



ASYLUM SEEKERS AND AUSTRALIAN POLITICS, 1996-2007

Bette D. Wright, BA(Hons), MA(Int St)

Discipline of Politics & International Studies (POLIS)
School of History and Politics
The University of Adelaide,
South Australia

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Note: the acronyms of DIMA and DIMIA have both been used in relation to the Department of Immigration to accurately reflect the department's title at the time.

DECLARATION

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

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ABSTRACT

The thesis is a study of the politics of refugee and asylum seeker policy in Australia, focussing on the John Howard Coalition period 1996-2007. It is argued that the era constituted a pivotal point in time, both politically and historically, when Australia acted contrary to the spirit of its international obligations. The government introduced harsher exclusionary policies which failed to observe some of the basic principles of protection contained within the *United Nations High Commissioner for Refugees (UNHCR) 1951 Convention, Relation to the Status of Refugees* and *1967 Protocol Relating to the Status of Refugees* (hereinafter the *Convention*).¹

The *Tampa* incident can be seen as a trigger for the introduction of harsher exclusionary policies. From that time those arriving by boat were unable to land on Australian shores. The shift to a new approach saw a flurry of cleverly crafted policies to control, deter and deny unauthorised arrivals and marked an era of change in political culture which found support from many of the voting public. With an election looming in 2001, the government grasped at events for political advantage. The asylum seeker issue, which invoked deeply ingrained public passions of fear, intolerance and exclusion, became politicised to a degree never before experienced in Australia.

This thesis will ascertain how exploitation of unauthorised boat arrivals was invoked to achieve a self-serving political agenda, as the government embarked on a deliberate strategy of exclusion of “others”. In the context of a conservative electorate with strong notions of nationality and sovereignty, it will explore the government’s utilisation of the

¹ UNHCR, *Convention and Protocol Relating to the Status of Refugees, 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees*, Geneva, August, 2007. Australia is a signatory along with over 140 other states. See Justin Healey. (ed.) “Refugees and asylum seekers – Seeking asylum within Australia: An overview from the Department of Immigration & Multicultural & Indigenous Affairs”, *Issues in Society*, Vol. 193, Rozelle, NSW: Spinney Press, 2003, p.11

politics of fear. This includes an examination of a compliant media to create a level of moral panic to persuade an anxious public that one group, the smallest of unlawful non-citizens, posed a threat to their nation and way of life. It is concluded that the strategy proved successful, contributing to electoral success, and paving the way to legitimise a plethora of harsher policies.

The new approach to asylum seekers, however, was not without specific consequences. This thesis explores how the government compromised its international obligations to the *Convention*, and seeks to explain why this path was taken and the manner in which it was achieved. It examines policy outcomes in terms of costs and exposes the very high price of the new policy direction.

INTRODUCTION

Xenophobia, patriotism and defence of borders will always drown out, for a period at least, compassion for the foreigner. It is one of the indelible stains of history. It is so easy to provoke hostility against the foreigner, the outsider and the person who is different. We each have a dark and fearful side that can be exploited.

John Menadue²

The John Howard Coalition era constituted an important period for Australia in relation to refugee and asylum seeker policy. The years 1996-2007 signified a pivotal point in time, both politically and historically, when harsher policy shifts were introduced to further control, deter and deny unauthorised arrivals. It is argued that key factors such as sovereignty, an entrenched psyche of bias and prejudice, and the desire to exclude and deter those whom the nation did not want, combined to enable the legitimisation and acceptance of harsh policies during the Howard era. These policies were not in the spirit of, and at times contrary to, the nation's international obligations as signatory to the *United Nations High Commissioner for Refugees (UNHCR) 1951 Convention, Relation to the Status of Refugees* and *1967 Protocol Relating to the Status of Refugees* (hereinafter the *Convention*).³

The policy shifts occurred despite the fact that the global issue of refugees and asylum seekers remains one of the gravest and most complex for the developed world,⁴ bringing with it ideological, moral and practical dilemmas. Prior to the Howard era, Australia had

² John Menadue. "Australian Multiculturalism: Successes, Problems and Risks" in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, p.87

³ UNHCR, *Convention and Protocol Relating to the Status of Refugees, 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees*, Geneva, August, 2007. Australia is a signatory along with over 140 other states. See Healey, *op. cit.*, p.11

⁴ U.S. Committee for Refugees and Immigrants (USCRI), *World Refugee Survey*, 2007, states that while the world's more developed countries contribute most of the funding to assist refugees, developing countries with a per capital incomes under \$2,000 host around two-thirds of all refugees. For example, see Table 11: Ratios of Refugees to Host Country Populations, Table 12: Distribution of Refugees by Host Country Wealth, p.13. This distribution has been typical over the years.

taken steps to demonstrate it was maturing as a nation, for example, through dismantling the prejudicial “White Australia” policy in 1974⁵ and announcing a comprehensive refugee policy in 1977.⁶ In addition, the worst fears of Australians were proven unfounded when, for the first time, large numbers of refugees with different characteristics (Asians), the “significant other”,⁷ successfully resettled after the Vietnam War. Australia’s culture and national cohesion prevailed regardless, and a catastrophe did not result from the influx of “others”. This facilitated improved attitudes and greater tolerance over time.

Notwithstanding such advancements, it is argued that progress was thwarted in the Howard era. During that period certain events unfolded which impacted on the Australian political landscape, presenting choices for the government. One option was to deal calmly and responsibly with issues and advance the cause of improved attitudes, greater tolerance and a more humanitarian approach to the global refugee situation. Another alternative was to foster a more insular, state-centric approach to complement a self-serving government agenda. As we shall see, the latter became the preferred choice, with the trigger being the *Tampa* affair.

⁵ Raymond Evans. “White Australia Policy” in Jupp, J. (2nd edition) *Australian people: an encyclopaedia of the nation, its people and their origins*, Cambridge University Press: Oakleigh, Victoria, pp.44-49; also Willard, Myra. *History of the White Australia Policy to 1920*, second edition, Melbourne University Press (reprinted) 1978; A.C. Palfreeman. *The Administration of the White Australia Policy*, Melbourne University Press, 1967, pp.135-6. The policy was dismantled completely by 1974. See Mary Crock. *Immigration and Refugee Law in Australia*, Leichardt, N.S.W: Federation Press, 1998, p.7; James Jupp. *From White Australia to Woomera, the Story of Australian Immigration*, 2nd Edition, Cambridge: Cambridge University Press, 2007, p.41

⁶ Hon. Michael Mackellar, Minister for Immigration and Ethnic Affairs, Statement, House of Representatives, 24 May, 1977, p.1714, cited in Barry York, (Dr). *Australia and Refugees, 1901-2002 Annotated Chronology Based on Official Sources: Summary*, Parliament of Australia, Chronology no.2, 2002-03, 16 June 2003, pp.12-13. A refugee policy before this time was considered unnecessary. Australia was able to ignore most claims for protection if it involved non-Europeans, as the White Australia policy effectively barred entry to non-whites. See also Elbriitt Karlsen, Janet Phillips and Elsa Koleth. *Seeking asylum: Australia’s humanitarian program*, Parliament of Australia, Department of Parliamentary Services, 21 January 2011, pp.2-3.

⁷ Don McMaster. *Asylum seekers: Australia’s Response to refugees*, Melbourne: Melbourne University Press, 2001, pp.2-4, 6, 37

The thesis emphasises key factors which helped make possible the implementation of a harsher policy direction. In Chapters 1 and 2, the critical role of sovereignty and its impact on Australia's responses are considered, where a nation operates within a global environment, yet has complete control over its internal affairs. The conflict between a national state-centric agenda and humanitarian international obligations is explored. Chapter 3 examines past attitudes and policy shifts which reflected the nation's historical experiences. Current debates often draw on generalised assessments of the past and the fundamental rationale of this chapter looks at the shaping of the nation through its past, by understanding developments and changes over time. In this context, Australia's laws and history are paramount in gaining an appreciation of national thinking and attitudes.⁸

Major events are discussed in Chapter 4 and the manner in which they represented catalysts for change during the Howard era. The opportunity was seized upon by the government to exploit these events which were couched in terms of a national threat to security and borders. The events selected for discussion are the rise of Pauline Hanson and the One Nation Party, the development and implementation of the Temporary Protection Visa (TPV),⁹ the *Tampa* incident, and the terrorist attacks on the U.S.A. 11 September 2001. It is argued that the government used these significant developments to politicise a fundamental human rights issue¹⁰ for political advantage. A consequence of this was the formation of a two-tiered system for asylum seekers, an issue which is dealt with in Chapter 5.

⁸ Crock, *Immigration*, p.11. Crock maintains that gaining an appreciation of Australia's immigration laws and history is vital in understanding how attitudes to immigration have changed over the years, and that the "persistent by-product" of heavy government involvement has displayed a preoccupation with control.

⁹ The TPV was a Howard Coalition initiative and was revised by the Australian Labor Party when it took office.

¹⁰ David Cox. "Australia's Immigration policy and Refugees" in Birrell, Robert, Leon Glezer, Colin Hay & Michael Liffman. (eds) *Refugees, resources, reunion: Australia's immigration dilemmas*, Fitzroy, Vic: VCTA Publishing, 1978, p.13. David Cox observes that the matter can be politicised and made into a political "football" with a person a "pawn ... in international and national politics".

In what manner did the *Tampa* incident prove to be a major trigger for political change?

John Howard, on a Melbourne talkback radio, 17 August 2001, said:

We are a humanitarian country. We don't turn people back into the sea; we don't turn un-seaworthy boats which are Likely to capsize and the people on them be drowned. We can't behave in that manner. People say we'll send them back from where they came. The country from which they came won't have them back. Many of them are frightened to go back to those countries and we are faced with this awful dilemma of, on the one hand, trying to behave like a humanitarian decent country, on the other hand making certain that we don't become just an easy touch for illegal immigrants.

Less than ten days later the maritime vessel, the *Tampa*, with human cargo seeking refuge, arrived off the coast of Australia.¹¹ Already in the Australian public perception there was fear and resentment towards asylum seekers, and the government had taken advantage of negative reports of asylum seekers as “vandals, arsonists, child-molesters and war criminals”.¹² Under normal circumstances, a ship in distress, such as the *Tampa*, would have received no more attention than normal, but the electoral support of the Coalition seemed to be fading. With an election looming the Coalition seized on the opportunity to cast the arrival of the *Tampa* and its human cargo of refugees as an invasion on a nation requiring protection.¹³

Using the *Tampa's* invading asylum seekers as an example, the Government's rationale was to convince Australians that new policy directions would maintain the integrity of the system, ensure the floodgates were shut to new arrivals, and tackle the people smuggling activities which threatened Australia's borders.¹⁴ The strategy was devised to provoke national anxieties and targetted one group against whom the nation must be protected.

Such thinking is explored in Chapter 6, which analyses the tactic adopted by the

¹¹ This incident is discussed in Chapter 4.

¹² Mungo MacCallum. “Girt by sea: Australia, the Refugees and the Politics of Fear”, *Quarterly Essay*, (online) No.5, Melbourne, Vic:Black Inc., 2002, p.56.

¹³ Wayne Errington & Peter van Onselen. *John Winston Howard*, Melbourne University Press: Carlton, Victoria, 2007, p.305. The *Tampa* incident has been described as bad policy for a number of reasons, including failing to observe the law of the sea, using the military as campaign fodder, which in turn undermined the morale of soldiers and sailors.

¹⁴ Jupp, *From White Aust*, p.197

government to convince the Australia public it needed protection against the undesirable, illegal and unlawful “other”. The tactic revealed that values and attitudes enshrined in the past “White Australia” policy¹⁵ endured, with exclusion of “others” still alive in the electorate’s mind. Drawing upon the works of authors such as Stanley Cohen,¹⁶ John Street¹⁷ and Colin Hay,¹⁸ the theory of moral panic and “folk devils” is utilised, examining how the government invoked old passions of fear, intolerance and exclusion against unauthorised boat arrivals, the powerless and “wretched of the earth”.¹⁹ The role of the media is a critical element in this analysis.

The comparative small size of the targeted group has received little scholarly recognition. Instead, much attention, public resentment, intolerance and hatred has been directed towards unauthorised boat arrivals. This thesis considers the fact that the group represented (and still does) the smallest number of unlawful non-citizens in Australia. Unauthorised arrival numbers are contrasted and compared with the ten-fold, and sometimes twenty-fold, number of overstayers. An explanation is sought as to why the largest group did not attract political attention. It is proposed that without media or public focus on overstayers, the resentment against unauthorised boat arrivals could remain intense. It laid bare the presence of a deeply entrenched bias against those identified as “different”, provoking anger and outrage that one group may be taking advantage of Australia’s good nature. Decisive action by the government impressed an anxious public which sought security and border protection.

¹⁵ Evans, “White Australia Policy” in Jupp, *op. cit.*, p.44-49; Willard, *op. cit.*; Palfreeman, *op. cit.*, pp.135-6.

¹⁶ Stanley Cohen. *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, MacGibbon & Kee: London, 1972

¹⁷ John Street. *Mass Media, Politics and Democracy*, Palgrave Publishers Ltd: Hampshire, 2001

¹⁸ Colin Hay. “Mobilization Through Interpellation: James Bulger, Juvenile Crime and the Construction of a Moral Panic”, *Social and Legal Studies*, Vol.4, June 1995

¹⁹ Eugene Kamenka. “On Being a Refugee” in Saikal, Amin. *Refugees in the modern world*, Canberra: Department of International Relations, Australian National University, 1989, p.11; McMaster, *Asylum seekers*, p.8

A recurring theme throughout this study is Australia's compromised international obligations by not acting in the spirit of, and at times contrary to, the *Convention*. Double standards are presented where the nation's conduct as a generous and "humanitarian decent country"²⁰ must, at the same time, not allow itself to be taken advantage of or become a "soft touch".²¹ There have been significant consequences to this approach, providing a key focus for this work. There is evidence that this line of attack came at a very high price, both intangible and tangible. Scholarship is limited in the area and more research could benefit policy-makers. However, one study, *A price too high: the cost of Australia's approach to asylum seekers*,²² provides an excellent basis from which to begin. Chapters 7 and 8 build on the report through further investigation, and outcomes are considered in terms of human costs, a compromised departmental culture, a tarnished Australian reputation, and economic factors.

It will become clear that the the energy, money, time and commitment invested in stopping the smallest and most unpopular group of unauthorised arrivals proved counter-productive. Not one party – the public, the government, and particularly not the asylum seekers – benefitted in the long-term. Overstayers continued to represent the largest unlawful non-citizen group, yet still avoided exposure. Australia's international obligations were compromised, people suffered, reputations were damaged, policies were flawed, and the objective was never achieved because the boats continue to arrive to this day.

²⁰ John Howard on Melbourne talkback radio, 17 August 2001

²¹ Michael Leach & Fethi Mansouri. *Lives in limbo: voices of refugees under temporary protection*, Sydney: University of NSW Press, 2004, p.6; Julian Burnside. *From nothing to zero: letters from refugees in Australia's detention centres*, Melbourne, Lonely Planet, 2003, p.55

²² Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Dr Tony Morris. *A price too high: the cost of Australia's approach to asylum seekers*, A Just Australia, August 2007

In response to global events, there is no doubt irregular maritime arrivals will continue to ebb and flow as they have for the last thirty years.²³ The aim of this work is to show that measures adopted during the Howard era (and continued by Labor) have not only compromised international obligations, but have also come at too great a cost in human, economic and social terms. Bad policy-making, such as the TPV and off-shore processing, has done nothing to enhance Australia's reputation as a good global citizen and has proven highly damaging to those who seek Australia's protection. This work offers a critique and an opportunity to scrutinise policy outcomes. Based on the consequences, it is proposed that there is room for much improvement.

Methodology

The methodology for this thesis has been based on qualitative research and analysis, using traditional archival materials. The research has approached these sources critically, investigating primary sources such as Hansard, ministerial speeches, government media releases, government publications and official documents, as well as official and unofficial reports. Media information has played a major role in assessing inconsistencies and the veracity of stated facts and this has been done through an examination of newspaper reports, television and radio transcripts, and documentary analysis. In addition, the result of poll data has been considered, through research agents such as Gallup, Morgan and Nielsen. To gauge the views of the "person in the street", newspaper surveys and letters to the editor were reviewed.

Theoretical tools have been adopted for analysing issues pertaining to refugees and asylum seekers. In relation to refugee theory, the work of scholars such as Aristide R Zolberg,

²³ Janet Phillips & Harriet Spinks. *Boat arrivals in Australia since 1976*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 11 February 2011, p.17

Egon F. Kunz and Tom Kuhlman²⁴ have been drawn upon. In addition, the theoretical reflections of Stanley Cohen and John Street²⁵ have been utilised to explore the politics of fear, moral panic and “folk devils”. These theories allow us to gain a better understanding of events and expose a form of persuasion adopted by the government and media. The methodology highlights where politicians have devised self-serving policies to maintain power and control in Australia, exploiting certain events to promote and elevate public anxiety for a desired political outcome on what is, ultimately, a fundamental human rights issue.

The methodology has also utilised quantitative data from government and non-government sources, e.g., statistics from the Australian Bureau of Statistics (ABS), Bureau of Immigration, Multicultural and Population Research (BIMPR), departmental publications and annual reports, UNHCR and Amnesty International. Analysis has been conducted to establish factual data on unauthorised arrival groups with the aim of providing evidence, and seeking a rationale, for inconsistencies and contradictions relating to their treatment.

²⁴ Aristide R Zolberg. “The Formation of New States as a Refugee-Generating Process”, *The Annals of the American Academy of Political and Social Science*, Vol.467, No.24, 1983, pp.24-38; Egon F Kunz. “The Refugee in Flight: Kinetic Models and Forms of Displacement”, *International Migration Review*, Vol.7, No.2, 1973, pp.125-146; Egon F Kunz. “Exile and Resettlement: Refugee Theory”, *International Migration Review*, Vol.15, No.1/2, Refugees today, Spring-Summer 1981, pp.42-51; Tom Kuhlman. “The Economic Integration of Refugees in Developing Countries: A Research Model”, *Journal of Refugee Studies*, Vol.4, No.1, 1991, pp.1-20

²⁵ Cohen, *op. cit.*, 1972; Street, *Mass Media, Politics and Democracy*; Street, John. *Politics and Popular Culture*, Policy Press: Cambridge, UK, 1997

CHAPTER 1: CONCEPTUAL FRAMEWORK

In today's world, not only are there complex issues presented by transnational activities such as technology, communication and trade, but also with the voluntary and involuntary movement of large numbers of people crossing national borders. In the case of refugees, this group has been identified in academic discourse¹ to highlight deficiencies in sovereignty and the state system. The presence of refugees and the phenomenon of forced migration present a basis upon which to assess the effectiveness of sovereignty, nation-states and territorial boundaries, and the impacts these can produce.² In order to examine the debate on Australian sovereignty and the "alien" – the aberrant asylum seeker or refugee – a conceptual framework must be constructed. This study will be set within the context of nation-state and sovereignty. To lay the foundations of the thesis and provide a backdrop, literature on critical themes of nation and sovereignty need to be explored, including, but not restricted to, issues of identity and nationality, citizenship, justice and human rights.

Sovereignty, the nation-state and stateless people

Carl Schmitt defined sovereignty as "he who decides on the state of exception".³ This concept of sovereign exception creates for itself a rule legitimising the authority of the state, guaranteeing the condition of sovereignty, and perpetuating its legitimacy. As a

¹ For example, see Claudia Tazreiter. "Between state sovereignty and invisibility: monitoring the human rights of returned asylum seekers", *AJHR*, Vol 12, No.1, 2003, p.10; Zygmunt Bauman. *Modernity and Ambivalence*, Cambridge: Polity Press, 1991, pp.1-15, 75-79; Hannah Arendt. *The Origins of Totalitarianism*, George Allen & Unwin Ltd: London, 1958, particularly, The "Nation of Minorities" and the Stateless People, pp.269-290; Stephen Castles. "The International Politics of Forced Migration", *Development*, Vol.46, No.3, 2003, pp.11-20

² Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*, Translated by Daniel Heller-Roazen, Stanford University Press: Stanford California, 1988, pp.131-5; Zolberg, *op. cit.*, pp.27-34; Liisa Malkki. "National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees", *Cultural Anthropology*, Vol.7, No.1, Space, Identity, and the Politics of Difference, Feb., 1992, pp.24-44; Robert Jackson. *Sovereignty: Evolution of an Idea*, Polity Press: Cambridge UK, 2007, particularly pp.ix-xi, 78-134

³ Carl Schmitt. *The Concept of the Political*, Expanded Edition, The University of Chicago Press: Chicago 60637, 2007

prominent post World War I legal scholar and intellectual, Schmitt probed the “nature and sources of ... the weakness of the modern liberal, parliamentary state”, and considered critical questions on relations between liberalism and democracy, politics and ethics, and the need to create “enemies” as a means of legitimising state actions.⁴

In his work, *The Concept of the Political*, Carl Schmitt puts forward a concept of political realism to explain the emergence of the sovereign state and its power. According to his realist perspective, a political entity assumes the existence of an enemy and therefore the potential for conflict is always present. Using this approach, an enemy must be established, for without perceived threat there is no rationale for a political entity to exist. Therefore, a division of the world into separate political territories is a necessity, for where there is one state there must be others, and where there is another state there must be an enemy.⁵

Hence, sovereignty and the state represent power and independence within the global system, with aspirations of a strong national territory and identity. Anyone outside the sovereign state poses a potential risk and is therefore an enemy of the state. Accordingly, the deviant refugee becomes a misfit and a possible threat to perpetuating the shaping and reinventing process of the imagined nation-state and its citizens, undermining “the security and coherence of the sovereign project”.⁶ To protect the nation-state, strategies must be devised to keep under control the movement of such people. The language of politics⁷

⁴ *Ibid.*, Forward, pp.ix – xxxii

⁵ Jef Huysmans. "The Question of the Limit: Desecuritisation and the Aesthetics of Horror in Political Realism". *Millennium* (0305-8298), Vol.27, No.3, 1998, p. 575, states that it “is in the face of an enemy that the political authority obtains its most fundamental capacity to integrate free individuals into the political community and to legitimate its ruling of society”. See also Emma Haddad. “The Refugee: The Individual between Sovereigns”, *Global Society*, Vol.17. No.3, July 2003, p.300

⁶ Nevzat Soguk and Geoffrey Whitehall. “Wandering Grounds: Transversality, Identity, Territoriality, and Movement”, *Journal of International Studies*, 1999, ISSN 0305-8298, Vol.28, No.3, p.679; Zolberg, *op. cit.*, pp.29-31

⁷ The manner in which political language was used in relation to asylum seekers during the Howard era is discussed in later in this thesis.

situates these unwelcome people as a problem, with the state as the authority to resolve the issue.

Giorgio Agamben, in *Homo Sacer: Sovereign Power and Bare Life*, considers the paradox of sovereignty.⁸ Agamben utilises Schmitt's explanation on the structure of the exception to demonstrate a sovereign's independence from the law as the highest authority, while, at the same time, remaining part of that law. A sovereign has the power to override the law, thereby placing itself above and beyond its own rules. As Agamben notes, since it is "outside the law", the state of exception defines the structure of sovereignty, while at the same time represents a form of exclusion.⁹

The sovereign defines both what is inside and outside its space, creating the situation whereby its validity is determined. This supposition/presumption leads to the conjecture that an individual falling outside the realm of the powerful sovereign may be dealt with as an excluded "other". One, the inside, represents order and control within a normal situation, and the other, the outside, represents disorder and irregularity. As previously noted, anyone "outside" may be a potential risk and threat to the sovereign state.¹⁰

We may ask whether nation-states existed forever or are they a relatively recent construct. In her work, "*The Refugee: The Individual between Sovereigns*", Emma Haddad¹¹ discusses this and looks at historical issues of sovereignty and the state. Haddad explains the existence of refugees in terms of a "pluralist system of nation-states in which individual

⁸ Agamben, *op. cit.*, p.15

⁹ *Ibid.*, pp.17-18

¹⁰ *Ibid.*, p.19; Bauman, *op. cit.*, pp.4-7, 8-12

¹¹ Haddad, *op. cit.*, pp.297-322. Haddad, author and publisher, is from the European Institute of the London School of Economics.

states fail to guarantee the content of substantive sovereignty”.¹² According to the author, the establishment of political and legal relations between states occurred with the Treaty of Westphalia in 1648, when the modern world superseded the past feudal society of the medieval world. Nationality, as a secular concept, emerged as a response to pluralism and as an essential feature of an international community, and clearly defined who belonged to a particular society and who did not.¹³

Sovereignty means recognition of a nation-state as a political entity within the international system, and incorporates the principle that management of a sovereign’s internal affairs should not be subject to interference by other like states.¹⁴ Within its territorial borders, the international system acknowledges that the sovereign state commands overarching power and authority and is “independent of all foreign authorities”.¹⁵ In addition, “statehood” means “territory” and the organisation of the population within state boundaries goes hand-in-hand with the organisation of political power.¹⁶

The nationalised state developed as “a specific concept of territory as a bounded, exclusionary space”, faced with the task of ensuring all individuals in the population became members of this exclusionary space.¹⁷ The creation of defined states and space allows those people within the territory to become members of that society, and specifically excludes all those external to it. The supreme authority, demanding allegiance

¹² *Ibid.*, p.304

¹³ See also Benedict Anderson. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Revised Edition, Verso: London, 1991, pp.6-7

¹⁴ Haddad, *op. cit.*, pp.299-300

¹⁵ Robert Jackson. *The Global Covenant: Human Conduct in a World of States*, Oxford: Oxford University Press, 2000, pp.156-157

¹⁶ Michael Cox, Tim Dune & Ken Booth. “Empires, Systems and States: Great Transformations in International Politics”, *Review of International Studies*, Vol.27, Issue 5, 2001, p.5. The authors discuss the work of Stephen Krasner in relation to this issue.

¹⁷ Haddad, *op. cit.*, p.301

from its population, can dictate standards, religious conformity and exert authority and power.

This point is addressed by Benedict Anderson in *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, who defines “nation” as an “imagined political community – and imagined as both inherently limited and sovereign”.¹⁸ Anderson asserts the nation is *imagined* owing to the fact that within any nation, big or small, the members of that community never know, meet or hear many fellow-members, and that it is therefore only in their minds that they imagine their society. The nation is also imagined as limited – with boundaries and sovereign – as a response to confronting pluralism, and as a community – encompassing the notion of fraternity to the point that people are prepared to die for “such limited imaginings”.¹⁹

Any group or individual, therefore, who transgresses by crossing state boundaries and moving into another territory, clearly upsets the distinction between the internal and the external. They represent the aberrant members of a society, belonging no longer to the state of origin, and infringing the laws of sovereignty in the new host community as non-members. These people, refugees, “act to challenge the sacred sovereignty of the modern state” and are “the side-effect of the creation of separate sovereign states. Indeed, they are the creation of separate sovereign states which have failed to enforce a system of substantive sovereignty that would ensure the protection of all their citizens. ... Without the modern state there could be no refugees”.²⁰

¹⁸ Anderson, *op. cit.*, p.6

¹⁹ *Ibid.*, pp.6-7

²⁰ Haddad, *op. cit.*, pp. 297, 301

According to Haddad, the concepts of sovereignty and separate states within the international system illustrate that, as a state grew increasingly “nationalised”, the more important it was to build a strong “state to nation” bond. However, as an individual or a group, the refugee forces the world to recognise a spatial distinction between “here and there”, and their presence reveals the cracks and slippages of a flawed global boundary system. Their existence is a result of the world presupposing a territorial basis to political life, seeing the refugee as an exception to the normal “citizen-state-territory trinity”. The refugee represents a threat to the nation-state and its desire to build a robust, balanced society, by introducing potential insecurities, racial and cultural tensions, as well as logistical and economic challenges.²¹

More than five decades ago Hannah Arendt contributed major analyses in the areas of nation, the state structure, power and sovereignty. Of particular interest for this thesis is her insight into minorities and stateless people, and the rights of humanity. Arendt claims that internal disintegration of nation-states commenced post-World War I, and a major contributing factor was the proliferation of Peace Treaties for the protection of minorities, coupled with a continuously growing refugee movement as a result of revolutions.²² In the language of Minority Treaties:

... only nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin. . . . transformation of the state from an instrument of the law into an instrument of the nation had been completed; the nation had conquered the state, national interest had priority over law ...²³

Arendt asserts that the danger of such a development had always been present, and that where the establishment of nation-states and constitutional government coincided, there

²¹ *Ibid.*, pp.298, 320

²² Arendt, *The Origins of Totalitarianism*, p.270

²³ *Ibid.*, p.275

was a risk that a breakdown between legal institutions and the national interest would result in “disintegration of ... government and of organization of peoples”.²⁴ The outcome, the creation of a mass of stateless persons, occurred when a state preferred to lose or expel from the trinity of “state-people-territory”, any citizen who opposed or differed from the dominant position. The mass arrival of stateless people in other countries, and the introduction of policies such as “mass denationalization”, produced pressure and conflict in neighbouring countries, both in times of war and peace.²⁵ It was this right of a nation-state, the right to decide who may be included and who may be excluded, which was the instrument that caused a far-reaching flow-on effect and the consequences of statelessness.

Aristide Zolberg’s work on sovereignty and nation states draws on the reflections and observations of Arendt. Zolberg finds inspiration in Arendt’s ability to analyse from a political orientation, emphasising the “inherent dynamics of a political situation”, in contrast to a sociological perspective, which would lead one “to focus principally on conflicts”.²⁶ He, like Haddad and Schmitt, comprehends the international system in terms of sovereignty, nation-states and territorial boundaries, subscribing to the view that “the principal key for understanding how refugees come about” in the world, stems from an analysis of the historical process of the formation from a world of empires, into national states.²⁷ The defining privilege of any nation-state is its right to determine who may be

²⁴ *Ibid.*, p.275

²⁵ *Ibid.*, p.277. Arendt considers that the stateless person living outside the pale of the law was created through the revocation of naturalization, such as in 1933 for those of Jewish origins in Germany, and Belgium in the 1930s.

²⁶ Zolberg, *op. cit.*, pp.27-29

²⁷ *Ibid.*, pp.24-38; see also Allan Borowski, Anthony Richmond, Dr Jing Shu & Alan Simmons. “The International Movements of People” in Adelman, Howard, Allan Borowski, Meyer Burstein and Lois Foster. (eds) *Immigration and Refugee Policy: Australia and Canada Compared*, Volume I, Carlton, Vic.: Melbourne University Press, 1994, pp.48-9

included and who may be excluded – i.e., who would be inside and outside – from its territory through the establishment of its borders.²⁸

Another scholarly contribution worthy of attention is the work by Robert Jackson, who notes that:

Sovereignty is an idea of authority embodied in those bordered territorial organisations we refer to as ‘states’ or ‘nations’ and expressed in their various relations and activities, both domestic and foreign. ... Sovereignty is at the centre of the political arrangements and legal practices of the modern world. ... State sovereignty is a fundamental idea of authority of the modern era, arguably the most fundamental.²⁹

Jackson asserts that the global system of today is that of a sovereign authority created by past kings, rulers and agents as a result of events in Europe in the sixteenth and seventeenth centuries.³⁰ Sovereignty is so far-reaching that no part of the world is excluded from its construct. Consequently, any individual must live within either one state or another as there is no neutral territory which is unoccupied or unclaimed. According to Jackson, the formation of sovereignty depends on an understanding at two levels, one of “*supreme* authority in the state, and an idea of political and legal *independence* of geographically separate states”.³¹ These two levels, however, are not independent of each other but are critically linked to form the single, complete idea of sovereignty. The first level constitutes the rights and duties for which the state, its government and its citizens, are responsible. The second level is for each individual sovereign state to assume responsibilities to other states, and to work with them on matters such as foreign affairs, trade and co-operative relations.³²

²⁸ Andrew Brouwer and Judith Kumin. “Interception and Asylum: When Migration Control and Human Rights Collide”, *Refuge*, Vol.21, No.4, p.8. The authors discuss methods of control, such as visas and interception.

²⁹ Jackson, *Sovereignty*, Preface, p.ix

³⁰ This point is also made by Benedict Anderson, *op. cit.*, p.7

³¹ Jackson, *Sovereignty*, p.x

³² *Ibid.*, pp.x-xi. Co-operative relations is a point taken up later in this thesis in relation to burden-sharing.

Under the title of “Sovereignty and Modernity”, Jackson defines a number of sovereign manifestations, including popular, democratic and territorial, and considers the benefits and shortcomings of each.³³ For example, he claims that popular sovereignty implies that final authority rests with the consent of the people, yet defining who constitutes “the people” is fraught with difficulty. Since the voice of the people must be invoked, this requires recognition and organisation by someone, through some process, in order for the “*vox populi*” to be delineated and acted upon. Similarly, democratic sovereignty finds its roots in liberal democracy, vesting its power through institutions and a constitution. The key to this is citizenship and people’s inherent political rights. However, there is a risk that, should an “uninformed or unreasonable majority” consistently determine issues on public law and policy, serious negative results may transpire.³⁴

In addition, Jackson considers whether borders of a territory provide the circumstances and limitations for citizens within, or whether the nation and its people determine the space and boundaries for their own sovereign jurisdiction. He argues that the historical case demonstrates territorial borders were defined by imperialists of the past, seeking to exploit and control, and not by the cultural groups within. The political global map was shaped in a style created by imperialism, whether ill-fitting for populations or not, and this pattern was sanctified by international law. This principle reaffirms the determination of territorial jurisdictions and territorial integrity of states through mutual respect, co-operation and non-intervention into the internal affairs of a state. In summary, Jackson argues that the

³³ Jackson, *Sovereignty*, pp.78-113

³⁴ See Chapter 6 for a discussion on government misinformation and withholding of facts from the Australian public, where the democratic voice of the people must be invoked.

world system of sovereignty will continue, even if its evolution is unpredictable, because there is no alternative challenging system hovering in the wings.³⁵

Other writers, such as Martha Finnemore, contend that where situations of nation and sovereignty have resulted in forced migration, this has exposed cracks in the international system. From the premise that states do not exist alone, but within a global structure, Finnemore claims that “[p]olitical science has focussed attention on problems of how states pursue their interests”.³⁶ She claims that state national interests are power, security and wealth, and because states are socially constructed entities, their interests are defined in the context of internationally held norms. States’ interests are to avoid invasion, extinction and economic collapse, and to do this, they must be perceived as powerful and prepared to protect through strong leadership and government. *It is only when there are slippages in a seemingly perfect system that flaws and faults are revealed.*

So far, we have considered the development of the world into separate sovereign states, and the need for each state to develop cohesion and a strong sense of societal belonging within boundaries. The discussion will now move on to identity and nationality, in an effort to build a better understanding of how society identifies and responds to those who transgress the rules of sovereignty through the unauthorised crossing of borders. It will be argued that states define and label these individuals or groups as the “other” or the “alien”, having the power to declare who is a member of their society and included, but also who is a non-member and therefore excluded. For the refugee or asylum seeker, this delineation has major implications.

³⁵ Jackson, *Sovereignty*, pp.104-116; Philip Spencer & Howard Wollman. "Nationalism and the Problem of Humanitarian Intervention", *Australian Journal of Human Rights* 4; Vol.13, No.1, 2007, p.90

³⁶ Martha Finnemore. *National Interests in International Society*, Cornell University Press: N.Y., p.1

Nationalism and Identity

The notion of nationalism holds a special place in any discussion involving refugees. Not only are refugees perceived as a threat to the stability and harmony of a state into which they reposition themselves, they can also be seen as the “other” or the “alien”, against whom members of a society can perpetuate their own national identity. This includes the right for each and every individual to know “who and what they are”, as well as “the right to identify with a culture and a history”.³⁷

Nationalism is an ideology which is, and has been, notoriously contested and even elusive. Those who proclaim themselves to be nationalists often disagree among themselves as to what constitutes a nation, especially where different levels of importance are attached to subjective and objective features.³⁸ In addition, “issues of identity, culture, language, history, myth, memory and territory”³⁹ are said to make up the imagined nation, which may also take different forms, such as Western or Eastern. While nationalism may vary in form, it can be said that the common features remain more dominant than those which divide.⁴⁰ Yet the borders and boundaries that enable nationalism to be defined within the nation space, are shifting and flexible due to changing events, leaving some to argue that long-term distinctions become unsustainable.⁴¹

³⁷ Melanie Phillips. “Legal and Illegal Immigration: A *conversazione* starter” in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, p.5

³⁸ Spencer, *et al.*, *op. cit.*, p.81

³⁹ *Ibid.*, p.81

⁴⁰ *Ibid.*, p.81

⁴¹ For example, see Umut Ozkirimli. *Theories of Nationalism: A Critical Introduction*, MacMillan Press Ltd, Hampshire, 2000, pp.57-62. Ozkirimli states in his introduction (p.1) that “[n]o single political doctrine has played a more prominent role in shaping the face of the modern world than nationalism”.

One feature of the nationalist ideology, in whatever form it may take, imagines the world to exist in a specific way, comprised of nations, where groups or societies share a national identity. In addition, those who exist outside are the external “other”.⁴² Nationalism has been the subject of considerable analysis⁴³ in order to better understand nationalist claims. Among the most important of these is the assertion that all other loyalties, such as class or gender, must be sacrificed to the greater claim of loyalty to the nation.⁴⁴ This priority is reinforced and institutionalised to the point where people see overarching national loyalty as normal and sensible, and are prepared to fight to the death for their nation.⁴⁵ Yet these claims, which are presented as a fixed, permanent and irreversible national identity, are open to challenge.⁴⁶

Nationalism can also take the form of political ideology, according to some scholars, who suggest that such nationalists seek political power for their nation, ideally in the form of a state for the nation.⁴⁷ Within the framework of the international order, governments and nation-states interact to represent the interests of their people. According to Spencer and Wollman, the expression reflects the formulation of relations between *nation*-states, which is “an integral part of nationalist ideology, that the world is made up of nations, that the primary political unit is the national one”.⁴⁸

⁴² Spencer et al., *op. cit.*, p.81

⁴³ *Ibid.*, p.82. The authors note the key contributions on this subject in the works of Hobsbawn, Gellner and Anderson.

⁴⁴ *Ibid.*, p.82

⁴⁵ *Ibid.*, p.82

⁴⁶ *Ibid.*, p.82. For example, the authors observe that these identities can be more fluid, multiple and complex, and that some, such as Benedict Anderson, find this better understood as “imagined” nationalism.

⁴⁷ See John Breuilly. *Nationalism and the State*, second edition, Manchester University Press: UK, 1993 p.28, 269-280; Spencer et al., *op. cit.*, p.82

⁴⁸ *Ibid.*, p.83

The premise that “people” are the same as “nation” is, according to the authors, seldom considered.⁴⁹ Within this context of international relations, states have secure borders, they enjoy recognition of sovereignty from other nation-states, and there is agreed compliance on the principle of non-interference. It is this latter point, the intention of which was to build on order and security and allows states’ independence in internal affairs, which threatens to disrupt stability. The argument is that intervention is potentially anti-democratic. While democracy is seen as “a universalistic doctrine, emphasising the common human capacity for self-determination”, nationalism can be seen as “particularistic, emphasising the differences between peoples and the value of a nation’s distinctive culture, tradition and ways of living”.⁵⁰

Nationalism, through this definition, can be understood as promoting exclusivity, in contrast to democracy which promotes inclusivity. According to Spencer and Wollman, “... it has proven in practice quite difficult for even the most inclusionary forms of nationalism to sustain their openness consistently, before deeper anxieties about who should be allowed in and who kept out have periodically reasserted themselves”.⁵¹ Nationalist movements have rejected the rights of others to determine themselves,⁵² and this has led many intellectuals to express concern about nationalism. Indeed, the boundaries and borders constructed between people have prompted claims that this has made some hate another.⁵³ Articulating the nature of nationalism, including demanding uniformity of race and culture, and the differentiation of unique qualities of a “people” from those of their neighbours, must be done with “trepidation and unease”, for this

⁴⁹ *Ibid.*, pp.83-84

⁵⁰ *Ibid.*, pp.87-88

⁵¹ *Ibid.*, pp.94-121

⁵² *Ibid.*, p.88

⁵³ Judith Brett. “Relaxed and Comfortable: The Liberal Party’s Australia,” *Quarterly Essay*, Issue 19, 2005, p.39. See also James Curran. *The Power of Speech: Australian Prime Ministers defining the national image*, Melbourne University Press: Melbourne, 2004, p.2

national community thinking has sparked powerful nation-states, revolutions and wars.⁵⁴

An example of extreme nationalism can be seen in Hitler's Nazi Germany of the late 1930s and 1940s.

Nationality as a concept introduces the construct to define not just who one is, but also who one is not. It is the vehicle which clearly creates "exclusionary identity practices based on dichotomies", providing an "ordering principle" that establishes the criteria for "what and who is internal to states, and what and who is external".⁵⁵ The identity of the refugee is not as a member of that community, but as an excluded outsider, and this exclusion is dependent upon the erection of well-defined boundaries in the form of borders designed by governments to strengthen a state, thereby defining the privileged citizen against the displaced.⁵⁶ As Zygmunt Bauman comments:

One cannot knock on a door unless one is outside; and it is the act of knocking on the door which alerts the residents to the fact that one who knocks is indeed outside. 'Being outside' casts the stranger in the position of objectivity: his is an outside, detached and autonomous vantage-point from which the insiders (complete with their world-view, including their map of friends and enemies) may be looked upon, scrutinized and censored. The very awareness of such an outside point of view (a point of view epitomized by the stranger's status) makes the natives feel uncomfortable, insecure in their home ways and truths.⁵⁷

Bauman contends that nation-states exist to support modernity's desire for social order.⁵⁸

This social order relies on dichotomies, where one member identifies with the good and the norm, and the "other", a second member, is abnormal and a deviation that represents degradation, a stranger and an enemy. To better understand the global system, Bauman suggests the modern mind models the world on a geometric-type pattern or grid, which allows a logical and rational view of the international system. The contradictions, he

⁵⁴ *Ibid.*, p.2

⁵⁵ Haddad, *op. cit.*, pp.301-2

⁵⁶ Zolberg, *op. cit.*, pp.35-36

⁵⁷ Bauman, *op. cit.*, p.78

⁵⁸ *Ibid.*, pp.1-15

argues, are crucial for creating an illusion of symmetry, the very presence of which is necessary to maintain power for what the author terms the *modern project*. However, “the world is not geometrical. It cannot be squeezed into geometrically inspired grids”. Yet through the creation and defined territories with borders and boundaries, nation states have created the identities of the “other of us”, the “refugee”, the “foreigner” and “stranger”⁵⁹.

According to Eugene Kamenka, himself a migrant, nationalism can explain much of Australia’s reluctance to freely embrace refugees. He asserts:

In Australia, for all its pretensions to the contrary, nationalism today is predominantly an economic doctrine: keep out the competition, let us live without effort. Australian nationalists do not call on Australians to do more and better; they tell them to fear those who try harder, and who have seen more (often through no virtue of their own), who have wider horizons.⁶⁰

While Gassan Hage⁶¹ focusses his discussion on Australia in particular, his analysis of “nation” and identity is applicable on a wider scale. Hage considers the issue in terms of the nationalist imaginary and identifies two ways of envisaging a nation by those who are members of a society. He asserts that a duality exists where a member may claim they “belong to the nation”, while adopting a mentality that “the nation belongs to me”. The first image can be understood as a social and geographical space incorporating notions of territory and belonging, while the second can be seen as a collective force which drifts above the territory, protecting and defending the nation.

His argument is that citizens within the nation can be so paranoid about border penetration by “the significant other” they provide support for overly aggressive and vigilant

⁵⁹ *Ibid.*, pp.14-15; see also Soguk, et al., “Wandering Grounds”, pp.680-681; Malkki, *op. cit.*, pp.24-26. Malkki claims that recent theoretical shifts and conjunctures have increased analytic visibility on the issue. Her work considers the refugee through the perception of how people construct, remember, and lay claim to particular places as “homelands” or “nations”. She explores normative discourse on identity and territory. She suggests the connection in nationalist discourses and nationalist imaginary is largely metaphysical, conceived in terms of botanical expressions such as soil, nourishment, roots, origins, and trees.

⁶⁰ *The Age*, 26 January 1985, cited in Katharine Betts. *Ideology and Immigration: Australia 1976 to 1987*, Melbourne University Press, 1988, p.115

⁶¹ Gassan Hage. *Against Paranoid Nationalism: Searching for hope in a shrinking society*, The Merlin Press Ltd: London, 2003

government policies.⁶² While the threat is articulated and defended in “racist and totalitarian” terms, the inner sanctum of the nation state claims to uphold the values of non-racism and democracy.⁶³ The consequence of this is that the balancing act fails, with deterioration in life quality for the interior citizens, due to the paranoid fear that the good life is threatened. Hage explores the Australian experience of nationality and identity, connecting colonialism and paranoia, suggesting that “white colonial paranoia” has shaped Australian society and culture since Federation. Australians feared loss of Europeanness and whiteness, along with the privileges this provided. Hage asserts that the “Australian national imaginary” operates in this manner, and its people fear that if in some way the Australian border was compromised, there would be an end to the Australian world.⁶⁴

Hage’s study looks at the social and political reality during the Howard Coalition Government’s era, and suggests that compassion was in short supply at the time. He suggests that Australian society is defensive, negative and fearful of threats to the point where the citizens are anxious, troubled and paranoid nationalists.⁶⁵ They suffer from “compassion fatigue”, similar to many Western nations faced with a seemingly never-ending number of asylum seeker and refugee arrivals hoping to enter and resettle into their nation. Accordingly, Hage suggests the political system of the Howard era re-established some features of the colonial white obsession and helped foster an institutionalised paranoid form of nationalism. He criticises these nationalists, describing them as “no-hopers produced by transcendental capitalism and the policies of neo-liberal government”, as well as labelling them the “refugee of the interior”.⁶⁶

⁶² This point is pertinent to the discussion on moral panic in Chapter 6

⁶³ Hage, *op. cit.*, pp.31-46

⁶⁴ *Ibid.*, pp.48-49

⁶⁵ *Ibid.*, pp.1-3

⁶⁶ *Ibid.*, pp.7, 21

Citizenship, Inclusion and Exclusion

What does citizenship mean? While the term may be currently undergoing an adaptation to 'fit' the global contemporary world, citizenship remains fundamentally important.

According to Claudia Tazreiter, “[c]itizenship, or permanent residency status, allows an individual to make claims on a particular state for rights.”⁶⁷ It is a legal and political construct which places a person as a member of a particular nation state and in its society. Through this national and political identity, an individual is defined as either excluded or included. As an included member of a nation state, a citizen receives legally determined benefits and is eligible for specific rights. The principal assumptions relating to the notion of citizenship include “concepts of equality, freedom, exclusion, discrimination and the ‘other’ ”.⁶⁸ As noted by Don McMaster:

The question of who belongs and who is to be excluded in a nation hinges on citizenship, and immigration policy has a pivotal part in this construction.

Connecting these revelations about discrimination to citizenship in turn uncovers the gaps that asylum-seekers, such as the boat people, can fall into; they are at the mercy of the nation-state without any sufficient recourse to natural justice. A nation-state can discriminate against its ‘other’ by enacting policies that, unjustly and contrary to human rights, exclude targeted groups.⁶⁹

Because of the power vested in the nation-state through the citizen community, policies controlling the entry or exclusion of strangers are unchecked by a hierarchical regime. If a person or refugee is seen as not adequately satisfying specific requirements for a nation state, they are generally excluded from citizenship of that society. The greatest right for a state, some claim, is the power to allow entry into the nation or to exclude a person by refusing membership.⁷⁰ Those seeking citizenship are often referred to as “aliens”,⁷¹ belonging instead to the global international system rather than one nation state. This

⁶⁷ Tazreiter, *op. cit.*, p.8

⁶⁸ McMaster, *Asylum seekers*, p.163

⁶⁹ *Ibid.*, pp.6-7

⁷⁰ Brouwer, et al., *op. cit.*, p.8.

⁷¹ Nonja Peters (Dr) “From Aliens to Austr(alien)s: a look at immigration and internment policies”, Paper presented at *From Curtin to Coombs: war and peace in Australia seminar*, Curtin University of Technology, 25 March 2003

global legal status, however, is totally lacking in a defined political or social identity.⁷² In the interim, they are stateless and in limbo.

According to Hage, the issue of citizenship and honour go hand-in-hand.⁷³ Hage questions the value of a citizenship when rights are conferred but humanity is denied. He upholds the proposition that a state not “weakened by ethnic, racial and class relations of domination becomes crucial in defining what an honourable society and an honourable citizenship entails”,⁷⁴ and suggests there should be “moral reciprocity” of recognition between a society and a newcomer. This mutual acknowledgement of moral worth is completely lacking in relation to the refugee, who is not a guest in the country but a needy person who is “laying bare their dependent status”, seeking help, work and shelter.⁷⁵

Human rights and citizenship can be inextricably linked.⁷⁶ Those seeking protection within a country such as Australia who are denied citizenship and, as a result, have their human rights violated, have been identified as the “significant other”. This is relevant for those who are placed in detention, during which period citizenship is withheld, meaning detainees face uncertainty, fear and concern for the future. Such individuals or groups seeking refuge, particularly in Australia, have been subject to tight control, stereotyped and labelled as “undeserving” or “unworthy”.⁷⁷

⁷² McMaster, *Asylum-seekers*, p.162-163

⁷³ Gassan Hage. (ed.) *Arab-Australians: citizenship and belonging today*, Melbourne University Press: Melbourne, 2002, pp.2-8

⁷⁴ *Ibid.*, p.3

⁷⁵ *Ibid.*, pp.7-8

⁷⁶ Tazreiter, *op. cit.*, p.8

⁷⁷ McMaster, *Asylum-seekers*, pp.188, 190-1; Julia Hinsliff. *Integration or Exclusion? The Resettlement Experiences of Refugees in Australia*, The University of Adelaide, September 2006, p.255

Incorporated into the term citizenship is the notion of possession. Very strong, deep-seated emotions are attached to possession, ownership and a sense of belonging. Some become obsessed with the belief that their land must be protected from those who would take it from them by force or coercion, and paranoia and security become overwhelming priorities for those who fear the unknown. It is argued that this possessiveness can be linked to nation, identity and a strong sense of control. In Australia, the notion of land possession is deeply entrenched, with a long-established dream being the ownership of house and land. The holders of the land possess power, and they can use their power to preserve possession by introducing severe limitations for newcomers who wish to enter the country and become a citizen. The powerful often dictate the conditions of entry, when and who may be granted citizenship, what criteria must be met, and when fluctuating circumstances may reflect changes in the rules.

If one tries to enter the domain of those who already possess, a real or imaginary threat is immediately perceived by the owner.⁷⁸ Their possession is sought after, desired, and contested by others. Such newcomers represent offenders who threaten the safe culture and territory, potentially introducing different values and ultimately violating the existing conditions in an effort to gain access or entry. Bauman observes:

The stranger cannot adopt the native culture as it stands without first attempting to revise some of its precepts. The native culture defines him and sets him apart as a miscreant. The stranger is assigned no status inside the cultural realm he wants to make his own. His entry will therefore signify a violation of the culture he enters. By the act of his entry, real or merely intended, the life-world of the natives that used to be a secure shelter is turned into a contested ground, insecure and problematic. By the same token, the very good will of the stranger turns against him; his effort to assimilate sets him further apart, bringing his strangeness into fuller than ever relief and supplying the proof of the threat it contains.⁷⁹

⁷⁸ Suvendrini Perera. *Australia and the insular imagination: beaches, borders, boats, and bodies*, New York: Palgrave Macmillan, c2009, p.62. The author suggests the state can act like a “besieged householder turning away uninvited guests or trespassers who encroach on private property”.

⁷⁹ Bauman, *op. cit.*, p.78

In addition, wider concerns have been articulated in terms of national security and border protection.⁸⁰ If not handled efficiently, borders can be perceived as increasingly porous and providing opportunities for terrorists. For a fearful society, strong public support for policies which strictly control entry and resettlement have complicated the possibilities and options for asylum seekers.

Justice and human rights

[I]nternational law is founded on the concept of sovereignty – *i.e.*, the notion that the world is divided into a finite set of states with mutually exclusive jurisdiction over segments of territory and clusters of population – the definition in effect assumes that the determinants of persecution are also internal to the appropriate state.⁸¹

Sovereign states have an absolute obligation to protect their citizens' human rights, which means allowing access to "a range of civil, political, economic, and social rights".⁸² These human rights transcend geographical borders and should be available to all people, including refugees, who seek those rights and protection from a state other than their own. Not only are human rights critical for people, they are critical for the stability and security of states. One who is stateless and unable to access rights may become a threat due to their prolonged frustration over circumstances, contributing to angry and impatient attitudes and actions. One consequence may be that vulnerable individuals could be at risk of recruitment by radical groups or those involved in terrorist activities.⁸³ This is an undesirable outcome, especially in current times where preoccupation and control of territories dominates.⁸⁴

⁸⁰ Alexander Betts. *Protection by Persuasion: International Cooperation in the Refugee Regime*, Cornell University Press: London, 2009, pp.1-2

⁸¹ Aristide R. Zolberg, Astri Suhrke & Sergio Aguayo. "International Factors in the Formation of Refugee Movements", *International Migration Review*, Vol.20, No.2, Summer 1986, p.152

⁸² Betts, *Protection by Persuasion*, p.6

⁸³ *Ibid.*, p.7. Betts discusses, pp.6-9, how states' willingness to provide protection to those fleeing persecution depends on a number of issues, including admission of refugees, preparedness to contribute financially, and to "burden-share". Yet many states shirk these responsibilities, creating further stress on those prepared to contribute to the international system. The answer, the author suggests, is to create incentives and improve states' behaviour, to facilitate international co-operation, and to introduce a common

According to Claudia Tazreiter's work monitoring the human rights of unsuccessful asylum seekers, the "issues that stem from concerns over human rights defy geographical borders".⁸⁵ Tazreiter argues that sovereignty interacts clumsily with migration, forced or voluntary, and with the principles of human rights. She claims that the connection between migration and human rights sits uncomfortably in that one incorporates issues of borders, protection and security, and the other a global value system embracing justice and efficacy. The stateless person, who is unable to make claims on a state because they are outside their country of origin, may find the ideal principles of human rights do not match up with reality.⁸⁶

Andrew Brouwer and Judith Kumain also make the point that, in an age preoccupied with national security, states continue to practice sovereign control by allocating more resources and energy to defend borders against the unauthorised entry of people. While progressively tighter national and regional visa policies are one method of strictly controlling the arrival of people, frequently the emphasis is on interception. The unwelcome refugee or asylum seeker is seen as subverting the systematic migration program, hence the broader acceptance of policies of air or maritime interception, and possibly the return of vessels.⁸⁷

set of standards set within strong institutional frameworks. This would serve to better protect the collective interests of states operating within an international system.

