Department of Infrastructure, Transport, Regional Development and Local Government

Office of Transport Security

Assessment of Maritime Security Identification Card (MSIC) Eligibility Criteria

Report

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Glossary

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
AFP	Australian Federal Police
AIC	Australian Intelligence Community
ASIC	Aviation Security Identification Card
ASIO	Australian Security Intelligence Organisation
IOF	Individual Offending Frequency
MSIC	Maritime Security Identification Card
OTS	Office of Transport Security

1. Executive Summary

1.1 Scope and Methodology

The Department of Infrastructure, Transport, Regional Development and Local Government (the Department) has engaged GHD to assess the Maritime Security Identification Card (MSIC) eligibility criteria. This report provides the assessment and an account of the supporting research and literature review in line with the Department's service requirement[1], which consists of:

- Whether the current MSIC scheme is meeting policy objectives.
- Linkages between offences and a person's propensity to be involved in certain relevant activity – terrorism, organised crime, unlawful interference with maritime transport and offshore facilities etc.
- Whether the current list of maritime security relevant offences (MSRO) is adequate and suggested alternatives.
- The current adverse criminal record criteria and suggested enhancements where appropriate.
- The pros and cons of using criminal intelligence in assessing eligibility.
- Individual characteristics/circumstances that may inform the likelihood of re-offence and their relevance in decision making.

The report is designed to provide an evidence-based assessment of the degree to which the current MSIC eligibility criteria meet policy objectives. This includes a review of relevant explanatory memoranda and other policy material to obtain a historical context as well as a review of perceived threats to maritime transport and offshore facilities, the offences and behaviours that point to a propensity to deliver such threats, the degree to which the current list of offences captures these relevant offences and behaviours and the nature of the gaps. Other elements of the review – the use of criminal intelligence and the Secretary's discretionary powers – have also been covered.

In accordance with Attachment A of the Department's Request for Quote, GHD undertook a number of analytical steps, involving:

- Review of the current arrangements (with respect to MSIC eligibility) and their historical policy objectives.
- Review of changes in policy objective, in particular the fundamental driver of security policy – perceived maritime security threat.
- Review of relevant literature to define behaviours and offences that relate to perceived current maritime security threat.
- Identification of gaps – the behaviours and offences that are not captured within current arrangements.

Additional components of research and consultation included:

- Nature and availability of relevant information.
- The issues involved in using criminal intelligence as decision support in determining MSIC eligibility.

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[1] Service requirements are detailed at Schedule 1, Services Agreement number 41000721.

- Processes and guidelines that may provide additional rigour to primary decision making and internal review.

1.2 Availability of Research Material

Statistical analysis of offences committed by those who have been found to have been engaged in terrorist activity is not possible for a number of reasons:

- 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.
- Of those who have been convicted under these provisions, the vast majority are serving their sentence and have not had an opportunity to recidivate or commit further offences that might be 'related'.
- Many of the relevant provisions that are now captured in the Anti-Terrorism Act 2005, for example, fell under the Crimes Act 1914 prior to 2005. To obtain a full analysis of offences that fall under this legislation – or that may be relevant to such offences – would require a detailed and complex review and analysis of offences under many legislative frameworks and of how these offences prior to 2005 were interpreted and prosecuted in the various Australian jurisdictions.
- Existing data (hard copy) cannot readily be subjected to statistical analysis.

For these reasons, the analysis and conclusions offered in this report are to a large degree based on a review of current frameworks and existing literature. This has led to some valuable and significant conclusions. Also, some degree of analysis has been possible of data in the public domain. Although based on offences and prosecutions that have occurred in the United States of America, the data is considered relevant to the analysis given the similarities between the Australian and US jurisdictions.

Apart from the literature and limited statistical analysis, GHD has had reference to relevant legislation and, where available, to underlying policy, although the latter does not exist in great quantity. The recent 'National Security Statement' has also informed the analysis.[2]

1.3 Consultations

Given the nature of the project, GHD has limited consultations to the Office of Transport Security (OTS), AusCheck and the Australian Crime Commission (ACC).

[2] The First National Security Statement to the Australian Parliament. Address by the Prime Minister of Australia The Hon. Kevin Rudd MP 4 December 2008. In particular with reference to critical infrastructure protection and transport issues.

2. Conclusions

2.1 Policy Intent

The current MSIC does not appear to be meeting policy objectives in that current eligibility criteria do not capture a range of offences and behaviours that are known to have linkages with terrorist activity and the unlawful interference with maritime transport and offshore facilities.

2.2 Scope of Current and Future Processes

An expanded set of maritime security relevant offences is suggested on the basis of wide-ranging literature review regarding linkages of offences with terrorist activity.

The current adverse criminal record criterion represents a major gap in its reliance on custodial sentences. The analysis clearly demonstrates that a great many offences that are related to terrorist and related activity are not captured in this criterion.

Some offences should attract automatic disqualification and others should have a conditional effect and be considered in the context of circumstances and the nature of the offence. Conduct is categorised in terms of 'antecedent conduct', 'operational conduct' and 'other criminal conduct' for the purposes of this analysis.

2.3 Criminal Record Criteria

Current eligibility criteria do not capture a range of serious and related criminal convictions.

OTS might consider widening the scope of the eligibility criteria to include all convictions that might be considered to be serious in nature to include all custodial orders imposed by Lower and Higher courts and all orders (custodial and non-custodial) imposed by the Higher courts.

2.4 Use of Criminal Intelligence

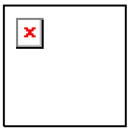
There are clear prima facie benefits associated with the use of criminal intelligence in support of MSIC eligibility determinations.

While a range of practical and other issues would need to be resolved to give effect to this, a substantial quantity of criminal intelligence material that may be relevant to MSIC eligibility determinations is available and relatively readily accessible.

The Department should explore this option further.

2.5 Internal Review – the Secretary's Discretionary Powers

The findings demonstrate that there are demographic and individual characteristics, circumstances and other factors that need to be taken into account as variables regarding the likelihood that an individual may be considered a risk to maritime security – that is, whether the applicant is engaged in an active criminal career. Criminal career information has significant relevance, including, the age at which the career commenced and at which an individual commenced substance abuse and unemployment, for example.



Consideration needs to include this, as well as issues around criminal specialisation, escalation/de-escalation of the seriousness of offences, career length and termination.

3. Analysis of Current MSIC Eligibility Arrangements and Policy Objectives (Task Item 1)

3.1 Background

The policy objective of the MSIC scheme, as stipulated by the Office of Transport Security (OTS), is to help mitigate the threats of terrorism and of unlawful interference with maritime transport and offshore facilities. This is set out in Sections 10 and 11 of the Maritime Transport and Offshore Facilities Security Act 2003[3] (the Act). The policy intent can at least partly be achieved through a process to identify the criminal histories of people who have occupations or business interests that require them to have unmonitored access to maritime security zones. As such, the MSIC eligibility determination process is designed to deliver a level of assurance that those who are issued with an MSIC have backgrounds that are suitable for accessing sensitive and restricted areas in ports, ships and offshore facilities, and that they do not pose a threat to maritime security. The principal purpose of this report is to determine whether the current MSIC scheme is achieving the objectives outlined above. A brief summary of the research findings has been reported below.

The findings of this report indicate that the current MSIC scheme is currently not meeting the stipulated policy objectives. GHD found that the current MSIC eligibility criteria (as defined in Table 6.07C of the Maritime Transport and Offshore Facilities Security Regulations, 2003) (*the Regulations),* or more specifically, the list of maritime-security-relevant offences (MSROs), does not adequately reflect, the stated policy objectives – particularly when one takes into account the potential use of trusted insiders and the threat of criminal infiltration by organised crime groups. Further, the report found cause to suggest that the current adverse criminal record criterion (which only considers custodial sentences) may benefit from amendment.

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[3] According the Section 10 of the Act, the term 'terrorist act' has the same meaning as in Part 5.3 of the Criminal Code.

Section 11 of the Act defines the term 'unlawful interference with maritime transport and offshore facilities' as any of the following done without lawful authority:

(a) committing an act, or causing any interference or damage, that puts the safe operation of a port, or the safety of any person or property at the port, at risk;

(aa) committing an act, or causing any interference or damage, that puts the safe operation of an offshore facility, or the safety of any person or property at the offshore facility, at risk;

(b) taking control of a ship or offshore facility by force, or threat of force, or any other form of intimidation;

(c) destroying a ship that is being used for maritime transport;

(ca) destroying an offshore facility;

(d) causing damage to a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk;

(e) doing anything on board a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk;

(f) placing, or causing to be placed, on board a ship that is being used for maritime transport anything that puts the safety of the ship, or any person or property on board or off the ship, at risk;

(g) putting the safety of ships at risk by interfering with, damaging or destroying navigational aids, communication systems or security systems;

(h) putting the safety of ships at risk by communicating false information.

(2) However, unlawful interference with maritime transport or offshore facilities does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action of a kind mentioned in paragraphs (1)(a) to (h).

3.1.1 MSROs

A new list of offence categories and MSROs has been put forward for consideration in Section 5. Informed through a wide ranging, detailed review of existing scholarly literature pertaining to the historical linkages between offences and the propensity to engage in terrorist activity, or unlawfully interfere with maritime transport (Section 4), this ‘updated’ list of MSROs seeks to fill in the gaps identified in, and associated with the current regime. An overhaul of the current list of MSROs will constitute a significant step towards ensuring the current regime meets the stipulated policy objectives.

3.1.2 Current Adverse Criminal Record Criteria

These findings (see Section 6) lead GHD to conclude that the current adverse criminal record criterion is inadequate, and that a lower threshold is required to meet the policy objectives of the MSIC scheme adequately. Available data suggests that all sentencing decisions should be considered in some instances, not just those relating to an imposition of detention.

3.2 Contemporary Maritime Security Policy Objectives

The main driver of maritime security policy is perceived maritime security threat. The Department has provided GHD with access to relevant security threat material. It is understood that there is no other available documentation on contemporary policy objectives. The following overview of the general security threat context provides the basis for the policy intent – the MSIC processes are designed to protect the maritime environment from them. The identification and analysis of relevant offences and behaviours in the subsequent sections is informed by this security threat context.

3.2.1 Threat Context

In general, the Australian Government considers that terrorism is the greatest threat in the domestic maritime context although various criminal threats are perceived to be significant as well. Accordingly, the aim of the MSIC eligibility determination process is to safeguard against the threats of terrorism and unlawful interference with maritime transport and offshore facilities.

Regarding terrorism, improvised explosive devices (IED) are the most commonly used means of attack by terrorist groups around the world.

Military-style attack is also a possible scenario, including use of small arms or larger weapons enabling a stand-off attack.

Regarding terrorist threats that are perceived to be less significant, hijacking has occurred in the past. In addition, there is the potential for sabotage.

There is a wide range of organised criminal scenarios, including but not necessarily limited to trafficking in all of its forms (people, drugs, tobacco, alcohol, undeclared goods, intellectual property and firearms) and immigration, customs and quarantine fraud. Apart from threats directly attributed to organised criminal activity, criminal elements already engaged in the above unlawful activities can potentially be recruited, coopted or tricked into facilitating terrorist planning. For example, a person engaged in smuggling contraband goods might easily be turned to smuggle goods for terrorist purposes, knowingly or unknowingly. Elements involved in people smuggling might be turned to facilitate the unlawful entry into Australia of individuals involved in terrorist activities.

The national counter-terrorism alert level is MEDIUM[4] and there is no indication, known to GHD, of impending adjustment of this level either upwards or downwards.

3.2.2 Vulnerabilities

Government thinking on this relates largely to the obscuring over recent years of previously clear lines of demarcation between organised crime and terrorism. The component activities of organised crime, as it is conventionally defined, are either similar or the same as many of the activities that support terrorist targeting, planning and operational execution. For example a drug trafficker would use a similar skill set to smuggle or secrete materiel to be used in an attack; and a 'conventional' criminal could potentially be recruited to fulfil that role. Unconscious facilitation is also a possible scenario where a criminal engaged in even minor trafficking could be prevailed upon to facilitate the unlawful passage across the border of an article, without being made aware of its nature.

This suggests that there is a potential vulnerability relating to the access to a facility or process by a 'trusted insider': a person who has been granted access to an organisation's facilities or controlled systems who are able to bypass security arrangements, exploit vulnerabilities and facilitate terrorist or other criminal behaviour. This can happen by one or more trusted insider attacking or circumventing security systems or providing information such as safe combinations, security gaps etc., or as a result of coercion or trickery a trusted insider(s) takes certain measures in support of criminal or terrorist activity.

[4] This is defined as follows: 'A terrorist attack could occur'. The measures that are required at this alert level are: 'business as normal, increased vigilance, making sure all business continuity/recovery plans are in place'.

4. Understanding the Linkages between Specific Offences, Terrorism and Unlawful Interference with Maritime Transport and Offshore Facilities (Task Item 2)

4.1 Introduction

This part of the report defines the offences and behaviours that could potentially lead to, or represent a form of, unlawful interference with maritime transport and offshore facilities. 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.

GHD reviewed and analysed assessed maritime security threat in terms of the nature of the threat environment itself, potential sources of threat and perceived vulnerabilities. These components of threat have then been linked to related offences or groups of offences that are evident in the literature review.

This literature review identified a diverse range of behaviours and conduct with historical and theoretical linkages with both terrorist activity and the unlawful interference with mass transportation networks – with particular emphasis being placed on the maritime transport industry. Works cited in this review originate from a multitude of scholarly, law enforcement, and government sources. Using offence data spanning the previous four decades (1968-2008), GHD constructed a catalogue of criminal behaviours/conduct that have been shown to be associated and affiliated with terrorism, as well as the unlawful interference with the maritime transport industry. This catalogue is comprised of three separate lists: the first, chronicles the conduct that terrorists engage in whilst preparing to commit a terrorist act (antecedent conduct), the second examines the commission of terrorist incidents (operational conduct), and the third list considers 'other' criminal behaviours that might not be related to terrorism or unlawful interference per se, but may still threaten the lawful operation of maritime and offshore facilities.

4.2 Antecedent conduct

For the purposes of this overview, 'antecedent conduct' is defined as the totality of measurable behaviours, committed by a terrorist group in advance of a terrorist incident. Whilst some studies have also considered non-criminal behaviours (e.g. telephone conversations, meetings, etc), this current review will only consider the criminal element as the former falls outside the scope of this review. Antecedent behaviours can be categorised into two types: 'preparatory' conduct, or actions undertaken by individuals to assist in the preparation of a terrorist incident; and 'ancillary' conduct, or actions undertaken in the terrorist organisation for reasons of internal security, funding, maintaining day-to-day operations or personal reasons. Smith and his colleagues (2008) suggests that the "identification of these antecedent behaviours may have important implications for preventing terrorism" (p. 13).

