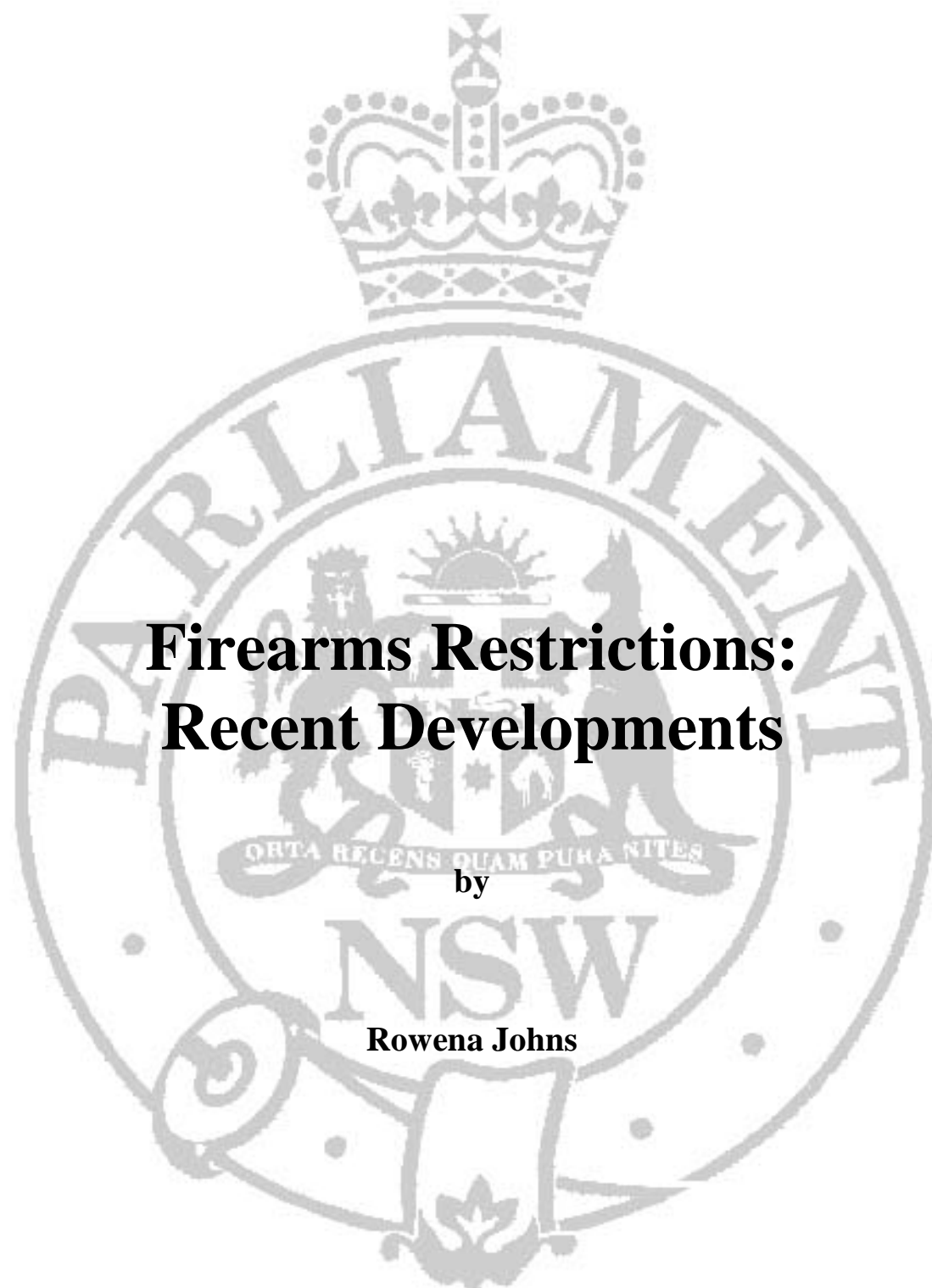


**NSW PARLIAMENTARY LIBRARY
RESEARCH SERVICE**



**Firearms Restrictions:
Recent Developments**

by

Rowena Johns

Briefing Paper No 3/04

RELATED PUBLICATIONS

- **Firearms Regulation: An Update** by Abigail Rath and Gareth Griffith, NSW Parliamentary Library Background Paper No 5/99

ISSN 1325-4456
ISBN 0 7313 1755 6

February 2004

© 2004

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent from the Librarian, New South Wales Parliamentary Library, other than by Members of the New South Wales Parliament in the course of their official duties.

NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE

David Clune (MA, PhD, Dip Lib), Manager (02) 9230 2484

Gareth Griffith (BSc (Econ) (Hons), LLB (Hons), PhD),
Senior Research Officer, Politics and Government / Law (02) 9230 2356

Talina Drabsch (BA, LLB (Hons)), Research Officer, Law (02) 9230 2768

Rowena Johns (BA (Hons), LLB), Research Officer, Law (02) 9230 2003

Stewart Smith (BSc (Hons), MELGL), Research Officer, Environment.. (02) 9230 2798

John Wilkinson (BA (Hons), MA), Research Officer, Economics..... (02) 9230 2006

Should Members or their staff require further information about this publication please contact the author.

Information about Research Publications can be found on the Internet at:

www.parliament.nsw.gov.au/WEB_FEED/PHWebContent.nsf/PHPages/LibraryPublications

Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

CONTENTS

EXECUTIVE SUMMARY

1. INTRODUCTION	1
2. BACKGROUND INFORMATION	2
2.1 National Firearms Agreement.....	2
2.2 Firearms Act 1996 (NSW).....	2
2.3 Gun buyback and amnesty in 1996-1997	3
2.4 Firearms classification in New South Wales	3
3. TRENDS IN GUN VIOLENCE	5
3.1 National statistics.....	5
3.2 New South Wales statistics	7
3.3 Gun crimes in south-west Sydney in 2003	9
3.4 Carr Government's response	14
3.5 Opposition's point of view	17
4. SOURCES OF ILLEGAL FIREARMS: SMUGGLING AND THEFT	18
4.1 State and Federal Government perspectives.....	18
4.2 Empirical information on the sources of illegal firearms	19
5. RECENT LEGISLATION, REGULATIONS AND AGREEMENTS	22
5.1 Commonwealth.....	22
5.2 New South Wales	26
6. HANDGUN BUYBACK AND AMNESTY	34
6.1 National	34
6.2 New South Wales	34
7. BAIL RESTRICTIONS FOR SERIOUS FIREARMS OFFENCES	39
7.1 Objectives of the Bail Amendment (Firearms and Property Offences) Act 2003	39
7.2 Presumption against bail for serious firearms offences.....	39
7.3 Other amendments.....	40
8. CHANGES IN THE SECURITY INDUSTRY	42
8.1 Security Industry Amendment Act 2002	42
8.2 Announcement of additional changes in 2003.....	43
8.3 Firearms (General) Amendment (Security Industry) Regulation 2003.....	44
8.4 Security Industry Amendment (Licence Conditions) Regulation 2003.....	46
8.5 Further issues	47
9. GUN COURTS	49
9.1 Review in New South Wales	49
9.2 Gun courts and programs in the United States of America	50
10. CONCLUSION	61

Appendix A: Figures showing trends in handgun crime in NSW, 1995-2000.

Appendix B: Legislative provisions for the gun court in Rhode Island, USA.

EXECUTIVE SUMMARY

This briefing paper examines developments in firearms regulation since late 2002, and some of the criminal conduct that has influenced reforms. While the jurisdictional focus of the paper is New South Wales, developments at a Commonwealth level are also outlined as they often provide a framework for the States.

Chapter 2 – Background information: 1996 was a landmark year in the evolution of firearms regulation in Australia. Events in 1996 that are important for understanding the present regulatory system include the National Firearms Agreement and the National Gun Buyback (pages 2-4).

Chapter 3 – Trends in gun violence: Statistics from national and state research organisations are presented on various aspects of firearms-related crime, such as the registration status of firearms and the types of firearms used to commit offences. Also examined in this chapter is the proliferation of gun violence in south-west Sydney in 2003, particularly drive-by shootings and thefts of handguns from security guards. One of the key policing responses to the problem was the formation of Task Force Gain (pages 5-17).

Chapter 4 – Sources of illegal firearms: Two sources of illegal firearms in New South Wales are importation from overseas and thefts from local legal stocks. The debate over which is the predominant source is reviewed, with reference to Commonwealth and State political perspectives and empirical studies (pages 18-21).

Chapter 5 – Recent legislation: Numerous legislative restrictions upon firearms, especially handguns, have been introduced since late 2002. Commonwealth Acts and regulations include the *Customs (Prohibited Imports) Amendment Regulations 2002*, the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*, and the *National Handgun Buyback Act 2003*. The main legislative changes in New South Wales are found in the *Firearms Amendment (Public Safety) Act 2002*, the *Firearms Amendment (Prohibited Pistols) Act 2003*, and the *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003*. New legislation is also discussed in Chapter 7 on bail developments and Chapter 8 on the security industry (pages 22-33).

Chapter 6 – Handgun buyback and amnesty: The Council of Australian Governments (COAG) resolved that a buyback scheme should operate throughout Australia from 1 July 2003 to 31 December 2003 to provide compensation for newly prohibited handguns. COAG also agreed that an amnesty should be conducted to encourage the surrender of other illegally-held handguns, without compensation, during the same period. The Commonwealth Parliament passed the *National Handgun Buyback Act 2003* to facilitate funding arrangements with the States. In New South Wales, the starting date for the buyback and amnesty was delayed to 1 October 2003, continuing until 31 March 2004 (pages 34-38).

Chapter 7 – Bail restrictions: The *Bail Amendment (Firearms and Property Offences) Act 2003*, which was not yet in force at the time of writing, will create a presumption against

bail being granted for a range of firearms offences, including: unlicensed possession of a firearm; possession of a loaded firearm in a public place; unauthorised selling, purchasing and manufacturing offences; stealing firearms; firing at dwellings; and unauthorised dealing in firearms or their parts on an ongoing basis (pages 39-41).

Chapter 8 – Regulating the security industry: Concerns over the vulnerability of the security industry to criminal infiltration, in view of the access that many security personnel have to firearms and sensitive information, led to stricter eligibility criteria for licence applicants under the *Security Industry Amendment Act 2002*. Fingerprinting requirements for security guards were tightened by the *Security Industry Amendment (Licence Conditions) Regulation 2003*, while further reforms under the *Firearms (General) Amendment (Security Industry) Regulation 2003* will restrict the calibre of handguns available to security guards and improve the safe storage of guns when the regulation commences on 1 May 2004 (pages 42-48).

Chapter 9 – Gun courts: In November 2003 the Carr Government appointed Gordon Samuels QC to conduct a review into the suitability of adopting gun courts in New South Wales. Gun courts are specialised courts that exclusively deal with firearms-related offences. The first gun court in the United States was established in 1994 in Rhode Island. There are different versions of gun courts in the United States: some are created by legislation, some consist of a designated judge or prosecutor at an existing court handling all firearms cases, and often they accept only juvenile offenders. In addition, numerous States have introduced court-imposed gun awareness programs (pages 49-60).

1. INTRODUCTION

Firearms have increasingly become the subject of regulation in Australia. This paper considers changes to legislation, policy and law enforcement operations that occurred or were proposed in 2002-2003. The starting point for the legislation reviewed is the Commonwealth's amendment of customs regulations, from 20 December 2002, to prohibit the importation of handguns and handgun parts for the purpose of sports shooting unless they conform to calibre, barrel and magazine specifications. As a consequence, New South Wales passed legislation, effective from 1 October 2003, placing restrictions on the type of handguns that may lawfully be used for sports target shooting. Further limitations were also imposed on the licence conditions of sports shooters, in line with resolutions agreed on by the Australasian Police Ministers' Council in November 2002 and endorsed by the Council of Australian Governments in December 2002. These changes created the need for a buyback scheme to pay compensation in exchange for prohibited firearms. Like the buyback of 1996-1997, a general amnesty is being run at the same time for other illegally-held firearms. In New South Wales the period is 1 October 2003 to 31 March 2004.

Another catalyst for reform has been the gun violence in Sydney in 2003, particularly drive-by shootings in south-west Sydney related to gang disputes. There were also numerous gun thefts from security companies, which prompted the formulation of stricter storage requirements and calibre limits on firearms. The security industry was already under scrutiny for susceptibility to criminal involvement. Eligibility criteria for security licence applicants, firearms safety training, fingerprinting, wearing of uniforms, and police powers to inspect firearms and conduct random ballistics tests have all been enhanced since 2002. Other responses by the Government to the gun violence in Sydney include increased penalties, new offences, tougher bail requirements for serious firearms offences, special police operations, and a review to consider whether to establish a specialised gun court to deal with firearms-related charges.

Except where stated otherwise, this briefing paper incorporates developments up to 31 January 2004.

2. BACKGROUND INFORMATION

It is beyond the scope of this paper to review the history of firearms regulation in Australia in detail. However, major changes occurred in 1996 that are crucial to understanding subsequent developments.

2.1 National Firearms Agreement

On 28 April 1996, 35 people were killed and 18 others were wounded at the historic site of Port Arthur in Tasmania by an assailant using a semi-automatic rifle. The Australasian Police Ministers' Council convened a special meeting on 10 May 1996 and agreed to a national plan for the regulation of firearms. The resolutions were refined at subsequent meetings and formed the basis of the National Firearms Agreement. The Agreement committed all States and Territories to a system of firearms licensing and registration.

The terms of the Agreement included:¹

- banning military style automatic and semi-automatic firearms;
- limiting the availability of non-military style semi-automatic rifles and shotguns to primary producers, professional vermin exterminators, and a limited class of clay target firearm users;
- introducing registration for all firearms, including longarms;
- grouping firearms into 5 broad licensing categories – outlined below at 2.4 on p 3;
- requiring all licence applicants to establish a genuine reason for firearms ownership;
- requiring all licence applicants other than those applying for category A firearms to establish that they have a special need for the particular category of firearm;
- requiring that permits be acquired for every new firearm purchase, with the issue of a permit to be subject to a waiting period of at least 28 days to enable appropriate checks to be made;
- stricter storage requirements for all firearms; and
- requiring all sales to be conducted by or through licensed firearms dealers.

Firearms which were otherwise prohibited could be owned legitimately if they were deactivated.² The deactivation requirements vary throughout Australia; the standards which apply in New South Wales are described in s 20(a) of the *Firearms Act 1996* and cl 31(3) of the *Firearms (General) Regulation 1997*.

2.2 Firearms Act 1996 (NSW)

In New South Wales, the *Firearms Act 1996* implemented the resolutions of the

¹ Les Tree, Director General of the Ministry of Police, *Review of the Firearms Act 1996: A Report for the Minister of Police*, 19 June 2000, pp 30-31 and Appendix A.

² Jacqueline Fitzgerald et al, 'Firearms and Violent Crime in New South Wales', *Crime and Justice Bulletin*, Number 57, May 2001, Bureau of Crime Statistics and Research, pp 6-7.

Australasian Police Ministers Council's meeting of 10 May 1996, as well as incorporating existing provisions from the *Firearms Act 1989*. Introducing the legislation, the then Minister for Police, Hon. Paul Whelan MP, stated that it 'represents the toughest controls on firearms ever enacted in New South Wales...The proposed Act will improve public safety by imposing strict controls on the possession and use of firearms, promoting the safe and responsible storage and use of firearms and facilitating a national approach to the control of firearms.'³

2.3 Gun buyback and amnesty in 1996-1997

The National Firearms Agreement also included a resolution that a compensation buyback scheme and a 12 month national amnesty should be conducted. The gun buyback started in most States on 1 October 1996 and ended on 30 September 1997. It secured the surrender of about 640,000 prohibited firearms nationwide. Compensation for owners was funded by the Commonwealth through a one-off increase in Medicare levy by 0.2% to raise about \$500 million.⁴ The compensation provided through the buyback scheme was authorised by the *National Firearms Program Implementation Act 1996* (Cth).

In New South Wales, a general buyback of prohibited firearms from the public concluded on 30 September 1997. A separate phase of the buyback in New South Wales was a compensation program for firearms dealers. The total number of firearms surrendered was 192,263 firearms, including 155,774 prohibited firearms and 36,489 non-prohibited firearms which were surrendered voluntarily because their owners no longer wished to retain them.⁵

2.4 Firearms classification in New South Wales

The licence categories of firearms in New South Wales are outlined at s 8 of the *Firearms Act 1996* (NSW).

Category A: air rifles, rimfire rifles (excluding self-loading), shotguns (other than pump action or self-loading), shotgun/rimfire rifle combinations.

Category B: muzzle-loading firearms (other than pistols), centre fire rifles (other than self-loading), shotgun/centrefire rifle combinations.

Category C (prohibited except for occupational purposes): self-loading rimfire rifles with a magazine capacity of no more than 10 rounds, self-loading shotguns with a magazine capacity of no more than 5 rounds, and pump-action shotguns with a magazine capacity no

³ Firearms Bill, Second Reading Speech, *NSWPD*, 19 June 1996, p 3204.

⁴ Auditor General, *The Gun Buy-Back Scheme*, Audit Report No. 25, Australian National Audit Office, Commonwealth of Australia, 1997, Part One, Summary.

⁵ Les Tree, Director General of the Ministry of Police, *Review of the Firearms Act 1996: A Report for the Minister of Police*, 19 June 2000, p 31.

greater than 5 rounds.

Category D (prohibited except for official purposes): self-loading centrefire rifles, self-loading rimfire rifles with a magazine capacity of more than 10 rounds, self-loading shotguns with a magazine capacity of more than 5 rounds, pump action shotguns with a magazine capacity of more than 5 rounds.

Category H (pistols): pistols including blank fire pistols and air pistols.

Firearms dealer licence: applies to the kinds of firearms specified in the licence. The licence authorises the licensee and their employees to possess, manufacture, convert, purchase, sell, transfer, repair, maintain or test any firearm to which the licence applies at the premises specified in the licence, and to possess, manufacture, purchase or sell ammunition for those firearms.

Firearms collector licence: applies to the kinds of firearms specified in the licence. However, pistols manufactured after 1 January 1946 and prohibited firearms (other than those under Category C or Category D) are excluded from this licence category.

3. TRENDS IN GUN VIOLENCE

3.1 National statistics

Registration status of firearms used in homicide in Australia, 1995-1999

A study by the Australian Institute of Criminology in 2000 on firearms used in homicide found that, since the introduction of the National Agreement on Firearms in 1996, there had been a noticeable increase in the proportion of homicides committed with a handgun (a Category H (sport/target shooting) firearm):

- in 1995/96, 13% of firearm-related homicides were committed with a handgun;
- in 1998/99, the figure had risen to 42.2%.⁶

The author, Jenny Mouzos, suggests that licensing, registration and storage requirements had restricted some people from obtaining firearms or a firearms licence legitimately. As a consequence, those individuals turned to illegitimate means of firearms acquisition.

Information on firearms licensing and registration confirmed that only 9.4% (11) of the 117 offenders who used firearms to commit homicide between 1 July 1997 and 30 June 1999 were licensed firearm owners with a registered firearm. None of the handguns used in homicides were registered.⁷

According to Mouzos, the policy implications of these findings are that ‘stronger emphasis needs to be placed on initiatives targeting illicit firearms trafficking⁸ and on compliance regarding the storage of firearms’, as one of the main methods of acquisition is theft of legal firearms from gun dealers, owners and others.

