



Gun violence: an update

by Lenny Roth

1. Introduction

Over the past year, there have been a large number of shootings, including drive-by shootings, in South-Western and Western Sydney. This has given rise to great concern in the community. NSW Police have set up a special taskforce to tackle gun violence. In addition, on 14 February 2012, the NSW Government announced a number of legislative reforms. These reforms will be contained in three bills:

- *Crimes Amendment (Consorting and Organised Crime) Bill 2012* (introduced on 14 February);
- *Crimes (Criminal Organisations Control) Bill 2012* (introduced on 15 February);
- *Firearms Amendment (Ammunition Control) Bill 2012* (introduced on 15 February).

The NSW Opposition, the NSW Greens, and the Shooters and Fishers Party, have also proposed reforms.

This e-brief updates (in part) a 2004 [briefing paper](#) on firearms restrictions.¹ After a brief history of firearm laws, the e-brief outlines trends in shooting incidents since 1995, and refers to data on the prosecution of firearm offences. Next, the paper examines the sources of firearms used in crime,

including theft. Finally, it refers to recent law enforcement action and proposals for law reform. This e-brief focuses on shooting incidents and does not cover armed robbery.

2. Brief history of firearm laws

As outlined in a 2008 [paper](#) by the Australian Institute of Criminology:

The former Australasian Police Minister's Council instituted significant changes to firearm laws across Australia following the Port Arthur shootings in 1996. The resulting National Firearms Agreement constituted a national plan to regulate firearms, including restricting possession of military-style automatic and semi-automatic firearms and stringent limitations on firearms ownership. More recent amendments to Australian, state and territory legislation as part of the National Firearm Trafficking Policy Agreement (2002) and the National Agreement on Handguns (2002) have introduced new firearm offences and an increase in maximum penalties for such crimes....²

In NSW, the latest major reforms of gun laws were introduced in 2002 and 2003. As noted in the 2004 briefing paper, these reforms created a range of new offences including: possession by an unlicensed person of three or more unregistered firearms (designed

to target trafficking); and shooting into a dwelling house or building with reckless disregard for the safety of any person.³ At the same time, the regulation of the security industry was tightened to reduce the risk of criminal activity and the incidence of gun theft.

3. Trends in firearm violence

3.1 Trends from 1995 to 2005:

Following a number of shooting incidents in NSW in the first half of 2006, the NSW Bureau of Crime Statistics and Research (BOCSAR) published a [paper](#) on trends in the use of firearms in violent crime in the period from 1995 to 2005.⁴

The paper was based on recorded incidents in the NSW Police's COPS database, and it examined two types of shooting offences: (i) murder with a firearm; and (ii) shoot with intent (which had two sub-categories: 'shoot with intent to murder' and 'shoot with intent other than to murder'). In relation to the offence of *murder with a firearm*, BOCSAR commented:

...the number of murders with a firearm has generally decreased over the 11-year period examined. In 1995, NSW Police recorded 29 murders with a firearm. This figure fell sharply in 1998 to just 13, before rising gradually to 23 in 2002. By 2004 and 2005, the number of recorded victims killed with a firearm was at levels similar to those recorded in 1999 and 2000.⁵

In relation to *shoot with intent* incidents, BOCSAR explained that:

While there was no statistically significant upward or downward trend in shooting incidents over the 11-year period examined, the trend in these offences was anything but uniform. During the first six years of the study, the number of 'shoot with intent'

incidents increased by 83 per cent, rising from 63 incidents in 1995 to 115 incidents in 2001. After a peak in 2001, shooting incidents fell by over 40 per cent, to around 65 incidents per year in 2004 and 2005.⁶

BOCSAR found that, across all of the years examined, the rate of shoot with intent incidents was much higher in Sydney than elsewhere in the State. In 2005, the rate in Sydney (1.2 incidents per 100,000 people) was twice the rate recorded in other NSW areas (0.6 incidents per 100,000 people).⁷ BOCSAR also reported that the rate of shoot with intent incidents was particularly high in four Sydney statistical divisions: Inner-Sydney; Canterbury-Bankstown; Fairfield-Liverpool; and Central Western. In 2005, Fairfield-Liverpool had the highest rate of any Sydney area, at almost 5 incidents per 100,000 people.

3.2 Trends from 2000 to 2011:

In 2010, BOCSAR published [data](#) on shooting offences in NSW and, separately, in the Sydney Statistical Division for the period from October 2000 to September 2010.⁸ The data related to four types of shooting offences recorded in NSW Police's COPS database. These were:

- (i) shoot with intent to murder
- (ii) shoot with intent other than to murder;
- (iii) discharge firearm into premises;
- (iv) unlawfully discharge firearm.