⁸⁴ Brouwer, et al., *op. cit.*, pp.6-24. This article looks at interception as a measure states use to protect themselves from unauthorised migration and the issues of human rights and law associated with these measures.

⁸⁵ Tazreiter, *op. cit.*, p.20

⁸⁶ *Ibid.*, pp.7-8

⁸⁷ Brouwer, et al., *op. cit.*, pp.6-24

These actions raise human rights and protection concerns, especially in relation to the principle of *non-refoulement*.⁸⁸ Brouwer and Kumain note the findings of the UNHCR Executive Committee conclusion that while interception of irregular migration may continue to be carried out by states, the opportunity for asylum seekers to leave one's country of origin and seek protection by another must not be removed.⁸⁹

The link between human rights and citizenship makes it necessary to determine what the world criterion for human rights should be. The most suitable way to determine this is to refer to *Universal Declaration of Human Rights*, as proclaimed by The General Assembly of the United Nations, 1948.⁹⁰ This document serves as a statement of what is a “common standard of achievement for all peoples and all nations” and includes the following:

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood
- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty
- Everyone has the right to life, liberty and security of person.

The Declaration can be understood in terms of the human race being one single group of people within global society, all of whom should be considered equal and entitled to common rights. This assumption embraces the principle that everyone shares similar basic values and principles around which their lives are based. When an individual or group

⁸⁸ See UNHCR, *Note on Non-Refoulement (Submitted by the High Commissioner)*, 23 August 1977, EC/SCP/2. Countries signing the *Convention* agree to the principle of *non-refoulement*, i.e., ensuring a person is not returned to a country where they may fear for their life. This issue is discussed later in this thesis.

⁸⁹ Brouwer, et al., *op. cit.*, p.18. The authors note the UNHCR Executive Committee Conclusion 97 (LIV) 2003 and observe that, notwithstanding some weaknesses, this Conclusion represented an important landmark. It acknowledged the need for states to control irregular arrivals, including the use of interception practices, but that state interests should not prevent people from seeking protection or “adequate treatment”.

⁹⁰ The General Assembly of the United Nations, *Universal Declaration of Human Rights*, 1948

experiences loss of freedom, rights or entitlements this, according to that set down in the Declaration, is improper and undesirable.⁹¹ Yet this is a recurring world theme.

Arendt, on the “perplexities of the rights of man”, contends that in the past, social and human rights protection had been outside the realm of the political. They were not guaranteed under the domain of government or constitution and, instead, were the sphere of influence of “social, spiritual and religious forces” and “proclaimed to be “inalienable”, irreducible to and undeducible from other rights or laws”.⁹² Yet the supposedly inalienable rights, according to Arendt, become unenforceable when a person no longer belongs to a sovereign state. Not only do these stateless persons become non-members of any society, but they lose their homes, their social context and their place in the world. They cannot rely on protection from any government and therefore become global citizens with no legal status or rights.

The more numerous these stateless groups become, the more difficult they are to handle. The more the number of these people increases, the easier it becomes to shift focus from the persecuting government, to the unfortunate and unwelcome status of the victims.⁹³

Their plight is that they belong to no community, and as a consequence are not equal in law because there is, in fact, no law which applies to them. As Arendt comments:

Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on which he does or does not do. ... They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion.⁹⁴

⁹¹ *Ibid.*

⁹² Arendt, *The origins of Totalitarianism*, p.291

⁹³ *Ibid.*, p.294. This point is relevant in the discussion on moral panic later in this thesis.

⁹⁴ *Ibid.*, p.296

In other words, humans need to have “the right to have rights”.⁹⁵ Arendt argues that humanity has in effect assumed the role formerly ascribed to nature or history, comprising the right to have rights, but that this “transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and a sphere that is above the nations does not exist”.⁹⁶

This point of a human’s “right to have rights” is considered by Emma Larking.⁹⁷ Larking reflects on the prevailing liberal democratic view that powerful states remain the best apparatus for protecting the rights of individuals, but questions how states can support this principle of equality for those within its boundaries while simultaneously excluding those outside its borders. Her concern is that nation-states can pursue policies to preserve the national interest, and that this takes precedence over human rights and basic freedoms. Larking asserts that the government can construct legislation in an open and aggressive manner which denies individuals basic human rights:

[T]heir pursuit of policies guided solely by concern for the so called ‘national interest’ can lead in effect to behaviour that undermines basic freedoms. Where this happens, a poisonous hypocrisy enters the bloodstream of the nation state, and infects the institutions established to protect the freedom and quality of its own citizens.⁹⁸

The deception, Larking observes, is clearly exposed when asylum seekers come face-to-face with democratic institutions which are constitutionally structured to protect such people. This group finds itself outside the realm and protection of the law, facing inequality and lack of privilege, with states using sovereignty as the password to deny such universal rights.⁹⁹ Larking argues that Australia, among other democratic nations, should not be declaring it is good and generous when allowing entry to those seeking protection,

⁹⁵ *Ibid.*, p.298

⁹⁶ *Ibid.*, p.298

⁹⁷ Emma Larking, “Human rights and the principle of sovereignty: a dangerous conflict at the heart of the nation state?”, *AJHR* 15, 10(2), 2004, pp.1-16

⁹⁸ *Ibid.*, p.1

⁹⁹ *Ibid.*, p.1

but should ensure there is no “erosion of the rule of law”. Australia must resist the temptation to consider only what is right and good for its people and, instead, should adopt a global value system.¹⁰⁰

In his work, Jackson considers the prevailing assumption that “sovereign states are an enemy of human rights, and that the construction of a world community which rises above the sovereign states system is necessary to emancipate humankind”.¹⁰¹ He rejects this view, claiming that there is no other global authority or power which exists to guard human rights, and that the protection of human rights and the upholding of civil society rest squarely with states and their governments. The primary responsibility of the state and its government is to provide an environment in which its citizens may enjoy freedom, safety and dignity, free from threats and danger. Jackson argues that it is because of sovereign state responsibilities on foreign policies, coupled with obligations under international law, that the protection of human rights is upheld.¹⁰²

Jackson acknowledges that the system is not perfect and is subject to “frailties and failings”, since it is organised and managed by humans.¹⁰³ It is this aspect of the system when states may become corrupt and deteriorate, that their citizens may be subjected to fear, abuse and torture, that human rights are threatened. A radical or revolutionary regime has the power to exploit and kill the mortal human within its boundaries, yet it is operating within the same authoritative and credible international system which recognises human rights. It is inadequate, therefore, for human rights simply to be recognised and

¹⁰⁰ *Ibid.*

¹⁰¹ Jackson, *Sovereignty*, p.114

¹⁰² *Ibid.*, p.134. See also a discussion by Betts, *Protection by Persuasion*, pp.2-22, who agrees that international co-operation is a necessary condition for protection. He considers the problems facing the international regime and suggests approaches to achieving the best co-operation, such as persuasion and promotion.

¹⁰³ Jackson, *Sovereignty*, p.114-115

safeguarded. There must be a formal arrangement which is authoritative and powerful, and Jackson argues that it is for this reason that sovereign states are critical for the protection of individuals and groups, protecting human rights for all people under international law.¹⁰⁴

The tension between nation and humanitarian issues is discussed by a number of authors,¹⁰⁵ who take the view that human rights should not be usurped by a state's political imperatives. For example, Lynda Crowley-Cyr¹⁰⁶ subscribes to the prevailing assumption that the sovereign states are the enemy of human rights, and she considers, through the theory of contemporary contractualism, that "the state has failed to discharge its obligations to detainees under its care", thereby legitimising exclusion.

Janna Thompson and Claudia Tazreiter also offer views on the tension "between common assumptions about the rights of nations and Universalist views about right and justice that come out of the liberal tradition".¹⁰⁷ According to Thompson, the nationalist view holds that the state has the power to control and restrict immigration based on benefits for the state and its citizens, and those who hold a different view are required to prove otherwise. Conversely, from the perspective of the Universalist, "the onus of justification" for imposing restrictions lies with those who have the power to enforce such limits. The

¹⁰⁴ *Ibid.*, pp.115-119

¹⁰⁵ See for example Lynda Crowley-Cyr. "Contractualism, Exclusion and 'Madness' in Australia's 'Outsources Wastelands' ", *Macquarie Law Journal*, Vol.5, 2005, pp.81-102; Janna Thompson,. "Human rights and the protection of borders: justifying restrictions on immigration and trade", *AJHR*, 14, pp.1-10; Tazreiter, *op. cit.*, pp.7-25. On this issue there is also a growing body of international political science literature. For example, see the significant work of Eiko Thielemann on refugee rights and harsh deterrence policies of Australia, such as Thielemann, Eiko R. "Burden-sharing" in Jones, Erik, Menon, Anand and Weatherill, Stephen (eds.) *The Oxford Handbook of the European Union*, Oxford handbooks in politics & international relations, Oxford University Press, Oxford, UK, 2012, pp. 810-824

¹⁰⁶ Crowley-Cyr, *op. cit.*, pp.81-102

¹⁰⁷ Thompson, "Human rights", pp.1-10; Tazreiter, *op. cit.*, pp.7-25

liberal tradition supports the Universalist assumption of equality for all individuals, and this is enshrined in a global principle of justice.¹⁰⁸

Thompson agrees with Larking and asserts that, in theory, the principle of Universalist morality is upheld by liberal democracy, while in practice acceptance is not so forthcoming. She claims scholars provide two answers to this problem, which are to either “embrace cosmopolitanism and all of its implications, or give up moral universalism”.¹⁰⁹ Thompson considers, however, that there is a third alternative worthy of exploration, and that is a mix of the Universalist perspective and the nationalist restrictions which she calls partiality. Partiality can be compatible with universalism if it fulfils Universalist outcomes: however, any conflicts between the two should favour a Universalist outcome.¹¹⁰

For some, such as Fiona Jenkins, policies on asylum seekers are framed with a national political agenda, and those seeking refuge and protection are “essentially assumed to be guilty until they can prove themselves innocent”.¹¹¹ Jenkins, who suggests that asylum seekers pose political challenges for nation-states, utilizes the thoughts of Agamben on modern law and its “rotten ambiguity”,¹¹² and contrasts these with the reflections of Arendt and Schmitt. Agamben, she notes, views the refugee as a “limit concept” when the nation state, “a key legitimating form of modernity”, appears to be collapsing.¹¹³ This potential for breakdown highlights concerns relating to fundamental categories of the nation state,

¹⁰⁸ Thompson, “Human rights”, p.1-10

¹⁰⁹ *Ibid.*, p.2-10

¹¹⁰ *Ibid.*, p.2

¹¹¹ Fiona Jenkins. “Bare life: asylum-seekers, Australian politics and Agamben’s critique of violence”, *AJHR*, 18, 2004, p.1

¹¹² *Ibid.*, pp.1, 8

¹¹³ *Ibid.*, p.7

and “the relation between declarations of rights and the nation state”.¹¹⁴ The refugee exposes a crisis situation for sovereignty, where individuals are not protected by human rights. In short, what today’s separation between humanitarianism and politics really represents is the differentiation between the rights of a specific group of people from those of the citizens.

Finally, the work of Nevzat Soguk¹¹⁵ has merit on the manner in which Australia balances the dilemmas of human rights and sovereignty. From a more global perspective, Soguk theorizes the refugee issue through the practices of statecraft and looks at how “[e]normous political, social and technological changes and transformations are triggering mass movements of people in search of “better” and “safer” places”.¹¹⁶ Not only are issues of poverty, natural disasters, civil wars, and military coups seeing mass movements of people desperate to move to other “imagined” communities, but the continuation and visibility of these expanding forced migrations also tends to blur the “imagined clarity of identity borders and boundaries”.¹¹⁷

While acknowledging all refugee experiences are different (with the exception of displacement), Soguk takes issue with the fact that conventional discourse on refugees provides no opportunity for the voices of the refugee to be clearly heard, and that this is a compromise of their rights. The discourse which prominently features those refugees within the debate also reduces the individual’s importance by subjecting them to treatment devoid of place, expression and, often, a representative organisation. He criticises refugee studies which use as their starting point the notion of citizen, territorial community, the

¹¹⁴ *Ibid.*, p.8

¹¹⁵ Nevzat Soguk. *States and Strangers: Refugees and Displacements of Statecraft*, University of Minnesota Press: Minneapolis, 1999

¹¹⁶ *Ibid.*, p.2

¹¹⁷ *Ibid.*, p.2

modern state, and the power which it derives from its citizens. He seeks alternatives to a world which defines the refugee as lacking representation, affinity and protection, as a non-member of the national community, a dislocated and uprooted citizen.¹¹⁸

While the refugee issue may involve a relatively small number of people in comparison to the total population of a particular receiving nation, the political conduct and power responses are considerable. This group of forced migrants challenges the “imagined” conditions pursuant to the hierarchy of the citizen/nation/state collective, and their interplay which results in the highest level of solutions. These solutions are addressed by international regimes which work closely to maintain the constructions of statehood, citizenship, stability, borders and boundaries as global normality. The consequence of this approach should relegate humanitarianism to a position far outranked by the demands of statism.¹¹⁹

The next chapter will consider the principles and obligations expected of nation states as set out by the *Convention* and how Australia, as a sovereign nation, has responded to these responsibilities.

¹¹⁸ *Ibid.*, pp.4-10. Soguk’s premise defines the state as the instrument accorded powers through the modern citizen’s authority and deploys law, protection and administration of the nation. The citizen, in this discourse, is the “constitutive agent” and the state is the “representative agent”. The community empowers the state and the state acts within clear environment of the sovereign territory. Clearly, in a world defined under these terms, the refugee lacks representation, affinity and protection, as a non-member of the national community, a dislocated and uprooted non-citizen. While Soguk deviates from conventional discourse by seeking alternatives to the view that a refugee is an aberration of the community citizen, he also links the fundamental human rights issue of refugees and asylum seekers to the conflicting priorities of the sovereign state. He sees the refugee, not as a problem to be resolved, but rather as a manifestation of a paradoxical situation in which they represent both negative and “recuperative” implications for sovereign state practices. As a negative presence, the refugee is seen as one who “transgresses political, cultural and socioeconomic borders and boundaries”, stirring clear objections from those authorised to protect the borders, intent on retaining the established and familiar identities

¹¹⁹ *Ibid.*, pp.19-21. The author discusses the example of the intervention approach which prioritises keeping an individual or group of refugees within the boundaries of their country of origin. This may be a more desirable outcome for neighbouring countries, but in effect, forces the refugee or asylum seeker to seek refuge within the state, creating another category of person fearing for their lives – the internally displaced person.

CHAPTER 2: REFUGEE ISSUES & THEORETICAL REFLECTIONS

Who is a Refugee?

The United Nations High Commissioner for Refugees (UNHCR) provides the following:

A refugee is a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country ...”¹

This is considered the most influential definition of a refugee, set by the international organisation, the UNHCR, which has as its core mandate the “protection of 32.9 million uprooted or stateless people ...”.² The task of protection is carried out by ensuring vulnerable persons receive basic human rights. It includes seeking food, shelter and medical care where necessary, helping refugees find safety in another country, and arranging repatriation where possible. Australia accepts this definition of a refugee, as set out by the UNHCR.

The classification draws on a state-centric view as “a person fleeing life-threatening circumstances”, which presents a refugee as one crossing national borders to seek protection due to “persecution”. Some argue that this is an inadequate concept, because it is too specific and therefore restrictive.³ For example, many who suffer equally serious crises, such as natural disasters of flood or famine, do not qualify for UNHCR refugee status. In addition, the strict definition does not encompass displaced persons (DP), a term particularly used during World War II. DPs are seen as “a person who has been forced to

¹ United Nations High Commissioner for Refugees (UNHCR), *Basic Definitions*, Article 1, The 1951 Convention Relating to the Status of Refugees

² UNHCR: The UN Refugee Agency. *Protecting the world's vulnerable people*, 2008

³ McMaster, *Asylum-seekers*, pp.21-24; Kamenka, *op. cit.*, in Saikal, Amin. *Refugees in the modern world*, Canberra: Department of International Relations, Australian National University, 1989, p.15; Kenneth Rivett. “What Australia Should Do” in Saikal, Amin. *Refugees in the modern world*, Canberra: Dept of International Relations, Australian National University, 1989, pp.113-4. Rivett discusses how the restrictive definition impacts on Australian policy. For example, those falling outside the strict definition can be considered under a separate category, the Special Humanitarian Programme;

leave his or her native place, a phenomenon known as forced migration”.⁴ This may involve persons displaced within their own national borders who suffer persecution or serious threat, but do not, or cannot, cross borders. Their suffering may include dispossession, loss of family and home, a loss of “self”, and even identity.⁵

The UNHCR also provides a definition for an asylum seeker. This is “a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application.” In addition, there are illegal immigrants or unauthorised arrivals, for example, “boat people”, who enter a country without meeting the legal entry requirements. This means they do not have a valid visa,⁶ yet these people may have “exactly the same moral claim for entrance” as refugees.⁷ Again, Australia accepts this UNHCR definition of an asylum seeker.

Can we say that nation-states are responding adequately to issues raised by refugees and asylum seekers, meeting the challenge of dealing with what is, in fact, a fundamental humanitarian matter? It is argued they are not. The international regime is primarily charged with finding global durable solutions and protecting those seeking refuge. As noted by Soguk, these solutions work closely to maintain the constructions of statehood, citizenship, stability, borders and boundaries as global normality. While the international

⁴ Nationmaster encyclopaedia online; McMaster, *Asylum-seekers.*, p.20

⁵ Kamenka, *op. cit.*, refers to refugees as “the wretched of the earth”, p.11; see also McMaster, *Asylum-seekers*, p.8

⁶ UNHCR, *Basic definitions*; Country Chapters, AUL, *Australia*, Government of Australia, March 2007, pp.1-2. See also York, *Extended version, op. cit.*, p.ii. York notes that illegal immigrants are “persons who enter or remain in Australia without a valid visa or travel authority. The most common form of illegal immigration is visa over-staying. Asylum seekers are not illegal immigrants as they have invoked Australia's obligations under the 1951 UN Convention and 1967 Protocol. They become illegal when they are denied refugee status and avenues of review and appeal are exhausted.”

⁷ Matthew J Gibney. *The ethics and the politics of asylum: Liberal Democracy and the Response to Refugees*, Cambridge: Cambridge, 2004, p.9

regime carries out much valuable and critical work, it can also be seen as a “toothless tiger”, occasionally failing in its obligations.⁸

The *1951 Convention* and the *1967 Protocol* have wide international support with over one hundred and forty (140) states as signatories,⁹ including Australia, yet criticism has been levelled at the refugee treaty for being “a relic of a bygone, cold war, almost ice-age era”, ‘decrepit’, having a ‘failing focus’, an ‘inability’ to find answers to causal factors such as ethnic violence, and ‘insensitivity’ in relation to security concerns at all levels, as well as ‘inflexibility’ coping with new developments.¹⁰ The instrument fails, according to Goodwin-Gill, in major areas, such as dealing with governments which perpetuate archaic notions of sovereignty with large-scale migration; it fails to protect refugees in the broader sense due to limitations of its formal definition; it fails to keep pace with human rights; it fails in conflict prevention and mediation, democratization, development and internal order; and it compromises standards of competent and efficient administration.¹¹

In addition, instruments such as the *1951 Convention* and *1967 Protocol* do not compel responsibility from nation-states. This is apparent in the following excerpt from the UNHCR, which states:

States’ Obligations

1951 UN Refugee Convention, the 1967 Protocol and UNHCR

The 1951 UN Refugee Convention and its 1967 Protocol is a legally binding treaty and a milestone in international refugee law. The majority of member states in the UN have accepted responsibility in providing protection for persons obliged to flee their country because of persecution. Australia ratified the 1951 UN Refugee Convention on 22 January 1954, and the 1967 protocol on 13 Dec 1973. New Zealand ratified the 1951 UN Refugee Convention on 30 June 1960, and the 1967 protocol on 6 August 1973. PNG ratified the 1951 UN Refugee Convention and the 1967 protocol on 17 July 1986.

Unlike other human rights instruments that came later, there is no monitoring mechanism or committee that examines countries to see whether they are complying with their obligations under the Convention.

⁸ Guy S Goodwin-Gill. “Refugees and Responsibility in the Twenty-First Century: More Lessons Learned from the South Pacific”, *12 Pacific Rim Law and Policy Journal* 23, 2003, pp.23-47

⁹ Healey, *op. cit.*, p.11

¹⁰ Goodwin-Gill, *op. cit.*, pp.23-24

¹¹ *Ibid.*, p.27

It is up to the signatory State to implement its commitments faithfully. UNHCR provides a supervisory role in this process.¹²

While this is a “legally binding treaty and a milestone in international refugee law”, there appears to be scope for individual state interpretation, as no formal monitoring system is in place to ensure countries comply with obligations. Compliance is, in fact, more of an honour system, and no penalties are placed on states which do not meet their responsibilities.¹³ As we have seen earlier, a sovereign state commands overarching power and authority within its borders and this is acknowledged by the international system. States carry out these responsibilities within their boundaries “independent of all foreign authorities”.¹⁴ International disagreement on the way in which a state functions or handles a situation can be expressed through public criticism or perhaps the art of persuasion but, ultimately, the regime cannot stop state-centric decisions which are not in the spirit, or are contrary to, the *Convention*.¹⁵

From a global perspective, a priority for the international community is political and strategic stability, to achieve balance, order and control in international affairs.¹⁶ Global refugees form part of that goal and, at the highest level, solutions have been sought through international conferences, the formation of international organisations, members’ (being nation-states) co-operation and agreement on definitions, standards of behaviour, appropriate actions and the authorisation of intervention – at times military – as well as the

¹² UNHCR, *Definitions and Obligations*, 2008

¹³ Conflicting priorities may tend to favour national interests where it is “up to the signatory State to implement its commitments faithfully”.

¹⁴ Jackson, *The Global Covenant*, pp.156-7

¹⁵ For example, Australia has been subject to much international criticism for the development and implementation of policies such as mandatory detention and the so-called “Pacific Solution”.

¹⁶ Stuart Harris. “Immigration and Australian foreign policy” in Jupp, James & Marie Kabala, *The Politics of Australian Immigration*, AGPS, Canberra, 1993, p.34

signing of treaties and conventions.¹⁷ Great importance is attached to the principle of providing asylum and protection to people of the international community fleeing persecution, and these actions are authorised through the international system of nation-states.¹⁸

Examples abound where and crises have occurred and a global refugee problem has resulted. These incidents illustrate where the international community can be seen as falling short in fulfilling its duty to identify potential conflicts, find solutions and protect those who, in order to survive, have fled their country. For example, nearly forty thousand Hungarian refugees fled to America as a result of the 1956 uprising, with around fourteen thousand accepted by Australia;¹⁹ around six thousand Czechs from Czechoslovakia settled in Australia after the 1968 uprising in Prague; refugees and displaced persons have been part of the Sudanese landscape for decades due to conflict and civil war;²⁰ the Rwandan crisis affected between half a million and a million of the Tutsi ethnic group and Hutu majority;²¹ and huge numbers of people fled from war in Bosnia and Herzegovina in former Yugoslavia.²² Added to that there have been conflicts in Vietnam, Cambodia and

¹⁷ Richard Wazana. "Fear and Loathing Down Under: Australian Refugee Policy and the National Imagination", *Refuge*, Vol.22, No.1, 2004, pp.83-95

¹⁸ Gibney, *op. cit.*, p.2

¹⁹ Graeme Hugo. "From compassion to compliance? Trends in refugee and humanitarian migration in Australia", *GeoJournal*, Vol.55, 2001, p.28

²⁰ This conflict has been traced to the control of the British, when the separation of political and cultural groups and reinforcement of their differences was a feature, and the lack of British advancement economically and structurally created problems for the south. See Peter M. Browne. *The longest journey: resettling refugees from Africa*, Sydney, Australia: University of New South Wales Press Ltd, c2006, pp.139-140; Commonwealth of Australia, March 2007, Department of Immigration and Citizenship, *Sudanese Community Profile*, p.3

²¹ Many of these people remained in their own country and so were not defined as refugees but displaced persons. The civil war resulted in massive refugee movements and political instability in neighbouring countries.

²² For an examination of policy towards those who fled, especially the temporary protection response, see Khalid Koser & Richard Black. "Limits to Harmonization: The "Temporary Protection" of Refugees in the European Union", *International Migration*, Vol.37, No.3, 1999, pp.521-543

Laos, Lebanon, Kosovar and East Timor, Ethiopia, Eritrea, and Sierra Leone, to name just a few.²³

The nation-state has been an active participant in supporting the international regime in achieving its aims, but there is a paradox. The members of the international organisation have another agenda – the nation. From a nation-state perspective, policies have been cemented in legislation setting out the manner in which the nation will be protected from perceived threats of non-citizens seeking to enter its space. These measures are numerous, and in the name of state integrity, include deterrence, containment, exclusion, prevention, restriction, scientific and objective geographical mapping of borders and boundaries,²⁴ and territorial enactments enforced by national institutions. States have also employed certain techniques in order to stop the flow of refugees and asylum seekers crossing their borders. The methods and practices adopted have been diverse and complex, and range from avoiding the difficult questions, redefining the problem, introducing different language such as replacing the word “refugee” with “illegal” or “economic” migrants, introducing laws to limit obligations, and intercepting boat people so they are forced to turn around and return from whence they came.²⁵

This interception, or interdiction,²⁶ contravenes the *Convention* on the matter of *refoulement*, which states refugees and asylum seekers are not to be forced back to the danger from which they are fleeing. If a boatload of people is turned around, there is no opportunity to evaluate the legitimacy or otherwise of their claims. Such actions are legitimised through the rhetoric of an ideology of shared beliefs and practices, empowered

²³ Hugo, *op. cit.*, p.28

²⁴ Perera, *op. cit.*, p.18

²⁵ Goodwin-Gill, *op. cit.*, pp.27-28

²⁶ *Ibid.*, p.28. The author states that the technique of interdiction is “an exercise of extra-territorial jurisdiction” and is used as an excuse to ignore certain obligations to refugees.

by the citizen or community who are rooted in the territorial space, against the uprooted, dislocated, displaced and forced out asylum seeker or refugee from their original community of citizens.²⁷ The state claims “to represent and protect” its citizens “within the clearly demarcated locale called the sovereign national territory”, against another who threatens their democracy, welfare and even their security.²⁸

From the above discussion we have gained an understanding that the refugee, or alien, compromises the nation-state and the international system. The phenomenon of forced migration reveals flaws in the “geometrically inspired grids”²⁹ of the order, and points to failures by the government of the country of origin for not carrying out its duty to protect its citizens. It also points to a failure of the receiving nation, which does not immediately accept the “alien” and can withhold basic human rights, thereby temporarily or permanently excluding the refugee. The refugee exposes the gaps and fissures in the sovereign state system and becomes a stateless person. Let us now consider how Australia deals with balancing its responsibilities.

Australia and sovereignty

How does Australia manage the difficult balance between sovereignty and human rights obligations on the refugee issue which has taken on increased significance in the context of current global transformations?³⁰ Let us begin with Australia’s obligations.

There is no doubt Australia has a sound record on the issue of refugees. The nation has a clear public position as a signatory to the *United National High Commissioner for*

²⁷ Soguk, *States and Strangers*, pp.10, 19

²⁸ *Ibid.*, p.10

²⁹ Bauman, *op. cit.*, pp.14-15

³⁰ Castles, *op. cit.*, pp.11-12

*Refugees (UNHCR) 1951 Convention, Relating to the Status of Refugees*³¹ and consistently accepts its agreed quota of approximately twelve thousand refugees per annum from the pool of refugees provided by the UNHCR. Satisfying these criteria ensures that Australia complies with both national and international requirements. In addition, on the surface Australia appears to be meeting its commitments towards the international principle of “burden-sharing”,³² as well as offering a number of generous benefits to refugees under the resettlement program, including support for accommodation, counselling, finance and instruction in English.

Australian politicians are quick to point to the responsible efforts and good international reputation the nation enjoys in assisting refugees.³³ Those who advocate maintaining the current level of support argue that the current Australian program is adequate, and that increased inflows could potentially have too great an impact on the social, cultural and economic fabric of the nation.³⁴ The expression is particularly directed at one group of people, the stateless, the powerless, and the “wretched of the earth”.³⁵ This group comprises the world’s asylum seekers with a distinct Australian historical bias against

³¹ UNHCR, *Convention and Protocol*.

³² Betts, *Protection by Persuasion*, pp.2-3. Betts asserts that burden-sharing is problematic as it is determined within “a very weak legal and normative framework”, resulting in significant consequences. He states that burden-sharing contributions are discretionary and voluntary, and that the UNHCR has had to work assiduously towards facilitating co-operation on this issue. See Chapter 8 for a discussion on burden-sharing.

³³ Jupp, *From White Australia*, p.196. Jupp describes how behind the political rhetoric there was a notion of the nation being “exceptionally charitable”; The Hon Philip Ruddock. Speech to Victorian Press Club, 26 March, 1998. In his speech Ruddock said, “How we respond to the humanitarian crises that continue to plague the world defines us as a nation. How we act on the global stage conveys to others what we are. We are a national that can be proud of its record of responding to refugee and humanitarian problems.” Some, such as Don Randall, have claimed that “Australia’s generosity towards refugees is outstanding”, *Commonwealth Parliamentary Debates*, Representatives, vol. 283, 9 August 2006, pp. 27, 29. Others, such as Andrew Robb, have stated that “As a country, on these matters, we are strong but fair, and generous to a fault.” *Commonwealth Parliamentary Debates*, Representatives, vol. 283, 10 August 2006, p. 44, Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 – Summing Up Speech, Speeches, Immigration and Multicultural Affairs

³⁴ See Jupp, *From White Australia*, pp.170-171. This point of a threat to the social fabric of a nation becomes pertinent in the discussion on moral panic later in this thesis.

³⁵ Kamenka, *op. cit.*, p.11; McMaster, *Asylum seekers*, p.8

those arriving unauthorised by boat.³⁶ Others, however, suggest it is not enough to declare the nation is doing its part through a highly formalised selection and entry scheme. They claim that, when dealing with millions of people fleeing for their lives from violence and terror, such a government program is too prescribed and inflexible, and can all too conveniently lead to protestations that Australia is already doing all it can.³⁷

According to Marie Kabala, rational concerns dominate one aspect of immigration policies, when the intake of people introduces skills and benefits to the economy, while the other aspect is governed by “social pressures that reflect attitudes, values and prejudices held by the community”.³⁸ If resistance is encountered with regard to the entry of a particular group of people, rationalisation is frequently couched in terms of promoting and maintaining social harmony and cohesion. National character becomes a dominant concern of the society, often bringing with it forces of racism and nationalism. Both rational and emotional arguments continue to shape the Australian democratic debate.³⁹ For a democracy such as Australia, it is argued that the domestic national agenda has at times conflicted with its humanitarian responsibilities. Australia can be seen as introducing state-centric policies, prioritising the nation and its citizens over human rights principles, and adopting an approach that is inextricably sovereign in its outlook – that is, retaining control over the composition of its population, with security a priority.⁴⁰

³⁶ Jessica Howard. “To Deter and Deny: Australia and the Interdiction of Asylum Seekers”, *Refuge*, Vol 21, No.4, December 2003, p.36. Howard claims that Australia has neglected some of its responsibilities to asylum seekers and refugees by “ensuring the sanctity of its borders in a climate of heightened security fears”. Her article discusses the lengths to which a developed state will go to in addressing the problem of forced migration and people smuggling, in an effort to meet a domestic policy objective, pp.35-50

³⁷ This is implicit in comments as articulated earlier in this work by Ruddock, Randall and Robb.

³⁸ Marie Kabala. “Immigration as public policy” in Jupp, James & Marie Kabala. (eds) *The Politics of Australian Immigration*, AGPS:Canberra, 1993, p.4

³⁹ *Ibid.*, p.18

⁴⁰ Harris, *op. cit.*, p.23-24

A number of examples support this assertion. For example, the excision of land from Australian territory was done in an effort to prevent Christmas Island and reefs in the vicinity to be destinations for asylum seekers from Indonesia. The Prime Minister was empowered by parliament to declare some parts of Australian territory to be outside the “migration zone”. This legislation prevented unauthorised arrivals from accessing Australia’s refugee protection regime.⁴¹ Another example is the Temporary Protection Visa (TPV), which offered temporary protection in lieu of a Permanent Protection Visa (PPV). It was also highly criticised internationally and nationally for not being strictly in the spirit of the *1951 Convention* and for being a breach of human rights.⁴² It was discriminatory and reduced access to rights and services. Its aim was to send a strong message of deterrence to hopeful unauthorised asylum seekers.⁴³

In addition, the policy of mandatory detention has been strongly criticised both internationally⁴⁴ and nationally⁴⁵ for restricting and controlling those seeking refuge. It is a policy which does not comply with human rights principles and is in breach of Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).⁴⁶ Mandatory detention, described by some as draconian,⁴⁷ will be discussed in more detail later in this

⁴¹ Crock, “In the Wake of the Tampa”, pp.70-71.

⁴² The TPV was a Howard Coalition initiative was been revised by the Australian Labor Party when it took office. See Leach, et al., *op. cit.*, pp.5-11; Don McMaster. “Temporary Protection Visas: Obstructing Refugee Livelihoods”, *Refugee Survey Quarterly*, Vol.25, Issue 2, 24 May 2006, pp.135-145

⁴³ *Ibid.*, pp.5-6, 8

⁴⁴ UNHCR *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, February 1999, Introduction; Amnesty International. *The impact of indefinite detention – the case to change Australia’s mandatory detention regime*, Amnesty International Australia Publications, 2005, pp.14, 23, 59, 61

⁴⁵ McMaster, *Asylum seekers*, p.xii

⁴⁶ Leach, et al., *op. cit.*, pp.60-63

⁴⁷ MacCallum, “Girt by sea”, p.36; Clara Law. *Letters to Ali* (videorecording), Collingwood, Vic: Madman Entertainment, 2004; Qamar Naseeb Khan. “Asylum Seeker: Our Conscience Dictates That We Must Protest” in Stephen, Sarah. *Refugees: exposing Howard’s lies!* Broadway, NSW: Resistance Books, 2002, pp.34-37; Sarah Stephen. “Mandatory Detention – A Policy Based on Lies” in Stephen, Sarah. *Refugees: exposing Howard’s lies!* Broadway, NSW: Resistance Books, 2002, pp.24-28

thesis. The *Tampa* incident⁴⁸ provides another example of sovereign control and conveyed a strong message of deterrence to asylum seekers hoping to reach Australian shores. The event led to another major policy initiative, the so-called and much-criticised “Pacific Solution”,⁴⁹ which had world-wide repercussions and reflected an approach inextricably sovereign in its outlook for retaining control over the composition of its population. This policy demonstrated Australia’s state-centric approach to the issue and its lack of compliance with the *1951 Convention*. The asylum seekers from the *Tampa* crisis were the first to be subjected to the new policy.⁵⁰

These examples illustrate how Australian sovereignty was invoked in order to prevent entry by the “other”. Exclusion was carried out in the name of the law and sovereignty, a hierarchy which is singular and requires no interrogation. Yet such logic generates situations where violence is perpetrated against a human being or a group of people. This rationality represents further violence, for the sovereign is outside the law, shielded and safeguarded from extra evaluation and accountability. Since it is “outside the law”, the state of exception defines the structure of sovereignty, while at the same time represents a form of exclusion.⁵¹

⁴⁸ David Marr & Marian Wilkinson. *Dark Victory*, Sydney: Allen & Unwin, 2003; Betts, Katharine. “Immigration Policy under the Howard Government”, *Australian Journal of Social Issues*, Vol.38, No.2, 2 May 2003, p.186; Manne, Robert. “The Howard Years: A Political Interpretation” in Manne, Robert. (ed.) *The Howard Years*, Black Ink Agenda: Melbourne, Victoria, 2004, pp.36-39

⁴⁹ Peter Mares. *Borderline: Australia’s response to refugees and asylum seekers in the wake of the Tampa*, Sydney: University of NSW Press, 2002, p.2; Errington, *op. cit.*, p.305, who asserts the so-called Pacific Solution was a waste of money and a humanitarian disaster, calling as it did on diplomatic favours which weakened Australia’s foreign policy. This was a face-saving exercise for the Prime Minister, John Howard.

⁵⁰ ABC documentary series, *The Howard Years*, Mondays 17, 24 November and 1 December, 8.30 p.m. This series includes the *Tampa* incident and its repercussions. It also touches on the manner in which offshore detention centres were agreed upon, particularly with the government of Nauru. The documentary notes the Nauru exercise alone cost the Australian taxpayer \$1 billion.

⁵¹ Agamben, *op. cit.*, pp.17-18

The country's position of denying access to procedures, advice and justice, of failing to recognise the refugee and provide rights accordingly, and to initiate policies to excise land or turn boats around, are specific actions representing lack of compliance and respect for the international system of protection for refugees and asylum seekers.⁵² Some go so far as to say "Australia's management of asylum seekers is abysmal and is not respected in the international community",⁵³ and that the policy shifts specifically in the period under the Howard Coalition "will resonate with other dark periods such as the exclusion of Australia's Indigenous peoples and the Stolen Generation".⁵⁴ Each signatory of the *Convention* has accepted, in spirit and in writing, the responsibilities and obligations contained therein. Where primary emphasis appears to be the national agenda, Australia's compliance as a signatory to the *Convention* can be questioned.

On the issue of a national political agenda which usurps human rights, some scholars⁵⁵ contend that, as states increase their wealth and so become a more desirable destination, two major challenges will be immigration and human rights. Others argue that states and their cultures remain resilient through laws, language, power and borders.⁵⁶ Another model proposes that the sovereign state can be compromised due to lack of an overarching body of authority, and that states can breach principles of international society. The charge is that, for reasons of power, security or wealth, rules are interpreted by states and then chosen according to the preferences of that state.⁵⁷

⁵² Goodwin-Gill, *op. cit.*, p.46

⁵³ McMaster, *Asylum seekers*, p.xii

⁵⁴ *Ibid.*, p.xii

⁵⁵ For example, Philip Bobbitt. *The Shield of Achilles – war, peace and the course of history*, London: Allen Lane, Penguin Books, 2002, pp. 696, 706.

⁵⁶ Robert O. Keohane & Joseph S. Nye Jr. "Power and interdependence in the information age", *Foreign Affairs*, Vol 77 No.5, Sept-Oct 1998, pp.81-95

⁵⁷ Cox, et al., *op. cit.*, pp.1-15

These claims are pertinent for Australia. The nation can be seen as using power, security and wealth to interpret or devise rules according to the priorities of the state. During the Howard era (particularly 2001-2007), the balance of a national agenda of protection and security was often stated, yet the nation had to simultaneously comply with international obligations on asylum seekers and refugees. Under a state-centric framework, it is argued that the Howard Coalition did not work positively towards an achievable balance of the two, and that a national political agenda took priority over human rights for asylum seekers and refugees. Although Australia claimed to be a humanitarian, caring, reputable global citizen, the interests of the nation (and government) were paramount.

Theoretical Reflections on Refugees

The theoretical study of refugees and involuntary migration has generally attracted less analysis on causes and consequences compared to that of voluntary migration.⁵⁸ Refugee studies, however, became increasingly important in the later period of the twentieth century. This is not to say earlier scholarly work, before the development of refugee studies, is devoid of significance. Indeed, large studies have been conducted into major forced migrations, including post-World War I and II.⁵⁹ However, with an increase of millions of refugees and people in forced migration, there arose a need to better understand the core problem and the consequences of this phenomenon.

According to Richard Black, early refugee studies tended to be absorbed within various social science disciplines and were not specifically identified as refugee studies. Black

⁵⁸ Kuhlman, *op. cit.*, p.1; Zolberg, *op. cit.*, pp.24-38. Zolberg claims they are inherently different and the normal emphasis is on migration with economic roots, p.25; Borowski, et al., *op. cit.*, in Adelman, Howard, Allan Borowski, Meyer Burstein and Lois Foster. (eds) *Immigration and Refugee Policy: Australia and Canada Compared*, Volume I, Carlton, Vic.: Melbourne University Press, 1994, pp.43-44 – see this work also for a discussion on a number of theories relating to international migration, such as the push-pull, social network, structural, gender and migration theories, pp.43-51

⁵⁹ Richard Black. “Fifty Years of Refugee Studies: From Theory to Policy”, *International Migration Review*, Vol.35, No.1, Spring 2001, pp.57-59. The author discusses a number of studies in this area.

suggests the starting point for refugee study prominence as a specific area of scholarly focus occurred through the *International Migration Review*. This coincided with the period when vast numbers were fleeing the Vietnam War (late 1970s), expanding interest in the subject. From 1988, the *Journal of Refugee Studies* also became important focal point for research publications on refugee issues. Both journals produced research pertinent to policy concerns, but Black claims the influence of this research has had limited effect translating into policy. Through the study of refugee policies, it has been possible to draw from past experiences and, coupled with theoretical reflections, the field of study has been developed and enhanced.⁶⁰ Although some claim that a differentiation between voluntary and involuntary movements of people is theoretically inappropriate,⁶¹ there is little doubt refugee flows will continue to be a part of the global political landscape.

Can there be a theory of refugees and forced migration? If theory is “an intellectual construction by which we select facts and interpret them”⁶² and which “permit explanation and prediction”, and if theories “deal in regularities and repetitions and are possible only if these can be identified”,⁶³ can these principles be applied to the phenomenon of forced migration? Over time, has the involuntary movement of people produced patterns which enable us to observe logical, consistent regularities and recurring factors, which can be tested and proven, leading to predictable outcomes and conclusions?⁶⁴ The answer is, yes.

⁶⁰ *Ibid.*, pp.57-61

⁶¹ Borowski, et al., *op. cit.*, in Adelman, Howard, Allan Borowski, Meyer Burstein and Lois Foster. (eds) *Immigration and Refugee Policy: Australia and Canada Compared*, Volume I, Carlton, Vic.: Melbourne University Press, 1994, p.48; Anthony H Richmond. “Sociological Theories of International Migration: The Case of Refugees”, *Current Sociology*, Vol.36, No.2, 1988, pp.7-25

⁶² K.N Waltz. "Realist thought and neorealist theory", *Journal of international affairs*, New York, (0022-197X), 1990, Vol.44, No.1, p.22

⁶³ *Ibid.*, p.26

⁶⁴ R.N Lebow. “The long peace, the end of the cold war, and the failure of realism”, *International Organisation*, Vol.48, No.2, Spring 1994, p.250

A number of scholars have contributed theoretical analyses to the field of refugee studies,⁶⁵ with Egon Kunz said to have laid the foundations of a workable theory of refugee movements. His works⁶⁶ deal with processes of flight and displacement of refugees and have been recognised as a “reference point” for “attempts at theory building”.⁶⁷ Kunz explained refugee movements as events which resulted from specific conditions. He considered the events and conditions immediately prior to the flight of refugees and suggested that these were not, in fact, exceptional events which were unique in society and therefore unable to be replicated. Instead, Kunz proposed there were “recurring elements” which provided explanations and highlighted factors present for predicting future patterns.⁶⁸ In his words, there was a “need to look at refugee situations not as individual historical occurrences, each distinctly different ... but as reoccurring phenomena, with identifiable and often identical sets of causalities bearing on selectivity of participation and flight patterns”.⁶⁹ Kunz considered that without a theoretical study identifying such factors and understanding them, clear, functional and sound advice could not be provided to authorities of resettlement countries.⁷⁰

The strength of Kunz’s work lay in his ability to design a conceptual framework which would enable many apparently contradictory and aberrant incidents to be resolved and fit within that construct. Under this framework the experiences of refugees over time could

⁶⁵ Everett S. Lee. “A Theory of Migration”, *Demography*, Vol 3, No.1, pp.47-57; Kuhlman, *op. cit.*, pp.1-20; Egon F. Kunz. “The Refugee in Flight: Kinetic Models and Forms of Displacement”, *International Migration Review*, Vol.7, No.2, 1973, pp.125-146; David, *op. cit.*, pp.67-105

⁶⁶ Kunz, *op. cit.*, pp.125-146; Kunz, “Exile and Resettlement”, pp.42-51

⁶⁷ Richard Black. “Fifty Years of Refugee Studies: From Theory to Policy”, *International Migration Review*, Vol.35, No.1, Spring 2001, pp.57-78

⁶⁸ Other authors agree that viewing the refugee phenomenon as unique is an inaccurate perspective, e.g., Barry N. Stein. “The Refugee Experience: Defining the Parameters of a Field of Study”, *International Migration Review*, Vol.15, No. 1/2, Refugees Today, Spring-Summer, 1981, p.320. See also Richmond, “Sociological Theories”, pp.7-25, who notes the emergence of growing evidence that undermines assumptions of spontaneous and unpredictable movements of people. He discusses various macro and micro theories of migration, as well as structural constraints as opposed to human behavioural choices.

⁶⁹ Kunz, “The Refugee in Flight”, p.127

⁷⁰ *Ibid.*, p.127

be explained, including major events such as the Hungarian revolution of 1956, situations when groups experienced tension or unity, and times when patterns of different actions emerged.⁷¹ To deal with the selective effects of refugee movement, he introduced a scientific view through a model of kinetics to explain causalities, resolve issues and enable predictions to be made.

Refugee studies are part of the much wider field of migration studies,⁷² but refugees comprise a specific and distinct social group within the field. Members of this group move from their country of origin against their will, without “positive original motivations” and are generally forced to leave due to fear or in order to survive. They are, according to some, “among the wretched of the earth”.⁷³

Let us consider the theoretical reflections of Kunz in more detail. In his work, Kunz accepted the migration application of “push and pull” factors, where a person moved freely by choice (causal motivation being the push factor) to another preferred country (the pull element). This traditional “push-pull” theory, embraced by many, was introduced by Everett S. Lee in 1966.⁷⁴ In the case of refugees, however, Kunz distinguished between voluntary and involuntary movements through a modification of this model. He incorporated an additional factor relevant to the refugee, the pressure element, adopting a “push-pressure-pull” logic within a “motivational” and “kinetic” model to better clarify their plight.

⁷¹ *Ibid.*, p.129

⁷² Kuhlman, *op. cit.*, p.1

⁷³ Kamenka, *op. cit.*, p.11; McMaster, *Asylum seekers*, p.8

⁷⁴ Lee, *op. cit.*, 47-57

Kunz identified three particular kinetic types within this concept, the anticipatory, acute and intermediate refugee movements.⁷⁵ The anticipatory group understands the threat in the home country and chooses to depart prior to major upheaval, with a country of destination selected and planned. Members of this group are compared by Kunz to voluntary migrants but differ in that, although a member has some choice in the matter, he or she follows more of a “push-permit” pattern. The second group, acute refugee movements, are very different from the anticipatory refugees. For members of the acute group, the conditions in their country are such that they must flee, they fear for their survival, and they are left with no choice but are “pushed” into urgent action. After fleeing, and with the realisation that he or she can never return to their country of origin, a period of adjustment towards the new country takes place. This creates a strong “pressure” factor in accepting a new life, language, customs and culture. The “pull” factor has not been present as the desire to survive has dictated that any sanctuary is acceptable.

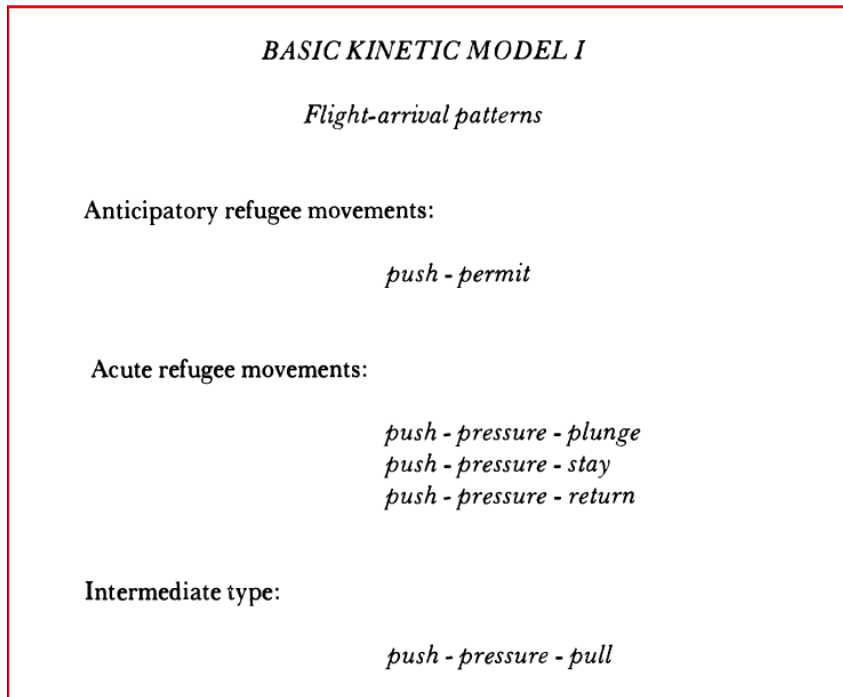
The acute group comprises three types, “push-pressure-plunge”, “push-pressure-stay” and “push-pressure-return”. Kunz suggests the first category provides “the most useful kinetic and motivational model”⁷⁶ for this group, when the refugee accepts the offer of settlement, protection and perhaps citizenship in the new country.⁷⁷ Kunz identifies a third but less important group, the intermediate, which may contain characteristics of both the movements described above. According to Kunz, in almost every case discernible “chain-connections” are present.⁷⁸ His basic kinetic model can be represented as follows:

⁷⁵ Kunz, “The Refugee in Flight”, p.131

⁷⁶ *Ibid.*, pp.131-4

⁷⁷ *Ibid.*, p.135, provides examples of the anticipatory and acute refugee movements which display discernible characteristics. For example, he refers to World War II and the movement of Jews escaping to neighbouring countries as members of the anticipatory group, which then changed into acute when Germany exerted military pressure on those countries.

⁷⁸ *Ibid.*, p.135



Source: Kunz, E.F. "The Refugee in Flight: Kinetic Models and Forms of Displacement", *International Migration Review*, Vol.7, No.2, 1973, p.134

Another useful theoretical contribution has been provided by Aristide Zolberg.⁷⁹ Zolberg views refugees as one type of victim within a world of victims, and that refugees are generated by the state to which they belong. He considers that migration patterns tend to be dictated by the economy but the nature of refugee flows is comparatively disorderly. The reasons for this are clear. Refugee movements are caused by unpredictable state conflicts, including civil or international war, and sudden regime changes. Zolberg argues from the perspective that political persecution produces a category of people internationally defined by the United Nations, but that this definition does not include all people who may fear for their lives. For example, displaced persons may be persecuted but do not receive the same level of protection because they remain within their state of origin.⁸⁰

⁷⁹Zolberg, *op. cit.*, , pp.24-38; Zolberg, et al., *op. cit.*, p.151

⁸⁰ Zolberg, *op. cit.*, pp.24-26

Zolberg argues that the internationally accepted definition of a refugee focusses on two persecuted groups, one due to race, religion, nationality and the other owing to political opinion,⁸¹ yet these two groups are dissimilar and require different solutions. His work aims to identify further categories of persecution, determining the precursors for refugee flows as well as seeking a deeper understanding of the prevalence of political persecution.⁸² Zolberg claims that, through an analysis of the historical process of the formation from a world of empires into a world of national states, this “provides the principal key for understanding how refugees come about”. His analysis establishes a number of stages within the process which creates refugees and involuntary movements of people, the main steps being:

- a generalized political crisis
- the emergence of victim groups
- tensions within a country interacting with those simultaneously experienced by others
- heightened tensions between states
- conflict which exacerbates refugee producing conditions.⁸³

Zolberg supports his analysis with examples, such as the expelling of Jews from Spain in 1492, Moslems who were deported by Spain to North Africa in the sixteenth century, the Puritans and Quakers exiled from England, and the French Huguenots.⁸⁴ By following these events Zolberg links the circumstances, conditions and patterns to uncover similarities in the emergence of victim groups and the consequential flow of people, arguing that contributing factors lie in a number of areas, including cultural differences,

⁸¹ Zolberg et al., *op. cit.*, p.153; Zolberg, *op. cit.*, p.25

⁸² Zolberg, *op. cit.*, pp.26-27

⁸³ *Ibid.*, pp.30-31. Others have identified further stages within the refugee experience. For example, Stein, *op. cit.*, pp.320-330, describes in this work eight distinct phases, a number of which consider the post-flight period and address numerous settlement-related experiences.

⁸⁴ Zolberg, *op. cit.*, pp.31-34

economic policies, political tensions, and underdevelopment, with a further factor being the presence of serious inequalities.⁸⁵

In Zolberg, Suhrke and Aguayo's work, "*International Factors in the Formation of Refugee Movements*",⁸⁶ the authors further develop the discussion of refugee movements, claiming the causal factors of the phenomenon reflect international situations and that the "transnational character of the processes involved" cannot be ignored.⁸⁷ While the authors acknowledge other perspectives emphasise an "internalist" view, their work gives credence to the global situation as an "interconnected whole", within which internal conflicts must be considered as part of the internationalisation of nations. For example, when fleeing tension in a state of origin, a destination must exist for the movement to take place. As noted by Kunz, the state of destination becomes a "pull" factor within the forced migration, and this can influence both the number of refugees fleeing their situation as well as the route chosen by the group(s).⁸⁸

According to their analysis, an additional complexity is the lack of an overarching global authority to which nation-states are accountable. Without such a world system, they claim, regimes experiencing sudden changes or instability affect not only the rogue nation, but produce serious implications for external nations. This type of tension invariably "entails a significant element of foreign involvement because of the linkages in the global state

⁸⁵ *Ibid.*, p.35-37

⁸⁶ Zolberg, et al., *op. cit.*, pp.151-169

⁸⁷ *Ibid.*, 151-153

⁸⁸ *Ibid.*, pp.153-155; Kunz, "The Refugee in Flight", pp.130-131

system”.⁸⁹ International dynamics, therefore, in some form or other, must impact to some degree on a society undergoing conflict.

Anthony Richmond⁹⁰ proposes that international migration, voluntary or involuntary, cannot be explained by one particular theory but that certain significant factors can go some way in explaining the phenomenon. He reviews refugee movements from “sociological and social psychological theories pertaining to international migration” and considers a number of approaches under the headings “macro” and “micro” theories. This involves a brief examination on various scholarly works, such as a societal systems application, and a functionalist orientation.⁹¹ Richmond also takes a “structuration”⁹² perspective and concludes that it is not appropriate to distinguish between “the economic and the socio-political determinants of population movement”. He argues the structuration process produces constraints which limit the choices for individuals and groups, who can more suitably be seen as “proactive” or “reactive”. Refugees or involuntary migrants are of necessity reactive due to the inability for this group to take advantage of rational choice.⁹³

Richmond considers that the complexities of a global society create difficult responses for those of different ethnic, social, political and religious backgrounds. The imbalance of the global economic development becomes a deciding factor in demands for labour, legal or illegal. As such, the subsequent movement of people can be seen as a symptom of the

⁸⁹ *Ibid.*, p.159. The authors provide examples of revolutions and their impact on other world nations, such as the French and Soviet revolutions, the Mexican Revolution, and contemporary conflicts in Kampuchea, Vietnam, Ethiopia, Iran, Afghanistan, Cuba, and Nicaragua.