The first of these antecedent types, Preparatory conduct, encompasses a variety of activities that are inherently criminal in nature. These activities and behaviours as identified in the historical and scholarly literature, include offences relating to the affiliation with, or membership of a terrorist group (Smith, Damphousse & Roberts, 2006), possessing/transporting explosive devises/materials (Clutterbuck 1994;

Greenberg, Chalk, Willis, Khilko & Oritz 2006; Smith & Damphousse, 2007; Smith et al., 2008), training (Smith et al., 2006; Smith et al 2008), the production and distribution of fraudulent identity documents (Schmid 1996; Shelley et al 2005; Smith et al 2006; Smith & Damphousse 2007; Smith et al 2008), weapons violations (Clutterbuck, 1994; Greenberg, Chalk, Willis, Khilko, & Ortiz, 2006; Mickolus, 1983; Schmid, 1983, 1996; Shelley, 2006; Shelley et al., 2005; Smith & Damphousse, 2007; Smith, Damphousse, & Roberts, 2006; Smith, Cothren, Roberts, & Damphousse, 2008; Australian Crime Commission, 2009; Morrison, 2002), larceny and theft (including motor vehicle theft) (Clutterbuck, 1994; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Salzano & Hartman, 1997; Schmid, 1983; Smith, 2008; Smith & Damphousse, 2007; Smith et al., 2006; Smith et al., 2008; Abhyankar, 2001), vandalism (National Counterterrorism Center, 2009; Smith et al., 2008), conspiracy (Mickolus, 1983; Smith & Damphousse, 2007; Smith et al., 2008), robbery (Hamm, 2005; Schmid, 1996; Smith, 2008; Smith & Damphousse, 2007; Smith et al., 2008) and trespassing (Greenberg et al., 2006; Mickolus). See Table 11 (Appendix B) for definitions.

Some of the antecedent activities of individuals associated with terrorist groups may also be ancillary in that they reflect behaviours related to funding the group, maintaining day-to-day operations and internal security. What is unique about these activities is that they are unrelated to the planning and preparation of specific acts of terrorism, instead sharing characteristics with other types of crime: namely street crime and transnational organised crime. The importance of the terrorism-crime nexus is not always fully appreciated, as security specialists, policy makers and academics have often had a tendency to focus exclusively on specific terrorist acts (Shelley et al 2006). The past few years have however, yielded some considerable progressions in this particular field of study. Both law enforcement data (e.g. Office of Transport Security, 2008; Smith & Damphousse, 2007) and scholarly discourse (e.g. Milward & Raab, 2006; Morrison, 2002; Schmid, 1996; Shelley, 2006) have highlighted the important role of ancillary conduct by terrorist groups, and have sought to realise and explore the linkages between organised crime and the facilitation of terrorist activity. Accordingly, this scholarship has identified a range of ancillary activities that have associations with the operations of terrorist groups, including offences related to smuggling, financing criminal activities, labour and vice. Offences relating to smuggling include the illegal trade in goods (Schmid, 1996; Shelley, 2006; Smith & Damphousse, 2007; Smith et al., 2008; Australian Crime Commission, 2009), supply of false identity documentation (Schmid 1996; Shelley et al 2005; Smith et al 2006; Smith & Damphousse 2007; Smith et al 2008), and arms smuggling (Clutterbuck, 1994; Greenberg, Chalk, Willis, Khilko, & Ortiz, 2006; Mickolus, 1983; Schmid, 1983, 1996; Shelley, 2006; Shelley et al., 2005; Smith & Damphousse, 2007; Smith, Damphousse, & Roberts, 2006; Smith, Cothren, Roberts, & Damphousse, 2008; Australian Crime Commission, 2009; Morrison, 2002). In the field of finance, ancillary conduct includes money laundering (Australian Crime Commission, 2009; Clutterbuck, 1994; Hamm, 2005; Schmid, 1983, 1996; Shelley, 2006; Shelley et al., 2005; Smith et al., 2008; Smith & Damphousse, 2007; Smith et al., 2006), fraud (see Abhyankar, 2001; Schmid, 1996; Shelley et al., 2005; Smith & Damphousse, 2007; Taylor & Kaufman, 2009), and the counterfeiting of monies (Hamm, 2005; Schmid, 1996; Smith et al., 2008; Smith & Damphousse, 2007; Smith et al., 2006). With respect to the field of labour, a number of offence types are exploited by both terrorist and organised crime groups alike. These offences include extortion (Block, 1982; Clutterbuck, 1994; Schmid, 1996; Smith & Damphousse, 2007), racketeering (Block, 1982; Clutterbuck, 1994; Schmid, 1996; Smith & Damphousse, 2007), bribery, corruption and graft (Block, 1982; Hamm, 2005; Shelley, 2006; Shelley et al., 2005; Smith & Damphousse, 2007). In the field of vice, organised criminals and terrorists may engage in the trafficking of persons or people smuggling for the purposes of sexual slavery and servitude (Schmid, 1996; Smith & Damphousse, 2007), as well as the trafficking of drugs/narcotics (Abhyankar, 2001; Australian Crime Commission, 2009; Clutterbuck, 1994; Morrison, 1997; Schmid, 1996; Shelley, 2006; Shelley et al., 2005; Smith et al., 2008). Other, less common trafficking modes are becoming more common (e.g. the trafficking of human organs (see Schmid, 1996). See Table 11 (Appendix B) for definitions.

4.3 Operational conduct

Whilst the above discussion of antecedent conduct provides insight into some of the activities and offences that have been shown to be associated with terrorist groups, the actions pertaining to the commission of terrorist acts are of the utmost importance to this eligibility criteria review. Over the previous four decades, terrorist profiles, motivations, targets and victims have varied considerably, but the wide variety of tactics and methods used to carry out these acts of terror have by and large remained the same (see for example Kaplan 1981; Clutterbuck 1994; Schmid 1996; Greenberg Chalk, Willis, Khlko & Oritz 2006; amongst others). As such, any review of the MSIC eligibility criteria must consider the diverse range of tactics utilised by terrorist groups in recent history, be it maritime related or otherwise. These activities include kidnapping (Clutterbuck, 1994; Hippchen & Yim, 1982; Mickolus, 1983; Morrison, 2002; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith & Damphousse, 2007), damage to property (Clutterbuck, 1994; Greenberg et al., 2006; Schmid, 1983), bombings (Clutterbuck, 1994; Greenberg et al., 2006; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith et al., 2008; Smith et al., 2006), hostage seizure/ barricade (Clutterbuck, 1994; Greenberg et al., 2006; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith et al., 2008; Smith et al., 2006; Wilson, 2000), sabotage (Greenberg et al., 2006; Mickolus, 1983; Schmid, 1983; Smith & Damphousse, 2007), armed attacks (Mickolus 1983), incendiary attacks (Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1996), hijacking (Abhyankar, 2001; Clutterbuck, 1994; Greenberg et al., 2006; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Salzano & Hartman, 1997; Schmid, 1983; Smith et al., 2008; Smith et al., 2006; Wilson, 2000), exotic pollution (Mickolus, 1983; Schmid, 1983), environmental pollution (Australian Crime Commission, 2009; Greenberg et al., 2006; Smith et al., 2006), assassinations or murder (Clutterbuck, 1994; Hippchen & Yim, 1982; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith et al., 2008; Smith et al., 2006), lynching (Schmid, 1996) and hoaxes/threats (Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1983; Smith et al., 2008; Smith et al., 2006). See Table 11 (Appendix B) for definitions.

4.4 Other Criminal Conduct

In addition to antecedent conduct and the activities/strategies carried out by terrorists, there are a number of 'other' activities that constitute unlawful interference with maritime transport and bear relevance to this review. There are a range of criminal activities that fall outside the ambit of terrorism, but still represent a significant threat to the maritime sector, including in terms of unlawful interference. These activities have been included in this discussion because of their historical importance to the maritime transport industry – with particular reference to organised crime groups operating on the waterfront. These offences include piracy (Abhyankar, 2001; Greenberg et al., 2006; Shelley et al., 2005), the unlawful interference with maritime transport (Commonwealth of Australia, 2003), treason, sedition, treachery and subversive activities (Schmid, 1996; Smith & Damphousse, 2007).

Table 1 (below) provides an illustrative example of the relevant behaviours (antecedent, operational and other), conduct (preparatory, ancillary, terroristic and other), and offence categories that have been identified as being relevant during the course of this review. See Table 11 (Appendix B) for definitions.

Table 1 Behaviours, conduct and categories of offences

Behaviour	Type of conduct	Offence category
Antecedent conduct	Preparatory activities	Affiliation/membership with a terrorist group
		Possessing/transporting explosive devices/materials
		Terrorist training
		Larceny/theft
		Vandalism
		Conspiracy
		Robbery
		Trespassing
		False Identity documents
		Weapons violations
	Ancillary activities	Illegal trade
		Money-laundering
		Fraud
		Counterfeiting
		Extortion and racketeering
		Bribery, corruption and graft
		People smuggling and people trafficking
		Drug trafficking
Operational conduct	Terrorist activities	Kidnapping
		Damage to property
		Bombings
		Hostage seizure/barricade
		Sabotage
		Armed attacks
		Incendiary attacks
		Hijacking
		Exotic pollution

Behaviour	Type of conduct	Offence category
		Environmental pollution
		Assassination and murder
		Lynching
		Hoaxes/threats
'Other' unlawful conduct	Other activities	Treason, sedition, treachery and subversive activities
		Unlawful interference with maritime transport and offshore facilities
		Piracy

Clearly the offence categories listed in Table 1 cover an enormous range of specific offences (outlined in Table 7 through Table 10), each with their own individual circumstances. It is not the intention of GHD to suggest that any and all offences that fall within these categories should be automatically disqualified – indeed this would be a misleading approach. The nature of terrorism and organised crime is not inherent in the violent, fraudulent or criminal act in and of itself. One and the same act (e.g. kidnapping) may be terroristic or not, and is largely dependent on the intentions and motivations of the perpetrator, as well as the specific circumstances of the particular offence (Schmid, 1983). Some of these offences, undertaken in isolation, and subject to scrutiny, do not represent a practical risk to maritime security. By way of example, an estranged father who kidnaps his child during a custody dispute could be considered to present less of a maritime security risk than another person who kidnaps an individual for monetary or politically motivated goals.

The question that must be asked then is whether or not the specific offence identified represents a tangible risk of being associated with terroristic behaviour, or the unlawful interference with maritime transport. Individuals engage in terroristic and/or disruptive behaviours for variety of purposes (see Schmid, 1983, p. 96). Whilst some of the offences discussed both (Table 1) and (Table 7through Table 10) obviously merit the automatic rejection of an MSIC application at face value (e.g. hijacking a vessel and exotic pollution), whilst the nature and circumstances of some other offences may make that decision less clear (e.g. trespassing, larceny and fraud), suggesting that disqualification should be conditional. As such, it is proposed that the offence categories (and specific offences outlined below) be compiled into two mutually exclusive categories: 1) automatic disqualification offences (high risk) and 2) conditional disqualification offences (low risk). Having two distinct classes of offences is essential given the extensive (and arguably broad) list of offences considered here. Such a diverse list lends itself to the possibility of error (e.g. an MSIC applicants may be rejected based on an adverse criminal record, that is in fact completely unrelated to antecedent, operational or 'other' conduct) and thereby must be subject to heightened scrutiny. To address this issue, GHD has provided a suggested framework whereby an assessor (in this case AusCheck) may be able to assess the 'extranormal' qualities of conditional disqualification offences to determine whether and applicant should in fact be eligible for the issuance of an MSIC. By way of example, some of the 'extranormal' qualities that will assist assessors will include the type of weapon utilised during the commission of an offence, the nature/features of the offence and the time/space an offence occurred.

4.5 Possible Decision Making Framework

4.5.1 Principles

This review provides an analysis of the offences that can be said to be related to terrorist offences or those relating to unlawful interference. There are many such offences. Whether or not they should be disqualifiable is a policy matter but should be related to assessed security threat and risk. Similarly, determinations in respect of conditional offences need to be contextualised in terms of risk as well. This report defines these groups of offences as follows:

- Automatic disqualification offences – those that present high risk regarding terrorism and unlawful interference and
- Conditional disqualification offences – those that present low risk regarding terrorism and unlawful interference.

It is suggested that conditional disqualification offences should attract consideration by the decision maker regarding the circumstances and nature of the offence and/or related conduct. GHD has developed a decision making framework as a guideline for considering extenuating circumstances, or assessing the 'extranormal' qualities of an offence. This is not a recommended procedure, but rather, high level guidance on what a decision maker might usefully consider in respect of a conditional offence in arriving at an informed decision.

4.5.2 Guideline

The following considerations might be included in determinations:

1. Determine whether the offence falls within definition of 'preparatory', 'ancillary', 'operational' or 'other' activities that might be construed as presenting security risk.

- 'Antecedent' conduct – the totality of behaviours, committed by a terrorist group in advance of a terrorist incident, including

  'Preparatory' activities – activities undertaken by individuals to assist in the preparation of a terrorist incident and

  'Ancillary' activities – activities undertaken by the terrorist organisation itself.

- 'Operational' conduct – 'terrorist' activities

  The activities that are manifest in the execution of a terrorist attack

- 'Other unlawful' conduct – 'other' activities that constitute unlawful interference with maritime transport and that fall outside the ambit of terrorism, particularly regarding organised crime.

2. Consider the policy intent for including the offence on the list of MSROs.
3. Consider the offence in question, its primary definition and whether it is a conditional disqualification offence.
4. In particular have consideration for how the offence might by disqualifiable in terms of risk**.**
5. Consider whether the offence is indicative of a lengthy or active criminal career (this is enlarged at Section 8 below) and have consideration for the following elements

- The seriousness of the offence
- Whether the offence occurred in isolation.
  - Was it one or 20 acts of vandalism?
- The elapsed time between offences
  - One isolated offence may not relate significantly to one that was committed 20 years ago
- Whether the offence was in fact related to other offences
  - There may be several offences that fall within the one ‘act’ or indeed within the one court proceeding.

6. If the offences can be related to terrorism, unlawful interference or international crime (and possibly other categories in accordance with perceived security threat and risk), then there would be prima facie reasons to disqualify.
7. If not, and the matter is ‘conditional’, consider:

- Whether the offence occurred in isolation
- The elapsed time between offences
- Whether, and the degree to which, the offence can be considered to be related to other offences or offences related to terrorism or unlawful interference as defined by law.

8. Consider the context of the court proceeding

- All convictions that might be considered to be serious in nature might include all custodial orders imposed by Lower and Higher courts as well as all orders (custodial and non-custodial) imposed by the Higher courts.

The key consideration is the degree to which an offence may be linked to activity related to terrorism or unlawful interference. For example, a kidnapping offence may be seen to be serious and prima facie disqualifiable. However, a kidnapping offence that occurs in the context of a family breakdown has little or no relationship with kidnapping for political, ideological or even pecuniary reasons.