Homicide in Australia, 1999-2000

This study of homicide showed that 65 victims were killed with a firearm in Australia in 1999-2000. New South Wales accounted for over a third of all firearm-related homicides in Australia. The proportion of the total figure represented by each State and Territory was:⁹

⁶ Jenny Mouzos, ‘The Licensing and Registration Status of Firearms Used in Homicide’, *Trends & Issues in Crime and Criminal Justice*, No 151, May 2000, Australian Institute of Criminology, Canberra, p 4.

⁷ Ibid, p 4 and Figure 6 on p 6.

⁸ Ibid, p 6. Mouzos notes that, to deter firearms trafficking, the Federal Government enacted tougher penalties for importing prohibited goods such as firearms. The *Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000* (Cth) introduced a 3-tiered system (instead of a single offence) with penalties up to a maximum of 10 years imprisonment and/or a fine of \$250,000.

⁹ Jenny Mouzos, ‘Homicide in Australia 1999-2000’, *Trends & Issues in Crime and Criminal Justice*, No 187, February 2001, Australian Institute of Criminology. Information is adapted from Table 1 on p 2.

Firearms used in homicides in Australia in 1999-2000

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUST
Number of homicides	24	16	8	6	8	1	2	0	65
Percentage of total	36.92	24.61	12.30	9.23	12.30	1.54	3.08	0	100

Category H (sport/target shooting) handguns accounted for 47.5% of the firearms used to commit homicide (28 out of 59 firearms). 75% of firearms used in homicide in 1999-2000 were not registered to the offender (33 out of 44 firearms).

Firearms-Related Deaths in Australia, 1991-2001

This longer study by the Australian Institute of Criminology examines the use of firearms to inflict fatal injury in Australia between 1991 and 2001, focusing on 5 main types of fatal firearm injury: suicide, homicide, accidents, shootings by law enforcement officers in the course of their duties, and undetermined cases.¹⁰

Findings of the study included:

- Firearms represented a small fraction of all external causes of deaths in Australia in 2001: 4.2% or 333 deaths.
- There was an overall downward trend in the number of firearms-related deaths over the 11 year period, from 629 in 1991 to 333 in 2001. The instances of homicide by firearm were 84 in 1991 and 47 in 2001.
- Of the 5083 registered deaths attributable to firearms between 1991 and 2001, suicides committed with firearms accounted for the majority of deaths (77%), followed by homicides (15%) and firearms accidents (5%).
- In homicides caused by firearms, the highest number of deaths was among males aged 25-34 years (152 deaths), followed by males aged 35-44 years (128 deaths).
- Deaths caused by shotguns and hunting rifles showed a marked decline from 1991 to 2001. Handgun use was somewhat uneven, but rose overall from 29 deaths by handguns in 1991 to 49 deaths in 2001.
- In firearms-related homicides between 1991 and 2001 (in cases where information on the type of firearm used was available), 37% were committed with a hunting rifle, 34%

¹⁰ Undetermined means where it is unclear whether death was accidental or purposely inflicted. Jenny Mouzos and Catherine Rushforth, 'Firearm Related Deaths in Australia, 1991-2001', *Trends & Issues in Crime and Criminal Justice*, No 269, November 2003, Australian Institute of Criminology, Canberra.

with a shotgun and 21% with a handgun.

National Homicide Monitoring Program, Annual Report 2001-2002

The National Homicide Monitoring Program (NHMP) identifies patterns in homicide victimisation and offending in Australia. The NHMP started collecting data in 1989 and has been operating within the Australian Institute of Criminology since 1990. The *Annual Report* of 2001-2002 showed a gradual decline in the use of firearms to commit homicide between 1 July 1989 and 30 June 2002:¹¹

- Firearms were used in 26% of homicides in Australia in 1989-1990;
- Firearms were used in 14% of homicides in 2001-2002.

The most common type of firearms used to commit homicide in 2001-2002 were handguns (56%). Predictably, in most cases the firearm used in the homicide was not registered or licensed to either the victim or the offender.

3.2 New South Wales statistics

Firearms used in crime, 1995-2000

Research published by the Bureau of Crime Statistics and Research in 2001 examined the extent to which handguns and other firearms were being used in violent crime in New South Wales. The statistics were drawn from the NSW Police database, Computerised Operational Policing System (COPS). Some findings of the research were:¹²

- ***Most common weapon:*** In New South Wales in 2000, knives were the most common instrument used in murders and robberies where a weapon was involved in the crime. Firearms were the second most common weapon.
- ***Murder with firearm:*** There was a reduction in the number of murders committed with a firearm in New South Wales between 1995 and 2000. The murder weapon was a firearm in 29 murders in 1995 and 17 murders in 1999 and 2000.
- ***Murder with handgun:*** Focusing on handguns as the type of firearm used, the number of murders committed with a handgun remained stable from 1995 to 2000.
- ***Robbery with handgun:*** In 2000 there were 655 robberies using firearms in New South Wales. 67% of these incidents (438) involved a handgun.

¹¹ Jenny Mouzos, *Homicide in Australia: 2001-2002*, National Homicide Monitoring Program Annual Report, Research and Public Policy Series No 46, Australian Institute of Criminology Canberra.

¹² Jacqueline Fitzgerald, Suzanne Briscoe and Don Weatherburn, 'Firearms and Violent Crime in New South Wales', *Crime and Justice Bulletin*, Number 57, May 2001, NSW Bureau of Crime Statistics and Research.

- **Shootings:** The number of incidents of shooting with intent¹³ remained relatively stable between 1995 and 1998 but increased substantially in 1999 and 2000.
- **South-west Sydney shootings:** The increase in shootings was particularly evident in the Canterbury-Bankstown and Fairfield-Liverpool Statistical Subdivisions. The rise in handgun shootings in those areas was more pronounced than the increase across the remainder of the State between 1995 and 2000. Furthermore, shootings in these two subdivisions accounted for more than half (55%) of all handgun shootings which occurred across New South Wales during 2000.

Graphs from the study showing trends in handgun crime in New South Wales from 1995 to 2000 are attached at **Appendix A** of this briefing paper.

Recorded Crime Statistics by Area, 1998-2002

Much of the political debate about gun-related crime in 2003 centred around the south-western region of Sydney. Some of the data collected by the NSW Bureau of Crime Statistics and Research (BOCSAR) may give an indication of gun violence on a geographical basis. However, caution should be exercised in interpreting the incidence of weapons offences from 1998 to 2002, as the category of 'weapons' includes implements besides firearms, such as knives. The BOCSAR data does not feature a separate category of firearms offences.

Recorded Criminal Incidents in 1998-2002 for Weapons Offences¹⁴

Statistical Subdivision	1998		1999		2000		2001		2002	
	Total ¹⁵	Rate ¹⁶	Total	Rate	Total	Rate	Total	Rate	Total	Rate
South West:										
Canterbury-Bankstown	225	73.1	442	143.7	410	131.8	512	162.9	404	128.6
Fairfield-Liverpool	328	100.1	625	187.6	584	171.5	591	170.2	485	139.7

¹³ 'Shooting with intent' is a phrase used in the research to describe incidents of assault or attempted murder in which the victims are shot at, but not killed.

¹⁴ Adapted from *NSW Recorded Crime Statistics 1998-2002*, Recorded Criminal Incidents by Area. Accessed on BOCSAR website at <www.lawlink.nsw.gov.au/bocsar1.nsf/pages/lga_home> on 25 November 2003. 'Incidents' means criminal incidents reported to police and recorded on the NSW Police Computerised Operational Policing System (COPS). Consequently, statistics for some offence categories may not reflect the actual level of crime in the community because many crimes are not reported to the police.

¹⁵ Total number of criminal incidents.

¹⁶ Rate per 100,000 of population.

Outer South Western Sydney ¹⁷	191	85.9	295	130.6	221	96.6	370	159.5	431	185.8
Other Areas: ¹⁸										
Inner Sydney ¹⁹	521	185.1	937	327.7	1011	348.5	1277	433.1	1132	383.9
Inner Western Sydney ²⁰	81	51.2	151	94.2	173	106.6	188	114.4	215	130.8
Central Western Sydney ²¹	255	88.7	485	167.3	431	147.0	500	167.9	584	196.1
Blacktown	248	99.9	399	156.9	353	135.6	461	176.5	428	163.8
Outer Western Sydney ²²	253	82.2	500	160.7	344	109.7	444	140.5	483	152.9
Eastern Suburbs	123	50.5	193	78.6	144	58.5	214	86.5	204	82.4
St George-Sutherland	186	44.2	433	102.0	455	105.9	457	104.9	370	84.9
Lower Northern Sydney ²³	117	41.0	261	90.1	233	79.7	256	86.4	219	73.9
Total:										
Sydney Statistical Division	2898	72.8	5465	135.5	5114	125.2	6113	147.6	5687	137.3

3.3 Gun crimes in south-west Sydney in 2003

Gun-related violence appeared to escalate in south-west Sydney throughout 2003. In particular, there were numerous drive-by shootings and thefts of guns from security firms. Much of the violence was reported to be the result of disputes between gangs or families:

With almost unlimited access to handguns and in some cases, military-style assault weapons, at least six ethnic-based rival groups have been engaged in tit-for-tat bloodletting across just a handful of Sydney suburbs for the past 18 months. At least 118 drive-by shootings, kneecappings, murders, armed robberies and other gun offences have occurred since March. Yet these are simply the incidents which have been reported by the media, with the real

¹⁷ Encompassing Campbelltown, Camden and Wollondilly Local Government Areas.

¹⁸ This is a selection of other statistical subdivisions; not every subdivision in Sydney is reproduced here.

¹⁹ Sydney, South Sydney, Marrickville, Leichhardt and Botany Bay Local Government Areas. The explanatory notes to the statistics warn that: 'Sydney Local Government Area, and therefore Inner Sydney Statistical Subdivision, has high recorded crime rates because, compared with other regions, the resident population is small relative to the number of people in the area. In other words the area has a high user population which is not reflected in the denominator of the rate calculation.'

²⁰ Ashfield, Burwood, Concord, Drummoyne and Strathfield Local Government Areas.

²¹ Auburn, Holroyd and Parramatta Local Government Areas.

²² Penrith, Hawkesbury and Blue Mountains Local Government Areas.

²³ North Sydney, Mosman, Willoughby, Lane Cove, Hunters Hill and Ryde Local Government Areas.

number estimated to be higher still. While official statistics on gang shootings are not kept, Mr Moroney [the Police Commissioner] yesterday described the current state of lawlessness as a form of “urban terrorism” and as the worst he had seen in four decades.²⁴

3.3.1 Drive-by shootings at people and residences

A chronology of various shootings since late 2002 (not including armed robberies) suggests a connection between the violence and drug dealing or gang rivalry. Semi-automatic or automatic firearms have often been used in the shootings.

- **13 December 2002:** Dimitri Debaz was shot in the Sefton Hotel and died in the carpark. The murder, believed to be drug-related, triggered a series of drive-by shootings and firebomb attacks. Pierre Debaz, Dimitri’s father, was arrested on 6 November 2003, and charged with the abduction and attempted murder of two men in separate attacks on 13 October 2003.²⁵ One of those men, Amar Slewa, who was shot and left bound in the boot of a burning car at Wetherill Park, was charged with being an accessory to the murder of Dimitri Debaz. Warrants were also issued for the arrest of Raphael Joseph and Raymond Youmaran in connection with the Debaz murder.
- **30 July 2003:** Khaled Taleb was wounded after being shot four times at a halal butcher shop in Bankstown.
- **27 August 2003:** More than 50 shots were fired into a house in Yanderra Street, Condell Park, at 9.30 pm. No one was injured. Two brothers, Abdul Darwiche and Adnan Darwiche, were charged in relation to the incident.²⁶
- **29 August 2003:** Three gunmen wearing balaclavas and armed with semi-automatic weapons shot Ali Abdulrazak dead when he returned to his car after prayers at Lakemba Mosque.
- **30 August 2003:** Shots were fired into a house in Boundary Road, Liverpool, at 1.30 am, although the four people who were home at the time were not hurt. At 1.50 am, more than 50 shots were fired into a house in nearby Darling Avenue, Lurnea. The nine people inside the house were unharmed.
- **22 September 2003:** A house in Miami Close, Greenfield Park, was shot at.
- **14 October 2003:** Three gunmen fired more than 100 bullets into a fibro bungalow in Lawford Street, Greenacre, killing Ziad Razzak (the nephew of Ali Abdulrazak) and Mervat Hamka (whose husband was a friend of Razzak’s).²⁷ Ballistics examination indicated that the types of weapons used in the shooting were high-powered 7.62 mm,

²⁴ John Kidman, Frank Walker and Eamonn Duff, ‘Military weapons in hands of gangs’, *The Sun-Herald*, 19 October 2003, p 4.

²⁵ Les Kennedy, ‘Swoop on homes nets huge cache of weapons’, *The Sydney Morning Herald*, 8 November 2003, p 13.

²⁶ Angela Kamper, ‘They came at dawn – nailing the gun gangs’, *The Daily Telegraph*, 29 November 2003, p 2.

²⁷ Neil Mercer and Les Kennedy, ‘Shots that shook Sydney’, *The Sydney Morning Herald*, Weekend Edition 18-19 October 2003, p 37.

.39 calibre SKK assault rifles.²⁸ Ziad Razzak had been released on parole in August 2001 after serving time for drug and other offences.

- **17 October 2003:** A 15 year old boy who was walking with a friend was shot in the arm by a motorist in the outer south-west suburb of Macquarie Fields.
- **21 October 2003:** Bullets were fired into the front door and windows of a home in the western suburb of Mays Hill at 10.15 pm before a car sped away.
- **30 October 2003:** Ahmad Fahda (reported to be an associate of the Razzak family) was killed by two gunmen armed with pistols as he filled a car at a petrol station in Punchbowl. On 6 November 2003, three men were taken into custody at Star City Casino by officers from Task Force Gain in relation to the Fahda investigation.
- **17 November 2003:** Shots were fired into a house at Naranghi Street, Busby.
- **7 December 2003:** Sayeh Frangeih, 59, was shot dead with a high-calibre handgun on the verandah of his home in Bristol Street, Merrylands, at about 8.00 pm. It was reported that a previous attempt was made at the same address on 25 September 2003.²⁹ Police also believed that the attack was intended for the man's two sons who were inside the house at the time of the shooting.³⁰ His sons had been released from prison earlier in 2003 after serving sentences for drug supply.³¹
- **7 December 2003:** Shots were fired at the rear of the King's Head Tavern in South Hurstville, including dozens of shots into parked cars, after an altercation between a number of men. Police stated that two men shot at Ramzi Aouad and Naseam El Zeyat, causing them to shoot back, and that police believe the shooting was connected to the murder of members of the Razzak family and the murder of Ahmad Fahda. One man was injured and a stolen Glock pistol was recovered from the scene.³²
- **9 December 2003:** Two men in a car were fired upon in Rhodes Avenue, Guildford, around 1.30 pm. The incident was believed to involve a dispute between two groups of men who knew each other.³³ In a separate incident, two police officers were fired at in Burwood by a driver of a car that had been stopped for speeding.
- **11 December 2003:** Two gangs of young men were engaged in a shoot-out at Wattle Grove at about 6.30 pm. Two houses in Daintree Drive were hit during the shootings but no one was injured.
- **19 December 2003:** Shots were fired into the front door and windows of a house in Newbridge Road, Chipping Norton, at 4.45 am by two men in a car. The three men

²⁸ Angela Kamper, 'They came at dawn – nailing the gun gangs', *The Daily Telegraph*, 29 November 2003, p 2, quoting Detective Chief Superintendent Bob Inkster.

²⁹ John Stapleton, 'Fatal shooting linked to gun-crime rampage', *The Australian*, 8 December 2003, p 3.

³⁰ Louise Perry, 'Botched killing to escalate violence', *The Australian*, 9 December 2003, p 3.

³¹ Louise Perry and John Stapleton, 'Drive-by targets were drug dealers', *The Australian*, 10 December 2003, p 3.

³² Louise Perry, 'Botched killing to escalate violence', *The Australian*, 9 December 2003, p 3.

³³ Police News, 'Shooting incident – Guildford', on police website on 10 December 2003 at <police.nsw.gov.au>

inside the house were not injured.³⁴ The occupants of the house were later revealed to be the Hannouf brothers, who were apprehended in January 2004 by Task Force Gain for drug, car re-birthing, and firearms activities.³⁵

- **26 January 2004:** At around 12.15 am, just into Australia Day, shots were fired from a passing car into a crowd of people queuing outside the Cave nightclub at the Star City Casino complex. Three members of the public were hit by ricocheting bullets.³⁶
- **1 February 2004:** 20 year old Mark Nicholls was shot dead at his friend's smash repairs workshop in Ilma Street, Condell Park. The friend was a protected witness whose information assisted police to conduct a 'sting' operation and raids on members of the Hannouf family. Early reports suggested that the killing may have been a case of mistaken identity.³⁷

3.3.2 *Thefts of guns*

Firearms stolen from the security industry, gun clubs, or the police can be valuable to criminals because they are 'clean' and therefore not connected with past crimes. There were numerous gun thefts from security companies in Sydney in 2003. The demand for stolen handguns may have been influenced by stronger gun regulations and the increase in gang-related violence in Sydney's south-western suburbs.

- **20 June 2003:** Six handguns were stolen from Fortress Security in Chinatown.
- **31 August 2003:** Three revolvers and 31 Glock pistols were stolen from Obliging Security Services in Chester Hill, when armed men in balaclavas held up an unarmed guard.
- **9 September 2003:** Armed men held up two Armaguard officers at Windsor, stealing cash and the guards' .38 calibre revolvers.
- **19 October 2003:** Eight Glock pistols and a Ruger pistol were stolen from a house at Greenacre connected with JAF Management Services.
- **19 October 2003:** Six guns were stolen from a Castle Hill private property.
- **20 October 2003:** One handgun was stolen from a guard at Drummoyne RSL.
- **20 October 2003:** Two handguns were stolen from Brinks security guards at the Liverpool Catholic Club.
- **27 October 2003:** Two .38 calibre pistols and \$100,000 were stolen at 9.30 pm from security officers who were re-stocking an ATM in Foveaux Street, near Central Station, by two armed men wearing balaclavas.³⁸

³⁴ Erin Miller, 'Eight bullets fired into home', *The Daily Telegraph*, 20 December 2003, p 15.

³⁵ Philip Cornford, 'Secretive brotherhood of crime laid bare in a police brief', *The Sydney Morning Herald*, Weekend edition, 24-25 January 2004, pp 1, 6.

³⁶ Kara Lawrence, 'Did nightclub refusal lead to drive-by attack', *The Daily Telegraph*, 27 January 2004, p 7.

³⁷ Scott Jenkins and Kara Lawrence, 'Executed in his garage', *The Daily Telegraph*, 2 February 2004, p 1; Juan-Carlo Tomas, 'Shot dead, but mate was the informer', *The Sydney Morning Herald*, 3 February 2004, pp 1, 4.

³⁸ Vanessa McCausland, 'Van guards' guns stolen in ATM raid', *The Daily Telegraph*, 28

- **Between 6 to 7 November 2003:** Four rifles and two shotguns were stolen from a secured steel cabinet at private premises in Marulan, in the Southern Highlands.
- **26 November 2003:** A man with a replica pistol stole a revolver and cash from a Chubb security guard emptying an ATM at the Glenrose shopping centre in Belrose just before 9.00 pm.³⁹
- **3 December 2003:** Nassein Amood was sentenced in the District Court to 8 years imprisonment with a non-parole period of 5½ years, for his part in a raid by four armed men on the South Western Sydney Firearms Range at Condell Park on 19 June 2002. Two staff members were ambushed and 19 rifles and pistols (including one with a telescopic silencer) were seized from a glass display case. The Court heard that the firearms were worth about \$80,000 on the black market.⁴⁰
- **11 December 2003:** Two security guards were robbed of their revolvers while conducting a night check on a bank at Auburn.
- **17 December 2003:** Tens of thousands of dollars and two .38 calibre Smith and Wesson revolvers were stolen from Armaguard security guards during a robbery at Broadway Shopping Centre. One of the thieves was armed with a single-barrelled shotgun.
- **22 December 2003:** In Hornsby at about 2.00 pm, men disguised in balaclavas stole the guns of three Chubb security guards outside the ANZ Bank in the Hunter Street Mall. No cash was taken but a 17 year old girl standing inside the bank was hit by a stray bullet fired by one of the bandits.

