Australia to join that list of jurisdictions—not on paper, as it is now, but actually in practice. It is currently a fair middle ground for people to possess pepper spray for self-defence without the fear of being criminally charged, so I thank Hon Aaron Stonehouse for pushing this argument forward. The motion has our support.

HON MARTIN ALDRIDGE (Agricultural) [2.12 pm]: I rise to indicate the National Party's support for the amended motion before the house and agreement with the amendments made by the house earlier in today's session. They have certainly made the motion more supportable from my perspective.

It is interesting to hear some of the comments made on this matter. In the lead-up to this debate I asked a few people their views on pepper spray, and if we were to poll the Western Australian population, we would probably find that half of them would think that it is legal to carry and use, and half would be wholly confused about what the law is. Although that is completely anecdotal, I think there is some general confusion amongst the community about how people can possess and use nonlethal force such as pepper spray.

I also had a bit of a look at some relevant Australian studies on the impact of pepper spray. There is not a lot, but I came across a report that was commissioned a few years ago, in 2005, by the former Crime and Misconduct Commission in Queensland. It looked at more than 5 000 cases in which pepper spray was used by the police force in Queensland. In Queensland, as in every other jurisdiction except Western Australia, it is a prohibited weapon. It found that in 83 per cent of cases it was deemed effective as a nonlethal weapon. In 10 per cent of cases it had limited use and in one per cent of cases it aggravated the behaviour of the person being targeted, so it actually had the contrary effect to what had been anticipated. Hon Aaron Stonehouse, in moving this motion, said that this is not the panacea. Indeed, the assessment that was done of those 5 000 cases in Queensland in 2005 showed that it was an effective self-defence measure in only eight out of 10 cases. The study concluded that, of the 5 000 cases it reviewed, no resultant health problems arose from the use of pepper spray by Queensland police. However, the report also acknowledged at least two cases that were still in doubt and noted that although it was the committee's view that there were no resultant health problems, it was also not risk-free.

Internationally, there is a lot of commentary from the United States, where pepper spray is probably more widely used and available. I do not think that is particularly relevant to Australia. I have seen from some of the reporting and studies from the United States that pepper spray is dispensed from canisters that look more like fire extinguishers than something one might carry for self-defence. It is used in applications like breaking up crowds and riots, so there are probably other factors in play.

Some comments were made about importation and the restrictions that apply. Some of the media reports I have read refer to that as well, and that would most likely be a matter for the federal government, not the state government. Interestingly, a quick search of the internet shows local companies from which one can legally source pepper spray. A Western Australian-based company appears to manufacture pepper spray in Western Australia from Western Australian materials, so maybe that is one way to navigate the federal government's importation restrictions, which I believe restrict their import to government and official use. A single canister of pepper spray from one of these Western Australian online businesses will set someone back \$44.95; a family pack of four canisters for \$159.95; or a business pack of seven canisters for \$349.95. Some information on the website also advises that it is illegal for people under the age of 18 years to purchase a controlled weapon, being pepper spray, and that beyond that, people should seek their own legal advice on its use. Thanks to Hon Aaron Stonehouse giving notice of this motion, I found out that Western Australia appears to be the most liberal jurisdiction in the sense that it is the only jurisdiction that lists pepper spray as a controlled rather than a prohibited weapon.

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Some of the commentary today has focused more on the use than the carriage of pepper spray. It is important to note that the motion before us is focused on the Weapons Act, which relates to the control and carriage of pepper spray, the defence mechanism for the carriage of pepper spray, and the circumstances in which one can carry it. A lot of the commentary has been focused on how one would use it, the implications of using it and the law relating to its use. As far as I can tell from the contributions so far, that is separate from the Weapons Act and is contained in the Criminal Code or other statutes of the state. If members think that this review by the government will deliver some final solution around people being able to carry and use pepper spray, I think it really only addresses the first element of the question, which is the legality of buying and carrying it. It probably does not address the issue of the circumstances in which it is reasonable to use it. I am not sure whether the government will extend its inquiry to consider more wholly all facets of using pepper spray in the community as a form of self-defence.

Some contributions were also made about using a defensive weapon offensively, or a controlled weapon which was with all good intent provided to people for self-defence but which was found to be used offensively. My assessment of the situation would be that pepper spray probably is not the weapon of choice for most people who want to commit crimes, but the inquiry that the government undertakes ought to consider that. Similarly, is that a reason not to allow it to be accessible for the purposes of self-defence? As Hon Rick Mazza outlined, a whole range of other things that are not weapons for the purposes of the Weapons Act could be deemed weapons, and they could be far more lethal or inflict far more serious injury than pepper spray. I have struggled to identify any very significant adverse health impacts from its use in Australian jurisdictions, noting that fairly limited studies and assessments have been done. I think that is largely because it has been a prohibited weapon in all states except Western Australia.

