Attachment 1

Comments on Department of Infrastructure, Transport, Regional Development and Local Government Office of Transport Security, *Assessment of Maritime Security Identification Card (MSIC) Eligibility Criteria* Report August 2009.

Dr Mark Nolan (BSc (hons), LLB, PhD)
Senior Lecturer
ANU College of Law
The Australian National University
Canberra ACT 0200
(02) 6125 8354
mark.nolan@anu.edu.au
http://law.anu.edu.au/scripts/StaffDetails.asp?StaffID=262

The opinions included here are my own personal views and not that of the ANU College of Law or of any other person or institution. This report has been authored solely by me.

Background to Comments

I received a copy of the August 2009 Report ('*The Report*') from the Maritime Union of Australia (the 'MUA') and was asked to report back on the merits of the recommendations contained in that report and the merits of the research upon which it is based. I was engaged by the MUA on a fee for services basis to prepare my comments that I understand will be used to guide some of the further discussions with the Department during a decision-making process relating to the reform of the MSIC scheme. In particular, I was asked to consider:

(i) if *The Report* should be the seminal body of work from which to base any rationale for change to the MSIC scheme, and,

(ii) if there needs to be a more appropriate study into the subject which could better analyse both the issues surrounding the MSIC scheme and any proposed changes to it.

In the short period of time that I have had available to produce my views, I believe that:

- *The Report* is an inadequate basis from which to consider evidence-based reforms to the MSIC scheme, and,

- that further systematic and comparative criminological study into the MSIC scheme is required.

I offer these views as an academic who teaches and researches in the fields of criminal law and procedure, criminal justice, legal psychology and social psychology. I have academic qualifications in law (LLB) and have been employed at the ANU College of Law, The Australian National University since 2002. I also have academic qualifications in social psychology (to honours (1994) and PhD level (2004)). I have been a co-investigator on an Australian Research Council project investigating domestic and international legal responses to counter-terrorism law. I led an empirical study under that project to measure social perceptions of Australia's response to the perceived terrorist threat. A list of my publications, as well as a list of the submissions I have made to various inquiries conducted by Australian governments relating to counter-terrorism law reform are listed at the following website: http://law.anu.edu.au/scripts/StaffDetails.asp?StaffID=262.

Central to my views on questions (i) and (ii) above are the following concerns I have with *The Report*:

(1) **Purpose of the MSIC**.

a. Is the purpose of the card to prevent terrorism or to regulate *any* criminal behaviour within maritime industry?

b. If the primary objective of the MSIC scheme is counter-terrorism, then *The Report* does not cite a range of relevant contemporary Australian sources.

(2) **Scope of the MSIC Eligibility Criteria**.

a. *The Report*'s listing of recommended maritime-security-relevant-offences (MSROs) sometimes appears to be under-inclusive.

b. This recommended MSRO listing sometimes appears to be over-inclusive.

(3) **Quality of the Criminological Research in *The Report***.

a. Many of the criminological comments from pp 35-41 are based on one work on criminal careers, a form of broken windows theory, by Blumstein, Cohen, Roth and Visher (1986), (not actually referenced in full in the reference section of *The Report*).

b. More relevant work is available on the causes of radicalisation and pathways to terrorism offending.

These points of concern give rise to *Recommendations 1-11* explained below and to suggestions of additional relevant research not included in *The Report*.

Summary of Recommendations

(1) Purpose of the MSIC.