5. Assessing the Current List of Maritime Security Relevant Offences (Task Item 3)

The purpose of this section is to provide a critical assessment of the current list of MSROs in order to determine whether the list is adequate and appropriate to meet the policy objective – that is, whether application of the list helps mitigate terrorist risk and the risk of unlawful interference with maritime transport and offshore facilities. GHD suggests that the current list of MSROs (as outlined in Table 6.07C of the Maritime Transport and Offshore Facilities Security Regulations 2003 (*The Regulations 2003*), p. 95 and reproduced in Table 6) fails to consider a substantial number of offences that have been identified as having historical linkages with both terrorist activity, and unlawful interference. These shortcomings and gaps in the current legislation have been identified in the text below, and an 'updated' list of MSROs, which considers all of these offences, is proposed.

5.1 Overview of Current MSROs

A logical place to begin this discussion is to provide a brief overview of the current MSROs as outlined in Table 6.07C of *The Regulations 2003*. The legislation outlines nine criteria (or items) that must be considered to determine an applicant's eligibility to receive an MSIC (see column 1, Table 6). These criteria encapsulate a range of criminal offences that fall within their broad scope. Columns 2 and 3 outline the specific offences and the relevant Australian Standard Offence Classification (ASOC) that apply to each offence. This particular list, as reported in Table 6, was supplied by AusCheck, and has been modified (by AusCheck) to include transport and terrorism offences. Further, as a matter of convenience, AusCheck has deleted duplicate offences.

The use of ASOC classifications enabled comparison of the current list of MSROs (Table 6) with the offence categories that were identified as being problematic (see Table 1). As suggested in Section 3, one of the key conclusions of this report is that the current list of MSROs does not meet the policy objectives of the MSIC scheme. Our review of the historical/theoretical literature relating terrorism and unlawful interference identified a significant number of relevant offences that fall outside the scope of the current legislation. The following provides an overview of the current gaps in the legislation.

The following offences pertaining to preparatory activities are not considered under the current legislation, including:

- Certain offences related to possessing/transporting and storing explosive materials and devices
- Larceny/theft offences
- Vandalism offences
- Some conspiracy offences
- Robbery offences
- Trespassing offences and
- A number of offences that constitute significant weapons violations.

With respect to ancillary activities the following specific offences are not considered under the current legislation:

- Certain offences pertaining to illegal trade
- Some fraud offences
- A range of specific offences relating to extortion, racketeering and blackmail and
- Some offences relating to bribery, corruption and graft.

Lastly, the legislation also neglects a range of offences related to operational conduct that may constitute terrorist activities that may fall outside of offences mentioned in Chapter 5 of the Criminal Code (Commonwealth of Australia, 1995). These include offences pertaining to:

- Kidnapping
- Some offences relating to the damage to property
- Hostage seizures/barricade
- Some offences relating to armed attacks
- Incendiary attacks
- Environmental pollution offences (as they might relate to terrorism or unlawful interference)
- Offences pertaining to the death of another human being – be it by assassination or murder
- Lynching and
- Some offences relating to making threats or hoaxes.

To address these gaps, a new set of Tables (Table 7 to Table 10) will outline the new offence categories proposed in Section 4, Table 1, in addition to providing a complete list of any corresponding ASOC code numbers and offence descriptions that bear relevance to their related offences. The reader will notice a likeness between Table 6 and Table 7 through Table 10 – they have purposely been constructed in the same manner so that comparisons between specific offences and categories can be made. Further, as a matter of convenience, GHD has highlighted specific offence additions in Table 7 through Table 10 (as outlined in the text above) to the current list of MSROs with boldface/highlighting. A summary of the offences removed from the current list of MSROs and a justification for doing so has been provided in Section 5.2.

Table 7 considers the first class of antecedent conduct – preparatory activities – which include affiliation/membership offences, training, possessing/transporting explosive devices/materials, larceny/theft, vandalism, conspiracy, robbery, trespassing, identity documentation, weapons violations and miscellaneous.

Table 8 lists the second class of antecedent conduct – ancillary activities – including illegal trade, money-laundering, fraud, counterfeiting, extortion, racketeering and blackmail, bribery, corruption and graft, people smuggling and trafficking, drug trafficking and miscellaneous.

Table 9 considers the offences related to operational conduct, which for the most part, constitutes a wide and diverse range of terrorist activities. The range of activities includes kidnapping, damage to property, bombings, hostage seizure/barricade, sabotage, armed attacks, incendiary attacks, hijacking, exotic pollution, environmental pollution, assassination and murder, lynching and hoaxes/threats.

Table 10 considers the final range of 'other' unlawful conduct and 'other' activities. These activities include a range of specific offences that relate to treason, sedition, treachery and subversive activities, piracy and the unlawful interference with maritime transport and offshore facilities.

5.2 Offences removed from current list of MSROs

A select number of offences, identified by AusCheck (Table 6.07C of *The Regulations*) as being MSROs, namely from 'Item 6: An identity offence involving counterfeiting or falsification of identity documents, or assuming another individual's identity' (see Table 6) have been removed from the suggested revised list of MSROs. These are:

- Falsely advertising a professional status (09911)
- Falsely claim a professional qualification (09911)
- Impersonate a doctor (09911)
- Impersonate a government employee (09911)
- Impersonate a justice official (09911)
- Impersonate a particular profession, trade, rank or status (09911)
- Impersonate a solicitor (09911)
- Impersonation (09911)
- Misrepresentation of professional status (09911).

GHD has found no cause to include these offences in the revised list of MSROs. The literature reviewed in Section 4 of this report did not support an argument for the inclusion of these offences. In particular, whilst the research did establish links between the supply, issue and use of false identity documentation, there was a paucity of evidence available to support the inclusion of offences related to 'impersonation', misrepresentation or 'falsely stating' professional credentials.

5.3 Conclusions

It is suggested that the current list of MSROs as described in Table 6.07C of *The Regulations 2003*, and reproduced in Table 6 does not sufficiently mitigate the risk of unlawful interference with maritime transport and offshore facilities, as called for under the legislation. Rather, GHD argues that a revised list of offence categories and specific offences (as reproduced in Table 7 through Table 10), are better suited than the current list of MSROs (Table 6) to meet the stated policy objectives of the MSIC scheme (see Sections 3 above). This is an argument that is informed and evidenced by the review of extant research conducted in Section 4 of this report (above).

GHD feels it necessary to stress that the offences listed above do not in and of themselves necessarily warrant an automatic disqualification from MSIC eligibility. Not all offences warrant automatic disqualification. It is argued that if an offence is to be considered disqualifiable, it must represent a tangible risk of being associated with terrorist behaviour, organised criminal activity, or unlawful interference. As such, GHD proposes that each offence should be judged on its own merits.

6. Evaluation of Adverse Criminal Record Criteria (Task Item 4)

6.1 Introduction

The current adverse criminal record criteria, as stated in Section 6.08A of *The Regulations 2003* stipulates that a person has "an adverse criminal record if he or she has been convicted of a maritime-security relevant offence and is sentenced to imprisonment (including periodic detention, home-based detention and detention until the rising of the court, but not including a sentence of community service" (p. 119). The purpose of this section is to assess whether the current criterion is an adequate and appropriate method of meeting the policy objective of the MSIC scheme; to help mitigate the risk of unlawful interference (DOTARS, 2006). This will provide evidence to suggest that the criteria (which only considers custodial sentences) is inadequate, citing the fact that there is a significant risk for some serious criminal convictions to be overlooked by assessors due to the structure of the Australian court system and the nature of sentencing decisions. Accordingly, GHD proposes an alternative method for identifying adverse criminal histories that addresses the concerns raised in the following analysis.

The following analysis will begin by providing a brief overview of the Australian courts and the adjudication of 'serious' offences. Next, the principles of sentencing will be considered, with particular emphasis being placed upon the imposition of custodial orders. Following that, an in-depth analysis of sentencing decision statistics (2007-08) for the revised list of MSRO categories to highlight some of the issues inherent in the current regime, and provide evidence to support the conclusions of this section.

6.2 Serious offences and the Australian courts

The Australian court system is relatively complex, with multiple courts holding sessions across all Australian jurisdictions (state, territory and federal) (Sawyer, 1967). Whilst a detailed dialogue describing the structure and hierarchy of this system falls outside the purview of this report, it is necessary to highlight the principal distinctions between higher (i.e. Supreme, District or County Courts – depending on the jurisdiction) criminal courts and lower courts (i.e. Court of Petty Sessions, Magistrates or Local Courts). Smaller states and territories (including the Australian Capital Territory, the Northern Territory and Tasmania only have two levels of courts – Supreme and Magistrates' Courts. Whilst there is some variation across jurisdictions as to which cases are heard in what court, generally speaking, higher courts adjudicate the most serious offences occurring within each jurisdiction. That is, higher courts are generally responsible of adjudicating indictable offences, whereas the lower courts are responsible for adjudicating less-serious, summary matters and smaller civil matters (Judicial Conference of Australia, 2007).

6.3 The principles of sentencing: the imposition of custodial orders

Whilst it is beyond the scope of this report to provide a complete and detailed discussion of Australian sentencing principles, GHD believes it necessary to at least gesture towards the rational underpinning the imposition of custodial orders. Due to the severity of incarceration, imprisonment and other custodial orders, jurisdictions across Australia (both state and federal) generally impose such orders when there are no other appropriate (and less onerous) sanctions that might be applied in all circumstances of a particular offence or offender. When considering the overall scale of punishments, in Australia as compared with other Western democracies (the United States of America in particular), Australian sentencing is very much weighted toward the lower end of the scale. That is, Australian courts are more likely to impose non-custodial orders such as fines and bonds, and in the event that custodial orders are imposed, they tend to be relatively short (Freiberg 2001). Further, in many Australian jurisdictions, it is actually a legal requirement that a sentencing court should only impose terms of imprisonment as a sanction of last resort (see for example Commonwealth of Australia, 1914). This limiting requirement is often described as the principle of parsimony, which requires that courts impose the sanction of imprisonment only as resort – that it, only after having exhausted all other possibilities of less serious penalty (Edney & Bagaric, 2007). This principle is prevalent indeed across Australia, and is evidenced by sentencing decision statistics (for 2007-08, lower and higher courts) which showed that only 10.2% of all criminal convictions received a custodial order[5] of some type, compared with 90.2% adjudications having non-custodial orders[6] imposed (Table not shown) (Australian Bureau of Statistics 2009). The following section subsection will chronicle these sentencing decisions in greater detail, as they relate to the offence categories relevant to this report.

6.4 Sentencing decisions in Australia 2007-08

This restraint is problematic considering some of the lower range offences that have been identified in Table 1 as having links with, and bearing relevance to terrorist activity, transnational organised crime and the unlawful interference. This is particularly the case when one considers lower-level preparatory offences (e.g. trespassing and weapons violations) as well as ancillary offences (e.g. illegal trade and counterfeiting currency) that may represent a significant threat, but fall below the threshold require for the imposition of a custodial offence.

The following subsections will provide statistics describing sentencing decisions in lower and higher Courts across Australia for 2007-08. The statistics referred to in Table 2 through Table 5 come from the *Criminal Courts in Australia 2007-08* publication supplied by the Australian Bureau of Statistics (ABS). These statistics provide nationally comparable data that show the number (and proportion) of defendants dealt with by the higher, lower and Children's criminal courts. More importantly however, the dataset includes details on the outcomes associated with adjudicated defendants (including sentence type) by the principal sentence committed (Australian Bureau of Statistics, 2009). The reader should note that due to data availability, this analysis is restricted to an analysis of aggregate data only. That is, the ASOC offence classifications available in publication 4513.0 make reference to aggregate offence divisions (i.e. groups of offences), and not at the specific offence level. As such, the following discussion of sentencing decisions is at a higher-level of generality. Whilst GHD acknowledges that readers should interpret these results with caution, it is argued that despite the limitations in the dataset, there is enough significant overlap between the ASOC offence categories supplied by the ABS, and the offence categories outlined in Table 7 through

[5] Custodial orders include custody in a correctional institution, custody in the community and fully suspended sentences.

[6] Non-custodial orders include community supervision/work orders, monetary orders or other non-custodial orders

Table 10, to support the assertions put forth in this report.

This analysis shows that the principle of parsimony is prevalent in Australia's judicial system, and that a considerable range of offences identified in the revised list of MSROs (see Section 5) may not attract custodial sentences, and thus do not come under scrutiny by AusCheck, or the OTS. Table 2 demonstrates the principal sentencing decisions[7] for principal offence classifications[8] related to preparatory conduct and related offences. Table 3 will refer to Ancillary conduct and related offences, Table 4 will describe operational conduct and related offences, and Table 5 will make reference to offences relating to 'other' conduct.

6.4.1 Sentencing decisions and preparatory conduct

Table 2 illustrates the sentencing decision for the aggregated ASOC offences categories that best reflect preparatory conduct as outlined in Table 7. The offences included in this analysis are:

- Robbery
- Extortion and related offences (including aggravated robbery, non-aggravated robbery and extortion)
- Unlawful entry with intent
- Theft and related offences (including the theft of, or illegal use of a mother vehicle, its parts or contents, theft from a person, theft of intellectual property, theft from a retail premises, receiving or handling the proceeds of a crime and the illegal use of property) and
- Weapons and explosive offences (including the import or export of prohibited weapons/explosives, the selling, possession and/or use of prohibited weapons/explosives, unlawfully obtaining or possessing regulated weapons/explosives, and dealing or trafficking in regulated weapons or explosives).

With respect to robbery, extortion and related offences Table 2 shows that custodial orders were imposed two-thirds (66.0%) of cases adjudicated in the lower courts, whilst nearly one-third received non-custodial orders. For cases adjudicated in the higher courts, these same offences garnered a higher rate of custodial orders, with more than nine in ten (91.2%) of cases attracting such a penalty, whilst less than one in ten (8.8%) received a non-custodial orders. Sentencing decisions handed down for offences adjudicated in the lower courts relating to unlawful entry with intent were relatively evenly split, with 50.8% reflecting custodial orders and 48.9% attracting non-custodial orders. Custodial orders were however more common in the higher courts, being applied in the vast majority of adjudications (81.6%), compared with non-custodial orders being applied in 18.1% of adjudications. Theft related offences adjudicated in the lower courts were far more likely to garner custodial orders than custodial orders (16.3% and 83.6% respectively). The inverse holds true in higher court adjudications whereby custodial orders were imposed in 69.7% of cases, compared with non-custodial orders at 30.4%. With respect to weapons related offences, these differences between the lower and higher courts were also quite pronounced. In cases adjudicated in the lower courts, custodial sentences were only imposed in 13.5% of cases, contrasting strongly with non-custodial orders, which were handed down in the vast majority (86.4%) of cases. The higher Courts on the other hand were far more likely to hand down custodial

[7] Please see explanatory notes 46-48 outlined by the ABS (2009) for a detailed discussion of definitional and coding issues pertaining to principal sentences.

[8] Please see explanatory notes 40-45 outlined by the ABS (2009) for a detailed discussion of definitional and coding issues pertaining to principal offences.

orders (doing so in 82.9% of cases) than non-custodial orders (in 17.1% of adjudications).