On 22 December 2003, hours after the incident at Hornsby, the Minister for Police, Hon. John Watkins MP, announced that Strike Force Brown, an existing unit which had worked on a number of bank-related crimes, had been given the main responsibility to investigate the attacks on security firms like Brinks, Armaguard and Chubb. The 16 member strike force would report directly to Acting Detective Superintendent Peter Cotter, the head of the Robbery and Serious Crime Squad.⁴¹

In late October in response to the gun thefts, the Premier, Hon. Bob Carr MP, was reported as saying that ‘the “bigger source” of illegal guns was through shipping containers but nonetheless the theft of numbers of guns from security companies is very serious.’⁴² The issue of whether gun smuggling into Australia is a significant source of illegal guns is examined in greater detail below in **Chapter 4** of this briefing paper on p 18.

October 2003, p 2; and Les Kennedy, ‘Robbery steals police thunder’, *The Sydney Morning Herald*, 18 December 2003, p 2.

³⁹ Matt Sun, ‘Guard’s gun stolen’, *The Daily Telegraph*, 27 November 2003, p 2.

⁴⁰ ‘Eight years’ jail for gun theft’, *The Daily Telegraph*, 4 December 2003, p 29.

⁴¹ Robert Wainwright and Tim Dick, ‘New taskforce to track down gun gangsters’, *The Sydney Morning Herald*, 23 December 2003, p 1.

⁴² Lillian Saleh, ‘Gun laws take aim at security firms’, *The Daily Telegraph*, 22 October 2003, p 3.

The Police Minister, Hon. John Watkins MP, observed, 'It's a sad fact that there's a growing black market in handguns. Every gun police take off the streets makes the price of another illegal gun go up.'⁴³ Mr Watkins foreshadowed tougher regulations on the legal storage of handguns which security firms would have to comply with: see **Chapter 8** of this briefing paper on p 42. However, Terry Murphy, spokesman for the Australian Security Industry Association, maintained that all the guns stolen in late October 2003 had been stored and carried in full accordance with the State Government's own guidelines. He said that less than 1% of stolen handguns were from security firms.⁴⁴

3.4 Carr Government's response

3.4.1 *Illegal handguns package*

On 23 September 2003, the Minister for Police, Hon John Watkins MP, announced a package of measures 'to combat the scourge of illegal handguns on the streets.'⁴⁵ The plan includes:

- **Increased detection and enforcement through Operation Vikings raids:** The 47-member mobile team of police from Operation Vikings began 'high-visibility, high-impact raids' from the first week of October, targeting criminals carrying concealed handguns. The mobile team had, by late October 2003, been deployed in the Local Area Commands of Bankstown, Campsie, City Central, Cabramatta, Surry Hills, Kings Cross, Flemington, Rosehill, Parramatta and Burwood. Between 1-22 October 2003 the mobile team filed 134 intelligence reports, made 27 arrests, laid 42 charges, issued 45 move-on directions, conducted 104 sniffer dog searches, and made 21 detections of drug possession.⁴⁶
- **Increased use of firearms detector dogs:** An additional 20 firearms detector dogs will be deployed from the 2004-2005 financial year to support searches, street policing, crime scene investigations and screening of public places and vehicles.
- **Enhanced search powers for handguns:** The Minister for Police and the Attorney General are reviewing existing stop-and-search powers and legislation, to specifically target handgun crime.

⁴³ Angela Kamper, 'Locksmith called in four days late', *The Daily Telegraph*, 5 September 2003, p 5.

⁴⁴ Nick O'Malley, 'Carr takes aim at security industry', *The Sydney Morning Herald*, 22 October 2003, p 4.

⁴⁵ Minister for Police, Hon. John Watkins MP, *Media Release*, 'Watkins Launches New Assault in War on Handguns', 23 September 2003, p 1. Information in this section is from the Media Release unless otherwise footnoted.

⁴⁶ Minister for Police and Commissioner of Police, *Joint Media Release*, 'Task Force Gain', 22 October 2003, p 3.

- **Harsher sentences for handgun crimes:** To address consistency in sentencing, the Government has asked the newly formed Sentencing Council to consider adopting 'standard minimum sentences' for serious gun offences. The Government is also considering whether more firearms offences should be classified as 'strictly indictable', meaning they must be dealt with in the District Court rather than summarily in the Local Court. In addition, the Commissioner for Police will instruct police prosecutors to appeal against firearms sentences that are considered inadequate.
- **Legislative changes:** Mr Watkins anticipated the introduction of legislative changes including clarification of gun possession in a 'public place', and new offences of stealing a firearm, ongoing firearms trafficking, forging a firearms licence, and selling major firearms parts.
- **Tracking ammunition sales:** A working group will consider new measures to track bulk sales of ammunition.
- **Regulating the security industry:** Stronger requirements will affect storage of firearms, the calibre and number of firearms allowed to be held, and the training of security personnel. See **Chapter 8** of this briefing paper on p 42 for more details.
- **Operation Vulcan:** The Operation Vulcan illegal firearms phone-in campaign has been reactivated and callers will be eligible for increased rewards of up to \$5000 for information leading to a conviction. The number for Operation Vulcan is 1800 333 000.
- **Improving police handling of firearms offences:** An additional 5 new positions will be provided to the NSW Police State Crime Command's Firearms and Regulated Industries Crime Squad. The additional officers will assist in gathering intelligence on gun crime and in developing better education for police with regard to gun handling and licensing procedures.

3.4.2 Task Force Gain

On 22 October 2003, the Minister for Police, Hon. John Watkins MP, announced the formation of Task Force Gain to focus on shootings and gun thefts in Sydney's south-west.⁴⁷ The Task Force will also examine extortion, drug trafficking and car rebirthing, and is funded by the sale of assets seized under proceeds of crime legislation. The 160-member Task Force comprises 80 investigators, 40 uniformed general duties officers, 20 highway patrol units, and 20 Target Action Group officers.

Task Force Gain was created by the merger of Strike Force Grapple (which already had 30 detectives investigating shootings and murders in the south-west), and six other strike forces dealing with gun crime. In addition, Task Force Gain will work with Operation

⁴⁷ Minister for Police and Commissioner of Police, *Joint Media Release*, 'Task Force Gain', 22 October 2003. See also: L Kennedy and N O'Malley, 'Ring of steel to shut down the drive-by gunmen', *The Sydney Morning Herald*, 23 October 2003, p 4.

Vikings and the new 47-member Vikings Mobile Team. Located in Sydney's south-west, Task Force Gain has easy access to Bankstown, Cabramatta and Liverpool areas.

At dawn on 6 November 2003, officers from Task Force Gain seized illegal weapons and drugs in raids targeting rival criminal groups involved in shooting episodes in the south-west. Seven homes were raided by 80 officers in Fairfield, Villawood, Hoxton Park and Bossley Park. One man was arrested on abduction and attempted murder charges and another man was arrested for drug offences. Weapons and gun parts uncovered included a 12-gauge pump-action shotgun, automatic and semi-automatic pistols, a replica Glock pistol, .45 calibre magazines and other gun components.⁴⁸

Another significant operation by Task Force Gain occurred at 6.00 am on 28 November 2003, when more than 200 police officers raided 11 homes in south-west Sydney, arrested six men and found three handguns connected to shootings. By the end of November, 48 people had been arrested and charged with a total of 147 offences.⁴⁹

On 16 January 2004, Task Force Gain was involved in the arrest of the four Hannouf brothers, who are connected with the feud between the Razzak and Darwiche clans. Two of the brothers, Ahmad and Rabbi, were arrested while selling amphetamines to an undercover agent in a police 'sting' operation at Star City Hotel, Darling Harbour. The other brothers, Haissam and Wahib, were arrested during raids on 13 houses and businesses of family members in Punchbowl, Chipping Norton, Rockdale, Greenacre, Lakemba, Croydon and Roselands. Detective Chief Superintendent Bob Inkster, head of Task Force Gain, stated: 'Drug trafficking and other organised criminal activities are the cause of the violence. The drive-by shootings and murders are the symptoms.'⁵⁰

It was reported on 19 January 2004 that the Police Commissioner, Ken Moroney, would recommend to the Minister for Police that Task Force Gain be made a permanent squad, focusing on gangs with links to Middle Eastern organised crime syndicates.⁵¹ On the same day the Minister for Police, Hon. John Watkins MP, released a statement that the Government would await a full NSW Police evaluation of Task Force Gain before making a decision on its long-term future. The Minister has requested the evaluation be provided to

⁴⁸ Les Kennedy, 'Swoop on homes nets huge cache of weapons', *The Sydney Morning Herald*, 8 November, p 13.

⁴⁹ Angela Kamper, 'They came at dawn – nailing the gun gangs', *The Daily Telegraph*, 29 November 2003, p 2.

⁵⁰ Philip Cornford and Aaron Parnell, 'Raid nets brothers linked to gang feud', *The Sydney Morning Herald*, Weekend edition, 17-18 January 2004, p 3; Philip Cornford, 'Secretive brotherhood of crime laid bare in a police brief', *The Sydney Morning Herald*, Weekend edition, 24-25 January 2004, pp 1, 6.

⁵¹ Aaron Parnell, 'Middle East gang unit back on the agenda', *The Sydney Morning Herald*, 19 January 2003, p 3. The article refers to a report in 2000 by Clive Small, the then head of Crime Agencies, that proposed forming a specialist unit to deal with crime in the Lebanese-Australian community. The Police Commissioner at the time, Peter Ryan, did not act upon the proposal.

him before the end of February 2004.⁵²

3.5 Opposition's point of view

During 2003, the Shadow Minister for Police, Peter Debnam MP, called on the Carr Government to adopt a five point plan:

- 'Admit there is a crisis with the illegal handgun culture in New South Wales';
- Immediately double funding and resources for investigation of shootings;
- Implement a strategy for random weapon searches of vehicles in crime hot spots;
- Offer and regularly publicise \$50,000 rewards for information which results in convictions for unsolved gun crimes; and
- Reverse the current 'minimalist' approach to charging and sentencing for unlicensed and/or unregistered gun offences.⁵³

Mr Debnam also stated that the community needed:

- Zero tolerance policing on the streets of Sydney, especially the southwest;
- An increase in overtime to put police officers and detectives on southwest streets in a 6 month blitz;
- Funding for extra support for prosecutors and the courts; and
- Lengthy prison sentences for gang members.⁵⁴

⁵² Minister for Police, Hon. John Watkins MP, *Media Release*, 'Statement re Task Force Gain', 19 January 2004.

⁵³ Variations on this list have appeared in numerous press releases from the Shadow Minister for Police, Peter Debnam MP, eg. 'Another week of gun deaths on Sydney streets', 6 August 2003; and 'Another 24 hours of gun violence', 13 October 2003.

⁵⁴ Peter Debnam MP, Shadow Minister for Police, *Media Release*, 'Guns, grenades & launchers – it's war on our streets', 19 October 2003.

4. SOURCES OF ILLEGAL FIREARMS: SMUGGLING AND THEFT

It is widely recognised that criminals do not carry licensed firearms, which prompts the question: where do they obtain their illegal guns? Two sources are firearms smuggled into Australia and those stolen from legal stocks of guns within Australia. However, there seems to be political controversy over whether the predominant source of illegal firearms is importation or theft. The answer has consequences for the apportioning of Federal or State responsibility.

4.1 State and Federal Government perspectives

On 22 June 2003, the Minister for Police, Hon. John Watkins MP, announced that a plan by the Carr Government to 'tackle the top tier of blackmarket gun smugglers' would be considered on a national level. The Prime Minister, Hon. John Howard MP, reportedly agreed that the Australian Crime Commission should consider the plan for a multi-million dollar fund to finance undercover police operations against illegal handguns.

Mr Watkins stated:

Handguns are not made in Australia. Like heroin, they're fully imported. We're talking about tackling large-scale gun importers the same way NSW Police intercept drug dealers on the street, engaging them in sting purchases. This fund would allow police agencies in NSW and across the country to take large numbers of guns off criminals – ensuring they never hit the blackmarket.⁵⁵

The features of the proposal are:

- A national fund of up to \$5 million to be made available to State or Federal investigative agencies such as NSW Police, the NSW Crime Commission and the Australian Crime Commission task force into illegal guns.
- Undercover operatives would use the finances to conduct 'controlled operations' similar to drug deals, in order to snare the highest level of traffickers.
- The fund would be financed on a two-thirds/one-third basis by the Commonwealth and the States.
- The fund would be administered through the Australian Crime Commission.

In October 2003, the Premier of New South Wales, Hon. Bob Carr MP, confirmed the government's stance that most guns in criminal hands in New South Wales are smuggled from overseas, through ports controlled by the Commonwealth: 'These guns are all

⁵⁵ Hon. John Watkins MP, Minister for Police, *Media Release*, 'NSW Plan to Tackle Gun Smugglers to be Considered on National Level', 22 June 2003.

imported into Australia and they feed a black market across Australia... We want to see our police performing the same undercover operations they perform on drugs, in disguise, going into the market, and ensnaring the dealers.' He suggested that the Federal Minister for Justice and Customs, Senator Chris Ellison, had stalled the plan for a national fund to finance undercover 'stings' against gun traffickers.⁵⁶

The then Acting Justice Minister, Hon. Philip Ruddock MP, countered that the Federal Government was moving on the New South Wales proposal after referring it to the Australian Crime Commission: 'NSW Police Commissioner Ken Moroney sits on the ACC board, so Mr Carr has no excuse for his wilful misrepresentation of the facts in this instance.'⁵⁷ Mr Ruddock also denied that most illegal handguns were smuggled from abroad, preferring research that indicated most illicit handguns in Australia are obtained within Australia from firearms dealers and gun owners. The Shadow Minister for Police in NSW, Peter Debnam MP 'said the growing incidence of gun theft suggested criminals were unable to get handguns smuggled into the country.'⁵⁸

4.2 Empirical information on the sources of illegal firearms

International traffic in small arms – Australian Institute of Criminology (1999)

A study published in 1999 by the Australian Institute of Criminology on international gun trafficking found no evidence of an organised black market in firearms run by the criminal underworld. Rather, it supported police intelligence that the existing black market in firearms in Australia consisted mainly of criminal gangs who acquired guns to commit other crimes (not for the purpose of dealing in firearms), and 'small networks of individuals who buy and sell [firearms] by word of mouth.'⁵⁹ Methods of illegal acquisition of firearms included:

- thefts from gun dealers, gun owners and others;
- mail/telephone orders, mostly internationally;
- domestic manufacture/assembly of restricted and prohibited firearms from imported parts;
- obtaining firearms illegally through commercial shipments, for example, by concealment among other commodities, or using false documentation, or by diversion or redistribution of firearms for an illicit purpose.⁶⁰

⁵⁶ Nick O'Malley, 'Carr takes aim at security industry', *The Sydney Morning Herald*, 22 October 2003, p 4.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Jenny Mouzos, 'International Traffic in Small Arms: An Australian Perspective', *Trends & Issues in Crime and Criminal Justice*, No 104, Australian Institute of Criminology, February 1999, p 3.

⁶⁰ Ibid, p 3.

This infers a mixture of sources. Where importation from overseas is the source, the 'greater percentage of firearms that are smuggled into Australia are imported as parts'.⁶¹ For example, gun parts ordered through the internet from America can be inconspicuously packaged, and eventually a fully operating firearm can be assembled in Australia.

Small arms trade in the Pacific – Small Arms Survey (2003)

A study of the small arms trade in the south Pacific region, published in 2003 by the Small Arms Survey project, supported the view that the majority of illegal guns in Australia are being stolen from legal sources within the country rather than 'smuggled' from overseas:

With the exception of some level of trade into Papua New Guinea from Asia and Australia and into Australia from the US, illicit importers into the Pacific appear to be minor. To date, the region's relatively small populations, large and readily accessible internal stocks in Australia and New Zealand, low purchasing power, and the lack of a developed gun culture in smaller nations all seem to have limited the demand for smuggled guns...

Those unlawfully-held firearms that do surface, either following the execution of violent crime or in conflicts within the region, appear to come almost exclusively from previously legal stocks.⁶²

According to the report, firearms seized at crime scenes and in routine policing can commonly be traced back to licensed Australian owners and arms importers. Thefts occur from private sources and the stocks of licensed arms dealers, while some licensed arms dealers have been prosecuted for illegal firearms sales to criminals. The authors conclude: 'It seems clear that the domestic leakage of firearms from licensed owners to criminals exceeds the volume of guns shown to have been smuggled into Australia.'⁶³ But importation can still be regarded as a problem. In the 2001-2002 financial year, Australian customs authorities seized 812 illegally imported firearms including 204 handguns, nearly three times the number seized in the previous year.⁶⁴

Firearms theft in Australia, 1994-2000 – Australian Institute of Criminology (2002)

The Australian Institute of Criminology conducted a study focusing on firearms thefts that

⁶¹ Ibid, p 4.

⁶² Philip Alpers and Conor Twyford, *Small Arms in the Pacific*, Occasional Paper No.8, a publication of the Small Arms Survey, March 2003, p 16. The Small Arms Survey is an independent research project, established in 1999 and located at the Graduate Institute of International Studies in Geneva, Switzerland. The study examined nations such as Australia, New Zealand, Papua New Guinea, Fiji and the Solomon Islands.

⁶³ Ibid, p 17.

⁶⁴ Ibid, p 17, quoting Toni O'Loughlin, 'Plan to Fight American Gun Disease', *The Sydney Morning Herald*, 19 April 2002.

were reported to police throughout Australia between 1 July 1994 and 30 June 2000.⁶⁵ The statistics presented in the study include:

- There were 2,165,170 registered firearms in Australia as at 1 July 2001, and a total of 764,518 individual licence holders. Queensland had the highest number of licensed individuals, followed by Victoria. New South Wales ranked third. In all jurisdictions, with the exception of the ACT, licence holders owned an average of three registered firearms each.
- As a proportion of the total adult population, about 5% of Australian adults held a current firearm licence, with Tasmania recording the highest at 11.8%. New South Wales had the lowest percentage among the States.
- A total of 25,171 firearms were reported stolen to police in Australia between July 1994 and June 2000. Annually, this equates to an average of 4195 legal firearms, or less than 1% of the total number of registered firearms (over 2.1 million).
- One quarter of the firearms reported stolen from 1994 to 2000 were stolen in New South Wales. Thefts of handguns were also highest in New South Wales.
- The biggest percentage of firearms reported stolen throughout Australia were rifles (52%), followed by shotguns (21%) and handguns (14%). By contrast, in the United States of America, the most commonly stolen firearms are handguns.
- The majority of firearms stolen between 1994 and 2000 were stolen from residential premises (81%), based on statistics from New South Wales, Victoria, Queensland, Western Australia and the Northern Territory.