Recommendation 1: **Clarify the purpose of the MSIC scheme before criminological arguments are used to support its expansion.**

***Recommendation 2*: Some existing and recommended MSRO listing may reflect exceptionalist views about how to respond to any threat of terrorism.**

***Recommendation 3*: Refer to completed Australian terrorism prosecutions to guide analysis.**

***Recommendation 4*: Clarify whether the risk assessment motivating *The Report*'s listing of MSROs is in fact the risk assessment test existing under maritime security legislation, and, refer to risk assessment tests required under other existing Australian counter-terrorism law for further context.**

***Recommendation 5*: Do not underestimate the human rights and natural justice concerns over the non-disclosure of intelligence relevant to MSIC eligibility decisions.**

(2) Scope of the MSIC Eligibility Criteria

***Recommendation 6*: Refer to other employment security screening schemes to consider if the existing MSIC scheme or *The Report's* recommended list of MSROs is over-broad in terms of employment-relevant fear of offending.**

***Recommendation 7*: Use the definition of a terrorist act in s 100.1 of the *Criminal Code Act 1995* (Cth) to assist in ensuring that the listed MSROs are neither under-inclusive nor over-inclusive.**

(3) Quality of the Criminological Research in the *The Report*

***Recommendation 8:* Critically question the utility of criminal careers theories of pathways to terrorist offending.**

***Recommendation 9:* Consider the discriminatory impact and human rights violations caused by the MSIC scheme if ethnic or other profiling based on individual, social or demographic characteristics is to be used.**

Recommendation 10: **Avoid unjustifiable causal analyses, especially those identifying unconscious behaviour as blameworthy.**

Recommendation 11: **Refer to contemporary legal, psychological and criminological research, especially research conducted in Australia or by Australian researchers.**

Comments

(1) Purpose of the MSIC

Preventing a Terrorist Attack or Any Type of Crime?

Many post-9/11 security-related national security initiatives, like the MSIC scheme, appear to have confused aims. When expansion of such regimes is mooted, articulating a clear purpose for the regime is critically important. I remain confused by *The Report*'s description of the purpose of the MSIC scheme, especially when the recommended list of MSROs is discussed. *The Report* claims that the Office of Transport Security (OTS) describes the policy objective of the MSIC scheme as being to "help mitigate the threats of terrorism *and of unlawful interference with maritime transport and offshore facilities* (p. 9). Does this mean the MSIC scheme is aimed at regulating the risk of all crime in the maritime industry, or aimed *solely* at preventing terrorism? If the purpose is to prevent terrorism, then the list of MSROs should have a clear link to planning or perpetrating terrorism from within the maritime industry. However, judging that link is not always easy to do in the abstract.

***Recommendation 1*: Clarify the purpose of the MSIC scheme before criminological arguments are used to support its expansion.**

Should the Terrorist Threat be Regulated with the Standard Criminal Law?

An ongoing concern about the proliferation of special counter-terrorism measures such as the MSIC, is that the existing utility and scope of the ordinary criminal law is often ignored. Ignoring that utility and scope often occurs amidst the rush to legislate many new "terrorism" law and procedures (Lynch, 2006). Often there is no time for adequate community and/or industry consultation. The view that new and exceptional criminal laws, procedures and security measures are justified following terrorist attacks has not always been supported in Australia. After the Hilton bombing in Australia in 1978, it was decided to counter terrorism with the ordinary criminal law (Hope, 1979; Nolan, 2005). Almost a decade later, no new offences or procedural law was discussed seriously following the attacks on the Turkish Consulate in Melbourne (resulting in prosecution under standard conspiracy to murder law: *R* v *Demirian* [1989] VR 97).

Following the Hilton bombing, Justice Hope recommended to the Australian Government in 1979 that no special terrorism offences should be added to the

standard criminal offences available at the time. Most of Hope's recommendations related to co-ordination between the police, the military (eg. use of call-out powers), and intelligence agencies rather than the suggestion that we need new terrorism offences.

Extracts from the Hope Report help to illustrate the choice between support for using the standard criminal law rather than the view that "exceptional" law and procedure is required to prevent the threat of terrorism in "exceptional" times. Having noted that some believe that terrorism is different to other examples of motivated violence because "every [terrorist] act is intended to have an intimidating global visibility", Hope maintained that:

> The existence of this distinction does not mean that the same means [i.e. the standard criminal justice process] should not be used to present, control or terminate violence, whatever the motive of the perpetrator.[1]

An orientation towards perceiving the risk to national security as a new threat from a different type of terrorism post-9/11 can be described as exceptionalism (Lynch, 2008b). This attitude has been described further by social psychologists as "siege mentality" (Bar-Tal and Antebi, 1992; Nolan, 2008) and has at least two consequences.

