

## **UNSWCCL Submission to NSW Attorney-General's Review to Consider the Merits of Establishing a Gun Court in NSW**

### **1. Guns and crime in NSW**

The series of fatal shootings in Sydney since August this year, had led to a perception in the community that handgun crime is on the increase and has reached epidemic proportions. Crime statistics, however, tell a different story.

According to the NSW Bureau of Crime Statistics and Research (BOCSAR) most crimes involving guns in NSW are robberies.<sup>1</sup> Over the last two years, the figures for armed robbery have remained relatively static.<sup>2</sup> Furthermore, assaults with handguns are down 36% over the last two years.<sup>3</sup> While shooting with intent was on the rise over the period from 1999 to 2001,<sup>4</sup> since that time such shootings have declined by 26%.<sup>5</sup>

After the last moral panic over gun-related crime, BOCSAR's published their 2001 report: "Firearms and Violent Crime in New South Wales". That report noted that 18 to 19 year old males are more likely to be involved in a firearm offence.<sup>6</sup> It also reported that the increase in shooting with intent was geographically limited to Sydney's south-west, centred on Bankstown and Liverpool.<sup>7</sup> That finding was confirmed in 2002.<sup>8</sup> The recent spate of shootings has also been concentrated in these regions.

The 2001 BOCSAR report found no direct link between firearm offences & drugs, but the authors did suggest that such a link was likely.<sup>9</sup> In the recent shootings in Sydney's south-west, there has also been speculation that they are drug related.<sup>10</sup>

It also appears that the shootings in Sydney since August 2003 are related to only three criminal groups.<sup>11</sup> Many of the shootings are in the nature of family feuds.<sup>12</sup> Given this background, UNSWCCL believes that it would be a gross over-reaction to entertain the establishment of a costly Gun Court to set straight such a highly specific and localised problem. This is a matter for police, not the courts.

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<sup>1</sup> Jacqueline Fitzgerald, Suzanne Briscoe & Don Weatherburn, "Firearms and Violent Crime in New South Wales" (2001) *Contemporary Issues in Crime and Justice* No 57 (NSW Bureau of Crime Statistics & Research), 3

<sup>2</sup> period from January 2001 to December 2002: Peter Doak, Jackie Fitzgerald & Mark Ramsay, "New South Wales Recorded Crime Statistics 2002" (2003) NSW Bureau of Crime Statistics & Research

<sup>3</sup> BOCSAR figures quoted in: New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 2003, 4072 (Bob Debus, Attorney General)

<sup>4</sup> BOCSAR, "Firearms and Violent Crime in New South Wales", n 1, 3

<sup>5</sup> BOCSAR figures quoted in: New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 2003, 4072 (Bob Debus, Attorney General)

<sup>6</sup> BOCSAR, "Firearms and Violent Crime in New South Wales", n 1, 5

<sup>7</sup> BOCSAR, "Firearms and Violent Crime in New South Wales", n 1, 4

<sup>8</sup> BOCSAR, "New South Wales Recorded Crime Statistics 2002", n 2, 4

<sup>9</sup> BOCSAR, "Firearms and Violent Crime in New South Wales", n 1, 4

<sup>10</sup> Neil Mercer & Les Kennedy, 'Shots that shook Sydney', *Sydney Morning Herald* (Sydney), 18 October 2003, 37.

<sup>11</sup> Neil Mercer, "160 officers, nine murders, five shootings and now police death threats", *Sunday Telegraph* (Sydney), 14 December 2003, 4

<sup>12</sup> Neil Mercer & Malcolm Brown, 'Feuding families blamed as two die in hail of bullets', 15 October 2003, *Sydney Morning Herald* (Sydney), 2.

## 2. NSW does not need a Gun Court

There are three main reasons given for establishing a Gun Court. The first reason is that it will reduce delays in the courts. By and large, this is no such problem in New South Wales,<sup>13</sup> and so this is hardly a valid reason to embark on establishing such a court.

Second, it is said that a Gun Court will reduce inconsistency with sentencing involving firearms.<sup>14</sup> But the actual problem is with shootings occurring in public, not with the sentencing of offenders. It is also unclear how consistency in sentencing will stop criminals from using guns.

Third, it is claimed that increasing the severity of sentences will deter criminals from using firearms. New South Wales already has the toughest firearm offences in the country,<sup>15</sup> and they were recently beefed up.<sup>16</sup> The deterrence value of such penalties is limited – something recently admitted by the NSW Premier.<sup>17</sup> Furthermore, it is not clear how increasing prison sentences for firearms offences requires the establishment of a Gun Court.

The experience of the United States is also often cited in support of a Gun Court. Given that only sixty firearm offences were committed by juveniles in NSW in 2002,<sup>18</sup> it could not be economically viable to duplicate the American juvenile Gun Courts. But ultimately, any analogy between the US and NSW is flawed owing to the fact that gun ownership and gun-related crime is far more prevalent in the US than it is in NSW.<sup>19</sup> The gun homicide rate in NSW is also much lower than the United States.<sup>20</sup>

It has also been suggested that a Gun Court would reproduce the great success of the NSW Drug Court. This is, at best, a misunderstanding of the functions of the two very different types of courts. The Drug Court attempts to *divert* people, who have what is essentially a medical problem, away from the criminal justice system. A Gun Court is designed to *punish* criminals who use or carry illegal firearms.