⁹⁰ Richmond, “Sociological Theories”, pp.7-25

⁹¹ *Ibid.*, pp.7-8

⁹² *Ibid.*, p.15. Richmond considers this in terms of “structural constraints” and “individual choice”, pointing out that this is a central problem in sociological theory, involving fundamental questions of free will over theories implying behavioural decisions by forces over which we have little or no control.

⁹³ *Ibid.*, p.17

global system and represents a different group from the political refugee, as defined by the international *1951 Convention*, relating to those fleeing from national political conflicts and tensions.

In a Refugee Review conducted by the Australian National Population Council in 1991, three key predisposing, precipitating and facilitating factors were provided to illustrate the movements of refugees.⁹⁴ According to the Council, the “general conditions prevailing in a country will significantly influence both the likelihood of there being precipitating conditions for flight and the probability of these actually resulting in movement”.⁹⁵ This will very much depend upon a “pull” factor, where the opportunity to escape to another country is available.

⁹⁴ David Ray Cox. *The National Population Council's refugee review*, Australian Govt. Pub. Service: Canberra, c1991, p.178

⁹⁵ *Ibid.*, pp.178-179. A “major precipitating factor” occurs when a political regime clings to power through the persecution of groups, individuals, or categories of individuals, and where that dominant group exercises “forms of persecution such as extrajudicial killings, summary arrest, torture and other human rights abuses”. The likely outcome of such adverse political or social conditions will be for target members to flee either real or perceived threats. Their escape will be to other countries where immediate safety is possible.

CHAPTER 3: AUSTRALIA'S HISTORICAL DEVELOPMENTS

Policies of exclusion

At the time of federation, the Constitution marked the formation of the Commonwealth through the *Commonwealth of Australia Constitution Act 1900*,¹ which, among other matters, assigned the federal government power over immigration.² The priority given to immigration is evidenced by the fact that one of the first legislative acts introduced and passed was the *Immigration Restriction Act 1901*, on 23 December 1901.³ The flow of people to Australia and policy determining the desirability of numbers, as well as who may come, and the burden an influx of people may impose on the nation's economy and infrastructure, have been significant factors in Australian public policy debates.⁴

From the Censuses of Australian States in 1901 we can determine the composition of the population at that time. In that year, the census recorded that there were 3,773,801 people (1,977,928 males and 1,795,873 females), and the birthplace statistics for those recorded 2,908,303 people (77.2%) as Australian-born with 857,576 (22.8%) born overseas. The three main countries of birth for those born overseas were the United Kingdom 679,159 (18.0%), Other European Countries 74,673 (2.0%), and Asian Countries 47,014 (1.3%).⁵

¹ *Commonwealth of Australia Constitution Act 1900* is an Act of the Parliament of the United Kingdom at Westminster

² Refer to Section, "Powers of the Parliament". Chief Justice Robert French, AC. "The Role of the Courts in Migration Law", *Migration Review Tribunal and Refugee Review Tribunal Annual Members' Conference*, 25 March, 2011, Torquay, Victoria, p.3. Prior to Federation, individual colonies had their own migration laws, reflecting either the need to attract migrants or restricting the movement of people through fear of a mixed race society.

³ See Crock, *Immigration*, pp.2, 13. Crock states (p.13) that the Act was "virtually identical to legislation used successfully in the South African province of Natal and adopted by New South Wales, Western Australia and Tasmania before Federation as a means of restricting non-European migration".

⁴ French, *op. cit.*, Introduction, p.1

⁵ Australian Bureau of Statistics (ABS), *1901 Australian Snapshot*

In Australia in 1901, therefore, white people comprised approximately ninety-eight per cent of the population. Aborigines were not included in the census.⁶

Australia had demonstrated an early preference for controlling and restricting entry to those it did not want, and the fear of being overrun by an alien culture was not new. Nonja Peters remarks that “Born out of the hybridity of 19th century Western racial theories, the idea for a 'white Australia' had by the 1880s not only achieved doctrinal status, it had become the legislative foundation stone and ideological lodestar for the new Australian Federation”.⁷

Laws had been introduced by States up to half a century earlier, restricting the admission of non-citizens. For example, in 1855, the entry of non-Europeans was legislated against by the State of Victoria, legally empowering a self-governing colony to exclude non-citizens as its right, and in 1881, again in Victoria, the *Chinese Act 1881 (Vic)* was introduced.⁸ Acts such as these sought to limit Asian and other “coloured” groups from migrating to Australia. The nation’s clear aim was to remain predominantly white, live by British customs and reduce any threat to labour from Chinese and Pacific Islanders. These migrants introduced challenges for the labour market in the form of competition and represented a risk to undercutting wages.⁹ Various other forms of legislation protected Australia from non-Europeans. For example, on 17 December 1901, in an effort to protect

⁶ At the time of writing in 1967, Palfreeman, *op. cit.*, Introduction and Chapter 1, notes that “99.7 per cent of the population is now of European race. Australia is, in fact, whiter now than when the Immigration Restriction Act became effective.” This excluded counting Aborigines.

⁷ Peters, *op. cit.*, 2003

⁸ Crock, *Immigration*, pp.12-13. See also Palfreeman, *op. cit.*, p.5, who states that, due to the Chinese being a key problem in the consideration of Australia’s entry policy, broad principles of entry were “geared to the Chinese and their problems in the first place and then extended to the smaller groups, with minor modifications when they became necessary”.

⁹ MacCallum, “Girt by sea”, p.15. MacCallum claims the Chinese were particularly unpopular, not because they were a different race (although that was an aspect), but because they “could live on the smell of an oily rag and worked for peanuts: thus they undermined the white man’s standard of living.”

Australian workers, the *Pacific Islands Labourers Act* of 1901 and 1906 were ‘to Provide for the Regulation, Restriction and Prohibition of the Introduction of Labourers from the Pacific Islands and For Other Purposes’.¹⁰ The Act ensured Pacific Islanders could only enter Australia as “indentured servants” until 31 March 1904, and its purpose was to enable the deportation of many of this group from 1906.

In the same period, industry employers were forced by law to search for overseas workers only after efforts to recruit from the local population had failed. The requirement to source local workers was bound by the *Contract Immigrants Act (the Amending Immigration Act 1905)*¹¹ which put in place stricter contract procedures, including Ministerial approval, written contracts with “no industrial dispute pending, and current award wages were paid”. In 1903 the *Commonwealth Naturalisation Act* ensured that non-Europeans, such as “natives of Asia, Africa or the Pacific Islands (except NZ)”¹² were prevented from taking out British citizenship. The Act “introduced the conditions by which ‘aliens’ could be granted naturalisation ... and attain the rights and privileges of British subjects”.¹³

¹⁰ *Pacific Islands Labourers Act 1901 (Cth)*

¹¹ *Contract Immigrants Act (the Amending Immigration Act 1905)*

¹² *Ibid.* See also Peters, *op. cit.*, Introduction

¹³ The Parliament of Australia, Parliamentary Library: *The Naturalization Act 1905*. This Act was subject to a number of amendments until it was abolished in 1956-7. For example, the Research Guide – Immigration to Australia 1901-39, Appendix 2, Chronology, states: “Amendments were passed in 1917 (whereby prospective applicants had to advertise their intentions to become naturalised in the press), 1920 (which repealed the 1903 Act, included the Territories and imposed a fee for the Certificate), 1936 (when women were allowed to apply for independent naturalisation, or take on ‘deemed naturalisation’ by using the marriage as certification), 1946 (which confirmed that a woman who was a British subject would not lose her status of Australian citizen if she married an ‘alien’), and 1948 (which repealed the earlier Acts and amendments and for the first time, men and women of Australia could gain citizenship by either birth or descent, registration or naturalisation. Thereafter, the application for naturalisation could be made one year after arrival although a further five years’ residence was required to obtain approval.” The Act retained “British subject” as the nationality of Australians and this was not overturned until 1984 by the Hawke Government; see also *Pacific Islands Labourers Act 1901 (Cth)*. The Federal Government amended the *Naturalisation Act 1903* during the War so that applicants for naturalisation would have to advertise their intent, renounce their own nationality and prove they could read and write in English. The *Nationality Act 1920* introduced a definition of ‘natural born’ British subject and residence requirements for naturalisation. The nationality of most of those who may have considered themselves ‘Australians’ was solely that of British subject until 1949.

In an effort to attract assent from the British imperial government, which was conscious of the offence race restriction legislation could cause, the *Immigration Restriction Act 1901* was devoid of overtly racist language.¹⁴ It did, however, discreetly define specific groups of people who were “prohibited”.¹⁵ To ensure selective entry into Australia, a literacy assessment was introduced. This comprised a fifty-word dictation test, set by an authorised officer in a European language of his determination. Failure meant one could not be granted citizenship. An additional measure permitted the government to carry out multiple testing procedures, thereby reducing some applicants’ chances of success. This biased process, overtly based on race and favouring educated Europeans, enabled Australia to refuse entry to those it did not want.¹⁶ The Act was operational until 1958.¹⁷

Under the *Immigration Restriction Act 1901*, the guiding principle of Australian policy was to exclude and deter. As a consequence, Australia’s scope to respond in a humanitarian way to any refugee crises was entirely limited by racial exclusion. No explicit refugee policy was required.¹⁸ The Act enabled the government to closely control immigration

¹⁴ Crock, *Immigration*, p.13; A.T. Yarwood. *Asian migration to Australia : the background to exclusion*, Melbourne University Press, NY:Cambridge University Press, 1964, p.22. Yarwood states that a “government was bound to satisfy the community’s demand for exclusion and at the same time to frame bills that conformed with imperial requirements”. See also p.26, that any “direct bill that named ... races to be excluded would cause particular offence... and would incur the delay and perhaps the refusal of Royal Assent”.

¹⁵ Crock, *Immigration*, p.13. For example, the “Royal assent” was not forthcoming for the “Coloured Races Restriction Bills” when passed by New South Wales, South Australia and Tasmania in 1896.

¹⁶ *Immigration Restriction Act, c1901*. An accompanying annotation states, in part: “It was initially proposed that the Test would be in English, but it was argued that this could discourage European migration and advantage Japanese people, and Americans of African descent. Instead, any ‘European language’ was specified. In 1905 this was changed to ‘any prescribed language’ to lessen offence to the Japanese. From 1932 the Test could be given during the first five years of residence, and any number of times. The Dictation Test was administered 805 times in 1902-03 with 46 people passing, and 554 times in 1904-09 with only six people successful. After 1909 no person passed the Dictation Test and people who failed were refused entry or deported.” See also Crock, *Immigration*, p.18. Crock claims the dictation test enabled “notorious instances of misuse of power” to be carried out, and the case of Egon Kisch is discussed as an example of such injustice.

¹⁷ *Ibid.*, p.19

¹⁸ York, *op. cit.*, *Summary*, p.8/24

policy, and effectively enshrined the White Australia policy.¹⁹ It ensured non-whites were not sanctioned to enter the country.²⁰

The White Australia policy reflected the prevailing attitude of the population and government of the time, when Australians suffered an overwhelming desire to keep the nation white and “safe”. This desire for maintaining “whiteness” conveyed both a lack of confidence and a lack of established national identity. It also reflected an attitude of perceived hostile “different” others in close proximity.²¹ In reality, the White Australia policy was to “nourish the fear that has run deep through Australian society . . . dark-skinned foreigners could penetrate Australia’s borders and pose a threat to the white man’s version of civilization”.²²

During the period from federation to the late 1930s, various Acts were introduced with the intent of restricting or excluding specific groups or individuals, including the Enemy Aliens Act 1920, officially the *Amending Immigration Act 1920*, and the *Empire Settlement Act 1922*.²³ The League of Nations was established in 1919, supported by Australia, resulting in small numbers of people being permitted to arrive in Australia during the

¹⁹ Evans, “White Australia Policy” in Jupp, J. (2nd edition) *Australian people: an encyclopaedia of the nation, its people and their origins*, Cambridge University Press: Oakleigh, Victoria, pp.44-49; also Willard, *op. cit.*; Palfreeman, *op. cit.*, pp.135-6

²⁰ Crock, *Immigration*, p.15, notes the role of the judiciary in accepting that the government, as an inherent part of state sovereignty, has the power to admit, exclude or expel.

²¹ Due to the nation’s lack of historical experiences in war, violence and invasion, the Australian population was swayed by propaganda and duplicity, and paranoia pervaded the nation in an effort to maintain “whiteness”. The prejudices of past experiences were prolonged through the dominant white Anglo-Saxon political culture. For example, see J.T. Lang. *I Remember*, Katoomba, NSW: McNamara’s Books, 1980, c1956. Extract of Chapter Six, “White Australia Saved Australia”, Australian National Information Database. This extract provides an example of attitudes of the times where Australia could be “engulfed in an Asian tidal wave”, that there “would have been no need for the Japanese to invade” with Australia “swallowed up by the rolling advance of a horde of coloured people . . .”

²² Nick Cheeseman. *Australia: In Danger of Ourselves (Part I)*, Human Rights Solidarity, Vol. 11 No. 12 Dec 2001 – Vol. 12 No. 01 Jan 2002; see also B. Hornage. *The yellow peril: a squint at some Australian attitudes towards Orientals*, Dubbo, NSW: Review Publications, 1976

²³ These Acts provided the basis for prohibition of certain groups, including Germans, Hungarians and Turks, and provided financial support for selected United Kingdom migrants and schemes for land settlement.

1920s, including Jews escaping anti-Semitism, so-called White Russians from the Soviet Union (who supported the White [monarchist] side during the 1920 civil war), and Italians escaping fascism under Mussolini. These groups were accepted with little fuss as long as they complied with the White Australia policy.²⁴

In the early 1930s, Australia offered very little in the way of attractions compared to the United States or Western Europe, and without a flourishing economy, departure totals outstripped arrivals.²⁵ Policies were developed to attract and encourage new arrivals during the depression, such as assisted passage. However, this began to change from the mid-1930s. With Hitler's political opponents not so welcome in neighbouring nations, applications to come to Australia increased. Added to this, Australia was recovering from the depression and its low population was of concern. This theme was taken up by Lord Gowrie, in 1938, who recognised the need for the population to increase, adding credence to the catch-cry that the country must "populate or perish".²⁶ Despite this, Australia still harboured concern and prejudice over certain groups. For example, Jews wishing to escape persecution and hopeful of gaining entry into Australia had, in 1938, a maximum quota imposed of 5,100 per annum. To effectively monitor this, the application form for prospective immigrants included a section in which one was required to identify whether they were Jewish.²⁷

²⁴ Klaus Neumann. *Refugee Australia: Australia's humanitarian record*, Sydney: UNSW Press, 2005, p.15. Neumann notes approximately 2,000 Jews and a similar number of White Russians arrived with little fuss from authorities.

²⁵ *Ibid*, p.16

²⁶ The Sydney Morning Herald (NSW : 1842-1954) Federal Minister for Health, Mr Hughes, *Peril in Falling Birth-Rate*, Tuesday, Feb 2 1937, p.2, in which Hughes stated "Australia must advance and populate, or perish".

²⁷ Neumann, *op. cit.*, pp.16-17

Charles Price asserts that Australia's approach to the refugee issue was not from a humanitarian perspective, nor recognition of their particular personal situation. Instead, the nation viewed potential newcomers with bias and self-interest at its core. Refugees were considered for their labour market value and the differences between them as a group and voluntary immigrants was not officially recognised.²⁸ As noted in parliamentary debate:

... it is felt that it will be possible for Australia to play its part amongst the nations of the world, in absorbing its reasonable quota of these people, while at the same time selecting those who will become valuable citizens of Australia and, we trust, patriots of their new home, without this action disturbing industrial conditions in Australia.²⁹

The quota set by Australia acted to limit refugees by setting eligibility requirements, yet in the period 1938-1939, many who did qualify for entry were not permitted to immigrate. With the onset of Australia's involvement in the Second World War, only those German nationals who had left prior to the declaration of war could continue to Australia, and all others were considered enemy aliens.³⁰

Australia, at the time, maintained a narrow definition of a refugee. In response to a question asking if the Commonwealth Government had adopted the definition provided by the League of Nations, or did it have another, the following was recorded: "Answer: The term "refugee" is, for the present, being applied to persons of German nationality, or former Austrian or German nationality, or of Czechoslovakian or former Czechoslovakian

²⁸ Charles A. Price. "Family Reunion & Refugees: Development and Outcomes of Official Policy" in Birrell, Robert, Leon Glezer, Colin Hay & Michael Liffman. (eds) *Refugees, resources, reunion: Australia's immigration dilemmas*, Fitzroy, Vic: VCTA Publishing, 1978, pp.147-156. This issue did not decline as years passed, and is discussed by Price, who states that early Australian refugee policy was criticised by some for selecting refugees of good health and age, so exploiting the refugees, and that Australia has always been conscious of the "importance of selective immigration – for three reasons: development, defence and population growth"; see also Viviani, Nancy. *The Long Journey: Vietnamese Migration and Settlement in Australia*, Melbourne University Press: Melbourne, 1984, p.121; York, *Summary, op. cit.*, p.7

²⁹ *Commonwealth Parliamentary Debates*, Representatives, vol.1589, 1 December 1938, p.2536, cited in Neuman, *op. cit.*, p.20

³⁰ *Ibid.*, pp.20-21

nationality, against whom there is political discrimination”.³¹ Some difficulties exist in establishing exact numbers of refugees admitted in the period, and the estimate of approximately 6,600 conflicts with another estimate (including a small number of refugee arrivals 1933-37) of approximately 10,000. It is possible that this discrepancy is due to the fact that some arrivals were classified as ordinary immigrants but were in fact refugees.³²

During the period 1938-39, there were calls from refugees in other countries to allow them to settle in Australia. Contrary to the Australian response in relation to many fleeing Nazi Germany’s policies, their appeals received little empathy. For example, a crisis similar in scope to that generated by Nazi Germany occurred when Spaniards, whose loyalty lay with the republic, fled to refugee camps in France. Numbers of Spanish refugees exceeded those who “had fled Germany, Austria and Czechoslovakia between 1933 and 1938”.³³

The level of importance this issue had for Australia is clearly demonstrated in the Cabinet announcement that “no special action was to be taken to encourage Spanish refugees”, and “that in view of Australia’s limited absorptive capacity . . . the Commonwealth Government regrets that it cannot see its way to grant special facilities for the migration of Spanish refugees to Australia”.³⁴ A “mere 24 Spanish nationals were admitted to Australia in 1939”.³⁵

Some groups did receive protection during the Second World War. For example, a small group of Poles was admitted to Australia and these people were not repatriated after the

³¹ “Answers to Questions Raised by the Council for Civil Liberties”, Melbourne, 24 February, 1939, A981, REF 1, p.1, *Refugees – General*, Australian National Archives

³² Neumann, *op. cit.*, p.21

³³ *Ibid.*, p.23

³⁴ Memorandum to The Secretary, Department of External Affairs from J.A. Carrodus, Secretary, Department of the Interior, “Spanish Refugees”, 28 June 1939, A981 REF 14, Pt.1, National Archives of Australia

³⁵ Arthur Calwell. *Commonwealth Parliamentary Debates*, Representatives, vol.190, 12 March 1947, p.578, cited in Neumann, *op. cit.*, p.23

war, but these Polish refugees represented a group which complied with the White Australia policy.³⁶ In contrast, some non-whites were allowed to come to Australia, but their admission was considered temporary and, after the Second World War, return to their country of origin was expected. These non-whites comprised a larger group of 5,473 non-Europeans from Asia and the South Pacific.³⁷ In another example, in the aftermath of the Pacific War (1941-45), the government made efforts to repatriate those it had protected. The immediate response to those refusing repatriation was to pass legislation forcing them to go home, and no discretion was offered in relation to special circumstances in individual cases.³⁸

In 1945, as Minister for Information, Arthur Calwell subscribed to the view that population growth should come from higher birth rates. He was later to concede that rising fertility rates would not, by themselves, be sufficient. In 1945, Calwell was appointed as the first Minister for Immigration by the Labor Party's Prime Minister J.B. Chifley.³⁹ Calwell endorsed, and articulated, prejudices inherent in both the labour movement and the Australian public, but was well placed/qualified to work on Labor's resistance towards large-scale immigration. He fought aggressively to recruit and expand from a wider immigration base from eastern and southern Europe, while maintaining the continuity of a "White Australia".⁴⁰ Calwell stated:

³⁶ War Cabinet Minute, Sydney – 9th April, 1941, (943) Agendum No. 130/1941 – Admission of Polish Refugees from Japan, A5954 370/10, Australian National Archives. This document agrees to admit 66 Polish refugees trapped in Japan, subject to conditions that "they be admitted for the duration of the war" and "each person admitted is of good character and personality and is in good health" as well as "preference be given to those who can speak English". See also Neumann, *op. cit.*, p.92-3

³⁷ York, *Summary*, *op. cit.*, p.7/22; Neumann, *op. cit.*, p.93; see also Palfreeman, *op. cit.*, p.63

³⁸ *War-time Refugees Removal Act 1949* – York, *Summary*, p.8/24; Palfreeman, *op. cit.*, pp.20-22, 102-3; Mirko Bagaric, Kim Boyd, John Vrachnas, Penny Dimopoulos & Sue Tonge, *Migration and Refugee Law in Australia: Cases and Commentary*, Cambridge University Press, 2007, p.39

³⁹ For a full list of Australia's Immigration Ministers, see Appendix F – Australia's immigration ministers; York, *Extended version*, Table 6, "Ministers of Immigration, Ministries and gross annual settler intake, 1945-1991(a)", p.139-140

⁴⁰ *Australian Dictionary of Biography*: Online edition

If Australians have learned one lesson from the Pacific war now moving to a successful conclusion, it is surely that we cannot continue to hold our island continent for ourselves and our descendants unless we greatly increase our numbers. We are but 7,000,000 people and we hold 3,000,000 square miles of this earth's surface. Our coastline extends for 12,000 miles and our density of population is only 2.5 persons per square mile . . . [M]uch development and settlement have yet to be undertaken. Our need to undertake it is urgent and imperative if we are to survive.⁴¹

He advocated an increase in the population of two per cent per annum and, with fertility rates unable to achieve this goal, his resolution was to bring large numbers to Australia when the economy was expanding.⁴²

This target proved untenable from the pool of prospective immigrants, so an increase was authorised for Jewish refugees with close Australian relatives. The scheme received a hostile response, some calling them the “refuse of Europe”,⁴³ and policy changes were initiated to quell the backlash. The call was for newcomers who could contribute to the economy. As a result, the government reacted to public outcry, and a maximum quota of Jews was set at twenty-five per cent. In 1947, through negotiations with the International Refugee Organisation (IRO), Australia agreed to resettle 12,000 Displaced Persons (DPs) from Eastern Europe each year for three years.

The agreement to resettle these DPs was not a reflection of a national humanitarian act. Once again, it was a deliberate tactic by Australia to increase the population and, more specifically, to increase the country’s labour force.⁴⁴ The population appeared to receive the newcomers positively, possibly because these people were seen as their “own kind”, and perhaps because they were well-educated, of good appearance, physically fit and

⁴¹ Extract from Hansard House of Representatives, 2 August 1945, pp. 4911-4915: Quote from Arthur Calwell - *White Paper on Immigration*; see also James R. Roach. “Australia's Immigration Program”, *Far Eastern Survey*, Vol. 21, No. 10 (Jun. 18, 1952), p.102

⁴² Neumann, *op. cit.*, p.28

⁴³ “ ‘Refuse’ of Europe not Wanted Here,” *Herald*, 28 January 1947, cited in Neumann, *op. cit.*, p.29

⁴⁴ *Ibid.*, p.31-32. The recurring theme of Australian refugee history indicates that refugee recruitment practices and displaced persons were essentially to increase the labour force. See York, *Summary, op. cit.*, p.7; Price, *op. cit.*, pp.147-156; also for a discussion on the Vietnamese refugee movement to Australia, see Viviani, *The Long Journey*, p.121

ambitious. Many were blonde, tall and healthy. The group shipped from Naples to South America in the late 1940s was reportedly different in looks, colouring and health, from those in the second group, from Germany's Bremerhaven, to Australia.⁴⁵ The White Australia policy ethos dominated, and the Australian selection process ensured those arriving on Australia's shores fitted the preferences of the nation, while others were excluded.

Due to the favourable reaction of Australians to the DPs as part of the IRO agreement, the Australian Government announced an increase in its intake, stating the nation would accept an intake "up to 200,000 people from the ranks of Europe's displaced persons if shipping can be obtained".⁴⁶ This total was not achieved due to shipping shortages, and by 1949 a total of only 50,000 was reached. The eligibility requirements for those wishing to resettle in Australia were strict, and specific selection criteria were applied, bringing claims that the nation handpicked from those in need.⁴⁷

Ideology and maintaining "whiteness"

⁴⁵ J.S. Ergas, "Immigration of Displaced Persons to South America and Australia," n.d. (circa 1948), Immigration of Displaced Persons Policy Pt.3, A6980 S250105, National Archives of Australia. Ergas writes, "On the twentieth of March, we took aboard 860 displaced persons bound for Australia. ... They were well dressed, carried additional clothes, made a fine appearance, and looked bright and intelligent", p.3. Of the group which was transported earlier to South America, Ergas says, "Many of them had skin diseases, others had staphylococcic (sic) infections and some had venereal diseases. ... Many were melancholy with a sad, forced smile", p.2

⁴⁶ *Commonwealth Parliamentary Debates*, Representatives, vol.207, 27 April 1950, pp.1969-70 cited in Neuman, *op. cit.*, p.30. The shortages in shipping were acknowledged in a number of documents. For example, see A6980 S250105, *op. cit.*, in which correspondence from the Prime Minister of Australia to the President of the United States of America says, "Up to the present considerable difficulty has been experienced by the Preparatory Commission for the International Refugee Organisation in obtaining shipping. . . . In fact, if the United States could see its way clear to provide sufficient shipping, Australia would be prepared to match the American contribution by accepting up to a total of 200,000 displaced persons at a greatly accelerated rate",. This archival file also includes a record of a newspaper article, "Shipping Holds up Flow of Australian Migrants", *Canberra Times*, 9 September 1948, which suggests financial resources were an additional factor limiting the flow of displaced persons to Australia.

⁴⁷ Browne, *op. cit.*, pp.141-2, suggests that "cherry-picking" has played a part in Australia's selection processes over time.

The Labor government was defeated by the Menzies Liberal Government in December 1949, and the Harold Holt became the Minister for Immigration. The new decade marked some major developments for Australia in relation to refugees. As previously noted, significant numbers of DPs were being resettled from European camps from 1947 to 1954. Up to 170,000 DPs, mostly Eastern Europeans from Germany and Austria, eventually entered the country under Australia's agreement with the IRO. Government refugee and immigration policies, which enabled the recruitment of such large numbers of people, were "framed by decisive factors, such as the need for labour after the Second World War and the politically bipartisan desire to stand firmly against the Soviet Union in the Cold War".⁴⁸

It was not only the White Australia policy that enabled Australia to implement policies of exclusion. Australia had framed its early refugee and immigration policies with anti-communism at its core. Underpinning the fledgling nation's policy development was the notion of ideology, and there is merit in further exploring this point. The national consciousness was dominated by what the population thought the Cold War represented: a war between communism and the Western world's civilized democracy.⁴⁹ Robert Manne observes that the "Cold War was a time when Western passions ran deep ... about the genuinely profound moral contrast between the communist and democratic worlds",⁵⁰ and that what penetrated the national consciousness was the belief that "the Cold War [was] about ... the struggle between the forces of Evil and Good".⁵¹

⁴⁸ York, *Summary*, p.7/22

⁴⁹ Neumann, *op. cit.*, pp.52-61

⁵⁰ Robert Manne. *The Petrov Affair: Politics and Espionage*, Sydney: Pergamon, 1987, p.44

⁵¹ *Ibid.*, p.87; For an account of the events in Australia surrounding the defection from communism of Vladimir Mikhailovich Petrov and later his wife, Evdokia, see J.B. Paul. "Labor's Petrov Legend: A Suitable Case for Internment" in Manne, Robert. (ed.) *The New Conservatism in Australia*, Oxford University Press: Melbourne, 1982, pp.111-140; see also Robert Manne. "The Rise and Fall of the Communist Movement" in Manne, *The New Conservatism*, pp.183-204; Michael Barnard. "The Soviet Danger" in Manne, *The New Conservatism* pp.220-236

The concept of ideology requires definition. The term is used in different ways by different people and therefore can be complex.⁵² Katharine Betts, lecturer and author, remarks:

For some an ideology is a world view, for others it is a set of political doctrines. But for many of the writers who use it 'ideology' refers to false, self-serving ideas. An 'ideology' is a lie, or a half-truth, told to protect the interests of those who tell it. Honest men and women might unintentionally get caught up in an ideology but if the facts of the matter were made clear to them they would disown it. This third definition of 'ideology' is quite common.⁵³

Betts asserts that ideology can be seen as opinions or principles which are maintained due to their functionality for either the people who believe in them, or those who promote and use them in an effort to control. Others define ideology as a resource which can be seen as "practical discursive action linked to power", and which are identified through "the practical effects of the mobilisation of discourse".⁵⁴ This understanding does not subscribe to ideology as a "false belief", nor accept that it is a steady and constant set of ideas positioned in the collective imagination. Instead, like others, ideology can represent the "lived" and the "commonsense" which exists within our language and arguments; a perspective especially visible in literature to do with refugees and their experiences. This represents discursive resources, providing logic to concepts such as equality and individualism. These discursive arguments have been put forward in Western thought and traditions to become normative over time.⁵⁵

⁵² Carol Johnson. *Governing Change: From Keating to Howard*, University of Queensland Press: Qld, 2000, pp.11-13

⁵³ Katharine Betts. *Ideology and Immigration: Australia 1976 to 1987*, Melbourne University Press, 1988, p.5

⁵⁴ M. Wetherell. "Racism and the analysis of cultural resources in interviews" in H. van den Berg, M. Wetherell and H. Houtkoop-Steenstra. (eds) *Analysing race talk: Multidisciplinary approaches to the interview*, Cambridge: Cambridge University Press, 2003, p.14; Margaret Wetherell & Jonathon Potter. *Mapping the Language of Racism: Discourse and the legitimation of exploitation*, Harvester Wheatsheaf: N.Y., 1992, p.24. The authors comment, "Ideology is the means by which the ruling class consolidates and reproduces its advantage through presenting its partial and sectional interests as the universal interests of the entire community".

⁵⁵ Michael Billig. *Ideology and Social Psychology: extremism, moderation and contradiction*, Oxford: Blackwell, 1982. In this work, Billig examines modern social psychological theories of ideology, with an emphasis on the historical dimension.

The logic and rationalisation of ideology has been adopted into the language of politicians, and its continued use and acceptance reflects not only the discursive strategies which politicians employ, but also the society in which it is used.⁵⁶ In this vein, it is argued that politicians in Australia have used certain situations to generate fear in the hearts of ordinary people.⁵⁷ As noted in Chapter 1, the sovereign defines both what is inside and outside its space, creating the situation where its validity is determined by the existence of the two, and an individual falling outside the realm of the powerful sovereign may be dealt with as an excluded “other”. The inside represents order and control and the outside typifies disorder and irregularity, thereby posing a potential threat to the sovereign state.⁵⁸ In a situation where there is clash of ideologies, for example, between the principles of Western democracy and communism, the differences between “them” and “us” can be manipulated. These differences proved fertile ground for Australian politicians to exploit in a population which was fearful and anxious of the “other”.

Many refugee admissions were on an ideological basis. While these groups still had to comply with the White Australia policy, those who were fleeing communist regimes were often accepted where others failed.⁵⁹ In contrast, the Government was reluctant to authorise deportation (or repatriation) to Soviet bloc countries, yet this was a favoured option in most other cases. The decision not to deport was based more on ideological

⁵⁶ Wetherell, “Racism”, p.13. Specific constructions can be used to legitimate and perpetuate forms of racial exclusion or racial dominance or, similarly, to reject or embrace human rights. For example, humanitarians utilize the term “equality” in their arguments to demonstrate violations of human rights and discrimination, while others have used the same term to argue that equality has been usurped for the majority. See M. Rapley. “How to do X without doing Y: accomplishing discrimination without ‘being racist - ‘doing equity’ ” in M. Augoustinos & K. Reynolds. (eds) *Understanding prejudice, racism and social conflict*. London: Sage, 2001, pp. 231-250. Rapley provides the example of Pauline Hanson’s objection to affirmative action for Aborigines, claiming this represents inequality, not equality, refer especially pp.241-245. See also Wetherell, et al. This work maps the perpetuation of inequality due to colonisation between Maoris and New Zealand whites.

⁵⁷ This point will be discussed in detail later in this thesis.

⁵⁸ Agamben, *op. cit.*, p.19; see also Schmitt, *op. cit.*; Bauman, *op. cit.*, pp.4-7, 11-12

⁵⁹ Groups such as the Hungarians, Czechs and Slovaks have been discussed previously in this thesis. See also Neumann, *op. cit.*, pp.52-61, for a discussion on successful asylum seekers escaping from communist rule.

opposition to the communist regime than humanitarian concerns for the individual.⁶⁰ This ideological element was to be a strong justification for decades in accepting some refugees and not others. However, ideology as a determining factor did diminish in potency over time.

In 1951, the *United Nations High Commissioner for Refugees (UNHCR) 1951 Convention Relating to the Status of Refugees* was adopted (hereinafter called the *Convention*). This declaration is the key legal document defining who is a refugee, their rights and the legal obligations of states. Australia was to ratify the document three years later, on 22 April 1954. By the mid-1950s, the Eastern Europeans, including some who had fled to other parts of Western Europe, as well as Italy and West Germany, remained a thin stream of people escaping from communism in their home countries.⁶¹

Shortly after, in 1956, the Hungarian Government repressed a major uprising in Budapest. After an attack on that city by the Soviets, the communists succeeded in crushing the resistance and installing its own government. Many tens of thousands fled to Austria and Yugoslavia, and the thin stream of refugees was to turn into a river. For Australia as a new signatory to the *Convention*, the government responded promptly, announcing that Australia would provide sanctuary for up to 3,000 refugees from Hungary, up to a maximum of 5,000. Knowing that this was a small proportion of a possible total of 140,000 seeking protection, and keen to avoid negative impacts on Australia's international reputation, Australia agreed to increase the intake by a further 5,000. Ultimately, 14,000 Hungarians were resettled in Australia by 1959. In 1968, when the

⁶⁰*Ibid.*, p.103

⁶¹ York, *Summary*, pp.3, 7/22; Neumann, *op. cit.*, p.34

“Prague Spring” uprising was suppressed in Czechoslovakia, Australia admitted approximately 6,000 Czechs and Slovaks who had fled their country.⁶²

Historian and writer, Klaus Neumann, remarks that Australia’s effort in the post-war resettlement programme was “impressive”, and that this was only overtaken by the numbers admitted in the United States. Australia accepted 250,000 refugees in the fifteen years post-Second World War. He suggests, however, that it is more significant to see who was not accepted by Australia, rather than who was. Neumann notes the “proudly asserted” claim in a Department of Immigration document, that “[i]n proportion to its population Australia has led the world in accepting refugees for resettlement”.⁶³ As a successful post-war resettlement programme, this is no doubt a noteworthy claim, but the language of the Department in using words such as “accept” (signalling altruism) and, more frequently, “select” or “recruit” (signalling selective self-interest)⁶⁴ does not bypass Neumann’s attention. Once again, the priority for Australia was in the area of “selecting” suitable labour, not necessarily a humanitarian response.

Australia was not quite so ready to boast of its record in relation to accepting those refugees described as the “hard core”. This term, according to the *1951 Convention*, was used to describe refugees who could not be resettled.⁶⁵ Australia had admitted so-called White Russians in the 1920s, as noted earlier, and in the late 1950s and early 1960s the nation permitted many thousands more to enter. The “hard core” White Russian refugees

⁶² York, *Summary*, pp.3, 7/22; Neumann, *op. cit.*, pp.35-36

⁶³ “Australia’s contribution to the relief of the problem of refugees,” Appendix ‘G’, 25 September 1959, A446 1962/67291, National Archives of Australia, pp.1-2. This document notes, para 2, p.1, that “Australia has made a substantial contribution to the solution of the global and regional refugee problem both through direct financial contributions, and more importantly, in providing the opportunity for permanent settlement”. See also Neumann’s discussion, *op. cit.*, p.37

⁶⁴ *Ibid.*, p.37; A446 1962/67291, *op. cit.*, pp.2-4, states, “The majority of refugees . . . have been selected”, (point 11) p.3, “For those refugees who are selected . . .”, (point 15) p.4, “Australia accepted more than 182,000 displaced persons . . .”, (point 18) and “Australia agreed to select . . .”, (point 19) p.4

⁶⁵ Neumann, *op. cit.*, p.37

had been isolated in China, Hong Kong and Korea. This situation had come about when many White Russians fled the revolution in the mid-1930s, seeking refuge in China. They were described in 1936 by G.H. Thomas as having a “strange standing in China. They are people without a country, and their lot is a sad one”.⁶⁶ In 1945, White Russians were sent to labour camps when the Russians occupied Manchuria, and many were forced to flee.⁶⁷ Approximately 2,500 further admissions were granted to a number of Armenians from Syria and Egypt.⁶⁸ Eventually, concessions were made by Australia on “hard core” refugees, by admitting 180 families from that group, as well as introducing some relaxation on refugee age limits.⁶⁹

From 1950 onwards, the Australian government was aware that the guiding principles of the White Australia policy were proving insular and inappropriate from an international perspective. The government had not readily acceded to requests to resettle people who did not meet the requirements determined by the White Australia policy, such as Asian and African refugees. This was clearly determined by the policy between 1950 and 1957, for example, which required that immigrants (or refugees) must be “European rather than non-European in appearance,” “75% or more of European descent,” and “must furnish documentary evidence in support thereof”, as well as being “fully European in upbringing and outlook”.⁷⁰

⁶⁶ Gould Hunter Thomas. *An American in China: 1936-1939. A Memoir*, Greatrix Press: New York, 2004, p.70. This description can be said to aptly fit any refugee, or asylum seeker.

⁶⁷ *Ibid.*

⁶⁸ Charles A. Price. "Australia and Refugees 1921-1976", report commissioned by the National Population Council, May 1990, pp.30, 48, cited in Neumann, *op. cit.*, pp.37-38

⁶⁹ Neumann, *op. cit.*, p.40

⁷⁰ T.H.E. Heyes to Secretary Department of External Affairs, 22 November 1950, A1838 1531/1 part 1, National Archives of Australia, cited in Neumann, *op. cit.*, p.42. See also “Instruction to Overseas Posts – Policy for the Admission of Persons of Mixed-race”, Admission of persons of mixed descent [race] – Part 1, A446 1970/95021, National Archives of Australia, p.1. Before they could be accepted into Australia, a person was required to be of “appearance, education, upbringing, outlook, mode of dress and way of living”; *Ibid.*, T.H.E. Heyes to Minister, “Criteria of Eligibility for Persons of Mixed Race”, 21 March 1957

The requirements of the White Australia policy enabled the nation to ignore many seeking refuge from violence and persecution, and Australia's ability to respond in a humanitarian way was limited to the selected few by racial exclusion. For example, during the 1950s and 1960s, some 700,000 Chinese refugees fled to Hong Kong after the establishment of the People's Republic of China. The complication for Australia regarding this situation lay in the fact that Hong Kong was a British colony and Australia did not wish to seem insensitive to the administration.⁷¹ In other conflicts, hundreds of thousands fled to Tunisia and Morocco from war-torn Algeria, and, again, hundreds of thousands of Tutsis fled the violent overthrow of the Rwandan government by the Hutus.⁷² What was becoming obvious was that Australia's White Australia policy was clearly determining "its approach to immigration" and only refugees who fitted the "colour, race and upbringing" requirements were resettled.⁷³

Australia's response to the above crises, or lack of it, drew an international spotlight onto its rigid stance. The White Australia Policy was becoming harder to defend and a political liability. Domestic and internal pressures were also mounting, and the government reacted in 1966 by creating a new visa category, which specifically enabled those who did not satisfy the racial requirements to be able to be admitted under the rules applying to non-European entry. Without discarding its priority for a qualified workforce and displaying a strong labour mentality, the document stated:

B. ENTRY WITH VIEW TO SETTLEMENT (ON FIVE-YEAR ENTRY PERMITS INITIALLY)

2. Applications for entry by well-qualified people wishing to settle in Australia with their wives and children may be considered on the basis of their suitability as settlers, their ability to

⁷¹ Neumann, *op. cit.*, p.43

⁷² *Ibid.*, p.42;

⁷³ *Ibid.*, p.42; Alan F. Kuperman. "Rwanda in Retrospect", *Foreign Affairs*, New York, N.Y. (0015-7120), Vol. 79, Issue 1, Jan/Feb 2000, p.95. Kuperman states that this violent struggle "spurred the exodus of about half the Tutsi population to neighboring states".

integrate readily, and their possession of qualifications which are in fact positively useful to Australia.⁷⁴

The document notes that exemption may occur for people “with specialized technical skills for appointments for which local residents are not available”.

Australia’s restricted immigration policies acted to bar refugees who were not of European descent. However, the notion of “mixed descent” was within the scope of the White Australia policy, and from 1957 immigration was allowed where such people “must be such as to satisfy the officer that they are of 75% or more European descent and that they will have no difficulty in being accepted as Europeans in Australia”.⁷⁵ This rule permitted the department to admit “desirable” immigrants, who spoke English, identified as Europeans, were British nationals, and assimilated easily. A number of these people, particularly Ceylonese Burghers and Anglo-Burmese, did not meet skin colour requirements and, to enable their acceptance, the “mixed descent” policy was subject to reforms in 1964 put forward by the immigration department.⁷⁶

While not accepting the department’s proposals which recommended broad reforms to the White Australia policy, the then Minister for Immigration, Hubert Opperman, was authorised by Cabinet that amendments be implemented:

... authorizing the Minister, at his discretion . . . to admit for permanent residence persons of mixed race where:-

- (a) humanitarian considerations, involving close family relationship or hardship on grounds of discrimination, are present; or
- (b) The applicant has special knowledge, experience or qualifications useful to Australia; or
- (c) the applicant has the ability to make a contribution to Australia’s economic, social and cultural progress;

⁷⁴ “Summary of Rules Generally Applying to Entry of Non-Europeans”, 25 August, 1966, *Non-European Policy – summary of rules*, A446 1966/45704, National Archives of Australia, p.1

⁷⁵ T.H.E. Heyes to Minister, “Criteria of Eligibility for Persons of Mixed Race”, 21 March 1957, *Admission of persons of mixed descent [race] – Part 1*, A446 1970/95021, National Archives of Australia

⁷⁶ Neumann, *op. cit.*, p.50. Included in these reforms of 1964 was a softening of the qualification and skills requirements for women, but this was in more to do with balancing the sexes than lifting restrictions.

if the applicant shows by appearance, education, upbringing, outlook, mode of dress and way of living, that he is capable of ready integration into the Australian community.⁷⁷

Due to the magnitude of, and possible public backlash from, these significant amendments to the White Australia policy, the changes were not publicly announced but implemented administratively.⁷⁸

It would be wrong, however, to think that Australia has not offered protection to asylum seekers in the past, yet in an anti-communist mentality, most who were admitted to the country were fleeing a communist regime.⁷⁹ Regardless of the “push-pull” factors determining the mass movement of people, or individuals, the Australian government and the Department of Immigration to this point in time can be seen as prioritising its selection of suitable people based on labour requirements and prejudice, not on compassion and humanitarian grounds.⁸⁰

On 1 November 1967, the *1967 Protocol Relating to the Status of Refugees*⁸¹ was established. The Protocol determined that States “undertake to apply the substantive provisions of the *1951 Convention* . . . but without limitation of date”. This meant that the *1951 Convention* was broadened in definition to apply to new refugees, by removing its geographical and time limitations which had previously specifically related to those who became refugees prior to 1951. In terms of geographical limitations, signatories were

⁷⁷ E.J. Bunting, Secretary to Cabinet, Cabinet minute, Decision no. 481, Submission No.406 – The Policy for the Admission of Persons of Mixed-Race, 15 September 1964, A446 1970/95021, *op. cit.*

⁷⁸ *Ibid.*, para 2 states, “[t]he Cabinet made the observation that these changes should be made administratively, i.e., without public announcement”. See also (Confidential) “Instruction to Overseas Posts”, 29 October 1964, (point 18) “It is to be specifically noted that Cabinet, in agreeing to the change in policy, requested that the changes should be made administratively, i.e., without public announcement, pp.5-6”

⁷⁹ For an account of such cases, see Neumann, *op. cit.*, pp.52-61

⁸⁰ See Palfreeman, *op. cit.*, Appendix IV, pp.174-5, Extract from an Explanation of Australian Immigration Policy Prepared by the Department of Immigration, 1 May 1965

⁸¹ *1967 Protocol Relating to the Status of Refugees*, Geneva, August, 2007

given flexibility to select only European refugees, an option which Australia had found attractive and politically convenient prior to the introduction of the *Protocol*.

The Whitlam government acceded to the *1967 Protocol* on 13 December 1973, six years after it came into being, ensuring Australia would formally recognise refugees beyond Europe. There was, however, a stipulation that "The Government of Australia will not extend the provisions of the *Protocol* to Papua/New Guinea." This statement reflected the unease the Australian government had in relation to its close neighbour:

... because she was unhappy about allowing to stay within her borders, as the Protocol might well have required her to do, any number of Papuans or West Irianese who might take small boats from the southern coast of Papua to the Torres Strait Islands and claim they were refugees seeking asylum; as, indeed, a few West Irianese did some years later.⁸²

Australia's reactions in the early 1970s, however, did not differ from previous responses.

For example, in 1972 Uganda was taken over in a military coup. The new president, Idi Amin, shortly thereafter declared that South Asians, whether citizens or non-citizens, must leave the country.⁸³ Thousands were forced to flee, and countries such as Britain and India offered to resettle many of them. Under the strain of accepting such large numbers, Britain sought Australia's help. Australia was clear in its response that it wished to retain its "homogeneous society" and would continue to select only those who would contribute to the labour force through appropriate qualifications and skills.⁸⁴

This stance was no longer a bipartisan one, and the Labor Party, then in opposition, lobbied for a different approach to the restrictive immigration and refugee policy. The political

⁸² Price, "Australia and Refugees", p.2

⁸³ African History, Idi Amin Timeline, *Key Events in the Life of Idi Amin Dada*. Idi Amin Dada expelled some 50,000 Asians on 27 August 1972. In addition, Amin confiscated their assets and insisted they departed within 90 days flying East African Airways.

⁸⁴ Commonwealth Parliamentary Debates, House of Representatives, vol. 79, 14 August 1972: 330, cited in Neumann, *op. cit.*, p.47; See also Klaus Neumann. "*Our own Interests Must Come First: Australia's response to the expulsion of Asians from Uganda*", p.10.4. Neumann notes the Minister for Immigration, Jim Forbes, stated that the "policies reflect the firm and unshakeable determination of the Government to maintain a homogeneous society in Australia". This had implications for some even though well qualified.

landscape was changing and the international reputation of Australia was being challenged. After defeating the Liberal Prime Minister, William McMahon, (1971-1972) on 2 December 1972,⁸⁵ Gough Whitlam became Australia's twenty-first Prime Minister on 5 December 1972. Whitlam, and his then Minister for Immigration, Al Grassby, supported multiculturalism and condemned racism.⁸⁶

His government acted to remove the last vestiges of the White Australia policy and announced its elimination on 31 January 1973.⁸⁷ The abolition of this policy was a significant point in Australia's history, and as a result of such a change, it could be assumed that the door was open for a number of Asian Ugandans to resettle in Australia. However, this was not the case and only a small number were granted visas, due to the requirement they should be qualified and their professional services deemed to be in short supply.⁸⁸ While there was no undertaking to substantially increase resettlement places under Whitlam, the government did announce an increase in financial aid of \$US75,000 to the UNHCR.

In 1974, the Whitlam Government established a new Department of Labour and Immigration which superseded the previous Department of Immigration. Al Grassby lost his seat at the next election and was succeeded by Clyde Cameron. In the period from 1947 to 1975, Australia had admitted "approximately 300,000 refugees and displaced persons", most of whom received government assistance for resettlement.⁸⁹ However,

⁸⁵ *Australia's Prime Ministers*, Australian Government, National Archives of Australia, 2010

⁸⁶ Jupp, *From White Australia*, pp.10, 41; Betts, *Ideology and Immigration*, p.105

⁸⁷ Crock, *Immigration*, p.7; Jupp, *From White Australia*, p.41

⁸⁸ *Commonwealth Parliamentary Debates*, House of Representatives, vol. 79, 22 August 1972: 468, states that "Australia would admit Asians from Uganda only if they were qualified to practise within professions in Australia into which they could be readily absorbed", cited in Neumann, "Our own Interests", p.10.4.

⁸⁹ York, *Extended version*, p.15

while the rules had changed on the entry of non-Europeans into the country, qualifications and skills remained the defining factor for admission of immigrants or refugees.

In an echo of previous immigration constraints, Whitlam made this fact clear when responding to a question about increasing entry permits to Asians fleeing Uganda. He answered, “If they have got qualifications such as entitle people to come to Australia then certainly they can come”.⁹⁰ Numbers of non-Europeans immigrants and refugees did not increase substantially, perhaps reflecting the enduring legacy of the White Australia policy remained.

Adapting to a changing world

In 1975, Prime Minister Malcolm Fraser’s Liberal Coalition took office and established a new Department of Immigration and Ethnic Affairs under Minister Michael Mackellar (1976-1979). A number of world events took place during the leadership of Malcolm Fraser. These included the civil war in the nation’s immediate region in 1975, which saw Australia provide protection to about 2,500 East Timorese,⁹¹ and, a year later, more than 15,000 Lebanese were granted entry as a result of the civil war in Lebanon. Inspired by such events, an enquiry was commissioned and, in 1976, the Joint Standing Committee on Foreign Affairs and Defence issued its report, “*Australia and the Refugee Problem*”.⁹² This report made a number of recommendations, including “as a matter of urgency ‘an approved and comprehensive set of policy guidelines and the establishment of appropriate machinery’ to be applied to refugee situations”.⁹³

⁹⁰ Prime Minister’s Press Conference in London, 25 April 1973, Whitlam Institute (University of Western Sydney). The 1967 Protocol had not yet been signed. Australia acceded to this in 13 December, 1973. See also Klaus Neumann. *Refugee Policies in an Election Campaign*, Trades Hall Melbourne, 8 September 2004

⁹¹ Burke, *In Fear of Security*, particularly pp.148-179, for a comprehensive discussion on East Timor covering the Whitlam, Fraser and Hawke Government periods.

⁹² Parliament of Australia Senate, *Australia and the Refugee Problem*, December 1976

⁹³ York, *Summary*, pp.2, 9/22, and York, *Extended version*, p.17

Some progressive initiatives were adopted as a result of the Joint Standing Committee report, and in 1977 Mackellar announced that Australia was to fully recognise its international humanitarian obligations. This public declaration by the Minister enabled Australia to establish, for the first time, a comprehensive refugee policy, which effectively separated normal migration policy from refugee policy.⁹⁴ Four key principles contained in the policy have endured:

1. Australia fully recognises its humanitarian commitment and responsibility to admit refugees for resettlement.
2. The decision to accept refugees must always remain with the Government of Australia.
3. Special assistance will often need to be provided for the movement of refugees in designated situations or for their resettlement in Australia.
4. It may not be in the interest of some refugees to settle in Australia. Their interests may be better served by resettlement elsewhere. The Australian Government makes an annual contribution to the United Nations High Commissioner for Refugees (UNHCR) which is the main body associated with such resettlement.⁹⁵

The new approach was a watershed in Australia's history and, shortly thereafter, an international crisis was to see the nation's humanitarian commitment put to the test. Neumann observes that it was "only when Australia acceded to the Protocol that it accepted obligations under international law regarding refugees other than European displaced persons and so-called escapees".⁹⁶

The Vietnam War was to act as a touchstone for Australia's pledge to the *Protocol*.

Australia fought alongside the United States of America (U.S.) against the North

Vietnamese. Saigon fell in April 1975, and the North's victory triggered a situation where

⁹⁴ As previously noted, a refugee policy before this time was considered unnecessary. Australia was able to ignore most claims for protection if it involved non-Europeans, as the White Australia policy effectively barred entry to non-whites. See York, *Extended version*, p.18, who notes that the first coherent approach to the refugee issue included recommendations such as "a commitment to the formulation of procedures for designating refugee situations and appropriate responses to them; the establishment of an inter-departmental committee to advise the Minister, in consultation with voluntary agencies, on Australia's capacity to accept refugees; an examination of ways in which voluntary agencies may be encouraged to participate in refugee resettlement; and the strengthening of the Department of Immigration and Ethnic Affairs' Refugee Unit. A significant aspect of the new policy relates to the humanitarian acceptance of people 'in refugee-type situations who do not fall strictly within the UNHCR mandate or within Convention definitions'."

⁹⁵ Hon. Michael Mackellar, Minister for Immigration and Ethnic Affairs, Statement, House of Representatives, 24 May, 1977, p.1714, cited in York, *op. cit.*, pp.12-13; Karlsen, et al., *op. cit.*, pp.2-3

⁹⁶ Neumann, *Refugee Australia*, p.12

the South Vietnamese were forced to flee for their lives, escaping to refugee camps in neighbouring countries such as Hong Kong, Singapore and Malaysia.⁹⁷ The main impact for Australia, which had always been insular and protected in the past by the White Australia policy, was that for the first time large numbers of people of different characteristics (Asians), the “significant others”,⁹⁸ were arriving on its shores by boat. Given that Australia was supporting the South Vietnamese in the war, their choice to seek refuge in Australia seemed logical and rational, but for Australians the situation triggered entrenched perceptions of fear and trepidation.⁹⁹ The long-held convictions of Asian invasion and swarms from the north found fertile ground in the Australian imagination, and the arrival of these “self-selected” asylum seekers indicated to some that Australia may have lost control of its borders and refugee system.¹⁰⁰

From a humanitarian and international obligation perspective, the matter should have been straightforward. These people desperately sought refuge and protection from Australia and this was its responsibility as a signatory to the *Convention*. However, the dilemma for the government was more complex. Relations with the Asia region were strengthening, the nation had announced the abolition of the White Australia policy, and now its hand was forced into dealing with the realities of its new humanitarian direction on refugees in a climate where the Australian people held grave fears and anxieties over “non-white”,

⁹⁷ The Parliament of the Commonwealth of Australia. *Australia and the Refugee Problem: The plight and circumstances of Vietnamese and other refugees*, Report from the Senate Standing Committee on Foreign Affairs and Defence, Australian Government Publishing Service: Canberra, 1976, p.4; see also Neumann, Klaus. *Does History Matter?* ANU E Press, pp.47-64, specifically Ch 3. Oblivious to the obvious? Australian asylum-seeker policies and the use of the past, for a discussion on the Vietnamese experience and how references to the past can play a role in government policy.