The first consequence is to duplicate substantive and procedural criminal law as well as policing resources. In the resulting systems, unintended consequences observed include co-ordination problems and weakening the prospects of successful prosecution (eg. as in *R v ul-Haque* [2007] NSWSC 1251: Nolan, 2009). The second consequence is to relabel existing criminal threats, deserving of regulation via the standard criminal law, as "national security threats". In turn, there is demand to create new regimes of prevention and control that are subject to critique from the perspective of international human rights law, administrative law, and constitutional law (eg. the challenge to the control order regime in *Thomas v Mowbray* [2007] HCA 33).

> ***Recommendation 2*: Some existing and recommended MSRO listing may reflect exceptionalist views about how to respond to any threat of terrorism.**

Need for Analysis of Recent Australian Terrorism Prosecutions

If one of the main aims of the MISC scheme is to enhance national security and to reduce the risk of terrorist attack, a systematic and thorough analysis of Australian terrorism prosecutions to date should be done and the implications of that analysis for transport and maritime industry systems should be considered.

Analysing Australian terrorism prosecutions gives insight into potential radicalisation of those who fall foul of discretionary, licensing-style decisions. A good example is the case of *R v Mallah* [2005] NSWSC 317. Mallah was refused an Australian

[1] Hope, 1979, 10.

passport on grounds that he was likely to engage in and be convicted and sentenced for firearm registration offences (see Gani, 2008, 285). In response to this passport refusal alongside the challenge of being prosecuted for firearms offences, Mallah subsequently made threats to bomb ASIO offices and DFAT offices to an undercover agent posing as a journalist. For making those threats, Mallah was convicted by a jury of threatening a Commonwealth official, though, was not convicted of two other preparation for terrorism offences with which he had also been charged. The escalation of Mallah's discontent with his treatment resulted in colourful media appearances prior to making the threats. This radicalisation is caused by an arguably less provocative event than being denied a chance to work as is possible under the MSIC scheme. Being refused a travel document that would have otherwise enabled Mallah to attend a family wedding overseas seems relatively minor when compared to being unable to work in your chosen or trained maritime profession following a MSIC refusal decision.

The Report claims that to refer to Australian terrorism prosecutions finalised to date, and to use these cases in any law reform analysis, is invalid due to the fact that:

> "Statistical analysis of offences committed by those who have been found to have been engaged in terrorist activity is not possible . . . [as] there have been insufficient convictions in relation to offences under 'Offences Against National Security' or "Terrorism' provisions to form a dataset of sufficient scale for meaningful statistical analysis." (p 6)

Presumably this is a comment about terrorism offence prosecutions under the *Criminal Code Act 1995* (Cth). I do not understand why the validity of such case analysis needs to be judged only on statistically grounds. What is the inferential statistical procedure contemplated in the analysis that would require possible consideration of the impact of sample size? As an empirical researcher who understands the need for such considerations in many quantitative analyses, I fail to see the relevance of such statistical comments here. Each completed Australian terrorism prosecution to date, with either single or multiple defendants, tells a valuable story for law reformers. These stories should be told and used to complement any quantitatively-derived, evidence base. This reference to statistical analysis, and the requirements of any supposed quantitative analysis, remains vague in *The Report*.