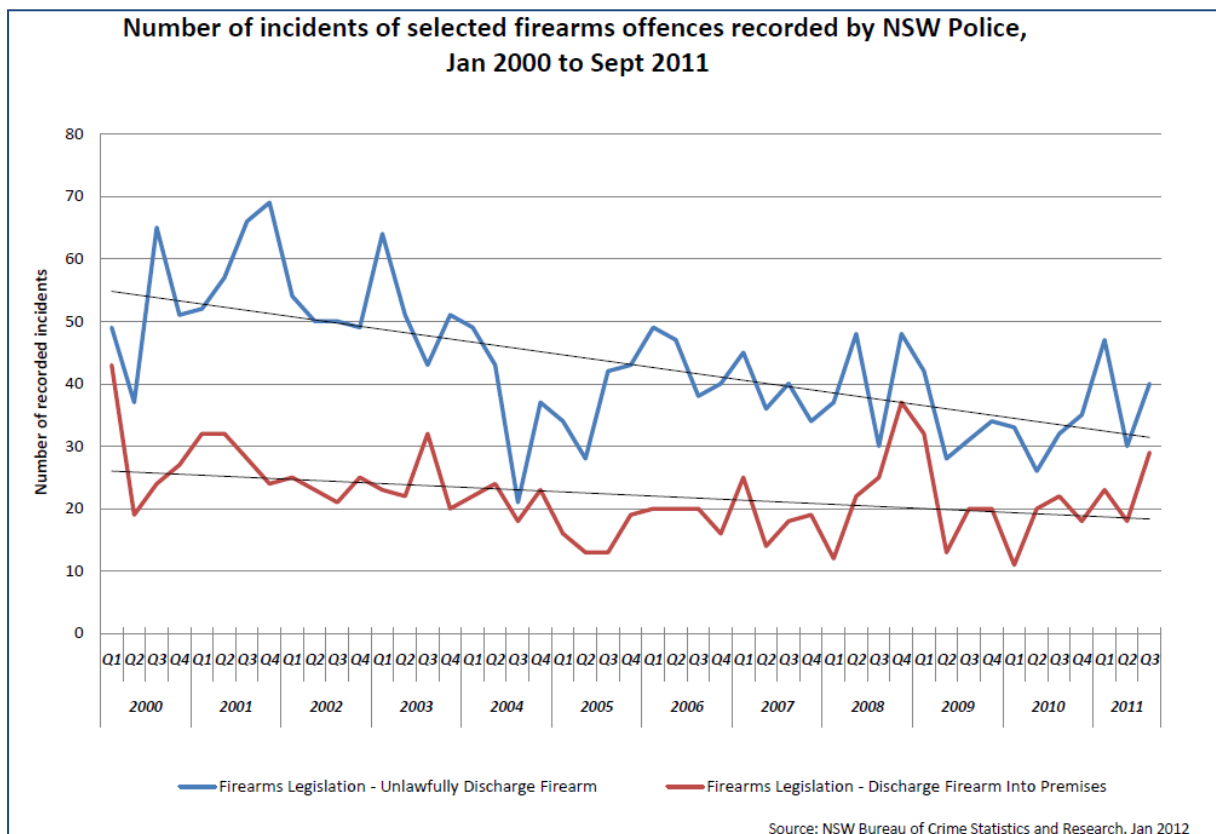
The data is shown in Table 1 below. There was a significant downward trend over the 10-year period in three of the categories of shooting offences in both NSW and Sydney (a reliable trend test could not be conducted for 'shoot with intent to murder').⁹

Table 1: Trends in shooting offences (NSW & Sydney): Sept 2000 to Sept 2010

	Shoot with intent to murder		Shoot with intent other than to murder		Discharge firearm into premises		Unlawfully discharge firearm	
	NSW*	Sydney	NSW*	Sydney	NSW*	Sydney	NSW*	Sydney
2000/01	56	48	60	44	119	98	227	128
2001/02	42	31	48	38	93	72	223	110
2002/03	32	29	68	57	102	81	207	95
2003/04	27	20	47	37	84	64	165	79
2004/05	16	14	44	27	66	43	141	67
2005/06	32	20	41	31	79	70	177	95
2006/07	18	11	35	29	73	54	161	80
2007/08	21	16	44	35	78	61	149	60
2008/09	20	17	41	33	102	80	149	79
2009/10	16	14	39	28	73	62	124	43
Significant trend	N/A	N/A	↓	↓	↓	↓	↓	↓

*Note that NSW includes Sydney.

Figure 1: Trends in two shooting offences (NSW): Jan 2000 to Sept 2011



On the [release](#) of NSW Recorded Crime Statistics for the June 2011 quarter, the Director of BOCSAR, Don Weatherburn, provided the following update on two of the four shooting offences covered in the 2010 data:

Despite recent shooting incidents, the two weapons offences of 'unlawfully discharge firearm' and 'discharge firearm into premises' were stable over the 24 months to June 2011 for NSW.