Table 2 Sentencing decisions for preparatory offences in Australia 2007-08

	Lower Courts			Higher Courts		
Offence	**Number of adjudications**	**Percentage custodial orders**	**Percentage non-custodial orders**	**Number of adjudications**	**Percentage custodial orders**	**Percentage non-custodial orders**
Robbery, extortion and related offences	241	66.0%	31.5%	1554	91.2%	8.8%
Unlawful entry with intent	7031	50.8%	48.9%	1215	81.6%	18.1%
Theft and related offences	28,235	16.3%	83.6%	415	69.6%	30.4%
Weapons and explosives offences	7610	13.5%	86.4%	181	82.9%	17.1%

Source: Australian Bureau of Statistics 2009

Overall, this analysis shows that the vast majority of preparatory offences relating to theft and weapons/explosives (adjudicated in both levels of courts) have no custodial orders attached to them and as such could not be considered in an eligibility assessment under the current criteria. Further, slightly more than half of the offences relating to unlawful entry with intent would be excluded from the current criteria. The statistics did show that robbery, extortion and related offences carry with them a high rate of custodial orders (in both lower and higher courts). Further, the fact that the vast majority of cases were heard in the higher courts shows the weight and severity applied to this particular range of offences.

When comparing the two levels of courts, Table 2 shows that the lower courts adjudicated far more cases (n=43,117), but were significantly less likely than the higher courts to impose custodial orders. higher courts on the other hand heard far less cases (n= 3,365) than the lower courts, but were far more likely to impose custodial orders in the cases that were adjudicated in those courts. These statistics lend credence to the argument that higher courts adjudicate more serious offences, and as such, hand down more severe penalties.

6.4.2 Sentencing decisions and ancillary conduct

Table 3 outlines offences categories that for the purposes of this analysis reflect certain ancillary offences (outlined in Table 8). These are:

- Deception related offences that include

- Cheque/credit card fraud
- Make/possessing equipment to make false/illegal financial instruments
- Fraudulent trade practices
- Prescription drug fraud
- Fare evasion
- Fraud
- Counterfeiting currency and related offences
- Dishonest conversion
- Bribery
- Misrepresentation of professional status, and
- non-fraudulent trade practices and

◗ Illicit drug offences including

- Importing/exporting illicit drugs
- Trafficking in commercial and non-commercial quantities of illicit drugs and
- Manufacture, cultivation possession or use offences.

There is considerable variation with respect to the sentencing preferences handed down by the lower and higher courts with respect to the ancillary offences outlined above. Whilst the lower courts were far more likely to impose non-custodial orders than custodial orders for deception related offences (81.6% and 18.2% respectively), the opposite was true in the higher courts, where custodial orders were handed down 83.7% of the time, compared with only 16.3% of cases attracting a non-custodial order. This same trend was evident for illicit drug offences as well, as more than nine in ten (91.2%) cases adjudicated in the lower courts attracted a non-custodial order, compared with less than one in ten attracting a custodial order. The imposition of custodial orders was far more prevalent in the higher courts (being done in 85.8%) of cases, compared with non-custodial orders being imposed in only 14.2% of instances (see Table 3)

Table 3 Sentencing decisions for ancillary offences in Australia 2007-08

	Lower Courts			Higher Courts		
Offence	**Number of adjudications**	**Percentage custodial orders**	**Percentage non-custodial orders**	**Number of adjudications**	**Percentage custodial orders**	**Percentage non-custodial orders**
Deception and related offences	14,367	18.2%	81.6%	763	83.7%	16.3%
Illicit drug offences	26,737	8.2%	91.7%	2560	85.8%	14.2%

Source: Australian Bureau of Statistics 2009

In summary, Table 3 showed that the higher courts were far more likely that the lower courts to impose custodial orders for offences considered to be ancillary in nature. The lower courts adjudicated far more (and less serious) ancillary cases (n=41,104) than the higher courts (n=3,323).

6.4.3 Sentencing decisions and operational conduct

Table 4 (below) provides an overview of sentencing decisions for offence categories related to operational conduct (outlined in Table 9). The offences listed in this table consider:

- Property damage and environmental pollution offences, including
  - Property damage by fire or explosion
  - Graffiti
  - Property damage
  - Water pollution offences
  - Noise pollution offences and
  - Environmental pollution offences
- Abduction and related offences, including
  - Abduction and kidnapping and
  - Deprivation of liberty/false imprisonment
- Homicide and related offences, including
  - Murder
  - Conspiracy to murder
  - Attempted murder
  - Manslaughter and
  - Driving causing death and
- Acts intended to cause injury.

The statistics provided by the ABS provide evidence to support the assertion that on the whole, higher courts were far more likely than the lower courts to impose custodial orders for offences that could be considered as being operational in nature. For the vast majority of offences relating to property damage and environmental pollution, the lower courts applied non-custodial orders (92.5%), and only imposed custodial orders in 7.3% of cases. Again, the opposite was true in the higher courts, where custodial orders were more prevalent, with nearly seven in ten adjudications (69.4%) receiving such a sentence, compared with non-custodial orders being handed down in only 30.6% of cases. In abduction related offences, the higher courts were more than four times more likely than the lower courts (81.0% compared with 20.0%) to impose custodial orders, and far less likely to hand down non-custodial orders (19.0% versus 70.0%). Further, with regard to homicide and related offences, the higher courts were nearly three times more likely to impose custodial orders when compared to the lower courts (97.3% and 34.4% respectively). Non-custodial orders were relatively common for this offence class in the lower courts (applied 65.6% of the time), but were rarely handed down in the higher courts (in only 2.7% of cases). And finally, with respect to acts intended to cause injury, the higher courts were far more likely to impose custodial orders than their lower court counterparts (81.8% versus 27.0% respectively).

Table 4 Sentencing decisions for operational offences in Australia 2007-08

Offence	Lower Courts			Higher Courts		
	Number of adjudications	Percentage custodial orders	Percentage non-custodial orders	Number of adjudications	Percentage custodial orders	Percentage non-custodial orders
Property damage and environmental pollution	13,770	7.3%	92.5%	307	69.4%	30.6%
Abduction and related offences	20	20.0%	70.0%	105	81.0%	19.0%
Homicide and related offences	61	34.4%	65.6%	370	97.3%	2.7%
Acts intended to cause injury	39,063	27.0%	72.8%	3026	81.8%	18.2%

Source: Australian Bureau of Statistics 2009

In summary, the statistics provided by the ABS provide evidence to support the assertion that on the whole, the higher courts were far more likely than the lower courts to impose custodial orders for offences that could be considered as being operational in nature. Indeed, the imposition of custodial sentences in the lower courts (and thus the vast majority of total adjudications) is relatively rare. In 2007-08, lower courts adjudicated far more operational offences (n=52,914) than the higher courts (n=3808).

6.4.4 Sentencing decisions and 'other' conduct

The statistics provided in Table 5 describe the sentencing decisions for some of the offences listed as being related to 'other unlawful conduct' in Table 6. These include:

- Offences against justice procedures, government security and operations, such as
  - Escaping from custody
  - Breaching bail
  - Breaking parole
  - Breaching court/justice orders
  - Resisting or hindering police officers or justice officials
  - Prison regulation offences
  - Resisting or hindering government officers concerned with government security
- Offences against government security, such as
  - Resisting or hindering government officials and
  - Offences against government operations.

Table 5 shows that these 'other' offences were far more likely to garner custodial sentences in the higher courts than in lower courts. While three-quarters (75.2%) of higher court adjudications resulted in a custodial sentence being imposed, only one in ten (9.3%) of similar offences adjudicated in the lower courts attracted the same. Accordingly, non-custodial orders were far more prevalent in the lower courts (90.5%) as compared to the higher courts (24.8%).

Table 5 Sentencing decisions for 'other' offences in Australia 2007-08

	Lower Courts			Higher Courts		
Offence	**Number of adjudications**	**Percentage custodial orders**	**Percentage non-custodial orders**	**Number of adjudications**	**Percentage custodial orders**	**Percentage non-custodial orders**
Offences against justice procedures, government security and operations	30,286	9.3%	90.5%	230	75.2%	24.8%

Source: Australian Bureau of Statistics 2009

In summary, the lower courts adjudicated a substantially greater number of 'other' cases (n-30,286) than the higher courts (n=230). Further, the higher courts were far more likely to impose custodial orders for offences related to 'other' conduct when compared to the lower courts. Again, this is likely due to the fact that the offences heard in higher courts are more serious than those adjudicated in the lower courts, and as such attract heavier sanctions.

6.5 Summary and conclusions

The data on sentencing decisions as discussed in Table 2 through Table 5 (above), and the conclusions derived there from have highlighted a number of key findings that GHD believes must be considered when evaluating the utility of the current MSIC eligibility criteria. As an abbreviated summary, these issues include

- **Sentencing principles** – When considering the overall scale of punishments, in Australia as compared with other Western democracies, Australian sentencing is very much weighted toward the lower end of the scale and is more likely to impose non-custodial orders.
- **Sentencing decisions** – Overall, the above analysis of sentencing decisions showed that the vast majority of orders handed down by the courts for offences relating to preparatory, ancillary, operational and other conduct (adjudicated in both levels of courts combined) were non-custodial in nature. As these offences would not be considered for assessment under the current eligibility criteria.
- **Adjudications (lower courts)** – The lower courts adjudicated the least serious offences, and thus the vast majority of all criminal matters heard in Australian courts. Accordingly, the imposition of custodial sentences to these offences was relatively uncommon in most cases (with the exception of offences relating to burglary and extortion).

- **Adjudications (higher courts)** – The higher court adjudications only represent a small proportion of total criminal matters, but in doing so represent serious offences that can attract severe penalties. Consequently, the higher courts were far more likely than the lower courts to impose custodial orders. Whilst the higher courts do adjudicate far less cases than the lower courts, it is the conclusion of this report that it is these 'serious' cases that are the most significant.

There is sufficient cause to argue that the current eligibility criteria do not meet the policy objective of the MSIC scheme as outlined in *The Regulations 2003,* and that the potential exists for some serious criminal convictions to be overlooked by assessors. As a possible alternative, GHD suggests that the OTS consider widening the scope of its eligibility criteria to include all convictions that might be considered to be serious in nature. Accordingly, in keeping consistent with the sentencing principles dictated by the courts, any such criteria should include all custodial orders imposed by lower and higher courts (as the current scheme dictates), in addition to all orders (i.e. custodial and non-custodial) imposed by the higher courts. Table 2 through Table 5 show that adopting such an amendment would enable OTS to assess all serious criminal histories in the eligibility determination process, while allowing the vast majority of offences that the courts consider as being relatively minor to not impede upon an applicant's ability to procure employment in a regulated and/or restricted area such as a maritime port. In summary, it is the conclusion of this report that including all higher court adjudications represents the most appropriate manner of widening the net, and capturing a broader range of serious criminal histories for further assessment by AusCheck.

7. Utility of Criminal Intelligence Information in Assessing Eligibility (Task Item 5)

Current MSIC eligibility determination processes do not include the use of criminal intelligence. In theory, relevant intelligence has potential benefits for any administrative decision making process, including primary and internal review determinations of MSIC eligibility. The relative benefits of intelligence support typically relate to its accuracy, relevance, timeliness, accessibility and usability. If accurate, relevant intelligence exists and is available, processes for handling, storage and accessing it may be determined between the recipient and the originating agency / agencies. This report looks only at the question of whether relevant intelligence is available and at a high level regarding the general utility of using it in the eligibility determination process. GHD does not make recommendations on intelligence handling procedures and instead offers general suggestions only regarding how the MSIC determination process might be varied to accommodate it.

As indicated elsewhere, in the current process, AusCheck initiates a criminal check with CrimTrac and a security check with ASIO. Once requested information is received, AusCheck advises the issuing authority whether the applicant has been disqualified on either criminal or security grounds or whether the issuing authority has discretion to issue a MSIC. Although ASIO may provide a negative or qualified security assessment, which would likely lead to a refusal to issue, it is understood that this has never occurred in respect of an MSIC applicant.

At present the practicalities of current arrangements preclude the effective utilisation of indices, since all of the information that AusCheck receives regarding criminal records is hard copy. Material is not cross referenced and applicant files are archived after a short period of time. Information is sought by AusCheck only in respect of an application and used for the particular purposes of primary and internal review decision making.

In its current form, neither does the system provide for a flow of information on applicants through time. Such a capability would require ongoing access to intelligence material by decision makers or a flagging process which provided for periodic checking or real time scanning of the MSIC cohort.

This can be seen as a gap in the eligibility screen. There are many behaviours and offences of relevance to terrorism and unlawful interference that are not captured by the current eligibility determination process; and even were non-custodial offences part of the screening process, much potentially relevant criminal and non-criminal activity is undertaken without an offence being committed. Still, there is a possibility that the applicant's activities may be the subject of criminal intelligence reporting. Similarly, a subject may have committed offences that do not preclude eligibility or that are not 'related', but criminal intelligence may indicate a pattern of 'relevant' behaviour. Intelligence can also potentially enable better risk-based decisions – for example where an applicant will have access to particularly sensitive assets or information and where intelligence exists that is of relevance to that context but which may not necessarily disqualify an applicant from performing in a less trusted position. There is a strong prima facie case for the use of intelligence as decision support in the MSIC eligibility determination process.

Access to the database is by means of a monitor that can be located within a client agency, there to be interrogated by appropriately cleared staff; client agencies include the Australian Customs Service and a small, but growing, number of regulatory authorities. The database has different levels of access which range from full access to all information that has been uploaded to the dataset by contributing law enforcement agencies, to the lowest level, which is understood to provide an indication only of whether criminal intelligence is held on a subject.

Discussions with ACC regarding the potential relevance of Acid Alien indicate that areas in which criminal intelligence may shed light include the activities of stevedores, customs agents and truck drivers, in respect of whom there may be relevant criminal intelligence holdings.

According to ACC, checking of a typical cohort of employees at any port would be expected to return a criminal intelligence trace at a rate of approximately three per cent of the sample group. The majority of these would be traces of minor importance, but some would indicate multiple and ongoing activities and behaviours. There would be an expectedly low number of disqualifications on the basis of criminal intelligence traces and in such cases, especially where there is, for example, no criminal history, a decision to disqualify would obviously have to be taken judiciously, given the clear natural justice and procedural fairness issues involved.

Another issue in this context is the flow of information regarding criminal convictions. The current eligibility determination process involves a snapshot on criminal history, which means that serious criminal activity that would otherwise disqualify an applicant from MSIC eligibility could be occurring post-MSIC issue without the issuing body's knowledge, and without the relevant government authority's knowledge. It is strongly suggested that such a tracking system be discussed with CrimTrac. If this proves not to be practical, then consideration should be given implementing a process whereby criminal checking of MSIC holders is undertaken at a given frequency throughout the life of the MSIC.