Between 1994 and 2000 there was a significant increase in the use of handguns in crime, especially in New South Wales. But there had not been a corresponding increase in the number of handguns stolen. The study concludes that 'there has been a downward trend in the number of firearms reported stolen in Australia. This is a positive indication that the stringent storage requirements introduced through legislative reforms are producing the desired effect, and reducing the number of firearms targeted by thieves.'⁶⁶ Of course, the rates of handgun theft in New South Wales may have risen since the data period of 1994-2000.

⁶⁵ Jenny Mouzos, 'Firearms Theft in Australia', *Trends & Issues in Crime and Criminal Justice*, No 230, June 2002, Australian Institute of Criminology, Canberra. The study acknowledges that the figures may under-represent the numbers of stolen firearms because some owners may not have reported thefts if they were not licensed to own the firearm or the firearm was not registered.

⁶⁶ *Ibid*, p 6.

5. RECENT LEGISLATION, REGULATIONS AND AGREEMENTS

A selection of Commonwealth and New South Wales legislation and regulations from 2002-2003, as well as the resolutions of some relevant bodies, are presented in this chapter.

Legislation and regulations dealing with the granting of bail for firearms offences and restrictions upon firearms in the security industry are examined separately in Chapter 7 and Chapter 8 respectively.

5.1 Commonwealth

5.1.1 Background

An influential event on Commonwealth legislative reform was the multiple shooting at Monash University on 21 October 2002. A student armed with two handguns opened fire on a tutorial group at the Clayton campus, killing two young men and injuring five other people.

The Commonwealth Government, after consulting with organisations representing sporting shooters, firearms dealers and historical collectors, put forward proposals for firearms reforms to the Australasian Police Ministers' Council (APMC) meeting in Darwin on 5 November 2002. The APMC, at its Sydney meeting on 28 November 2002, adopted 28 resolutions aimed at tightening controls on handguns. The reforms included that handguns for legitimate use in sporting competitions be prescribed by calibre, barrel length and number of shots. Measures were also agreed in relation to such topics as minimum participation rates for sporting shooters, and the authority of shooting clubs to expel members.⁶⁷

On 6 December 2002, the resolutions of the APMC were endorsed by the Council of Australian Governments (COAG), representing each State and Territory Government and the Commonwealth. COAG agreed that the classes of handguns permitted for sports shooting purposes would be restricted from 1 July 2003 on the basis of calibre, barrel length and magazine/shot capacity.

5.1.2 Customs (Prohibited Imports) Amendment Regulations 2002

The *Customs (Prohibited Imports) Amendment Regulations 2002 (No 4)* imposed the restrictions envisaged by COAG on importations. The *Customs (Prohibited Imports) Regulations 1956* were amended to prevent the importation of prohibited handguns and handgun parts with the following features by sporting shooters, or their direct sale by firearms dealers/importers to sporting shooters:

- a calibre that is greater than .38, unless the handgun is used to participate in a specially

⁶⁷ Minister for Justice and Customs, Senator Chris Ellison, *News Release*, 'Police Ministers Agree to Comprehensive Handgun Reforms', 28 November 2002.

- accredited sporting event – in that case a calibre of up to .45 will be permitted.⁶⁸
- a barrel length of less than 120mm for semi-automatic handguns and less than 100mm for revolvers and single-shot handguns, unless the handgun is a highly specialised target pistol;⁶⁹
 - a magazine/shot capacity that exceeds 10 rounds.⁷⁰

The *Customs (Prohibited Imports) Amendment Regulations 2002 (No 4)* commenced upon gazettal in the *Commonwealth of Australia Gazette* on 20 December 2002.

5.1.3 Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002

The firearms provisions of the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002* amended the *Criminal Code Act 1995* and commenced on 16 January 2003.⁷¹ The amendments make it a criminal offence, in the course of trade and commerce between any States and Territories, to:

- dispose of or acquire a firearm, where the disposal or acquisition of that firearm is an offence under a State or Territory law;
- take or send a firearm from one State or Territory to another, intending that the firearm will be disposed of in the other State or Territory in circumstances that would constitute an offence against the firearm law of that other State or Territory.

The maximum penalty is imprisonment for 10 years and/or a fine of 2500 penalty units (currently \$275,000).

5.1.4 Australian Crime Commission Establishment Act 2002

The *Australian Crime Commission Establishment Act 2002* created the Australian Crime Commission from 1 January 2003, in place of the National Crime Authority, the Australian Bureau of Criminal Intelligence, and the Office of Strategic Crime Assessment.

The *Australian Crime Commission Establishment Act 2002* amended the *National Crime Authority Act 1984* and renamed it the *Australian Crime Commission Act 2002*. The functions of the Australian Crime Commission (ACC) include to investigate ‘serious and organised crime’ – a new term. The definition of serious and organised crime under s 4(1)

⁶⁸ For example, the majority of States and Territories have agreed that the events of metallic silhouette and single (or western) action shooting should be specially credited for the use of handguns up to .45 calibre.

⁶⁹ Handguns that are custom-designed for target shooting are exempt from the barrel length restriction.

⁷⁰ Black powder muzzle-loading pistols and cap and ball revolvers are exempt from the calibre, barrel length and magazine/shot capacity restrictions.

⁷¹ 28 days after receiving assent on 19 December 2002.

of the *Australian Crime Commission Act 2002* involves any of the listed types of offences that are committed by two or more offenders, using substantial planning and organisation, sophisticated methods, and ordinarily committed in conjunction with other offences of a like kind. The list of offences includes ‘firearms’ to ensure that the ACC has the power to investigate the illegal importation of firearms and trafficking in firearms.

The Special Investigation Team into Firearms Trafficking was established in the ACC in May 2003.⁷² A four month investigation involving cooperation between the Commonwealth and New South Wales began in August 2003 and resulted in a series of raids in New South Wales, arrests, and the seizure of firearms and parts.⁷³

5.1.5 Crimes Amendment Regulations 2003

The *Crimes Amendment Regulations 2003 (No 2)* amended the *Crimes Regulations 1990* and commenced on gazettal in the *Commonwealth of Australia Gazette* on 10 October 2003. The Regulations prescribe that an offence involving firearms is a ‘serious Commonwealth offence’, enabling controlled operations to be carried out for the purposes of obtaining evidence that may lead to the prosecution of a person for offences involving firearms. The definition of a ‘serious Commonwealth offence’ is therefore consistent with the definition of ‘serious and organised crime’ in the *Australian Crime Commission Act 2002*.

5.1.6 National Handgun Buyback Act 2003

The *National Handgun Buyback Act 2003* commenced on the day it received assent, 30 June 2003. This legislation enabled the Commonwealth to appropriate funds for the purpose of providing financial assistance to the States and Territories for the handgun buyback scheme that was scheduled to run from 1 July to 31 December 2003.

The appropriation was for two main purposes:

- to reimburse States/Territories for payments made by them to compensate persons for their surrender of handguns, handgun parts, and accessories during the handgun buyback; and
- to reimburse States/Territories for other payments made in connection with the handgun buyback or with the Council of Australian Governments’ (COAG) handgun reforms.

The total indicative cost of the handgun buyback program to the Commonwealth is expected to be \$69 million, to be appropriated out of the Consolidated Revenue Fund. The COAG agreement specifies that the handgun buyback will be funded firstly from the \$15

⁷² Minister for Justice and Customs, Senator Chris Ellison, and Chief Executive Officer of the Australian Crime Commission, Alastair Milroy, *Joint News Release*, ‘ACC gathers intelligence on firearms trafficking’, 4 July 2003.

⁷³ Minister for Justice and Customs, *Media Release*, ‘Commonwealth and State cooperation leads to massive firearms seizure’, 15 November 2003.

million left unspent from the 1996 firearms buyback. The balance is to be met on a cost-sharing basis between the Commonwealth and the States, with the Commonwealth reimbursing two-thirds and the States one third.⁷⁴

5.1.7 Other COAG resolutions⁷⁵

Additional resolutions by the Council of Australian Governments (COAG) were intended to be implemented by the States. Legislation has put these principles into effect in New South Wales, as outlined under **5.2.3** on p 27.

Sports shooting: COAG resolved that from 1 July 2003, people who wish to take up sports shooting will have to satisfy a number of new requirements to be issued with a handgun licence and to be granted permission to acquire a handgun. The new requirements include:

- membership of a sports shooting club for all sporting shooters;
- police record checks and character references for new applicants;
- graduated access to handguns for new sporting shooters through a 12 month probationary period supervised by their shooting club;
- completion of a firearms safety training course for new sporting shooters;
- participation in a minimum number of shooting events every year for all sporting shooters.

The 12 month probationary period envisaged for all new sporting shooters is divided into two parts. During the first 6 months, sporting shooters will not be permitted to own a handgun of any type and must use handguns provided by the club under supervision. In the second 6 months, sporting shooters should only be permitted to own a .22 calibre pistol or revolver and a .177 air pistol; or a centrefire pistol or revolver and a .177 air pistol. After successful completion of the 12 month probationary period, sporting shooters may be able to acquire additional handguns, subject to demonstrating a genuine need and being able to meet other requirements.

Collectors: COAG agreed that from 1 July 2003, to be licensed as a genuine collector, a person must:

- belong to a State or Territory accredited historical collectors' society;
- have his or her licence application endorsed by that accredited collectors' society;
- comply with strict storage requirements;
- display a commitment as a 'student of arms' to collect or retain post-1946 handguns;
- deactivate handguns which are prohibited for sports shooting purposes.

⁷⁴ Summary from Explanatory Memorandum circulated by authority of the Minister for Justice and Customs. Obtained from SCALEplus at <<http://scaletext.law.gov.au/html/ems/0/2003/0/2003052204.htm>>

⁷⁵ Information from the National Handgun Buyback website at <www.handgunbuyback.gov.au>

5.1.8 Other Commonwealth developments in brief

- **Firearms Policy Working Group** was established by the Australasian Police Ministers' Council (APMC) in 2001 to provide advice on firearms policy matters.
- **National Firearms Trafficking Policy Agreement** was agreed to by APMC at its meeting in Darwin on 17 July 2002. The Agreement deals with such matters as ensuring substantial penalties apply for the illegal possession of a firearm; creating an offence of conspiring to commit an interstate firearm offence; and regulating the manufacture of firearms in a nationally consistent manner, with serious offences for illegal manufacture of firearms.⁷⁶
- **Formation of a Sporting Shooters and Firearms Advisory Council**, comprising representatives of farmers, sporting shooters organisations, firearms dealers, the security industry, and film armourers. The Council had its inaugural meeting in Canberra on 9 October 2003 and will provide a forum through which the Federal Government can consult with representatives of the firearms industry on firearms-related issues and regulations.⁷⁷ At the first meeting, the Minister for Justice and Customs, Senator Chris Ellison, foreshadowed a full review of Customs regulations regarding the firearms importation process, to be conducted over the next 6 months, and the transfer of firearms safety testing from the Australian Federal Police to Customs to overcome delays in the safety testing of imported firearms.⁷⁸

5.2 New South Wales

5.2.1 Firearms Amendment (Public Safety) Act 2002

The *Firearms Amendment (Public Safety) Act 2002* commenced on 15 July 2002. The changes it made to the *Firearms Act 1996* included:

- **Firearms detection dogs** – Part 6A was inserted into the *Firearms Act 1996* to authorise the use of dogs by police officers to detect firearms and explosives in public places.
- **Unauthorised manufacture of firearms** – Section 50A was inserted to create specific offences for manufacturing a firearm without a licence or permit. A maximum penalty of 10 years imprisonment applies, or 20 years where the firearm in question is a prohibited firearm or pistol.

⁷⁶ Accessed on 5 December 2003 on the website of the Attorney General's Department, Criminal Justice Division, Firearms Unit, at <<http://scaleplus.law.gov.au/html/histreg/6/3170/top.htm>>

⁷⁷ Minister for Justice and Customs, Senator Chris Ellison, *Media Release*, 'First meeting held of full Firearms Advisory Council', 9 October 2003.

⁷⁸ *Ibid.*

- ***Refusal of firearms licence application on basis of criminal information*** – The general restrictions on firearms licences and permits under ss 11 and 29 were amended to provide that a licence must not be issued to a person if the Commissioner of Police is of the opinion, having regard to any criminal intelligence or information, that the person is a risk to public safety and the issuing of the licence would be contrary to the public interest.
- ***Firearms trafficking*** – To target trafficking, s 51D was inserted to introduce an offence of possession by an unlicensed person of three or more unregistered firearms. The maximum penalty is 10 years imprisonment, or 20 years if any of the firearms is a prohibited firearm or pistol.
- ***Converting firearms*** – Specific offences were inserted at s 63(3)&(4) to ban the unauthorised conversion of a non-prohibited firearm into a prohibited firearm, and to punish the provision of information to be used in performing such a conversion. The maximum penalty for both offences is 10 years imprisonment.

5.2.2 Crimes Legislation Amendment Act 2002

The *Crimes Legislation Amendment Act 2002* implemented a series of reforms to the criminal law, including firearms offences committed by juveniles. The definition of ‘serious children’s indictable offence’ in s 3 of the *Children (Criminal Proceedings) Act 1987* was amended to include offences under the *Firearms Act 1996* relating to the manufacture or sale of firearms that attract a maximum penalty of 20 years imprisonment. Offences that are serious children’s indictable offences must be dealt with ‘according to law’ in the District Court or Supreme Court rather than before a Children’s Court. This amendment commenced on 24 February 2003.

5.2.3 Firearms Amendment (Prohibited Pistols) Act 2003

The *Firearms Amendment (Prohibited Pistols) Act 2003* commenced on 1 October 2003. It makes changes to the regulation and control of pistols used for sports shooting, and provides compensation for surrendering certain pistols. The Act generally gave effect to the consolidated resolutions agreed on by the Australasian Police Ministers’ Council at the Special Meeting on Firearms (Handguns) on 28 November 2002 and the handgun reforms endorsed by the Council of Australian Governments after that meeting.⁷⁹

(i) Summary of main changes

The *Firearms Amendment (Prohibited Pistols) Act 2003* introduced numerous reforms. The main changes, in brief, are:

- The types of handguns that can be used for sport target shooting are limited to a

⁷⁹

Explanatory Note to the Firearms Amendment (Prohibited Pistols) Bill.

maximum of .38 calibre, and to a minimum barrel length of 120mm for semi-automatic handguns and 100mm for revolvers and single shot handguns. Some exceptions are provided, such as specialised target pistols with shorter barrels that are used in the Olympic Games and Commonwealth Games.

- Pistol magazines with a capacity above 10 shots are banned. It is an offence to possess or use a pistol with such a magazine in it, or to possess such a magazine.
- A new probationary pistol licence scheme requires new applicants to receive training at a pistol club using the club's pistols. Licence holders are not permitted to own a pistol in the first 6 months.
- Sport target shooters must comply with minimum participation rates.
- Licensed pistol shooters who surrender prohibited pistols are to be compensated.
- Firearms collectors who have pistols manufactured after 1946 in their collection must provide proof of membership in a collectors' society and fulfil other requirements.

(ii) Definition of a 'prohibited pistol'

A definition of a 'prohibited pistol' is inserted at s 4C of the *Firearms Act 1996*, meaning: a pistol with a calibre of more than .38 inch; a self-loading pistol with a barrel length of less than 120 mm; a revolver with a barrel length of less than 100 mm, but not a black powder pistol. It should also be noted that a prohibited pistol is different to a prohibited firearm. Prohibited firearms are listed in Schedule 1 of the *Firearms Act 1996*.

(iii) New offences

New offences are created in the *Firearms Act 1996*:

- Possession or use by a holder of a category H (sport/target shooting) licence of a pistol fitted with a magazine that has a capacity of more than 10 rounds. The maximum penalty is 14 years imprisonment: s 51E.
- Possession of a barrel for a prohibited pistol, unless authorised. Maximum penalty is 5 years imprisonment: s 58(2).
- Converting a pistol into a prohibited pistol. Maximum penalty is 10 years imprisonment: s 63.

(iv) Membership of pistol club

- Approval of applications for membership of pistol clubs is subject to special conditions inserted by cl 80A of the *Firearms (General) Regulation 1997*, including the provision by the applicant of two character references from adults who have known the applicant for at least two years.

- If the pistol club cancels or suspends the membership of any member, it must notify the Commissioner, and provide reasons for the cancellation or suspension. There is also an obligation to inform the Commissioner if the pistol club secretary or other club official is of the opinion that an applicant or a member may pose a threat to public safety if in possession of a firearm: cl 80A of the *Firearms (General) Regulation 1997*.⁸⁰
- The Commissioner is authorised to disclose to a pistol club official any information that is, in the opinion of the Commissioner, relevant to the person's application for membership, eg. pistols held by the applicant, or names of other approved pistol clubs of which the applicant is a member: cl 83 of the *Firearms (General) Regulation 1997*.

(v) Probationary pistol licence

A new probationary pistol licence scheme is introduced:

- A Category H (sport/target shooting) licence that is issued to a person who has never held such a licence is to be issued as a probationary pistol licence. For the first 6 months of the probationary licence, the licensee must not possess or use a pistol except while on the premises of a pistol shooting club and under the supervision of a person who is the holder of a full licence.
- By the end of the 6 month period, the licensee must have completed a firearms training and safety course conducted by the club where the membership is held: s 16A.
- The term of a probationary pistol licence is 12 months: s 21(3).

(vi) Sport/target shooting licences

- A Category H (sport/target shooting) licence must not be issued to a person unless the person has previously held a probationary pistol licence and unless the application for the licence is supported by a written statement by the pistol shooting club of which the person is a member confirming that the person has complied with the conditions specified under s 16A (probationary pistol licences): amending s 16 of the *Firearms Act 1996*.
- Category H (sport/target shooting) licence holders are authorised to possess or use pistols only for the purposes of participating in competitive shooting activities that are approved by the Commissioner of Police: amending s 8 of the *Firearms Act 1996*.
- Section 31 is amended to provide that the Commissioner must not issue a permit authorising a holder of a Category H (sport/target shooting) licence to acquire a pistol unless the application for the permit is supported by a written statement from the pistol

⁸⁰ Clause 80B imposes similar obligations on collectors' societies to provide information to the Commissioner.

shooting club confirming that the licence holder has adequate storage requirements for the safe keeping of the pistol, and specifying the shooting activities for which the pistol is required.

(vii) Participation requirements

- Participation requirements for members of approved pistol clubs are amended at cl 81 of the *Firearms (General) Regulation 1997*. A licence holder must, during the 12 months that the licence is in force, participate in at least six club-organised ‘competitive shooting matches’ at the club’s shooting range.⁸¹
- There are additional participation requirements for persons who own different types of pistols. For each type of pistol owned by a sport target shooter (ie. air pistol, centrefire pistol, rimfire pistol, and black powder pistol), the licence holder is required to participate in at least four club-organised shoots.⁸² So, if a person owns two different types of pistols (irrespective of the number of individual pistols), he or she is required to participate in eight club-organised shoots. Participation in competitive shooting matches counts as club-organised shoots. Therefore, if a person’s pistols belong to one category of pistol, attendance at the six competitive shooting matches will obliterate the need to undertake the four club-organised shoots for that type of pistol.

(viii) Special pistols for competitions

- A Category H (sport/target shooting) licence may be issued to authorise a person to possess and use a ‘specialised target pistol’, being certain pistols and revolvers that have short barrel lengths,⁸³ but only for the purpose of enabling the licence holder to participate in specialised shooting competitions as are approved by the Commissioner: s 16B of the *Firearms Act 1996*.
- The *Firearms (General) Regulation 1997* is amended to enable the Commissioner to issue special permits authorising the possession and use of pistols with a calibre of more than .38 (but not more than .45) that are otherwise not prohibited pistols, for the purposes of a person who is the holder of a Category H (sport/target shooting) licence participating in specialised shooting competitions approved by the Commissioner: clause 59A.