More than 55 per cent of 'discharge firearm into premises' incidents in the year to June 2011 were recorded in the three Sydney SSDs of Central Western Sydney, Canterbury-Bankstown and Fairfield-Liverpool.

Over the year to June 2011, NSW recorded an average of 6.75 incidents per month for 'discharge firearm into premises' which was very similar to the 6.9 incidents per month reported in the previous quarter.¹⁰

In February 2012, BOCSAR published updated [data](#) on these offences. In NSW, in the year from October 2010 to September 2011, there were 88 reported incidents of 'discharge firearm into premises' and 152 reported incidents of 'unlawfully discharge firearm'. In both cases, there was an increase on the number of incidents compared to the previous year. BOCSAR also published a graph of the long-term trend up to September 2011 (see Figure 1, previous page).

The data published by BOCSAR in 2010 did not show the number of reported incidents of murder involving a firearm in NSW. In 2011, the Police Minister, Mike Gallacher, provided the figures in the Table below in [response](#) to a question on notice. Note that there are differences between these figures and the data reported by BOCSAR in 2006 (see Section 3.1 above).

Year	Number of murders in NSW involving a firearm
2001	28
2002	32
2003	26
2004	17
2005	22
2006	20
2007	11
2008	11
2009	20
2010	17

3.3 Trends in use of handguns: The 2006 BOCSAR study also examined the use of handguns in shooting and armed robbery incidents. The study found that handguns were used in almost one third of recorded homicides involving a firearm in NSW in 2005 (compared to around 30 percent in 2000, and around 25 percent in 1995). Similarly, handguns were used in almost one third of 'shoot with intent' incidents in NSW in 2005 (compared to around 40 percent in 2000, and around 16 percent in 1995).¹¹

A 2008 [study](#) by Samantha Bricknell (a researcher at the Australian Institute of Criminology) examined the criminal use of handguns in Australia in the period from 1989-90 to 2005-06.¹² Some of the key findings were:

- During the early to mid 1990s, handguns accounted for less than 20 percent of all firearm homicides, but over the following 10 years this percentage increased to around 50 percent;
- Arguments over money or drugs was the primary alleged motive behind handgun homicides, and accounted for almost three in 10 homicides committed with a handgun (domestic altercations also contributed to a sizeable proportion of these homicides).

Bricknell commented on the use of handguns in other countries:

In the United Kingdom, and particularly the United States, there is a known association between handgun ownership (and use), and involvement in the illegal drugs market and/or gangs. Handguns are used as badges of respect and status, and also as a means of protection, and the inherent violence that permeates these two worlds promotes handgun use during episodes of conflict, sometimes with lethal consequences.¹³

Bricknell then stated:

While the dynamics of criminal associations operating in Australia do not reflect those in the United States or United Kingdom, elements of these – such as the use of firearms (particularly handguns) as protection – are likely to have been adopted. It is feasible then that the pattern of handgun homicide described in this paper is in part a consequence of disputes and other provocation occurring between players involved in particular criminal activities, such as motorcycle gangs and people involved in the illegal drugs trade.¹⁴

4. Prosecution of firearm offences

There is limited published data on the prosecution of offences involving firearms in NSW. In 2008, the Australian Institute of Criminology published a [paper](#) on the prosecution of firearms offences in a number of Australian jurisdictions (including NSW) in the period from 2002 and 2004. For the purposes of the study, firearms offences were defined as an offence under the relevant firearms legislation of each State; or an offence which, by definition, involves use of a firearm. The paper explained:

For example, offences relating to possession, use, licensing, and storage of firearms are dealt with under the relevant firearms legislation of each jurisdiction. Other offences under the relevant crimes legislation in each jurisdiction necessarily involve use of a firearm, for example, shooting with intent or possession of a loaded firearm in a public place. However, further offences under the crimes legislation, such as armed robbery, may also commonly involve use of a firearm but, for the purposes of the statistical part of this report, are not considered a firearm offence.¹⁵

The NSW dataset was supplied by BOCSAR and covered all firearms offences heard in upper and lower courts from January 2002 to December 2004. It contained data for 7,396 charges relating to 3,987 defendants. The majority of the charges (55%, n=4,391) related to unauthorised possession of firearms or ammunition. Just over one quarter of charges (27%) related to the failure to comply with safekeeping and safe storage requirements, while firearm discharge offences accounted for around 4 percent of charges (n=317).