⁹⁸ McMaster, *Asylum seekers*, pp.2-4, 6, 37

⁹⁹ Nancy Viviani. *Australian government policy on the entry of Vietnamese refugees in 1975*, Nathan, Q: Centre for the Study of Australian-Asian Relations, Griffith University, 1980, p.1.

¹⁰⁰ *Ibid.*, p.1

uninvited arrivals.¹⁰¹ The Vietnam War and its reverberations proved to be a watershed in Australian history, and the implications “challenged, and ultimately resulted in the reformulation of, the pillars of the post-war migration consensus”.¹⁰²

As a result of these experiences, coupled with a new comprehensive refugee policy, in 1978 the government established a bureaucracy to deal with the issue through the Refugee and Special Programs Branch of the Department of Immigration and Ethnic Affairs. It also appointed a Determination of Refugee Status Committee (DORS) and a Standing Inter-departmental Committee on Refugees”.¹⁰³ DORS was to provide a formal mechanism for assessing onshore refugees under the Refugee Convention whereas prior to this, the relatively few asylum requests were handled on an ad hoc basis and a final decision was at the Minister’s discretion whether one was granted entry or not.¹⁰⁴

During the late 1970s, another major report was undertaken and tabled in Parliament. This was known as the Galbally Report, officially titled the “*Review of Post-Arrival Programs and Services to Migrants*”.¹⁰⁵ As a result of this report, funding was made available for numerous migrant services, including the establishment of Migrant Resource Centres, and further announcements were made on extending family reunions, as well as “reaffirming a commitment to humanitarian and compassionate responsibilities”. Refugees were “to be admitted under criteria separately established for each refugee program within the guidelines announced in May 1977”.¹⁰⁶

¹⁰¹ *Ibid.*, p.1. Viviani claims that the end of the Vietnam War created “a touchstone for the demise of the White Australia policy”.

¹⁰² Gibney, *op. cit.*, p.179

¹⁰³ York, *Summary*, pp.2, 8/22

¹⁰⁴ Crock, *Immigration*, p.127

¹⁰⁵ F. Galbally. *Review of Post-Arrival Programs and Services to Migrants*, Australian Government Publishing Service: Canberra, 1978

¹⁰⁶ York, *Extended version*, p.20. York’s chronology states that, “acting on the report, the Government establishes Migrant Resource Centres, reshapes the Adult Migrant Education Program, provides grants for

There was a prolonged saga of boat arrivals through the years 1977 to 1979, with a swift political reaction.¹⁰⁷ In 1977 and 1978, over 7,000 Indo-Chinese refugees, comprising 5,458 Vietnamese, 1,331 Laotians and 328 Cambodians, were admitted into Australia.¹⁰⁸ These years were renowned for the greatest number of unauthorised boat arrivals Australia had ever experienced. More than 1,400 asylum seekers arrived in 37 small boats and, in keeping with the nation's new humanitarian commitment, 9,597 refugees from over forty countries were admitted, including Soviet Jews, White Russians, Timorese and Lebanese.¹⁰⁹ The evaluation of refugee claims was the responsibility of DORS, which made recommendations to the Minister. The final decision for admission or rejection lay with the Minister.

In an effort to seek an international solution to the Indo-Chinese refugee problem, Mackellar participated in UNHCR consultations in 1978 and, in the same year, again with an international perspective, Mackellar visited Australia's regional nations to work unilaterally on a co-operative solution. Australia offered \$250,000 to the UNHCR to assist Indonesia in establishing an island processing centre. It was also during this period that people smuggling was becoming an issue.¹¹⁰

During the 1970s, there was a clear shift in policy and attitude with the development and adoption of a number of significant initiatives. The proposal on multiculturalism,

migrant welfare workers, establishes the Institute for Multicultural Affairs and expands the Telephone Interpreter Service." In addition, the chronology includes that the initiatives would also introduce "a numerical 'points' system to ensure that future immigrants have the skills and qualities best suited to Australia's national needs. The new program is based on three-year rolling programs, with an assumed net intake of 70 000 per annum."

¹⁰⁷ Betts, *Ideology and Immigration*, pp.142-3. Betts asserts the increased arrivals represented the 'problem migrant', being "ethnically and racially distinct, oppressed, hunted, dispossessed", and to some intellectuals, it was a re-enactment of the past racist experience when Jews were rejected by Nazi Germany.

¹⁰⁸ Department of Immigration and Ethnic Affairs, *Review '78*, Canberra 1978, p.2, cited in York, *Extended version*, p.20

¹⁰⁹ York, *Extended version*, pp.20-21

¹¹⁰ *Ibid.*, p.21

introduced by the Whitlam Government, was taken up by the Fraser Government, thereby receiving bipartisan support.¹¹¹ According to Giani Zappala and Stephen Castles, “[m]ulticulturalism was redefined according to an “ethnic group model” in which Australian society was seen as consisting of a number of distinct ethno-cultural communities, held together by a set of “overarching values”.¹¹²

Reform put to the test

Between 1976 and 1981, a total of 2,087 Vietnamese nationals arrived in boats on the North Coast of Australia,¹¹³ and in 1981-82, the refugee and special humanitarian intake was 21,917, the highest since 1950-51 and unmatched since.¹¹⁴ Yet some believe Australia took a number far below that which it was capable of accepting.¹¹⁵ As a wealthy and advanced nation, deeply involved in fighting the North Vietnam communist enemy, Australia’s intake, set as target numbers, began to attract international and domestic criticism.¹¹⁶ Some saw the approach as restrictive and a compromise of its international obligations to allay the fears of voters, and in preference to protecting an established national political agenda. Mandatory detention was not part of the nation’s strategy and, instead, the Vietnamese were offered a comprehensive resettlement program which included benefits and programs of support.¹¹⁷

¹¹¹ The Rt Hon. Malcolm Fraser, Prime Minister. *Inaugural Address on Multiculturalism to the Institute of Multicultural Affairs*, to the Institute of Multicultural Affairs in Melbourne, University of Melbourne, 30 November 1981. In this address, Fraser stated that the “key elements of multiculturalism can be simply stated. They are based both on realism and idealism” and “that even if we wished otherwise ethnic and cultural diversity can neither be ignored nor readily extinguished”. Jupp, *From white Australia*, pp.41, 123

¹¹² Gianni Zappala & Stephen Castles. “Citizenship and Immigration in Australia”, *Georgetown Immigration Law Journal*, Vol.273, 1999, p.291.

¹¹³ Crock, *Immigration*, p.127; Jupp, James. *The Australian People: an encyclopaedia of the nation, its people and their origins*, Cambridge University Press, 1988, p.384

¹¹⁴ York, *Summary*, p.5; Karlsen, et al, *op. cit.*, p.3, states that between 1975 and 1991, Australia accepted in excess of 130,000 Indochinese refugees

¹¹⁵ Viviani. *Australian government policy*, p.15

¹¹⁶ *Ibid.*, p.15

¹¹⁷ *Ibid.*, p.17. Viviani states that a well-researched, clear exposition of Labor’s policy was contained in the Senate enquiry on resettlement policies and problems, held 11 June 1975 by the Standing Committee on Foreign Affairs and Defence, which “succeeded in bringing to light the first of the resettlement problems of

It was around this period in Australia that a particular ideological climate was attributed to immigration and the issue of refugees. Difficult questions were shunned in preference to being challenged. For example, Geoffrey Blainey's proposed different perspective in 1984 resulted in much controversy.¹¹⁸ He delivered a form of criticism which upset the "[i]deologically correct attitudes to immigration" in a world where the "in-group acceptance" fostered the contrasting "cold face of exclusion to dissenters".¹¹⁹

However, under Fraser's Liberal Coalition, there had clearly been considerable progress in the government's resettlement policies, as well as a shift towards a more humanitarian approach. This included the establishment of the Special Humanitarian Program and special entry arrangements. In addition, a more tolerant attitude saw easier acceptance of those falling between the cracks of a strict *Convention* refugee definition, although this was not extended to those arriving unauthorised by boat.

By 1983, the Fraser Government had lost power to the Labor Government, under Prime Minister Bob Hawke. A number of Immigration Ministers were to take over the portfolio, namely Stewart West,¹²⁰ Chris Hurford, Mick Young, Robert Ray and Gerry Hand.¹²¹ The new Labor Government was to shift its policy direction to accommodate a more diversified intake in response to changing conditions regionally and internationally. Notwithstanding, funding cuts to certain immigration policies underpinned the Labor Government's new direction, including the abolition in 1986 of the Australian Institute of Multicultural

the refugees and their work formed the foundation for a reassessment of resettlement policy in the government".

¹¹⁸ Geoffrey Blainey. Speech to Warrnambool Rotarians, 17 March 1984; Geoffrey Blainey. *All for Australia*, North Ryde, N.S.W : Methuen Haynes, 1984, pp.1-25, 64-65, 84-91.

¹¹⁹ Betts, *Ideology and Immigration*, p.5

¹²⁰ Betts, *Ideology and Immigration*, pp.157-8. A new points system was introduced under Minister West, the justification for which was to oversee a fairer, more consistent process in line with Australia's needs.

¹²¹ York, *Extended version*, Table 6, "Ministers of Immigration, Ministries and gross annual settler intake, 1945-1991(a), p.139-140

Affairs, and cuts in the areas of Adult Multicultural Education Program and English as a Second Language (ESL). In line with these measures the government, in 1985, had cut the refugee intake by twenty-five per cent, and introduced the Special Humanitarian Program. This plan created further hardship and additional financial stress for those coming to Australia, as it required them to pay their own airfares.¹²²

Humanitarian associations, such as the Indo-China Refugee Association (ICRA),¹²³ found that matters of greater complexity were becoming part of its functions. For example, with the arrival in the late 1980s of different ethnic groups and a lack of support or established community networks in place, the organisation was required to assist people from Honduras and Guatemala, as well as some from South America, including El Salvador, Chile.¹²⁴ Reputable associations such as ICRA were approached by the then Department of Immigration Local Government and Ethnic Affairs (DILGEA), to assist in working with those in need, and to deliver a quality settlement service. During the late 1980s and early 1990s, ICRA was to assist in the settlement of more refugees from countries such as Ethiopia, Eritrea, Somalia and Sudan.¹²⁵

It was at the end of the 1980s and early 1990s when a number of major events took place which impacted on Australia and its migration and refugee policies. In 1989, Australia adopted an international approach to the Indo-Chinese issue along with over fifty other nations, through the “Comprehensive Plan of Action (CPA)”. Members endorsing this plan co-operated to clear camps of thousands of Vietnamese displaced by the war. Over

¹²² Australian Refugee Association (ARA). *History by Australian Refugee Association*, p.4

¹²³ *Ibid.*, pp.4-5 - The Indo-China Refugee Association (ICRA) was first created in 1975 as a response to the Indo-Chinese situation, and later, in 1994, renamed the Australian Refugee Association (ARA). ARA was an early proponent of a program involving case management techniques, which addressed the needs of new arrivals in a personalised form. This model was later refined and adopted by others.

¹²⁴ ARA, *op. cit.*, p.4

¹²⁵ *Ibid.*, p.5

18,000 Vietnamese resettled in Australia.¹²⁶ Also, in 1989, the end of the Cold War and the collapse of the Soviet Union at the end of 1991, took with them the rationalisation for the previously-held anti-communist mentality and the war of different ideologies.

In the latter year, civilians protesting for democracy in Tiananmen Square were dealt with by the Chinese government promptly and harshly. A violent military operation was used to crush the protest and haunting scenes were telecast throughout the world of a sole youth standing defiantly against a massive army tank.¹²⁷ The reaction of the then Prime Minister, Bob Hawke, was quick, decisive and, some would say generous,¹²⁸ announcing that students in Australia on a temporary visa would be granted asylum on application. The decision resulted in thousands responding to the offer and applying. Some 28,000 who were in Australia at the time of the Tiananmen massacre were granted permission to stay, and later another 20,000.¹²⁹ In addition, families were also eligible to apply for family reunion.¹³⁰

The Hawke Government had been in power since 11 March 1983. Immigration had increased under his Prime Ministership, but a tightening of policy funding was apparent. The Fitzgerald Report was produced in 1988 to advise the Government on Immigration and Australia's responses to associated issues. The report gave refugees some attention, and Recommendation 26 (ii) suggested an increase in the intake of the refugee/humanitarian category B to 15,000. It also recommended that the Government cease the quota or target allocation, but upheld the then prevailing view that "[i]n all cases, it will remain the responsibility of the Australian Government to decide who will be accepted for

¹²⁶ York, *Extended version*, pp.8, 21

¹²⁷ The sole youth is commonly called "Tank Man"

¹²⁸ Betts, "Immigration Policy", p.169

¹²⁹ *Ibid.*, p.174

¹³⁰ *Ibid.*, p.169-170 for statistics on net overseas migration and immigration, 1975-76 to 2002-03

resettlement in Australia”.¹³¹ It considered citizenship was a key symbol of commitment to Australia and a requirement for respecting the nation’s institutions and principles.¹³²

The following year, Hawke released the “National Agenda for a Multicultural Australia”, as a response to the changing composition of the Australian people.¹³³ It focussed on, and emphasised, the importance of citizenship, as outlined in the Fitzgerald report, and represented a shift from the previous ethnic group model. The citizenship model of multiculturalism embraced a system of rights tied inexorably to one’s commitment to Australia, its institutions and principles. The Agenda expressed, within economic restraints of the time, the “goals, priorities and strategies” of the Hawke Government “to promote respect for individual identity, to ensure social cohesion and to enhance social justice.”¹³⁴

With the arrival of the first unauthorised Cambodian asylum seekers by boat in 1989, public anxiety increased. For a number of reasons, the Hawke Government treated these Cambodians far more firmly than the recent intake of Chinese. These reasons included the fact that, at the time, applicants for visas, particularly onshore asylum seekers, were challenging the department in the legal system. Also, rational analysis was usurped by

¹³¹ Fitzgerald Report. *Immigration – A commitment to Australia*: Executive Summary, Canberra: Australian Government Publishing Service, 1988. This report focussed on citizenship and major immigration issues, such as numbers of immigrants, the composition of people, the economy, lack of consultation and on the public’s confusion about multiculturalism.

¹³² *Ibid.*, pp.xi-xvi, 2. See Betts, *Ideology and Immigration*, p.175, who states that, while the report suited the Opposition who welcomed it, the Government denied it an early formal response as its recommendations on “family reunion and multiculturalism findings embarrassed the Government and enraged ethnic community leaders”. For a detailed analysis of citizenship, see also Zappala, et al., *op. cit.*, particularly pp.287, 293, 302-303.

¹³³ Australian Government, Department of Immigration and Citizenship, *National Agenda for Multicultural Change*, 1989. Zappala et al., *op. cit.*, pp.291-292, note that funding cuts and other unpopular moves, such as merging the SBS with the ABC, attracted protests and demonstrations by migrant organisations, threatening the tightly held marginal seats in Sydney and Melbourne to fall to the ALP. A new direction was required, and came in the establishment of an Office of Multicultural Affairs (OMA) and dropping the SBS-ABC merger.

¹³⁴ *National Agenda for Multicultural Change*; Zappala, et al., *op. cit.*, pp.291-292. The authors note the “three dimensions of multicultural policy” cultural identity, outlined in the ALP approach under Hawke.

strong ethnic lobbying, with the government fearing “a political backlash”¹³⁵ from “ethnic leaders”.¹³⁶ In the same year, the *Migration Act 1958* (which had replaced the *Immigration Restriction Act 1901*) was overhauled. This revamp saw the introduction of approximately two hundred new regulations, and was hence known as the *Migration Legislation Amendment Act 1989*.¹³⁷ The plethora of new rules and criteria were aimed at tightening, making accountable and making consistent the decisions relating to the nation’s immigration program, including refugees. In effect, the legislation created a two-tiered system.

Under the guise of improving control, these initiatives created a structure whereby people arriving by boat illegally, once assessed and rejected, could not appeal to the judiciary and could be mandatorily deported. The tough regulations were to act as a deterrent to any would-be illegal entrants and send a strong message Australia was not a “soft touch”.¹³⁸ The passing of this legislation led to a much more tightly-controlled Australian migration policy, inviting international and national controversy, criticism and condemnation.

The 1980s-1990 was an era in which there was an increase in refugee applications to Australia, and when change was occurring in the composition of the Australian people. The Government responded accordingly with a shift of policy on multiculturalism, emphasising citizenship as the link to a system of rights. There was a sympathetic public attitude to refugees, in line with the Government’s more humanitarian approach towards the forced movement of people. The influx of Vietnamese refugees and the thousands of

¹³⁵ Betts, “Immigration Policy, p.174

¹³⁶ B. Birrell. “Problems of immigration control in liberal democracies: the Australian experience” in G. Freeman and J.Jupp. (eds) *Nations of Immigrants: Australia, the United States, and International Migration*, Melbourne: Oxford University Press, 1992, p.36

¹³⁷ Commonwealth Consolidated Acts, *Migration Legislation Amendment Act 1989*

¹³⁸ Leach, et al., *op. cit.*, p.6

Chinese students who sought protection had not created the anticipated (by some) situation of disarray for the Australian population. While not all were happy, public anxiety and fear over asylum seekers and refugees was temporarily quelled.

Waning tolerance

Paul Keating was Australia's 24th Prime Minister and held office from 20 December 1991 to 11 March 1996. While Gerry Hand retained the immigration portfolio on Keating's takeover, he was replaced in 1993 by Senator Nick Bolkus, who held the office until the party lost power.¹³⁹ During the Keating era, there were a number of major incidents which translated into policies impacting on refugees and asylum seekers. The refugee and illegal entry matter had begun to attract greater attention due to increased arrivals, and the Government responded with the introduction of a temporary protective visa in lieu of granting permanent citizenship status – 1991-96.¹⁴⁰

The entry permits were introduced under the Domestic Protection (Temporary) Entry Permits (DPTEP) scheme.¹⁴¹ This legislative amendment intended to discourage those who hoped to find protection in Australia, particularly the increased number of Chinese students after the Tiananmen Square incident. It was specifically directed to onshore applicants, and the shift reflected Australia's continued preference for addressing the problem on a temporary basis.¹⁴² In a recurring theme in Australia's history, it was expected that those affected would return home as soon as conflict diminished in the country of origin.

¹³⁹ *Australia's Prime Ministers, op. cit.*

¹⁴⁰ Regulation 117A, Migration Regulations (Amendment) (1991) No. 25 – Regulation 9.

¹⁴¹ Regulation 117A, Migration Regulations (Amendment) (1991) No. 25 – Regulation 9. This regulation (117A) provides for the grant of a domestic protection (temporary) entry permit to a person who is in Australia and has been granted refugee status by the Minister. It provides for a stay of 4 years. This regulation replaced and deleted the previous Regulation 8 - Regulation 117 (Refugee (restricted) visa or entry permit) which "provides for the grant of a refugee (restricted) visa or entry permit which is to be replaced by the domestic protection (temporary) visa or entry permit. (See regulation 9)."

¹⁴² Neumann, *op. cit.*, p.92.

With an increase in boatloads of asylum seekers arriving on Australia's shores in 1990, the nation's sympathetic approach to refugees was again put to the test. Australia's population was beginning to suffer from "compassion fatigue".¹⁴³ Specific language and terminology relating to unauthorised arrivals, particularly "boat people",¹⁴⁴ had begun to emerge as far back as the late 1970s and early 1980s, but in the 1990s negative connotations relating to refugees and asylum seekers frequently formed part of the media and politicians' vernacular.¹⁴⁵ Terms such as "queue-jumping", "illegal" and "unwelcome" found credence and public perception grew more negative. In later years, other terms such as "racist", "brutal" and "savage" were added to the list, to embitter and polarise Australian opinion.¹⁴⁶ The use of language by politicians will be considered in further detail in Chapter 6.

The Government response was to amend the Migration Act. From 1992, asylum seekers arriving unauthorised in boats were to be put into mandatory detention. Prior to this time, any detention of asylum seekers was on a discretionary basis by the Minister. The changes, introduced through the *Migration Amendment Act 1992* (Cth) Act, amended the term "arrest" (with the connotation of a criminal offence) to "detain in custody" (to avoid confusion). The amended Act stated that it was "in the national interest that each non-citizen who is a designated person should be kept in custody" (54J), and that " 'custody' ...

¹⁴³ Hage, *Against Paranoid Nationalism*, p.7

¹⁴⁴ Janet Phillips & Harriet Spinks. *Boat arrivals in Australia since 1976*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 11 February 2011

¹⁴⁵ Moss Cass (Dr) "Stop this unjust queue jumping", *The Australian*, 29 June 1978. This article, by the Opposition Spokesman on Immigration and Ethnic Affairs, notes the reaction to what Australians perceived as "illegal immigrants", but warned that turning the boats away, or sending them back, were not moral options; see also York, *Extended version*, pp.19-20, 28; William Maley. "Refugees" in Manne, Robert. (ed.) *The Howard Years*, Black Ink Agenda: Melbourne, Victoria, 2004, pp.147-148; MacCallum, "Girt by sea", pp.41-43; Katharine Gelber. "A fair queue?: Australian public discourse on refugees and immigration", *JAS, Australia's Public Intellectual Forum*, No.77, 2003, 19-30

¹⁴⁶ Owen Harries. "Hearts, Minds and Immigration" in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, p.66

includes being held in a processing area”(54K). In addition, “a designated person must be kept in custody” (54L.(1)).¹⁴⁷

The rationalisation for these changes was that the new system would reduce confusion due to an array of laws, provide a uniform regime for detention and removal of people, enhance the Government’s control of people, and give greater precision to border control.¹⁴⁸ The intent was to provide a review system at a reasonable cost, to ensure that individuals were treated fairly, to regulate the refugee status determination effectively and efficiently, and ensure individuals were *not subjected to unnecessary restrictions or inconvenience*.¹⁴⁹

The introduction of mandatory detention proved a highly contentious era in Australian refugee policy. It represented a new and different approach in the handling of non-citizens or those who arrived in Australia without a valid visa. Mandatory detention ushered in a period which attracted wide-ranging criticism, both internationally and nationally.¹⁵⁰ It was not in the spirit of the *Convention* and was considered by many to be contrary to Australia’s obligations as a signatory to the international agreement.¹⁵¹

In 1992, a “Special Assistance” migration category for refugees was announced by the Immigration Minister. This programme was directed at those arriving from the Soviet

¹⁴⁷ Migration Amendment Act 1992 No. 24, 1992 - SECT 3; see also Minister for Immigration, Local Government and Ethnic Affairs, *Media Release*, MPS 39/92, 17 July 1992. The announcement “proposed to reduce the various forms of status for non-citizens to just two: 'lawful' and 'unlawful'. Unlawful non-citizens to be subject to detention and removal, under the proposals.”

¹⁴⁸ The Parliament of the Commonwealth of Australia, House of Representatives, *Migration Amendment Bill 1992*, Explanatory Memorandum (Circulated by authority of the Minister for Immigration, Local Government and Ethnic Affairs The Hon. Gerry Hand, MP.)

¹⁴⁹ Also Migration Reform Bill 1992 - *Second Reading*, 4 November 1992, p.2620, Mr Hand (Minister for Immigration, Local Government and Ethnic Affairs) (9.17 p.m.) (Italics added); *Migration Amendment Bill 1992*, Explanatory Memorandum.

¹⁵⁰ Francesco P. Motta. “Between a rock and a hard place”: Australia’s mandatory detention of asylum seekers, *Refuge*, Vol.20, No.3, 1 May 2002, p.13

¹⁵¹ William Maley. "Asylum-seekers in Australia's international relations", *Australian Journal of International Affairs*, Vol.57, No.1, 1 April 2003, p.187, 197

Union, Yugoslavia, Croatia, Albania, Lebanon and East Timor.¹⁵² A significant development by the Government was its public recognition that humanitarian and migration issues were fundamentally different. This was declared in a Ministerial Press Release, announcing a strategy to separate the Migration and Humanitarian Programs.¹⁵³ However, other measures were introduced to ensure greater control, such as the restriction of judicial review of visa applications, and a rule-based selection system.

The period 1990 to 1996 was marked by a number of developments. It was a time when multiculturalism became entrenched in Australia's political and social institutions, and where broader responsibilities were allocated to the Office of Multicultural Affairs (OMA), and the Department of Immigration and Ethnic Affairs, especially in relation to resettlement services. Financial support was made available by Government to agencies providing services to newcomers, including refugees, and the Bureau of Immigration, Multicultural and Population Research (BIMPR) was funded.¹⁵⁴

¹⁵² ARA, *op. cit.*, pp.5-6; Minister for Immigration, Local Government and Ethnic Affairs, *Media Release*, MPS 41/92, 24 July 1992

¹⁵³ *Ibid.* Also released on the same day, announcing the Refugee, Humanitarian and Special Assistance migration categories for 1992-1993

¹⁵⁴ Zappala, et al., *op. cit.*, p.294; York, *Extended version*, p.68

CHAPTER 4: THE HOWARD ERA

The Liberal Coalition, led by Prime Minister John Howard, held power from 1996 to 2007. Howard defeated the Keating Labor Party and took office on 11 March 1996. The new Government remained committed to the principles established in 1977, as announced by Minister Mackellar, and maintained an annual quota of approximately 12,000 through the Humanitarian Program.¹ The Coalition continued to observe the principle of planned and systematic immigration. Some assert that the Howard era did not mark a major political or philosophical shift from past government responses to the refugee and asylum-seeker issue.² Others disagree,³ and the words of James Jupp encapsulate some key points in the debate:

In its long history of refugee settlement Australia had never forcibly removed asylum seekers from its territory until all avenues of appeal had been exhausted; never transferred asylum seekers outside its territory to camps managed on its behalf and at its expense; never denied the possibility of permanent residence and family reunion to those eventually accepted as refugees; never experienced mass protests and hunger strikes at detention centres; never redefined its borders to exclude offshore territories; and never alienated most of those engaged in refugee settlement work or previously co-operating with the Department of Immigration. In so far as its policy was understood overseas, Australia had been accepted as a pioneer in effective multiculturalism, as a safe haven for thousands of refugees, as a pioneer in settlement services and as a humane liberal democracy. In a few short months, this reputation was destroyed. In the global village, media reports were almost uniformly critical, not least in the Norwegian press. If Australia retained international influence it was among those pressing for a revision of the UN Convention and a claim-down on asylum seekers.⁴

Jupp's observations suggest that, clearly, the manner in which asylum seekers were treated in Australia under Howard did change dramatically, and a severe approach to deter and penalise was adopted. Indeed, the Howard Government has been attributed with

¹ York, *Summary*, p.10/22

² *Ibid.*, p.10/22

³ Brett, "Relaxed and comfortable", p.iv, states that the Howard Government had done some things "unforgivable", had a "record of cruelty" and had "corrupted practices" of accountable government. See also Maley, "Asylum-seekers", pp.187-202; Marr, et al., *op. cit.*; Savitri Taylor. "Should Unauthorised Arrivals in Australia Have Free Access to Advice and Assistance?", *AUJHRights 3*; Vol.6, No.1, 2000, pp.1-22.

Taylor argues (p.13) that asylum seekers have less entitlement to procedural safeguards than criminals, who at least have trials conducted to ensure the innocent are acquitted rather than convicting the guilty. Her assumption is that we must think less of a person who is not a member of our society, and their loss of liberty or freedom is of lesser value than that placed on a member of our own community.

⁴ Jupp, *From White Australia*, p.197

outshining every predecessor “in the demonization of refugees”.⁵ Conforming to the government’s hard line, public attitudes hardened towards asylum seekers, became more intolerant, and even bordered on hatred.⁶

From the moment the Coalition took office, major changes were introduced to laws and policies impacting on refugees and those seeking humanitarian protection. While the immigration programme inherited by the Howard Government was unpopular and lacked rationale,⁷ reforms were introduced which “sharpened the program’s economic focus”.⁸ This included funding cuts for programs, a reduction in the immigration intake, an increase in immigration of skilled workers, an increase in fees for visas, an increase in fees for English courses, and increases in the waiting period for new immigrants for social service benefits.⁹

The Government also took a firm stance on border control and tried to limit the role of the courts by narrowing judicial review.¹⁰ In addition, in a “highly symbolic move”, it abolished the Bureau of Immigration, Multicultural and Population Research and the

⁵ Maley, “Refugees” in Manne, *op. cit.*, p.145

⁶ Brett, “Relaxed and comfortable”, p.39. Brett argues that the creation of boundaries between people can make them hate each other. Public Surveys and voteline information frequently indicate strong public opinion against allowing refugees and asylum seekers into Australia. See *The Advertiser*, Wed 22. 07.09, p.17; *The Advertiser*, Wed 24.02.10, p.21; *Herald Sun*, 5 October 2007; *The Advertiser*, Tues Feb 9, 2010, p.17; *The Advertiser*, Tues 30.06.09, p.19; *The Advertiser*, July 30, 2008

⁷ Betts, “Immigration Policy”, p.169. In addition, the program “was dominated by family reunion, brought in many migrants who needed welfare support and was open to fraud”.

⁸ *Ibid.*, p.169

⁹ Zappala, et al., *op. cit.*, p.294, 309; Philip Ruddock. “The Immigration Policies of the Commonwealth Government”, *National Observer*, No.54, Spring, 2002, pp.15-19, states: “Since coming to power in March 1996, the Liberal/National Coalition Government has progressively implemented a considerable number of measures to enhance the integrity of Australia’s immigration programme. ... to restore the Australian community’s confidence in the programme ...”. See also Australian Government. Department of Immigration and Citizenship, *Refugee and Humanitarian Issues, Australia’s Response*, June 2009, p.23, which states that in “1995-96, SACs provided visas to 6910 people and more than half of the Humanitarian Program comprised either SAC or onshore protection grants. Following a review of the SAC program in 1996 all SACs were gradually brought to a close by the end of 2001”.

¹⁰ Betts, “Immigration Policy”, p.139; The Hon Philip Ruddock, MP. “Refugee Claims and Australian Migration Law: A Ministerial Perspective”, *University of New South Wales Law Journal*, Vol.23, No.3, 2000, p.8. Ruddock stated that restriction of access to judicial review “in all but exceptional circumstances” was because some were using it “as a means of prolonging their stay in Australia”.

Office of Multicultural Affairs.¹¹ Another major reform, implemented almost immediately, ensured that onshore applicants who were successfully granted refugee status were deducted from the overall total of offshore humanitarian visa places. The humanitarian intake also counted the family members of humanitarian immigrants, effectively ensuring that changes in the numbers of onshore applicants “automatically induced” changes in the humanitarian program, a scenario which played itself out in 1999 when boatpeople significantly increased.¹²

Catalysts for change

A number of policy initiatives at the time had influenced the political landscape, such as the so-called “Pacific Solution”, mandatory detention,¹³ and the excision of islands from Australia.¹⁴ These legislative changes took a new and harsher direction compared to that of the past, yet they were implemented with little political opposition, and with considerable public support. How and why was this able to happen? It is proposed that the situation can be better understood by identifying major events that shaped the period and which, in turn, created catalysts for change.¹⁵ Four key issues have been identified for discussion: the rise of Pauline Hanson and the One Nation Party, the Temporary Protection Visa (TPV),¹⁶ the *Tampa* incident and subsequent so-called “Pacific-Solution”¹⁷ and the

¹¹ Geoff Boucher & Matthew Sharpe. *The Times Will Suit Them: Postmodern conservatism in Australia*, Crows Nest NSW: Allen & Unwin, 2008, p.181; Zappala, et al., *op. cit.*, pp.294, 309

¹² Betts, “Immigration Policy”, p.182-3. Betts states that most of the unauthorised onshore arrivals were subtracted from the Special Assistance Category, not the Refugee and Special Humanitarian programs.

¹³ UNHCR *Revised Guideline*; Amnesty International. *The impact of indefinite detention*, p.23; Leach, et al., *op. cit.*, pp.60-81

¹⁴ Crock, *Tampa*, pp.70-71. In an effort to prevent Christmas Island and reefs in the vicinity to be destinations for asylum seekers from Indonesia, the Prime Minister was empowered by parliament to declare some parts of Australian territory to be outside the “migration zone”. This legislation prevented unauthorised arrivals from accessing Australia’s refugee protection regime.

¹⁵ While it is recognised there are a number of events which could be addressed as catalysts for change, such as the Woomera riots of 2002, the key issues identified are based on content analysis of primary sources.

¹⁶ The TPV was a Howard Coalition initiative and was revised by the Australian Labor Party when it took office.

¹⁷ Errington, *op. cit.*, p.305. The *Tampa* incident has been described as bad policy for a number of reasons, including failing to observe the law of the sea, using the military as campaign fodder, which in turn undermined the morale of soldiers and sailors. Mares, *op. cit.*, pp.1-2; McMaster, *Asylum seekers*, p.xii

terrorist attacks on the U.S.A. on 11 September 2001. These significant developments resulted in policy shifts which were legitimised by the government as necessary in an effort to protect a nation under threat.

The Hanson Factor

Pauline Hanson delivered a maiden speech to parliament on 10 September, 1996, as the Independent member for Oxley. It was to have a remarkable effect. She addressed a poorly attended House on issues such as money wasted on Aborigines, the High Court promoting 'separatism', the need for disbanding ATSIC, the abolition of multiculturalism, and warned that Australia was being 'swamped' by Asians. She represented, she said, the forgotten 'mainstream' and praised Calwell, who had publicly supported the White Australia Policy. Her plea was that unless Australia woke up and strong national leadership surfaced, it would be too late for Australia. Hanson touched a raw nerve in the disenfranchised and disenchanted voters of Australia.¹⁸ She struck at the heart of political correctness and challenged the authority of the ruling elites, stating what many felt but no politician uttered. To the surprise of many, she became a "source of general fascination" as well as a "political heroine".¹⁹

On 11 April, 1997, a new political party was launched by Pauline Hanson. David Barnett observes:

No more unlikely national leader could be imagined. Hanson was a simple woman, unread and unlettered, but she was articulating the resentment in the community of policies which appeared to favour migrants and Aborigines, very steeply so in the case of Aborigines. She also had the support of resentful gun owners.²⁰

¹⁸ Rae Wear. "Permanent Populism: The Howard Government 1996-2007", *Australian Journal of Political Science*, (2008) 43, p.625

¹⁹ Robert Manne. "The Howard Years: A Political Interpretation", in Manne, *op. cit.*, pp.14-15; Pauline Hanson's maiden speech in federal parliament, 10 September, 1966, 5.15 p.m.; see also Rapley, *op. cit.*, pp.241-245, for a discussion on Hanson's Maiden Speech.

²⁰ David Barnett (with Pru Goward). *John Howard: Prime Minister*, Viking: Victoria, 1997, p.783

One Nation had arisen at “a time of cultural and economic dislocation in rural and regional Australia” when disillusionment reigned over the lack of recognition for “traditional Anglo-Australian forms of identity”.²¹ This was especially the case for those who believed they had been left behind due to State and federal government deregulatory reforms.²² Pauline Hanson and her One Nation party, which were short-lived and politically limited, appealed to the insular and cautious attitudes of some disillusioned Australians.²³ By June of the same year, her popularity increased, and her share of the votes was seriously damaging both the Democrats and the Greens. As a Queensland-based candidate, her emergence was raising grave concerns for the National Party in that State, especially since her meetings and gatherings were attracting hundreds more people than the National Party’s rallies.²⁴

Howard made a tactical error of judgement in his assumption that Hanson was simply another rogue candidate causing distraction. He severely underestimated her impact and mood of the electorate at the time. His mistake was an absence of condemnation for her racist-type comments, delaying criticism, and instead, claiming the right to free speech was at stake.²⁵ Many believed Hanson was articulating views on racism to which Howard

²¹ Wear, *op. cit.*, p.625

²² Burke, *Beyond Security*, p.184

²³ Peter Gale. “The refugee crisis and fear: Populist politics and media discourse”, *Journal of Sociology*, Vol.40, No.4, 2004, p.322. Gale states that “Hansonism became synonymous with intolerance and bigotry”.

²⁴ Barnett, *op. cit.*, p.784

²⁵ Manne, “The Howard Years: A Political Interpretation”, in Manne, *op. cit.*, p.16; G. Smith & David Lowe. “Howard, Downer and the Liberals’ Realist Tradition”, *Australian Journal of Politics and History*: Vol.51, No.3, 2005, p.463. See also Zappala, et al., *op. cit.*, p.311; S.Howard & J. Gill. “It’s like We’re a Normal Way and Everyone Else is Different: Australian children’s constructions of citizenship and national identity”, *Educational Studies*, Vol.27, No.1, 2001, pp.87-103, stating One Nation as embracing “a narrowly xenophobic platform based on monocultural mythology”. See also Colin Brown. “Problems in Australian Foreign Policy: January-June 1996”, *The Australian journal of politics and history* (0004-9522), Vol.42, No.3, p.340; Malcolm Fraser (former Prime Minister). *From White Australia to today*, Australian Refugee Association Oration, Adelaide, 24 June 2011, p.6, states that “[n]either the government nor the opposition condemned her as she should have been condemned. The toughest words went something like “I don’t agree with her, but she has the right to say it.” The right to free speech which we all possess does not involve a right to create racial tension and division.”

himself subscribed, hence his hesitation to publicly denounce her.²⁶ Australia's Asian neighbours were watching developments closely. Hanson's rise in popularity, along with disturbing comments, created much tension with Asian governments, who assumed that the voting public supported her views.²⁷

Howard later distanced himself from One Nation's policies and was compelled to publicly reinforce his party's commitment to tolerance and equality. Nothing had been gained by the Coalition consorting with Hanson. She was to dominate Howard's first term as Prime Minister through her ability to attract wide media attention and to articulate "politically incorrect" views, which carried favour many disgruntled voters. Her claims that Australia was in danger of being changed forever resonated with many disenfranchised voters, enabling her to direct the political agenda and usurp Howard's ability to control it.²⁸

Confronted with what appeared to be a new "politics of race", many election lessons were to be heeded by all.²⁹

As an astute politician, Howard's response to One Nation's threat was to develop a strategy to recapture straying voters.³⁰ He had heard the message of the electorate and "recast policies on Aboriginal affairs, multiculturalism, immigration, social welfare and Australian nationalism to match more closely those advocated by Hanson" and "poured

²⁶ Betts, "Immigration Policy", p.171. In the 1980s, Howard had suggested that proportion of people from Asia was higher than public preferred, causing protest from those who saw this as legitimising racism. See also Brett, "Relaxed and comfortable", p.21. Brett states that this was in fact correct, as in 1988 a government-commissioned report found low levels of popular support for current immigration program and that the level of Asian intake might threaten the social fabric of Australia; Crock, *Immigration*, p.7, states that Howard was forced to make a public apology in 1995 to the Asian population in Australia about these comments.

²⁷ Errington, *op. cit.*, p.255; Gale, *op. cit.*, p.323

²⁸ Errington, *op. cit.*, pp.231, 252. Howard's assumption that Hanson was another rogue candidate causing distraction severely underestimated voter opinions.

²⁹ Manne, "The Howard Years: A Political Interpretation", in Manne, *op. cit.*, pp.20-21. The Liberal Party had placed One Nation above Labor candidates as preferences on how-to vote-cards, resulting in a narrow Labor win. This loss was caused by Liberal Party supporters' disaffection with the decision and exposed the danger of placing One Nation above Labor candidates as preferences.

³⁰ Smith, et al., *op. cit.*, p.463

vast amounts of money into rural and regional Australia”.³¹ These Coalition policy shifts were not, however, driven by long-term considerations of the electorate, but instead by electoral imperatives.³²

In the late 1990s, Australia experienced a new wave of Muslim and Middle Eastern asylum seekers arriving by boat. These boat arrivals came at a time when “fear and misinformation were rife within the public domain”.³³ The Government’s response to these arrivals was to immediately force them into mandatory detention for indeterminate periods, a policy which has been the subject of a key public social justice debate in Australia.

In contrast, in 1999, compassion and support was displayed by many Australians for the Kosovar refugees fleeing from conflict between the majority ethnic Albanians and Serbs.³⁴ Public donations and programmes were put in place to offer assistance to those Kosovar refugees, and approximately 4,000 were provided temporary resettlement through ‘Safe Haven Visas’.³⁵ The major campaign was named “Operation Safe Haven” and it was a pivotal point for two reasons. The first was to offer temporary protection, rather than permanent.³⁶ This response reflected One Nation’s official policy, that: “ONE NATION believes in providing temporary refuge until the danger in the refugee’s country is

³¹ Wear, *op. cit.*, p.625. See also Zappala, et al., *op. cit.*, p.311, on Howard’s view on multiculturalism. The authors state that “Prime Minister Howard studiously avoids the theme of multiculturalism” in his desire to retreat from the policy. See also Jupp, *From White Australia*, p.126

³² Wear, *op. cit.*, p.625; Gale, *op. cit.*, p.323

³³ ARA, *op. cit.*, p.6

³⁴ York, *Summary*, p.10/22

³⁵ ARA, *op. cit.*, p.6; York, *Summary*, p.10/22. See also Migration Act 1958 – Section 37A, Temporary safe haven visas

³⁶ The previous occurrence was when Chinese students were offered protection temporarily at the time of the Tiananmen Square massacre. As previously noted, Australia’s clear and continued preference for addressing the refugee issue has been on a temporary basis.

resolved. There is no assumption of automatic permanent residence in Australia”.³⁷

When Kosovars were encouraged to return to their country of origin, this temporary protection policy attracted controversy.

The second issue was linked to their return home, in the form of a cash incentive, which was seen by some as an enticement or inducement, and inappropriate. However, the “reintegration packages” of \$3,000 per adult were taken up by most and, ultimately, almost all Kosovar refugees returned to their home country at a cost of around \$100 million to Australia.³⁸

Temporary Protection Visa (TPV)

Prime Minister Howard was explicit in his strong preference for the formal, orderly and controlled offshore system as a method of admitting refugees to Australia, and that the Humanitarian Program’s offshore component, which assisted those in greatest need, was damaged by those arriving unauthorised on the nation’s shores. As his Minister for Immigration, Philip Ruddock, said:

Under our humanitarian programme, Australia resettles those persons in the very greatest need ...

...

While our desire to assist these persons is strong, Australia has a finite capacity. The pressure placed on our resources by those arriving in Australia without authority, and seeking to engage our obligations to provide protection, limits our capacity to assist those at greatest risk.

...

Some asylum seekers come here from countries where there is little risk of persecution, but which are less prosperous than Australia. They seek to use our refugee determination processes to obtain the right to work in Australia or to access health services and other support at Australian taxpayer expense while their claims are assessed.³⁹

In an effort to send a strong message of deterrence to hopeful unauthorised asylum seekers, the Temporary Protection Visa (TPV)⁴⁰ was introduced in 1999. This new policy was the

³⁷ *One Nation’s Immigration, Population and Social Cohesion Policy 1998*, point 11, Refugee, para 3.

³⁸ York, *Summary*, p.10/22

³⁹ Ruddock, “The Immigration Policies”, pp.15-19

⁴⁰ Leach, et al., *op. cit.*, p.4-5, Pauline Hanson *Immigration 1998*; Sarah Stephen. *Refugees & the rich-world fortress*, Broadway, NSW: Resistance Books, 2005, p.4 – Stephen states that the TPV was initially proposed by Pauline Hanson’s One Nation Party. See Leach, et al., *op. cit.*, pp.5-11. The authors discuss the

subject of much debate and criticism from the beginning, especially by humanitarian organisations. The initiative was said to have been poached by John Howard from Pauline Hanson's One Nation Party platform,⁴¹ which states:

In an increasingly unpredictable world with political, economic, religious, racial, environmental and socio-ethnic instability, an increasing flood of refugees is occurring. In the current world situation of 15 million refugees, Australia's refugee program which accepts 12,000 per annum (one of the largest per capita by developed countries), is nothing more than a token gesture as it gives no assistance to the 99.9 per cent of refugees left behind. Any program that helps 0.1 per cent of refugees, does nothing for 99.9 per cent and costs billions is indeed unfair and immoral. One Nation believes in providing temporary refuge until the danger in the refugee's country is resolved. There is no assumption of automatic permanent residence in Australia.⁴²

The TPV was not strictly in the spirit of the *1951 Convention* and was considered a breach of human rights.⁴³ It affected those who arrived in Australia without authorisation and who were subsequently found to be refugees, allowing qualification for the TPV. Those who arrived without authorisation and were subsequently found not to be refugees were deported. The TPV was granted for three years only and a holder was then required to undergo further processing to ascertain their continuing refugee status. The TPV is seen by many as discriminatory, formulated for deterrence, not protection, and to punitively reduce access to rights and services. It was a policy which created a clear two-tiered system.⁴⁴ The manner in which refugees arrived in Australia, therefore, became the distinguishing factor on whether Australia would support or incarcerate them.⁴⁵

disturbing nature of this policy due to the introduction of standards of differentiation which restricted refugees. Labelled negatively as illegal and undeserving, refugees were given a TPV which was cleverly crafted to still meet international obligations.

⁴¹ It should be noted that Pauline Hanson and the One Nation Party ebbed and flowed in electoral popularity over the limited time of their existence, sometimes therefore influential and at other times inconsequential.

⁴² Pauline Hanson's *One Nation, Immigration, Population and Social Cohesion Policy 1998*

⁴³ Manne, "The Howard Years: A Political Interpretation" in Manne, *op. cit.*, p.33; Leach, et al., *op. cit.*, pp.5-11. Leach and Mansouri discuss how the TPV policy, disturbingly, introduced standards of differentiation which placed restrictions on refugees. These TPV holders were often labelled as "undeserving and illegal". Carefully constructed, however, the TPV continued to meet international obligations. See also Sarah Stephen & Daniel Moya. "Temporary Protection Visas Punish Refugees" in Stephen, Sarah. *Refugees: exposing Howard's lies!* Broadway, NSW: Resistance Books, 2002, pp.19-23

⁴⁴ Leach, et al., *op. cit.*, pp.5-6, 8

⁴⁵ Hinsliff, *op. cit.*, pp.26-9

The TPV initiative did not, in fact, deter new arrivals. More unauthorised boat people arrived at Australia's shores after the introduction of the TPV, and in 1999-2001 this figure totalled 8,000.⁴⁶ The experience of 1991 and the Domestic Protection (Temporary) Entry Permit⁴⁷ had already proven "that temporary protection does not work as a deterrent for desperate migrants who are fleeing persecution and poverty, and that it only creates insecurity for refugees".⁴⁸ What the TPV did successfully do was ensure people's lives were miserable.

The two-tiered system created by the TPV, and the continued policy of exclusion, were sustained by the ongoing policy of mandatory detention. Detainees were effectively incarcerated without trial, often for many years.⁴⁹ Mandatory detention attracted world-wide criticism from the UNHCR and other humanitarian organisations,⁵⁰ but the Australian public, already resentful of asylum seekers coming to their shores, continued to support the hard Government line and reject asylum seeker pleas.

The Tampa incident

The *Tampa* became a highly politicised incident in Australian history. The Coalition seized on the opportunity to cast its arrival and its human cargo of refugees as an invasion on a nation requiring protection.⁵¹

⁴⁶ Manne, "The Howard Years: A Political Interpretation" in Manne, *op. cit.*, p.33.

⁴⁷ Previously noted in this chapter.

⁴⁸ Andreas Schloenhardt. "Australia and the Boat People: 25 years of Unauthorised Arrivals", *23 UNSW Law Journal*, Vol.33, 2000, p.54

⁴⁹ The Bartlett Diaries. *Who is the longest serving detainee now that Peter Qasim is 'Free'?* Tuesday 19 July 2005. This document discusses the experience for Qasim as the longest-serving detainee of seven years.

⁵⁰ UNHCR, *Revised Guidelines*, Introduction; Amnesty International. *The impact of indefinite detention*, p.23, stating that "detention should normally be avoided and refugees and asylum seekers should be protected from unjustified or unduly prolonged detention". See also Leach, et al., *op. cit.*, pp.60-,63, stating Australia's detention policy "breached Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR)" in relation to arbitrary detention.

⁵¹ Errington, *op. cit.*, p.305. The *Tampa* incident has been described as bad policy for a number of reasons, including failing to observe the law of the sea, using the military as campaign fodder, which in turn undermined the morale of soldiers and sailors.

The then Prime Minister Howard gave a direct order to the rescuing Norwegian freighter ship's captain, Arne Rinnan, and refused to allow the asylum seekers on Australian shores. This was despite the claim that some asylum seekers required medical assistance, which later escalated to an emergency. Eventually the Ship's Captain ignored the Australian government's direct order and entered Australian water. The incident proved the resolve of the Howard government to refuse asylum seekers the right to land on Australian shores for due processing. The actions of Howard and the government received international publicity and created a tense situation with the Norwegian government, which viewed Australia's hard line as a breach of international maritime law. Eventually, the *Tampa* asylum seekers were transferred to *HMAS Manoora*, which then progressed with its human cargo to the intended detention centre.

As a signatory of the *1951 Convention*, and under the Australian constitution, the nation was obligated to offer refuge to asylum seekers on the *Tampa*, and process their claims for refugee status. Instead, the incident became highly politicised in an effort to gain political mileage. Both the government and the media used the situation to their advantage, feeding on the national paranoia and obsession associated with boats arriving on the horizon. They were portrayed, not as desperate asylum seekers in need of protection, but as hostile invaders, illegals and "potential terrorists".⁵²

World-wide repercussions were felt as a result of the *Tampa* incident, in conjunction with an associated major political issue which it triggered. The desperate attempt by the Australian government to keep asylum seekers from its shores led to the so-called "Pacific Solution", a policy initiative hastily introduced to ensure unwelcome asylum seekers would

⁵² Harries, in Kramer, *op. cit.*, pp.66-67; Leach, et al., *op. cit.*

be transported to detention centres, such as to neighbouring Nauru.⁵³ Again, this policy demonstrates Australia's state-centric approach to the issue and its lack of compliance with the *1951 Convention*, with the asylum seekers from the *Tampa* crisis the first to be subjected to the new policy. More than "400 mostly-Afghani asylum seekers"⁵⁴ were sent to Nauru, rather than brought into Australia.⁵⁵ Although fighting terrorism in Afghanistan, Australia demonstrated lack of commitment to providing refuge for Afghan asylum seekers. The "Pacific Solution" saw the establishment of a second offshore processing centre, that of Manus Island in Papua New Guinea. Australia has been accused of using the smaller Pacific nations as a "dumping ground" for its problem of asylum seekers, although both were well rewarded for their co-operation and received "millions of dollars in aid in exchange".⁵⁶ The Opposition remained quiet when it came to proposing possible alternatives, thereby indicating bipartisan support for this policy.⁵⁷ There is little doubt that the mood of the nation had been gauged and the opposition had acquiesced through the key collective weapon of silence when it came to these shifts in policies.

Due to incidents such as the *Tampa* affair Howard enjoyed overwhelming support as the nation's acclaimed protector and guardian of national security, values and culture.⁵⁸ The legitimisation of new legislation on stronger border control, and tighter policies to stop the invading "other" in the form of (mainly Muslim) unauthorised asylum seekers, was justified in these terms. While it is the prerogative of any nation-state to grant or reject admission, these issues found fertile ground for new laws and policies. Clear evidence is

⁵³ MacCallum, "Girt by sea", pp.48-52; ABC Documentary *The Howard Years*, 1 and 8 December, 2008

⁵⁴ Amnesty International Australia, *Australia winds up the Pacific Solution* by L.Lea, 15 February 2008.

⁵⁵ ABC documentary series, *The Howard Years*, Mondays 17, 24 November and 1 December, 8.30 p.m. This series includes the *Tampa* incident and its repercussions. It also touches on the manner in which offshore detention centres were agreed upon, particularly with the government of Nauru. The documentary notes the Nauru exercise alone cost the Australian taxpayer \$1 billion.

⁵⁶ Amnesty International *Australia winds up the Pacific Solution*.

⁵⁷ Browne, *op. cit.*, p.143

⁵⁸ Christian Kerr. "John's Party or John's Parting?" in Kerr, Christian. (ed.) *The Crikey Guide to the 2007 Federal Election*, Penguin Group (Australia), 2007, p.23.

available to support the fact that the population was seriously worried about terrorism and unauthorised arrivals. In 2001 the issue of terrorism and asylum seekers rated in the top four *non-economic* vital issues along with health, the environment and defence.⁵⁹

Aware of the electorate's mood and mounting paranoia, the hasty response of the Howard Government came in the form of a plethora of *Tampa*-inspired legislative changes. These were known as "the Pacific Solution",⁶⁰ which aimed to deter or penalise people smugglers and unauthorised arrivals. The legislative changes included *The Border Protection (Validation and Enforcement Powers) Act 2001(Cth)*,⁶¹ *The Migration Amendment (Excision from Migration Zone) Act 2001(Cth)*,⁶² *The Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001 (Cth)*,⁶³ *The Migration Legislation Amendment Act No. 1 2001(Cth)*,⁶⁴ *The Migration Legislation Amendment Act No.5 2001(Cth)*,⁶⁵ *The Migration Legislation Amendment Act, No.6 2001(Cth)*,⁶⁶ and *The Migration Legislation Amendment (Judicial Review) Act 2001(Cth)*.⁶⁷

⁵⁹ Ian McAllister & Juliet Clark. *Australian Election Study Trends in Australian Political Opinion: Results from the Australian Election Study, 1987-2007*, Canberra May 2008, pp.13,14,53 In fact, prior to 2001, the issue of refugees and asylum seekers was not even rated.

⁶⁰ York, *Extended version*, p.50

⁶¹ This bill imposes minimum prison terms for people smugglers and provides additional authority in relation to vessels carrying unauthorised arrivals. It safeguards/upholds the Government's action on the *Tampa* in law.

⁶² This bill excises territories from Australia's migration zone, including Christmas Island, Ashmore, Cartier and the Cocos (Keeling) Islands, and creates a new visa category. The effect of the excision legislation is that non-citizens who have first entered Australia at an excised offshore place without lawful authority — meaning without a valid visa that is in effect — are barred from making valid visa applications on arrival or during their stay in Australia. See Department of Immigration and Citizenship, *Fact Sheet 81 – Australia's Excised Offshore Places*, 2009

⁶³ This bill allows for unlawful non-citizens on excised territory to be detained, or transferred from Australia to another country, and prevents the person taking action in an Australian court against the Government.

⁶⁴ This bill limits judicial powers and sets time limits for an applicant to appeal a case.

⁶⁵ The aim this bill is to avoid restrictions of the Privacy Amendment (Private Sector) Act 2000 by authorising disclosure of information from a migration zone by private organisations.