(ix) Revocation of licence

⁸¹ It should be noted that training sessions and target practice do not qualify as club-organised competitive shooting matches.

⁸² Club-organised shoots do include training sessions and target practice held on the club’s pistol range.

⁸³ Section 16B defines a ‘specialised target pistol’ as a self-loading pistol with a barrel length of less than 120mm, or a revolver with a barrel length of less than 100mm, that in the opinion of the Commissioner is of a distinctive size or shape and is used in International Shooting Sport Federation competition events, but that is not otherwise a prohibited pistol.

Section 24(2)(c1) is inserted in the *Firearms Act 1996* to authorise the Commissioner to revoke a firearms licence if satisfied that the licensee has caused a firearm to be lost or stolen through any negligence or fraud on the part of the licensee.

(x) Licensed firearms collectors

- An applicant for a firearms collectors licence is required to provide a written statement by the collectors' society or club of which the applicant is a member, confirming that the applicant's collection has genuine commemorative, historical, thematic or financial value: s 12 of the *Firearms Act 1996*. This replaces the previous requirement for the applicant to 'demonstrate' the value of the collection.
- Pistols manufactured after 1 January 1946 may be kept by licensed firearms collectors only if certain requirements are complied with, for example, the collector produces evidence to the Commissioner that they have been a member of a collectors' society or club for at least a year: inserting s 17C.⁸⁴
- Any prohibited pistol (see **(ii) Definition of a 'prohibited pistol'** above) that is part of a licensed firearms collection is required to be rendered temporarily inoperable: amendment to s 20(b).

(xi) Compensation scheme

A new s 78 makes provision for a scheme to compensate licensed pistol shooters and licensed dealers who surrender prohibited pistols, and licensed collectors who surrender pistols manufactured after 1946. The amount of compensation payable is to be specified in a valuation list, to be made publicly available. If the amount is disputed by the person entitled to be paid compensation, the matter will be referred to an independent evaluation panel for determination.

(xii) Prohibited weapons under the Weapons Prohibition Act 1998

The *Weapons Prohibition Act 1998* is amended to add pistol magazines with a capacity of more than 10 rounds to the list of prohibited weapons. A permit will be required to lawfully possess such a magazine. However, there are exemptions:

- temporary exemption during the period of the buyback scheme, for licensed pistol shooters who currently possess such a magazine.
- exemption under the *Weapons Prohibition Regulation 1999* for holders of Category H (pistols) licences who hold the licence for business or employment purposes.

⁸⁴

Similar requirements apply under s 20(f) to collectors who had a firearms collectors licence immediately before the commencement of the *Firearms Amendment (Prohibited Pistols) Act 2003*, if post-1946 pistols are part of the collection.

5.2.4 Firearms and Crimes Legislation Amendment (Public Safety) Act 2003

The *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003* commenced on 15 December 2003. The Act implements the legislative changes that were first announced by the Minister for Police, Hon. John Watkins MP on 23 September 2003, as part of the package of measures on illegal firearms.⁸⁵

The focus of the amendments is the creation of new firearms-related offences:

- ***Shooting into a dwelling house or building***, with reckless disregard for the safety of any person, is inserted at s 93GA of the *Crimes Act 1900*. This new offence will cover drive-by shootings and the maximum penalty is 14 years imprisonment. The provision states that the prosecution does not have to prove that a person was actually placed in danger. The Minister for Police confirmed: 'it's not necessary for police to prove anyone was in direct danger from the shots, or that there was intent to harm anyone... In fact, the penalty applies even if there was no-one inside the house.'⁸⁶
- ***Stealing a firearm*** is another new offence that carries a maximum penalty of 14 years imprisonment: s 154D of the *Crimes Act 1900*.
- ***Possession by an unauthorised person of an unregistered firearm in a public place*** attracts a maximum penalty of 10 years imprisonment, or 14 years if committed in circumstances of aggravation: s 93I of the *Crimes Act 1900*. The aggravated offence is committed if the crime involves the possession of more than one unregistered firearm, or the possession of an unregistered pistol, or if the unregistered firearm is a prohibited firearm.
- ***Meaning of 'public place'*** is clarified for the purpose of new and existing firearms offences under Part 3B of the *Crimes Act 1900*. Being in a public place includes being in a vehicle or vessel that is in a public place: s 93F.⁸⁷
- ***New offences relating to selling firearms parts*** are intended to capture criminals selling barrels and magazines on the black market. Purchase of a firearm part by an unauthorised person (inserting s 50AA(1) into the *Firearms Act 1996*), or selling a firearm part to an unauthorised person (inserting s 51BA(1)) are both punishable with a

⁸⁵ Firearms and Crimes Legislation Amendment (Public Safety) Bill, Second Reading Speech, NSWPD, 29 October 2003, p 4352. Details of the *Media Release* are also outlined at '**3.4.1 Illegal handguns package**' on p 14 of this briefing paper.

⁸⁶ Minister for Police, Hon. John Watkins MP, *Media Release*, 'Drive-by Shooting Laws Passed', 13 November 2003.

⁸⁷ This amendment overcomes the decision of the NSW Court of Appeal in *Hardman v Director of Public Prosecutions* [2003] NSWCA 130. The majority (McColl JA and Tobias JA; Meagher JA dissenting) found that possession of a loaded firearm in a motor vehicle on a public road did not constitute possession of a firearm in a public place for the purposes of s 93G(1)(a)(i) of the *Crimes Act 1900*.

maximum penalty of 5 years imprisonment. Purchase of a firearm part for a prohibited firearm or pistol by an unauthorised person (inserting s 50AA(2)) or selling a firearm part for a prohibited firearm or pistol (s 51BA(2)) carries a maximum penalty of 10 years imprisonment. Selling firearm parts illegally on an ongoing basis, meaning on 3 or more separate occasions over 12 consecutive months, attracts up to 20 years imprisonment: s 51BB.

- ***Selling firearms illegally on an ongoing basis*** under s 51B of the *Firearms Act 1996* is modified, so that the 3 occasions of sale that constitute the offence may occur during any consecutive period of 12 months. Previously, the 3 occasions of sale had to occur within 30 days. The maximum penalty is 20 years imprisonment.
- ***Using a false licence or permit*** or other document in order to obtain a firearm is a new offence inserted at s 71A of the *Firearms Act 1996*. The maximum penalty is 10 years imprisonment. To commit an offence, the person must know that the document is false.⁸⁸
- ***Firearms (General) Regulation 1997*** is amended at clause 14 to require a licence or permit holder to notify the Commissioner of the address where the holder keeps his or her firearms, and of any change to that address.

When introducing the legislation, the Minister for Police, Hon. John Watkins MP, foreshadowed:

The Government is also considering making more serious firearm crimes strictly indictable in order for such crimes to be tried in the District Court or the Supreme Court and, therefore, attract higher sentences. It is also examining measures to ensure that more cases are dealt with on indictment [ie. rather than prosecuted summarily in the Local Court], and ensuring that the Commissioner for Police instructs prosecutors to instigate immediate appeals if firearms criminals receive sentences that the community views as inappropriate.⁸⁹

⁸⁸ The amending Act omits the previous offence of forging or fraudulently altering a firearms licence or permit, because an offence of making a false document is available under s 300 of the *Crimes Act 1900*. That offence also carries a maximum penalty of 10 years imprisonment.

⁸⁹ Firearms and Crimes Legislation Amendment (Public Safety) Bill, Second Reading Speech, NSWPD, 29 October 2003, p 4353.

6. HANDGUN BUYBACK AND AMNESTY

6.1 National⁹⁰

The purpose of the handgun buyback is to remove from the community handguns that are not used in genuine sports shooting, and to compensate for their surrender. On 6 December 2002, the Council of Australian Governments (COAG) agreed that a handgun buyback would operate for 6 months and that sporting shooters, dealers, importers and historical collectors would be compensated for the surrender of certain handguns, parts and accessories. The *National Handgun Buyback Act 2003* (Cth) provides for funding arrangements between the Commonwealth and the States for the handgun buyback: further details of the Act appear above at **5.1.6** on p 24.

COAG envisaged that the handgun buyback would run from 1 July 2003 to 31 December 2003. This period was observed by Queensland, Tasmania, the Australian Capital Territory and Northern Territory.⁹¹ Western Australia's buyback period was from 14 July to 31 December 2003, while Victoria started the scheme on 8 August 2003 in Geelong.⁹² In South Australia, like New South Wales, the commencement of the handgun buyback was delayed until 1 October 2003.⁹³

Monetary values of handguns, parts and accessories were agreed upon by Commonwealth, State and Territory governments, to apply consistently in the form of a National List. An expert panel convened in each State and Territory assesses the value of any handgun that is not on the list. Each State and Territory is responsible for organising the collection and destruction of handguns within its jurisdiction.

COAG agreed that, in conjunction with the period of the 6 month buyback scheme, an amnesty would be held for handguns that are unregistered or are held by unlicensed persons. The amnesty enables people to surrender such illegally-held handguns without incurring a criminal penalty for their possession. No compensation will be paid for these illegal handguns.

6.2 New South Wales

The handgun amnesty commenced in New South Wales on 1 October 2003 and will finish on 31 March 2004. The basic concept is that illegal handguns can be handed in at any

⁹⁰ Information in this subsection is from the National Handgun Buyback website at <www.handgunbuyback.gov.au> unless otherwise stated.

⁹¹ Information is from police websites: <www.police.qld.gov.au/handguns> <www.police.tas.gov.au> <www.afp.gov.au> <www.nt.gov.au/pfes>

⁹² Western Australia Police Service website at <www.police.wa.gov.au/handguns> and 'Owners attack payout wait as gun crackdown starts', *The Age*, 2 August 2003.

⁹³ National Handgun Buyback website at <www.handgunbuyback.gov.au>

police station and no questions will be asked. Money is not payable in exchange for the firearms.

The handgun buyback is being conducted for the same period. The presence of compensation for licence holders means a greater degree of complexity for this scheme. The main features are:⁹⁴

(i) Eligibility

The buyback applies to gun owners affected by the restrictions introduced by the *Firearms Amendment (Prohibited Pistols) Act 2003*, which commenced on 1 October 2003, namely:

- **Currently registered handguns that are prohibited by the new laws.** Briefly, the types of handguns that can be used for sport target shooting are limited to a maximum of .38 calibre, and to a minimum barrel length of 120mm for semi-automatic handguns and 100mm for revolvers and single shot handguns. Magazines with a capacity above 10 rounds are banned.
- **Legal handguns owned by licence holders for sport target shooting who choose to leave the sport** because they cannot meet the new minimum participation rates imposed by the Act.

For further details on the *Firearms Amendment (Prohibited Pistols) Act 2003* see 5.2.3 on p 27 of this briefing paper.

Exemptions from the buyback may be permitted for high calibre handguns (over .38 but not more than .45) used in specially accredited shooting events, and for specialised target pistols used in International Shooting Sport Federation competitions.

(ii) Mobile vans

All handguns owned by individuals are required to be taken to a mobile buyback van and examined by the firearms examiners. Compensation for surrendered handguns is only available through the mobile buyback vans. The schedule of the vans is available on the NSW Police website at <www.police.nsw.gov.au>. Locations on the remainder of the schedule for early 2004 include pistol clubs and police stations.

(iii) Procedures for examination of guns

All handguns owned by target shooters will be examined at the mobile site by a firearms examiner. The firearms examiners will measure the barrel, check the magazine capacity, and advise if it is legal or prohibited under the new laws.

⁹⁴ Information was obtained from the NSW Police website at <www.police.nsw.gov.au> and the National Handgun Buyback website at <www.handgunbuyback.gov.au>

- Where handguns are prohibited by the new laws they can be exchanged at the mobile van site for a compensation cheque on the spot, provided that the licence holder brings the registration documents proving that they are the legal owner of the surrendered item.
- Where handguns are legal, the barrel measurements will be recorded by computer and the licence holder will be issued with a receipt indicating that the gun is legal. A firearms registration certificate will be sent at a later date.

If a handgun would not be prohibited except for having an over-10 round magazine, the owner can choose to surrender only the magazine for compensation.

(iv) Compensation

Compensation is payable to sporting shooters if they:

- surrender their newly prohibited handguns, major parts (eg. slides, barrels and trigger assemblies), and directly related accessories (eg. over-capacity magazines and speed loaders);
- wish to leave the sport completely due to the new restrictions, and surrender all their handguns and their Category H licence. They will not be eligible to hold another handgun licence for a period of 5 years. Compensation can be paid for both their prohibited and non-prohibited handguns, major parts, and directly-related accessories.

Sporting shooters will not be paid compensation for minor parts such as firing pins, screws and springs, or ammunition. The major parts and accessories must be specific to the surrendered handgun or to a prohibited handgun previously owned by the person.

The amount of compensation is determined by the National Handgun Price List which has been prepared for most makes and models of handguns, in consultation with firearms dealers and associations throughout Australia. If the gun is listed on the price list, compensation will be paid in accordance with the condition of the gun. Compensation will also be paid for certain accessories and spare parts specific to the prohibited or surrendered gun. Prices can be consulted on the buyback website on <www.handgunbuyback.gov.au> by selecting 'Search the National Valuation List'.

(v) Compensation for enhancements

If the firearm has been enhanced, this will be taken into account in its valuation. The National Handgun Price List caters for a range of handgun enhancements.

(vi) Disagreement about valuation

If the owner disagrees with the price for a customised handgun, or it is not on the National Handgun Price List, an independent valuation will be conducted by an expert valuation panel appointed by the Commissioner of Police. The valuation decision of the panel is final.

(vii) Compensation for non-sporting uses?

The compensation scheme is focused on persons issued with a licence for a handgun used for sport target shooting and who present their registration certificates proving ownership of the firearm. Compensation will not be paid to a person whose licence has expired or been suspended or revoked. Handguns that are authorised by a business licence, such as for a security firm, are not eligible for compensation under the handgun buyback.

(viii) Compensation for firearms dealers

Firearms dealers have separate compensation arrangements for handguns which do not meet the new restrictions on calibre, barrel length, and magazine/shot capacity. Dealers and importers who believe they will not be able to sell stocks of handguns which they are prohibited to sell to sporting shooters may choose to voluntarily surrender these handguns in return for compensation. Similarly, stocks of handgun parts, accessories and ammunition that are not interchangeable with handguns that are permitted to be sold to sporting shooters may be exchanged for compensation. To be eligible to receive compensation, the stock must have been ordered prior to 20 December 2002, when the Commonwealth changed its importation laws.

The amount of compensation will be determined:

- For dealers – according to a national list of handgun values for dealers, which has been agreed to by all jurisdictions. But dealers will not be compensated for ‘loss of business’ arising from handgun reforms.
- For importers – according to the customs value plus 20%. Customs value is what the importer declared to the Australian Customs Service (ACS) at the time of importation, and will be verified by the ACS. For parts and accessories, importers will be paid the same amount as on the national dealer list.

Separate arrangements to the mobile vans have been made for dealers and importers to surrender handguns in each jurisdiction.

(ix) Historical collectors

Historical collectors who believe they will not be able to meet the new ‘student of arms’ requirement⁹⁵ can choose to voluntarily surrender their post-1946 handguns in return for fair compensation. In these circumstances, collectors will not be eligible to acquire post-1946 handguns for at least 5 years. The amount of compensation will be determined in accordance with the national list of handguns.

Genuine historical collectors are exempt from the handgun buyback and will be able to retain and add to their collections, including those handguns which are now prohibited for

⁹⁵ The collector must display a commitment as a student of arms to collecting or retaining post-1946 firearms.

sports shooting purposes. However, collectors must comply with all other requirements, for example, to temporarily deactivate all handguns that are prohibited for sports shooting.

(x) Disposal of collected guns

Handguns surrendered under the buyback will be crushed at the buyback site and sent to the NSW Police Weapons Disposal Unit to be melted down. Guns of historic value will be retained by NSW Police.

The buyback process will be subjected to an independent audit to ensure that every handgun surrendered is accounted for, and to verify its destruction or other fate.

7. BAIL RESTRICTIONS FOR SERIOUS FIREARMS OFFENCES

7.1 Objectives of the Bail Amendment (Firearms and Property Offences) Act 2003

On 13 November 2003, the Police Minister, Hon. John Watkins MP, announced that the Government would introduce legislation in Parliament to restrict bail for prohibited weapons offences, and any gun crime involving a danger to the public.⁹⁶

On 19 November 2003, the Minister for Justice, Hon. John Hatzistergos MLC, introduced the Bail Amendment (Firearms and Property Offences) Bill in the Legislative Council. The Bill passed the Upper House on 2 December 2003, and passed the Legislative Assembly on the same day. The Act was assented to on 5 December 2003 but had not commenced at the time of writing.

One of the main objectives of the *Bail Amendment (Firearms and Property Offences) Act 2003* is to create a presumption against the granting of bail to persons charged with certain serious firearms and weapons offences. A select group of offences are treated with such gravity by the *Bail Act 1978*. A presumption against bail applies to certain drug-related offences under s 8A, and bail is to be granted only in exceptional circumstances for murder or repeat offences of serious personal violence pursuant to ss 9C and 9D.

7.2 Presumption against bail for serious firearms offences

A presumption against bail for 'serious firearms and weapons offences' is inserted by the *Bail Amendment (Firearms and Property Offences) Act 2003* at s 8B of the *Bail Act 1978*. Serious firearms and weapons offences include:

- offences in the *Firearms Act 1996* relating to unauthorised possession, sale, purchase or manufacture of firearms, or unauthorised dealing in firearms on an ongoing basis, ie. ss 7, 36, 50, 50A(2), 51(1A), 51(2A), 51A, 51B and 51D(2);
- offences in the *Crimes Act 1900* relating to causing danger with a firearm, under s 93G and s 93H(2);
- new offences created by the *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003*: firing at a dwelling house or building (s 93GA of the *Crimes Act 1900*), aggravated possession of an unregistered firearm in a public place (s 93I(2)), stealing firearms (s 154D), and selling firearms parts on an ongoing basis (s 51BB of the *Firearms Act 1996*).

A person accused of one of these offences has to satisfy the decision-maker (court or police) that bail should not be refused.

As a consequence of these changes, the *Bail Amendment (Firearms and Property Offences)*

⁹⁶ Minister for Police, Hon. John Watkins MP, *Media Release*, 'New Bail Restrictions for Gun Crime', 13 November 2003.

Act 2003 omits s 9(1)(e1) of the *Bail Act 1978* which previously specified an exception to the general presumption in favour of bail for unauthorised possession or use of a pistol or prohibited firearm under s 7 of the *Firearms Act 1996*.