Sentences of imprisonment were imposed in relation to 13 percent (867) of all proven firearm offences (n=6,755). The report commented:

Most imprisonment sentences were imposed for possession offences (56%, n=483), followed by discharge offences (13%, n=117), safekeeping offences (10%, n=88), alteration offences (9%, n=80) and sales offences (7%, n=65). Five percent of all imprisonment sentences imposed were for one month or less in duration (n=46), [and these] were mainly for possession of ammunition (28%, n=13), possession of a general firearm (13%, n=6) or safekeeping of a general firearm (13%, n=6).

The most-severe imprisonment sentences (more than 60 months) were imposed for discharge and sales offences, in particular shooting at a person with intent to cause grievous bodily harm (n=4), discharging a firearm with intent to resist/prevent apprehension or detention (n=2) and selling more than three firearms within 30 days (n=1)...While caution must be exercised when interpreting means, discharge offences and sale offences appeared to have the longest mean sentence length (21 months and 20 months, respectively).¹⁶

5. Sources of firearms used in crime

5.1 Legal or illegal firearms? It is not known what proportion of firearms used in criminal activity has been obtained legally and what proportion has been obtained from illegal sources. It seems reasonable to assume that most firearms used in crimes have been obtained illegally but the evidence is limited. In the 2008 [paper](#) referred to above, Samantha Bricknell commented on the status of firearms used in homicides:

The majority of firearms used to commit homicide in Australia since 1989-90 were held unlawfully at the time. Of the 150 offenders known to have used a handgun to commit homicide, 12 percent were licensed firearm owners and two percent had used a registered firearm. Considering all firearms, 15 percent of offenders held a firearms licence and 11 percent of firearms used were registered.¹⁷

5.2 Sources of illegal firearms:

There are no reliable estimates of the number of illegally obtained firearms in circulation in Australia. In addition, there are a number of potential sources of illegally obtained firearms and it is not clear what constitutes the primary source. In her 2008 paper, Samantha Bricknell commented:

...Firearms diverted into the criminal community are likely to come from both the legal and illegal markets, but it is difficult to quantify these proportions.

Illegally sourced firearms come from a combination of illegal importation of complete firearms or their parts, illegal domestic manufacture and the reactivation of firearms. The main supply route of firearms from the legal to illegal sphere is through diversion. The black market in firearms does not appear to be dominated by organised crime, but rather by a looser system of criminal gangs who acquire firearms when and where they are needed, and by people with otherwise legitimate access to firearms who co-ordinate small-scale transfer of firearms out of the legal pool.

Illegal firearms sourced via diversion are supplemented by firearms stolen from private dealers and owners, the security industry, police, and the military...¹⁸

In December 2008, the Australian Crime Commission concluded an intelligence operation into illicit firearm markets, and [reported](#) that:

Firearms are diverted to the illicit market through theft including staged robberies, rogue firearm dealers and the reactivation of firearms that have been listed as deactivated. The more significant avenues of diversion were as a result of theft and 'leakage' from firearms dealers into the black market.

Those firearms dealers who do not comply with current legislation and regulation also have the potential to facilitate the leakage of firearms from the legitimate market to the illegitimate market.

The Australian Institute of Criminology's *Firearm Theft in Australia 2006-07* publication estimates around 1500 firearms are

stolen each year with correspondingly low recovery rates.

The risks of movement of firearms from the legitimate to the illegitimate market is compounded when firearms are stockpiled, making these stockpiles greater targets for theft.

The ACC did not find extensive evidence of the illegal importation of firearms.¹⁹

5.3 Firearm theft: The latest statistics on firearms theft are contained in the Australian Institute of Criminology's annual monitoring report, [Firearm Theft in Australia 2008-09](#).²⁰ At the outset, it is important to note the limitations of this data:

The data presented in this report represents only those incidents of firearm theft reported to police. Not every victim of crime reports the incident to police and hence, not every incident of firearm theft that occurred within the 2008–09 period is necessarily captured in the dataset.²¹

The report explained further that:

...Those owners who illegally own firearms, either because they are unlicensed, their firearms were not registered at the time of the theft or the firearm is prohibited under Australian law, are least likely to report a theft because of the risk of being 'discovered' and consequently prosecuted for firearms offences.

Owners who were knowingly negligent regarding the securing of their firearms may also be less inclined to report a theft, again because of risk of sanction. Finally, owners might not feel compelled to report the theft if their firearm was old, inoperable or of negligible value.²²

The report found that nationally (excluding Western Australia, which

did not supply data), a total of 1,570 firearms from 620 separate theft incidents were reported stolen in 2008/09. NSW had the largest number of firearms reported stolen (592 firearms from 220 incidents).