UNSWCCL does not believe that NSW needs a Gun Court.

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<sup>13</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 November 2003, 4828 (Bob Debus, Attorney General)

<sup>14</sup> John Brogden MP, NSW Opposition Leader, quoted in: Nick O'Malley, 'Drive-by shooters face 14 years jail', *Sydney Morning Herald* (Sydney), 29 October 2003 <<http://www.smh.com.au/articles/2003/10/28/1067233170074.html>>. For a similar argument, see also BOCSAR, "Firearms and Violent Crime in New South Wales", n 1, 6.

<sup>15</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 2003, 4072 (Bob Debus, Attorney General)

<sup>16</sup> *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003* (NSW): added new firearms offence to *Crimes Act* and the *Firearms Act* with heavy maximum penalties (for unauthorised possession, firing at a dwelling-place, stealing a firearm, etc).

<sup>17</sup> Nick O'Malley, 'Drive-by shooters face 14 years jail', *Sydney Morning Herald* (Sydney), 29 October 2003 <<http://www.smh.com.au/articles/2003/10/28/1067233170074.html>>

<sup>18</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 November 2003, 4828 (Bob Debus, Attorney General)

<sup>19</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 November 2003, 4828 (Bob Debus, Attorney General)

<sup>20</sup> BOCSAR, "Firearms and Violent Crime in New South Wales", n 1, 6.

### 3. sensationalist moral panic is irresponsible

The current situation in our community, where some Sydneysiders are convinced that their homes are in imminent danger of drive-by shootings, is largely due to the moral panic whipped up by irresponsible media reporting and the outrageous words of Opposition politicians.

Stories that Sydney is now being run by 1000 young men with guns are simply untrue.<sup>21</sup> Describing these gun-toting criminals as 'urban terrorists' is also unhelpful,<sup>22</sup> given that the object of their offences is not to terrorise the public but rather to eliminate rivals or exact revenge.

UNSWCCL submits that the calls for a Gun Court, which originated on the Opposition benches,<sup>23</sup> should be seen as a similar sensationalist attempt to grab media attention. In the spirit of the 'law and order auction', the Opposition appears to be obsessed by increasing the punitive regime in NSW. It is a shame that they do not put as much effort into addressing the underlying social problems in Sydney's south-west. Related calls for mandatory sentencing also demonstrate this Opposition obsession with punishment, rather than social solutions.<sup>24</sup>

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<sup>21</sup> attributed to Peter Debman, Shadow Minister for Police: Stavro Sofios, "I'm coming after you: Police Commissioner warns 'urban terrorists'", *Daily Telegraph* (Sydney), 18 October 2003, 4.

<sup>22</sup> attributed to Police Commissioner Ken Moroney: Stavro Sofios, "I'm coming after you: Police Commissioner warns 'urban terrorists'", *Daily Telegraph* (Sydney), 18 October 2003, 3-4.

<sup>23</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 2003, 4072 (John Brogden, Leader of Opposition); and, New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 2003, 4053 (Andrew Tink, Shadow Attorney-General).

<sup>24</sup> Opposition Leader John Brogden quoted in: Nick O'Malley, 'Drive-by shooters face 14 years jail', *Sydney Morning Herald* (Sydney), 29 October 2003  
<http://www.smh.com.au/articles/2003/10/28/1067233170074.html>. See also comments of Shadow Attorney-General: New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 October 2003, 4053 (Andrew Tink, Shadow Attorney-General).

## 4. conclusion

Ultimately, UNSWCCL believes that the recent shootings in Sydney are a *policing* problem and not a problem for the Courts. Creating an expensive Gun Court will not deter the shootings, make the public safer or improve the social circumstances of Sydneysiders living and working in the south-west. Neither will a Gun Court halt the social conditions that drive people to use guns and to commit gun-related crime.

It would be better to use the money earmarked for such a court to advance long-term solutions to the social problems in the area; to build the social capital of those communities and offer support, hope and employment to the youth of the area.

In 1999, the NSW Drug Summit recommended investment in social capital of communities.<sup>25</sup> UNSWCCL encourages the NSW Government to revisit and recommit to the recommendations of the Drug Summit, especially the recommendation to support and build communities – rather than wasting money on creating an unnecessary Gun Court.

The establishment of a Gun Court will not help restrict the access to, or demand among, young males in the south-west for firearms. Nor will it help to answer the question: how did people get hold of these guns in the first place? The existence of a Gun Court in NSW would not have stopped the recent theft of 31 Glock semi-automatic pistols in Sydney in August this year.<sup>26</sup>

UNSWCCL believes that there is currently no need to establish a Gun Court in NSW and that, rather, resources should be directed to the communities affected by the recent shootings to help address the root causes of crime in those areas.

Michael Walton  
University of NSW Council for Civil Liberties

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<sup>25</sup> Recommendation 1.6: NSW Drug Summit, *Communiqué* (21 May 1999)  
<http://www.druginfo.nsw.gov.au/druginfo/publications/communique.pdf>,

<sup>26</sup> Stavro Sofios, "I'm coming after you: Police Commissioner warns 'urban terrorists'", *Daily Telegraph* (Sydney), 18 October 2003, 4