> ***Recommendation 3*: Refer to completed Australian terrorism prosecutions to guide analysis.**

Need for Clarification of the Required Risk Analysis

If one of the main aims of the MISC scheme is to enhance national security and to reduce the risk of terrorist attack, the nature of risk judgment recommended by *The Report* needs to be contextualised by understandings of other risk assessment tests legislated to date as part of Australia's response to 9/11. There is some confusion in *The Report* about the test required for risk assessment under the MSIC scheme. The relevant risk assessment is described in *The Report* as the "tangible risk of being associated with terroristic behaviour" (pp. 16; 21).

If this is the risk assessment used to shape recommendations in *The Report*, it must be identical to the actual risk assessment test contained in relevant maritime security legislation. Further insight into the appropriateness of *The Report's* recommendations related to the "tangible risk" test will be gained by referring to Australian research on the challenges of counter-terrorism risk assessment including the application of (catastrophic) precautionary principles (Goldsmith, 2007). Risk assessment tests are also prescribed and used as part of the Federal preventative detention and control order scheme in Divisions 104 and105 of the *Criminal Code Act 1995* (Cth).

> ***Recommendation 4*: Clarify whether the risk assessment motivating *The Report*'s listing of MSROs is in fact the risk assessment test existing under maritime security legislation, and, refer to risk assessment tests required under other existing Australian counter-terrorism law for further context.**

Human Rights, Administrative, and Criminal Law Principles Affected by the Secrecy and Non-Disclosure of Relevant Evidence

No doubt there could be, and perhaps have already been, strong concerns raised by some workers who are, even only initially, refused a MSIC. In such a context, *The Report*'s anticipation of concerns over natural justice following non-disclosure of intelligence sources (p. 34) is important. This concern deserves greater emphasis in *The Report* and in any expanded scheme. These natural justice concerns have psychological resonance in expectations of procedural justice which help to legitimate the status of the decision-maker (Tyler, 1997). They are also similar to expectations of fair trial and full disclosure of the prosecution case to the defence.

The fair trial expectations and the desire to avoid trial by ambush by prosecutors as supposed model litigants are major concerns with the restricted information aspects of the MSIC and other security-related (legal) processes. The person empowered to make discretionary decisions as to MSIC eligibility based on confidential information, does so risking the Government's reputation and legitimacy. There are trends in the post-9/11 era within Australian and other jurisdictions to deny disclosure under new secrecy laws such as the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth). This Federal legislation has received much adverse comment from Australian human rights groups and NGOs reporting to the International Commission of Jurists' (ICJ) Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights. On the 4 May 2009, the ICJ published the results of their international report into such issues (International Commission of Jurists, 2009). Similar non-disclosure of "criminal intelligence" used for control order decision-making is now possible under newer legislation aimed at the regulation of organised crime in Australia (eg. *Serious and Organized Crime (Control) Act 2008* (SA)). International attention and local reaction from affected Australians will remain focused on any departures from administrative law, criminal law and human rights norms.

The impact of such mismatch between expectations and treatment could be exacerbated by possible privacy rights and labour rights (eg. right to work as provided

for in Article 6, *International Covenant on Economic Social and Cultural Rights*) concerns flowing from adverse MSIC eligibility decisions.

> ***Recommendation 5*: Do not underestimate the human rights and natural justice concerns over the non-disclosure of intelligence relevant to MSIC eligibility decisions.**

(2) Scope of the MSIC Eligibility Criteria

It may be useful to refer to other occupational security screening legislative schemes (eg. for child care workers etc under the *Commission for Children and Young People Act 1998* (NSW)). In doing so, we can obtain a sense of proportion about how to select offences which are most relevant to the occupational context being regulated for security reasons. Section 33B of the *Commission for Children and Young People Act 1998* (NSW) lists excludable prohibited persons whose prior offending closely relates to threat of child sex-offending. Notably, there is no lengthy speculative list of offences thought to be "gateway offences" leading to a future likelihood of child sex offending.