The following table shows trends in firearm theft in all jurisdictions from 1994-2000 to 2008/09.²³ Nationally, the number of firearms reported stolen decreased substantially in the first half of the last decade: from 4,195 in 1994-2000, to 1,470 in 2004/05. However, between 2004/05 and 2008/09, both nationally and in NSW, there was an upward trend in the number of firearms reported stolen. The report commented on this trend:

Without access to data regarding changes in the number of firearms registered in Australia it is not possible to discern whether this increase in stolen firearms is influenced by a general increase in legally-owned firearms or rather, that it is a genuine indication that theft numbers are on the rise. The pattern observed across the states and territories is not uniform and in most jurisdictions the number of reported stolen firearms has tended to fluctuate rather than present a clear upward or downward trend.²⁴

Table 2 Trend in stolen firearms 1994–2000 to 2007–08 (number stolen per year)

	1994–2000 ^a	2004–05	2005–06	2006–07	2007–08	2008–09
NSW	1,048	371	401	432	410	592
Vic	538	302	211	276	332	302
Qld	750	329	302	320	352	319
WA	602	207	191	232	297	n/a
SA	823	150	198	204	193	211
Tas	306	83	114	52	107	99
ACT	36	8	9	n/a	9	22
NT	92	20	19	10	12	25
Australia	4,195	1,470	1,445	1,526 ^b	1,712	–
Australia (ex WA)	3,593	1,263	1,254	1,294	1,415	1,570

a: The figures in this column represent the average number of firearm stolen during this period

b: Excludes Australian Capital Territory. Because the number of firearms reported stolen in the Australian Capital Territory each year is small, the exclusion of ACT data does not overly underestimate the Australian total

Some of the other main findings from the 2008/09 report were:

- *Theft of multiple firearms:* More than half (55 percent) of all reported incidents of firearm theft involved the theft of multiple firearms. The number of firearms stolen in multiple firearm thefts ranged from two to 19; the most common theft involved two.
- *Types of stolen firearms:* Rifles accounted for the majority (60%) of all reported stolen firearms, with bolt-action rifles the most often recorded as stolen. One-quarter (24%) of stolen firearms were shotguns, mostly single barrel or double barrel. Handguns constituted six percent of firearms that were reported stolen; just over half (53%) of these were revolvers and 46 percent were semiautomatic pistols.
- *Status of stolen firearms and owners:* 91 percent of firearms reported stolen were registered. In addition, 88 percent of firearm owners who reported a theft held a valid licence for the firearms that they reported stolen.
- *Location of theft:* Private residential premises were the primary target for firearm theft, as was the case in the previous four years. More than 80 percent of the total firearms reported stolen were taken from this location, the majority of which had been stored in the house. A large number of thefts were aided by the premises or vehicle not being secured.
- *Firearm storage compliance:* Firearms stolen in 63 percent of incidents had been stored in a firearm safe or otherwise secure receptacle. Firearms were described as being unsecured or left in the open in 10 percent of theft incidents in 2008–09. Between 2005–06 and 2008/09, 18 percent of firearms stolen were not stored appropriately.
- *Breaches of firearm laws:* Since 2004–05, around 20 to 25 percent of firearm owners who reported the theft of their firearms were

found, or suspected, to be in breach of firearm laws. Of those firearm owners who were found in breach, 62 percent were subsequently charged and/or disciplined (75 percent in NSW).

- *Recovery of stolen firearms:* Firearms were recovered by police from 14 percent of reported firearm theft incidents. Recovered firearms were returned to their owners in 45 percent of cases.
- *Use of stolen firearms in crime:* Firearms stolen in three percent of theft incidents in 2008/09 were identified as having been subsequently used in the commission of an offence, or found in the possession of a person charged with a serious offence. In one case, a firearm was found in possession of a member of an outlawed motorcycle gang. Only one theft resulted in the use of a firearm to commit a violent crime.

The report concluded (in part):

Although anywhere between 1,500 and 1,700 firearms were reported stolen each year of the monitoring period, there is no suggestion that the majority of firearm owners were not complying with laws around the safekeeping of firearms. That said, clearly some owners were not compliant and additional initiatives may now need to be considered to further reduce the incidence of firearm theft. The consistency in the findings...over the four year period, particularly with respect to theft locations and their associated vulnerabilities, provides a stable template from which these initiatives may be developed.²⁵

The report identified the following options for consideration:

- Changes to legislation regarding minimum storage requirements;
- Promoting additional auditing of safekeeping arrangements;
- Enhancing educative programs for firearm owners; and
- Additional investment in crime prevention strategies.

6. Recent law enforcement action

6.1 NSW: On 12 January 2012, NSW Police [launched](#) Operation Spartan to tackle gun violence. It stated:

The NSW Police Force will step up its fight against gun related violence with significant additional resources being allocated across all three Sydney metropolitan regions from today.

Operation Spartan will utilise not only extra resources from field operations, but will work closely with State Crime Command Squads currently investigating criminal gangs across Sydney.