The capability now exists for criminal intelligence to be used in a meaningful and ongoing way in the MSIC eligibility determination process and could, through appropriate procedures, be used in an eligibility review process as well. This, in addition, to examining the feasibility of implementing a real time feed of criminal offence information from CrimTrac, represents a potentially significant enhancement to the determination process and its effectiveness in mitigating the threats of terrorism and unlawful interference with maritime transport and offshore facilities.

There is, therefore, a clear benefit to be gained from the use of existing and accessible criminal intelligence. However, there are some countervailing considerations, which will be of potential concern regarding practicality, the reliability of the information itself and natural justice.

Designed to ensure that accurate, relevant intelligence is available to decision makers in a timely fashion, intelligence systems present some practical challenges. Technical solutions can be of assistance. Where, for example a decision maker is able to access criminal intelligence electronically according to agreed access protocols, and to do so according to the requirements of implemented internal policies and procedures regarding the use of intelligence, practical and resource issues may be mitigated. Access to the Acid Alien database may hold out some promise of such a solution.

However, given the size of the MSIC holder cohort and the rate of application, any intelligence system implemented to support the MSIC eligibility determination process will have significant resource implications. The Department will have to decide exactly how criminal intelligence will be used (use at the primary and / or review stage and / or to monitor the MSIC cohort at a given extent and frequency) and the related administrative decision making processes; for example, what to do when criminal intelligence emerges regarding a current MSIC holder. Apart from the policy and process issues around how criminal intelligence may be used to support primary and review decision making, monitoring poses a range of considerations, including, for example, natural justice issues and issues around how a holder can be disqualified on the basis of intelligence without compromising the intelligence or the source itself. These matters would need to be carefully worked through with ACC and protocols agreed.

Regarding intrinsic value, at some level the accuracy and provenance of all intelligence can be questioned. Intelligence material is almost always incomplete for the simple reason that the needs of those who require it rarely coincide with the source's anticipation of what is needed or of the intelligence process itself to deliver exactly what is needed just on time. Often intelligence provides valuable snap shots on a related matter from which inferences may be made – rarely will it provide 'the answer'.

This is particularly the case regarding criminal intelligence, which can be notoriously inaccurate as well as incomplete. Criminal intelligence on a person could have been provided by a source with criminal or malign intent and the material may or may not have been corroborated. These imperfections are likely not to be known to the decision maker. Furthermore, criminal intelligence is normally collected and recorded in the course of a particular inquiry. As a result the range of 'related' behaviour relevant to MSIC eligibility determinations can never be captured by the criminal intelligence process as it currently exists – intelligence coverage will always be incomplete. These two issues effectively render somewhat problematic over reliance on criminal intelligence in a decision making process that goes to livelihood. To be used in support of any administrative decision, intelligence material needs to have considerable veracity.

Discussion of policy and procedure leads into the range of natural justice issues that relate to the use of intelligence. Procedural fairness can be said to be negatively impacted in any decision where intelligence that supports that decision may not be disclosed or shared with the subject / applicant. This would therefore apply to the bulk of all decisions that are informed by intelligence. The Department clearly has a range of sensitive stakeholder relationships that may be impacted should a change in policy of this nature be implemented. From a strictly legal standpoint, however, it is possible to design legislative provisions to protect criminal intelligence from disclosure. Of particular relevance is one of the seven standards for 'identification and Probity Checks for Security Industry Licences' agreed between the Commonwealth and the States and Territories, which involves the:

> *use of criminal intelligence to determine the fitness of an applicant to hold a licence with, subject to administrative review processes, the existence and nature of that intelligence not to be disclosed to the applicant.*[9]

This principle – along with the other principles regarding the establishment of a nationally consistent regulatory framework in respect of the security industry – is currently being migrated into legislation and some jurisdictions have already implemented it. Furthermore, it is understood that provisions relating to non-disclosure of criminal intelligence information have already been challenged (in particular in NSW and SA) and upheld at judicial review.

In addition to this, robust and widely tested non-disclosure provisions already exist in Commonwealth legislation – the Australian Security Intelligence Organisation Act 1979 for example. Thus, while the example in the preceding paragraph relates to State and Territory jurisdictions, ample precedent exists in the Commonwealth jurisdiction as well. This is important since challenge of any new non-disclosure

[9] COAG (July 2008), Regulation of THE Private Security Industry: Manpower (Guarding) Sector, paragraph 3 (c) as referenced at http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/regulation_of_private_security_industry.rtf. The relevant COAG communiqué is referenced at http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm.

provisions in the Maritime Transport and Offshore Facilities Security Act 2003 before the Federal Court can be expected to occur.

A possible approach that might mitigate these issues might be to design processes whereby not all MSIC holders are subjected to criminal intelligence checking. The issue here would be, however, that a limited screen might defeat the purpose, given that criminal intelligence holdings are themselves incomplete. Also, if a monitoring process were to be implemented, there would be a need to run the whole cohort through a running / ongoing process.

In conclusion, the prima facie benefits of using criminal intelligence as MSIC eligibility decision support are clear. According to the ACC, relevant intelligence is available. Also with the appropriate legislative cover (as has been implemented in other legislative frameworks), such sensitive information need not be disclosable in the likely event of court challenge. However, there are serious natural justice issues regarding the use, and non-disclosure, of potentially highly contestable information in determinations that go to livelihood. Fundamental questions regarding the balance between society’s response to security threat (perceived and real) and natural justice and civil liberties go far beyond the immediate benefits of intelligence support and will need careful and prudent consideration by the Department. Certainly the maritime sector will have strong views on the matter.

8. Decision Making and the Secretary's Discretionary Powers (Task Item 6)

8.1 Introduction

The Secretary has discretion under the legislation to approve issue of an MSIC in certain cases (6.08F the *Regulations*) and to reconsider decisions in relation to MSICs and other matters (6.08X, the *Regulations*). Under Regulation 6.08X, on receiving an appeal from an applicant who has been refused an MSIC, the secretary has the discretion to consider a range of factors in determining whether an individual might be a risk to maritime security. In order to inform this process, GHD has provided a review of characteristics and circumstances that bear relevance to this review, and the Secretary's discretionary powers. The following section identifies a wide range of demographic characteristics (gender, age, ethnicity) and other factors/circumstances (age of initiation into criminal activity, the seriousness of offences, substance use/abuse, employment and previous criminal histories) as a means of assisting the OTS in determining the likelihood that an applicant may re-offend, or unlawfully interfere with maritime transport and offshore facilities.

In reviewing these characteristics, GHD has engaged with the body of criminological literature pertaining to 'criminal careers', which, in short, considers the totality of the offending career (i.e. longitudinally). As such, this allows for a meaningful analysis of characteristics that are associated with 'active' criminals, and provide empirical evidence to assess the longevity, the seriousness, and the likelihood of re-offending over these careers. GHD contends that the findings reported in this section have the potential to play a considerable role in assisting the Secretary in making informed decisions relating MSIC application appeals. The body of research described below identifies and articulates a range of demographic and individual characteristics, circumstances and other factors and considerations which may affect the likelihood that an individual may be continually engaging in an active criminal career – and thus be considered a risk to maritime security.

This section provides background context on criminal career scholarship (Section 8.2) and goes on to describe the factors associated with active criminal career trajectories (Sections 8.3, 8.4 and 8.5). Section 8 concludes by providing a summary of conclusions, a discussion of the weight that should be applied to the findings reported, and makes reference to some of the ethical implications involved in adopting such an approach (Section 8.6).

8.2 Criminal careers and related concepts

In this analysis, aggregate offending rates are partitioned into two primary components: first, the percentage of the population that commits crimes and second, the nature and extent of activity of those people who are actively engaging in crime (i.e. active offenders). Considering both of these factors is important because the two components can be influenced by very different factors and call for quite different policy responses. Accordingly 'criminal career' scholarship differs from traditional criminal justice statistics and research, which merely considers the 'proportions' of offences and offenders. Thus, this current work enables researchers and policymakers to consider factors that may otherwise not be available, and as such adds value to this report. This section will consider three facets of criminal career research that bear particular relevance to this review:

1. The individual offending frequency (i.e. the rate of criminal activity for active offenders) and the

factors/characteristics associated with such offending;

2. The seriousness of the offences committed and;
3. Criminal career length and termination (i.e. the length of time an offender is actively offending)

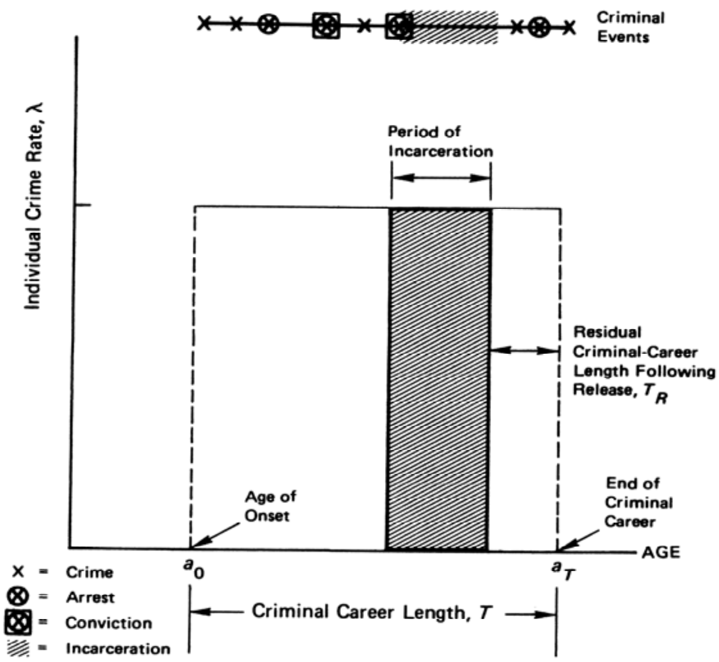
The frequency of offending, the seriousness and length of a criminal career may have considerable variation across offenders. At one extreme are offenders whose careers consist of a single offence, whilst at the other are the 'career criminals' who commit multiple serious offences over an extended period of time. The latter class of offenders are often characterised as being 'dangerous', 'habitual' or 'chronic' offenders (Blumstein, Cohen, Roth and Visher 1986). A fourth component of criminal career scholarship pertains to the factors associated with the initiation into criminal careers. However, GHD has determined that this research falls outside the scope of this review and will not be considered here.[10]

GHD has provided a definition and brief overview of the basic criminal career. This model provides background context that will inform subsequent subsections.

8.2.1 Outlining the basic model of a criminal career

The basic criminal career model (as described below) provides a reference for organising knowledge about the dimensions that describe individual criminal behaviour and activities. It permits the specification of relationships among various dimensions and the computation of statistics that describe offending across in an observed sample, and allows for the assessments of potential intervention impacts (Blumstein, Cohen, Roth and Visher 1986).

Figure 1 Modelling a Criminal Career



(Blumstein, Cohen, Roth and Visher 1986, p. 21)

[10] Readers should consult Blumstein, Cohen, Roth and Visher (1986, p.31) for further information.

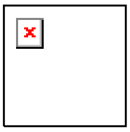


Figure 1 illustrates a highly simplistic model that introduces the essential elements of the criminal career. The top line (marked by Xs) represents a sequence of events during an active offender's criminal career. On this line, the X denotes the occurrences at which the offender committed crimes. Circled offences reflect instances where the offender was arrested, and crimes for which the arrest has led to a subsequent conviction have been enclosed in a square. Periods of incarceration following convictions are noted in the shaded areas (Blumstein, Cohen, Roth and Visher 1986).

At some stage along the continuum, an individual initiates into criminal activity. This first offence may involve a rational conscious choice on the part of the offender, it may be a product of a new set of associations that had recently developed, or may have been an inadvertent consequence of a change of circumstances in an individual's life. Once the individual initiates into criminal activity, it continues over a period of time, potentially increasing or decreasing in frequency. Eventually the individual terminates his or her criminal career, possibly because of death, but more commonly at a young age, after which time his or her probably of re-offending is relatively low (Blumstein, Cohen, Roth and Visher 1986) (discussed in greater detail below).

The 'career duration' (which obviously omits many of the complexities of a real career), is described in the bottom part of Figure 1. The individual offender is assumed to initiate into criminal activity at an 'age of onset (*a*O), but his or her official record may not reflect onset until the point of first arrest – which may be considerably later. Once initiated, the individual continues to commit crimes at a relatively constant rate (individual crime rate). The career terminates when the final crime is committed, and is represented in Figure 1 as (aT) or age of termination (Blumstein, Cohen, Roth and Visher 1986).

In summary, the model depicted in Figure 1 eludes to three essential elements of initiation:

1. The frequency of, or mean individual crime rate;
2. The age of initiation into criminal careers and;
3. The duration and termination of a criminal career.

The reader should note that there may be considerable variation across these three elements across offenders. These variations may be influenced by demographic characteristics, personal events or circumstances associated with an individual, or by other broader forces such as penalty/sanction levels or other community characteristics (Blumstein, Cohen, Roth and Visher 1986).

8.3 Individual frequencies for active offenders

This section provides an overview of previous research findings relating to individual offending frequency (IOF) and the factors associated with such offending. Overall rates of offending, demographic and other factors relating to IOF will be discussed.

8.3.1 Overall rates

The IOF is a measure of the number of crimes committed annually by an active offender. Despite differences in data collection techniques (official criminal justice data or self-reports[11]), in samples (general population, arrestees, and inmates), and in the varying jurisdictions examined, there is considerable convergence in estimates for any given offence types, particularly violent crimes and property crimes (Blumstein, Cohen, Roth and Visher 1986). As expected, the average IOF of

[11] See for example Peterson and Braiker (1980) and Chaiken and Chaiken (1982)

incarcerated individuals is higher than those who are not incarcerated (Chaiken and Chaiken, 1982; Peterson and Braiker 1980; Visher 1986). Perhaps most significantly, however, is the variation in IOF across offenders, which shows a distribution that is highly skewed. That is, the median offender only commits a small number of crimes per year, whilst a small percentage of offenders commit 100 crimes or more per year (Blumstein, Cohen, Roth and Visher 1986).

8.3.2 Demographic differences in individual offending frequency

Gender, age and ethnicity data are routinely collected for offenders (primarily for operational and identification purposes) and estimates are routinely used by law enforcement and government to inform policymaking processes (Blumstein, Cohen, Roth and Visher 1986). When considered in a criminal career context, estimates of IOF showed that in contrast to the large demographic differences observed in offence participation rates (e.g. more males are brought before the criminal justice system than females), IOF and criminal career trajectories did not vary substantially along demographic lines. In particular, previous research has presented evidence to suggest that IOF is insensitive to gender differences (see Inciardi, 1979; Elliott and Huizinga 1983), age (see Peterson and Braiker 1980; Chaiken and Chaiken 1982) and ethnicity (Peterson and Braiker 1980).