Decisions over listing MSROs as part of the MSIC scheme could benefit from such a narrow focus on offences related clearly to the feared (terrorist) behaviour. Below, the suggestion is to match MSROs as closely as possible to elements of the terrorist act definition in s 100.1 of the *Criminal Code Act 1995* (Cth). We should be mindful that the Commonwealth Attorney-General has just received community consultation on an exposure draft of proposed reforms to that definition. Tailoring the list of MSROs more closely to offending clearly related to the definition of terrorist acts is superior to using more speculative lists. More speculative lists result when guided by the type of criminological theorising present in *The Report* (see criticisms below) aimed at identifying antecedent crimes leading down a pathway to terrorist offending. The weaker approach used in *The Report* leads to inconsistent results including the recommended list of MSROs being *both* an under-inclusive as well as an over-inclusive.

> ***Recommendation 6*: Refer to other employment security screening schemes to consider if the existing MSIC scheme or The Report's recommended list of MSROs is over-broad in terms of employment-relevant fear of offending.**

Under-inclusive

Systematic analysis of Australian terrorism prosecutions again assists to identify where the recommended list of MSROs is problematic. For example, in the successful prosecution of Faheem Lodhi (*R v Lodhi* [2006] NSWSC 691) it was found that Lodhi impersonated an electrician in order to obtain official maps of the electricity grid (Gani, 2008, p. 292). However, *The Report* suggests that a range of impersonation and dishonest representation offences should be removed from a revised list MSROs, including removal of the offence of "impersonating a particular profession, trade, rank or status (09911)" (p. 21). This is despite the fact that *The Report* itself suggests (p.

13) that supply of false identity documentation can be related to terrorist activity (Smith et al., 2008).

Another curious omission is that federal cybercrime offences contained in the *Criminal Code Act 1995* (Cth) do not appear in the recommended list of MSROs. This is despite the fact that the definition of terrorist act in s 100.1 of the *Criminal Code Act 1995* (Cth) includes "seriously interferes with, seriously disrupts, or destroys an electronic system" including "a system used for, or by, a transport system". *The Report* itself also lists Damage to Property in Table 11, Appendix B, and defines it as damage to virtual environments, hacking and cyber-terrorism. There is the accompanying suggestion (p. 13) that Clutterbuck (1994) and Greenberg et al. (2006) have demonstrated links between cybercrime and terrorist offending.

Over-inclusive

Over-inclusive recommendations for MSROs derive from the reliance on "criminal careers" and pathways to crime theories (see criticisms below). The assumption promoted in *The Report* is that a range of offending behaviour (from graffiti to organised criminal activity) can all be possibly linked to eventual participation in terrorist offending.

> ***Recommendation 7:*** **Use the definition of a terrorist act in s 100.1 of the *Criminal Code Act 1995* (Cth) to assist in ensuring that the listed MSROs are neither under-inclusive nor over-inclusive.**

(3) Quality of the Criminological Research.

Antecedent Conduct and Criminal Careers

The Report cites a range of references relating to "antecedent conduct" which purportedly predicts terrorist offending (pp 12-13). It is a relief that the work on non-criminal behaviours (eg. telephone conversations and meetings etc; p. 12) as antecedents to terrorist offending is not developed in *The Report* as being of relevance for MSIC eligibility decision-making.

Furthermore, one reference to research into criminal careers by Blumstein, Cohen, Roth and Visher (1986) was the basis for much discussion in *The Report*. The full reference is not included in the reference section of *The Report*. However, this citation is probably a reference to Blumstein, Cohen, Roth, and Visher, *Criminal Careers and "Career Criminals"*. Notable is the lack of citation of more recent scholarship, either critical or supportive, of those 1986 ideas. It would be valuable to know what the more contemporary criminological scholarship now says of the concept of criminal careers generally in criminology or in the study of terrorist offending in particular. Missing from *The Report*, for example, is reference to the Special Issue on the longitudinal patterning of criminal activity edited by Piquero (2004) for the *Journal of Contemporary Criminal Justice* where reference to research on criminal careers, including work by Blumstein et al. (1986), was made.