Acting Commissioner Nick Kaldas says "Operation Spartan" will begin its work immediately using the Public Order & Riot Squad, the Traffic & Highway Patrol Command, Region Enforcement Squads, Dog Squad, Pol Air, additional local area command resources as well as State Crime Command and other resources.²⁶

In response to difficulties encountered by police in getting cooperation from witnesses in relation to drive by-shootings, on 16 January 2012, the Minister for Police, Mike Gallacher, announced that the NSW Crime Commission would assist NSW Police in their investigations. The Minister [reportedly](#) stated that:

The NSW Crime Commission...has royal commission powers to compel witnesses to not only attend the commission, but to answer questions...The NSW Crime Commission also has with it a suite of technological devices that give the investigation by police a significant lift in terms of resourcing.²⁷

On 13 February, the Premier provided an update on Operation Spartan:

Since its launch in early January, Operation Spartan has been responsible for 68 arrests, resulting in 138 charges and the seizure of 16 firearms. Eight persons have been charged specifically in relation to the drive-by shootings including 5 for 'discharge of firearm' offences.²⁸

6.2 Commonwealth: On 12 February 2012, the Federal Minister for Home Affairs and Justice, Jason Clare, [announced](#) that the Australian Crime Commission would conduct a National Intelligence Assessment of the illegal firearm market and its links to gang activity in Australia.²⁹ This would include tracing the firearms linked to the most recent shootings in Western Sydney and Adelaide. A preliminary report will be provided to the Standing Council on Law and Justice in April, and a final report will be presented to State and Territory Police Ministers at their next meeting in July.

7. Proposed law reforms in NSW

7.1 NSW Government reforms: On 13 February 2012, the NSW Premier, Barry O'Farrell, [announced](#) a package of reforms to "combat organised crime in further support of police in their war on drive-by shootings".³⁰ As noted in the introduction to this e-brief, the proposed reforms will be introduced into Parliament in three separate bills.

On 14 February 2012, the Attorney-General, Greg Smith, introduced into Parliament the [Crimes Amendment \(Consorting and Organised Crime\) Bill 2012](#). In the Agreement in Principle [speech](#), Mr Smith explained:

The Government is determined to ensure that the NSW Police Force has adequate tools to deal with organised crime, and this bill represents part of a suite of reforms aimed at achieving that. The bill introduces a new aggravated form of drive-by shooting, introduces new offences relating to criminal groups, and modernises the offence of consorting, as well as extending and clarifying its application.³¹

Aggravated drive-by shooting: The bill proposes a new offence of firing at a dwelling house in the course of an organised criminal activity, with a maximum penalty of 16 years imprisonment. The existing offence of firing at a dwelling house carries a maximum penalty of 14 years imprisonment (*Crimes Act 1900* (NSW), section 93GA).

Offences relating to criminal groups: The bill will change the existing offence of participating in a criminal group (*Crimes Act 1900*, section 93T) so that it is no longer necessary to prove that the defendant knowingly participated in the criminal group and knowingly or recklessly contributed to the occurrence of a criminal activity. Under the bill, it will be sufficient if the defendant knew *or ought reasonably to have known* about these matters. The bill will also create new offences with higher penalties (two of which will have higher penalties than the existing offence in section 93T):

- Directing the activities of a criminal group (maximum penalty: 10 years);

- Directing the activities of a criminal group whose activities are organised and on-going (maximum penalty: 15 years)
- Receiving a material benefit derived from criminal activities of a criminal group (maximum penalty: 5 years)

Offence of consorting: The bill proposes changes to the existing offence of habitually consorting with convicted criminals (*Crimes Act 1900*, section 546A) including:

- defining what is meant by "habitually consort" with convicted offenders;
- providing that the offence of consorting is not committed unless the person has been given a warning by police about consorting with an offender; and
- increasing the maximum penalty to 3 years and/or a fine of \$16,500 (currently it is 6 months and/or a fine of \$440).

On 14 February 2012, the NSW Attorney-General, Greg Smith, also [announced](#) that the NSW Government would be introducing into Parliament a new version of the 2009 laws to outlaw motorcycle gangs, which the High Court struck down as unconstitutional in June 2011.³² Mr Smith explained:

...judges will now be required to give reasons for declaring a criminal organisation, which will address a key issue in the High Court decision...³³

The proposed new laws are contained in the [Crimes \(Criminal Organisations Control\) Bill 2012](#). This Bill was introduced into the Legislative Assembly on 15 February.

The Government is also proposing an amendment to the *Firearms Act 1996* (NSW) to ensure that licensed firearm owners can only purchase ammunition for firearms they own. The Minister for Police, Mike Gallacher explained:

In addition to having to show a firearms licence or appropriate permit when purchasing ammunition, purchasers will also now have to demonstrate that they are the registered owner of a firearm that takes the ammunition they are purchasing.³⁴

It is also proposed that firearm dealers will be required to keep a record of all sales of ammunition. The proposed changes are set out in the [Firearms Amendment \(Ammunition Control\) Bill 2012](#). This Bill was introduced into the Legislative Council on 15 February.