8.3.3 Other factors related to individual offending frequency

Contrary to the findings indicated in Section 8.3.2, there is evidence to suggest that there are differences in IOF that can be attributed to, and are associated with a range of ‘other’, non-demographic factors. These factors include the age of initiation into criminal careers, substance use/abuse, unemployment and prior criminal acts. Whilst the theoretical implications of these findings can often be ambiguous, these factors do offer some policy potential – particularly as a basis for identifying offenders who are likely to continue to engage in active criminal careers. This body of research shows that individuals who initiate into their criminal careers at younger ages typically have higher values of IOF than those who commence later in life (Wolfgang, Figlio and Sellin, 1972, as cited in Blumstein, Cohen, Roth and Visher, 1986; Farrington 1983). High frequencies of IOF are also found among active offenders who use drugs (especially in the case of poly drug use) and among those who have abused substances during childhood and adolescence (Chaiken and Chaiken 1982). The values of IOF for substance users are twice as high as those reported by non-users, and can be up to six times as high during instances of sustained or heavy use (McGothlin, Anglin and Wilson, 1978; Ball, Shaffer and Nurco 1983; Gropper, 1985; Blumstein, Cohen, Roth and Visher, 1986). Finally, there is also evidence to suggest that the length of time spent in paid employment (or more importantly, the lack thereof) is a significant factor associated with IOF. Individuals who are unemployed for significant periods tend to commit crimes at higher rates (Chaiken and Chaiken 1982). Further, to employment status, research has generally found that individual levels of crime (i.e. measured by incidence rates) are not associated with wage levels (Witte, 1980; McGahey 1982). With respect to prior criminal acts, research has indicated that high levels of criminal activity in the past are a good indicator of continued future offending at high frequencies (Blumstein and Cohen, 1979; Peterson and Braiker, 1980; Chaiken and Chaiken, 1982; as cited in Blumstein, Cohen, Roth and Visher, 1986).

8.4 Trends in seriousness: specialisation and escalation

Research shows that whilst most active offenders commit a considerable variety of crime types (e.g. in violent offences, property offences, drug offences etc) there is a tendency to repeat (or specialise) the same crime within a crime-type grouping over a criminal career (Bursik, 1980; Rojek and Erikson 1982). That is, individuals arrested for drug related offences were more likely to commit similarly oriented offences on successive arrests, than those that might be considered unrelated (e.g. violent offences). With respect to offence escalation, the research reviewed for this report found that amongst juveniles, offence seriousness generally tended to escalate over successive arrests (Wolfgang, Figlio and Sellin, 1972). It is however difficult to ascertain how much of that escalation is due to differences amongst offenders (i.e. with more persistent offenders committing more serious crimes), or a general propensity among offenders to escalate their crimes as their criminal careers progress (Blumstein, Cohen, Roth and Visher, 1986). In contrast, the evidence relating to escalation trends for adults is less clear. Several studies do exist that indicate that the average level of seriousness declines on successive arrest for adults (see for example Moitra 1981; Blumstein Cohen and Das, 1985), but there is some debate as to the reliability of this evidence due to the methodological underpinnings of this research (see Blumstein, Cohen, Roth and Visher, 1986).

8.5 Career length and termination

The fact that participation in criminal activity is more widespread among adolescents than among adults and IOF is relatively stable over age for those offenders who remain active (See Section 8.3.2) has led many scholars to conclude that many (if not most) criminal careers are very short, ending after only brief forays into criminal activity as adolescents. This conclusion is consistent with and supported by the average ages reported in aggregate arrest statistics (Blumstein, Cohen, Roth and Visher, 1986). Further, research pertaining to the duration and termination of criminal careers suggests that adult careers average only approximately five years for offenders committing serious offences (Greenberg 1975). This average does however mask some of the differences and individual characteristics of offenders (see further Blumstein, Cohen, Roth and Visher, 1986, p.91).

With regard to residual career length, which refers to the expected time still remaining in criminal careers (labelled *TR* in Figure 1, above), is approximately five years for 18-year old offenders, but increases to ten years for serious offenders still active in their 30s – suggesting that a decline in criminal career trajectories for these latter cases does not become apparent until these offenders enter their 40s (Blumstein and Cohen 1982). This finding (that residual career length increase during an individual's 20s, to reach a maximum in the 30s) perpetuates the common misconception that low arrest rates of offenders in their 30s reflect higher rates of career termination at those ages. In fact, Blumstein, Cohen, Roth and Visher (1986, P95) suggest that these low arrest rates actually result from a high degree of career termination at earlier ages (before the offender turns 30). However, those offenders who initiate into criminal careers at earlier ages, and persist in their criminal activities into their 30s display the lowest rates of termination and the longest residual careers (Blumstein, Cohen, Roth and Visher, 1986).

8.6 Conclusions: Use of criminal career information in decision making

GHD contends that the findings reported in Section 8 have the potential to play a considerable role in assisting the Secretary in making informed decisions relating MSIC application appeals. This body of research identifies and articulates a range of demographic and individual characteristics, circumstances and other factors and considerations that may affect the likelihood that an individual may be engaging in an active criminal career – and thus be considered a risk to maritime security.

As an abbreviated summary, the relevant findings to this review, as they pertain to criminal careers include:

- **Individual offending frequency –** statistics (overall) suggest that a small number of offenders commit the majority of crimes
- **Demographic characteristics –** whilst there are considerable differences across offending populations, the career trajectories of offenders were relatively consistent across gender, ethnic lines and age groupings
- **Other factors and characteristics –** there is evidence to suggest that the age of initiation into criminal careers, substance use/abuse, unemployment and prior criminal activity are all factors/characteristics associated with active criminal careers.
- **Specialisation –** offenders have a tendency to repeat (or specialise in) the same offences (or types of offences) over the course of their criminal careers.
- **Escalation –** juvenile offence seriousness tended to escalate over successive arrests, whereas offence seriousness tended to decline amongst adults
- **Career length –** Many (if not all) criminal careers are short, averaging approximately 5 years
- **Career termination –** Most criminal careers terminate before the age of 30. However, those individuals who initiate into criminal careers at an early age, and persist well into adulthood have the lowest rates of termination and the longest criminal careers.

Whilst GHD acknowledges that these findings are relevant to reconsider decisions relating to MSIC applications, it is necessary to gesture towards some of the ethical implications that incorporating these findings into the decision making process may have. The relative weight that this research should have in eligibility determinations is touched upon as well.

8.6.1 Ethical considerations

There are differing views as to the extent to which it is appropriate, in an ethical sense, to use predictive considerations to influence decisions relating to the order and maintenance of criminal justice. OTS should perhaps consider arguments put forth by adherents to the ‘just-desert’ philosophy, who oppose the use of prediction altogether in criminal justice decision making processes. Citing issues relating to ‘blameworthiness’, it is argued that sanctions (in this case, the rejection of an MSIC application) should be based on the merits of the individual exclusionary offences, and those merits alone (see further Blumstein, Cohen, Roth and Visher, 1986, p.155).

8.6.2 Weight

The weight that should thus be applied to these findings should be considered carefully. The acceptable weight that should be applied to these factors by the Secretary is dependant on two key factors. The first being the gravity of harm that one is attempting to prevent by disqualification, and the second being the accuracy of the offence classifications and criminal history data in assessing risk. Further, when deciding whether the inclusion of a particular trait, characteristic or circumstance is ethically acceptable, its relationship to blameworthiness (as described in 8.6.1) of the offender should be considered (Blumstein, Cohen, Roth and Visher, 1986).

In light of these concerns, it concluded that variables such as prior adult convictions, and substance abuse are more widely accepted as predictors of active criminal careers than behaviours or characteristics related to employment status or age, over which the offender is presumed to have far less control. Demographic characteristics such as ethnicity are not accepted as items that should be considered. They are not associated with the concept of blameworthiness, they have no logical relationship with offending patterns, and their inclusion only serves as an affront to basic societal values (Blumstein, Cohen, Roth and Visher, 1986).

Appendix A

Tables

Table 6 Current list of items, offences and descriptions

MSROs as per Table 6.07C (Commonwealth of Australia, 2003, p. 95)	ASOC code no.	Offence description
Item 1: An offence mentioned in Chapter 5 of the Criminal Code.	15321	Commit act of terrorism
	15321	Provide or receive training relating to terrorist act
	15321	Possess things connected with terrorist acts
	15321	Facilitate or aid in a terrorist act
	15321	Commit act in preparation or planning for a terrorist act
	15321	Direct a terrorist organisation
	15321	Recruit for membership of a terrorist organisation
	15321	Membership of a terrorist organisation
	15321	Training or receiving training from a terrorist organisation
	15321	Funding or providing support for a terrorist organisation
	15321	Associating with a terrorist organisation
	15321	Offences relating to control orders
	15321	Offences relating to preventative detention orders
Item 2: An offence involving the supply of goods (such as weapons or missiles) for a Weapons of Mass Destruction program as mentioned in the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995.	15341	Supply of goods for weapons of mass destruction
	15341	Providing services for weapons of mass destruction
Item 3: An offence involving the hijacking or destruction of an aircraft or vessel.	12112	Arson of aircraft
	12112	Property damage to aircraft caused by intentional fire
	12114	Arson of vessel
	12114	Property damage to vessel caused by intentional fire
Item 4: An offence involving treachery, sabotage, sedition, inciting mutiny, unlawful drilling, or destroying or damaging	15331	Sedition
	15331	Selling national secrets
	15331	Treason
	15331	Sabotage

MSROs as per Table 6.07C (Commonwealth of Australia, 2003, p. 95)	ASOC code no.	Offence description
Commonwealth property, mentioned in Part II of the Crimes Act 1914.	15331	Assisting prisoners of war to escape
	15331	Interfering with political liberty
	15331	Unlawful drilling (military training)
	15331	Destroying or damaging commonwealth property
Item 5: An offence involving interference with aviation, maritime transport infrastructure or an offshore facility, including carriage of dangerous goods on board an aircraft or ship, or endangering the security of an aerodrome, a port or an offshore facility.	08292	Theft of a vessel
	08293	Theft of an aircraft
	16411	Hijack aircraft
	16411	Assault crew of aircraft
	16411	Make threats in relating to the endangerment of an aircraft
	16411	Make threats relating to the endangerment of an airport
	16411	Commit act of violence at airport
	16411	Destroy aircraft
	16411	Dangerous or negligent act involving aircraft or airports
	16411	Make false statement relating to the endangerment of an airport
	16411	Make false statement relating to the endangerment of an aircraft
	16412	Illegally take control of aircraft
	16412	Endanger safety of aircraft
	16412	Prejudice safe operation of aircraft
	16412	Carry dangerous goods onto an aircraft
	16431	Hijack vessel
	16431	Assault crew of vessel
	16431	Make threats relating to the endangerment of an vessel
	16431	Make threats relating to the endangerment of a port
	16431	Commit act of violence at port
	16431	Destroy vessel
	16431	Threaten or make false statement relating to the endangerment of a vessel

MSROs as per Table 6.07C (Commonwealth of Australia, 2003, p. 95)	ASOC code no.	Offence description
	16431	Threaten or make false statement relating to the endangerment of a port
	16432	Negligent act involving vessel
	16432	Illegally take control of vessel
	16432	Endanger safety of vessel
	16432	Prejudice safe operation of vessel
	16432	Carry dangerous goods onto a vessel
	16432	Sea transport, fail to preserve health and safety of passengers
	16942	Fail to declare controlled goods, other than weapons, explosives or drugs
	16942	Illegal exportation/importation of controlled goods, other than weapons, explosives or drugs
Item 6: An identity offence involving counterfeiting or falsification of identity documents, or assuming another individual's identity.	09192	Forge signature on a document
	09194	Supply false documentation to get a weapons licence
	09194	Supply false documentation to get an explosives licence
	09194	Supply false documentation to get, keep or upgrade a vehicle licence
	09911	Falsely advertising a professional status
	09911	Falsely claim a professional qualification
	09911	Impersonate a doctor
	09911	Impersonate a government employee
	09911	Impersonate a justice official
	09911	Impersonate a particular profession, trade, rank or status
	09911	Impersonate a solicitor
	09911	Impersonation
	09911	Misrepresentation of professional status
	15521	Passport theft
	15521	Passport forgery
	15521	Visa forgery
	15521	Fraudulent offences relating to passports

MSROs as per Table 6.07C (Commonwealth of Australia, 2003, p. 95)	ASOC code no.	Offence description
	15521	Fraudulent offences relating to visas
	15521	Providing or possessing false travel or identity documents
Item 7: Transnational crime involving money laundering, or another crime associated with organised crime or racketeering.	08315	International money laundering
	08315	Knowingly dealing in proceeds of crime, money or property (substantial amounts)
	08315	Failing to report a transfer of currency into or out of Australia
Item 8: People smuggling and related offences mentioned in Chapter 4, Division 73 of the Criminal Code.	15511	Offence of people smuggling
	15511	Aggravated people smuggling
Item 9: An offence involving the importing, exporting, supply or production of weapons, explosives or a trafficable quantity of drugs.	10111	Drug couriers involved in importing illicit drugs
	10111	Import controlled substances
	10111	Import illicit drugs
	10121	Drug couriers involved in exporting illicit drugs
	10121	Export controlled substances
	10121	Export illicit drugs
	10211	Controlled substances, deal or traffic in — commercial quantity
	10211	Drugs, illicit, deal or traffic in — commercial quantity
	10211	Supply of controlled substances — commercial quantity
	10211	Supply of illicit drugs — commercial quantity
	10221	Controlled substances, deal or traffic in
	10221	Drugs, illicit, deal or traffic in
	10221	Supply of controlled substances
	10221	Supply of illicit drugs
	10221	Traffic in controlled substances
	10221	Traffic in illicit drugs
	10221	Supply of illicit drugs to a minor

MSROs as per Table 6.07C (Commonwealth of Australia, 2003, p. 95)	ASOC code no.	Offence description
	10311	Cultivation of controlled substances
	10311	Cultivation of illicit drugs
	10311	Growing of plants used to make illicit drugs
	10311	Manufacture of controlled substances
	10311	Manufacture of illicit drugs
	11111	Exportation of prohibited explosives
	11111	Importation of prohibited explosives
	11111	Sale of prohibited explosives
	11112	Exportation of prohibited weapons
	11112	Importation of prohibited weapons
	11112	Sale of prohibited weapons
	11113	Exportation of prohibited firearms
	11113	Importation of prohibited firearms
	11113	Sale of prohibited firearms
	11191	Modification of prohibited explosives
	11191	Manufacture of prohibited explosives
	11192	Modification of prohibited weapons
	11192	Manufacture of prohibited weapons
	11193	Modification of prohibited firearms
	11193	Manufacture of prohibited firearms
	11232	Dealing, unlicensed, of legalised or regulated explosives
	11232	Importation, unlicensed, of legalised or regulated explosives
	11232	Sale, unlicensed, of legalised or regulated explosives
	11232	Trafficking, unlicensed, of legalised or regulated explosives
	11233	Dealing, unlicensed, of legalised or regulated firearms
	11233	Firearm, disposing/selling or ammunition to unlicensed person
	11233	Importation, unlicensed, of legalised or regulated firearms
	11233	Sale, unlicensed, of legalised or regulated firearms