The Report relies on Blumstein et al. (1986) and the research cited at pp 12-14 to suggest which type of offending is a clear antecedent to tangible risks of developing a criminal career as a terrorist offender. Such criminal careers theorising used in *The Report* is a form of "broken windows theory" (Wilson and Kelling, 1982), namely that neglecting the policing of minor crime (such as "broken windows" in a housing project or community) encourages even more serious crime. This theory is used to recommend increased policing of minor crime in order to deter serious offending. It is questionable that this is an appropriate basis for the MISC scheme and the exclusion of some workers from their workplaces.

Many commentators are critical of such causal links being drawn, especially when they are used to justify zero-tolerance policing of, say, public order offending. The critique of broken windows theory by Harcourt (2001) is discussed by Bronitt & McSherry (2005, p 745-748), especially in terms of the unreliability of empirical evaluations of the success of zero-tolerance policing (which uses tough on crime policies, non-discretionary enforcement, and ensures policing of minor offences: Marshall, (1999), p. 2). This critique is a useful guide as to why much of the criminal careers research cited in *The Report* should be questioned. The research is questionable in so far as it suggests that even minor MSROs on an applicant's criminal record should exclude them from maritime industry work out of fear that prior minor offending indicates a propensity to develop a criminal career in terrorism. The criminal careers research cited in *The Report* is at odds with the more appropriate body of contemporary research into why and how extremism develops and results in terrorist offending. The criminal careers work is of limited use in understanding the pathway to terrorist offending in the Australian maritime industry. Broken windows logic in *The Report* should also be questioned to prevent the MSIC scheme becoming merely one strategic choice by the Government to reassure the electorate that they are tough on crime on the waterfront, in the interests of national security, at almost all cost to the livelihood of a maritime worker.

> ***Recommendation 8:*** **Critically question the utility of criminal careers theories of pathways to terrorist offending.**

Ethnic Profiling

Despite the fact that *The Report* rejects ethnic profiling, and rejects the use of ethnicity as a predictor of criminal careers (p. 41), *The Report* still supports the view that "a range of demographic and individual characteristics . . . may affect the likelihood that an individual may be engaging in an active criminal career – and thus be considered a risk to maritime security" (p. 39). This suggests that some level of ethnic or other profiling is supported by *The Report*. Human rights concerns such as freedom from racial, ethnic or religious prejudice (in domestic legislation or in UN treaties) are relevant for tempering profiling being done and eligibility decisions being made on the basis of individual characteristics.

> ***Recommendation 9:*** **Consider the discriminatory impact and human rights violations caused by the MSIC scheme if ethnic or other profiling based on individual, social or demographic characteristics is to be used.**

Unconscious Involvement

Of additional concern is the use of the unexplained concept of "unconscious involvement". Whatever this concept is understood to be by the authors of *The Report*, it is, at times, given inappropriate weight in some worrying examples of speculative causal analysis:

> "For example, offences involving fraud *may* predispose towards involvement in organised criminal activity or trafficking in illicit products in the maritime context, which *could* in turn predispose towards conscious or *unconscious* involvement in activities directly or *indirectly* in support of terrorism *or* unlawful interference with maritime transport and offshore facilities." (*The Report*, p. 12, *emphasis added*)

> ***Recommendation 10:*** **Avoid unjustifiable causal analyses, especially those identifying unconscious behaviour as blameworthy.**

Research Omitted

Some important Australian legal and social-scientific scholarship which has emerged post- 9/11 is missing from *The Report*. A considerable amount of this research expands the more simple criminal careers, profiling and pathways to crime understandings cited in *The Report*.

Legal Research

Much of the post-9/11 Australian research is focused on the fate of human rights norms as the result of a range of legislative reforms with a national security rationale (eg. Bronitt (2008); Byrnes (2008); Mathew (2008); Lynch and Williams (2006), Lynch, Williams, and MacDonald (2007)). This work is shaped by both comparative and historical analysis which guards against undue exceptionalism in the analysis (Gani and Mathew, 2008).