7.2 Criticism of consorting offence:

An [article](#) in the *Sydney Morning Herald* on 14 February 2012 noted criticisms of consorting offences by Alex Steel, an Associate Professor in the Law School at the University of NSW. Commenting on the Premier's recent announcement (prior to the introduction of the Bill), he said:

It gives too much discretion to police and undermines freedom of expression and freedom of association. If the impetus driving this is that police can't compel witnesses to talk to them, that is fundamentally a failure of police intelligence. This will simply increase the pool of people who can be arrested. But there's no requirement that they would have anything to do with the shootings.

In a modern-day society there should not be an offence of speaking to anybody unless the nature of a conversation is a conspiracy...³⁵

7.3 NSW Opposition proposals: On 31 August 2011 the NSW Opposition Leader, John Robertson, issued a [media release](#), calling for:

...a new aggravated offence to be introduced – so that tougher penalties can be imposed by the courts in circumstances where drive by shootings put the lives of ordinary citizens at risk.³⁶

Mr Robertson stated:

There is currently no specific criminal offence in NSW dealing with drive-by shootings, so unless an offender kills or seriously injures a person, drive-by shooters are typically charged with the offence of 'Firing at Dwelling House or Building' under the Crimes Act.

This carries a maximum penalty of 14 years imprisonment; however, according to the Australian Defence Lawyers Alliance the most likely imprisonment period for this offence is 4 ½ years, and for first time offenders, the most likely penalty is a suspended sentence.

According to Mr Robertson:

...the Attorney General, should ask the NSW Sentencing Council to investigate increasing penalties for all drive-by shooting related offences and look at introducing a specific offence to deal with the problem.

The NSW Labor Party has also been calling for the NSW Government to replace the laws targeting outlaw motorcycle gangs, which the High Court declared invalid in June 2011.³⁷

7.4 The NSW Greens' proposals: On 23 January 2012, David Shoebridge MLC issued a [media release](#) stating:

With gun theft, gun ownership and gun crime on the rise in NSW, it is

time to take action to reduce the number of guns in circulation in NSW. The Greens NSW will introduce legislation in 2012 to limit the number of firearms owned by registered firearms holders to a maximum of three guns absent exceptional circumstances.³⁸

Mr Shoebridge argued that:

It is simply wrong that individuals can accumulate an unlimited number of deadly weapons, with next to no scrutiny of their need for these weapons.

Some registered gun owners clearly own an excessive number of firearms, and their private arsenals are targets for organised crime whether they are properly secured or not.

Less guns in society mean less opportunities for gun crime. Reducing the number of weapons held in private residences will work to limit the attractiveness of gun theft by organised crime.

In a December 2011 [media release](#), the NSW Greens also called for a ban on semi-automatic hand guns.³⁹ Mr Shoebridge referred to an increase in drive-by shootings and an increase in gun theft, and he said:

Semi-automatic hand-guns are easy to conceal and are a weapon of choice for criminals. They should be banned for private use.

While there are many law-abiding firearms owners in NSW, the fact remains that there is no sufficient reason for anyone to privately own these deadly weapons.

7.5 Shooters and Fishers Party comments and proposal: The Shooters and Fishers Party have criticised the Government's proposed changes to firearms laws. Speaking in

the Legislative Council on 14 February 2014, Robert Borsack MLC [argued](#) that similar restrictions in South Australia have not impacted on drive-by shootings. Mr Borsack added:

If police have intelligence that someone with a firearms licence is buying ammunition and passing it on to criminal elements doing the drive-by shootings, they should crack down on the wrongdoer. Laws are already in place making it an offence to possess ammunition without a proper licence, and this would apply to the criminals in these shootings.⁴⁰

Responding to claims by the NSW Greens that gun theft has been increasing, the Shooters and Fishers Party issued a [media release](#) stating that "firearm theft is decreasing in NSW as the ownership of firearms rises".⁴¹ Mr Borsack also said that, based on Firearm Registry figures, between 2001 and 2011, theft rates plunged from 0.137% of registered firearms to just 0.057%. He stated:

...this dramatic reduction in theft rates speaks volumes for the way in which responsible, law-abiding firearm owners have acted to secure their firearms and keep them out of criminal hands.

On 14 February 2012, Mr Borsack also gave notice of motion to introduce the [Crimes Amendment \(Possession or Discharge of Firearms in Commission of Offences\) Bill 2012](#). The details of the bill have not yet been outlined.