⁶⁶ Where there is an absence of documentation, this bill permits adverse inferences to be drawn; it defines key terms relating to refugee status used by the Federal Court and the RRT when determining refugee status; and it narrows the interpretation of 'refugee' and associated terms such as 'persecution'.

⁶⁷ This bill limits judicial review and prohibits class actions in migration litigation. It relies on the "satisfaction" of the Minister for the granting of a particular visa.

The legislative framework, established in late 2001, guaranteed that unwelcome unauthorised arrivals would be taken to offshore processing facilities at Nauru and Manus Island, Papua New Guinea.⁶⁸ The excision of Cocos Island, Christmas Island, Ashmore Reef and Cartier Reef from Australian territory sent a strong message of deterrence and meant those seeking protection could not apply for a Protection Visa or Temporary Protection Visa while detained on those islands.⁶⁹

A storm of protest had followed the legislative package of 2001, but in December 2002 the Government was pleased to announce that no unauthorised boats had arrived in the previous twelve months. According to Minister Ruddock, the cessation of boats proved the policies of the Government were working. Ruddock introduced a humanitarian aspect by commenting that, importantly, those policy shifts had “stopped people risking their lives in dangerous journeys”.⁷⁰ By 2003, York observed:

... the Government’s multifaceted strategy based on prevention of outflows from countries of origin and first asylum, cooperation with other countries to disrupt people smugglers, mandatory detention and the introduction of temporary protection for genuine cases who arrive without authorisation, and the Pacific Solution appears to have achieved its objectives.⁷¹

Strong policies to deter and penalise had resulted in the desired outcome for the Government, and the election of 2004 was run on different issues, such as workplace relations and tax reform, rather than asylum seekers.⁷² However, the policy of mandatory detention on Australian soil continued to haunt the political landscape, and media reports featured the continuation of protests, disruption and destruction which occurred during the

⁶⁸ The so-called “Pacific Solution” has been discussed in Chapter 1. MacCallum, “Girt by Sea”, pp.48-52; ABC Documentary *The Howard Years*, 1 and 8 December, 2008

⁶⁹ York, *Extended version*, p.112; Minister for Immigration and Multicultural Affairs, *Media Release*, MPS 160/2001, 17 September 2001, cited in York, *Ibid.*, p.112

⁷⁰ Minister for Immigration and Multicultural and Indigenous Affairs, *Media Release*, MPS 112/2002, 17 December 2002, cited in York, *Extended version*, p.133

⁷¹ York, *Summary*, p.13/22

⁷² Christian Kerr. (ed.) *The Crikey Guide to the 2007 Federal Election*, Penguin Group (Australia), 2007, p.15; Manne, “The Howard Years: A Political Interpretation” in Manne, *op. cit.*, p.23. Manne claims that the victory in 1998 provided the government with a mandate for taxation reform and in July 2000, Australians were faced with a new tax regime.

period, with major financial implications.⁷³ International and national criticism did not dampen the Government's determination to have on-shore unauthorised arrivals mandatorily detained, and the cost to the nation ran into many millions of dollars.⁷⁴ Similarly, the so-called "Pacific Solution" cost the nation "millions of dollars in aid in exchange", most notably in return for Nauru and Papua New Guinea's co-operation with Australia.⁷⁵ Nauru was not, and still is not, a signatory to the *Convention*, although Papua New Guinea did accede to it and the *Protocol* in 1986.

The Howard Government took the path to penalise and deter and this came at a huge cost.⁷⁶ The Government's priority was a national agenda of border protection, the exclusion of "others", and punishment to those who sought its protection through the onshore approach rather than the preferred offshore program. By taking this option, it is argued that the Government failed to comply with its obligations and responsibilities as a signatory to the *Convention*. International and national criticism, diminishing regional relations,⁷⁷ cases of wrongful mandatory detention for Australian citizens,⁷⁸ shameful

⁷³ *The Advertiser*, "\$8.5 million damage bill", Monday, December 30, 2002, pp.1,4; *The Advertiser*, "Cuffed and locked away", Thursday, January 2, 2003, pp.1,7; *The Advertiser*, "Rann to send PM arsonists' bill for attacks at Baxter", Tuesday, December 31, 2002, p.5; *The Advertiser*, "Mission to destroy", Wednesday, January 1, 2003, pp.1,6; *The Advertiser*, "Burnt, buckled and broken – the deserted shell that was Woomera", Thursday, January 9, 2003, p.4; Law, *op. cit.*; see also Leach, et al., *op. cit.*, pp.73-4; Gale, *op. cit.*, p. 335. Gale states that while the policy was to be a deterrent, it had other effects as well. For example, he claims that "a policy of mandatory detention does not create a receptive host population for those who are granted refugee status"

⁷⁴ Chapter 8 deals with the economic cost of deterrence.

⁷⁵ Amnesty International. *Australia winds up the Pacific Solution*; BBC News, *Australia ends 'Pacific Solution*, 8 February, 2008 OR Amnesty International. *The impact of indefinite detention*.

⁷⁶ The cost of deterrence policies was considerable, including in human terms, a compromised departmental culture, a tarnished international reputation, and in economic terms. The costs will be dealt with in detail in Chapters 7 and 8. Roger Zetter. "International perspectives on refugee assistance" in Ager, Alastair. (ed.) *Refugees: Perspectives on the Experience of Forced Migration*, Continuum: NY, 1999, p.67. Zetter asserts that an agenda of deterrence, control and restriction reflects cynical and implicitly racist attitudes in developed countries, where those nations fear refugees may threaten living standards and ethnic hegemony, and that a quota intake system is a mechanism deployed to demonstrate humanitarian credentials but is, in fact, a method to limit the flow of asylum seekers and refugees.

⁷⁷ In 2002, Howard stated his government was prepared to make pre-emptive strikes in Asian countries where "terrorist cells" may be working to target Australia. This threat caused immediate upset and reaction from leaders in the Philippines, Thailand, Malaysia and Indonesia, who sought to rebuke Australia's provocative attitude. See Thomas J. Haldon. *The Possibility Of Australian Pre-emptive Military Action: Political &*

conditions in Australian detention centres,⁷⁹ damaging reports by humanitarian organisations and activists,⁸⁰ challenges from many reputable members of society,⁸¹ massive financial costs, and a better-informed public, all contributed to a higher profile on the issue and a questioning of government policy for the Howard Coalition. Although Australia had a history of excluding and prohibiting those it did not want, the Howard era was cast by some as outstripping every predecessor government in its policies of exclusion and the demonization of one specific group – asylum seekers.⁸²

11 September 2001

It has been argued that the tragic events of 11 September 2001 changed the world forever.⁸³ The Western world found itself vulnerable to a threat which was impossible to predict or control and a new era of global terrorism was born. Australia aligned itself strongly with the U.S., to the point where Prime Minister John Howard was labelled “deputy sheriff”.⁸⁴ The need for the U.S. to wage war on the enemy meant Australia would be there by its side, “shoulder-to-shoulder”, with its powerful friend. This major world event provided a

Legal Implications, 15 Dec 2002; also AAP, Canberra, *Asia rejects Howard's preemptive strike suggestion*, 2 Dec 2002.

⁷⁸ The wrongful detention of two Australian citizens, in particular, Cornelia Rau and Vivien Alvarez, received considerable media coverage. Both were unable to defend or represent themselves from incarceration. These cases caused a shift in public perception and the debate on detention centres. See *The Advertiser*, “Alvarez to get millions”, Friday, December 1, 2006, p.5; *The Australian*, “Asylum seeker set free”, Friday, August 16, 2002, p.2, which comments on the Federal Court order to release a Palestinian asylum-seeker whose “continued detention” was “unlawful”; *The Australian*, on the wrongful deportation of Vivien Alvarez, Tuesday, June 20, 2006, p.33.

⁷⁹ UNHCR, *Revised Guideline*; The Parliament of the Commonwealth of Australia. *A report on visits to immigration detention centres*, Joint Standing Committee on Foreign Affairs, Defence and Trade, Canberra, June 2001, Printed by CanPrint Communications, Pty Limited, Canberra, Commonwealth of Australia, 2000, pp.32-67

⁸⁰ For example, see Phil Glendinning, Carmel Leavey, Margaret Hetherington & Mary Britt. *Deported To Danger II: The Continuing Study of Australia's Treatment of Rejected Asylum Seekers*, Edmund Rice Centre for Justice & Community Education, September 2006

⁸¹ Robert Birrell. “Immigration Control in Australia”, *ANNALS, AAPSS* 534, 1994, p.111. Birrell states these people include “religious leaders, academics, sections of the ethnic movement, refugee advocates, and, most recently, specialist immigration lawyers”.

⁸² Maley, “Refugees” in Manne, *op. cit.*, p.145

⁸³ M.C. Ricklefs. “Australia and Indonesia” in Manne, Robert. (ed.) *The Howard Years*, Black Ink Agenda: Melbourne, Victoria, 2004, p.280

⁸⁴ David Fickling. Australia seen as ‘America’s deputy sheriff’: Indonesia wary of Howard’s government, *The Guardian*, Friday 10 September 2004; Howard Denies Australia has ‘sheriff’ role”, *The Sydney Morning Herald*, October 17, 2003; Alex Spillius. “Bush entrusts ‘deputy sheriff’ Howard with Pacific policing role”, *The Telegraph*, 15 Aug 2003

pretext for the Howard Coalition to build on the Australian public's fears and anxiety, a strategy which found political leverage in the exploitation of one very small group of people – those arriving unauthorised by boat seeking asylum. The Government aimed to convince the Australian population that only strong leadership and hard-hitting policies could protect the nation and its borders from a new threat of attack, represented by “potential terrorists” arriving unannounced by boat.

John Howard was in Washington on 11 September 2001 when the terrorist attack on the Twin Towers and the Pentagon occurred, with the loss of nearly 3,000 American lives.⁸⁵ Much has been written on the attacks, and for Howard this was a critical time in his political and personal life. He personally witnessed the attacks, and he immediately proclaimed Australia's solidarity with the United States.⁸⁶ Howard declared that the national interests of Australia lay with its powerful friend, the U.S., which would lead the “Western governments” in their fight for world security. In an act of self-defence, the “West” would fight against the terrorist war waged on its freedom by Muslim extremists and Islam.⁸⁷

In the past, the Prime Minister had used the expression that he wanted the Australian people to be “comfortable and relaxed” about their history and themselves,⁸⁸ and did so in

⁸⁵ Kaja Zahfuss. “Forget September 11”, *Third World Quarterly*, Vol.24, No.3, 2008, p.513

⁸⁶ Manne, “The Howard Years: A Political Interpretation”, in Manne, *op. cit.*, pp.39, 46; Ricklefs, *op. cit.*, p.280

⁸⁷ Zahfuss, *op. cit.*, p.515, 520-521. Zahfuss examines the notion of memory and what part recalling images and trauma might play in events such as this. The author highlights that by looking as 11 September only, the origin or roots of the problem are ignored. The preferred US message is that policies developed since 11 September are a result of that day. Any debate is unwelcome on what history and a wider context might reveal, as this may be disrespectful to the dead.

⁸⁸ Brett, “Relaxed and comfortable”, p.30; Manne, “The Howard Years: A Political Interpretation” in Manne, *op. cit.*, p.43

a conscious strategy to offer assurance and confidence to a disillusioned electorate.⁸⁹ From this early position, and with such a spectacular reappearance of global terrorism, he shifted to a new political expression that Australians should be “alert but not alarmed”.⁹⁰ This was a time of international instability, and defined a period of political opportunity. Howard campaigned in the November 2001 election on themes of border protection, security threats and leadership strength.⁹¹ His ability to identify with the Australian population was never stronger or more evident than in times of a national crisis.⁹²

Judicial review was narrowed in the Howard era, and Phillip Ruddock, the Minister for Immigration, had established a reputation as far back as early 1996 for increasing restrictions relating to judicial and administrative review.⁹³ Tension between Minister Ruddock and the judiciary had not gone unnoticed. For example, in one television interview, he stated:

The executive arm of government believes it is appropriate for the government of the day to make decisions in relation to who shall settle permanently in Australia, and it is not incumbent upon the courts,

⁸⁹ Curran, *op. cit.*, p.259. Other leaders have been attributed with this quality in times of crisis. For example, Margaret Thatcher gained voter support for her hard stance on the Falklands War when Argentinian forces invaded in April 1982. This contributed to a resurgence of support resulting in her re-election in 1983.

⁹⁰ *Ibid.*, pp.257, 259. Curran observes: “He who sought to tranquilise the nation into an era of blissful ease has been transmogrified into the great defender of the nation”.

⁹¹ Crock, *Immigration*, p.1. Crock comments that although Australia prides itself on the multicultural nature of the nation, it has always harboured the scourge of xenophobia and racism. Errington, *op. cit.*, pp.312. Errington questions whether the election would have been won by Howard without the *Tampa* incident, concluding that it may have but it was an “ugly victory” when such incidents, including the terrorist attacks of 2001, changed government and electorate relationships in the developed world.

⁹² Ricklefs, *op. cit.*, p.281; Curran, *op. cit.*, p.244;

⁹³ S.H.Legomsky. "Refugees, Administrative Tribunals, and Real Independence: Dangers Ahead for Australia". *Washington University law quarterly (0043-0862)*, 76, 1998, pp.248-249. For example, Ruddock's reaction was swift when decisions by the Refugee Review Tribunal (RRT) on two claims for asylum did not concur with his Department's view, commenting that the RRT delegates “would not be reappointed if they made decisions that went beyond the law”, *Canberra Times*, December 27, 1996, cited in Legomsky, *Ibid.*, p.249. The suggestion they had gone outside the law represented occasions when the RRT may have found “the applicant's interpretation of the law more convincing than the Department's”. Legomsky, (p.249-250), asserts that if a losing party happens to be the authority with the power to determine if a person retains their job or not, then the adjudicators will likely be aware they may not retain their job. The message is that, if they decide against the preferred outcome of the Department, the possibility that they may lose their job will undoubtedly influence the manner in which such adjudicators approach these cases. The tendency was for RRT members to worry about the security of their job should the RRT rule against the Department. Legomsky goes on to note that, though reasons cannot be substantiated, in 1997, of 35 members whose terms on the RRT expired but who reapplied, 16 were not renewed.

by creative law-making to take that power away from the Parliament. And this has gone on for some time.⁹⁴

His “lack of faith in the judiciary”⁹⁵ had been made evident when he publicly criticised certain judges for wrongly reconsidering some applicants’ cases, and finding loopholes where possible “to deliberately undermine the government’s refugee policies.”⁹⁶ The situation was clearly a struggle between the executive, which on the one hand aimed at strictly controlling immigration, and the judiciary on the other hand, with a mandate of upholding human rights.⁹⁷ Ruddock was to defend his approach on more than one occasion, asserting there were essential broad core values which underpinned a sound immigration policy.⁹⁸

The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, introduced into the House of Representatives 11 May 2006, and retrospective from 13 April 2006, was specifically aimed at boat arrivals, regardless of whether they reached the Australian mainland, and regardless of their nationality.⁹⁹ It would:

... mean that all persons arriving at mainland Australia unlawfully by sea (even those airlifted to Australia at the end of a sea journey) on or after 13 April 2006 will now be treated as if they had landed in an excised place.

The regime nominating places as excised offshore places is not replaced but extended by this bill by means of changing the definition of *offshore entry person* to *designated unauthorised arrivals*.

⁹⁴ ABC, *7.30 Report*, 8 December 1998 (cited in Stratton, Jane & Siobhan McCann. Staring into the abyss : confronting the absence of decency in Australian refugee law and policy development, *Mots Pluriels*, No.21, May 2002

⁹⁵ Andrew N. Langham. “The Erosion of Refugee Rights in Australia: Two Proposed Amendments to the Migration Act, *Pacific Rim Law and Policy Journal*, 1999, pp.651-679

⁹⁶ Lorna Knowles. *Ruddock Hits back at Sir Anthony Mason*, AAP Newsfeed, December 11, 1998, cited in Langham, *op. cit.*, p.660

⁹⁷ *Ibid.*, p.660

⁹⁸ Ruddock, “The Immigration Policies”. Ruddock claimed there were a number of these core values. Briefly they are non-discrimination, reunion, national economic interest, burden-sharing and resettlement, and capacity to be effective. See also Ruddock, “*Refugee Claims*”, p.1. Ruddock stated that four main objectives serve to influence Australia’s refugee determination system, namely, “compliance with international obligations; administrative justice for the individual; practical, efficient and lawful administration; and the public accountability of government. These objectives are also set within the broader context of international obligations and determined by “the administrative or judicial processes of individual nation states”.

⁹⁹ Senator Amanda Vanstone, ‘Strengthened border control measures for unauthorised boat arrivals’, *Media Release*, 13 April 2006.

The Bill will 'effectively eliminate the distinction between unauthorised boat arrivals at an excised offshore place and those who reach the mainland'.¹⁰⁰

The political landscape was changing in relation to asylum seekers, and the tide appeared to be turning slightly in their favour. This Bill was condemned by major humanitarian organisations, such as Amnesty International Australia, which argued that the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* "punishes genuine asylum seekers and potentially places Australia in breach of its international legal obligations".¹⁰¹ In essence, "the most radical and inhumane changes to the Migration Act in our history" sought to expand the area previously exercised in the so-called "Pacific solution" to include the entire Australian coastline.¹⁰²

On Monday 14 August, 2006, it was reported that the Prime Minister had withdrawn the Government's Migration Bill as he faced "certain defeat in the Senate", and that "the arithmetic was clear and he simply didn't have the numbers to get the legislation through the upper house".¹⁰³ The withdrawal of the bill was seen as a political defeat for Howard, with some concluding he had "misjudged the political mood" when advancing the legislation. Its dumping was seen as a "triumph for the lawyers, non-government organisations and human right lobby".¹⁰⁴

¹⁰⁰ *The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*; Senator Amanda Vanstone, 'Minister seeks to strengthen border measures', *media release*, 11 May 2006

¹⁰¹ Amnesty International Australia, *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, 23 May 2006

¹⁰² Natasha Stott Despoja. "Talk: Turning our backs on the vulnerable", *The Advertiser*, Monday June 19, 2006, p.20; Laura Anderson. "Immigration tussle goes on", *The Advertiser*, Monday June 19, 2006, p.19;

¹⁰³ ABC local radio, Radio National, Gillian Bradford, transcript: *Howard Dumps Migration Bill*, Monday, 14 August 2006; *The Sydney Morning Herald*, Phillip Coorey. "PM dumps new asylum law", August 14, 2006

¹⁰⁴ This bill was seen as the Australian Government pandering to the Indonesians, and was proposed at a time of diplomatic rift between Canberra and Jakarta. The rift was over the fate of 43 Papuan asylum seekers. See Cath Hart and Steve Lewis, "Rebels to force PM's hand", *The Australian*, Thursday August 10, 2006, p.1, 4. This article claims Liberal moderates were concerned the policy [was] designed to appease Indonesia rather than to enhance Australia's immigration regime". See also "Dangerous Waters: Australian sovereignty is damaged by the migration bill", *The Australian*, Thursday August 10, 2006, p.11; Mike Steketee. "Party History goes overboard", *The Australian*, Opinion, Thursday August 10, 2006, p.10; "Images of Australia's

In 2007, the Howard Coalition introduced another new initiative, again in a strategy of deterrence. The Government agreed to a Mutual Assistance Arrangement with the U.S. “to provide mutual assistance for the resettlement of people in need of international protection”.¹⁰⁵ This agreement was essentially a swap of one group of asylum seekers for another. The intention was to have the U.S. resettle those in Australia’s offshore detention centres. In return, Australia would accept people intercepted by the U.S. in its territorial waters, and held at Guantanamo Bay, Cuba.¹⁰⁶ The agreement was cleverly crafted to ensure international obligations were met, with the integrity of the international system of protection upheld. According to the Minister, this would ensure “the integrity of Australia’s borders”, provide “protection to those who need it”, and send a “strong deterrence message to people smugglers”.¹⁰⁷

Events such as those outlined above came with consequences under the Howard government and led to the development of a two-tiered system for asylum seekers in Australia – those labelled as “undeserving”¹⁰⁸ and those assumed to be “good” by waiting patiently in refugee camps.¹⁰⁹ The following chapter explores the different groups within the two-tiered system, and compares and contrasts the different treatment each receives.

colonial past”, *The Australian*, Monday August 14, 2006, p.1; Samantha Maiden. “PM faces defeat on asylum”, *The Australian*, Monday August 14, 2006, p.1; Mark Kenny. “Defeat for PM as Lib revolt kills asylum Bill”, *The Advertiser*, Tuesday August 15, 2006., p.8; “What the refugee bill's defeat means”, August 16, 2006; *Radio Kate*, “Migration Bill”, August 14, 2006, states: “Everything about this Bill was wrong . . . The Prime Minister has made a habit of appealing to the worst human instincts and the withdrawal of the Bill is a sign that even some on his own party members are no longer willing to stomach his callous approach to vulnerable people in need”;

¹⁰⁵ Kevin Andrews (former Minister for Immigration and Citizenship). *War Crimes MOU and Asylum Agreement Signed*, media release, 17 April 2007

¹⁰⁶ Azadeh Dastyari. “Trading in refugees”, *Online opinion*, 28 May 2007, p.1

¹⁰⁷ Andrews, *War crimes MOU*, *op. cit.*

¹⁰⁸ McMaster, *Asylum-seekers*, pp.188, 190-1; Hinsliff, *op. cit.*, The University of Adelaide, September 2006, p.255

¹⁰⁹ Adrienne Millbank. “Boat People, Illegal Migration and Asylum Seekers; in Perspective, *Current Issues Brief 13*, 1999-2000, Parliamentary Library, p.5/7.

CHAPTER 5: DIFFERENT GROUPS, DIFFERENT TREATMENT

For asylum seekers and refugees, being defined in Australia as a member of a particular group often attracted serious consequences. According to their assigned category, different treatment was meted out. Public confusion, misunderstanding and attitudes have facilitated the construction and perpetuation of these different groups and the political decisions which have impacted upon their treatment.

The matter is highly complex, controversial and emotional. There have been (and still are) misunderstandings about the difference between refugees and humanitarian entrants, Australia's humanitarian responses, the plethora of visa categories, and difficulties with the Migration Act, including its numerous amendments. There has also been a lack of awareness about what Australia's international obligations are as a signatory to the *Convention*, if indeed the public is aware of the arrangement.¹ Poor recognition by the public of the international legal dimension has reflected people's ignorance of the issue.²

The population at large has been confused as to what constituted Australia's onshore component, and the offshore component, with its involvement and reference system through the UNHCR.³ There has been further uncertainty about the migration zone and the "offshore" processing of asylum seekers who reached the excised territory of Christmas Island. To complicate the matter even more, those who did reach Christmas Island were counted as onshore asylum seekers, while those previously sent to Nauru or Manus Island (as part of the so-called "Pacific Solution") were counted as offshore asylum seekers

¹ Karlsen, et al., *op. cit.*, p.1

² Crock, *Immigration*, p.163

³ Karlsen, et al., *op. cit.*, p.1

processed extraterritorially.⁴ In these circumstances, it is understandable that doubt and confusion were linked to the issue. Due to the high level of community misunderstanding, the very “notion that any unvisaed non-citizen should have a right – however qualified – to be admitted and to be offered the protection of residence is both confronting and difficult to accept for many Australians”.⁵

Consequently, in a desire to maintain control, immense political effort was put into preventing persons from entering the country and in eroding their rights.⁶ This was enforced through the introduction of numerous acts of legislation to deter and penalise. During parliament in September 2001, Senator Meg Lees outlined a number of steps the government had taken to that point in time “to protect our borders”, stating that “an enormous range of provisions already ... makes it extremely difficult for people to even get here”.⁷ The Senator referred to a chronology of events to outline specific measures which had restricted asylum seekers’ rights and opportunities.⁸ (See Appendix A – Chronology of government legislation on asylum seekers.)

Identifying different groups

The UNHCR states that the total world’s “people of concern”⁹ under its responsibility was, at the end of 2009, a total of 36.5 million.¹⁰ As noted previously, Australia has assumed

⁴ *Ibid.*, p.2

⁵ Crock, *Immigration*, p.163; Karlsen, et al., *op. cit.*, p.1

⁶ Crock, *Immigration*, p.125. Crock asserts that the “prevailing feature of different categories of refugee and humanitarian visas is the extent of the government’s control over the selection and admission of applicants”. For example, when the quota in a particular category was fully met, the Minister could ensure visas were no longer issued. In addition, national priorities could dictate sudden changes or adjustments in the entry criteria, and there was little recourse for those whose visa ruling was rejected.

⁷ Migration Amendment (Excision From Migration Zone) Bill 2001, Second Reading, *Hansard*, Tuesday, 25 September 2001, p.27816

⁸ C. Graydon. “A Decade of Dismay: Good Bye to Refugee Protection”, *Human Rights Defender*, Issue 9, No.1, 2000, pp.17-25; Migration Bill, *Second Reading*, Senator Meg Lees, p.27816

⁹ The UNHCR defines people of concern as “refugees, asylum-seekers, returned refugees, the internally displaced and stateless people”.

¹⁰ UNHCR, Trends in Displacement, Protection and Solutions, *UNHCR Statistical Yearbook*, 2009. Refer Appendices for global figures.

clear obligations towards those who meet the UNHCR definition of a “refugee”, including the provision that these people cannot be returned to a country where they may suffer persecution, or where they may fear for their life.¹¹ Australia’s permanent immigration programme comprises two components,¹² the non-humanitarian migration component (to contribute to the labour force and population growth)¹³ and the humanitarian component (to cater for refugees and those in humanitarian need). An annual humanitarian intake of approximately 12,000 is accepted under a national quota,¹⁴ which has remained consistent for a number of years. The following table provides details.

TABLE 1: Australian statistics

Number of humanitarian visas granted, by category, in Australia for 1996-97 to 2006 – 2007

NB: Minister for Immigration and Citizenship Senator Chris Evans announced on August 15, 2008 that 13,014 humanitarian visas had been granted from 2007 - 2008.

Category	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07
Refugee	3,330	4,010	3,990	3,800	4,000	4,160	4,376	4,134	5,511	6,022	6,003
Special Humanitarian Program (SHP)	2,580	4,640	4,350	3,050	3,120	4,260	7,280	8,927	6,755	6,836	5,275
Special Assistance Category (SAC)	3,730	1,820	1,190	650	880	40	0	0	0	0	0
Onshore Humanitarian	0	0	0	0	160	10	3	2	17	14	38
Onshore Refugees	2,250	1,590	1,830	2,460	5,580	3,890	866	788	895	1,272	1,701
Total	11,890	12,060	11,360	9,960	13,740	12,360	12,525	13,851	13,178	14,144	13,017

Source: Adapted from data provided by Refugee Council of Australia, *Australian Statistics*, 2008¹⁵

The Australian Humanitarian Program is enshrined in law under the Migration Act and Migration Regulations. It provides permanent and temporary visas for refugees and humanitarian entrants who come to Australia as offshore or onshore entrants.¹⁶ The

¹¹ The principle of *refoulement* has been discussed in Chapter 2

¹² Refugee Council of Australia, *Current Issues – Refugee Settlement*, 2008

¹³ (The Hon) M.J.R. MacKellar, Issues in Immigration. Selected 1979 speeches by the Hon. M.J.R. MacKellar, M.P., Minister for Immigration and Ethnic Affairs, 1975-1979, Commonwealth of Australia, Australian Government Publishing Service: Canberra, 1980, p.3. On Immigration, MacKellar states: “As far as possible then, our policy is geared to meet requirements of the labour market”.

¹⁴ McMaster, *Asylum seekers*, p.45. As noted earlier in this thesis, this figure was set after World War II through a guiding rule of taking around one per cent of the nation’s population juxtaposed with a natural one per cent population increase.

¹⁵ See also Appendix H – UNHCR persons of concern

¹⁶ See Department of Immigration Annual Reports, Section: Visas, Immigration and Refugees, Refugee and Humanitarian

Migration Act 1958 - Sections 91 R (“Persecution”), and Section 91 S (“Membership of a particular social group”), incorporate the requirements of the *Refugee Convention*, Article 1A(2), which defines a refugee and sets the terms by which Australia determines a person’s eligibility to receive protection. As a signatory to this *Convention*, Australia has an international binding obligation to accept any individual, irrespective of the manner in which they arrive, to ensure their human right to claim refuge is available, and to guarantee no instance of “*refoulement*” occurs.¹⁷ In theory, from the moment their determination process verifies that they meet the definition of a refugee, they are entitled to protection.¹⁸

Different groups are represented within the Australian humanitarian program, reflecting the various situations and experiences of applicants. The range of visa classes signifies the need to identify and understand unique conditions people suffer, in order to enhance their chances of resettlement in Australia.¹⁹ For the purpose of this discussion, it is necessary to differentiate between groups to better assess the impact relevant strategies and initiatives may have had. These groups are:

1. The offshore refugee
2. The onshore categories
 - temporary resident
 - unauthorised boat arrival (irregular maritime arrival)
 - unauthorised air arrival
 - visa overstayers

Group 1 – the offshore refugee

The offshore intake is part of a formal, approved administrative system; one which was publicly and explicitly preferred by John Howard. The program has worked consistently well for years, with the majority of people from overseas being successfully resettled on

¹⁷ Refugee Council of Australia. *Boat arrivals*, p.1/3. Countries signing the *Convention* agree to the principle of *non-refoulement*, i.e., ensuring a person is not returned to a country where they may fear for their life.

¹⁸ Crock, *Immigration*, p.127

¹⁹ Crock, *Immigration*, p.178

refugee or humanitarian grounds.²⁰ The program has enabled Australia to build an international reputation of being a caring and generous nation.²¹ Under the quota system to which Australia agreed, refugee applicants are required to register through their local UNHCR representative in the country of first refuge. Applications for Australia are assessed under the requirements set out in the *Convention and Protocol*. The process may be lengthy and, considering the extremely high number of refugees involved, chances of success are limited. It has been stated that, with “only around 80,000 places allocated each year for resettlement, if all of the world’s refugees were to join a queue, the wait would be 192 years”.²²

Australia’s offshore resettlement component is the largest of its Humanitarian Program. “Offshore refugees” were covered (during the Howard era) under three main categories of refugee, special humanitarian and special assistance,²³ comprising two categories of permanent visa and two temporary visas. The offshore refugee program consists of the following:

(a) Refugee category. This includes visa subclasses 200 (Refugee), 201 (In-Country Special Humanitarian), 203 (Emergency Rescue) and 204 (Women At Risk). Refugees are people outside their country of nationality, who are subject to persecution in their home country and have been identified in conjunction with the United Nations High Commissioner for Refugees as in need of resettlement;

(b) Special Humanitarian Program (SHP) category. This includes visa subclasses 202 (Global Special Humanitarian). SHP entrants are people outside their home country who have suffered substantial discrimination amounting to gross violation of their human rights and who have been proposed by an Australian citizen, resident or community group in Australia;

²⁰ The focus on which groups receives priority may fluctuate over time according to global situations. For example, the Department of Immigration and Citizenship Annual Reports 2001-02 and 02-03 state respectively that “regional priority was given to people from Africa, the Balkans, the Middle East and South West Asia regions as recommended by the UNHCR” and “priority was given to resettlement of people from Africa, the Middle East and South West Asia”. In 2007-8, this pattern was again similar, comprising Africa, Middle East and South West Asia, and Asia and the Pacific.

²¹ Crock, *Immigration*, p.124

²² Asylum Seeker Resource Centre (ARSC), *Asylum Seekers and refugees: myths, facts and solutions*, October 2011

²³ Australian Government. Department of Immigration and Citizenship, *Refugee and Humanitarian Issues, Australia’s Response*, June 2009, p.23 states that in 1995-96, SACs provided visas to 6910 people and more than half of the Humanitarian Program comprised either SAC or onshore protection grants. Following a review of the SAC program in 1996 all SACs were gradually brought to a close by the end of 2001.

(c) Special Assistance category (SAC). This visa category was discontinued after the 2001-02 program year. This category was for people who, while not meeting the refugee or special humanitarian criteria, were nonetheless in situations of discrimination, displacement or hardship. SAC proposers were required to enter into a written undertaking to provide assistance to the applicant and his or her dependants for at least six months after arrival.²⁴

As the above makes clear, the refugee category concentrates on individuals who are overseas and outside their countries of origin who would, if returned, suffer persecution. Most of these people are identified by the UNHCR as suffering persecution in their home country, and Australia is notified of a pool of refugees. Australia then carries out a “selection” process of suitable refugees from the UNHCR pool. Australia, as a sovereign nation, is not bound by the *Convention* on who it offers protection to and, as Mary Crock observes, this sovereign right is exercised by Australia to be “free to offer protection to whoever it chooses, irrespective of their international legal status as refugees”.²⁵

Permanent protection visa recipients in the offshore category, whose Australian assessment is successful, are brought to Australia at the expense of the government and a resettlement program is put in place, such as the Integrated Humanitarian Settlement Strategy. This program is long-term and delivers intensive settlement support to new humanitarian arrivals. Assistance is available to the newcomers, for example, for accommodation, referrals, English tuition, and counselling for past experiences with trauma and torture. In the later stage of settlement, ongoing assistance can be accessed through migrant resource agencies, organisations and centre services in the Settlement Grants Program.²⁶

²⁴ RCOA, *op. cit.*; *Country Chapter AUL: op. cit.*, p.1; Crock, *Immigration*, pp.124-125. The final category was introduced in 1991-92 and included sub-programs. The government initiative to address the imbalance of the male-female gender intake was enlarged at one point to ensure quotas were met.

²⁵ Crock, *Immigration*, p.123; Karlsen, et al., *op. cit.*, p.9, states that the UNHCR can only recommend or refer people for resettlement, whether or not they meet the definition of a refugee, with the ultimate decision to grant a visa resting with participating states.

²⁶ Australian Government, Department of Immigration and Citizenship, *Fact Sheet 66 – Humanitarian Settlement Services*, 2009

The Temporary Offshore category refers to those who have abandoned another country which had been providing protection, and who qualify for humanitarian entry into Australia. Two sub-categories exist: secondary movement relocation and secondary movement offshore entry. Firstly, those who have come from a safe first country of asylum and then a second, before lodging an application with Australia, receive a five year visa (visa subclass 451). Secondly, those who arrive unlawfully in Australia at an offshore excised place (for example, Christmas Island)²⁷ having moved from a safe first country, are granted a three year visa (Visa Subclass 447).²⁸

Group 2 – the onshore groups

For a nation which has a history of tightly controlling its immigration program, the arrival of unplanned asylum seekers challenges the control regime and its ability to select entrants. As Christine Stevens observes, “Asylum seekers are a self-selected, demand-driven group, whose numbers, country of origin, ethnic background, and social and demographic characteristics cannot be determined in advance of their arrival”.²⁹ The government spends considerable time and effort developing strategies to limit or prevent the arrival of these people, while at the same time continuing to plan and maintain a systematic intake.³⁰ For onshore asylum seekers, a determination process is required to assess the legitimacy of refugee claims, as defined by the *Convention*. The onshore resettlement program consists of:

Onshore Humanitarian category which includes people granted permanent resident status on humanitarian grounds or granted Temporary Humanitarian.³¹

²⁷ Leach, et al., *op. cit.*, pp.56-57

²⁸ Country Chapter AUL: *op. cit.*, pp.1-2. The Rudd Labor Government, upon taking office in late 2007, revised this policy.

²⁹ Christine A. Stevens. “Asylum seeking in Australia”, *International Migration Review* 3, 2002, p.864

³⁰ Crock, *Immigration*, p.123

³¹ RCOA, *Australian Statistics*

The onshore group can be seen as falling into the three main categories; temporary residents already in Australia and subsequently seeking protection, unauthorised boat arrivals, and unauthorised air arrivals. A fourth group, visa overstayers, is an important element of this discussion, although very few of these people apply for refugee status.³²

The Government provides figures on the number of applications for protection sought through the onshore component of the Humanitarian Program. In 2003-2004, the top protection visa applications by citizenship show that the main countries were the PRC, India, Malaysia, Indonesia, Iraq, Fiji, the Republic of Korea, Sri Lanka, Bangladesh and Vietnam.³³ Due to changing global situations and various conflicts, there have been fluctuations in applications by citizenship countries over time. However, the pattern remains relatively similar. For example, in 2007-2008, the ten top ten nationalities which lodged protection visa applications were the PRC, Sri Lanka, Malaysia, Indonesia, Iraq, India, Pakistan, Zimbabwe, Iran and South Korea.³⁴

- *Temporary residents*

“Onshore refugees”, as the term indicates, are those who are already in Australia on temporary visas, for example, for study purposes, and then claim protection. The Government states:

The majority of asylum seekers are people who have arrived in Australia on a valid visa and subsequently apply for protection. Most of these applicants receive a bridging visa upon lodging their application, which allows them to remain lawfully in the community until the application is finalised. Many bridging visas provide the applicant with work rights in Australia and access to Medicare benefits.³⁵

There is a limited period for applications, but “[p]rovided that they apply for refugee status within forty-five days of arrival, such ‘lawful’ asylum seekers can also obtain a

³² *Ibid.*; Betts, “Immigration Policy”, p.185

³³ Population Flows: Immigration Aspects 2003-04 Edition, p.34

³⁴ Australian Government. Department of Immigration and Citizenship, *Refugee and Humanitarian Issues, Australia’s Response*, June 2009, Chapter 3, p.27

³⁵ *Refugee and Humanitarian Issues, Ibid.*, p.32

work permit”.³⁶ There is a clear distinction between those who hold a temporary visa and then fear for their safety if they return to their home country and apply to stay in Australia, and those who arrive without valid documentation and apply for protection. The following table provides details of temporary migrants, 1997-2001:

TABLE 2: Stock of temporary migrants³⁷

Stock of temporary migrants, June 1997 and June 2001

	30 June 1997	30 June 2001	30 June 1997	30 June 2001
			%	%
Visitors	184,776	201,700	46.5	36.4
Students	107,055	138,200	27.0	24.9
Working holiday makers	34,541	46,600	8.7	8.4
Business visitors	15,724	12,600	4.0	2.3
Long-stay business migrants	9,462	56,000	2.4	10.1
Bridging visas	31,440	62,300	7.9	11.2
Other	14,128	36,900	3.6	6.7
Total	397,126	554,200	100.0	100.0

Sources: Data for 1997 are supplied by the Immigration Department (bridging-visa data for 1997 taken from DIMA, 1999:36), data for 2001 are derived from DIMIA (2002: 53).

Source: Betts, Katharine. “Immigration Policy under the Howard Government”, *Australian Journal of Social Issues*, Vol.38, No.2, 2 May 2003, p.180

As noted in Chapter 3, in 1989 Prime Minister Bob Hawke offered Permanent Protection Visas (PPVs) to many Chinese students who were in Australia when the Tiananmen Square massacre occurred. Some suggest that this type of event is the only time a claim for permanent protection is conceivable; that is, when a student or visitor lawfully arrives with a *bone fide* purpose, with absolutely no intention of claiming asylum, but the situation changes in their country of citizenship during the period of the

³⁶ Mares, *op. cit.*, p.5

³⁷ The Australian government refers to the total of overstayers as “stock of overstayers”. For example, see ABS, *1301.0 – Year Book Australia, 2002*, “Overstayers”, and ABS, *1301.0 – Year Book Australia, 2004*, “Overstayers”

person's stay in Australia.³⁸ Should the applicant be forced to return to their home country, this may result in "refoulement".

- *Unauthorised boat arrivals (irregular maritime arrivals)*

The onshore asylum seeker may arrive by boat without valid documentation and subsequently apply for protection. Most asylum seekers arriving by boat come with the purpose of claiming refugee status.³⁹ However, historically boat arrivals do not represent the highest proportion of asylum applicants, with most arriving by air.⁴⁰ The Department of Immigration and Citizenship notes:

The overwhelming majority of around 4000 people who seek Australia's protection each year arrive lawfully by commercial aircraft. Asylum seekers arriving by boat in an unauthorised manner constitute a very small proportion of the total and have their claims considered on Christmas Island.⁴¹

Many consider that compared to the major flows of 'unauthorised' arrivals in other parts of the world over the last few decades, Australia deals with a very small proportion.⁴² The majority of boat arrival applicants are successful in their claims and are eventually recognised as refugees,⁴³ yet this small group persists in receiving the

³⁸ Frank Brennan. *Tampering with Asylum: A Universal Humanitarian Problem*, St Lucia: University of Queensland Press, 2003, p.209

³⁹ Millbank, "Boat People", p.3/7

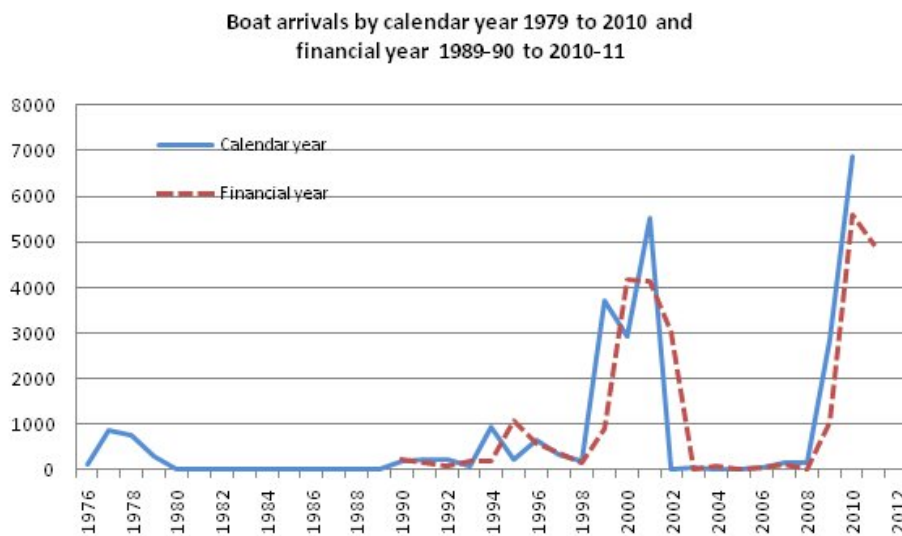
⁴⁰ Janet Phillips. *Asylum seekers and refugees: what are the facts?*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 22 July 2011, pp.3-4. For example, in 2001-2, 1,193 people were refused entry at Australia's airports, 2002-3, 937 and 2003-4, 1,241 – Australian Human Rights Commission, *2008 Face the Facts*, Paragon Printers Australasia, October 2008

⁴¹ Australian Department of Immigration and Citizenship. *Refugee and Humanitarian Issues: Australia's Response*, 2008, pp.27-28,

⁴² Phillips, et al. *Boat arrivals*, p.3; McMaster, *Asylum seekers*, pp.125-126; Khalid Koser. "Responding to Boat Arrivals in Australia: Time for a Reality Check", *Lowy Institute for International Policy*, December 2010, pp.4-6; ABC, 7.30 Report, *Britain's fight with asylum seekers*, 10 September 2001. This report states Britain was expecting around 100,000 asylum seekers in the coming year. See also Millbank, *op. cit.*, p.12/17, who states that the U.S. had 41,377 applications lodged in 1999 and that the UK had, in 2000, become the top European destination of asylum seekers with an estimated 97,900 applications. See Fiona H. McKay, Samantha L. Thomas & R. Warwick Blood. " 'Any one of these boat people could be a terrorist for all we know!' Media representations and public perceptions of 'boat people' arrivals in Australia", *Journalism*, Vol.12, No.5, July 2011, p.608

⁴³ Brennan, *Tampering with Asylum*, p.208; Australian Bureau of Statistics (ABS), 1301.0 – *Year Book Australia, 2004*, "Unauthorised arrivals and overstayers in Australia (Feature Article)", states that, for 2001-02, "Most recent unauthorised arrivals by sea were Chinese, Turkish, Iraqi, Pakistani, Sri Lankan, Afghan or Bangladeshi. This contrasts with earlier arrivals by boat, who were mainly Chinese, Vietnamese and Cambodian." Ethnicity is used for to determine citizenship for unauthorised entrants arriving by boat. This can be different for unauthorised air arrivals.

greater part of the nation's public and political attention.⁴⁴ Unauthorised boat arrival asylum seekers were relatively small in volume in the years 1989 to 1994 (approx. 696 people) leading up to the Howard era, with a sharp increase occurring 1994-95 (approx.1089) and another major peak during the Howard period, from 1997-2002 (approx.13,039). The following graph depicts the flow of unauthorised boat arrivals 1979-2010 by calendar year and 1989-2011 by financial year.



Source: Phillips, Janet. *Asylum seekers and refugees: what are the facts?*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 22 July 2011

According to available data, the number of people arriving on Australia's shores as unauthorised boat arrivals during the Howard era totalled 13,663.⁴⁵ (Appendix B(a) – Boat arrivals since 1976 by calendar year and financial year provides further details.) While there is no doubt Australia's international obligations are clear and binding in relation to these people, they are unplanned, self-selected and relatively unwelcome.⁴⁶ They have been particularly impacted by specific policy shifts, the target of deterrence and penalisation, and restrictions on freedom and equality. Uncertainty and

⁴⁴ Phillips, *Asylum seekers*, p.4/15

⁴⁵ Phillips, et al., *op. cit.* Figure adapted from available data.

⁴⁶ Crock, *Immigration*, p.9; Stevens, *op. cit.*, p.864

controversy have surrounded the manner in which Australia has carried out some of its responsibilities in relation to this group.

- *Unauthorised air arrivals*

This group of asylum seekers manages to reach mainland Australia by air without prior authorisation. Overall, the number of unauthorised air arrivals has been greater than those arriving unauthorised by boat.⁴⁷ Upon arrival at the Australian airport, a person without the necessary or valid documentation is interviewed. They must give a clear indication that they believe they would be subject to persecution in their country of origin, should they return. They must also state that they wish to seek protection in Australia as a UNHCR *Convention* refugee. They may be granted a substantive or bridging visa, otherwise a prompt turnaround is arranged and they are returned from whence they came on the first available flight.⁴⁸ The illegal entrant is returned by the air carrier which brought him or her to the port of last embarkation. Where the air carrier is unknown, the government arranges a flight.

The issue of unauthorised air arrivals has been influenced by a number of factors in recent times. For example, greater sophistication in the organisation of illegal people movements, the high quality of forged documents,⁴⁹ and vast numbers of air travellers in Australia, combined with a limit to immigration and customs resources, all lend

⁴⁷ Betts, "Immigration Policy", *op. cit.*, p.183;

⁴⁸ Mares, *op. cit.*, p.6; Millbank, *op. cit.*, p.4/7; Commonwealth of Australia. "*Protecting the Border: Immigration Compliance*", Department of Immigration and Multicultural Affairs, Canberra, 2000, p.37

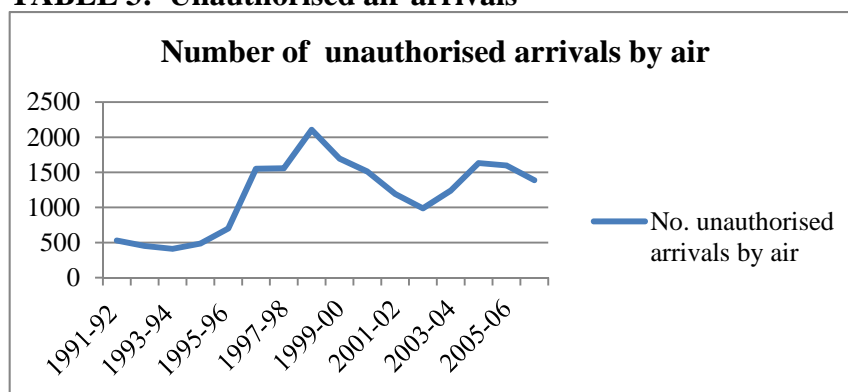
⁴⁹ Department of Immigration Annual Report 2004-05, 1.3.2 Prevent Unlawful Entry, states that the Airline Liaison Officer (ALO) Network conducts "document screening of *many* Australia-bound passengers at *key* international gateways" (bold and italics added). 'Many' does not mean 'all', and 'key' does not mean 'every' international gateway, therein presenting the possibility for illegal entry. In 2004-05, the department states 1,632 people were refused immigration clearance at airports, and that 207 persons attempted to travel to and enter Australia on forged or fraudulent documentation.

weight to the supposition that *many more than detected may be entering the country illegally*.⁵⁰ One government document states:

As many unauthorised entrants have no travel documents on arrival in Australia, the citizenship of these entrants is sometimes difficult to determine. The origin country of the arrivals by air is used when citizenship is not available, while ethnicity is used for unauthorised entrants arriving by boat.⁵¹

During the Howard era, the top ten countries or territories of citizenship for unauthorised air arrivals which were refused entry into Australia were (with some annual fluctuations) Malaysia, Iraq, South Korea, New Zealand, India, Philippines, UK, PRC, Thailand and Indonesia.⁵² The following depicts the flow of unauthorised air arrivals from 1991-2006 (see also Appendix C – Unauthorised Arrivals to Australia by Air, 1989-2007).

TABLE 3: Unauthorised air arrivals



Source: Adapted from data provided by Phillips and Spinks⁵³

⁵⁰ Millbank, *op. cit.*, p.4/7 (italics added.) Department of Immigration Multiculturalism and Indigenous Affairs provides statistics on the volume of air traffic in Australia. For example, in 2002-03, the number of passenger arrivals/departures was 17,759,000. In 2004-05, (Part 2, Outcome 1) this number was 17.7 million.

⁵¹ ABS, *1301.0 – Year Book Australia 2004*, “Unauthorised arrivals and overstayers in Australia”, states that in “2001-02, 13% of unauthorised entrants arriving in Australia by air originated in Malaysia, 11% originated in New Zealand, 8% originated in the Republic of (South) Korea and 8% originated in China. ... Most recent unauthorised arrivals by sea were Chinese, Turkish, Iraqi, Pakistani, Sri Lankan, Afghan or Bangladeshi. This contrasts with earlier arrivals by boat, who were mainly Chinese, Vietnamese and Cambodian.” These air arrival statistics denote the origin country of arrivals by air where citizenship has not been established, thereby reflecting different results when criteria involves country of citizenship.

⁵² *Protecting the Border*, p.35. ABS, *1301.0 – Year Book Australia, 2002*, states that in 1999-2000, the source countries of unauthorised air arrivals were, in descending order, Iraq, South Korea, New Zealand, Thailand, PRC, Indonesia, Sri Lanka, Somalia, Algeria and Kuwait. ABS, *1301.0 – Year Book, Australia, 2004*, states that in 2001-02, the source countries of unauthorised air arrivals were, in descending order, China (excl. SARs & Taiwan Prov.), India, Indonesia, Japan, Malaysia, New Zealand, Korea, Republic of (South), Thailand, U.S.A., and UK.

⁵³ RCOA, *Facts and Stats, Australian Statistics*; Phillips, *Asylum seekers*

Under the Migration Act, people in Australia who have arrived in an unauthorised fashion by air, and for whom a decision is pending, are placed in detention until their status is determined.⁵⁴ According to available data, the number of unauthorised air arrivals during the Howard era totalled 16,460.⁵⁵ The annual rate of these arrivals was greater in number and more consistent than unauthorised boat people, with over one thousand each year 1996-2007. While the total is in excess of unauthorised boat people in the same period, and this group is also unplanned and self-selected, there is a different public perception in relation to these unlawful non-citizens.⁵⁶ Appendix D – Overstayers and unauthorised arrivals, 1997-2008, provides further details of air arrival figures from 1991-2007.

- *Visa overstayers*

A person becomes an unlawful non-citizen if he or she overstays the expiry of their visa. They are not unlawful if they have been issued with a replacement authority.⁵⁷ The majority of visa overstayers have arrived on a visitor's visa, while some without a visa at all or without a valid visa may evade the point of entry controls set up in Australia.⁵⁸ A person may also become an unlawful non-citizen if their visa is cancelled for some reason, usually due to conduct unbecoming.

Most overstayers do not apply for protection as a refugee. However, should they do so, they may be dealt with a number of ways, such as being granted a bridging visa while

⁵⁴ *Protecting the Border, op. cit.*, p.37

⁵⁵ Phillips, et al., *Boat arrivals*. Refer also Appendix C – Unauthorised Arrivals to Australia by Air, 1989-2007

⁵⁶ Christine Inglis, Anthony Birch & Geoffrey Sherington. "An overview of Australian and Canadian Migration Patterns and Policies" in Adelman, Howard, Allan Borowski, Meyer Burstein and Lois Foster. (eds) *Immigration and Refugee Policy: Australia and Canada Compared*, Volume I, Carlton, Vic.: Melbourne University Press, 1994, p.23

⁵⁷ *Protecting the Border, op. cit.*, pp.55-59; Crock, *Immigration*, p.179

⁵⁸ *Ibid.*, p.178. See also York, *Extended version*, p.ii. York notes that illegal immigrants are "persons who enter or remain in Australia without a valid visa or travel authority. The most common form of illegal immigration is visa over-staying."

their claim is being assessed, and released into the community, or they may be removed from Australia.⁵⁹ The Refugee Council of Australia provides the following:

An overstayer is a non-citizen (of Australia) who remains in Australia after the expiry of their temporary visa. The largest groups of overstayers are from the UK and USA. Most came as tourists or on working holiday visas. ... [A] very small proportion of overstayers apply for refugee status.⁶⁰

As well as the United Kingdom (UK) and the United States of America (USA), three other countries rate highly as main countries of citizenship: the Philippines, the People's Republic of China (PRC), and Indonesia.⁶¹

TABLE 4: Overstayers by Top 5 Countries of Citizenship⁶²

At December 1997-1998			At December 1999			At June 2000		
Country	No.	% of total	Country	No.	% of total	Country	No.	% of total
UK	5586	11.8	UK	5561	10.5	UK	5931	10.1
USA	4757	9.9	USA	4557	8.6	USA	4759	8.1
Indonesia	3497	6.8	Philippines	3290	6.2	Philippines	3796	6.5
Philippines	2798	5.5	PRC	3487	6.6	PRC	3746	6.4
PRC	2735	5.4	Indonesia	3462	6.5	Indonesia	3977	6.8

Note: Figures were updated in December 2000. **Source Data:** Outcomes Reporting Section **Source:** Protecting the Border: Immigration Compliance, 2000, p.58; Department of Immigration and Citizenship, *Annual Report, 1997-98*, Sub-Program 2.1: Compliance and Investigation

Throughout the following years, the pattern remained similar, as the following

Department of Immigration information depicts:

Overstayers by Top 5 Countries of Citizenship

At June 30 2009	
Nationality	Number
PRC	5930
USA	4860
Malaysia	3640
UK	3200
Philippines	2570

Source: Department of Immigration and Citizenship, *Population Flows, Immigration aspects 2008-2009* edition

⁵⁹ Betts, "Immigration Policy", p.185

⁶⁰ RCOA, *Facts and Stats, Australian Statistics*

⁶¹ These countries contrast with the countries of citizenship for unauthorised boat and air arrivals.