7.3 Other amendments

The *Bail Amendment (Firearms and Property Offences) Act 2003* also made other significant changes that did not overtly focus on firearms, including:

- **Repeat property offenders:** A presumption against bail is created for certain repeat property offenders by inserting s 8C into the *Bail Act 1978*. The provision applies to persons who are accused of two or more serious property offences (not being offences arising out of the same circumstances) and who have been convicted of one or more serious property offences within the last two years. The definition of ‘serious property offence’ in s 8C includes: steal from person, armed robbery, demand money with menaces, break and enter with intent to commit offence, motor vehicle theft, and car-jacking. The Minister for Justice, Hon. John Hatzistergos MLC, explained that the repeat offender provisions are:

...based on the strategy that by identifying certain categories of offences charged in combination with the criminal history of the person charged, high-risk persons may be identified and incapacitated, thereby preventing them from offending in the future. Criminology research has repeatedly shown that a small percentage of offenders are responsible for a large percentage of crime. This is especially the case in relation to property offences.⁹⁷

- **Failure to appear at court while on bail:** Previously, s 52 of the *Bail Act 1978* meant that a person could not be proceeded against for failing to appear at court in accordance with their bail undertaking, if the case concerned an offence that was punishable summarily, and the matter was dealt with in the person’s absence (‘ex parte’). Section 52 is removed by the *Bail Amendment (Firearms and Property Offences) Act 2003*.
- **Forfeiture of bail money:** The existing s 53A of the *Bail Act 1978* states that a court may make an order for bail money to be forfeited in accordance with a bail agreement, if the accused fails to comply with a bail undertaking to appear in court. Section 53AA is added to provide that, on conviction for failing to appear in court, any bail money agreed to be forfeited under a bail agreement is forfeited and a forfeiture order is taken to have been made by the court that convicted the person. However, a person can object to a forfeiture order within 28 days, pursuant to s 53DA.
- **Return of bail money:** Section 63 is inserted into the *Bail Act 1978* to explicitly provide that, after a court finds a person guilty or not guilty of an offence, the court

⁹⁷ Minister for Justice, Hon. John Hatzistergos MLC, *Bail Amendment (Firearms and Property Offences) Bill*, Second Reading Speech, *NSWPD*, 19 November 2003, p 5196.

must (if it has not previously done so) consider whether to make an order for the return of any bail money or bail security that has been deposited in connection with the proceedings.

- ***Conviction warrants:*** An amendment is also made to the *Criminal Procedure Act 1986*. Section 317A is inserted to provide that a court that issues a warrant for the arrest of a convicted person to bring them before the court for sentencing, must deal with the person as expeditiously as possible. This may discourage bail from being granted to a person between their arrest on a conviction warrant and the sentence being handed down.⁹⁸

⁹⁸ On 18 November 2003, the day before the amending legislation was introduced, the Minister for Police, Hon. John Watkins MP, stated during question time in the Legislative Assembly: 'Changes will be made so that a person arrested on a conviction warrant may not be released on bail before he or she is brought before the court for sentencing. This will ensure people are dealt with by the court as soon as possible.' Questions Without Notice, 'Bail Law Reform', *NSWPD*, 18 November 2003, p 5129.

8. CHANGES IN THE SECURITY INDUSTRY

8.1 Security Industry Amendment Act 2002

The *Security Industry Amendment Act 2002* amended several statutes. The changes were prompted by the Government's awareness of 'opportunities for organised criminals and terrorists to manipulate the current security licensing process. As part of the Government's enhanced counter-terrorism capability, we are seeking to minimise such opportunities, decrease the risk of criminal activity within the security industry and to increase enforcement of current licensing requirements.'⁹⁹

The amendments to the *Security Industry Act 1997* commenced on 31 January 2003 (except where stated otherwise), and included:

- ***Strengthening the eligibility requirements for licence applicants***, for example, by giving guidance on the meaning of a 'fit and proper person' to hold a licence under s 15 of the *Security Industry Act 1997*. In determining whether an applicant is a fit and proper person, the police may have regard to any criminal information that is relevant to the activities performed under the class of licence sought by the applicant, or that causes the police to believe that improper conduct is likely to occur if the applicant is granted a licence. The safety risks of granting security licences to people in Australia on temporary resident or overseas student visas were also addressed.¹⁰⁰ New licences will be restricted to permanent Australian residents and Australian citizens, consistent with the requirements for police officers. However, this change will not apply to existing licences.
- ***Mandatory fingerprinting and photographing*** requirements for security licence applicants and licence holders, imposing a similar regime as that which applies to police officers.¹⁰¹ This is a response to instances of fraudulent manufacture of training certificates and security licences, and the obtaining of security licences using false identification documents, or after a legal change of name to circumvent the criminal

⁹⁹ Mr Bryce Gaudry MP, Parliamentary Secretary, Security Industry Amendment Bill, Second Reading Speech, *NSWPD*, 12 November 2002, p 6544.

¹⁰⁰ 'The administrative cost associated with obtaining criminal history checks on all overseas applicants is prohibitive, as is the timeframe for obtaining relevant record checks from overseas law enforcement agencies...NSW Police is concerned that a number of overseas persons with [criminal] records which would exclude them if they were permanent residents are potentially being issued with a licence. Not obtaining criminal history checks...presents both a criminal threat to the industry as well as a threat to public safety. This is particularly the case as, once licensed, a security guard may obtain access to firearms in order to perform his/her security duties': *ibid*, pp 6549-6550.

¹⁰¹ The actual amendments to s 18 of the *Security Industry Act 1997* state that the police may require an applicant to consent to having his or her fingerprints and photograph taken, but must refuse to grant the licence unless the applicant has been fingerprinted and photographed in accordance with such a requirement.

record checks.¹⁰² Previously, s 18 of the *Security Industry Act 1997* allowed police to take fingerprints of security licence applicants in order to confirm the applicant's identity where there was doubt.

- ***Requiring security industry personnel to be wearing their security uniforms*** while carrying firearms (except where they possess special authority to carry firearms when not in uniform), so as to decrease the prospect of personnel using firearms for off-duty activities. This amendment commenced on 28 February 2003 and aims to meet the 'need for frontline police to be able to instantly identify when a licensed security guard is carrying a firearm without the proper authority'.¹⁰³
- ***Granting powers to police to conduct random ballistics testing*** on security industry firearms to identify whether firearms have been used in criminal activities.

Amendments were also made to the *Firearms Act 1996* with regard to security guards:¹⁰⁴

- ***Firearms safety training*** – A licence held for the purpose of employment as an armed security guard must be revoked if the licensee has failed to undertake firearms safety training.¹⁰⁵
- ***Inspection of firearms kept by security businesses*** – A police officer may enter premises of a security business and inspect the storage and safety of the firearms.

8.2 Announcement of additional changes in 2003

On 20 November 2003, the Minister for Police, Hon. John Watkins MP, announced reforms to the security industry to restrict access to handguns, increase safe storage, and remove high-powered guns from use.¹⁰⁶ These changes were influenced by an increase in gun thefts from security companies. At the time of the announcement, 65 guns had been stolen from the security industry during 2003.¹⁰⁷

The reforms proposed included:

¹⁰² Mr Bryce Gaudry MP, Parliamentary Secretary, Security Industry Amendment Bill, Second Reading Speech, *NSWPD*, 12 November 2002, pp 6546-6547.

¹⁰³ *Ibid*, p 6545.

¹⁰⁴ The two amendments described here commenced on 31 January 2003.

¹⁰⁵ Clause 69(2) of the *Firearms (General) Regulation 1997* requires that a security guard who possesses a firearm must undertake, at least once a year, an approved firearms safety training course.

¹⁰⁶ Minister for Police, Hon. John Watkins MP, *Media Release*, 'Maximum Security: Industry Forced to Upgrade Gun Controls', 20 November 2003.

¹⁰⁷ Minister for Police, Hon. John Watkins MP, Questions Without Notice, 'Security Industry Firearms Access Reform', *NSWPD*, 20 November 2003, p 5469.

- Limiting the number of guns in the security industry;
- Banning guns in sectors of the industry which cannot demonstrate an absolute need to be armed;
- Increasing safe storage requirements, in proportion to the number of guns held;
- Restricting the calibre and capacity of security industry handguns, and removing guns outside that range;
- Conducting security firm audits by the Firearms and Regulated Industries Crime Squad;
- Strengthening the training requirements for security firms.

Mr Watkins stated:

I fully expect a number of companies will not be able to meet the new standards, or explain why they should still be allowed access to firearms. If that is the case, they do not deserve to have the licence and they will be put out of business. There are 3,117 firearms licensed to the security industry in New South Wales, and 7,863 guards authorised to carry them. The loss of one of these guns – from registered use to the black market – is one too many... We have revoked the permits of 62 security organisations in the past five years. We will step this up until we know the “soft targets” within the industry have been eliminated.¹⁰⁸

The package of reforms was prepared with the assistance of the NSW Police Firearms Squad, the Security Industry Council, unions, and some of the larger security firms.

On 19 December 2003, regulations containing most of the projected reforms were gazetted: the *Firearms (General) Amendment (Security Industry) Regulation 2003* and the *Security Industry Amendment (Licence Conditions) Regulation 2003*.¹⁰⁹

8.3 Firearms (General) Amendment (Security Industry) Regulation 2003

The regulation is made under the *Firearms Act 1996* and amends the *Firearms (General) Regulation 1997*. It commences on 1 May 2004.

(i) Calibre of handguns in the security industry

Clause 60(3) is inserted in the *Firearms (General) Regulation 1997* to provide that, except where otherwise authorised by the Police Commissioner, a licence issued to a security guard does not authorise the guard to use or possess:

- a self-loading firearm with a calibre of more than .40” or
- a pistol with a calibre of more than .38”.

¹⁰⁸ Ibid, p 5469.

¹⁰⁹ *Government Gazette*, No 197 of 19 December 2003, pp 11299-11305 and 11353-11355.

This means that no security industry weapon would exceed the firepower available to NSW Police. The Minister for Police, Hon. John Watkins MP, anticipated that the new restriction would lead to the immediate surrender of 60 guns, for which compensation could be received in the current handgun buyback.¹¹⁰

(ii) Restrictions on security guards acquiring firearms

Clause 61A is added to the *Firearms (General) Regulation 1997* to ‘prevent armed security guards from applying for a permit to acquire a firearm for the reason of carrying on activities as a security guard, or from using a firearm that has been acquired for any other purpose while carrying on activities as a security guard’.¹¹¹ This provision reinforces that armed security guards should only have access, for the purposes of their work, to firearms owned by the security company which employs them. The underlying concern appears to be that security guards could take advantage of their position for ulterior motives, perhaps even to participate in criminal activities or to supply firearms to those involved in crime.

(iii) Safe storage requirements

Clause 61B imposes special requirements for the safe keeping of firearms by security firms. The safety measures increase depending on the number of firearms held by the security firm:

Guns held	Storage requirements which must be observed	No. of firms¹¹²
One gun	<ul style="list-style-type: none"> • Firearms stored in a safe fitted with a trigger or barrel lock. • Firearms secured individually on a locked device within the safe. • Safe fitted with an alarm that is monitored off-site. • Premises equipped with an intruder alarm and duress facilities which are monitored off-site. 	128 firms
2-5 guns	<ul style="list-style-type: none"> • Firearms stored in a safe that weighs at least 150kg, and is fitted with a trigger or barrel lock. Within safe, firearms to be secured on a locked device. • Safe secured to brick or concrete floor or wall. • Safe fitted with alarm monitored off-site. • Safe kept locked except when distributing firearms. • Separate intruder alarm for premises and duress facilities, monitored off-site. • Premises not to be used for residential purposes. 	255 firms
6-15 guns	<ul style="list-style-type: none"> • Safe with same features as previous category PLUS weighing 	89 firms

¹¹⁰ Minister for Police, Hon. John Watkins MP, *Media Release*, ‘Maximum Security: Industry Forced to Upgrade Gun Controls’, 20 November 2003.

¹¹¹ Explanatory Note to the *Firearms (General) Amendment (Security Industry) Regulation 2003*.

¹¹² The number of security firms which belonged to each category was current at 20 November 2003: Minister for Police, Hon. John Watkins MP, *Media Release*, ‘Maximum Security: Industry Forced to Upgrade Gun Controls’, 20 November 2003.

	at least 500kg, and fitted with 15 minute time delay locks. <ul style="list-style-type: none"> • Separate intruder alarm and duress facilities for premises, monitored off-site. • Premises not to be used for residential purposes. 	
Over 15 guns	<ul style="list-style-type: none"> • Safe within a vault or control room. • Safe fitted with trigger or barrel lock, secured to brick/concrete walls or floor, fitted with alarm monitored off-site, locked at all times except when distributing firearms, and firearms secured individually on a locked device within the safe. • Premises to be of an approved type, with 24 hour video surveillance, and intruder alarms and duress facilities monitored off-site. 	19 firms

These requirements effectively mean that residential storage is banned for security firms holding more than one firearm.

(iv) Number of firearms to be held by security firms

Clause 69A is inserted in the *Firearms (General) Regulation 1997* to stipulate that a licence issued to a security firm authorises the firm to use or possess only as many firearms as, in the opinion of the Police Commissioner, are required to carry out the security activities of the firm.

The Commissioner may require the firm to provide relevant information in order to form an opinion on the matter, including the number of firearms owned by the firm, the number of armed security guards employed by the firm, and the security activities for which the firearms are used.

The Minister for Police, Hon. John Watkins MP, has indicated further criteria against which applications will be assessed:

- the nature of the business conducted and the need for firearms for the duties carried out;
- details of overt and covert operations;
- a list of current clients for whom the use of firearms is requested, and supporting letters from those clients;
- training and experience of employees who are requesting weapons access.¹¹³

8.4 Security Industry Amendment (Licence Conditions) Regulation 2003

The *Security Industry Amendment (Licence Conditions) Regulation 2003* is made under the *Security Industry Act 1997* and commenced on gazettal on 19 December 2003. It inserts clause 20A into the *Security Industry Regulation 1998* to specify that it is a condition of a security licence that the licensee must, at the request of the Commissioner of Police,

¹¹³ Minister for Police, Hon. John Watkins MP, *Media Release*, 'Maximum Security: Industry Forced to Upgrade Gun Controls', 20 November 2003.

consent to having his or her fingerprints taken if he or she was not required to be fingerprinted at the time of applying for a licence. Fingerprints obtained in accordance with cl 20A may be used ‘for any purpose as the Commissioner sees fit.’

The Minister for Police, Hon. John Watkins MP, stated on 20 November 2003 that NSW Police was in the process of photographing and fingerprinting all security guards, and at that time 6400 guards had been assessed.¹¹⁴

8.5 Further issues

On 20 November 2003, the Minister for Police also detailed the ongoing monitoring procedures and training improvements that would be implemented, as well as another potential area of regulation.

(i) Guns only to be allowed for certain duties

The *Firearms Act 1996* has not previously regulated the type of security duties for which firearms can be used. The Government proposes ‘banning guns in sectors of the industry which cannot demonstrate an absolute need to be armed’.¹¹⁵ Firearms access in the security industry would be limited to the following activities:

- Cash-in-transit duties;
- Guarding premises with high-value merchandise or machinery;
- Guarding critical or high-risk infrastructure;
- Certain patrols and alarm response – on individual application only; and
- Provision of firearms training.

This specific issue did not feature in the *Firearms (General) Amendment (Security Industry) Regulation 2003* or the *Security Industry Amendment (Licence Conditions) Regulation 2003*. Nor had it been the subject of a separate regulation at the time of writing.¹¹⁶

(ii) Statewide auditing program

The NSW Police Firearms and Regulated Industries Crime Squad has established Strike Force Traditional, which will monitor and enforce the new requirements. A statewide auditing program will be commanded by the Squad, in conjunction with all 80 Local Area Commands. It will endeavour to ensure that the changes are implemented and adhered to, and it will seek to revoke the licences of non-compliant companies.

¹¹⁴ Ibid.

¹¹⁵ Minister for Police, Hon. John Watkins MP, *Media Release*, ‘Maximum Security: Industry Forced to Upgrade Gun Controls’, 20 November 2003, quoting the heading on p 2 of the media release.

¹¹⁶ Government Gazettes were checked up to 30 January 2004 inclusive.

(iii) Increased training requirements

A committee has been established to review training requirements for security guards. Representatives on the committee are from the State Crime Command of NSW Police, the Ministry for Police, NSW Police Association, Vocational and Educational Advisory Board, Security Industry Council, and Victoria Police. It is expected that the committee will produce new training requirements and modules by mid 2004.

9. GUN COURTS

Gun courts are specialised courts that deal with gun-related violence. They aim to increase expertise among judges and lawyers who participate in the court, reduce delays, and facilitate consistency of decision-making. By educating offenders, gun courts ultimately seek to decrease gun crime.

9.1 Review in New South Wales

In Sydney during 2003 there were numerous drive-by shootings, gun thefts, and shoot-outs between rival gangs, especially in the south-western suburbs. Members of the Opposition advocated that a gun court, similar to those operating in the United States of America, was among the measures needed to cope with the 'crisis'.¹¹⁷

On 12 November 2003, the Attorney General, Hon. Bob Debus MP, announced that the Government had appointed Hon. Gordon Samuels QC, a former Governor of New South Wales and retired Supreme Court judge, to conduct 'a review into the operations of our courts system with respect to gun violence, and with specific reference to examine the merits of a gun court.'¹¹⁸ However, the Attorney General stated:

It is easy to see why that model has been so attractive to policy makers, yet great caution must be exercised in applying the American experience in New South Wales courts. In particular, we have to recognise that gun crime – indeed, gun ownership of every kind – has been vastly more widespread in the United States than in New South Wales.¹¹⁹

During 2002, 60 juveniles were charged with firearm offences in New South Wales. The Attorney General reflected that:

Of 60 offenders drawn from across the State it is difficult to see that New South Wales has the numbers to make a separate juvenile gun court viable; however, that is a matter on which, of course, I will hold judgment until Mr Samuels makes his findings. It is important also to bear in mind that the New South Wales legal system treats juveniles who have committed serious offences as if

¹¹⁷ For example, Shadow Attorney General, Andrew Tink MP: Consideration of Urgent Motions, 'Gun Crime, *NSWPD*, 16 October 2003, p 4053; and quoted by Robert Wainwright in 'Samuels to investigate gun courts', *The Sydney Morning Herald*, 13 November 2003, p 5. Leader of the Opposition, John Brogden MP: Questions Without Notice, 'Shooting incidents', *NSWPD*, 16 October 2003, p 4072; and quoted by Nick O'Malley in 'Drive-by shooters face 14 years' jail', *The Sydney Morning Herald*, 29 October 2003, p 3.

¹¹⁸ Attorney General, Hon. Bob Debus MP, Questions Without Notice, 'Gun Court', *NSWPD*, 12 November 2003, p 4828.

¹¹⁹ *Ibid*, p 4829. Also: Robert Wainwright, 'Samuels to investigate gun courts', *The Sydney Morning Herald*, 13 November 2003, p 5.

they were adults and tries them in the District Court. I would need to hear a convincing case before changing that arrangement and transferring that sort of case to a juvenile gun court.¹²⁰

The Terms of Reference for the review are:¹²¹

- (1) To review the manner in which gun related crime is prosecuted and dealt with in New South Wales courts, in particular:
 - (i) current prosecution policies and guidelines of the Director of Public Prosecutions and NSW Police; and
 - (ii) sentencing.
- (2) To consider the advantages and disadvantages of establishing an exclusive gun jurisdiction in New South Wales, having regard to the various models in the United States.
- (3) If the review considers there is merit in the creation of a gun court, the report should make recommendations concerning its objectives, the nature of its jurisdiction, and its mode of operation across New South Wales.
- (4) Whether or not the review sees merit in the creation of an exclusive gun jurisdiction, the report should include recommendations for any necessary amendments to prosecution policies and guidelines with respect to gun related crime and any other recommendations for improving the manner in which gun related crime is prosecuted and dealt with by the courts.

The deadline for submissions from interested individuals and organisations to the review was 19 December 2003.¹²²

9.2 Gun courts and programs in the United States of America

9.2.1 General principles

The first gun court was established in the United States in Providence, Rhode Island State, in 1994. Gun courts appear to be part of the trend in the legal system towards specialised courts which target particular offenders, and which involve the participation of various criminal justice agencies to address the community impact of criminal behaviour. Adult and youth drug courts are another example of this approach, and have already been adopted in New South Wales. Gun courts can be tailored towards adult or juvenile offenders. Some are underpinned by legislation and others are run as pilot programs or within an existing court's jurisdiction.