Psychological Research on Radicalisation

Specifically, psychological theorising and research on the radicalisation and socialisation of terrorist offenders (via the "stairway to terrorism": Moghaddam, 2005; Louis, 2009) is omitted from the work. This work highlights the social dimensions, and the intergroup relationship between suspected offenders and the State (legislators, police, etc). This work asks what role societal treatment of groups perceived to be at risk of radicalisation has on their movement towards extremist behaviour. This work takes us beyond more simple notions of predicting risk based on prior offending and individual characteristics alone. It examines the dynamic social forces at play when law reform and institutional decision-making is perceived to be fair, or not, by those already at some stage in the radicalisation process. Further reviews of the (social) psychological causes of radicalization are detailed by Victoroff (2005).

Also missing from *The Report* is reference to more recent Australian research on pathways to crime for younger offenders (France and Homel, 2007). Further Australian critiques of simplistic, probabilistic and inductive approaches to profiling terror suspects would also add to the literature referenced in *The Report* (Petherick, 2008; Wilson, 2008).

Recommendation 11: **Refer to contemporary legal, psychological and criminological research, especially research conducted in Australia or by Australian researchers.**

References

D Bar-Tal and D Antebi, 'Beliefs About Negative Intentions of the World: A Study of the Israeli Siege Mentality' (1992) 13(4) *Political Psychology* 633.

A Blumstein, J Cohen, JA Roth, and CA Visher, Criminal Careers and "Career Criminals." (Washington, DC: National Academy Press, 1986).

S Bronitt, 'Balancing Security and Liberty: Critical Perspectives on Terrorism Law Reform' in M Gani & P Mathew (eds), *Fresh Perspectives on the 'War on Terror'* (Canberra: ANU ePress, 2008), 65.

S Bronitt and B McSherry, *Principles of Criminal Law* (2nd Edition, Pyrmont: Lawbook Co, 2005).

A Byrnes, 'More or Less Law? The Resilience of Human Rights Law and Institutions in the 'War on Terror'' in M Gani & P Mathew (eds), *Fresh Perspectives on the 'War on Terror'* (Canberra: ANU ePress, 2008) 127.

R Clutterbuck, *Terrorism in an Unstable World* (London: Routledge, 1994).

A France and R Homel (eds) (2007). *Pathways and Crime Prevention: Theory, Policy and Practice* (Cullumpton, Devon, UK: Willan Publishing, 2007).

M Gani, 'How Does it End? Reflections on Completed Prosecutions Under Australia's Counter-Terrorism Legislation' in M Gani & P Mathew (eds), *Fresh Perspectives on the 'War on Terror'* (Canberra: ANU ePress, 2008) 269.

M Gani & P Mathew (eds), *Fresh Perspectives on the 'War on Terror'* (Canberra: ANU ePress, 2008).

A Goldsmith, 'Preparation for Terrorism: Catastrophic Risk and Precautionary Criminal Law' in A Lynch, G Williams, and E MacDonald (eds), *Law & Liberty in the War on Terror* (Leichardt: Federation Press, 2007) 59.

MD Greenberg, P Chalk, HH Willis, I Khilko and DS Oritz, *Maritime Terrorism: Risk and Liability* (Santa Monica: RAND Corporation, 2006)

B Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* (Cambridge: Harvard University Press, 2001).

International Commission of Jurists, *Assessing Damage, Urging Action* (available at http://ejp.icj.org/hearing2.php3?id_article=172&lang=en, accessed 23 October 2009).

WR Louis, 'If They're Not Crazy, Then What? The Implications of Social Psychological Approaches to Terrorism for Conflict Management' in W Stritzke, S Lewandowsky, D Denemark, F Morgan, and J. Clare (eds), *Terrorism and Torture: An Interdisciplinary Perspective* (Cambridge: Cambridge University Press, 2009) 125.