⁶² The charts demonstrate similar patterns of overstayer countries of origin over time. In 1997-08, officers located 12 679 overstayers, including 3 703 who approached the Department for assistance, and 618 who became unlawful as a result of their visas being cancelled. In 2009, there were 48,700 overstayers in Australia.

In 2007-2008, overstayers who were taken into immigration detention due to non-compliance or breach of their visa totalled 1865, representing 41.3% of the total detention population.⁶³ This is a small number compared to the overall total of overstayers in the same year of 48,500. The main concern with this group is set out by the Commonwealth, as follows:

Overstayers are a considerable burden to the community because of the cost of their location and removal from Australia and their access to Government services and benefits intended for Australian citizens and lawful residents. Those who work take jobs away from Australians and they are often a health and security risk because they have not been through the stringent checks on health and character which are mandatory for long term visa applicants.

Overstayers also create pressure for:

- Some kind of amnesty to give resident status to people would not normally be allowed to migrate;
- Much greater regulation and increase in enforcement resources within Australia; and
- Increased restrictions overseas on the movement of certain categories of people into Australia.⁶⁴

In addition to these concerns, the government states that overstayers who may be working illegally can be exploited by unscrupulous employers, and they may be paid well under the wage rate.⁶⁵ Due to their illegal status, the normal avenues for reporting or complaining about unethical treatment are not available.⁶⁶

The Australian government refers to the total of overstayers as “stock of overstayers”, and reports on those who have overstayed their visa short-term, medium-term and long-term. For example, the accumulated stock of overstayers at the end of June 2000, was estimated to be 58,745. According to the government, “[a]n estimated 29% of these had overstayed their visa by less than a year, a further 15% between one and two

⁶³ Department of Immigration and Citizenship, *Fact Sheet 86 – Overstayers and Other Unlawful Non-citizens*

⁶⁴ *Protecting the Border*, 2000 edition, p.57. See also ABC Television. “The People Smugglers' Guide to Australia”, *Four Corners*, 23 August 1999, p.13/15, in which an interviewee states that there is no problem getting a tax number from the tax office from the very beginning although taxation accountants often ask many questions which may create a risk of false information being uncovered. Having a tax number then enables an illegal immigrant to access government benefits which take from rightful Australian citizens.

⁶⁵ Department of Immigration and Citizenship, *Fact Sheet 87 – Initiatives to Combat Illegal Work in Australia*, “Problems created by illegal workers”

⁶⁶ Department of Immigration and Citizenship, *Fact Sheet 86 – Overstayers and Other Unlawful Non-citizens*; Department of Immigration and Citizenship, *Fact Sheet 87*

years and 28% were believed to have overstayed for 9 years or more”.⁶⁷ As at June 2002, the government reported that the stock of overstayers in Australia was estimated to be 60,000, reporting that “[a]pproximately 19% had overstayed their visa by less than a year and a further 14% had overstayed by between one and two years, whereas 27% had overstayed their visa by 10 years or more.”⁶⁸ What these figures demonstrate is that the stock of overstayers represents both a basic core of tens of thousands of undetected people from past decades, a figure which is calculated from immigration records going back to 1981,⁶⁹ as well as a new moving tide of thousands every year.⁷⁰

There are many questions which can be posed in relation to this matter. For example, if the government is able to give relatively accurate figures on how many people have overstayed and for what duration, why have these people not been traced and forced to return to their countries of origin? What are the illegal overstayers doing and where are they living and working? What identification are they using, are they claiming medicare benefits, paying taxes, and where are their children going to school? Disturbingly, answers are not readily forthcoming. As far back as 1999 one source claimed it was impossible to confirm the government’s estimate of 50,000 illegals, and that a tax return was not a problem for an illegal as a tax number was issued upon registration at the Australian Taxation Office (ATO).⁷¹ The same source states that

⁶⁷ ABS, *1301.0 – Year Book Australia, 2002*, “Overstayers”

⁶⁸ ABS, *1301.0 – Year Book Australia, 2004*, “Overstayers”. The departmental annual report, 2003-04 states that in “In 2003-04 the department located 20,003 persons who had either overstayed their visa or were in breach of their visa conditions. Of the 20,003 people located in 2003-04, some 12,978 were issued bridging visas”.

⁶⁹ Department of Immigration and Multiculturalism and Indigenous Affairs, *Annual Report 2003-04*, p.86

⁷⁰ By 2011, the government was still reporting that a “*small number* of people ... fail to depart Australia before their temporary visa expires” and therefore overstay, and that in the financial year of 2009-10, “it was estimated that around 15 800 people overstayed their visa”. For a complete breakdown of country of citizenship of unlawful non-citizens in Australia as at 30 June 2009, refer Appendix G – Estimate of unlawful non-citizens in Australia as at 30 June 2009

⁷¹ ABC TV, “The People Smugglers' Guide”

while official estimates of illegal Chinese was around 2,000, the Chinese community estimated around 10,000.⁷²

Laws relating to unlawful overstayers are contained in Act s 172(4), Act s 173, and Act s 177,⁷³ and deal with such issues as unlawfully providing false information or producing forged documentation at the point of entry, yet succeeding in entering the country. For many overstayers, visa cancellation may be the result of working illegally or a breach of the visa conditions.⁷⁴ Due to the large number of visa overstayers, locating and removing a person is difficult and resource intensive, and frequently comes about through a member of the public bringing this to the attention of the authorities; in other words, a system of “dobbing in”.⁷⁵

⁷² *Ibid.* The Department of Immigration claims many thousands of overstayers are backpackers, predominantly from the UK – see Australian Government. Department of Immigration and Citizenship, “Overstayer system effective”, Letter to the Editor – *Australian Financial Review*, 19 July 2004. In this correspondence, the government stated that the integrity of the overstayer calculation is valid, coming from the department’s own records and community referrals, providing “highly reliable and specific information about the identity and whereabouts of unlawful non-citizens and illegal workers which the Department vigorously follows-up. This is supported by data-matching and verification across a range of databases to locate people.” See also Question Taken on Notice, Q.41, Output 1.3: Enforcement of Immigration Law. However, Millbank, *op. cit.*, p.5/7, observes the Immigration Department states that keeping the “stock” number of illegals controlled is resource intensive, and “growth of the illegal population makes detection difficult and encourages further illegal migration”

⁷³ These Acts refer respectively to the by-passing or being refuted immigration clearance; a person entering Australia in a way not permitted by the Act; and being a designated person

⁷⁴ Crock, *Immigration*, p.179; See also Department of Immigration Annual Reports

⁷⁵ The Department of Immigration and Multicultural and Indigenous Affairs *Annual Report 2003-04*, p.87, states a “Dob-Line” was launched by Minister Vanstone on 19 February 2004 and until June that year, received an average of around 570 calls per week. The Department of Immigration and Citizenship *Annual Report 2007-08*, Section 1.4.1 Detection Onshore, notes: “Information from the public provides important support to the government in its efforts to maintain the integrity of immigration programs. Members of the public report instances of possible malpractice mainly through the department’s telephone reporting numbers. A free national ‘dob-in’ fax service is also available”. See also *Fact Sheet 86, op. cit.*, that a number of ways are used to locate unlawful non-citizens, including “referrals from employers, educational institutions, departmental investigations, community information, police and other government agencies” and that various government departments work together “to locate non-citizens who are employed illegally, or claiming welfare payments and benefits to which they are not entitled.”

According to available data, the number of overstayers during the Howard era totalled a staggering **583,148**.⁷⁶ Compare this to 13,663 unauthorised boat arrivals in the same period.⁷⁷ Appendix D – Overstayers and unauthorised arrivals, 1997-2008 provides details on the number of visa overstayers compared to unauthorised boat and air arrivals.

As we have seen, the *Tampa* incident and terrorist attacks on the U.S. ushered in a new era of intense legislation directed at unauthorised (boat) arrivals, and a significant expansion of the detention system.⁷⁸ For example, to deter “illegal people smuggling” and increase control over the migration zone,⁷⁹ the government greatly increased powers of officials, who were granted authority to detain and deport asylum seekers under the so-called “Pacific Solution”.⁸⁰ In addition, applicants could not apply for a Protection Visa (PV),⁸¹ and “the law prohibit[ed] judicial proceedings relating to offshore entry” by an “offshore entry person”,⁸² representing less recourse for asylum seekers to gain assistance due to a curbing of court powers.

⁷⁶ RCOA, *Australian Statistics*; Phillips and Spinks, *Boat arrivals*. Figure derived from available annual data. According to the Department of Immigration and Citizenship Annual Report 2007-08, these figures do not include those in detention for non-compliance of their visa.

⁷⁷ See Appendix B(a) – Boat arrivals since 1976 by calendar year for statistics.

⁷⁸ Motta, *op. cit.*, p.17

⁷⁹ DIMIA, Fact Sheet 81, *Australia’s Excised Offshore Places*, states: “These laws were introduced to strengthen Australia’s territorial integrity, reduce instances of persons entering Australia illegally by means of hazardous sea or air voyages and deter the activities of people smugglers”.

⁸⁰ Migration Act (Excision from Migration Zone) (Consequential Provisions) inserted s.198A which gave authority to a Commonwealth officer to take an offshore entry person from Australia to a country declared under the provisions of the Migration Act at subsection 198A(3); see also Kneebone, Susan. “The Legal and Ethical Implications of Extra-territorial Processing of Asylum Seekers: the Safe Third Country Concept”, Paper presented to the ‘Moving On: Forced Migration and Human Rights’ Conference, Sydney, 22 November 2005;

⁸¹ This was enshrined in law and an applicant had to be in the “Australian migration zone” – see Motta, *op. cit.*, p.17

⁸² *Ibid.*, p.17; Migration Amend, *op. cit.*, [s.54R]. See also Human Rights and Equal Opportunity Commission (HREOC). *Those Who’ve Come across the Sea: Detention of Unauthorised Arrivals*, Commonwealth of Australia, Canberra: AGPS, 11 May 1998, pp.23-24

In contrast to the political effort put into preventing unauthorised arrivals by sea or by air, minimal political effort was put into discouraging approximately 50,000 temporary visa holders each year from overstaying their time in Australia. Modest initiatives ranged from encouraging employers and co-workers to notify the department of a person in this category, from setting up a “dob-in”⁸³ telephone line, and carrying out regular investigations and organised searches to detect such people. Unauthorised air arrivals seeking protection, who held valid visas, were granted permission to enter and no detention would occur subject to application for a PV within their valid visa period. While their claim was being assessed, they would be free to live in the community. Should a PV application not occur before expiry or cancellation of their visa, only then would the person be liable for detention as “unlawful non-citizens”.⁸⁴

Having defined the categories of asylum seekers and with the benefit of clear comparative numbers, we can now move on to consider different treatment for different groups. This analysis will be done by utilising the theory of moral panic and the notion of fear in politics.

⁸³ “Dob-in” is the Australian vernacular for informing on somebody. See Australian Government. Department of Immigration and Citizenship, Fact Sheet 87 – *Initiatives to Combat Illegal Work in Australia*; Australian Government. Department of Immigration and Citizenship, *Immigration Dob-in Service*. The government states that the “Immigration Dob-in Service is a service for people in the community who have information about people living or working illegally in Australia and suspected offences or fraud being committed against Australia’s immigration and citizenship programs”

⁸⁴ Motta, *op. cit.*, p.17

CHAPTER 6: THE POLITICS OF FEAR – MORAL PANIC

The sociologist Stanley Cohen wrote:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folk-lore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way society conceives itself.¹

Cohen's analysis is set within the framework of moral panic, a concept which has proven to be durable and useful, representing the struggle between respectable mainstream society and marginalised groups. It examines "how a moral threat or supposed threat is *represented or expressed* by the contending parties in a moral dispute".² Cohen's detailed case study is of a particular form of rival youth gangs during the 1960s, known as the Mods and Rockers. The groups were perceived as a threat to order and control in society, in the same vein as other forms of danger challenge cultural stability, such as drugs and their users, communists, delinquents, homosexuals or terrorists.³ The threats are presented as one of "a gallery of types that society erects to show its members which roles should be avoided and which should be emulated. ... [V]isible reminders of what we should not be".⁴ The analysis of the Mods and Rockers exposes a method of social control and serves to illustrate some intrinsic features in the emergence of moral panics.

¹ Cohen, *op. cit.*, p.9., 23-24. Cohen utilises the work of disaster researchers and the sequential mode which has been developed to cope with such events, including reactive phases to each stage. These elements include warning, threat, impact, inventory, rescue, remedy and recovery. Cohen applies some of these stages to the emergence of a societal threat and considers the chain of reactions. In particular, he analyses how the mass media promotes levels of public anxiety through exaggeration and amplification of a particular event.

² Erich Goode and Nachman Ben-Yehuda, , *Moral Panics: the social construction of deviance*, Cambridge, MA: Blackwell Publishing, 1994, p.31

³ Timothy Recuber. "The Terrorist as Folk Devil and Mass Commodity: Moral Panics, Risk, and Consumer Culture", *Journal of the Institute of Justice and International Studies*, (1538-7909), Vol.9, 2009, p.159

⁴ Cohen, *op. cit.*, p.10

The initial emergence of threat is perceived within the framework of moral panic and, for this threat to materialise, a number of key elements must be present.⁵ They are heightened concern over a threat; increased hostility towards that particular group; a wide consensus in society that the threat is real; a sense of disproportionality that this threat is more serious than others; and, lastly, volatility, in that the threat may be explosive and unpredictable, while others “become routinized or institutionalized”.⁶ In addition to these elements, there are “five *spheres* within which moral panics are expressed or *actors* who express them: (1) the general public; (2) the media; (3) social movement activity; and/or (4) political activity, such as speeches and laws proposed by legislators; and (5) law enforcement, mainly the police and the courts”.⁷

Cohen examines public anxiety, including the role that mass media plays in its delivery of information. He observes that the mass media can define and shape social problems, and that they “have long operated as agents of moral indignation”. For example, the manner in which the media report specific “facts” can, in itself, create an atmosphere of “concern, anxiety, indignation or panic”. These ingredients, if coupled with the perception that certain values are under threat, set preconditions for “new rule creation or social problem definition”.⁸ In other words, the threat may not be real, but immediate action must be taken to deal with the perceived danger. A critical part of understanding the public’s reaction to certain incidents is the quality and timeliness of information they receive.⁹

This body of evidence has been subjected to a defined process before being made available to the public. For example, “alternative definitions” may have been placed on the information, an assessment of what constitutes “news” has been carried out, the method of

⁵ Goode, et al., *op. cit.*, p.37

⁶ *Ibid.*, pp.37-43, 48-49; Recuber, *op. cit.*, p.159; Cohen, *op. cit.*, p.12

⁷ Goode, et al., *op. cit.*, p.49 (italics in author’s original)

⁸ Cohen, *op. cit.*, pp.16, 17

⁹ *Ibid.*, p.16

gathering and presenting the facts has been decided upon, and the newsworthiness of the event has been evaluated in relation to the likely success of newspaper sales or number of viewers who may watch.¹⁰

Other scholars have emphasised the existence of a defined process in presenting newsworthy items. For example, Colin Hay considers a generic theoretical model “to inform an analysis of the processes involved in the construction, *through narration*, of the contemporary moral panic around juvenile crime”.¹¹ Hay comments on the practice of media selectivity and encoding, asserting that it is only through “the role of the media in the ‘recruiting’ of subjects to moral panics ...” and the “... narrative constitution of a moral panic that we can reveal the mechanisms through which such resonances are produced”.¹² He claims that the process of selecting, sampling and encoding converts a particular event into a “mediated event”,¹³ after which additional values and levels of importance are imposed.¹⁴ Events seen as newsworthy are selected as stories, which Hay labels “mediated narratives”.¹⁵ They are then reported as a “socially constructed”¹⁶ item and therefore encoded. Encoding brings with it preferred readings, which allow the mediated narrative to unfold, drawing selectively “upon dominant ideological themes prevalent and internalized within the societal ‘common sense’ ...”.¹⁷ This allows the reader or viewer to make sense of a perceived threatening situation, and allows the prevailing ideologies,

¹⁰ It is patently clear that the mass media is a multi-billion dollar business and is driven by media moguls and a huge bureaucracy, the overarching priority of which is profit. See Street, *Mass Media*, pp.41, 124-132

¹¹ Hay, *op. cit.*, p.205. (Italics in author’s original.) In this analysis of juvenile delinquency, Hay states that current moral panics are “characterized in much the same way by the same excesses of spectacularization, sensitization (both public and police), deviance amplification, symbolic (if not ‘deterrent’) sentencing, moral authoritarianism, the mobilization of a control culture, the return of vigilante groups to the streets, and the discursive construction and exclusion of the deviant”, and expunging the “significant other”.

¹² *Ibid.*, p.202

¹³ *Ibid.*, p.202-204

¹⁴ *Ibid.*, p.204

¹⁵ *Ibid.*, p.202-204

¹⁶ *Ibid.*, p.202-204

¹⁷ *Ibid.*, p.204

assumed during the encoding process, to enhance the “story” by using recognised references and understandings.¹⁸

Strategies can be adopted to increase the coverage of an incident. One of these methods includes “over-reporting”, and the continued use of a particular term with which the public eventually identifies, and links to, an event.¹⁹ This then becomes normalised in an “emotionally charged climate”, and can include “abuses of language”, “misleading headlines” and the more subtle “generic plural”.²⁰ In addition, a story may appear more than once, but be described slightly differently, adding to the perception that the event may be becoming more regular and therefore more of a threat. The result can often be that the high profile of coverage lodges in the public’s consciousness and then is drawn upon at a later stage.²¹

Through his examination of the facts, Cohen shows that the incidents involved in his case study on the Mods and Rockers’ period were exaggerated by an alarmist mass media, which employed methods to sensationalise, overstate and elevate a situation in public awareness, thereby playing a role in creating and spreading mass hysteria.²² Ultimately, Cohen claims that the images portrayed by the media become “crystallized into more organized opinions and attitudes. ... [T]he cognitive beliefs or delusions transmitted by

¹⁸ *Ibid.*, p.204. See also Bryan E. Denham. Folk Devils, News Icons and the Construction of Moral Panics”, *Journalism Studies*, Vol.9, No.6, 2008, pp.945-946. Denham states that, in Western society, mainstream news agencies tend to reinforce dominant conceptions of morality, and when accepted standards of behaviour appear threatened, “moral panics” sometimes ensue. News agencies facilitate moral panics by relying on public officials as information sources and by portraying those who would confront existing structures, policies and institutions as deviant, disgruntled or representative only of a fringe minority.

¹⁹ Cohen, *op. cit.*, p.32

²⁰ *Ibid.*, p.32-3. For example, Cohen states that this occurs if one boat was overturned, yet the “subtle and often unconscious journalistic practices” would read ‘boats were overturned’. See also Hay, *op. cit.*, p.198.

²¹ Cohen, *op. cit.*, p.33

²² *Ibid.*, p.33

the mass media and assimilated in terms of audience predispositions”²³ therefore become institutionalised and normalised.

Ulrich argues that today is a “risk society” with emerging new and varied sites of anxiety,²⁴ in part because mass media provide opportunities for more information and greater exposure. This can reduce the risk of “top-down” panic created as a social control measure. However, it seems more likely the mass media has put the public on constant alert in panic mode for even trifling events. According to Beck, the emergence of terrorism has been one example of “the new reflexive risks of modernization”, with a stereotypical and stigmatized “folk devil”, and has set America into an intense moral panic.²⁵ Although the instances of terrorism attacks have been few, fear has translated into action with the introduction of numerous government policies.²⁶ As John Mueller asserts, “for all the attention it evokes, terrorism actually causes rather little damage and the likelihood that any individual will become a victim in most places is microscopic”.²⁷ Fear of threat has, however, provided justification for these new policies, often limiting freedom and privacy in ways unacceptable in the past. Australia has not been immune to such a development.

Hay contends that the notion of moral panics must be considered within the broader social, political and economic context which enables its generation, mobilization and, indeed, the public’s participation.²⁸ The characterisation of a threatening “other” can take root

²³ *Ibid.*, p.49

²⁴ Ulrich Beck. “The silence of words and political dynamics in the world risk society”, *Logos*, Vol.1, No.4, 2002, pp.1-18. Beck argues that the “*political* explosiveness of the world risk society lies in the fact that we, with our civilizing decisions, cause global consequences that trigger problems and dangers that radically contradict the institutionalized language and promises of the authorities”, p.4

²⁵ Recuber, *op. cit.*, pp.159-60

²⁶ Carmen Lawrence. *Fear and Politics*, Scribe Short Books: Carlton North, Vic., 2006, p.76. Lawrence states that though such attacks are clearly tragic, the fact is that the number of people who die as result of terrorism constitutes a tiny number compared to civil wars or car accidents.

²⁷ John Mueller. “A false sense of insecurity?” *Regulation*, September 1, 2004, p.42

²⁸ Hay, *op. cit.*, pp.197, 202

wherever there is a predisposition for it to manifest itself, and can be tied to public insecurity, a prevailing anxiety about economic pressures and unemployment, a threat to national stability, or possibly the dilution of societal values through an influx of different ethnic groups. It is proposed that these factors are relevant to dealing with the issue of refugees and asylum seekers in Australia. As has been previously discussed, Australia has displayed all of these characteristics, exhibiting anxiety and paranoia throughout its history in relation to maintaining whiteness, policies of exclusion, fear of the “significant other”,²⁹ and difficulties in adapting to a changing world.

The framework of moral panic can be applied to Australia during the Howard Coalition era in relation to refugees and asylum seekers. Through an examination of determining factors, such as rhetoric, perceived threat, attitudes, and the media, it will become clearer how these features have shaped and influenced the then government’s decision-making and public responses. These elements have woven together in a complex web producing a distinctive Australian interpretation of the asylum seeker issue.

Asylum seekers and preconditions of fear

In an effort to understand global events, individuals and societies try to make sense of upheaval and disorder in the modern world. According to Zygmunt Bauman, these situations require explanation, classification and categorisation, and in order to explain events, a method of classification is required to separate, set apart, or assign certain functions, postulating on the distinctive entities which exist and allocating these to particular units or divisions. This gives the world structure and represents order rather than chaos, with language developed to sustain the systematic and preferred, while suppressing or denying the random and contingent, that which is uncontrolled and to be feared. In turn, this logic, or construction, provides an opportunity to review probabilities and

²⁹ McMaster, *Asylum seekers.*, p.37

possibilities, thereby making it possible to predict or limit random events. The act of classifying, however, leads to activities which perpetrate the division of inclusion and exclusion. Bauman claims this is “an act of violence perpetrated upon the world, and requires the support of a certain amount of coercion”,³⁰ and that the act of distinguishing units or divisions leads to a natural inclination to intolerance. This, in turn, leads to the setting of limits on admission and denying rights to any who are unable to assimilate.

As part of the same phenomenon, Australia’s past is littered with examples of alarmist messages of intolerance, such as Asians overrunning the country, the threat of Chinese workers, the Yellow Peril and the Communist Reds. Australians have been constantly fearful: fearful of being isolated, fearful of different neighbours, and even fearful of things they didn’t know existed until brought to their attention.³¹ One of Australia’s greatest and most enduring fears, indeed, has been that of invasion. Although never invaded (other than white invasion on Aboriginals), the fear of “hordes from the north” has been perpetuated through propaganda and duplicity, infusing the nation’s history and contributing to national paranoia.³² Asylum seekers who arrive by boat first appear on the horizon so they do not, in the minds of many Australians, represent desperate, wretched people. Instead, they are seen as a potentially threatening enemy ready to attack. This fear has always been fuelled by political manipulation and exploitation.³³ Suvendrini Perera observes:

³⁰ Bauman, *op. cit.*, pp.1-8

³¹ Lawrence, *op. cit.*, p.4, 8

³² See Hornage, *op. cit.*; J.L. Gibson. “Political Intolerance and Political Repression During the McCarthy Red Scare”, *The American Political Science Review*, Vol.82, No.2, June 1988, pp.511-529

³³ Robin Corey. *Fear: The History of a Political Idea*, Carey, NC, USA: Oxford University Press, 2004. Corey considers fear in politics where a threat may be exaggerated by politicians to mobilise public opinion and then provide a proposal to solve the problem. This is achieved when public debate is hijacked by an issue and resources are monopolised for the cause. Ideology and political opportunity select the principal object of public fear. Corey provides the example of asylum seekers arriving in boats who are constantly said to be potential terrorists and a threat to national security, while almost nothing is said about the more numerous unauthorised air arrivals or the far greater number of overstayers. See also Lawrence, *op. cit.*, pp.19-21

While the state has assumed the stance and rhetoric of a besieged householder turning away uninvited guests or trespassers who encroach on private property, other models of ownership emphasize hospitality and generosity to strangers in need as part of inexorable obligations of ownership.³⁴

The “political paranoia” triggered by boat arrivals was expertly stoked in the period beginning as early as 1999, although it was to reach its apogee between 2001 and 2003. A common rhetorical strategy was that adopted by then Prime Minister Howard in one radio interview: “I don’t want to use the word invaded . . . but.” The remark adroitly puts into play a whole gamut of historical fears from infection to infiltration. In this period boats, germs, and children, as well as diminutive places such as Rote or Timor, all testified to the fear that small things arouse in the Gulliver of the region.³⁵

Politicians have utilised fear over time in a cunning tactic to win public support, using authority and power to proclaim themselves the protectors of society.³⁶ As the U.S. satirist, H.L. Mencken, is noted for saying, “The whole aim of practical politics is to keep the populace alarmed (and hence clamorous to be led to safety) by menacing it with an endless series of hobgoblins, all of them imaginary”.³⁷ Some suggest that today’s politicians are all too ready to exploit the threat of fear, grabbing at any chance to use it as a public compliance tool, and that they have largely recognised the value of focussing “on our historic phobia about invaders as the primary hook for their fear campaign”.³⁸ Political fear is different from personal fear. Personal fear can be genetically programmed to ensure survival through the “fight or flight” response. Political fear is conditioned and learnt, and defined by Robin Corey as:

...people’s felt apprehension of some harm to their collective well-being – the fear of terrorism, panic over crime, anxiety about moral decay – or the intimidation wielded over men and women by governments or groups. What makes both types of fears political rather than personal is that they emanate from society or have consequences for society. ... Political fear ... arises from conflicts within and between societies.³⁹

³⁴ Perera, *op. cit.*, pp.62

³⁵ *Ibid.*, pp.97-98

³⁶ Christian Kerr. “John’s Party or John’s Parting?” in Kerr, Christian. (ed.) *op. cit.*, p.23. The author notes that Howard campaigned on fear of both the known and unknown.

³⁷ H.L. Mencken. *In Defense of Women*, (Chapter II, Section 13. Women and the Emotions), New York: Alfred A. Knopf, Inc., 1920, 1922.

³⁸ Lawrence, *op. cit.*, p.4

³⁹ Corey, *op. cit.*, p.2

Heightened concern – the media and rhetoric

Political fear can be seen as the “dominant currency of modern public life, ... the staples of political and media discourse”.⁴⁰ The media have played a central role in promoting fear and anxiety, through hype and propaganda, in conjunction with political manipulation. Anyone reading our daily newspapers, or watching television, is inundated with moral panic through a plethora of headlines warning of threats to our daily life.⁴¹ As Stephen Castles suggests:

Europeans, North Americans or Australians who rely on the tabloid press might well believe that their countries were being besieged by asylum-seekers and illegal immigrants. Sensationalist journalists and right-wing politicians map out dire consequences like rocketing crime rates, fundamentalist terrorism, collapsing welfare systems and mass unemployment. They call for strict border control, the detention of asylum-seekers and deportation of illegals.⁴²

These types of stories generate reader and viewer interest, resulting in profits through increased sales, and frequently translating into political votes.⁴³ Media commentators, newspapers and magazine outlets are often recognised as supporting a particular view, for example either liberal or left-wing, providing coverage with the power to “jettison” the beliefs of a particular party or leader.⁴⁴ Reporters and commentators can both swell and fuel electoral power by the nature of their “conservative representations in the public sphere”,⁴⁵ a privilege which some claim is “extraordinary”,⁴⁶ since many are not made

⁴⁰ Lawrence, *op. cit.*, p.9

⁴¹ Hay, *op. cit.*, p.205. Hay claims that with saturation of threats in the mass media, the moral panic becomes lived, and translates into public responses. For example, parents in mortal fear of their children being abducted cling to them when newspaper headlines state: “hold tight of your kids”; Huysmans, *op. cit.*, p.569

⁴² Castles, *op. cit.*, p.11

⁴³ Street, *Mass media*, pp.41, 124-132

⁴⁴ Boucher, et al., *op. cit.*, p.12. Also, for example, see pp.1-9 for comments on *Quadrant*, as right-leaning or liberal magazine, along with commentators such as Miranda Devine (*Sydney Morning Herald*), Andrew Bolt (*Herald Sun*) and journalist Paul Kelly (*The Australian*).

⁴⁵ *Ibid.*, p.7

⁴⁶ Niall Lucy & Steve Mickler. *The War on Democracy: Conservative Opinion in the Australian Press*, Crawley WA: University of Western Australia Press, 2006, p.6

accountable to strict editorial standards or specific ethical codes to which others must comply.⁴⁷

The role of talkback radio in Australia has played a potent role in nourishing moral panic and a political agenda. Talkback radio differs from other media systems by providing direct audience access through invitation and “has been implicated in having a role in setting the news agenda”.⁴⁸ The audience is granted an opportunity to participate by sharing comments, information and opinions. A study by Jacqui Ewart assessed the motivations of people who called or listened to talkback radio. One key finding acknowledged the immense power of this form of radio, for not only could it shape some audience opinions, it could also influence politicians. Presenters played a major role in handling issues responsibly, but there was a danger misinformation and dedicated air time could enable the championing of a particular issue negatively or positively.⁴⁹ The study also found that some saw talkback radio as a democratic process, one in which views could be canvassed and expressed in areas ignored by the general media.

In relation to asylum seekers, it provided a platform for ordinary Australians to express uninhibited views on the issue. According to the media monitoring services organisation, Rehave, the asylum seeker and refugee issue was one of the most widely and passionately discussed subjects ever.⁵⁰ In 2001, Rahame’s research established that 8,430 people had called talkback radio on the subject and that most callers were “totally opposed to asylum-

⁴⁷ *Ibid.*, p.6. The authors list Piers Akerman, Kevin Donnelly, Keith Windschuttle, P.P. McGuinness, Alan Jones and Frank Devine as some whose right-wing views receive primary coverage.

⁴⁸ Jacqui Ewart. *Talkback Radio: An emotional homeland and heartland. A study of some Australian talkback radio audiences*, c2008

⁴⁹ *Ibid.*, pp.32-33

⁵⁰ Emma MacDonald. “Immigration the biggest issue on talkback radio, *Canberra Times*, 21 December 2001, p.7, cited in Romano, Angela R. “Refugees, Radio Journalism and Communications for Social Change”, *Proceedings Transformations: Culture and the Environment in Human Development*, Australian National University, Canberra, 2005, p.2

seekers and were totally in agreement with the government's policy then".⁵¹ However, talkback radio introduced a disturbing aspect to the debate, with some callers expressing hatred, stating that boatpeople were "human waste",⁵² that we should "torpedo" their boats and that John Howard's views were right,⁵³ and that boatpeople were "would-be illegal immigrants".⁵⁴

Howard recognised this particular form of communication provided a unique and important opportunity to engage directly with the Australian people.⁵⁵ He also recognised it as a powerful tool to set a political agenda. For example, at the time of the "Children Overboard" affair, an already angry public was further fuelled when he stated, "I don't want people of that type in Australia, I really don't."⁵⁶ Frustrated and furious callers used talkback radio to voice their opposition to asylum seekers, infused with a tinge of racism.⁵⁷ These public xenophobic responses have caused genuine concern among groups such as journalists and humanitarian organisations, with talkback radio becoming a major conduit for "strident, belligerent and even violent sentiments expressed about asylum seekers and refugees".⁵⁸

⁵¹ Ross Peake. "A milestone for a resurgent John Howard", *Canberra Times*, 12 July 2003, p.B2, cited in Romano, *op. cit.*, p.2

⁵² MacDonald, *op. cit.*, cited in Romano, *op. cit.*, p.2

⁵³ Steve Price. 3AW commentator, cited in *Outline 2001 / 20*. Asylum seekers: should those aboard the MV Tampa be able to apply for refugee status from within Australia?, p.5/9

⁵⁴ Piers Akerman. Immigration policy, sovereignty and the media. Paper presented to the 14th Conference of the Samuel Griffith Society, Menzies Hotel, Sydney, 14-16 June, 2002

⁵⁵ Errington, et al, *op. cit.*, p.318. Errington observes this medium gave Howard particular access to the elderly and to regional audiences, but some, such as political commentator Michelle Grattan, criticised his media management for making him less accountable to reputable journalists. He had the ability to be "simultaneously over-exposed and under-available".

⁵⁶ Transcript of the Prime Minister The Hon John Howard MP, Interview with Jon Faine, Radio 3LO, Melbourne, 9 October 2001; Mares, *op. cit.*, p.135

⁵⁷ Angela Romano. "Journalism's role in mediating public conversation on asylum seekers and refugees in Australia", *Australian Journalism Review*, Vol.34, No.2, 2004, p.44

⁵⁸ *Ibid.*, p.59

As we have seen, the rise in popularity of Pauline Hanson's One Nation Party tapped into the highly emotive areas of nationalism and fear, and revealed the intensity of public anxiety. The electorate's mood in maintaining cultural priorities of a "white", safe and cohesive population was exposed. Howard recognised how strongly these issues resonated with the Australian public and, as an astute politician, inspired a shift in public debate which brought with it a change in Australia's social and political landscape.⁵⁹ Asylum seekers were caught in the crossfire over this new approach which informed a harder line on maintaining the government's electoral imperatives.⁶⁰ It was in this social and political context, where the preconditions for moral panic existed, that John Howard arguably thrived.

The pattern of unauthorised boat and air arrivals and visa overstayers in Australia tends to reflect conflicts and hostilities in other parts of the world.⁶¹ For example, the wave of asylum seekers from the Middle East and Central Asia between 1997 and 2000 increased, an escalation caused by people fleeing political situations created by the Taliban, the dictatorship of Iraq's Sudan Hussein, and an allied response to sanctions against Iraq, combined with a restriction on temporary settlement by neighbouring countries such as Iran and Pakistan.⁶² Australia became an alternative destination for those fleeing persecution in situations where other options were severely curtailed, and this third wave was also the beginning of a serious link with people trafficking.⁶³ In addition, there was an

⁵⁹ Smith, et al., *op. cit.*, p.463; Wear, *op. cit.*, p.625; Zappala, et al., *op. cit.*, p.311; Jupp, *From White Australia*, p.126 ; Gale, *op. cit.*, p.323

⁶⁰ Wear, *op. cit.*, p.625

⁶¹ McKay, et al., *op. cit.*, p.610, state that unauthorised arrivals "increase in line with world events".

⁶² McKay, et al., *op. cit.*, p.609

⁶³ *Ibid.*, p.609; Hugo, *op. cit.*, p.35

intensification of hostility from both the media and the public with this new group, especially negative rhetoric attached to boat people.⁶⁴

Some contend that rhetoric can be dismissed as “inconsequential in analysis of political culture”,⁶⁵ and that such language is “windy, hollow, empty” in substance, and full of “superficial gloss”.⁶⁶ Others,⁶⁷ however, assert that political rhetoric, positive or negative, is critical in forming a clear connection between the people and government. Those in authority become the “principal ‘national opinion leader and mobiliser’ ”,⁶⁸ with the intention being “to attract and hold support of diverse audiences possessing a range of conventional beliefs and present interests”⁶⁹

According to Judith Brett, while successful politics rests on the rhetoric of unity with the leader claiming to represent the people *en masse*, it also relies on division by constantly attacking the opposition. John Howard proved a master of wedge politics,⁷⁰ much to the despair of his opponents.⁷¹ This thesis supports the view that rhetoric is a key political tool to shape, influence, and direct, the target audience and that politicians, with a co-operative

⁶⁴ McKay, et al., *op. cit.*, p.609; Murray Goot & Tim Sowerbutts. “Dog Whistles and Death Penalties: The Ideological Structuring of Australian Attitudes to Asylum Seekers”, paper for the *Australasian Political Studies Association Conference*, University of Adelaide, 29 September – 1 October, 2004, p.7. In contrast to the Vietnamese wave described by the then Government as ‘genuine refugees’, this third group was condemned by the government as ‘illegal’ and ‘queue jumpers’; Katharine Betts. “Boatpeople and Public Opinion in Australia”, *People and Place* 9 (4), 2001, p.45. Betts suggests that the scale of the human movement concerned Australians, that new source countries were not popular with the public, and the link to people smuggling created a perception these were not genuine refugees, but people manipulating the system for their own advantage. Where it was seen in the past that to turn the boats back would be inhumane and cause innocent, desperate people to risk drowning, in 2001 people were inclined to think, “Let the people smugglers take them back to Indonesia”.

⁶⁵ Curran, *op. cit.*, p.14

⁶⁶ *Ibid.*, p.14

⁶⁷ For example, see *Ibid.*, p.14; Inglis, et al., *op. cit.*, pp.3-32

⁶⁸ Curran, *op. cit.*, p.15

⁶⁹ L.F. Crisp. *Ben Chifley: A Political Biography*, Angus & Robertson, Sydney, 1961, pp.282-284, cited in Curran, *op. cit.*, p.15

⁷⁰ The term “wedge politics” refers to the splitting off and co-opting part of the support base of one’s political opponent by framing of issues or presentation of options. Brett, “Relaxed and comfortable”, p.49, describes wedge politics as “dancing between the rhetorics of unity and division”..

⁷¹ *Ibid.*, p.49

media, have utilised this form of communication to connect with and manipulate the voting public for their political vision.⁷² A potent weapon in a government's armoury, it is argued, is the ability to revise and modify the truth, re-master it and then sell it to the voting public through the media.

In Australia, the media played a major role in the Howard era. It is argued that eventually the images and words presented by a co-operative media became "crystallized into more organized opinions and attitudes"⁷³ and assisted in ensuring the negative aspects of the unauthorised boat people become institutionalised and normalised. According to Rodan and Mummery, the media represented asylum seekers as "binary", either genuinely seeking refuge and fleeing from persecution, or taking advantage of generous policies in a selfish desire to benefit economically or personally.⁷⁴ While the humanitarian aspect is critical in any consideration of asylum seekers, the media frequently framed the issue in the same manner as the government; in terms of national identity, national interest and border security.⁷⁵ This has been labelled as the "politics of fear".⁷⁶

Media portrayals of asylum seekers mirrored the established negative picture presented by the Australian government, constructing a "threat" which "provided a strong rationale for

⁷² Curran, *op. cit.*, p.15

⁷³ Cohen, *op. cit.*, p.49

⁷⁴ Debbie Rodan & Jane Mummery. "Discursive Australia: Refugees, Australianness, and the Australian Public Sphere", *Continuum: Journal of Media & Cultural Studies*, Vol. 21, Issue 3, September 2007, p.356

⁷⁵ Michael Pugh. Drowning not Waving: Boat People and Humanitarianism at Sea, *Journal of Refugee Studies*, Vol.17, Issue 1, 2004, pp.50-69. Pugh argues that media and government discourse surrounding asylum seekers distance these 'stateless wanderers' from the reasons for their flight and marry them to a debate about identity and homeland rather than the human rights violations they may have experienced. In linking asylum seekers with threats to security – in particular terrorism and economic opportunism – the news media are provided with an opportunity to influence public opinion away from the humanitarian issues associated with asylum seekers toward border security and sovereignty issues; Danielle Every & Martha Augustinos. "Constructions of Racism in the Australian parliamentary debates on asylum seekers", *Discourse and Society*, Vol.18. No.4, 2007, p.413

⁷⁶ Gale, *op. cit.*, p.336; Lawrence, *op. cit.*; Corey, *op. cit.*, especially Introduction. Cory suggests fear can operate in one of two different ways, where either political leaders identify what the public should be afraid of, or they engage in threats towards anyone who challenges their power. In the first instance, a threat may be exaggerated to mobilise public opinion and propose solutions to solve the problem.

the strict asylum policies post 2001”.⁷⁷ In a framework lacking critical investigation, media reporting echoed government language and terminology, and did not divert from the propagandist model put forward by ministers and spokespersons.⁷⁸ This, in effect, served as a supplement to ideological filters applied by the press itself. A report by the Australian Press Council in 2004 found that the expression “illegal” which was bandied about in relation to refugees, immigrants and asylum seekers, did not reflect “free and ethical reporting”, instead representing terms very often inaccurate and typically connotat[ing] criminality”.⁷⁹ Other media reports were found to be misleading and misconstruing the truth, thereby continuing the “self-fulfilling prophecy”⁸⁰ of negative connotations by association.⁸¹

⁷⁷ Natascha Klocker & Kevin M. Dunn. “Who’s Driving the Asylum Debate? Newspaper and Government representations of asylum seekers”, *Media International Australia incorporating Culture and Policy*, No. 109, November 2003, p.86. In this study, Klocker and Dunn claim that the “threat angle has utility for both the federal government and newspaper owners. Threatening constructions in government documents provided strong justification for strict asylum policies” and that “a sensationalist style of reporting” concurred with the profit agenda of the mass media. See also Summerfield, Derek. “Sociocultural dimensions of war, conflict and displacement” in Ager, Alastair. (ed.) *Refugees: Perspectives on the Experience of Forced Migration*, Continuum: NY, 1999, p.126

⁷⁸ Australian Press Council, Adjudication No. 1242, June 2004; Australian Press Council. (ed.) *Annual Report No.34*, 30 June 2010 1242, p.17; RCOA, *Media Use of ‘Illegal’ for asylum seekers and refugees: Guide to making complaints*; Klocker, et al., *op. cit.*, p.86, state that the media focussed on “sensational categories of description, including bad character, uncontrollable and burden”.

⁷⁹ Australian Press Council, *Guideline No. 262*, 2004. This guidelines was superseded on 10 January 2009 with *Advisory Guideline No. 288: Asylum Seekers (2009)*; see also Fraser, *From White Australia*, p.7, commenting on a Parliamentary Library research team paper regarding inaccurate and false words to describe boat people.

⁸⁰ Robert K. Merton is credited with the basic term, “self-fulfilling prophecy”, which hypothesises that the power of thinking that predicts something is true, causes that very prediction to be fulfilled; Costas Azariadis. “Self-Fulfilling Prophecies”, *Journal of Economic Theory*, Vol.25, 14 April 1980, revised 31 October, 1980

⁸¹ The ABC operates a monitoring role through the program, *Media Watch*, to identify where the government and media might compromise reporting responsibility. For example, on 8 October 2007, *Media Watch* featured *Ganging Up*, which covered a report on Sudanese refugees in Melbourne accused of break-ins and thefts on a local business. Television footage was included in the report showing the perpetrators in action. *Media Watch* found the report was inaccurate and violence was not carried out by Sudanese refugees, instead holding others responsible. A second incident on a commercial channel accused the Sudanese again of a crime, but this was found to be incorrect and was in fact carried out by white men and a male Pacific Islander. However, the Sudanese had already been erroneously linked to violence, gangs and disturbance. This flawed reporting occurred prior to the 2007 federal election and contributed to negative public perceptions of Sudanese refugees. Shortly after these inaccurate reports, Howard’s Immigration Minister Kevin Andrews declared that African refugee numbers would be reduced, owing to the failure of the Sudanese community to integrate. See *The Age*, “No Africans allowed: Has our way of life come to this?” – Editorial, October 4, 2007; *Herald Sun*, “A problem with settling”, Thursday October 4 2007, p.24; *The Advertiser*, “Home attack was ‘tribal’”, Wednesday July 18, 2007.

This issue is addressed by John Street in *Mass Media, Politics and Democracy*.⁸² Street recognises that the democratic process can be skewed and thwarted by the media when there is a systematic promotion of some interests or, conversely, lack of information. The ability to misinform or tilt the balance towards a particular interest has consequences for the target audience.⁸³ Street identifies four types of bias⁸⁴ which can result in conflict between opinion and fact and the role of journalism is to aspire to complete objectivity, “stating facts, balance and impartiality without favour” enshrined within a code of conduct.⁸⁵

Street asserts that the media news service delivered to the population is a consequence of economics. The media is in the market as a provider to the public. Woven into this is the overwhelming desire for profit, and where commercial interests are involved, power and political impacts are inextricably linked. Consciously or intentionally, reporting is tailored to the needs of that market, with a value judgement made on what facts to present and what to selectively omit.⁸⁶ Intense and thorough investigative journalism may be compromised in a world where the image is becoming more dominant than the word, and where appearance “subsumes content”.⁸⁷ Politicians are increasingly developing and honing communication techniques and skills with which to campaign, employing teams of experts to advise on presentation, language, advertising and packaging, and even “suitable

⁸² Street, *Mass media*.

⁸³ *Ibid.*, p.16

⁸⁴ *Ibid.*, pp.17, 20. These four types of bias are: partisan, propaganda, unwitting and ideological. Partisan bias is explicit and deliberate; propaganda bias promotes a view without stating this, using persuasive and sometimes veiled language; unwitting bias incorporates judgemental values on what constitutes a newsworthy story compared to another; and ideological bias is unintended but reveals hidden values and assumptions, based on “norms”.

⁸⁵ *Ibid.*, pp.20-21

⁸⁶ *Ibid.*, pp.18, 41, 128-130

⁸⁷ Street, *Politics and Popular Culture*, pp.51-52

jokes”.⁸⁸ In today’s climate, the ultimate political aim is to win or maintain power, and co-operative or “biased” media reporting can be the crucial link which delivers that goal.

One small section of the media, however, displayed independence and dissent on issues relating to asylum seekers. These were the cartoonists. Cartoonists habitually injected irony, sarcasm and wit in their work, portraying social commentary in a manner different from the written word. Through this medium, a message could be subtly or overtly portrayed through pictures and, arguably, this method was likely to reach a broader section of the public, embracing those perhaps less likely to read political comment. Many cartoons conveyed a level of frustration towards government policy, often being provocative and attacking the Howard government. According to some,⁸⁹ cartoonists tried to make Australians aware of callous opportunism, xenophobic hysteria against terrorism, exuberant loyalty to the U.S. and the darker side of the public’s nature upon which “cynical, poll-driven politicians” played.⁹⁰

Cartoonists were remarkably consistent in their response to the asylum seeker issue which “flew in the face of public opinion”.⁹¹ As an example, one illustration depicts a group of politicians looking out to sea at drowned bodies, stating: “What a tragedy – they’ve drowned before we could turn them into an election issue”.⁹² Another depicts black people arriving on shore in a tiny dingy and is titled, “Beach closed. Jellyfish in

⁸⁸ *Ibid.*, pp.13-15; see also Corey, *op. cit.*, who discusses fear in politics where a threat may be exaggerated by politicians to mobilise public opinion and then a proposal is required to solve the problem. This “dominates public debate and monopolises resources”.

⁸⁹ Haydon Manning & Robert Phiddian. “Two men and some boats: The cartoonists in 2001” in Warhurst, John & Marian Simms. (eds) *2001: The Centenary Election*, University of Queensland Press: Qld, 2002, pp.41-61

⁹⁰ *Ibid.*, pp.50, 58

⁹¹ *Ibid.*, p.45

⁹² Peter Nicholson, *The Australian*, 24 October 2001 (used with permission granted 14.04.10)

Canberra.”⁹³ Some graphics provide commentary on detention, and the cynicism of others is hard to escape.⁹⁴ The cartoons were thinly veiled comments on exploitation of asylum seekers, lack of public and political compassion, selfish attitudes and lack of moral compass. The hypocrisy of a kind and generous nation was the focus.⁹⁵

The Howard Government used imaginative political discourse on the suitability or unacceptability of a particular people, and did to a degree not previously experienced in Australia.⁹⁶ This was done by vigorously targetting one specific category of asylum seekers, and can be seen as a course of action emanating from a deep-seated desire in the public sphere to control who may enter the country, and to ensure selection according to national preference. The ultimate aim was to convince the Australian people this tactic was necessary for their own protection. It was carried out through a cleverly crafted campaign embracing rhetoric, perceptions, fear and insecurity.⁹⁷ As Malcolm Fraser aptly put it:

It is so easy for political leaders, who are sometimes presumed to know more than they do or are presumed to have a higher motivation than they do to arouse fears of the unknown of people who come from a different background, a different history, a different culture and also a different religion.⁹⁸

In considering the use of rhetoric, this term needs to be clearly defined. Rhetoric is described as the “art of persuasive or expressive speaking or writing; language designed to persuade or impress (often with implication of its insincerity, exaggeration, etc.);

⁹³ Nicholson, “Excision refugee zone”, 13 April 2006

⁹⁴ Bill Leak, *The Australian*, 26 January 2004; Nicholson, “Refugees at Woomera tested to explode by Howard Ruddock”, 24 December 2001. This cartoon on detention says, “Woomera Testing Station. We are conducting important scientific research to see just how much people can take before they explode. Please avert your eyes”; Bill Leak, “The White Picket Fence Australia Policy”, 29 March 2002 (used with permission)

⁹⁵ See also a number of cartoons produced by Peter Nicholson, especially “Bakhtiyari caught lying by lying politicians”, 24 August 2002; “Refugees: one billion poured into Pacific Solution”, 5 August 2002; “Children overboard lie detector Howard”, 19 August 2004

⁹⁶ Jupp, *From White Australia*, p.197

⁹⁷ Lawrence, *op. cit.*, pp.19-21

⁹⁸ Fraser, *From White Australia*, p.6

persuasiveness of or *of* looks or acts”.⁹⁹ To demonstrate how rhetoric was used during the Howard era, the focus will be on persuasive government language, reporting specific ‘facts’ to impress or sensationalise, and the subsequent creation of a heightened atmosphere of concern, anxiety, indignation or panic.

It is proposed that the perceived danger of a threat to Australian public values set preconditions for government action, where new rules and laws were more easily accepted by the public. By driving the electorate to a heightened state of fear, a national agenda to defend and protect was legitimised at the expense of one specific group of people seeking refuge in Australia. This compromised Australia’s international obligations and enabled legislation to be implemented which was not in the spirit of the *Convention*. In fact, it contravened it.

Cohen argued that negative connotations eventually amplify in the public’s mind upon reading and hearing poignant language. When terms are continually directed towards a specific group, repetition normalises the link and ensures an automatic public association. During the Howard era, constant use of specific words was a defining feature of the government’s rhetoric, with communication relating to a specific group couched in negative, emotive language.

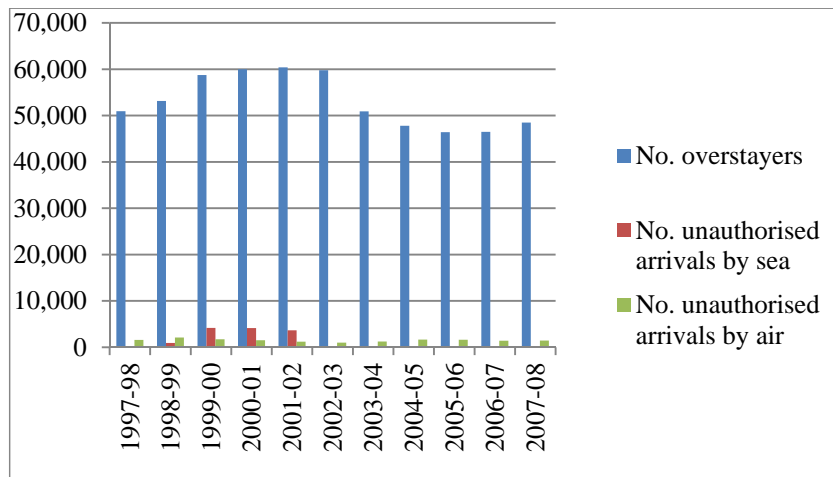
It would be reasonable to assume that the target for this concern should be the largest number of unlawful non-citizens, but this was not the case. It was not the largest group to which this rhetoric was directed, nor was it the second largest. It was, in fact, the smallest: “boat people” or “irregular maritime arrivals”. This group personified the “invading

⁹⁹ J.B. Sykes. (ed.) *The Concise Oxford Dictionary of current English*, (sixth edition, Oxford Clarendon Press: Oxford, 1976, p.965 (italics in author’s original)

enemy”, arriving uninvited in boats over the horizon, and triggered anxiety and fear in the hearts of Australians. However, as the most vulnerable, powerless and “wretched of the earth”, there is little doubt these people were the easiest to politicise and exploit.¹⁰⁰

To put these groups into some perspective, the following graph, providing a yearly breakdown of group totals, depicts unauthorised boat arrival numbers and other unauthorised groups. The boat people in question are so small, comparatively speaking, that they are not even visible in the statistics for some years.

TABLE 5: Unauthorised boat, air arrivals and overstayers



Note: Adapted from data provided by the Refugee Council of Australia.¹⁰¹

Rhetoric used in this way allows us to consider, in a particular period, how “the ‘social objects’ of refugees and Australianness have been spoken, written and thought about at a specific point in history”.¹⁰² For example, the use of the words “them” and “us” can immediately define who is included and who is excluded, and this terminology appeared increasingly in political discourse early in the Howard era. With the advent of 11

¹⁰⁰ Kamenka, *op. cit.*, p.11; McMaster, *Asylum seekers*, p.8; see also Menadue, *op. cit.*, in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, p.87

¹⁰¹ RCOA, *Australian Statistics*, 2008

¹⁰² Rodan, et al., *op. cit.*, pp.349-350

September 2001, the pretext was set for protectionist discourse to flourish in a climate of heightened fear and anxiety. It included more frequent references to “them”, “they” and “us”, with “them” representing the barbaric and deviant, and “us” representing the civilised and cultured.¹⁰³

In the aftermath of 11 September, George W. Bush used the now familiar quote, “You are either with us or against us”.¹⁰⁴ “They” constituted the enemy, the threat and the danger. “Us” represented the enlightened community whose freedom and superior way of life was at stake.¹⁰⁵ The Howard Government had a choice to be calm and rational or to provoke hysteria after the attacks on the U.S. It “chose to hype it up” to defend the nation’s values.¹⁰⁶ Australia, without hesitation, joined the “Coalition of the Willing” in support of the U.S. declared war on terror.¹⁰⁷ Terrorism itself is not new, and the war on terror represented a fight against guerrilla warfare in an international context,¹⁰⁸ a form of psychological warfare to evoke fear and demoralise, particularly aimed at undermining the legitimacy of governments by demonstrating to citizens the state’s inability to guarantee their security.¹⁰⁹ The goal implicit in this response was not just tactical in a broader international strategic sense, it was also political in a domestic context.

¹⁰³ Debbie Rodan & Jane Mummery. “Discursive Australia: Public Discussion of Refugees in the Early Twenty-First Century”, 2007, pp.1-12

¹⁰⁴ CNN, Washington. “You are either with us or against us”, Washington, November 6, 2001 Posted: 10:13 p.m. EST (0313 GMT)

¹⁰⁵ Johnson, *John Howard’s ‘Values’*, p.200. Johnson claims Howard’s rhetoric was persistently in the form of national interest.