¹²⁰ Attorney General, Hon. Bob Debus MP, Questions Without Notice, 'Gun Court', *NSWPD*, 12 November 2003, p 4829.

¹²¹ The Terms of Reference are summarised from an advertisement placed by the Attorney General's Department of NSW, 'Review to Consider the Merits of Establishing a Gun Court in NSW', *The Sydney Morning Herald*, 29 November 2003, p 30.

¹²² The contact address was: Ms Rani Young, Criminal Law Review Division, NSW Attorney General's Department, GPO Box 6, Sydney NSW 2001 or <rani_young@agd.nsw.gov.au>

The rationale for gun courts in the American legal context is ‘...built around the simple idea of removing gun cases from the crushing criminal caseload of Common Pleas Court, where impatient judges frequently give defendants mild or probationary sentences in exchange for a waiver of their right to a lengthy jury trial. Channeling the cases to a gun court...[supporters argue]...will ensure that gun crimes are not ignored or reclassified at the demand of a public defender who threatens the judge with a jury trial.’¹²³

However, some critics are concerned that special courts may signify that the government or the legislature is encroaching upon judicial discretion, rather than allowing the judge to determine a suitable method for dealing with an offence according to the circumstances of the case. There are differing views from within the judiciary. In several States, judges have been the motivating force behind the creation of gun courts or programs. But other judges oppose the trend towards fragmentation of the court system into so-called boutique courts. In Philadelphia, where a Democrat State Representative introduced a bill proposing a specialist firearms court in 1999, the President Judge of the Court of Common Pleas, Alex Bonavita, stated: ‘I just hate to keep carving up the court into little pieces. It really hurts our ability to be flexible and move judges around. They [specialty courts] create logistical problems, staffing problems and scheduling problems.’¹²⁴

Features that gun courts commonly exhibit include:

- **Early intervention** – the gun court hearing is held as soon as possible after the arrest, for greater impact on the offender.
- **Expedited process** – cases are intended to be processed quickly, to improve efficiency.
- **Low level offenders** – gun court programs usually focus on first time gun offenders or young offenders, rather than the most serious category of offenders.
- **One judge** – or a small number of judges preside over the court, to increase familiarity with the cases and facilitate consistency of decisions. For the same reason the number of prosecutors involved is limited.
- **Team approach** – a team of professionals commonly participates in the court. The judge, prosecutors, defence counsel, probation officers, police, and juvenile justice officers work together with community members.
- **Intensive supervision** – participants on probation are closely supervised, with a strong sense of professional support and consultation.
- **Emphasis on education** – awareness and counselling about the negative consequences of weapons are usually important components.
- **Parental attendance** (for juvenile gun courts) – programs often require or encourage parents to attend educational classes with a juvenile offender.

9.2.2 Case studies from different States

¹²³ Noel Weyrich, ‘The Orphaned Gun Fix’, *Philadelphia City Paper* (weekly newspaper), 13-20 July 2000, at <<http://citypaper.net/articles/071300/cb.citybeat.gun.shtml>>

¹²⁴ Ibid.

Some of the major examples of gun courts, or courts with specialised functions in relation to firearms, in the United States are:

City (County)	State	Name of program	Year started	Offenders
Providence (Providence County)	Rhode Island	Gun Court	1994	Adult
Birmingham & Bessemer (Jefferson County)	Alabama	Jefferson County Juvenile Gun Court	1995	Juvenile
Minneapolis (Hennepin County)	Minnesota	Juvenile Gun Program	1995	Juvenile
Seattle (King County)	Washington	Youth Handgun Violence Initiative	1996	Juvenile
New York City (Kings, Queens & Bronx Counties)	New York	Brooklyn Gun Court Bronx Gun Court Queens Gun Court	2003	Adult

Other States have implemented gun awareness or education programs as part of court procedures when dealing with firearms offences, rather than establishing a specialised jurisdiction. Depending on the nature of the program, they may have some features that are similar to the gun courts. Therefore, several gun programs are considered at the end of this chapter.

(a) Providence, Rhode Island State¹²⁵

The first Gun Court in the United States was established in Providence, Rhode Island, in September 1994. The support of the National Rifle Association and gun control groups enabled legislation to be passed to establish a separate ‘gun court calendar’ within the Superior Court.

The Gun Court legislation focuses on ‘expediting the processing and disposition of such [gun-related] cases and, unless otherwise provided, imposing prison terms that must be served.’¹²⁶ The legislation provides for the presiding justice of the Superior Court to assign personnel to exclusively hear and decide all criminal offences committed in Providence and Bristol Counties involving the possession, use, or threatened use, of a firearm. All trials must be scheduled within 60 days of completion of discovery.

¹²⁵ Information was obtained from: *Promising Strategies To Reduce Gun Violence*, Office of Juvenile Justice and Delinquency Prevention Report, US Department of Justice, 1999, especially Profile No 37. Accessed at <http://ojjdp.ncjrs.org/pubs/gun_violence>

¹²⁶ The *Rhode Island Code*, Title 8: Courts and Civil Procedure – Courts, Chapter 8-2: Superior Court, Section 8-2-15.1, subsection (b): Declaration of policy.

The results of the Gun Court indicate greater speed of disposition and certainty of punishment. For example, of 866 cases assigned to the Gun Court between September 1994 and October 1998, 82% resulted in sentences (including a suspended or deferred sentence or probation). Before the Gun Court, sentences were imposed in only 67% of cases. Case disposition time was reduced by 311% to 126 days. Previously, the average disposition time was 518 days.

The section of the *Rhode Island Code* (the General Laws of Rhode Island State) that gives the Gun Court its jurisdiction is attached at **Appendix B** of this briefing paper.

(b) Jefferson County, Alabama State¹²⁷

(i) Establishment

The Jefferson County Juvenile Gun Court was established in Birmingham, Alabama, in April 1995 by Sandra Storm, a Circuit Court Judge in the Family Court of Jefferson County. Juvenile deaths had reached a peak in 1994, when there were 34 deaths of individuals aged 18 years and younger. Judge Storm proposed a court to handle juvenile gun cases in the hope that early intervention could reduce the number of homicides and other serious gun crimes involving youth.

(ii) Jurisdiction

The infrastructure of the Family Court was adapted to accommodate a juvenile gun court. The Family Court of Jefferson County is actually a centralised complex that handles all juvenile crime and delinquency cases from violent offences such as murder, to truancy, abuse, and neglect. Family Court judges already had authority for mandatory detention of juvenile offenders; discretion to consider whether juvenile cases were suitable for diversion; a mandate for prompt action (ie. to review incoming cases within 72 hours of arrest and to hold trials within 10 days); and access to boot camps. Two other features were added: intensive follow-up supervision by probation officers, and the involvement of parents in the adjudication process.

The centralisation of services in the Family Court complex is considered one of the keys to the success of the Juvenile Gun Court. Having most juvenile government agencies located onsite eliminates many of the logistical barriers to obtaining services.¹²⁸ For example, a

¹²⁷ The main source of information on Jefferson County was: David Sheppard and Patricia Kelly, 'Juvenile Gun Courts: Promoting Accountability and Providing Treatment', *JAIBG Bulletin* (Juvenile Accountability Incentive Block Grants Program), May 2002, Office of Juvenile Justice and Delinquency Prevention (OJJDP), US Department of Justice. Accessed on the website of the National Criminal Justice Reference Service at <www.ncjrs.org> Also: *Promising Strategies To Reduce Gun Violence*, OJJDP Report, 1999, especially Profile No 43. Accessed at <http://ojjdp.ncjrs.org/pubs/gun_violence>

¹²⁸ Legal Aid, a probation office, an Assistant District Attorney, drug-testing services, child support personnel, and a family therapist are located in the complex. A detention centre adjoining the court building has the capacity to hold 80 young people, ranging in age from 10 to 19 years.

judge or probation officer can request on-the-spot assessment or mental health placement through the court liaison officer.

Initially, the Juvenile Gun Court was limited to first-time juvenile gun offenders aged 17 years and below from the city of Birmingham, but in 1999 additional Federal funding made it possible to expand the program to the city of Bessemer.

(iii) Procedure

Cases proceed through the Juvenile Gun Court as follows:

- **Arrest** – First-time offenders aged 17 years or under are arrested for gun-related offences that are less serious, eg. gun possession. Those accused of more serious gun offences, such as armed robbery or murder, are processed through the regular juvenile court or transferred to the adult criminal court.¹²⁹
- **Court intake** – Following arrest, juvenile offenders are taken to the detention centre where they are fingerprinted and undergo comprehensive intake screening that includes drug testing.
- **Detention hearing** – At the detention hearing, about 95% of those charged plead ‘true’, which is the equivalent of a guilty plea in a criminal court. The others go to trial. All Gun Court detention hearings are held within 72 hours. In Birmingham, most youths are kept at the detention centre until trial or final disposition.¹³⁰
- **Trial** – The Gun Court holds trials within 10 working days of referral if requested.
- **Sentence** – Those who plead or are found guilty are sentenced to the program outlined below, if they are considered at low risk of violent behaviour. (Youth at high risk are sent to a State detention facility.)
- **Boot camp** – One of the main components of the sentence for convicted juvenile gun offenders is the High Intensity Training (HIT) program, a 28 day boot camp run by the Alabama Department of Youth Services. The classes include physical fitness, academic tuition, counselling and self-development.
- **Parent education program** – While young offenders are in boot camp, their parents attend the Parent Education Program (PEP). The weekly classes include parenting skills, parent-youth communication, and presentations by the judge of the Juvenile Gun Court, the county coroner, the county sheriff, and mental health liaison personnel. When the young offenders return from boot camp, they attend the PEP classes with their parents. Parents who fail to complete the program can be

¹²⁹ Juveniles charged with multiple gun offences or with violent or other serious offences are transferred to the adult criminal court or the Alabama Department of Youth Services. Alabama State law allows juveniles as young as 14 to be tried as adults.

¹³⁰ In Bessemer, some youths may be released pending trial, particularly if they were not in direct possession of a firearm.

incarcerated. Court data from 1995 indicated an 87% completion rate for PEP participants.

- **Adolescent Substance Abuse Program** – After boot camp, all youths must participate in the Adolescent Substance Abuse Program (ASAP). In addition to drug and alcohol abuse, counsellors cover such issues as self-esteem, anger management, and sexually transmitted diseases. Youths must pass 6 consecutive drug tests as part of completing the 6 week program.
- **Probation** – After release from the boot camp, the youths are all placed on maximum supervision probation. For 30 days they are under house arrest except for going to school and work, and they must observe a curfew of 8.00 pm on weeknights and 8.30 pm on weekends. They must also phone their probation officer at appointed regular intervals, and are subjected to unannounced home visits from a probation officer, police officer or sheriff's deputy. If the 30 day period is successfully completed, the young person will be less frequently monitored. Probation supervision can range from 6 months to 2 years. Violations of probation for minor infractions, such as disobeying the curfew, can result in being monitored by an electronic device or a telephone voice recognition system. More serious violations can lead to revocation of probation and placement in a detention facility.
- **Discharge** – When a young person has fulfilled all of the probation requirements, they are discharged from the Juvenile Gun Court program through a formal court order.

(iv) Evaluations and results

In 1995, the year that the Juvenile Gun Court commenced, it handled 323 juvenile gun offences. This was an increase from 273 juvenile gun offences in 1994. This outcome is believed to be the result of increased awareness among law enforcement officers that there were new sanctions for juvenile gun charges. From 1995 to 1997, there was a decrease in juvenile gun offences generally (from 323 cases in 1995 to 302 in 1997), and gun-related deaths in particular (from 30 in 1995 to 18 in 1997). However, court data also showed that offenders were getting younger: in 1995 only 9 offenders were aged 13 or younger, but by 1997 there were 24 cases involving juveniles in this age group.

Recidivism rates among the first 100 cases in the Juvenile Gun Court showed that participants had an overall re-offending rate of 41%, compared with 73% among juveniles in the first 100 cases from 1994 (the year before the Gun Court was established). In addition, Gun Court participants were less likely to re-offend on firearms charges: 11% committed new gun offences, compared with 32% of juveniles whose cases were adjudicated prior to the Gun Court.¹³¹

¹³¹

Recidivism rates for gun crimes were also examined by a research firm, Cosmos Corporation, which evaluated the Juvenile Gun Court for the US Justice Department. Its analysts found that participants had a re-arrest rate for gun crimes of 20%, compared with 40% for juveniles outside the program: 'Gun Court Counters Teen Weapons Use', 23 January 2001, Join Together Online at <www.jointogether.org> (see Gun Violence > News > News Summaries).

Based on police data, gun-related juvenile offences declined by 38.7% in Birmingham from 266 offences during the period September 1996-August 1997, to 170 offences in the period September 1997-August 1998.¹³² Research conducted by the Center for Law and Civic Education at the University of Alabama found that juvenile gun charges decreased by 54% in Birmingham between 1995 and 1999, and violent crime rates decreased by 57%. The Juvenile Gun Court and other violence reduction programs available in Jefferson County were credited with contributing to these results.¹³³

(c) New York City, New York State¹³⁴

In May 2003 the Mayor of New York City, Michael Bloomberg, officially announced the commencement of a new pilot program, the Brooklyn Gun Court, to handle the felony gun possession cases from five precincts in Brooklyn. At that stage, the five precincts accounted for more than half the shootings in Brooklyn and approximately one quarter of the shootings in New York City.

The Brooklyn Gun Court operates on an expedited schedule, requiring all cases to be disposed of within 120 days. The cases are heard by one specially designated judge at the state criminal court building in Brooklyn. Three Assistant District Attorneys have been assigned to participate in the project. The Brooklyn Gun Court began processing cases on 28 April 2003 and is expected to handle 400 cases per year.

On 16 December 2003, Mayor Bloomberg announced the opening of two new Gun Courts in the Bronx and Queens, and the addition of two precincts to the Brooklyn Gun Court. The Bronx and Queens Gun Courts will start hearing cases in January 2004 and will process every felony gun possession case from all police precincts in their respective boroughs. Like the Brooklyn Gun Court, they will have one judge handling the cases from arraignment (ie. entering of a plea) through to trial and sentence. Intensive police training on apprehending suspects, search and seizure, and giving testimony in court, is designed to strengthen the legal basis for gun cases. The Bronx Gun Court is expected to process approximately 270 cases per year, and the Queens Gun Court around 175 cases.

The District Attorney of Kings County, Charles Hynes, stated that the Brooklyn Gun Court 'has already proven its worth' since commencing in April 2003, with an increase of more

¹³² Quoted in: *Promising Strategies To Reduce Gun Violence*, Profile No 43, Report by the Office of Juvenile Justice and Delinquency Prevention, 1999, US Department of Justice.

¹³³ Quoted by: David Sheppard and Patricia Kelly, 'Juvenile Gun Courts: Promoting Accountability and Providing Treatment', *JAIBG Bulletin*, May 2002, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice.

¹³⁴ Sources: (i) 'Mayor Michael R. Bloomberg Announces Latest Expansion of Operation Spotlight With Opening of Brooklyn Gun Court', 7 May 2003, article on website of NY Vote: New York's Online Political Source at <www.nyvote.com> (ii) Office of the Mayor, Press Release, 'Mayor Michael R. Bloomberg Announces Major Expansion of Gun Court Program to the Bronx and Queens and Additional Precincts in Brooklyn', 16 December 2003, available on NYC Government website at <www.nyc.gov> Select 'Office of the Mayor' .

than 20% in dispositions of gun possession felonies compared to 2002. 'In addition the quality of sentences has improved with more defendants receiving a year or more in prison as opposed to sentences that previously included less prison time and probation'.

Some other results from the first 6 months of operation of the Brooklyn Gun Court were:

- the median length of prison sentences quadrupled, from 90 days to one year;
- sentences of straight probation were eliminated entirely;
- gun cases were processed more efficiently under an accelerated 120 day schedule, with a 33% improvement over the standard case disposition;
- shooting incidents decreased by 15.4% in the five precincts in Brooklyn where the court initially had jurisdiction.

(d) Seattle, Washington State¹³⁵

The Youth Handgun Violence Initiative in Seattle is not a formalised gun court, but involves the designation of a specialist prosecutor in the juvenile court to deal with firearms offences.

(i) Establishment

The Seattle Police Department and the King County Prosecutor's Office co-operated in the delivery of the Youth Handgun Violence Initiative (YHVI). The project commenced in September 1996 and was funded by a grant from the US Department of Justice's Office of Community Oriented Policing Services.¹³⁶

(ii) Procedures and strategies

A new prosecutor position (a 'Deputy Prosecuting Attorney' or DPA) was established in the juvenile court. This Attorney was dedicated exclusively to the prosecution of juveniles who committed crimes using firearms. Unlike some programs, the focus was not on less serious offences. Violent and chronic juvenile offenders were also dealt with.¹³⁷ The DPA's functions included:

- to increase the effectiveness of the prosecution of juvenile firearms offenders by

¹³⁵ Bob Scales and Julie Baker, 'Seattle's Effective Strategy for Prosecuting Juvenile Firearm Offenders', *OJJDP Juvenile Justice Bulletin*, March 2000, accessed at <www.ncjrs.org/pdffiles1/ojjdp/178901.pdf> Also: *Promising Strategies To Reduce Gun Violence*, Office of Juvenile Justice and Delinquency Prevention Report, 1999, Profile No 42.

¹³⁶ A further grant to continue the project was made in 1999 by the Office of Juvenile Justice and Delinquency Prevention's Juvenile Accountability Incentive Block Grants scheme.

¹³⁷ During the period of the first funding grant in 1996-1997, approximately 25 firearms-related cases were filed each month, including felony-level possession, burglary, and violent crimes.

- tracking them throughout the judicial process;
- to improve the co-ordination of law enforcement and prosecution efforts;
 - to provide training and legal advice to Seattle police officers and detectives to improve the quality of cases they submitted for prosecution;
 - to perform a statistical analysis of juvenile firearms offences.

The strategy of ‘vertical prosecution’ was adopted, which means that a single prosecutor handles a case from the time it is first received until it is resolved. This is distinct from the usual practice of a different prosecutor handling the case at each stage of the court system.

(iii) Outcomes

The vertical prosecution of firearms cases resulted in greater continuity and consistency. Due to the DPA’s specialisation in firearms and knowledge of the particular case in question, the DPA was able to provide more comprehensive information to the judge and the probation officers. As a result, judges’ rulings on juvenile firearms-related cases became more consistent.

The training provided by the DPA to police officers on legal issues (eg. constructive possession of a firearm) resulted in a dramatic improvement in the cases submitted by the police, and contributed to a 50% reduction in the dismissal rate for firearms cases due to legal or factual problems. The DPA was also in a better position to identify and assess which cases should be transferred from the juvenile court to the adult criminal court.

Cases were filed more promptly, especially when juveniles were in custody, and were adjudicated faster. Fewer charges were subject to plea offers and plea bargains, increasing the proportion of cases that went to trial. Due to the better preparation of trials, the percentage of trials ending in a guilty verdict rose from 65.4% to 78.4%.

(e) Minneapolis, Minnesota State¹³⁸

The Juvenile Gun Program of Minnesota is another initiative that cannot strictly be regarded as a gun court. But it is a court-imposed sanction which involves a direct penalty of community service, and is more rigorous than the gun awareness courses that are considered below. Therefore, it can be said to combine elements of a gun court and an educational program.