MSROs as per Table 6.07C (Commonwealth of Australia, 2003, p. 95)	ASOC code no.	Offence description
	11233	Trafficking, unlicensed, of legalised or regulated firearms
	11234	Sale, unlicensed, of legalised or regulated weapons
	11234	Trafficking, unlicensed, of legalised or regulated weapons
	11234	Weapons, legalised or regulated, unlicensed exportation of
	11234	Dealing, unlicensed, of legalised or regulated weapons
	11234	Importation, unlicensed, of legalised or regulated weapons
	13153	Conspiracy to grow illicit drug crops (commercial quantity)
	13153	Conspiracy to import illicit drugs (commercial quantity)
	13153	Conspiracy to manufacture illicit drugs (commercial quantity)
	13153	Conspiracy to sell illicit drugs (commercial quantity)

Table 7 Preparatory activities

Offence category	ASOC Code no.	Offence description
Affiliation/membership offences	15321	Direct a terrorist organisation
	15321	Recruit for membership of a terrorist organisation
	15321	Membership of a terrorist organisation
	15321	Associating with a terrorist organisation
Training offences	15321	Provide or receive training relating to terrorist act
	15321	Training or receiving training from a terrorist organisation
Possessing/transporting explosive devices/materials	11111	Exportation of prohibited explosives
	11111	Importation of prohibited explosives
	11111	Sale of prohibited explosives
	11121	Possession of prohibited explosives
	11191	Modification of prohibited explosives
	11191	Manufacture of prohibited explosives
	11192	Modification of prohibited weapons
	11192	Manufacture of prohibited weapons
	11213	Unlawful possession of legalised or regulated explosives
	11213	Unlawful purchase of legalised or regulated explosives
	11213	Unlawfully obtaining legalised or regulated explosives
	11222	Explosives storage offences
	15321	Possess things connected with terrorist acts
Larceny/theft	07111	Burglary
	07112	Break and enter without violence or threats
	07112	Burglary involving breaking without violence or threats
	07113	Break and enter dwelling with violence or threats
	07113	Burglary involving breaking and violence or threats
	07114	Break and enter shop
	07114	Enter shop with intent

Offence category	ASOC Code no.	Offence description
	07115	Break enter and steal
	07115	Break and enter with intent
	08111	Illegal taking of a motor vehicle (permanent deprivation)
	08111	Theft of a motor vehicle
	08219	Attempted Theft
	08219	Theft
	09219	Larceny
	08219	Bag snatching where no assault takes place
	08219	Bill of Sale theft
	08219	Cheque theft
	08219	Credit card theft
	08219	Deed theft
	08219	EFTPOS card theft
	08219	Pick pocketing
	08221	Computer hacking involving theft of software
	08221	Computer software piracy
	08221	Computer software theft
	08221	Copyright theft
	08221	Intellectual property theft
	08221	Patent theft
	08231	Drug, licit, theft from retail premises
	08231	Shoplifting
	08231	Theft of equipment from retail premises, in concert with other theft
	08231	Theft of goods from retail premises
	08231	Unauthorised dealing with shop goods
	08292	Theft of a vessel
	08293	Theft of an aircraft
	08295	Theft from dwellings

Offence category	ASOC Code no.	Offence description
	08296	Theft from buildings other than dwellings
	09311	Stealing as a public servant
	09311	Theft by employee
	09312	Theft by trustee
	09313	Theft by officers of companies
	09319	Theft by person in position of trust
	09319	Embezzlement
	13141	Going equipped to steal
	13141	Possession of housebreaking implements
Vandalism	12199	Vandalism
Conspiracy	13151	Conspiracy
	13151	Conspire with other persons to commit a criminal offence
	13152	Conspiracy to defraud
	13152	Conspiracy to steal
	15215	Conspiring to obstruct justice
Robbery	06111	Armed robbery
	06111	Assault with intent to steal/rob, armed
	06111	Robbery involving possession of a weapon
	06111	Robbery involving use of a weapon
	06111	Stealing with violence, armed
	06112	Aggravated robbery without a weapon
	06112	Assault with intent to steal/rob, unarmed
	06112	Robbery, unarmed, aggravated
	06112	Robbery, unarmed, committed in company (two or more persons)
	06112	Robbery, unarmed, involving the infliction of injury
	06112	Robbery, unarmed, with violence
	06112	Stealing with violence, unarmed
	06112	Stealing, unarmed, aggravated

Offence category	ASOC Code no.	Offence description
	06121	Demand money with menaces
	06121	Non-aggravated robbery
Trespassing	13111	Trespass
	13111	Unlawful intrusion upon land or property
	13111	Unlawfully on premises
Identity documentation	09191	Document forgery
	09191	Manufacture false/illegal instruments, other than financial instruments
	09191	Possess equipment to make false/illegal instruments, other than financial instruments
	09192	Forge signature on a document
	09194	Supply false documentation to get a weapons licence
	09194	Supply false documentation to get an explosives licence
	09194	Supply false documentation to get, keep or upgrade a vehicle licence
	15521	Passport theft
	15521	Passport forgery
	15521	Visa forgery
	15521	Fraudulent offences relating to passports
	15521	Fraudulent offences relating to visas
	15521	Providing or possessing false travel or identity documents
	16921	Passport offences, other than passport theft
Weapons violations	11112	Exportation of prohibited weapons
	11112	Importation of prohibited weapons
	11112	Sale of prohibited weapons
	11113	Exportation of prohibited firearms
	11113	Importation of prohibited firearms
	11113	Sale of prohibited firearms
	11122	Possession of prohibited weapons

Offence category	ASOC Code no.	Offence description
	11123	Possession of prohibited firearms
	11123	Use of prohibited firearms
	11193	Modification of prohibited firearms
	11193	Manufacture of prohibited firearms
	11211	Legalised concealable firearm, unlawfully possess or purchase
	11211	Possess unlicensed concealable firearm
	11212	Possess firearm without licence/permit
	11212	Possess unregistered firearm except concealable
	11212	Unlawful possession of legalised or regulated firearms except concealable
	11212	Unlawful purchase of legalised or regulated firearms except concealable
	11212	Unlawfully obtaining legalised or regulated firearms except concealable
	11219	Unlawful possession of legalised or regulated weapons other than firearms
	11219	Unlawful purchase of legalised or regulated weapons other than firearms
	11219	Unlawfully obtaining legalised or regulated weapons other than firearms
	11221	Being armed in public
	11221	Carry concealed firearm
	11221	Carry concealed weapon
	11221	Carry firearm dangerously
	11221	Carry weapon dangerously
	11223	Possession of firearm with intent to commit an offence
	11223	Misuse of legalised or regulated firearms
	11223	Unlawful modification of a legalised or regulated firearm
	11223	Unlawful use of a firearm
	11224	Misuse of legalised or regulated weapons

Offence category	ASOC Code no.	Offence description
	11224	Unlawful modification of a legalised or regulated weapon
	11231	Ammunition, sell without a dealers licence
	11232	Dealing, unlicensed, of legalised or regulated explosives
	11232	Importation, unlicensed, of legalised or regulated explosives
	11232	Sale, unlicensed, of legalised or regulated explosives
	11232	Trafficking, unlicensed, of legalised or regulated explosives
	11233	Dealing, unlicensed, of legalised or regulated firearms
	11233	Firearm, disposing/selling or ammunition to unlicensed person
	11233	Importation, unlicensed, of legalised or regulated firearms
	11233	Sale, unlicensed, of legalised or regulated firearms
	11233	Trafficking, unlicensed, of legalised or regulated firearms
	11234	Sale, unlicensed, of legalised or regulated weapons
	11234	Trafficking, unlicensed, of legalised or regulated weapons
	11234	Weapons, legalised or regulated, unlicensed exportation of
	11234	Dealing, unlicensed, of legalised or regulated weapons
	11234	Importation, unlicensed, of legalised or regulated weapons
	11291	Dealer, legalised or regulated explosives, registration offences
	11292	Dealer, legalised or regulated firearms, registration offences
	11293	Dealer, legalised or regulated weapons, registration offences
	13147	Possession of firearm with intent to commit an offence
	13147	Possession of weapon with intent to commit an offence

Offence category	ASOC Code no.	Offence description
	15341	Supply of goods for weapons of mass destruction
	15341	Providing services for weapons of mass destruction
Miscellaneous	15321	Commit act in preparation or planning for a terrorist act

Table 8 Ancillary activities

Offence category	ASOC Code no.	Offence description
Illegal trade	08311	Handling stolen goods
	08311	Handling stolen proceeds of crime
	08311	Possession of stolen goods
	08311	Receiving stolen goods
	08311	Receiving stolen proceeds of crime
	08312	Bringing stolen goods into another state or territory
	08312	Handling goods stolen in another state or territory
	08312	Possession of property stolen in another state or territory
	08313	Possession of money from sale of illicit drugs
	08313	Possession of proceeds of drug offences
	08314	Possession of proceeds of crime other than drug offences
	08315	Knowingly dealing in proceeds of crime, money or property (substantial amounts)
	13211	Operation of illegal casino
	13229	Alcoholic products, production, sale or purchase of without a license
	13229	Tobacco products, production, sale or purchase of without a license
	16941	Export regulations offences
	16941	Fauna, illegal exportation/importation
	16941	Flora, illegal exportation/importation
	16941	Import regulations offences
	16942	Illegal exportation/importation of controlled goods, other than weapons, explosives or drugs
Money laundering	08315	International money laundering
	08315	Failing to report a transfer of currency into or out of Australia
	15321	Funding or providing support for a terrorist organisation

Offence category	ASOC Code no.	Offence description
Fraud	09111	Cheque fraud
	09111	Use of false or illegally obtained cheques
	09112	Credit card fraud
	09112	EFTPOS card fraud
	09112	Use of false or illegally obtained EFTPOS cards
	09112	Use of false or illegally obtained store credit cards
	09112	Use of false financial instrument
	09122	Avoid payment of customs and excise
	09122	Customs fraud
	09122	Excise fraud
	09122	Making a false declaration to avoid government fee or payment
	09122	Making a false statement to avoid government fee or payment
	09131	Deceptive commercial practices
	09131	Deceptive trade practices
	09131	Falsification of company register
	09131	Fraudulent commercial practices
	09131	Fraudulent trade practices
	09991	Deception offences, nec
	09991	Obtain property by deception
	09991	Obtain financial advantage by deception
Counterfeiting	09211	Counterfeiting currency
	09211	Pass counterfeit coins or notes
	09211	Possess counterfeit coins or notes
	09211	Possess equipment for the manufacture of counterfeit coins or notes
	09211	Counterfeiting currency
	09211	Pass counterfeit coins or notes
	09211	Possess counterfeit coins or notes

Offence category	ASOC Code no.	Offence description
	09211	Possess equipment for the manufacture of counterfeit coins or notes
Extortion, racketeering and blackmail	06211	Blackmail
	06211	Demand benefit involving the misuse of authority
	06211	Demand benefit with threats of criminal prosecution
	06211	Demand benefit with threats of destruction of a person’s reputation
	06211	Demand favours involving the misuse of authority
	06211	Demand favours with threats of criminal prosecution
	06211	Demand favours with threats of destruction of a person’s reputation
	06211	Demand money involving the misuse of authority
	06211	Demand money with threats of criminal prosecution
	06211	Demand money with threats of destruction of a person’s reputation
	06211	Demand property involving the misuse of authority
	06211	Demand property with threats of criminal prosecution
	06211	Demand property with threats of destruction of a person’s reputation
	06212	Extortion
	06212	Demand benefit with threats of force or violence
	06212	Demand favours with threats of force or violence
	06212	Demand money with threats of force or violence
	06212	Demand property with threats of force or violence
Bribery, corruption and graft	09411	Accepting of a bribe by a government official
	09411	Giving of a bribe to a government official
	09411	Offering of a bribe to a government official
	09491	Accepting of a bribe by other than a government official
	09491	Giving of a bribe other than to a government official
	09491	Offering of a bribe other than to a government official
	09491	Secret commissions

Offence category	ASOC Code no.	Offence description
	15212	Bribing or dishonestly attempting to influence a juror
	15212	Bribing or dishonestly attempting to influence a witness
	15212	Corruption of jurors
	15212	Corruption of witnesses
	15212	Deceive a witness
	15213	Bribing or dishonestly attempting to influence a justice official
	15213	Corruption of justice officials
	15213	Official corruption – justice proceedings
	15491	Official corruption, government operations
People smuggling and people trafficking	15511	Offence of people smuggling
	15511	Aggravated people smuggling
Drug trafficking	10111	Drug couriers involved in importing illicit drugs
	10111	Import controlled substances
	10111	Import illicit drugs
	10121	Drug couriers involved in exporting illicit drugs
	10121	Export controlled substances
	10121	Export illicit drugs
	10211	Controlled substances, deal or traffic in — commercial quantity
	10211	Drugs, illicit, deal or traffic in — commercial quantity
	10211	Supply of controlled substances — commercial quantity
	10211	Supply of illicit drugs — commercial quantity
	10221	Controlled substances, deal or traffic in
	10221	Drugs, illicit, deal or traffic in
	10221	Supply of controlled substances
	10221	Supply of illicit drugs
	10221	Traffic in controlled substances
	10221	Traffic in illicit drugs

Offence category	ASOC Code no.	Offence description
	10221	Supply of illicit drugs to a minor
	10311	Cultivation of controlled substances
	10311	Cultivation of illicit drugs
	10311	Growing of plants used to make illicit drugs
	10311	Manufacture of controlled substances
	10311	Manufacture of illicit drugs
	10991	Permit premises to be used for taking, selling or distribution of controlled substances
	10991	Permit premises to be used for taking, selling or distribution of illicit drugs
	13153	Conspiracy to grow illicit drug crops (commercial quantity)
	13153	Conspiracy to import illicit drugs (commercial quantity)
	13153	Conspiracy to manufacture illicit drugs (commercial quantity)
	13153	Conspiracy to sell illicit drugs (commercial quantity)
Miscellaneous	15321	Facilitate or aid in a terrorist act

Table 9 Terrorist activities

Offence category	ASOC Code no.	Offence description
Kidnapping	05112	Kidnapping
Damage to property	12199	Property damage other than by fire, explosion or the application of substances
	12199	Wilful damage other than by fire, explosion or the application of substances
	12199	Malicious damage
	12199	Intentional damage
	12199	Criminal damage
	13146	Possessing any object with intent to destroy or damage property
	15331	Destroying or damaging commonwealth property
	16121	Computer hacking
	12199	Property damage other than by fire, explosion or the application of substances
	12199	Wilful damage other than by fire, explosion or the application of substances
	12199	Malicious damage
	12199	Intentional damage
	12199	Criminal damage
	13146	Possessing any object with intent to destroy or damage property
	15331	Destroying or damaging commonwealth property
	16121	Computer hacking
Bombings	11124	Use of prohibited explosives
	11222	Discharge explosives at prohibited times or places
	11222	Unlawful use of explosives
	11222	Misuse of legalised or regulated explosives
Hostage seizure/barricade	05211	Deprivation of liberty
	05211	False imprisonment