¹⁰⁶ Tony Kevin. “Foreign Policy” in Manne, Robert. (ed.) *The Howard Years*, Black Ink Agenda: Melbourne, Victoria, 2004, p.306

¹⁰⁷ Robert Manne. “Little America: How John Howard has changed Australia, *The Monthly*, March 2006, p.23. Manne considers that Australia’s willingness to support the U.S. in their war on terror was tantamount to a type of “down payment on its insurance policy with the U.S.” It effectively bought protection from the stronger partner for the smaller, less powerful, friendly nation.

¹⁰⁸ Lawrence, *op. cit.*, p.75. While terrorism is not imagined, it is exaggerated as a threat.

¹⁰⁹ Lawrence, *op. cit.*, pp.76-77. In relation to terrorism, one of the high profile cases in Australia involved an Australian citizen, David Hicks, who was captured by the Americans as a Taliban soldier and charged with conspiracy to attack civilians, aiding the enemy and attempted murder. He was locked up for years in the U.S. Guantanamo Bay prison without charge or trial. His incarceration brought the terrorist issue right to Australia’s doorstep and the denial of justice became an issue of much national debate. See *Weekend*

With many Australians already uneasy about uninvited arrivals, the Howard Government utilised the language of “them” and “us”, applying this to the unauthorised boat people.

The Coalition’s strategy was to categorise and stigmatise through the application of protectionist rhetoric. Under the banner of Australia being compassionate, open, generous and hospitable,¹¹⁰ the constructs of “good” and “bad” asylum seekers emerged.¹¹¹ These concepts identified good asylum seekers as those who stuck to the rules, applied for sanctuary through the UNHCR, and did the right thing by waiting patiently for selection.

They came to Australia in an orderly, systematic manner, invited from the awaiting pool of people.

Bad asylum-seekers, on the other hand, rejected this planned and charitable system, coming uninvited through the “back door”. Bad asylum seekers did not join a queue, did not line up with a throng of other hopefuls, and thereby risking waiting 192 years to be chosen and, worst of all, they often did not have personal documentation to identify

Australian, “The World”, “Bush will push new laws on detainees”, July 1-2, 2006, p.15; *Weekend Australian*, “The Nation”, “Put Hicks on trial now, PM tells US”, July 1-2, 2006, p.4; *The Australian*, “Opinion”, “American Court’s Supreme Injustice: The ‘Hamdan’ ruling will further delay Hicks’s trial”, Monday, 3 July, 2006, p.9; *The Australian*, “The Nation”, “Imperial Bush brought to heel”, Monday, July 3, 2006, p.8

¹¹⁰ Gale, *op. cit.*, p.329; “Australians proud of their caring record”, *The Advertiser*, Wednesday, 29 August 2001, p. 19; Crock, *Immigration*, p.124; Errington, *op. cit.*, p.301, quotes Howard when weighing up Australia and the need to balance the sovereign right of the nation “to decide who comes here and in what circumstances”, against “our humanitarian obligations as a warm-hearted, decent international citizen”, with the emphasis favouring sovereignty over warm-heartedness.

¹¹¹ N. Lynn & S. Lea. “A phantom menace and the new Apartheid: the social construction of asylum-seekers in the United Kingdom”, *Discourse & Society*, Vol.14. No.4, 2003, p.433. The authors state that a distinction between “genuine and bogus refugees” occurs with a “ ‘bad feeling’ attributed only to ‘bogus’ refugees, who are constructed as the ‘problem’”. The concept of the ‘bogus’ refugee or asylum seeker is seamlessly entered into the argumentative process, without explanation or qualification. Bogusness no longer needs to be explained – *it just is*. ... [T]he ‘knowledge’ is commonplace and as such has entered everyday discourse without question. ... so ‘naturalized’ ... it is perhaps no longer necessary to defend the accusation that many asylum-seekers are not fleeing from oppressive and hostile conditions in their home country.” Added to this, the division between “good” and “bad” enables a further distinction to be made. It separates those who are eligible to receive the host nation’s support, in the form of accommodation, tuition and other benefits, and those who should not be entitled as they are undeserving, having arrived here in an illegal manner, expecting to engage the support of a generous nation in the same way genuine asylum seekers do. This latter group is even more dangerous, because economically they are demanding support from limited funds, creating stress on the system and causing other Australian citizens to be denied. Having established that these unplanned arrivals are “bad”, they can therefore become the target of policy shifts to exclude and expel them, legitimising new harsh laws against them, because they are “liars and cheats, and harsh policies against them are justified.”

themselves. They did not employ the Australian way of a “fair go”, instead “pushing in” and forcing the government to deal with them.

Australia’s political leaders frequently referred to the boat people as “illegals” and “queue jumpers”,¹¹² but there were many other words to embitter and polarise the electorate.

These words became associated on a regular basis with the smallest group of unlawful non-citizens, and included “economic refugees”, “non-genuine”, “vandals”, “arsonists”, war criminals”, “unlawfuls”, “racist”, “brutal”, “savage”, “criminals”, “forum shoppers” and “child molesters”.¹¹³ In addition, “[they] had pushed drugs, they would be evil, they would be prostitutes and maybe terrorists”.¹¹⁴ The fact that they were fleeing to Australia, frequently on unseaworthy boats and risking their lives, was of no consequence. Instead, the Howard government generated public fear of these mainly Middle Eastern or South Asian people. Tactically and politically, the strategy worked, with Coalition members supporting their leader’s approach and with little dissent evident from the Opposition.¹¹⁵

The national political agenda was apparent, with support translating into electoral votes.¹¹⁶

Not even widespread international criticism was effective in stopping this tactic. While

¹¹² Gelber, *op. cit.*, pp.19-30

¹¹³ MacCallum, “Girt by sea”, *op. cit.*, p.41-43, 56; Harries, in Kramer, *op. cit.*, p.66; Hugo, *op. cit.*, p.34; See also newspaper articles, such as “First safe haven”, Quick Word, *The Advertiser*, Wednesday July 4, 2002, p.15; Letters to the Editor, *The West Australian*, Monday August 5, 2002; Catherine Hockley and Daniel Clarke. “As the smoke clears, scars of battle remain”, *The Advertiser*, Monday, December 30, 2002, p.4; “Poor policy doesn’t justify arson”, Letters, *The Australian*, Wednesday January 1, 2003; “Courageous call”, Opinion Letters, *The Advertiser*, Wednesday January 1, 2003, p.17. “Inflamed by debate”, *Sunday Mail*, January 12, 2003, p.41; Rebekah Devlin. “It’s sinful and insular”, *The Advertiser*, Monday December 29, 2003, p.12

¹¹⁴ Fraser, *From White Australia*, p.6. See also D Gray, “WA illegals in copycat breakouts” *The Age*, 10 June 2000, with Minister Ruddock stating that some of these people “could be murderers, could be terrorists”.

¹¹⁵ Fraser, *From White Australia*, p.6. Fraser states that the Coalition members conformed with their leader. However, the opposition, conscious of the votes lost to One Nation and the need to recapture as much ground as possible, was divided. See also Keith Suter. “Australia’s international humiliation over boat people”, Monday 15 October 2001, *On Line Opinion*. Suter comments that three factors have emerged to reveal Australia’s hatred against asylum seekers: continued paranoia, the thread of racism in Australian politics, and the politics of anger in a volatile electorate, making Labor reluctant to aggravate its supporters (perhaps losing them to the new Pauline Hanson party) and unwilling to challenge a Prime Minister whose popularity came at a cost of “bashing of refugees”.

¹¹⁶ For example, see McAllister, *op. cit.*, pp. 13,14,53

such criticism was damaging, the political interests of the government were focussed on the national voting electorate. Let us not underestimate the influence of public opinion on the political decision-making process, which translates into votes and subsequently the maintenance or loss of power.

For Australians, continual reinforcement of unauthorised boat people as “they” became synonymous with the bad, degenerate and disorderly, particularly after the *Tampa* affair.¹¹⁷ “They” represented people who were “un-Australian”, who would not respect the nation’s values, who were not like “us”, and who would not be prepared to integrate.¹¹⁸ The public identified a perceived threat and adopted the negative language, saying the “bad” group were “illegal immigrants”, “not like us”, had a “belligerent attitude”, were engaged in “appalling behaviour”, were lacking in “humanity” and were a “danger to Australia”.¹¹⁹ The clear message underpinning this discourse was that these asylum seekers, who apparently destroyed property and documentation, rioted and sewed their lips together, carried out barbaric practices such as stoning of women, and tried to hold the government to ransom to get their own way, could not possibly have a place in the Australian

¹¹⁷ Maley, “Refugees” in Manne, *op. cit.*, pp.155-156. Maley asserts that after the Tampa affair, “[o]ne other curious development merits scrutiny. In aftermath of *Tampa* affair, anti-refugee stories began to appear in press which bore all the hallmarks of having been planted by government sources.” The author suggests a close relationship between the media and government, and notes a story on Piers Akerman “welcoming his use of material from a departmental media kit”. Maley comments on a *Daily Telegraph* news item, 13 October 2001, that ‘The Navy will investigate claims sailors on board the HMAS *Manoora* were assaulted by asylum seekers’. It was stated that ‘the Navy would report to the minister when an inquiry was completed’. Yet Maley observes that “[o]nce the election was safely out of the way, all the claims sank without trace”.

¹¹⁸ Johnson, “John Howard’s ‘Values’ ”, pp.201-202. Johnson discusses the different approach of Howard compared to Malcolm Fraser, who embraced multiculturalism. Johnson contends Howard encouraged particular forms of citizenship and discouraged others. His view was that those who come here should embrace Australian values or leave, as evidenced by his statement that ‘if somebody has come from another country and has failed to properly embrace the values of this society, his society . . . then the idea of taking away their citizenship is one that ought to be looked at’. At a later date, Howard backed away from these claims which, according to Johnson, p.201, “raise issues about an individual’s right to peacefully disagree with dominant values in a liberal democracy”.

¹¹⁹ Rodan, et al., “Discursive Australia: Refugees”, p.350

community.¹²⁰ They were “different” and therefore incompatible with Australia’s way of life.

The asylum seeker menace, hostility and consensus

Conforming to Cohen’s principles of moral panic, the asylum seeker menace was inflamed further by the Immigration Minister, Phillip Ruddock, who made inciting statements to an already anxious Australian electorate.¹²¹ In an ABC interview in 1999 his claims dominated headlines with the announcement that a “national emergency” threatened Australia in the form of “10,000 illegal immigrants” preparing to flood the country. He stated: “The info that is available to us ... suggests that whole villages are packing up and there is a pipeline. It was a national emergency several weeks ago, it’s gone up something like ten points on the Richter scale since then.”¹²² He continued in this vein, stating to journalists in 2000 that “thousands of illegal immigrants were headed for Australia and would be hard to stop. I believe there are significant numbers of people in the pipeline - so there are some in Indonesia, some in Malaysia, some elsewhere, ... I think those in the pipeline are going to be very hard to deter.”¹²³

Underpinning this statement was the message that Australia would need protection from these thousands of queue-jumping “others”, and that tightening the laws and regulations would shield Australians from this happening.¹²⁴ Such highly alarmist predictions found

¹²⁰ *Ibid.*, pp.350-351

¹²¹ Crock, *Tampa*, p.75. Crock asserts that Ministers’ rhetoric fanned concerns about unauthorised boat people and allowed the dissemination of false or misleading information.

¹²² Burke, *In Fear of Security*, p.xxii; ABC, *730 Report*, “Australia a new target for displaced Iraqis”, 15 November 1999; Anne Pedersen and Fozdar, Farida. “Refugee without Refuge: Wasim, Phillip Adams, and a Nation Divided” [online]. *Journal of Pacific Rim Psychology*, Vol. 4, No. 1, 2010, p.13

¹²³ “Ruddock warns of thousands more boat people”, *AAP General News (Australia)*, Perth, Western Australia, 18 May 2000; “Thousands more boat people heading to Australia, Ruddock warns”, *Canberra Times*, 19 May 2000.

¹²⁴ Crock, *Immigration*, p.163. Crock concludes that “[c]oncern about the phenomenon of uninvited refugees and asylum seekers is quite out of proportion to the actual number of persons who seek refuge here”. She contends that the level of misunderstanding in the community is high, prompted in many cases by possible

fertile ground with the Australian public, to the point where they perceived the threat to be a form of national emergency.¹²⁵ Instead of presenting it for what it was, “an administrative problem”, Ruddock was portraying the threat posed to Australia’s integrity;¹²⁶ a threat so serious it required the invoking of war and the mobilisation of the navy to deal with it, requiring decisions and actions on a level not normally acceptable in peacetime.¹²⁷

Australians were being warned that, as a generous and hospitable nation, they would be taken for a “soft touch” or a “soft target”¹²⁸ by those who wished to exploit their kindness, and therefore stricter laws and harsher measures were justified to deal with the aberrant “other”.¹²⁹ Rather than seeing these people escaping from threat, they were instead constructed as being *the* threat.¹³⁰ The “dominant western discourse” ethnically marks the mainly Afghan or Iraqi asylum seekers within the framework of “fundamentalist, violent,

reporting or blatant scare mongering tactics in the media, and that the adverse public perception about refugees has fostered an environment in which the government has been able to pursue increasingly strict immigration measures without worrying about public scrutiny. See also Langham, *op. cit.*, pp.656-657
¹²⁵ *Ibid.*, p.656. Langham comments that the perceptions of the public are often “based on misinformation and overt media influence.”

¹²⁶ Burke, *In Fear of Security*, pp.xxii, xxiv

¹²⁷ This war mentality was also demonstrated by many members of the Australian public, and even the State Government of South Australia, in relation to detention centre uprisings, calling for the army or federal police to be mobilised. See Catherine Hockley and Daniel Clarke. “Send in the troops”, *The Advertiser*, Saturday January 4, 2003, p.4; Boucher, et al., *op. cit.*, p.2. The invocation of wartime solutions occurred again in 2007 when the Howard Government turned to the military and police for handling the remote Indigenous community situation, saying Aboriginal children’s safety was a ‘natural disaster’. This tactic followed a decade of outsourcing indigenous health, welfare and education provisions.

¹²⁸ Emily C. Peyser. “‘Pacific Solution’? The Sinking Right to Seek Asylum in Australia”, 11 *Pacific Rim Law & Policy Journal Association*, 431, 2002, pp.455, 448; Ruddock, “Refugee Claims”, p.4

¹²⁹ Burke, *In Fear of Security*, p.xxii. Burke notes: “The political ramifications of invoking a ‘national emergency’ were demonstrated by the new regulations he [Ruddock] introduced soon after, and meekly accepted by the federal Labor Opposition, which restricted the rights of illegals in relation to other refugees, provided for unlimited mandatory detention, and left them vulnerable to automatic deportation after thirty months”. York, *Summary*, p.10/24; Leach, et al., *op. cit.*, p.6, Burnside, *op. cit.*, p.55; Crock, *Immigration*, p.163, contends there “can be little doubt that the government’s fixation with immigration control and the harsh measures put in place to discourage on-shore applicants for refugee status are rooted firmly in adverse public opinion”. See also Langham, *op. cit.*, pp.656-657

¹³⁰ Pugh, *op. cit.*, pp.50-69, claims that the media and government rhetoric distances the reason asylum seekers flee, including human rights abuses, and instead constructs them within a debate on identity and homeland. Through discourse which links asylum seekers to security and threat, the media opportunistically influences the public away from humanitarianism and sways them towards sovereignty and border protection.

unstable, uncivilised, cunning and lustful”,¹³¹ so at any cost, Australia must be “secure from cultural strangeness”¹³² or the significant other. As we have already seen, such a frame of mind allowed a plethora of legislative acts to be passed by the government in 2001.¹³³ It justified incarceration, restricting judicial review, employing a two-tiered system, and the introduction of harsh border protection measures.¹³⁴

Let us examine a little more closely two of the abovementioned terms, that of boat people being possible terrorists, and the notion of a queue. Firstly, is it reasonable to claim that boat people may be terrorists? The term has been subject to considerable repetition, especially from 11 September 2001, and has been specifically used in relation to unauthorised boat arrivals. Other unauthorised groups have not been classified in this way, resulting ultimately in the public automatically associating the unauthorised boat arrivals with possible terrorists.¹³⁵

By nature, a terrorist requires a number of factors to be in his or her favour. These include being able to blend in with the rest of the population, maintaining a low profile, often having an established network, access to accommodation, remaining low key in daily activities, concealing any tendency towards subterfuge or duplicity, and being clandestine in relation to any purchase or delivery of unusual material, such as guns or explosives.¹³⁶ Funding, intelligence, communication, and preferably a degree of sophistication are essential features for the development and planning of any form of attack. A person who

¹³¹ K.H. Karim. “The historical resilience of primary stereotypes: Core images of the Muslim other” in S.H. Riggins. (ed.) *The language and politics of exclusion. Others in discourse*, London: Sage, 1997, pp. 153-182

¹³² Burke, *In Fear of Security*, p.xxiii

¹³³ Crook, *Immigration*, p.124, states that it is due to onshore ref claimants that we owe many of restrictive legislative measures introduced in and after 1992.

¹³⁴ Peyser, *op. cit.*, p.437; Pugh, *op. cit.*, pp.5--69

¹³⁵ McKay, et al., *op. cit.*, pp.607-626

¹³⁶ For example, the terrorists responsible for the attacks on New York and Washington in 2001 had been in the country for a number of years.

arrives by air, whether lawfully or on fraudulent documentation, is likely to pass through airport checks, blend in with the general public, travel freely from place to place, have accommodation, access to a network of people and communication facilities, and funding as required.

Contrast this with a person arriving unauthorised by boat. This scenario involves interception by the Australian Navy, transportation to an excised territory, mandatory detention for an indefinite period, and assessment by Immigration officers due to lack of documentation. Where are the essential features necessary for terrorist planning and attack? They are, of course, non-existent. The accusation that boat people are possible terrorists therefore appears not to hold, and was more likely designed to capture the imagination of the Australian public and instil fear and anxiety.¹³⁷ It reinforces the message that the public needs protection.¹³⁸

In relation to the expression that boat people are “queue jumpers”, this is also a claim without foundation. The term implies there is a list containing those awaiting an assessment process when their turn arrives. However, this is a myth. Katherine Gelber provides a useful analysis on the word “queue”, stating that in relation to immigration, it is a misplaced term.¹³⁹ She discusses that the queue can exhibit cultural values, dominated

¹³⁷ The one peacetime planned (failed) terrorist attack Australia experienced in 2009 on the Holsworthy military base in New South Wales was carried out by two males in particular, and four men were arrested with a fifth questioned over terrorism offences. All of these men were Australian citizens. They were of Somali and Lebanese backgrounds and police claimed they were tied to al Qaeda. These men were well equipped with mobile phones, extensive material and night-vision cameras. See “Suicide Attack Suspects Arrested in Australia”, August 5 2009; ABC News. Jamelle Wells and Philippa McDonald. *Five Sydney men jailed over terrorism plot*, 15 February 2010; ABC 7.30 Report, *Melbourne police foil terror plans*, Matt Peacock (reporter), 4 August 2009; Ganguly, Rajat. *The Age*, “Terror in our backyard”, Opinion, August 6 2009, writes: “A comprehensive strategy would help defuse the real threat to Australia’s security”.

¹³⁸ Carl Ungerer, Australian Strategic Policy Institute, stated on 4 August 2009 in an interview with Kerry O’Brien on the 7.30 Report, that “Australia has to understand that it a terrorist attack on home soil is a real possibility.”

¹³⁹ Gelber, *op. cit.*, pp.19-30

by conventional rules which incorporate the principle of first-come, first-served. The queue represents method, order and the notion of fairness. Those who try to “muscle in” instead of waiting patiently display un-Australianness in that they do not play by the system of a “fair go”. Australian culture promotes the idea of fairness, and consequently someone pushing in and not playing by the rules of an accepted cultural system, can provoke community hostility. Politicians and the media have been opportunistic and have readily utilised this propagandist and stigmatised language to their advantage.¹⁴⁰ Yet this approach has been used against those who usually can’t wait or use the normal channels for application as they need to flee for their lives.

A prime example of government and media opportunism towards the unauthorised boat people came about with the “Children Overboard”¹⁴¹ event in 2001, immediately before an election, and just two days after the election date was announced.¹⁴² The false claims were made that asylum seekers had thrown their children overboard. This was considered an attempt by asylum seekers to force the Australian government to offer refuge, tantamount to emotional blackmail.¹⁴³ The Government had established a hard line on asylum seekers and this had received strong public support. The Australian public was outraged that refugees seeking asylum would stoop to the inhumane action of throwing their children in the sea to drown – all this to achieve their aim of finding refuge in Australia. A subdued Opposition, having placed its “toe in the water”, and seeing overwhelming support for the

¹⁴⁰ *Ibid.*, pp.19-30; Stephen, *Refugees & the rich-world fortress*, p.3. Stephen states that those who arrive by boat face “punishment and demoralization” as they are perceived as jumping the “queue, but that the UNHCR admits there is no such thing as a “queue” with more than twenty million refugees worldwide seeking refuge”.

¹⁴¹ For a full account of the incident, see Weller, Patrick. *Don’t Tell the Prime Minister*, Melbourne: Scribe, 2002

¹⁴² Manne, “The Howard Years: A Political Interpretation” in Manne, *op. cit.*, p.39. The election was set for 10 November, 2001.

¹⁴³ Brett, “Relaxed and comfortable”, p.45; Manne “The Howard Years: A Political Interpretation” in Manne, *op. cit.*, pp.39-40. Howard commented over and over on his dismay that people could act in such a manner.

government, provided no dissent to the handling of the event, nor suggested alternative platforms or policies.¹⁴⁴ The vessels involved in this tragedy in which 353 lost their lives and only 45 survived, were the *HMAS Adelaide* and the *SIEV 4*.¹⁴⁵

The “children overboard” scandal later required a Senate Enquiry into the affair, titled the “Report of the Select Committee on a Certain Maritime Incident.”¹⁴⁶ The Committee’s findings listed factors such as “genuine miscommunication or misunderstanding, inattention, avoidance of responsibility, a public service culture of responsiveness and perhaps over-responsiveness to the political needs of ministers, and deliberate deception motivated by political expedience.”¹⁴⁷ The media had received certain photographs of children being allegedly thrown overboard from the *SIEV 4* on 7 October, but later the inquiry found these were taken on 8 October at the time the *SIEV 4* was actually sinking.¹⁴⁸ An undisclosed source, which “leaked” information, provided the opportunity for the media to obtain and publicise the photographs.¹⁴⁹

Before the Senate Enquiry, the Coalition’s established line was clear. Howard stated, “I certainly don’t want people of that type in Australia, I really don’t”,¹⁵⁰ implying their moral parental values were inferior to Australians’, and that the public must be safeguarded from such shameful deviants.¹⁵¹ It has now been proven that people were being rescued from the water, not thrown in, but the damage could not be easily undone and the

¹⁴⁴ MacCallum, “Girt by Sea” pp.48, 60

¹⁴⁵ Leach, et al., *op. cit.*, pp.46-7, 55

¹⁴⁶ Parliament of Australia Senate. *Select Committee for an inquiry into a certain maritime incident*, tabled 23 October 2002.

¹⁴⁷ *Ibid.*, Executive Summary

¹⁴⁸ *Ibid.*, Executive Summary

¹⁴⁹ *Ibid.*, Executive Summary. See also Smith, Hugh. “A certain maritime incident and political-military relations (Defence)”, *Quadrant*, Vol.46, No.6, June 2002

¹⁵⁰ Interview with Jon Faine, *op. cit.*; Mares, *op. cit.*, p.135

¹⁵¹ Alison Saxton. “I certainly don’t want people like that here: The discursive construction of ‘asylum seekers’ ”, *Culture and Policy*, No.109, November 2003, pp.109-120

Australian public was left with images of people struggling in the open ocean. With general public understanding on the issue lacking, no sympathy was directed to the newcomers and the responses fell into past standard reactions as articulated by Pauline Hanson¹⁵² – refuse to let them land; replenish boats and send them off; administer health and nutrition needs and return them from whence they came.¹⁵³ Australia’s commitment to the principle of “*non-refoulement*” appeared to have found no place in the minds of the Australian public.

Howard won his third term in office, and it is likely this controversial episode contributed to his success.¹⁵⁴ While many found the denials, mistruths, and mistreatment of asylum seekers unacceptable,¹⁵⁵ Howard’s personal ratings increased.¹⁵⁶ The public approved of the strong stance he had taken on the *Tampa* incident, and concurred with his “dismay” on the dreadful incident of “throwing children overboard”, including his statement that they “were not the sort of people Australia wanted”.¹⁵⁷ After the federal election, the Senate Enquiry Committee concluded that, among other findings, the government appeared to be making an example of the *SIEV 4* to other intending asylum seekers.¹⁵⁸ Politicisation of the asylum seeker issue was apparent.

¹⁵² Errington, *op. cit.*, p.299, notes Pauline Hanson’s statement: “We go out, we meet them, we fill them up with fuel, fill them up with food, give them medical supplies and we say ‘Go that way’ ”.

¹⁵³ Moss Cass. “Bodies! Souls?” in Birrell, Robert, Leon Glezer, Colin Hay & Michael Liffman. (eds) *Refugees, resources, reunion: Australia’s immigration dilemmas*, Fitzroy, Vic: VCTA Publishing, 1978, p.163; Leach, et al., *op. cit.*, pp.46-55, refers to the ignominy of the “children overboard” scandal and “the militarisation of Australia’s response, and the higher media profile of the issue”. This thesis notes that Australia was not the only nation with this approach. For example, Malaysia and other South East Asian states had similar policies in relation to the Vietnamese in the 1970-1908s.

¹⁵⁴ Maley, “Asylum seekers”, p.192

¹⁵⁵ Mares, *op. cit.*, p.3. These included refugee advocates, church groups and human rights activists; Birrell, “Immigration Control”, p.111. Birrell concurs, stating that these people include “religious leaders, academics, sections of the ethnic movement, refugee advocates, and, most recently, specialist immigration lawyers”. Peyser, *op. cit.*, p.449

¹⁵⁶ For example, see McAllister, *op. cit.*, pp. 13,14,53

¹⁵⁷ Interview with Jon Faine, *op. cit.* See also Errington, *op. cit.*, p.40

¹⁵⁸ The Findings of the Committee include the following: “The sequence of ‘unusual’ features surrounding the treatment of *SIEV 4* – the leaking of the fact of *SIEV 4*’s interception to the media, the ‘special’ arrangement for Air Vice Marshal Titheridge to contact Brigadier Silverstone directly for the latest news, and

The considerable amount of time and effort put in to “demonising”¹⁵⁹ one group of people has been widely commented on,¹⁶⁰ and is unsound for at least two key reasons. Firstly, as we have already seen, as a signatory to the *Convention* Australia has an international binding obligation to accept any individual, irrespective of the manner in which they arrive, to ensure their human right to claim refuge is offered, and to guarantee no instance of “refoulement” occurs. An abrogation of this responsibility at any point in time represents a compromise of international obligations. Secondly, most unauthorised boat arrivals were proven to be refugees with “over 90% of Afghans and Iraqis” granted protection.¹⁶¹ The “demonisation” is, therefore, easy to invalidate. If the majority of boat arrivals proved to be genuinely in need of protection and were granted entry into Australia, and if unauthorised air arrivals and overstayers outnumbered this group by around fifty to one, it is logical to conclude that the focus of substantial negative political and media attention was unwarranted. Why, therefore, was the government pouring time, energy, and money, into portraying one group as illegal and non-genuine?

The two latter groups did not fall prey to such language. They were not labelled, negative rhetoric was absent, and descriptions invoking fear and anxiety were absent. On any group other than unauthorised boat arrivals, there appears to have been a conspiracy of silence.

Unveiling the reason for the different treatment to different groups allows us to better

Mr Moore-Wilton’s ‘heated’ insistence that the SIEV’s passengers not be landed on Christmas Island – all point to the likelihood that the Government had decided to make an example of SIEV 4.”

¹⁵⁹ Maley, “Refugees” in Manne, *op. cit.*, pp.144-148

¹⁶⁰ Crock, *Immigration*; Inglis, et al., *op. cit.*; Burke, *In Fear of Security*, particularly Introduction, pp.xxi-xiiv; Maley, “Refugees” in Manne, *op. cit.*, pp.144-166; Gale, *op. cit.*, p.334; Richard Towle. (Regional Representative for Australia, New Zealand, Papua New Guinea and the South Pacific) Asylum Seekers and Australians: Where Do We Stand Now?, Survivors of Torture and Trauma Assistance and Rehabilitation Services (STTARS) Forum, Wednesday 19 May 2010, Bethlehem House, Adelaide. Towle commented that the enemy in war is portrayed as a faceless, hateful, dangerous human who must be destroyed, and that refugees are demonised in this way by media and political spin. Meeting these people face-to-face puts the issue into perspective but when no human contact is involved, this group is easier to demonise.

¹⁶¹ Brennan, *Tampering with Asylum*, p.208

understand the issue,¹⁶² which has been the subject of considerable parliamentary debate.

For example, on Wednesday 7 February 2001, ALP MP Dick Adams, speaking to the

Migration Legislation Amendment Bill (No.2) 2000, stated:

This government has become quite paranoid about refugees. It seems very worried about boat people. The refugees who come here at great risk to themselves and their families are locked up for months—even years—while the government tries to sort out their credentials; yet the government cannot allow them to have full access to the review provisions.¹⁶³

...

Thousands of illegal immigrants come in by air or legitimate means; sometimes they are not touched by the migration people until they are picked up in the community for other reasons. The government does not seem to be too worried about them. I think there are about 50,000 a year. How many boat people do we have? About 2,500. The previous speaker, the member for Chifley, said we are spending \$200 million on the 2,500 or 3,000 boat people. But we have 50,000 people each year who arrive by air and overstay their visas. This government does not seem to be too worried about that group of people. Maybe it is because most of those people come from Europe, America, Canada or other white, English-speaking countries.¹⁶⁴

Peter Gale asserts that the “notion of whiteness” and identity lie at the heart of the continuing debate in Australia.¹⁶⁵ Others, such as Anthony Burke, argue that the notion of security underpins the issue of asylum seekers, asserting that cultural alienness is at the basis of anxiety in Australia.¹⁶⁶ He suggests that if this were not the case, Australians would be paranoid about the number of unauthorised air arrivals, and the high level of tens of thousands of visa overstayers each year.¹⁶⁷ While the government releases statistics in the Department of Immigration’s annual report, it keeps a particularly low profile on

¹⁶² Inglis, et al., *op. cit.*, p.23

¹⁶³ MP Dick Adams, Australian Labor Party, House Hansard, 7 February, 2001, p.24039

¹⁶⁴ MP Dick Adams, Australian Labor Party, *House Hansard*, Wednesday 7 February, 2001, p.24039; Extract of Australian parliamentary debate cited in Every, et al., *op. cit.*, p.422; Inglis, et al., *op. cit.*, p.47

¹⁶⁵ Gale, *op. cit.*, pp.321-324, 334. Gale observes that the “relationship between media discourse and political representations of asylum seekers reflects the intersection between the imaginings of national identity and populist politics in contemporary Australian culture. ... whiteness has been a significant historical marker of national identity in Australia. The recent debate surrounding the Government policy and practice towards refugees and in particular asylum seekers arriving by boat, reflects the ongoing significance of the social construction of whiteness in contemporary Australia.”(p.334) He outlines three themes. Firstly, as a safe and caring, protective Australia which generously offers humanitarian refuge; secondly, a sovereignty with national rights, fighting threats from the barbaric, illegal “other”; thirdly, a country with national and international obligations to asylum seekers predicated on their rights under the UN Convention. Gale contends all these themes draw on the notion of whiteness, encompassing superiority, institutionalised privilege and an acceptance of violence against the excluded other.

¹⁶⁶ Burke, *In Fear of Security*, pp.xxii-xxiii, 188-198. Burke discusses the deep-seated anxiety John Howard shared with other Australians on a transformation of national identity which would be inevitable as a result of engagement with an “Asian” future, conflicting with his (Howard’s) preferred definition of the need for “sameness” within Australia society.

¹⁶⁷ *Ibid.*, p.xxii

commenting to journalists about these groups. It is based on the premise that the public wants to feel secure, a notion built on a “bounded and vulnerable identity in perpetual opposition to an outside”, represented as the “other”.¹⁶⁸ This dominant philosophical process is one of exclusion.

While security is seen as universal as a fundamental societal value, it operates on creating division between those included and outsiders. This pattern of exclusion is an enduring aspect of the refugee debate. For example, Senator Chris Schacht, ALP, states:

I tell you what: if unfortunately because of the circumstances in Zimbabwe with the way the white farmers are being treated - and I do not agree at all with the way they are being treated; I think that what the Mugabe government is doing is a disgrace - those farmers fled that country in some sort of boat and came to Australia Senator Lightfoot would be at Cottesloe Beach welcoming them with a banner because they are white and they are farmers and they are from Zimbabwe.

But if they were black farmers from Zimbabwe he would be standing at the shore saying 'Get out we don't want you.'

(Senator Chris Schacht, ALP, Senate Hansard, 25/9/01: 27844)¹⁶⁹

The issues of “whiteness”, security and exclusion are all pertinent to Australians who want to feel secure. They are fearful.¹⁷⁰ One electoral message from Howard in 1998 was that the population had been delivered “security, safety and stability”.¹⁷¹ This message contained within it a guarantee of the ultimate social value, security, bringing a promise of the paramount condition for life and freedom.¹⁷² Security from threat in an ever-hostile world is an appealing message to an uncertain public. In relation to unauthorised air arrivals, the government claimed it had control of the situation. Promoted negatively, this group had (and still has) the potential to represent a threat equal to, or greater than, unauthorised boat people.

¹⁶⁸ *Ibid.*, p.xxiii-xxv

¹⁶⁹ Senator Chris Schacht, ALP, *Senate Hansard*, 25 September 2001, p.27844; Every, et al, *op. cit.*, p.423; and in relation to the *Tampa*, see MacCallum, “Girt by sea”, p.64

¹⁷⁰ Lawrence, *op. cit.*, p.126-127

¹⁷¹ Burke, *In Fear of Security*, pp.xxxv, 184

¹⁷² *Ibid.*, p.xxxvi

Due to Australia's isolation and geography, monitoring air arrivals and departures has been promoted as manageable with strict controls and advanced technology built into the system. In addition, those arriving at an airport, or already in Australia, almost always possessed some form of identification documentation, even if later proven to be fraudulent or forged. These factors go some way in a different public perception towards air arrivals.¹⁷³ In contrast, the unauthorised boat arrivals appeared without notice, with no predetermined checks possible at the point of departure or arrival, with high health and safety risks and with a total lack of control, triggering a situation involving urgency and anxiety. Often these people did not have documentation (having calculatedly and intentionally destroyed it, according to the government),¹⁷⁴ thereby forcing a two-tiered approach.

However, by the then-government's own definition, it is argued that unauthorised air arrivals and overstayers were just as much "queue jumpers" and "illegals" as those arriving by boat. People who arrived on a visitor or student visa, with the intention of then seeking refugee status, entered Australia under false pretences.¹⁷⁵ The racial and geographic double standards become perceptible, with air arrivals or overstayer violators not immediately mandatorily detained. The basis for this tolerant approach appears on the surface to be, as MP Dick Adams has suggested, that the predominant countries of origin are culturally

¹⁷³ ABC Television, "The People Smugglers' Guide". Andrew Metcalfe, Border Control, Department of Immigration, perpetuated the perception that there was nothing to worry about with unauthorised air arrivals, stating: "Air arrivals don't receive the publicity that boat arrivals do because they happen every day around Australia in ones or twos. Sometimes they're a larger group, but usually it is just one or two people coming through, usually on false documentation."

¹⁷⁴ DIMIA, 15 October 2001, states that "Many unauthorised arrivals have disposed of their identity documents en route to Australia". A number of reports suggest that people smugglers advise the asylum seekers to attempt sabotage of their boats and destroy their documentation and, having placed their lives in the hands of these criminals, they do not hesitate to follow orders. For example, see Paul Maley & Gavin Lower, "Sabotage craft, asylum seekers told: Philip Ruddock", *The Australian*, April 17, 2009; ARSC, *op. cit.*, Myth 3; Motta, *op. cit.*, p.22,

¹⁷⁵ Mike Steketee. "Return to Sender", *Australian*, March 1, 2007, cited in Perera, Suvendrini, *Australia and the insular imagination*, p.97

similar to Australia, such as the U.K., New Zealand or Ireland. By contrast, the boat arrivals originate mainly from the Middle East and Asia.¹⁷⁶

Every government's aim is to appear in control and have the confidence of the voting public. During the Howard era it is apparent that a two-pronged approach was devised, a strategy which selectively minimised exposure to certain information and positively reinforced other facts. As a result, newspaper and television and radio coverage on the number of unauthorised air arrivals was close to non-existent. News items occasionally appeared, commenting on contrasting numbers of air and boat arrivals, but these were uncommon. On 25 October 2009, an article appeared with the headline, "Most asylum seekers fly: 32 for every one boat",¹⁷⁷ stating:

Every day at least 13 asylum seekers arrive through Australian airports, representing more than 32 times the number of boat people supposedly "flooding" across our maritime borders. A total of 4768 "plane people", more than 96 per cent of applicants for refugee status, arrived last year on legitimate tourist, visitor and other visas – compared with 161 who arrived by boat during the same period. And plane people are much less likely than boat people to be genuine refugees, with only about 40-60 per cent ultimately granted protection visas, compared to 85-90 per cent of boat people. In 2007-08, 3987 claims were received and 1930 were approved.

The article did not attract attention, nor trigger major debate. It did nothing to fan the flames of discontent in Australian society. The point to note here is every single boat arrival was seen as newsworthy. Not one boat arrival seems to have gone by without some level of media attention and comment, a practice which was carried out throughout the Howard era and remains to this day.¹⁷⁸ The exact opposite occurred in relation to unauthorised air arrivals and overstayers, with no regular updates occurring. Statistics were seldom commented on by the government in media releases or interviews, nor were

¹⁷⁶ *Ibid.*, p.97-98;

¹⁷⁷ Claire Harvey. "Most asylum seekers fly: 32 for every one boat", *Sunday Mail*, October 25 2009, p.10

¹⁷⁸ For example, a collection of newspaper clippings for 2009 provide approximately ninety (90) articles on boat people and related issues, such as people smugglers, yet less than a handful of references on unauthorised air arrivals. Research on other years reflects the same pattern.

they rigorously followed through by journalists. On the surface, it appeared that the key collective weapon of silence was applied.

While publicity on overstayers and unauthorised air arrivals was minimal, any information which did appear was reassuring and confident. The public message of reinforcement was promoted through government reports of sophisticated operations at major airports, high levels of technology at the government's disposal, and advanced technical capabilities for screening unlawful entrants.¹⁷⁹ As previously discussed, Airport Liaison Officers (ALOs) were employed to monitor passenger movements at airports,¹⁸⁰ and airline carriers would be penalised if an unlawful non-citizen was brought into the country.¹⁸¹ Television programmes such as "Border Security: Australia's Front Line", which commenced in 2004, proved popular with viewers,¹⁸² reinforcing the message that Australia's borders were safe and controlled through highly sophisticated processes and procedures to stop the unwanted "other".

It is proposed that there was good reason for unauthorised air arrivals and visa overstayers having a low profile. Firstly, if the true number was common public knowledge, the electorate may perceive the government was losing control. Secondly, public anxiety was already high over one group and to expose a second (let alone a third, unlawful and

¹⁷⁹ For example, see departmental annual reports, 2000-1, 2002-3, 2003-4, 2005-6

¹⁸⁰ Department of Immigration and Multicultural and Indigenous Affairs, *Annual Report*, 2003-04, Report on Performance, Outcome 1, p.82. The Airline Liaison Officers (ALO) role is to screen the documentation of "many Australian-bound passengers at key international gateways", to "provide advice to airlines and to host governments on passenger documentation issues, and by their visible presence, deter the activities of those involved in people smuggling".

¹⁸¹ Commonwealth of Australia. "Protecting the Border.", p.37; Millbank, *op. cit.*, p.4/7

¹⁸² *Border Security – Australia's Front Line*, Channel 7. This program which premiered in 2004, comes with the caption, "Go behind the desk of Australia's Immigration, Customs, and Quarantine departments with this often emotional, always dramatic reality show. See how the professionals guard the borders of the land down under". The online available rating displays 7.6 of a maximum of 10. Some concern has been expressed that government pressure on the media can sometimes result in production editing which ensures a positive depiction of the government, with errors or oversights selectively deleted. See Bob Burton. *Inside Spin: The Dark Underbelly of the PR Industry*, Allen & Unwin, 2007; ABC Media Watch. *Immigration Dept threat to Border Security*, David Knox (reporter), 15 September 2009.

unplanned) non-citizen group would risk heightening fear in the electorate. Thirdly, and perhaps most importantly for the government, public confidence could be reduced, or perhaps even disappear, and this could have dire consequences at the ballot box with the government risking loss of power. It appears, therefore, that the preferred option was silence, a tactic which attracted criticism by some.¹⁸³

The Howard government's decade in office was dominated by the politics of fear involving politicisation and exploitation of the smallest, most vulnerable group of asylum seekers. This was achieved through a campaign of negative rhetoric, a co-operative media, heightened public anxiety and hostility (as well as public ignorance and misinformation), and the perception that greater national security could be achieved through tougher border strategies and harsher penalties for any unlawful arrivals. It is argued that the basis of this approach was to shore up the public vote and so maintain power. As we have seen, the population is best controlled when it is afraid. Fear sells, fear is functional, fear sows mistrust and it gets governments elected.¹⁸⁴ However, the repressive consequences of fear make it "a toxic force to be resisted",¹⁸⁵ in the form of a "poisonous hypocrisy enter[ing] the bloodstream of the nation state".¹⁸⁶ There is little doubt that, while new policy measures were temporarily successful in keeping unauthorised maritime arrivals from coming to Australia, they came at significant cost. The next chapter will examine the price in human terms of refugee and asylum seeker policy shifts during the Howard era.

¹⁸³ See "Burside launches blistering attack on media"; Andrew MacLeod. "Boats, votes & suffering", *The Age*, Opinion, Sept 26 2001; Corey, *op. cit.* As previously noted, Corey discusses this point in relation to exaggerated emphasis on claims boat arrivals may be terrorists, compared to lack of comment regarding the more numerous unauthorised air arrivals or the far greater number of overstayers.

¹⁸⁴ Lawrence, *op. cit.*, pp.126-127

¹⁸⁵ *Ibid.*, pp.126-127

¹⁸⁶ Larking, *op. cit.*, p.1

CHAPTER 7: COSTS IN HUMAN TERMS

Australia's deterrence policies came at a considerable cost in human terms. To highlight the impacts of political determinations, three key areas have been selected for discussion. These are mandatory indefinite detention, the determination process and people smuggling.

Mandatory indefinite detention

According to James Jupp:

[T]he rationale for having a humanitarian program at all is a belief in human rights. These rights were increasingly being denied under a system of detention more draconian than that in most liberal democracies. The politicians' rationale – that the majority of Australians supported the policy, as proved by the Coalition victory of November 2001 – was fully in the populist tradition that 'the people are always right'. Unfortunately history suggests that this is not invariably the case.¹

In Australia, all people have a fundamental right, based in common law, to enjoy freedom from arbitrary detention.² According to world standards, the major document outlining human rights is the International Bill of Human Rights,³ in which three instruments are contained: The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). The treatment by a government towards a person within its territory is primarily contained in the ICCPR,⁴ to which Australia is a party.⁵ Article 9(1): freedom from arbitrary detention, states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

¹ Jupp, *From White Australia*, p.198

² Motta, *op. cit.*, p.12. It should be noted that a fundamental right based in common law can be overturned by ordinary statute.

³ See Australian Human Rights Commission, Human Rights Explained, Fact Sheet 5, *The International Bill of Human Rights*

⁴ Nick Poynder. "Human Rights Law and the Detention of Asylum-Seekers" in Crock, Mary. (ed.) *Protection or punishment? : the detention of asylum-seekers in Australia*, Leichardt, N.S.W.: Federation Press, 1993, pp.60-61

⁵ Motta, *op. cit.*, p.22

No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.⁶

This passage conveys the message that “the right to personal liberty as the broad principle involved”⁷ is not commensurate with arbitrary detention. If detention does occur, it “must not only be legal according to domestic law, it must also not be arbitrary under international law”.⁸ The Executive Commissioner of the UNHCR (ExComm) has also affirmed that detention can only be a last resort, advising that “detention should normally be avoided”.⁹ In addition, the Universal Declaration of Human Rights (1948), Article 9 and Article 14, respectively, state that “[n]o one shall be subjected to arbitrary arrest, detention or exile”; and that “(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution”.¹⁰ These articles are in harmony with the UNHCR *Convention*, Article 31, which reads:

Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.¹¹

However, since 1992, mandatory detention of all unlawful residents¹² has been required under Australia’s immigration laws. This came about due to increased hostility from 1989

⁶ International Covenant on Civil and Political Rights (ICCPR), Article 9(1)

⁷ Matthew Stubbs. *Arbitrary Detention in Australia: Detention of Unlawful Non-Citizens under the Migration Act 1958 (Cth)*, *Australian Year Book of International Law* 9, 2006

⁸ *Ibid.*, Section: Freedom from arbitrary detention

⁹ UNHCR, Executive Commission of the UNHCR (EXComm) Conclusion No.44 (XXXVII) –1986. *Detention of Refugees and Asylum Seekers, Report of the 37th Session*: UN doc. A/AC.96/688, para 128: Recommendation (d)

¹⁰ The General Assembly of the United Nations, *Universal Declaration of Human Right*

¹¹ UNHCR, *Convention and Protocol*, Article 31, p.29

¹² In 1992, an appeal to the High Court in the case of *Chu Kheng Lim vs MILGEA* (1992) 110 ALR 97, drove the push for legislation on detention – see Crock, *Immigration*, p.25; Motta, *op. cit.*, p.15. Just prior to the case, legislation was passed to legalise the applicant’s detention retrospectively. The government also created a “designated persons” classification, requiring such a person to be detained. See *Migration Amendment Act 1992* No. 24, 1992 - Sect 3, [s.54K, 54L, 54N and 54P]. *The Migration Reform Act 1992*

towards asylum seekers arriving unauthorised by boat, prompting measures to deter through a policy of mandatory detention.¹³ Amendments to the Act in 1992 created a “designated persons” classification, which applied to any unlawful arrivals, including asylum seekers, to be detained until their claim was successfully determined and provided with a visa, or removed from the country if unsuccessful.¹⁴ The policy was harsh and served to dehumanise asylum seekers by “locking them up away from public scrutiny in isolated and degrading gulags and mentioning their existence only when they became desperate enough to fight back”.¹⁵ In this manner, they were “out of sight, out of mind” and there was no risk of them mixing with the public, because should they have done so, they would have been “seen to be normal human beings, rather than faceless invaders with horns and tails, [and] sympathy could quickly swing their way”.¹⁶

The policy of deterrence amounted to a compromise of international obligations in relation to the *Convention*, as well as other agreements to which Australia is a party.¹⁷ The use of dehumanising and punitive detention was, according to the UNHCR, “contrary to the norms of refugee law” and it was not to be used “as a punitive or disciplinary measure for

(Cth) was amended to differentiate between “non-citizens” who were “lawful” and “non-citizens” who were “unlawful”. This replaced the past legal distinction between “unauthorized arrivals” and “illegal entrants”. All “non-citizens” who were “unlawful” were to be mandatorily detained.

¹³ *Migration Legislation Amendment Act 1989* (Cth); Crawford, J. “Australian Immigration Law and Refugees: The 1989 Amendments”, *International Journal of Refugee Law*, 1990, 626-627, 629; Stubbs, *op. cit.*; Motta, *op. cit.*, p.14. Those who did not hold a valid visa or their permit had expired, were prescribed under Section 14 of the Migration Act as an “illegal entrant”. Asylum seekers fell under the classification of Section 99 [s.36], designed for handling “prohibited entrants”.

¹⁴ As stated by Gerry Hand, (Minister for Immigration, Local Government and Ethnic Affairs), *Migration Reform Bill 1992 - Second Reading* “The Bill will provide for a uniform regime for detention and removal of persons illegally in Australia. Non-citizens who are in Australia without a valid visa will be unlawful and will have to be held in detention.” These provisions were in s.36(1) [s.26B]. See also Motta, *op. cit.*, p.16.

¹⁵ MacCallum, “Girt by Sea”, p.10

¹⁶ *Ibid.*, p.33

¹⁷ For example, the Convention relating to the Status of Stateless Persons; The Convention on the Reduction of Statelessness; The Convention on the Rights of the Child (CROC), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); The International Convention on Economic, Social and Cultural Rights; The International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of all Forms of Discrimination Against Women; and the previously noted ICCPR; David Corlett. *Returning Failed Asylum Seekers From Australia*, A Discussion Paper, Printmode, 2007, p.8; Poynder, *op. cit.*, pp.60-69

illegal entry or presence in the country.”¹⁸ Chris Bowen, Labor Minister for Immigration and Citizenship in the post-Howard era, stated that the policy reflected “shamefully” on Australia and demonstrated an absence of transparency, independent advice and review, and a lack of oversight of the process.¹⁹ A further compromise was the non-reviewable aspect by the court, breaching a fundamental common law principle and noted earlier in Article 9 of the ICCPR.²⁰ Furthermore, international treaty obligations were breached in relation to the CRC which outlines the rights of children and the young. Australia detained hundreds of children during the Howard era, yet as party to this instrument, Australia had committed to protecting and promoting their rights.²¹

How was the Australian government able to justify the establishment of policies contrary to its international obligations? Part of the answer to this question lies in the complexity of the law. As Crock explains:

According to traditional (dualist) view of the Westminster system of government, international law operates in a sphere that is independent of the municipal or domestic laws of a country. Treaties and Conventions are binding on state parties at an international level, but do not affect the local law unless enacted into law by the domestic parliaments of the countries involved.²²

...

Although bound at international law to comply with these instruments, Australia has chosen not to enact comprehensive legislation to translate its obligations into municipal law. The only mention of the Refugee Convention and Protocol in Australia’s domestic law is the reference made to the definition of refugee in s 5(1) of the Act and Sch 2, cl 866 of the Regulations.²³

Clearly, unless international law was incorporated into domestic law through an Act of Parliament incorporating such treaty obligations, a state was not forced to fully comply

¹⁸ See UNHCR, *Revised Guidelines*, Guideline 3: Exceptional Grounds for Detention, (iv) to protect national security and public order.

¹⁹ Chris Bowen, MP, Minister for Immigration and Citizenship. *New Directions in Detention – Restoring Integrity to Australia’s Immigration System*, Australian National University, Canberra, Tuesday 29 July 2008

²⁰ ICCPR, G.A. *res.2200 (XXI)*, U.N. Doc A/6316, 1966, entered into force 23 March 1976, cited in Submission 127, Made jointly by the Law Institute of Victoria, Liberty Victoria and The Justice Project, *Inquiry into Immigration Detention in Australia*, 25 August 2008, p.13

²¹ CRC, *introduction* at YouthLaw human rights; Submission 147, *op. cit.*

²² Crock, “Immigration”, p.25

²³ *Ibid.*, p.126

with those instruments when dealing with internal issues.²⁴ A state's ultimate responsibility was the management of its own affairs, with the power to protect its borders, retaining the sovereign right to grant or refuse entry to any individual.²⁵ However, it is argued that by becoming a signatory to certain international instruments, part of this sovereign right has been willingly surrendered and is therefore conditional upon those responsibilities.²⁶ International organisations do not inflict penalties on signatories, instead relying on states to act responsibly according to their international obligations.²⁷ When a signatory does breach or violate its obligations, the power exists to publicly criticise and to "name and shame".²⁸ This measure has been taken against Australia.

Having gone down a path contrary to recommendations by international agreements, can we identify costs in human terms for those detained? The answer is a resounding, "yes". While the concept of short-term detention for carrying out necessary checks is acknowledged as an essential part of the determination process, detention during the Howard era took on a new set of defining features, including mandatory incarceration for

²⁴ Debi McLachlan. *Refugees, Children's Rights and Rhetoric*, Department of Cultural Studies/Legal Studies, Flinders University, p.2; Tania Penovic, Azadeh Dastyari & Jessie Taylor. *Submission to Senate Legal and Constitutional Legislation Committee Inquiry into the provisions of the Migration Amendment (Designated Un authorised Arrivals) Bill 2006*, Castan Centre for Human Rights Law, Monash University, Melbourne, 5 June 2006, p.5

²⁵ Poynder, *op. cit.*, p.69

²⁶ Some argue that even with the introduction of legislation, sovereignty is not relinquished. See Rachel Mansted. "The Pacific Solution – Assessing Australia's Compliance with International Law", *Bond University Student Law Review*, Vol.3, Iss.1, Article 1, 3 January 2007, pp.1-13. For example, she notes (p.4) it is clear that, in relation to turning boats around or returning people, "Australia's excision of certain areas from its 'migration zone' does not purport to relinquish sovereignty over those areas", meaning rejection is prohibited even outside a state's borders. See also UNHCR Executive Committee, *Conclusion No. 6 (XXVIII)*, 1977

²⁷ Peyser, *op. cit.*, pp.441-442. Peyser states that complexities are involved in this approach. For example, the UNHCR attempts to enforce the protection provisions and is required to step in to "refugee determination when states fail to process" claimants. In addition, the "UNHCR is sustained by donations from the States Parties to the Refugee Convention and Protocol", thereby leaving "the UNHCR with little policing power when domestic systems diverge from international obligations".

²⁸ See Maley, "Asylum-seekers", pp.187, 191-192, for comments on international criticism of Australia

indefinite periods and imprisonment in remote localities, effectively penalising those who reached its shores.²⁹

The Australian government argued that it was not punishing “unlawful non-citizens” or “aliens” by arbitrarily detaining them; instead it was holding them legally for health and identity checks to protect the national interest and, upon granting of a visa, the person was immediately free to leave.³⁰ Under this interpretation, asylum seekers were not detained or penalised,³¹ no matter how long the period of incarceration.³² In 1997 the government made its position clear in Minister Ruddock’s response to a Question Without Notice:

The message from this government is that people who do come here illegally are not fleeing persecution. They come here with false hopes and expectations if they expect to be able to stay permanently. They will be dealt with quickly and efficiently. If they have no claim to remain in Australia, they will be returned.³³

In addition, the government argued that any person during their period of detention was free to leave simply by requesting this.³⁴ Some have found this line of explanation wanting, refuting both claims that it would amount to a threat to national security if these

²⁹ Submission 127, *op. cit.*, p.12 states that the “High Court of Australia held that the “unambiguous” wording of ss189, 196 (and 198) authorise the indefinite detention of an unlawful non-citizen in circumstances where there is no real prospect of removing them. ... This ruling means that indefinite immigration detention in Australia is deemed legal and constitutional.”