8. Conclusion

The recent shootings in certain areas of Western Sydney have again brought the issue of gun violence to the forefront of public and parliamentary debate. Controlling gun violence continues to pose a major challenge for law enforcement bodies. The

challenges are many: reducing the number of firearms (and ammunition) that are obtained illegally; disrupting organised crime; and ensuring that those responsible for gun violence are prosecuted. A number of new laws have been proposed to assist in achieving these objectives.

¹ R Johns, *Firearms Restrictions: Recent Developments*, Briefing Paper 03/2004

² M Davies and J Mouzos, *Court outcomes for firearms offences in Australia*, Technical and Background Paper 31, Australian Institute of Criminology, 2008, p7. For further background, see R Johns, n1. For an inter-State comparison of the penalties for unlawful possession of a firearm, see N Dixon, [Firearms Offences in Queensland and Other Jurisdictions](#), e-Research Brief 2010/30, Queensland Parliamentary Library, November 2010

³ R Johns, n1, p26-33.

⁴ S Williams, S Poynton, *Firearms and violent crime in New South Wales, 1995-2005*, *Crime and Justice Bulletin* No. 98, BOCSAR, August 2006

⁵ Williams and Poynton, n4, p2

⁶ Williams and Poynton, n4, p3

⁷ Williams and Poynton, n4, p4

⁸ BOCSAR, *Summary of NSW Recorded Crime Trends for Shooting Offences for Sydney Statistical Division (SD) and NSW*, 2010.

⁹ BOCSAR conducted a statistical test for a significant upward or downward trend in the monthly number of shooting incidents over the 10 year period. A downward arrow in the Table indicates that there was a significant downward trend. "N/A" indicates that the number of incidents was too low for a reliable trend test to be performed. The trends shown in the Table should read in the context of an increasing population in NSW and Sydney over the last 10 years.

¹⁰ Don Weatherburn, 'NSW Recorded Crime Statistics quarterly report June 2011', Media release, BOCSAR, 8 September 2011

¹¹ Williams and Poynton, n4, p3-4

¹² S Bricknell, *Criminal use of handguns in Australia*, *Trends and Issues in Crime and Criminal Justice* No. 361, Australian Institute of Criminology, September 2008.

¹³ S Bricknell, n12, p5

¹⁴ S Bricknell, n12, p5-6

¹⁵ Davies and Mouzos, n2, p2

- ¹⁶ Davies and Mouzos, n2, p15
¹⁷ S Bricknell, n12, p4
¹⁸ S Bricknell, n12, p5
¹⁹ Australian Crime Commission, What were the findings of the Illicit Firearm Markets Special Intelligence Operation?, *Frequently Asked Media Questions (Illicit Firearms)*, August 2009.
²⁰ S Bricknell, *Firearm theft in Australia 2008-09*, AIC Monitoring Report No. 16, Australian Institute of Criminology, 2011
²¹ S Bricknell, n20, p2
²² S Bricknell, n20, p2-3
²³ The table is taken from S Bricknell, n20, p4
²⁴ S Bricknell, n20, p32
²⁵ S Bricknell, n20, p34
²⁶ NSW Police, 'Police launch Operation Spartan to fight gun crime', *Media Release*, 12 January 2012.
²⁷ A Patty, 'Increased powers to combat shootings', *SMH*, 17 January 2012
²⁸ Hon Barry O'Farrell MP, 'New laws to tackle drive-by shootings', *Media Release*, 13 February 2012
²⁹ Jason Clare MP, 'Firearms used in drive-by shootings to be traced by the Australian Crime Commission', *Media Release*, 12 February 2012
³⁰ B O'Farrell, n28
³¹ G Smith, *Hansard (LA)*, 14 February 2012, p46
³² *Wainohu v New South Wales* (2011) 243 CLR 181
³³ G Smith, 'Bikie laws to be fixed', *Media Release*, 14 February 2012
³⁴ B O'Farrell MP, n28
³⁵ A Patty, 'O'Farrell's consorting law slammed as easy politics', *SMH*, 14 February 2012
³⁶ J Robertson, 'Tougher sentences needed to stop drive by shootings', *Media Release*, 31 August 2011
³⁷ See for example N Rees, 'Drive by shootings – O'Farrell sitting on his hands', [Media Release](#), 12 January 2012.
³⁸ D Shoebridge, 'Time to end private arsenals in NSW', *Media Release*, 23 January 2012
³⁹ D Shoebridge, 'Drive-bys and gun theft up: time to ban semi-automatic pistols', *Media release*, 6 December 2011
⁴⁰ R Borsak, *Hansard (LC)*, 14 February 2012, p52
⁴¹ R Borsak, 'Gun control lobby must face facts: firearm theft rate is falling', *Media Release*, 1 February 2012

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ISSN 1838-0204