A Lynch, 'Exceptionalism, Politics and Liberty: A Response to Professor Tushnet from the Antipodes' (2008b) 3 *International Journal of Law in Context* 31.

A Lynch, 'Legislating with Urgency: The Enactment of the Anti-Terrorism Act [No 1] 2005' (2006) 31 *Melbourne University Law Review* 747.

A Lynch, G Williams, and E MacDonald (eds), *Law & Liberty in the War on Terror* (Leichardt: Federation Press, 2007).

A Lynch and Williams, *What Price Security: Taking Stock of Australia's Anti-Terror Laws* (Sydney, UNSW Press, 2006).

J Marshall, 'Zero-Tolerance Policing' (1999) 9 Information Bulletin (South Australian Office of Crime Statistics).

P Mathew, 'Black Holes, White Holes and Worm Holes: Pre-Emptive Detention in the 'War on Terror' in M Gani & P Mathew (eds), *Fresh Perspectives on the 'War on Terror'* (Canberra: ANU ePress, 2008) 159.

F Moghaddam, 'The Staircase to Terrorism: A Psychological Explanation' (2005) 60(2) *American Psychologist* 161-169.

MA Nolan, 'Comparative Legal History of Counter-Terrorism Law in Australia and Japan: From the Hope Report to the Counter-Terrorism Committee' (Paper presented at the Gilbert+Tobin Centre of Public Law, University of NSW, Terrorism and Law Research Workshop, Crown Plaza Hotel, Coogee Beach, 20 June 2005).

MA Nolan, 'Counter-terrorism, Interviewing, and Investigative Interoperability: *R v ul-Haque* [2007] NSWSC 1251' (2009) 16(2) *Psychiatry, Psychology, and Law* 175-190.

M Nolan, 'Lay Perceptions of Terrorist Acts and Counter-terrorism Responses: Role of Motive, Offence Construal, Siege Mentality and Human Rights' in M Gani and P Mathew (eds) *Fresh Perspectives on the 'War on Terror'* (Canberra: ANU ePress, 2008) 85.

W Petherick, 'Offender Profiling in Australia' in K Fritzon and P Wilson (eds), *Forensic Psychology and Criminology: An Australian Perspective* (North Ryde: McGraw Hill, 2008) 237-250.

AR Piquero (ed), (2004) 20(2) *Journal of Contemporary Criminal Justice* (Special Issue) 100.

BL Smith, J Cothren, P Roberts, & KR Damphousse, Geospatial Analysis of Terrorist Activities: The Identification of Spatial and Temporal Patterns of Preparatory Behavior of International and Environmental Terrorists (Washington DC: National Institute of Justice, 2008).

TR Tyler, 'The Psychology of Legitimacy' (1997) 1 *Personality and Social Psychology Review* 323.

J Victoroff, 'The Mind of the Terrorist: A Review and Critique of Psychological Approaches' (2005) 49(3) *Journal of Conflict Resolution* 3-42.

P Wilson, 'Terrorism in Australia' in K Fritzon and P Wilson (eds), *Forensic Psychology and Criminology: An Australian Perspective* (North Ryde: McGraw Hill, 2008) 219-226.

JQ Wilson and GL Kelling, 'Broken Windows: The Police and Neighbourhood Safety' (1982) 249(3) *The Atlantic Monthly* 29.

Case Law

R v Demirian [1989] VR 97.

R v Lodhi [2006] NSWSC 691.

R v Mallah [2005] NSWSC 317.

R v ul-Haque [2007] NSWSC 1251.

Thomas v Mowbray [2007] HCA 33.

Statutes

Serious and Organized Crime (Control) Act 2008 (SA).

Commission for Children and Young People Act 1998 (NSW).

Criminal Code Act 1995 (Cth).

National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth).

Reports

RM Hope, *Protective Security Review* (Canberra, Com