Offence category	ASOC Code no.	Offence description
	05211	Hostage-taking but not transporting that hostage to another location
Sabotage	15331	Sabotage
Armed attacks	02111	Intentionally causing grievous bodily harm
	02112	Assault, carried out with the intent of committing a felony
	02112	Assault, carried out with the intent of preventing apprehension
	02113	Torture
	02114	Wounding
	02115	Assault occasioning bodily harm except where this is specified as grievous bodily harm
	02119	Assault, carried out in company
	02119	Assault, carried out using a weapon
	02119	Assault, causing serious bodily harm
	02119	Assault, committed with the intent to cause serious injury
	02119	Assault, committed with the intent to recklessly endanger life
	02119	Assault, involving possession of a weapon
	02119	Aggravated assault nec
	16411	Assault crew of aircraft
	16411	Commit act of violence at airport
	16411	Destroy aircraft
	16431	Assault crew of vessel
	16431	Commit act of violence at port
	16431	Destroy vessel
Incendiary attacks	12111	Arson of building
	12111	Property damage to building caused by intentional fire
	12112	Arson of aircraft
	12112	Property damage to aircraft caused by intentional fire
	12113	Arson of motor vehicle

Offence category	ASOC Code no.	Offence description
	12113	Property damage to motor vehicle caused by intentional fire
	12114	Arson of vessel
	12114	Property damage to vessel caused by intentional fire
	12119	Arson
	12119	Property damage caused by intentional explosion
Hijacking	16411	Hijack aircraft
	16431	Hijack vessel
Environmental pollution	12211	Air pollution offences
	12211	Bacterial pollution of air
	12211	Chemical pollution of the air
	12211	Pollution of the air
	12211	Smoke pollution of the air
	12221	Bacterial pollution of water utilities
	12221	Chemical pollution of water utilities
	12221	Effluent pollution of water utilities
	12221	Pollution of lakes by chemicals, effluent, sewerage, sullage, bacteria, etc.
	12221	Pollution of rivers by chemicals, effluent, sewerage, sullage, bacteria, etc
	12221	Pollution of streams by chemicals, effluent, sewerage, sullage, bacteria, etc.
	12221	Pollution of water utilities by chemicals, effluent, sewerage, sullage, bacteria, etc.
	12291	Environmental pollution offences
	12291	Pollution of oceans by chemicals, effluent, sewerage, sullage, bacteria, etc.
Assassination or murder	01111	Felony murder
	01111	Grievous bodily harm with intent — resulting in death
	01111	Murder
	01111	Unlawful killing with intent
	001221	Attempted murder

Offence category	ASOC Code no.	Offence description
	01211	Conspiracy to murder
Lynching	13194	Incitement to racial hatred
	13194	Incitement to vilification
	13195	Affray
Hoaxes/threats	04994	Going armed to cause fear
	15216	Threats against a witness
	16131	Threat to injure
	16131	Threat to murder
	16131	Threatening behaviour
	16132	Threats to cause explosion
	16132	Threats to cause fire
	16132	Threats to destroy or damage property
	16132	Bomb hoax
	16411	Make threats in relating to the endangerment of an aircraft
	16411	Make threats relating to the endangerment of an airport
	16431	Make threats relating to the endangerment of a vessel
	16431	Make threats relating to the endangerment of a port
	16431	Threaten or make false statement relating to the endangerment of a vessel
	16431	Threaten or make false statement relating to the endangerment of a port
Exotic pollution	11122	Use of prohibited weapons
Miscellaneous	15321	Commit act of terrorism

Table 10 Other unlawful/criminal conduct

Offence category	ASOC Code no.	Offence description
Treason, sedition, treachery and subversive activities	15211	False testimony
	15211	Perjury
	15219	Justice, subvert the course of
	15311	Hinder government officer concerned with national security
	15311	Resist government officer concerned with national security
	15331	Sedition
	15331	Selling national secrets
	15331	Treason
	15331	Assisting prisoners of war to escape
	15331	Interfering with political liberty
Unlawful interference with maritime transport and offshore facilities	15321	Offences relating to control orders
	15321	Offences relating to preventative detention orders
	15331	Unlawful drilling (military training)
	16921	Fail to comply with immigration visa conditions
	16921	Illegal entry
	16921	Illegal immigrant
	16921	Immigration regulation offences
	16942	Fail to declare controlled goods, other than weapons, explosives or drugs
	15321	Offences relating to control orders
	15321	Offences relating to preventative detention orders
	15331	Unlawful drilling (military training)
	16921	Fail to comply with immigration visa conditions
	16921	Illegal entry
	16921	Illegal immigrant
	16921	Immigration regulation offences

Offence category	ASOC Code no.	Offence description
	16942	Fail to declare controlled goods, other than weapons, explosives or drugs
	16411	Dangerous or negligent act involving aircraft or airports
	16411	Make false statement relating to the endangerment of an airport
	16411	Make false statement relating to the endangerment of an aircraft
	16412	Illegally take control of an aircraft
	16412	Endanger the safety of aircraft
	16412	Prejudice safe operation of aircraft
	16412	Carry dangerous goods onto an aircraft
	16432	Negligent act involving vessel
	16432	Illegally take control of vessel
	16432	Endanger safety of vessel
	16432	Prejudice safety of vessel
	16432	Carry dangerous goods onto a vessel
	16432	Sea transport, fail to preserve health and safety of passengers
Piracy	15595	Aid pirates, incite piracy

Appendix B

Offence Definitions/Conditions

Table 11 Offence Definitions/Conditions

Offence	Definition
Affiliation/ membership	This pertains to an individual who is in some way shape or form a member, affiliate or consort of a group/organisation that is involved in the maintenance of that group, or involved in the preparation of, or operational activities of that group (Smith, Damphousse, & Roberts, 2006)
Possessing/ transporting explosive devices/ materials	This includes the possession or transportation of an explosive devices or materials. (Clutterbuck, 1994; Greenberg, Chalk, Willis, Khilko, & Ortiz, 2006; Smith, 2008; Smith & Damphousse, 2007; Smith et al., 2006; Smith et al., 2008)
Training	This includes providing or receiving training connected with terrorist acts (Smith et al., 2006; Smith et al., 2008)
False identity documents	This includes any offence relating to the manufacture, supply, purchase or distribution of fraudulent identity documents (Schmid, 1996; Shelley et al., 2005; Smith et al., 2006; Smith & Damphousse, 2007; Smith et al., 2008)
Weapons violations	This includes any offence related to the importation or exportation, supply, service or manufacture of weapons, including small arms, missiles, explosives (handheld or otherwise), biological, chemical or weapons of mass destruction (Clutterbuck, 1994; Greenberg et al., 2006; Mickolus, 1983; Schmid, 1983, 1996; Shelley, 2006; Shelley et al., 2005; Smith & Damphousse, 2007; Smith et al., 2006; Smith et al., 2008; Australian Crime Commission, 2009; Morrison, 2002)
Theft/larceny	Theft/larceny involves the unlawful entry into facilities with the intent t o procure money, goods, documentation or information from that installation of vehicle.(Clutterbuck, 1994; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Salzano & Hartman, 1997; Schmid, 1983; Smith, 2008; Smith & Damphousse, 2007; Smith et al., 2006; Smith et al., 2008; Abhyankar, 2001)
Vandalism	Vandalism refers to the wilful and wanton destruction of another individuals property (National Counterterrorism Center, 2009; Smith et al., 2008)
Conspiracy	Refers to a plan to commit an unlawful act, formulated in secret by two or more parties (Mickolus, 1983; Smith & Damphousse, 2007; Smith et al., 2008)
Robbery	Includes an offence whereby the perpetrator takes the property of another person against his or her will using violence or the threat of violence (Hamm, 2005; Schmid, 1996; Smith, 2008; Smith & Damphousse, 2007; Smith et al., 2008)
Trespassing	Involves the forcible and/or unauthorised entry of land/property of another (Greenberg et al., 2006; Mickolus, 1983)
Illegal trade	Includes offences relates to the dealings in goods that are legal in and of themselves, but illegally imported, exported and distributed (i.e. the goods may be the proceeds of a crime, or the distribution may circumvent customs duties, taxes or regulations) (Schmid, 1996; Shelley, 2006; Smith & Damphousse, 2007; Smith et al., 2008; Australian Crime Commission, 2009)

Offence	Definition
Money laundering	Includes the circumvention of financial laws and regulations in order to disguise the illegal origins of criminal proceeds (Australian Crime Commission, 2009; Clutterbuck, 1994; Hamm, 2005; Schmid, 1983, 1996; Shelley, 2006; Shelley et al., 2005; Smith et al., 2008; Smith & Damphousse, 2007; Smith et al., 2006)
Fraud	Involves the use trickery, deceit or a breach of confidence, perpetuated for financial gain (Abhyankar, 2001; Schmid, 1996; Shelley et al., 2005; Smith & Damphousse, 2007; Taylor & Kaufman, 2009).
Counterfeiting	Refers to offences that relate to the manufacture and supply of counterfeit currency (Hamm, 2005; Schmid, 1996; Smith et al., 2008; Smith & Damphousse, 2007; Smith et al., 2006)
Extortion	Refers to an offence that occurs when an individual uses a coercive measure to unlawfully obtain property, money, services or compliance from another person, institution or entity (see Block, 1982; Clutterbuck, 1994; Schmid, 1996; Smith & Damphousse, 2007)
Racketeering	Racketeering refers to the operation of, and engagement with an unlawful business (Block, 1982; Clutterbuck, 1994; Schmid, 1996; Smith & Damphousse, 2007)
Bribery, corruption and graft	Refers to the perversion of integrity and describes act whereby an individual implies monies or services upon another to influence the behaviour of a recipient (Block, 1982; Hamm, 2005; Shelley, 2006; Shelley et al., 2005; Smith & Damphousse, 2007)
People trafficking and people smuggling	People trafficking refers to offences that involve the recruitment, transport, harbouring or receipt of humans for the purposes of forced labour, servitude, slavery, and prostitution (Schmid, 1996). People smuggling refers to the illegal movement of persons across borders for profit (Schmid, 1996; Smith & Damphousse, 2007)
Drug trafficking	Involves offences relating to the cultivation, import, export, supply and distribution of restricted substances (i.e. illicit drugs) (see Abhyankar, 2001; Australian Crime Commission, 2009; Clutterbuck, 1994; Morrison, 1997; Schmid, 1996; Shelley, 2006; Shelley et al., 2005; Smith et al., 2008).
Kidnapping	Kidnapping in this context refers to an incident in which a diplomat, business executive or other victim is taken and held for the purpose of extorting money (for criminal gain or funding further activity), political concessions (e.g. the release of prisoners are released), or some other demanded action is carried out (Clutterbuck, 1994; Hippchen & Yim, 1982; Mickolus, 1983; Morrison, 2002; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith & Damphousse, 2007)
Damage to property	Includes damage to physical property, facilities, ships, vehicles, systems, or virtual environments, including computer software, mainframes and databases (hacking, cyber terrorism etc) (Clutterbuck, 1994; Greenberg et al., 2006; Schmid, 1983)

Offence	Definition
Bombings	Includes offences that involve the attempt (successful or unsuccessful) to explode a device that will cause harm (to persons) and/or damage (to property). These offences include incidents involving improvised explosive devices (IEDs) or vehicle-borne IEDs (VBIED) (Clutterbuck, 1994; Greenberg et al., 2006; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith et al., 2008; Smith et al., 2006)
Hostage seizure/ barricade	Hostage seizure/barricade situations include incidents in which the terrorists seize one or more hostages but make no attempt to leave the original scene of the crime (Clutterbuck, 1994; Greenberg et al., 2006; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith et al., 2008; Smith et al., 2006; Wilson, 2000)
Sabotage	Refers to damage (or attempted damage) to facilities by means other than explosives or incendiary devices (Greenberg et al., 2006; Mickolus, 1983; Schmid, 1983; Smith & Damphousse, 2007)
Armed attacks	Involves personal attacks upon facilities, vehicles, or mass gatherings of people using missiles, hand-held weapons, throw bombs, grenades, mortars, rocket-propelled grenades or missiles (Clutterbuck 1994; Mickolus; 1983; National Counterterrorism Center, 2008)
Incendiary attacks	Involve the attempt to set aflame to selected facilities, with the intent to damage that facility and potentially harm those persons in and around those facilities. These types of attacks may include arsons or firebombing (Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1996)
Hijacking	Involves the alteration of the direction of a vehicle/vessel due to the actions of a terrorist. There are many types of hijackings – merely seeking a mode of transportation, situations where hijackers force the pilot to stop the vehicle, release the crew/passengers and blow it up, incidents where hijackers make specific demands on governments whilst threatening the safety of the passengers and crew, as well as the complete destruction of the vehicle for the purpose of instilling fear (Abhyankar, 2001; Clutterbuck, 1994; Greenberg et al., 2006; Hippchen & Yim, 1982; Mickolus, 1983; National Counterterrorism Center, 2009; Salzano & Hartman, 1997; Schmid, 1983; Smith et al., 2008; Smith et al., 2006; Wilson, 2000)
Exotic pollution	Exotic pollution includes attacks that involve the use of nuclear, chemical and/or biological agents to cause harm (against persons, vehicles, or facilities) or contaminate and make it unfit for use (Mickolus, 1983; Schmid, 1983)
Environmental pollution	Refers to offences related to the unlawful destruction of the environment/resources as a means of depriving others of its use (Australian Crime Commission, 2009; Greenberg et al., 2006; Smith et al., 2006)
Assassination or murder	Involves of an offence relating to the targeted killing of an individual. Included in this offence is the contracting of a third party to undertake such an action. (Clutterbuck, 1994; Hippchen & Yim, 1982; National Counterterrorism Center, 2009; Schmid, 1983, 1996; Smith et al., 2008; Smith et al., 2006)
Lynching	Involves punishing a person without legal process or authority and can involve bodily harm or death. Thor more specifically, hate crime oriented towards one particular group (Schmid, 1996)

Offence	Definition
Hoaxes or threats	Refers to an action whereby the perpetrator attempts to deceive an audience into believing, or accepting that a false statement is true (Mickolus, 1983; National Counterterrorism Center, 2009; Schmid, 1983; Smith et al., 2008; Smith et al., 2006)
Treason, sedition, treachery and subversive activities	Refers to a treasonous act that constitutes a betrayal or insurrection against the Commonwealth (Schmid, 1996; Smith & Damphousse, 2007)
Unlawful interference with maritime transport or offshore facilities	See section above definition – MTOFSA[12]

[12] As defined at reference 2 above.

Appendix C

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