(i) Establishment and objectives

The Juvenile Gun Program was designed by a Hennepin County Juvenile Court judge, with the assistance of juvenile probation staff, in response to the rising number of juveniles coming into the justice system on gun offences. Prior to the program’s inception, all juveniles adjudicated on gun offences were required to complete 100 hours of community

¹³⁸ *Promising Strategies To Reduce Gun Violence*, Office of Juvenile Justice and Delinquency Prevention Report, 1999, Profile No 44.

service. However, these orders were not consistently enforced and had little impact on recidivism.

Commencing in November 1995, the Juvenile Gun Program is supervised by the juvenile probation office and combines education and community service requirements. The goal of the Juvenile Gun Program is to encourage young people to think about the effects of gun violence on themselves, their families, and their communities. Important themes of the program are personal responsibility, victimisation, and community responsibility.

(ii) Procedures

When a juvenile appears before the Juvenile Court on a charge involving a gun, the court grants a 'stay' of proceedings and refers the juvenile to the Gun Program. If the juvenile fails to follow the expectations of the program, the stay is revoked.

Juveniles meet for 40 hours over a 16 week period for the educational component of the Juvenile Gun Program. Random urine testing is conducted at some meetings, and indications of drug use result in referrals for treatment. A variety of speakers, presentations, and demonstrations are intended to show participants the negative consequences of gun violence. Speakers have included the mayor, prisoners convicted of gun charges, police investigators, the parents of murder victims, and a juvenile on death row. In addition, trained professionals discuss anger management alternatives with the juveniles and help them to develop plans to manage stressful situations.

The Juvenile Gun Program also entails completion of a 60 hour community service requirement. Participants perform park maintenance, neighbourhood 'clean sweeps', and other jobs that benefit the community.

(iii) Evaluations

Evaluations have led to modifications of the Juvenile Gun Program, for example, by adding a formal aftercare component for those in need of probation supervision. Progress reports by the Probation Department compared results for program 'completers' with 'noncompleters.' Results up to 1999 indicated that completers had slightly lower rates for new charges than noncompleters, and that the new charges for completers were more likely to be misdemeanors (minor offences) rather than felonies (serious offences).

9.2.3 Court-imposed gun education programs

Various States have not established a separate jurisdiction known as a 'gun court' but operate gun awareness programs which may be imposed on offenders by the courts. Examples of these programs are:

- ***Project LIFE, Indianapolis, Indiana***¹³⁹ – Project LIFE (Lasting Intense Firearms

¹³⁹

Promising Strategies To Reduce Gun Violence, Office of Juvenile Justice and Delinquency Prevention Report, 1999, Profile No 45.

Education) was initiated in 1991 by the Marion County Superior Court, Juvenile Division, in response to an increase in the number of juveniles carrying guns. Project LIFE is a mandatory program for young offenders who are on probation for committing a weapons crime. Educational sessions lasting 6 weeks are held for the youths and their parents. Techniques include visual media such as police videos from homicide scenes. The sessions aim to educate participants about the impact of guns and other weapons, and to encourage young offenders to accept responsibility for their criminal behaviour.

- ***Detroit Handgun Intervention Program, Michigan***¹⁴⁰ – Established in 1993 in Detroit, the program was developed by Judge Willie Lipscomb Jr, who was concerned about the proliferation of handguns among young black men. The program requires, as a condition of pre-trial release, that offenders who are arrested for carrying concealed weapons attend a class in which they learn the negative consequences of gun use.
- ***Save Our Streets, Washington DC***¹⁴¹ – The pilot program ran for two years from 1995, and was a joint initiative of the National Institute for Dispute Resolution (NIDR) and Street Law Inc, a legal-educational organisation. Youths aged 13 to 17 years who had been arrested and charged with weapons offences were eligible. They were usually released into the custody of their parents, and were referred onto the pre-adjudication Save Our Streets program by the Superior Court of the District of Columbia. Participants attended 16 sessions of two hours duration on Saturdays. Sessions were interactive and included a debate on gun laws, learning negotiation skills to resolve a dispute non-violently, and engaging in role-plays as police officers, judges and lawyers. Assistance was given at some sessions by defence attorneys, police and professional mediators. An evaluation of the pilot program was released in 1998. Only 1.3% of the young people who attended four or more classes had been re-arrested on weapons offences, compared with 19.6% of the youths who did not start the program or attended three or fewer classes.

¹⁴⁰ Jeffrey Roth, 'The Detroit Handgun Intervention Program: A Court-Based Program for Youthful Handgun Offenders', *National Institute of Justice Research Preview*, November 1998. Also: *Promising Strategies To Reduce Gun Violence*, Office of Juvenile Justice and Delinquency Prevention Report, 1999, Profile No 41.

¹⁴¹ Information was obtained from the website of Street Law Inc. at <www.streetlaw.org> under 'Programs'.

10. CONCLUSION

Firearms restrictions in Australia and New South Wales in the last decade have progressed in response to specific events or criminal activities, such as the Port Arthur shootings in Tasmania in 1996, the Monash University shootings in 2002, and the gang-related shootings in Sydney in 2003. Interaction between the Commonwealth and the States has been involved in the regulatory process. In 2002, customs regulations prohibited the importation of certain handguns for sports shooting purposes that did not conform to the specifications on calibre, barrel length and magazine capacity endorsed by the Council of Australian Governments (COAG). These restrictions, along with the creation of a probationary licence scheme and minimum participation rates for sports shooters, were implemented in New South Wales by the *Firearms Amendment (Prohibited Pistols) Act 2003*. COAG also resolved to conduct a nationwide buyback of the newly prohibited handguns, and an amnesty for other illegal firearms. The buyback and amnesty are running in New South Wales from 1 October 2003 to 31 March 2004.

A range of initiatives are being pursued in New South Wales in response to gun violence. New offences such as stealing a firearm, firing at a dwelling, and using a false document to obtain a firearm were introduced under the *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003*. Police strategies have included raids by Operation Vikings and the formation of Task Force Gain to investigate shooting incidents and gang-related activities. In November 2003 the Attorney General announced a review to assess whether a specialised gun court should be established to concentrate on firearms offences. Another problem was the escalation of gun thefts in Sydney in 2003, which may partly be due to the stronger restrictions on handgun importing and licensing. This in turn focused attention on the safe storage of legal firearms by private individuals, the police, and especially security firms. New regulations that are due to commence in May 2004 will tighten storage requirements for security firms and limit the calibre of guns used, as part of an ongoing crackdown on the security industry. Whether the safety measures make a sufficient impact on handgun theft and circulation will have a bearing on further efforts to combat gun crime.

APPENDIX A:

FIGURES SHOWING TRENDS IN HANDGUN CRIME IN NSW, 1995-2000

(Source: Jacqueline Fitzgerald, Suzanne Briscoe and Don Weatherburn, 'Firearms and Violent Crime in New South Wales', *Crime and Justice Bulletin*, Number 57, May 2001, NSW Bureau of Crime Statistics and Research, pp 2-4.)

Figure 1: Recorded criminal incidents of murder with a firearm, and with a handgun, NSW, 1995 to 2000

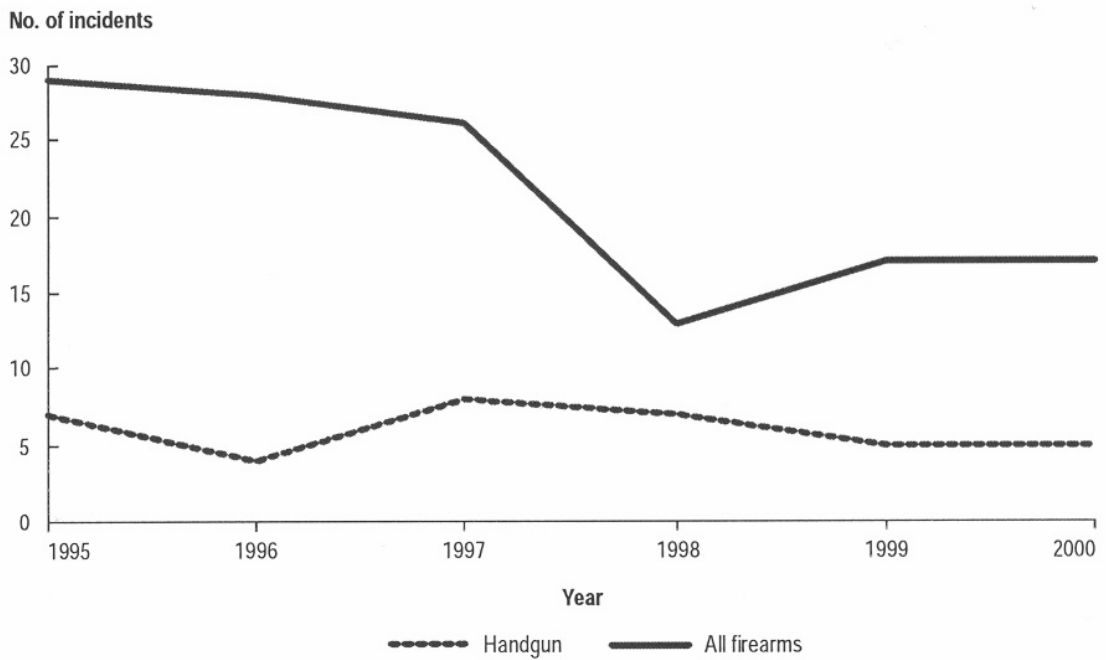


Figure 2: Recorded criminal incidents of robbery with a firearm, and with a handgun, NSW, 1995 to 2000

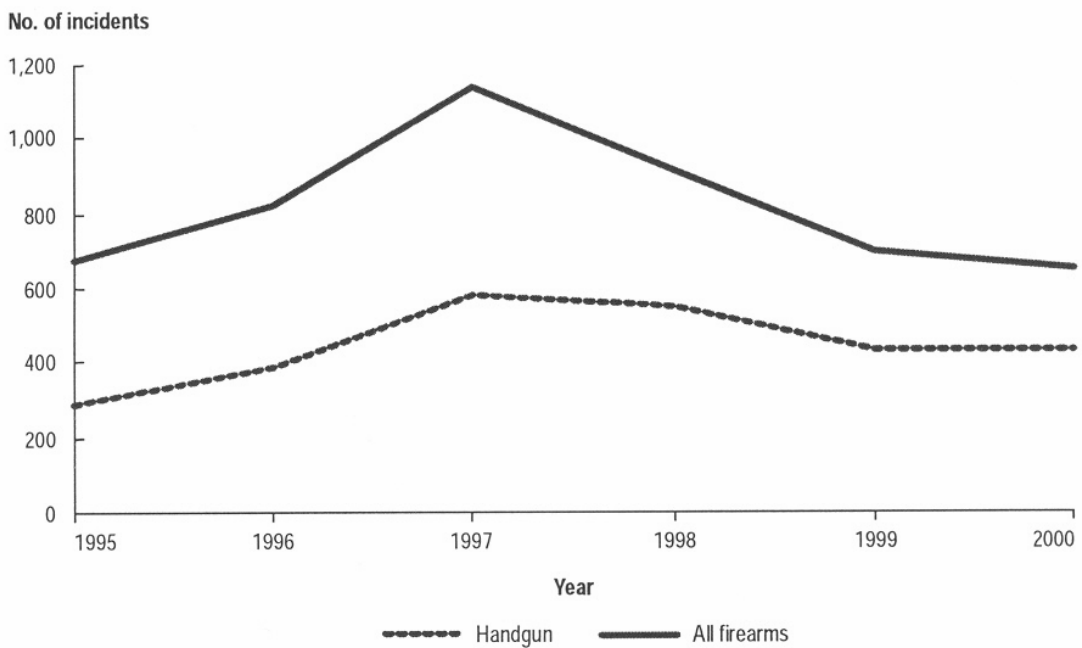


Figure 3: Recorded criminal incidents of shoot with intent, total, and with a handgun, NSW, 1995 to 2000

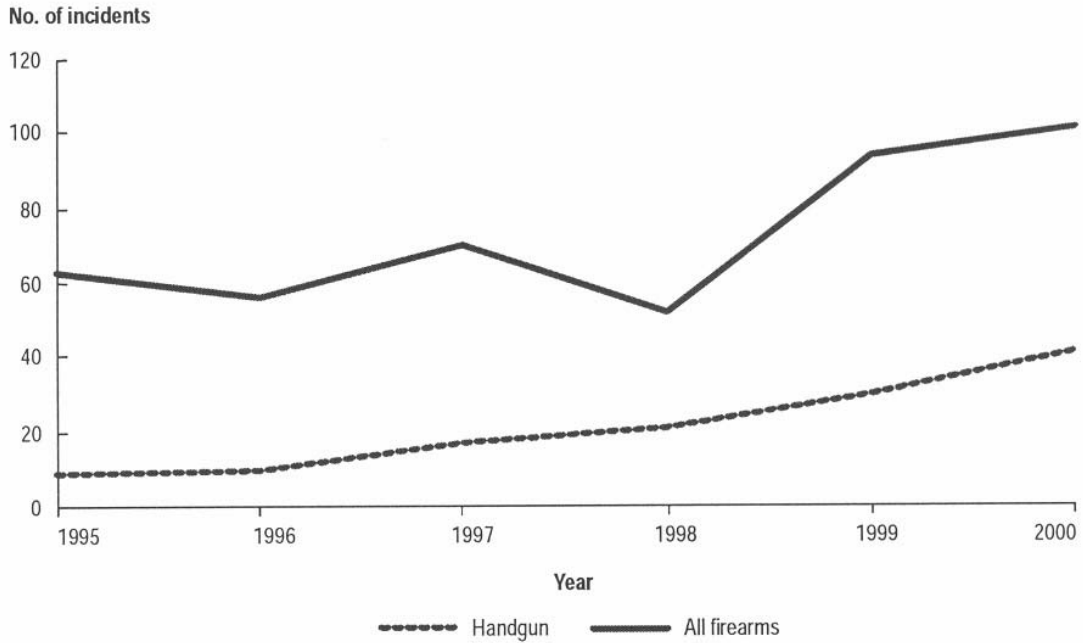
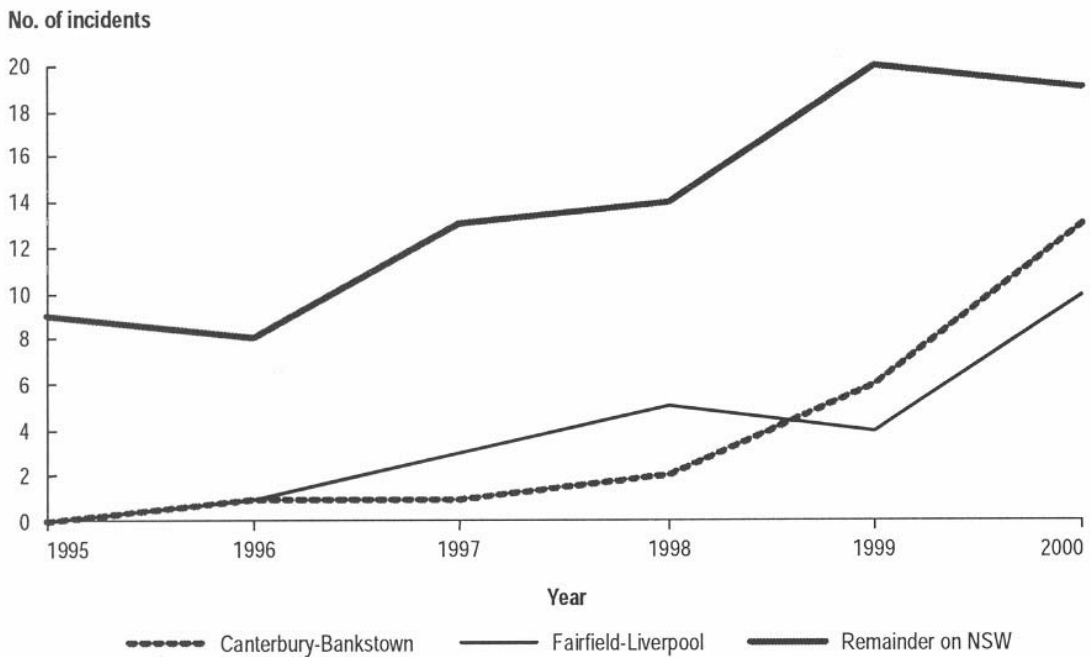


Figure 4: Trends in shootings with handguns, Fairfield-Liverpool, Canterbury-Bankstown, Remainder of NSW, 1995 to 2000



APPENDIX B:

LEGISLATIVE PROVISIONS FOR THE GUN COURT IN RHODE ISLAND, USA

(Source: The Rhode Island Code)

RHODE ISLAND CODE (extract)

TITLE 8
Courts and Civil Procedure—Courts

CHAPTER 8-2
Superior Court

SECTION 8-2-15.1

§ 8-2-15.1 Gun court calendar. – (a) *Findings and declarations.* The General Assembly finds that:

(1) There has been significant growth in the use of firearms in the commission of violent crimes.

(2) Many of the shootings are drug or gang related and endanger law abiding citizens.

(3) Many of the gun offenses are committed while individuals are free on bail for other offenses.

(4) The growing number of gun related offenses constitutes a burden upon the state of Rhode Island and threatens the domestic tranquility of the state and its people, especially residents of the urban areas where these crimes are most prevalent.

(5) In order to deter the use of firearms in the commission of violent crime, and to protect the law abiding public, there must be swift disposition of gun related offenses in our courts, and there must be the certain prospect of prison terms for those who are convicted of such crimes.

(b) *Declaration of policy.* It is hereby declared to be the policy of the state of Rhode Island to provide maximum safety and security to its people from unlawful gun related violence and intrusion upon their persons and property by expediting the processing and disposition of such cases and, unless otherwise provided, imposing prison terms that must be served.

(c) *Establishment.* To accomplish this purpose in an effort to minimize delay in the processing of criminal cases in the superior court for the counties of Providence and Bristol relating to the illegal possession and use of guns and other dangerous weapons, there shall be established a separate calendar within the jurisdiction of the superior court for the counties of Providence and Bristol for hearing trial and disposition of actions brought pursuant to §§ 11-47-3, 11-47-5, 11-47-5.1, 11-47-8, 11-47-24, 12-13-1.2, and 12-19-21.

(d) *Gun court calendar.* (1) The presiding justice of the superior court shall create a gun court calendar in the superior court for the counties of Providence and Bristol and shall assign personnel to the extent warranted to exclusively hear and decide all criminal actions involving offenses committed in Providence and Bristol counties and brought pursuant to violations of the provisions of §§ 11-47-5, 11-47-5.1, 11-47-8, and 11-47-24 set forth in subsection (c), and it shall be referred to as the "gun court calendar" of the superior court for the counties of Providence and Bristol.

(2) The "gun court calendar" of the superior court for the counties of Providence and Bristol shall also have concurrent jurisdiction with any other calendar of the superior court for the counties of Providence and Bristol to hear and decide all criminal actions involving offenses brought pursuant to violations of the provisions of §§ 11-47-3, 12-13-1.2, and 12-19-21, so long as the criminal action involves the possession, threatened use, or use of a firearm.

(e) Time for trial. All trials in the superior court for the counties of Providence and Bristol involving offenses brought pursuant to the sections as set forth in subsection (c) shall be scheduled for trial on the "gun court calendar" in the superior court for the counties of Providence and Bristol within sixty (60) days of the completion of discovery. No continuances or postponements shall be granted except for good cause shown. Such continuances as are necessary shall be granted for the shortest practicable time.

(f) Use of section. Under no circumstances shall the defendant(s) be permitted to use this section as a basis for a dismissal of an action, as this section is enacted for the benefit and convenience of the superior court for the counties of Providence and Bristol in the assignment of its actions for trial.