This is a good motion. I will follow the progress of the government's inquiry and I look forward to it reporting to the house at some stage in the future.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [2.20 pm]: I thank Hon Aaron Stonehouse for bringing this issue before the house. This has been a good conversation to have and, having listened to everybody, there is a range of views. One thing that I think we can all agree on is that Western Australians should be safe in public or private places. However, I think the key community safety message is first and foremost to call the police. If the incident is life threatening, people should call 000; if it is not life threatening but police attendance is required, they should call 131 444.

Notwithstanding that, Western Australia has legislated to classify pepper spray as a controlled weapon. That was done under the Weapons Act regulations in 1999. We also know from the debate this morning that Western Australia is the only state in which it is legal to possess pepper spray, but only under the strict condition that the person has reasonable grounds to do so.

Hon Alison Xamon raised some interesting stories. I am not convinced that further increasing the availability of nonlethal weapons such as pepper or oleoresin capsicum spray and tasers will necessarily make our community safer. Weapons can be taken off vulnerable people. I can imagine an old, or young, woman taking a pepper spray out of her bag, only for a bigger, burlier bloke to take it off her, use it against her and rob her bag at the same time. My point is that it comes with risks.

We have landed at a good place this morning in calling on the government to examine and report to the house on this issue. I acknowledge the comments of Hon Alison Xamon about perhaps the Attorney General or the ministers responsible seeking or calling for public submissions on this issue. I will bring that to the attention of the appropriate ministers. Again, it is a good conversation to have and there is a lot more work to be done. I support the amended motion before us.

HON AARON STONEHOUSE (South Metropolitan) [2.23 pm] — in reply: I am happy about where we have arrived at. From today's speakers we have heard opinions from across a broad spectrum of political parties and political ideologies. Admittedly, my original motion on notice might have been a little too broad. I am passionate about this issue, and sometimes that passion can get the better of me. To begin with, I thank the government for granting leave for me to move an amended motion this morning. It was very gracious of the government, after we spoke behind the Chair last night, to agree to that. But I also thank Hon Michael Mischin, who perhaps very late this morning provided alternative wording and moved an amendment that I think helped further clarify what I intended with this motion. Again, it was very gracious of the government to think on its feet and agree to that. I also thank the rest of the house for agreeing to that amended motion, even though it was brought on at the last minute. I think it was brought on and accepted in goodwill.

Hon Michael Mischin pointed out the complexity of the Weapons Act. I think a lot of the confusion comes from the lack of clarity. Although ignorance of the law is not normally an excuse, I think it is problematic that the law is being interpreted quite differently by the police and laypeople. It undermines the rule of law, and respect for the

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law and for police, when potentially vulnerable people—women, the frail, the elderly—are being charged for carrying pepper spray in instances when they thought they were within the law to carry it.

Hon Alison Xamon raised that the first step in addressing violent assault should always be crime prevention. I agree; crime prevention is certainly part of the solution. Of course, pepper spray is not a silver bullet to combat violent crime, but really my message today is that arming people may not be the solution to the problem—sure—but for crying out loud let us stop charging them for carrying pepper spray. For goodness sake, let us stop charging women, vulnerable people, the frail and people with physical disabilities. I am not saying that everyone should go out and buy pepper spray or that we should proliferate the carrying of pepper spray or that that is some solution, but for goodness sake let us at least provide some clarity and get the police off people's backs in those instances.

I understand that some people are concerned about weapons like pepper spray being turned against their victims. That is certainly a possibility, but, again, let us not criminalise people for carrying them in the first place. Pepper spray is generally categorised as being a nonlethal weapon. It was pointed out that some people have died after being pepper sprayed, but generally that was because of other medical conditions or other injuries sustained during an arrest. The pepper spray may have exacerbated it or it may be incidental, but, generally speaking, as we heard from the contribution of Hon Martin Aldridge, it is an effective weapon 80 per cent of the time. I think that is a pretty high success rate, and complications after the use of pepper spray are fairly rare.

I look forward to a review—an examination—and a report to this house on the Weapons Act and the carrying of pepper spray for self-defence purposes. I think Hon Martin Aldridge categorised it quite well when he said that this is not necessarily about the use of, and when it is appropriate to use, pepper spray; it is merely about when it is appropriate to carry it. I think the Criminal Code deals with the use of violence or force in self-defence fairly well already. That is a different matter. I gave the example of the lady in Wembley, who is in the public gallery today, having used pepper spray to fend off a sex pest. The court will determine whether her actions were reasonable in employing force in that instance. It is the charge of breach of the Weapons Act for carrying pepper spray in the first place that I am highlighting today. I think that is at odds with community expectations and a layperson's reading of "defence" in the Weapons Act. That needs to be addressed sooner rather than later. There are certainly women in my life—I have a mother, sisters-in-law, nieces and a partner—and I want them to have certainty when they are getting around late at night in potentially dangerous scenarios about what they can and cannot carry for their personal protection. I am sure that is a motivation for us all to do something about this, and I thank all members for signalling their support for this motion.

Question put and passed.