³⁰ Philip Ruddock, Minister for Immigration. “January 2002 Rebuttals to False Information Relating to Immigration Detention”, Press Information Page, cited in Motta, *op. cit.*, p.23

³¹ *Ibid.*, p.22; Penovic, et al., *op. cit.*, p.10. See also Commonwealth of Australia. House of Representatives, Questions Without Notice, Immigration: Unauthorised Boat Arrivals, Parl No.38, Questioner Mr Billson, Responder Mr Ruddock, 02 September 1997, p.7511. In this document, Mr Ruddock made it clear in parliament that the “message from this government is that people who do come here illegally are not fleeing persecution. They come here with false hopes and expectations if they expect to be able to stay permanently. They will be dealt with quickly and efficiently. If they have no claim to remain in Australia, they will be returned.”

³² The longest period of detention recorded was seven years in the case of Peter Qasim, from 9th September 1998 to July 2005. See The Bartlett Diaries, *op. cit.*

³³ Commonwealth of Australia. *Parliamentary Debates, House of Representatives*, Questions Without Notice, Immigration: Unauthorised Boat Arrivals, Parl No.38, Questioner Mr Billson, Responder Mr Ruddock, 02 September 1997, p.7511

³⁴ Senate Legal and Constitutional References Committee, *Report: Provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* (2006); Mansted, Rachel. “The Pacific Solution – Assessing Australia’s Compliance with International Law”, *Bond University Student Law Review*, Vol.3, Iss.1, Article 1, 3 January 2007, p.8; Department of Immigration and Multicultural and Indigenous Affairs, *Fact Sheet 76: Offshore Processing Arrangements*

people were released into the community,³⁵ and that harsher treatment for undocumented asylum seekers was justified.³⁶ As Nick Poynder observes:

It is quite clear that Australia's policy of detaining asylum-seekers is driven by one purpose, and one purpose only – deterrence; primarily, the desire to deter others from coming to Australia in search of asylum. ... [I]t is clear that the long-term detention of asylum-seekers by the Australian Government is both inappropriate and unjust. It has nothing whatsoever to do with the proper processing of refugee applications, but exists solely to act as a deterrent.³⁷

Much has been written on the subject of onshore and offshore detention,³⁸ and it is clear from these studies that many “unlawful non-citizens” in one of Australia's detention centres suffered great mental stress from the experience, especially after having frequently escaped violence, trauma and torture.³⁹ Key contributing factors for detainees included:

- human rights were usurped by a political agenda
- isolation and prison-type environments negatively affected mental health
- stress arose from dealing with the unknown, such as the length of incarceration and temporary (not permanent) protection upon release
- long detention periods contributed to powerlessness, hopelessness and subsequent assimilation and adaptation problems

³⁵ Poynder, *op. cit.*, p.66

³⁶ *Ibid.*, pp.66, 68

³⁷ *Ibid.*, pp.67. Poynder quotes Gerry Hand, House of Representatives Hansard, 5 May 1992, p.2372, who stated that their “release would undermine the government's strategy” and that “a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community”.

³⁸ For example, see Justice for Asylum Seekers (JAS) Alliance Detention Reform Working Group, *Alternative approaches to asylum seekers: Reception and Transitional Processing System*, June 2002; The Parliament of the Commonwealth of Australia. *A report on visits to immigration detention centres*, Joint Standing Committee on Foreign Affairs, Defence and Trade, Canberra, June 2001, Printed by CanPrint Communications, Pty Limited, Canberra, Commonwealth of Australia, 2000, pp.32-67; Burnside, *From Nothing to Zero*; GetUp: Action for Australia. *Submission: Inquiry into Immigration Detention in Australia*, 25 August 2008; Motta, *op. cit.*, pp.12-43; Rajaram, Prem Kumar & Carl Grundy-Warr. “The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand”, *International Migration*, Vol.42(1), Blackwell Publishing Ltd, 2004, pp.33-63; Stephen, “Mandatory Detention”, in Stephen, Sarah. *Refugees: exposing Howard's lies!* Broadway, NSW: Resistance Books, 2002, pp.24-28; Amnesty International. *The impact of indefinite detention*.

³⁹ Zachary Steel & Derrick M Silove. “The mental health implications of detaining asylum seekers”, *The Medical Journal of Australia*, Vol.175, No.11, 2001, pp.596-599; Crock, *Protection or punishment? Part 3: Human Impact*, pp.81-100; Derrick Silove, Patricia Austin & Zachary Steel. “No Refuge from Terror: The Impact of Detention on the Mental Health of Trauma-affected Refugees Seeking Asylum in Australia”, *Transcultural Psychiatry*, Vol.44, 2007, pp.359-393; Derrick Silove. “Policies of Deterrence and the Mental Health of Asylum Seekers”, *The Journal of the American Medical Association*, Vol 284, No.5, 2000, pp.604-611; Ingrid Sinnerbrink & Derrick Silove, A. Field, Zachary Steel & V. Manicavasagar. “Compounding of premigration trauma and postmigration stress in asylum seekers”, *Journal of Psychology*, Vol.131, Issue 5, September 1997, pp.463-470. This article outlines that, at the end of March, 1994, “approximately 21,000 asylum seekers were awaiting the outcomes of their residency applications in Australia”. The study concentrated on asylum seekers who had entered by air and, for that reason, were not detained but released into the community until a decision was reached on their claims. The main sources of stress they reported were previous exposure to persecution or organised violence, the fear of being returned, delays in the determination process and barriers to work and services.

- lack of access to quality services such as communication, health facilities, and legal advice.⁴⁰

Such factors resulted in human suffering which spanned many years and led to extreme measures by detainees, such as riots, destruction of detention centre property, hunger strikes, self-mutilation and even suicide.⁴¹ In turn, this behaviour saw the erosion of public support for asylum seekers and those eventually granted protection within the Australian community suffered further difficulties dealing with a hostile and angry public.⁴²

There is ample evidence that detained asylum seekers suffered mental health issues due to their incarceration, especially after earlier experiences of frequently escaping trauma and torture. According to one study investigating “the longer-term mental health effects of mandatory detention and subsequent temporary protection on refugees”:⁴³

... [P]rolonged detention exerts a long-term impact on the psychological well-being of refugees.

And:

Refugees recording adverse conditions in detention centres also reported persistent sadness, hopelessness, intrusive memories, attacks of anger and physiological reactivity, which were related to the length of detention.⁴⁴

According to another study in *Transcultural Psychiatry*:

⁴⁰ Rosemary Nairn. *Notes on Health and Mental Health for Asylum Seekers and Refugees held in Immigration Detention Centres and Living in the Community*, Refugee Action Committee (ACT), April 20005, updated May 2005, p.52

⁴¹ Commonwealth of Australia. Parliament of Australia Senate, Legal and Constitutional Legislation Committee, *Examination of Additional Estimates 2000-2001, Additional Information Volume 2*, Immigration and Multicultural Affairs Portfolio, September 2001, Questions on Notice, no.51, which details charges relating to Port Hedland incident and no.52, which details the cost of damage at Woomera Port Hedland and Curtin incidents; See also *The Advertiser*, “\$8.5 million damage bill”, Monday, December 30, 2002, pp.1,4; *The Advertiser*, “Cuffed and locked away”, Thursday, January 2, 2003, pp.1,7; *The Advertiser*, “Rann to send PM arsonists’ bill for attacks at Baxter”, Tuesday, December 31, 2002, p.5; *The Advertiser*, “Mission to destroy”, Wednesday, January 1, 2003, pp.1,6; *The Advertiser*, “Burnt, buckled and broken – the deserted shell that was Woomera”, Thursday, January 9, 2003, p.4; Law, *op. cit.*; Leach, et al., *op. cit.*, pp.73-4

⁴² Gale, *op. cit.*, p. 335. Gale states that while the policy was to be a deterrent, it had other effects as well. For example, he claims that “a policy of mandatory detention does not create a receptive host population for those who are granted refugee status”; For a discussion on the Pacific Solution and human costs, see Bem, et al., *op. cit.*, pp.16-29. At the individual level, see ABC TV 4 Corners, August 2001, covering the case of Shayan Badraie.

⁴³ Zachary Steel, Derrick Silove, Robert Brooks, Shakeh Momartin, Bushra Alzuhairi & Ina Susljik. “Impact of immigration detention and temporary protection on the mental health of refugees”, *The British Journal of Psychiatry*, Vol.188, 2006, p.58

⁴⁴ *Ibid.*, p.63. Steel concluded that negative mental health effects not only occurred during detention, but continued well afterwards.

There is growing evidence that prolonged confinement of asylum seekers in detention centres results in adverse mental health outcomes.

The impact of prolonged detention on the mental health of asylum seekers drew commentary from mental health professionals soon after the policy was introduced, but administrators and politicians disputed the assertion that detention was a factor in causing or exacerbating mental disorder. ... [T]he data from all sources converge in demonstrating that prolonged detention has adverse mental health and psychosocial impacts on adults, families and children.

The detention debacle in Australia provides a contemporary example of how a modern, pluralistic society that subscribes to multiculturalism and liberal values can, nevertheless, adopt policies that are regressive from a human rights, transcultural and mental health perspective. Once adopted, these policies can be adhered to stubbornly, even in the face of strong evidence indicating the harm that is being done.⁴⁵

Other reports concur with this view.⁴⁶

It is argued a critical point in the debate on detainees' health and well-being is the way in which the government managed Australia's detention processing centres. In 1997, detention centres on the Australian mainland were privatised to Australasian Correctional Management (ACM), a subsidiary to a U.S. firm, American Wackenhut Corporation.⁴⁷

The security giant Wackenhut developed and managed many private prisons across the world.⁴⁸ While the concept of privatisation can offer certain advantages, including competitiveness and public scrutiny,⁴⁹ in the case of detention centres competition was limited and open scrutiny was not possible in practical terms.⁵⁰

⁴⁵ Silove, et al., *No Refuge from Terror*, pp.359, 362, 387

⁴⁶ Silove, "Policies of Deterrence", p.604 states: "[T]here is growing evidence that salient postmigration stress facing asylum seekers adds to the effect of previous trauma in creating risk of ongoing posttraumatic stress disorder and other psychiatric symptoms. The medical profession has a role in educating governments and the public about the potential risks of imposing excessively harsh policies of deterrence on the mental health of asylum seekers."

⁴⁷ The term "Correctional" is noted as a description more closely linked with law breakers. Joint Standing Committee, *op. cit.*, p.29, states that while Australasian Correctional Services Pty Ltd (ACS) was awarded the contract, "the actual delivery of this contract has been sub-contracted by the parent company ACS to Australasian Correctional Management Pty Ltd (ACM)". See also p.16, which states that when the contract commenced, the firm "undertook a commercial due diligence evaluation of the condition of all the centres. Some 'minor deficiencies' with their fabric and structure were identified and subsequently corrected".

⁴⁸ Greenleft, *Corporate Scumbag: Abusing refugees and prisoners: Australasian Correctional Management* Wednesday, March 20, 2002; Margo Kingston. "Woomera: Reducing Australian values to private profit", *Opinion, Sydney Morning Herald*, May 20, 2003

⁴⁹ MacCallum, "Girt by Sea", p.27; Prior to 1997, a government agency, Australian Protective Services (APS), managed the security at Australia's detention facilities with such other services as food and medical services provided by DIMIA or individual contractors. See Australian National Audit Office, Audit Report No. 54, 2003-04, *Management of the Detention Centre Contracts – Part A*, Department of Immigration and Multicultural and Indigenous Affairs, p.45

⁵⁰ *Ibid.*, p.28

A number of issues have been raised on the privatisation of offshore processing locations. Gregor Noll observes that this practice can be seen as “outsourcing”,⁵¹ a term which conjures images of “economic globalization” where the “best offer” is sought,⁵² posing a number of questions. For example, what were the implications for human rights in an outsourced system, was there reduced protection by courts and authorities, what were the ramifications in the new context in refugee and human rights law, and where did direct responsibility lie in cases such as “*refoulement*”?⁵³

Outsourcing served to “insulate” states from international responsibility, offering less protection to detainees compared to territorial centres, and different treatment may have occurred for one group over the other.⁵⁴ Noll concludes that refugees were not as well-off in offshore locations, and that Australia was not better off due to the massive costs involved in the system which subsumed any savings from reduced onshore processing.⁵⁵ ACM, as the outsourced provider, made “no secret of the fact that ... the profit motive [w]as paramount”.⁵⁶

Evidence suggests that while ACM received appropriate training in Australia,⁵⁷ it did not distinguish between administering prisons and detention centres. For example, detainees

⁵¹ Gregor Noll. *Law and the Logic of Outsourcing: Offshore Processing and Diplomatic Assurances*, Paper Prepared for the Workshop on “Refugee protection in International Law. Contemporary challenges”, Oxford, 24 April 2006, p.1

⁵² *Ibid.*, p.1

⁵³ *Ibid.*, pp.1-3

⁵⁴ *Ibid.*, p.5

⁵⁵ *Ibid.*, pp.3, 6

⁵⁶ MacCallum, “Girt by Sea”, p.28

⁵⁷ Commonwealth of Australia. Legal and Constitutional Legislation Committee, Additional Estimates Hearing, Immigration and Multicultural Affairs Portfolio, 20 February 2001, Question Taken on Notice, Q.48. According to this government document, “All new Detention Officer recruits received 240 hours of orientation and pre-service training”, which covered training of thirty (30) various modules, including Cultural Awareness, Human Rights, Sexual Abuse Management, Suicide awareness, Control & Restraint, Detainee Management, Use of Batons and Use of Handcuffs.

were allocated a number and not addressed by name,⁵⁸ a system which identified a person according “to the prefix of the boat they arrived on, such as “Don 27” or “Tamp 180” .”⁵⁹ Visual checks were carried out which included night-time waking of detainees to establish their identification.⁶⁰ In addition, the detention centres resembled prisons, complete with guards, metal detectors, surveillance cameras, barbed wire surrounds and electric fences.⁶¹ From a humanitarian perspective, it seems highly plausible that the privatisation of “detention centres or prisons is to admit that conditions inside don’t matter; that prisoners and detainees have forfeited their rights to the protection of the state”.⁶²

In relation to children and detention, this represents a clear compromise of Australia’s obligations as contained in the UNHCR Guidelines which state that: “In accordance with the general principle stated at Guideline 2 and the UNHCR Guidelines on Refugee Children, **minors who are asylum-seekers should not be detained**”.⁶³ The CROC also incorporates articles to ensure children should not be placed in detention, suffer discrimination, or be subject to torture or trauma.⁶⁴ Australia has failed to comply with this legally-binding instrument, detaining hundreds of children over time and, while some

⁵⁸ Chris Atkinson. “Corporate Scumbag: Abusing refugees and prisoners: Australian Correctional Management”, *Greenleft*,

⁵⁹ *Ibid.*

⁶⁰ Joint Standing Committee, *A report on visits*, p.xiv

⁶¹ Law, *op. cit.*; MacCallum, “Girt by Sea”, p.36; Khan, *op. cit.*, pp.34-37; Stephen, “Mandatory Detention”, in Stephen, Sarah. *Refugees: exposing Howard’s lies!* Broadway, NSW: Resistance Books, 2002, pp.24-28

⁶² MacCallum, “Girt by Sea”, p.28

⁶³ UNHCR *Revised Guidelines*, Guideline 6: Detention of Persons under the Age of 18 years; UN Rules for the *Protection of Juveniles Deprived of their Liberty 1990*, A/RES/45/113 68th plenary meeting 14 December 1990 45/113; Motta, *op. cit.*, p.26

⁶⁴ CROC, Articles 2, 3, 30, 22, 37, 39. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not.

publicity was given to the issue,⁶⁵ the government refused to accept criticism regarding this policy, arguing instead that children should not be separated from their parents.⁶⁶

It appears that ACM staff did not always comply with the highest operational and management standards, including where children were concerned. For example, the issue of detained children was the subject of parliamentary debate. In answer to Question on Notice put by Mr Windsor to Mr Ruddock on Monday 8 September 2003, the following information was provided:

Incidents Notified to State Agencies Grouped by Incident Categorisation by Centre from 1 December 2000 - 19 May 2003

Categorisation of Incident	Curtin	Port Hedland	Woomera	Maribyrnong	Villawood	Christmas & Cocos Island	Baxter	Total
Alleged sexual abuse of a child by ACM staff	0	1	2	0	0	0	0	3
Alleged physical abuse of a child by ACM staff	0	3	8	0	0	0	0	11

Source: Adapted from data provided in Commonwealth of Australia, Parliamentary Debates, House of Representatives, Questions on Notice, Immigration: Detention Centres, Q.2073, Monday 8 September 2003

The government’s strategy of “out of sight, out of mind” proved effective. However, the above information is damning for two reasons. Firstly, the tabled data demonstrates that ACM failed to fully carry out its responsibilities⁶⁷ and was lacking in its duty of care to the government, the people of Australia and, not least, the detainees awaiting processing.

Should the above figures have related to any other institution, such as education and teacher-student relations, there would have been public uproar. The isolation of detention

⁶⁵ *The Advertiser*, “Key concern for children ‘who suffer’ “, Wednesday, April 17, 2002, p.16; *The Advertiser*, “Detainees languish alone, forgotten”, Wednesday, November 27, 2002, p.18

⁶⁶ Motta, *op. cit.*, p.26, states that detaining children is “clearly in breach of the CROC”. See also Refugee Council of Australia, *NGO Coalition warns Australia is failing asylum-seeker children*, Media Release, 22 November 2000

⁶⁷ Joint Standing Committee, *op. cit.*, p.16, which states that the Australian Correctional Services (ACS) (also known as ACM) “is responsible for meeting Occupational Health and Safety obligations for its employees. ... The contract also requires ACS to accept responsibility for the physical safety and security of detainees, staff and visitors”.

centres, lack of access and transparency, contributed to an environment where such behaviour was made possible. Secondly, since these types of incidents usually involve shame, humiliation and threats from perpetrators, one can reasonably suspect that reported cases were only the tip of the iceberg. The tabled figures reveal a lack of accountability and a compromise of responsibility in relation to the health and well-being of detainees seeking Australia's protection.

A case at the Woomera detention centre serves to illustrate. According to parliamentary debate:

DIMIA takes all allegations of abuse of children in detention extremely seriously. DIMIA requires that all incidents, allegations or reasonable suspicions of abuse or assault of children are reported, both to the local child welfare agencies and, under the detention services contract, to DIMIA. In most states, the child welfare agency will then decide if other parties, such as the police, need to be involved.⁶⁸

Nonetheless, serious allegations were made about sexual abuse against a twelve-year-old boy in relation to an incident on 17 March 2000. The claim of a cover-up by ACM of serious issues, including sexual abuse of the boy and possibly several women,⁶⁹ was made by former staff members and nurses who had worked at Woomera. In an interview on ABC radio, accusations were made that staff and inmates were prevented from speaking out, that management had pressured staff to change damaging reports, and that the "traumatised" boy was not able to go to hospital.⁷⁰ Staff were barred from reporting conditions in the camps through a confidentiality agreement but after a number of months a senior nurse, Marie Quinn, "blew the whistle" on what she believed was exploitation of children and a cover-up.⁷¹

⁶⁸ Commonwealth of Australia. *Parliamentary Debates*, House of Representatives Questions on Notice, Immigration: Detention Centres, Q.2073, Monday 8 September 2003, p.19484

⁶⁹ Jake Skeers. "Sexual and physical abuse in Australia's refugee detention camps", Nurses expose cover-up, *World Socialist Web Site*, 1 December 2000

⁷⁰ *Ibid.*, pp.2-3/4; MacCallum, "Girt by Sea", p.29

⁷¹ Skeers, *op. cit.*, p.2/4; MacCallum, "Girt by Sea", p.30

The Australian government, under the terms of its contract with ACM (which was confidential),⁷² had the power to penalise ACM up to \$20,000 for “certain criminal or disruptive incidents”,⁷³ providing a distinct disincentive for the reporting of such incidents. Further criticisms of ACM included allegations of destruction of records, lack of mandatory reporting, and inadequate staff numbers in breach of contractual requirements.⁷⁴ When the case became public,⁷⁵ Ruddock initially denied the incident of alleged abuse of the boy took place,⁷⁶ but in an effort to allay concerns about the management of the centres,⁷⁷ later announced an inquiry into Immigration Detention Procedures to be led by Philip Flood, AO. This was tabled in parliament on 27 February, 2001.⁷⁸ The inquiry was “forced” on the Federal Government when Minister Philip Ruddock admitted “that significant evidence had not been passed to investigation authorities”.⁷⁹

The inquiry specifically noted the General Agreement between DIMA and ACM stated that “the dignity of detainees is to be upheld” and that “ACM is under a duty of care in relation to detainees”.⁸⁰ It made sixteen recommendations on procedural changes, including revising policy instructions and a review of staff training.⁸¹ The Australian

⁷² Kingston, *Woomera*, p.1/12; Alexandra Kirk. “The World Today Australian Federal Police to investigate Woomera Detention Centre practices”, *ABC Online*, The World Today – Tuesday, 27 May, 2003

⁷³ Skeers, *op. cit.*, p.2/4;

⁷⁴ Kingston, *Woomera*, p.1/12; Kirk, *op. cit.*

⁷⁵ Even when the case became front page news, the Australian community remained relatively silent. See J. Knowler. “Father and son or rapist and victim?”, *The Weekend Australian*, 9-10 December, 2000, cited in McLachlan, *op. cit.*, p.5

⁷⁶ Commonwealth of Australia, *Parliamentary Debate*, The Senate, Questions without Notice, Woomera Detention Centre: Allegations, Question, Monday 27 November 2000. Senator McKiernan noted “that, on 22 November, Minister Ruddock admitted that he had wrongly assured the Australian public that there was no substance in allegations of child abuse at the Woomera Detention Centre”, p.19758; MacCallum, “Girt by Sea”, p.30

⁷⁷ ABC 7.30 Report, *Govt announces inquiry into Woomera allegations*, Transcript, 22/11/2000

⁷⁸ Questions on Notice, *op. cit.*, Q.2073, p.19485; 7.30 Report, *Govt announces inquiry*; Flood, *op. cit.*

⁷⁹ *Ibid.* In this programme, allegations by Woomera nurses are made public, and Minister Ruddock states that the aim of the inquiry is “to point out if there are serious defects in the system of reporting in relation to serious allegations of child abuse”. The interview with Kerry O’Brien also discusses the allegation the centre is “run on the cheap” by ACM.

⁸⁰ Flood, *op. cit.*

⁸¹ Philip Ruddock, MP, Minister for Immigration and Multicultural Affairs. *Immigration Minister Tables Flood Report*, MPS 023/2001, 27 February 2001; MacCallum, “Girt by Sea”, p.30

Federal Police (AFP) referred the child's case to SA Police for investigation and three years later it was found that "[n]o evidence existed to support allegations a 12-year-old boy was sexually assaulted".⁸² However, the government ended its contractual arrangement with ACM (which was renamed GEO Group Australia in January 2004). This was finalised in 2004 and the new tender went to Group 4 Falck Global Solutions Pty Ltd (Group 4), renamed Global Solutions Limited – Australia (GSL) with transition completed 29 February 2004.⁸³

In relation to the operation of these centres, Commissioner Palmer wrote that remote, custodial, purpose-built facilities were "unsatisfactory" for people under mental stress,⁸⁴ that there was "a high incidence of mental disorders among detainees",⁸⁵ that services to deal with these issues did "not inspire confidence in the integrity of the system", and that there existed "a clear lack of management and quality control oversight of the service delivery process".⁸⁶

Alarming, onshore detention centres were not the only facilities which attracted criticism with problems existing more widely.⁸⁷ From the government's own records of the period 2001-2005, parliamentary debate on offshore processing at Nauru and Manus Island

⁸² AAP, "No evidence of Woomera assault: police", *Sydney Morning Herald*, August 14, 2003

⁸³ ANAO, Report No. 54, 2003-4, pp.46-47

⁸⁴ Commonwealth of Australia. *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau Report*, M.J. Palmer, July 2005, p.144. This report resulted from an Inquiry in 2005 into the wrongful detention of Cornelia Rau and the deportation of Vivian Alvarez, both Australian citizens. The report provided an account of detainees' mental health problems, and drew attention to structural problems within the Department of Immigration.

⁸⁵ *Ibid.*, p.150

⁸⁶ *Ibid.*, p.140

⁸⁷ Australian Human Rights Commission. *Submission to National Inquiry into Children in Immigration Detention from Barbara Rogalla – former Woomera Nurse*, Updated 9 January 2003, p.10/13

outlined a startling array of health incidents in 2006.⁸⁸ (See Appendix E – Health incidents Nauru & Manus Island.)

Disturbingly, this information was not available from the Department, but had instead been sought by the Department from the Nauru Offshore Processing Centre (OPC), through the International Organisation for Migration (IOM).⁸⁹ IOM was contracted to manage Australia’s offshore processing centres under the so-called “Pacific Solution”.⁹⁰ The information above reveals that the Department’s responsibility in relation to duty of care was not being upheld, as officials were unaware of events in its own centres. During this same hearing, in response to Questions on Notice, Q1, the Department provided the following:

DIMA has not investigated the instances or frequencies of mental health ill-health directly but has sought information from the International Organization for Migration (IOM) on mental health issues, as part of IOM’s reporting against an assurance framework and DIMA’s role in managing IOM’s provision of service. The Department has not provided reports on individuals specifically.⁹¹

The determination process

Whether detainees were locked up for years or short periods of time, the manner in which the determination of their claims was carried out undoubtedly impacted on asylum seekers. Was the system fair, equitable and consistent, and what effect did the process have on applicants? The answer to these questions assists us in a better understanding of the human costs endured by asylum seekers.

⁸⁸ Commonwealth of Australia. Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, Public Hearing 26 May 2006, Response to Questions on Notice, Q.2; see also JAS, *op. cit.*, p.17

⁸⁹ Commonwealth of Australia. Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, Public Hearing 26 May 2006, Response to Questions on Notice, Q.1

⁹⁰ The role of the IOM was broader than this as it provided “processing and other services in Indonesia to prevent asylum seekers coming to Australia”. See JAS, *op. cit.*, p.30

⁹¹ *Inquiry into the Migration Amendment*, Q.1; see also JAS, *op. cit.*, p.17

Since 1993, Australia's onshore process has been a "two stage administrative determination procedure",⁹² firstly with the lodging of an application by an asylum seeker, and secondly with a review. Stage one required that an asylum seeker lodged an application with the Department of Immigration and Citizenship (DIAC) in writing and, to assess the person's claims in relation to the granting of refugee status, an officer of the Department carried out an assessment of the application. Applicants would then be interviewed, although this was not done in every case.

After being interviewed, the departmental officer would write a case summary and forward this to a senior officer in Canberra, who subsequently determined if the applicant's claims *prima facie* "may engage Australia's protection obligations under the Refugees Convention".⁹³ A negative determination saw the person removed as quickly as possible from Australia, and a positive determination enabled them to remain to make a PV application.⁹⁴

From a relatively early stage of the process, a security check of an individual or group of asylum seekers was initiated by Australian Security Intelligence Organisation (ASIO).⁹⁵ Stage two of the process related to the opportunity for review, should an application have been rejected.⁹⁶ Approximately 75% of asylum seeker applicants took the option to lodge another application for the review of a negative decision. Using exactly the same criteria of assessment, an independent body, the Refugee Review Tribunal (RRT), reviewed the

⁹² Refugee Council of Australia, *Australian Refugee Program*

⁹³ *Ibid.*; Taylor, "Guarding the Enemy", pp.399-400

⁹⁴ *Ibid.*, p.400

⁹⁵ *Ibid.*, p.400. Taylor asserts this process of "screening out" may reduce opportunities for asylum seekers to follow through with the formal application process, and expresses reservations on the transparency of the process.

⁹⁶ Legislation restricted this option for many taken to offshore processing centres, where asylum seekers had no merit review entitlement. This may have denied them protection. See Penovic, et al., *op. cit.*, p.3

department's decision. This was done through an oral hearing in a non-threatening environment, with the aim of guaranteeing "equality and fairness before the law and allow[ed] asylum seekers to present their full stories".⁹⁷

The independent review system was considered vital in the refugee determination process, giving confidence to applicants that the outcome of their individual case would not be affected by any government policies towards their home country.⁹⁸ This review resulted in two outcomes: the original decision was overturned and the applicant was granted refugee status, or the original decision was upheld. For humanitarian case rejections, the original case manager reviewed the material, with the option available of referring the individual's case to the Minister for discretion. This occurred if the officer had concerns about the safety of the applicant should they be returned to their country of origin.

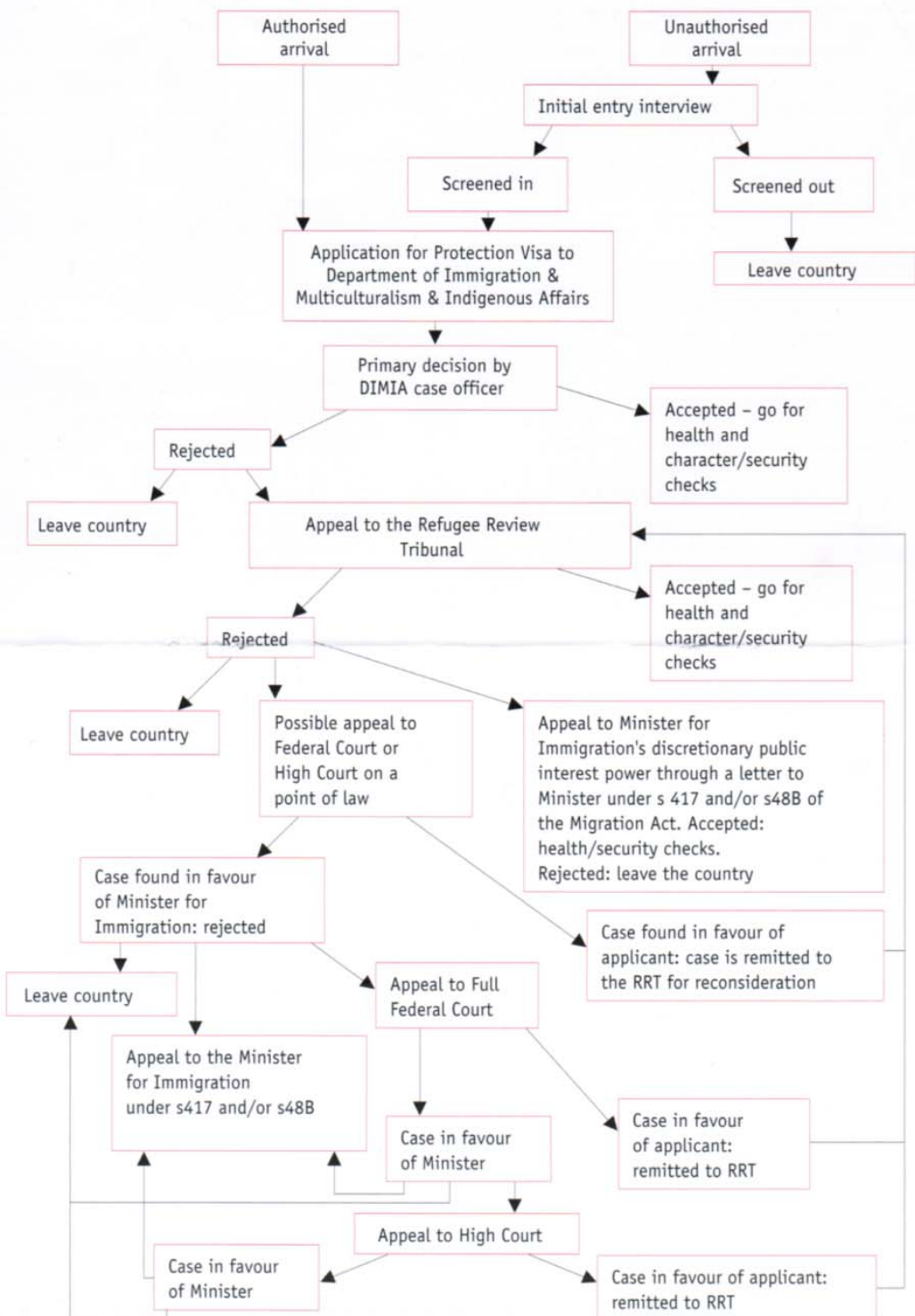
In certain circumstances, the option to lodge an appeal to the Federal Court was available for a rejected applicant. This avenue provided an opportunity to consider if the determination was carried out according to the letter of the law, and was not a reconsideration of whether the person had the status of a refugee. In a successful appeal, the case was reconsidered by the RRT, but there was no automatic guarantee the refugee status would be granted.⁹⁹ A flow chart (below) sets out the steps involved.

⁹⁷ Refugee Council, *Australian Refugee Prog*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

The Australian Onshore Refugee Determination Process⁶¹



Source: Brotherhood of St Laurence. *Refugee and Asylum Seeker issues in Australia*, Northern Press: Melbourne, Vic., June 2003, pp.50-51. Note: Footnote 61 of publication states: This chart was drafted in consultation with David Manne of the Refugee and Immigration Legal Centre and reprinted from *Migration Action*, Vol.XXV, No.1 April 2003

In an article outlining the context in which the Australian refugee determination system operated, Phillip Ruddock emphasised the international and national pressures to which the process was subject. In commenting on Australia's "highly developed" system, he stated:

As the UNHCR has acknowledged, Australia's determination system exceeds the requirements contained in the Conclusion adopted by the Executive Committee on the International Protection of Refugees in two significant respects. First, the Australian system provides for judicial review in addition to administrative review, when only one form of review is recommended by the Committee. Second, it provides for an overarching ministerial discretion in recognition of the fact that the public interest may be served through the Australian Government responding with care and compassion to the plight of certain individuals in particular circumstances".¹⁰⁰

While acknowledging that the determination process must play a critical part in assessing asylum seeker claims, some scholars suggest that it does not accurately reflect reality and that Ruddock's comments on the "highly developed" system do not convey the complexities and ambiguities contained within the process.¹⁰¹ David Corlett observes:

[T]he granting of protection is akin to winning a lottery. People with similar cases get different outcomes. Some people who detainees believe to have flimsy protection claims have gained protection while others whose claims are compelling are rejected. The lack of faith in the refugee determination system is compounded by detention. Like fear, distrust is part of the detention culture. Detention confirms that the protection determination process is less about offering protection to those in need of it and more about containing and deterring asylum seekers.¹⁰²

Others suggest that one of the most important aspects of the determination process is the credibility assessment,¹⁰³ which depends very heavily on the value of asylum seekers' words. This assessment brings with it some areas of concern, such as the personal judgement by an adjudicator, inconsistency between different adjudicators, lack of review on appeal, and the possibility of cultural misunderstandings.¹⁰⁴ In addition, an asylum seeker's case to win residence in Australia needed to be compelling so that decision-

¹⁰⁰ Ruddock, "Refugee Claims", p.2

¹⁰¹ For example, see Langham, *op. cit.*, pp.651-679; Connal Parsley. "Performing the Border: Australia's judgment of 'unauthorised arrivals' at the airport", *Australian Feminist Law Journal* 18, 2003, pp.55-76; Perera, *op. cit.*, pp.1-142, discusses the complexities in terms of the division between land and sea, and the "ongoing effects & legacies of divide betw oceanic & terrestrial, &spatial & geopol order" that has emerged over time. She asserts (p.142) that borders "operate not only spatially, but also conceptually & analytically"; Michael Kagan. "Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination", *17 Georgetown Immigration Law Journal*, 2003-2003, pp.367-416

¹⁰² Corlett, *Returning Failed Asylum Seekers*, p.30

¹⁰³ Kagan, *op. cit.*, pp.367-416

¹⁰⁴ *Ibid.*, p.367; Corlett, *Returning Failed Asylum Seekers*, p.30

makers were not convinced by a false account. Public suspicion would therefore be allayed that undeserving claimants did not exploit Australia's "generous" system.¹⁰⁵

Similar issues have been remarked upon by others. For example, Andrew Langham has listed numerous deficiencies in the system, such as:

- Primary determination assessment was frequently without legal representation or advice
- Most case officers did not have formal legal training, leading to possible incorrect decision-making
- Based on the questionnaire, interview, supporting documentation, and the department's knowledge of the applicant's country of origin, a recommendation was made to a Ministerial delegate
- RRT could review a denied application but solely on the written record with no hearing
- Applicants had no rights to call or cross-examine witnesses or have an attorney present
- Translations of a hearing was only partially available to a non-English speaking applicant, not a full hearing translation
- Failure of the RRT may have resulted in a "post-decision" fee, designed as a deterrence
- Right of appeal rested on a judgement of the magnitude of a life or death situation¹⁰⁶

Langham asserts that the above position did not acknowledge such difficulties as cultural differences, lack of legal rights awareness, lack of support agencies, emotional stress, language limitations and the "burden of having to file a complaint in writing".¹⁰⁷ These deficiencies, he asserts, must undermine the accuracy and the effectiveness of the determination process.

Connal Parsley, a scholar and researcher in law and linguistics, has provided an analysis on the determination process for unauthorised air arrivals.¹⁰⁸ His study is in terms of a "performance", exemplified at the border to demonstrate the superiority and power of a nation, capable of playing out an "elaborate choreography of administrative gestures"¹⁰⁹ which either expelled or accepted a hopeful applicant. The first step of this "performance,

¹⁰⁵ Kagan, *op. cit.*, p.367, 373

¹⁰⁶ Langham, *op. cit.*, pp.662-664

¹⁰⁷ *Ibid.*, pp.674-675

¹⁰⁸ Parsley, *op. cit.*, p.63. Although his work concentrates specifically on unauthorised air arrivals, the process is exactly the same for unauthorised boat arrivals. Neither is free nor equal before the law and there are consequences attached to not being an Australian citizen.

¹⁰⁹ *Ibid.*, p.62

scripted by DIMIA, ... provide[d] interviewing administrative staff with a form whose completion passe[d] for engagement with an ‘arrival’ ”.¹¹⁰ The asylum seeker was expected to produce instant tales of trauma to authority figures similar to those they feared and from whom they had fled, translating “their fear and pain into a reality”. Those who could not conform to the constructed requirements of the “form” for whatever reason, or whose stories were judged to be lacking in substance, represented fraudulent attempts and so were screened out. No assistance was offered by any organisation save DIMIA. The second step, which involved the “entry team” officer passing the completed form to a screening officer for assessment, reinforced the imagining of the national boundaries, the superiority of the law and the value of belonging.¹¹¹ No face-to-face interaction occurred with the screening officer, ensuring a process devoid of emotion.¹¹²

These steps substantiated the “worth and benefit of Australian sovereign law”, validated the attractiveness of the “haven” to outsiders, and proved beyond doubt that some were not worthy of entering the privileged space.¹¹³ In Parsley’s words, “if a passport is a kind of book, the sovereign is a kind of truculent reader”, so those without this official document risked brutal elimination.¹¹⁴ If fear and pain were not verbally translated by those whose command of the English language was poor, or non-existent, they were “trapped within the performance of Australia’s border” and risked being found illegitimate by a system which

¹¹⁰ *Ibid.*, p.61

¹¹¹ *Ibid.*, pp.61-63

¹¹² See Erika Feller, Volker Turk and Frances Nicholson. (eds) *Refugee Protection in International Law*, Cambridge University Press, 2003, pp.136-137, for additional individual assessment considerations under (iv) *The assessment of risk requires consideration of individual circumstances* (especially point 176 which states: “The requirement that there should be an individual assessment goes additionally to the point that there must be a real connection between the individual in question, the prospective danger to the security of the country of refuge and the significant alleviation of that danger consequent upon the *refoulement* of that individual.”)

¹¹³ Parsley, *op. cit.*, p.64

¹¹⁴ *Ibid.*, p.64

purported to be just.¹¹⁵ A judgement was therefore made on an interpretation of presented facts against the criteria set out in the *Convention*.

As we have already seen, ALOs were placed at predetermined overseas risk regions to prevent air travellers with improper documentation from embarking and reaching Australia.¹¹⁶ However, officers were not qualified¹¹⁶ to assess the protection needs of passengers, nor were there prescribed guidelines to protect non-citizens “intercepted at overseas airports” who sought refuge.¹¹⁷ Indeed, the introduction of Advance Passenger Processing (APP) in January 2003, which allowed pre-arrival reporting of passengers and crew,¹¹⁸ created an additional barrier to entering Australia which acted effectively as an “offshore” border,¹¹⁹ entailing checks at overseas embarkation points and imposing fines on carriers bringing unauthorised passengers. The APP initiative may have proved successful, with a marked decrease of infringements imposed over time, but it is possible that many who wished to apply for protection were denied.¹²⁰

The determination process, especially in relation to *non-refoulement*, has been the basis of considerable commentary.¹²¹ *Non-refoulement* is a key principle contained in the *Convention* and as such is a basic article “to which no reservations are permitted”,¹²² applied “... irrespective of whether or not the person concerned has been formally

¹¹⁵ *Ibid.*, pp.73-75

¹¹⁶ Corlett, *Returning Failed Asylum Seekers*, p.14

¹¹⁷ *Ibid.*, p.15

¹¹⁸ Australian Government. Department of Immigration and Citizenship, “Managing Australia’s Borders”, Sea Travel, Advance Passenger Processing (APP); Australian Government, Department of Immigration and Citizenship, *Australia’s APP: Advance Passenger Processing System*, October 2008

¹¹⁹ Corlett, *Returning Failed Asylum Seekers*, p.14

¹²⁰ *Ibid.*, p.14

¹²¹ For example, see Phil Glendinning, Carmel Leavey, Margaret Hetheron, Mary Britt & Tony Morris. *Deported to Danger: A Study of Australia’s Treatment of 40 Rejected Asylum Seekers*, Edmund Rice Centre for Justice & Community Education, September 2004; Glendinning, et al., *op. cit.*, 2006; Corlett, David. *Following Them Home: The fate of the returned asylum seekers*, Black Inc:Vic, 2005; Robert Manne & David Corlett. “Sending Them Home: Refugees and the New Politics of Indifference”, *Quarterly Essay* 13, December 2003, pp.8,15,25; Manstead, *op. cit.*, particularly pp.3-6

¹²² UNHCR, *Note on Non-Refoulement*

recognized as a refugee”.¹²³ It is therefore incumbent upon signatories to comply. However, the *Convention* and international law do not generally contain a right to asylum at state borders, meaning states are not compelled to accept refugees.¹²⁴ However, in relation to non-admittance, states are not “free to reject at the frontier, without constraint, those who have a well-founded fear of persecution”.¹²⁵ Where a state is not ready to admit such people, they must find an alternative which provides safety in a third country. The *Convention* states that: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.¹²⁶

Refoulement may only occur in one instance: where a refugee is considered a threat to national security or a danger to the community of that country.¹²⁷ The *Convention* adds that, “[in] view of the serious consequences to a refugee of being returned to a country where he is in danger of persecution, the exception provided for in Article 33(2) should be applied with the greatest caution”.¹²⁸ As a result, the individual assessment of refugees is required to ensure states comply and no instances of *refoulement* occur.¹²⁹ However, debate has persisted on whether genuine claimants have received adequate opportunity to claim protection, or were subjected to *refoulement*. While government documents state

¹²³ *Ibid.*

¹²⁴ Sir Elihu Lauterpacht QC and Daniel Bethlehem, “The scope and content of the principle of *non-refoulement*: Opinion” in Feller, Erika, Volker Turk and Frances Nicholson. (eds) *Refugee Protection in International Law*, 2003, p.113

¹²⁵ *Ibid.*, p.113

¹²⁶ *Convention Relating to the Status of Refugees*, 189 UNTS 150, art 33 (entered into force 22 April 1954); The principle has also been defined in numerous international instruments, such as the ICCPR and the Human Rights Committee, which also prohibit the *refoulement* of refugees. See UNHCR, *Note on Non-Refoulement*

¹²⁷ *Convention*, 189 UNTS 150, art 33(2) (entered into force 22 April 1954).

¹²⁸ UNHCR, *Note on Non-Refoulement*; Some argue that most asylum seekers do not pose a serious risk since the majority have been granted protection and refugee status. Department of Immigration and Multicultural and Indigenous Affairs, Offshore Processing Arrangements, *Fact Sheet 76: Offshore Processing Arrangements* (Revised 23 May 2005).

¹²⁹ Lauterpacht, et al., *op. cit.*, pp.133-134, 137

that “Departmental systems do not readily enable the generation of reports that determine whether removal from Australia is voluntary or involuntary”,¹³⁰ studies such as *Deported to Danger* and *Deported to Danger II* have provided in-depth investigations into returned asylum seekers, providing evidence of *refoulement* in a number of cases.¹³¹

The case of Akram Al Masri provides an example at the individual level, and illustrates the dangers some rejected asylum seekers face. Al Masri left Palestine 7 April 2001, travelled to Ashmore Reef by boat and was subsequently taken to Woomera where he was detained for seven months.¹³² His first application for refugee status in Australia was refused, as was a review application. He was advised by DIMIA he then had two options; apply to the Federal Court or return home. Believing the former to be futile, and knowing that reapplication meant he would remain in Woomera, a place he claimed was “so bad that I would rather return to the Gaza Strip and die with my family”,¹³³ Al Masri opted for returning to Gaza.

On request, Al Masri’s passport was forwarded to Australia by relatives. This occurred quite quickly but his departure was delayed, as both Israel and Jordan refused him entry.

While waiting for permission to leave Australia, the prospect of indefinite detention was so

¹³⁰ Commonwealth of Australia. Official Committee Hansard, Senate Standing Committee on Legal and Constitutional Affairs, Additional Budget Estimates, 21-22 May 2007, Q.143, Output 1.4: Compliance. This document states that between “1 July 2005 and 30 June, 8,807 people were removed from Australia out of detention”. See also Q.144, Output 1.4: Compliance, giving visa cancellation figures under the Migration Act 1958 s501.

¹³¹ Glendinning, et al., *op. cit.*, 2004; Glendinning, et al., *op. cit.*, 2006. These studies are “concerned with the implementation of Australia’s refugee policy measured against our obligations to people seeking asylum in terms of our adherence to international law and relevant United Nations Conventions and Covenants”. The works examine people’s fate where their cases were rejected by Australia, and were based on personal interviews. The interviews portray “graphic illustrations” of people’s dangerous experiences. More than 200 individual cases are considered. See also Corlett, D. *Following Them Home: The fate of the returned asylum seekers*, Black Inc:Vic, 2005; also Corlett, *Returning Failed Asylum Seekers*

¹³² “Let me live here, pleads detainee”, *The Advertiser*, September 2, 2002; “This man feared being sent home. He feared Woomera more. And now he is dead.” *The Advertiser*, Saturday August 2, 2008, p.19

¹³³ Marilyn Shepherd. “What happened to Akram al Masri”, *Webdiary*

traumatic he seriously injured himself, and was taken to Woomera hospital to recover. His struggle for release from detention while awaiting deportation became a high profile case with the Minister Philip Ruddock. The Federal Court ordered his release but he was denied a TPV.¹³⁴ Eventually he was deported to Gaza with the full knowledge his life was at risk. In August 2008, Al Masri was reported shot dead in the Gaza Strip.¹³⁵

Other legislative changes to validate and enforce harsher border protection measures may have also led to human costs in terms of *refoulement*. This emanated from policies requiring boats to be intercepted and returned from whence they came. For example, Operation Relex was military campaign announced by the Howard Coalition, implemented in an effort to safeguard Australia's northern coastline from the rise of unauthorised boat arrivals.¹³⁶ It was made possible by the *Border Protection (Validation and Enforcement Powers) Act 2001*, a bill which extended the 1999 legislation and gave power to relevant officials to interdict where people smuggling was suspected.¹³⁷ Operation Relex employed Australian military ships and aircraft specifically to intercept asylum seeker boats and return them to Indonesia.¹³⁸ It had a clear mission, as stated by Commander Norman Banks, Captain HMAS 'Adelaide': "Our mission was to deter and deny entry to Australia".¹³⁹

The operation cannot be claimed as a resounding success, with many intercepted boats not able to be escorted back to Indonesia.¹⁴⁰ From the time Operation Relex was announced in

¹³⁴ "This man feared ...", *op. cit.*, p.19

¹³⁵ *Ibid.*, p.19

¹³⁶ Marr, et al., *op. cit.*, particularly Chapter 10, pp.172-188

¹³⁷ Corlett, *Returning Failed Asylum Seekers*, p.19

¹³⁸ *Ibid.*, p.19

¹³⁹ ABC Television. To Deter and To Deny, *Four Corners*, March 2002

¹⁴⁰ Corlett, *Returning Failed Asylum Seekers*, p.19. The Senate Select Committee on A Certain Maritime Incident Report, *op. cit.*, p.27

2001 through to 2005-2006, “the ADF ha[d] been directly involved in the interception of 17 Suspect Illegal Entry Vessels”.¹⁴¹ Considering 56 unauthorised boats arrived from 2001-2006,¹⁴² this is not an overly impressive record. Notwithstanding, aside from prohibitive costs, there is a disturbing element about a military response to interdict unauthorised asylum seekers arriving by boat. Those on board such vessels may have had a genuine need to seek protection yet their case was not able to be presented to Australian authorities. As we have seen, every asylum seeker has the right by international law to seek protection. The act of interdiction may have denied them their right and, by escorting them back to Indonesia, it is argued Australia breached its *non-refoulement* obligations.¹⁴³

A regional agreement between Australia, Indonesia, the International Organisation for Migration (IOM), and UNHCR came into force in early 2000.¹⁴⁴ However, this arrangement can be seen as contributing to a compromise of Australia’s responsibility through the act of interdiction and returning asylum seekers to be processed in Indonesia.¹⁴⁵ Australia has played a major role by funding the IOM which housed, accommodated and assisted claimants in Indonesia awaiting outcomes.¹⁴⁶ Funding extended to rejected applicants, “voluntary” removals, the process of determination and “training and equipment to ... Indonesian police and immigration counterparts” to better deal with people smugglers and unauthorised asylum seekers.¹⁴⁷

¹⁴¹ Commonwealth of Australia. *Senate Foreign Affairs Defence and Trade Additional Estimates 2005-2006*, Answers to Questions on Notice from the Department of Defence, Question W29, Operation Relex

¹⁴² Refugee Council of Australia, *Boat arrivals*, (by calendar year) ; Phillips, et al., *op. cit.*

¹⁴³ Human Rights Watch: “By Invitation Only: Australian Asylum Policy”, *Human Rights Watch*, Vol.14, No.10(C), December 2002, p.14. See also UNHCR Executive Committee, *Conclusion No. 6 (XXVIII)*, 1977

¹⁴⁴ Human Rights *Ibid.*, p.51

¹⁴⁵ US Committee for Refugees, *Sea Change: Australia’s new approach to asylum seekers*, February, 2002, pp.11-12

¹⁴⁶ *Ibid.*, p.

¹⁴⁷ *Ibid.*, pp.14-15 Background paper on “Regional Cooperation Arrangements with Indonesia,” prepared by the Australian Department of Immigration and Multicultural Affairs, cited in *Sea Change*

Yet these processes could easily have been carried out on Australian territory, leading one to suspect that the issue is linked more to “a reassertion of sovereignty”, deterrence and maintaining entry control where it has been deemed “unlawful acts are being performed to bypass established immigration systems”.¹⁴⁸ The regional agreement has benefitted both Australia and Indonesia in a system controlling the movement of people, while at the same time publicly “recognizing and dealing with the protection needs of those who seek asylum.”¹⁴⁹ The agreement may have had merit, but has relied strongly on Australia’s relationship with Indonesia, an association which, historically, has been tenuous.¹⁵⁰

The cost in human terms again came down to the vulnerable and powerless individuals who were political pawns in a national and international issue. For example, IOM did not notify the UNHCR of intercepted persons unless they specifically requested an interest in contacting UNHCR, or seeking asylum,¹⁵¹ there was a lack of knowledge by assisted people about IOM’s role, levels of assistance and processes,¹⁵² and IOM has been “inherently unsympathetic to the idea that illegal secondary movements may be a

¹⁴⁸ *Ibid.*, pp.14-15 which states: “As of August 2001, IOM was assisting nearly 1,000 asylum seekers in 15 locations throughout Indonesia. UNHCR was caring for another 500. By late November, as a result of new arrivals, estimates of the total number of refugees and asylum seekers in Indonesia had grown to as many as 4,000. The Australian and Indonesian governments noted that many more could be clandestinely residing in Indonesia; see also “Afghans’ unhappy ending: Castaways in Indonesia,” *New York Times*, 24 November 2001

¹⁴⁹ DIMA background paper, “Regional Cooperation Arrangements in Indonesia.”, cited in *US Committee for Refugees*, p.15

¹⁵⁰ One prime example of such tension was Australia’s involvement in the granting of visas to 42 Papua asylum seekers in 2006 which angered Indonesia and triggered a diplomatic crisis, resulting in Indonesia’s ambassador to Australia being recalled. The episode sparked extreme tension between the two countries, and the incident invited comparisons regarding some claims for refugee status, e.g., the Bakhtiyari case, and the need for reviewing Australia’s method of processing. See *The Australian*, “Last Papuan claims interference”, Tuesday, May 2, 2006; *Weekend Australian*, “The Nation”, “Separatism in Papua a racist aim: Vanstone”, April 29-30, 2006, p.10; *The Advertiser*, “Jakarta demands we reject Papuans”, Saturday, May 20, 2006, p.75; *The Advertiser*, “Appeasement denied”, Saturday, June 17, 2006, p.44; *The Australian*, “Don’t toy with us: Jakarta”, Tuesday, April 18, 2006, p.1; *The Australian*, “The Nation”, “Downer to sign Jakarta accord”, Monday, November 13, 2006, p.2; *Weekend Australian*, “Inquirer”, “The Vanstone wiggle”, May 27-28, 2006, p.20; *The Advertiser*, “Lombok treaty can help heal old wounds”, Tuesday, November 14, 2006, p.11; *The Australian*, “Opinion”, “Pact underscores era of co-operation”, Monday, November 11, 2006, p.9

¹⁵¹ *By Invitation only*, p.51

¹⁵² *Ibid.*, p.51

necessary safety valve for many”.¹⁵³ IOM’s primary focus was the “return of rejected asylum seekers”, which fitted well with its “lack of protection mandate”, leaving the UNHCR to take the lead on protection.¹⁵⁴ Concerns about IOM included medical issues, lack of education for child asylum seekers, harsh living conditions, inadequate access to IOM authorities, and an undue overemphasis on voluntary return, often prematurely.¹⁵⁵

Some critics accused the Howard Government of having “blood on its hands” due to possible cases of *refoulement*, forcing refugees to return to danger when it was clear the person faced possible death.¹⁵⁶ Other commentators have not been so critical, opposing the asylum seekers’ method of arrival and expressing concern about certain source countries.¹⁵⁷ Some saw these unwelcome and unauthorised asylum seekers as a threat to national security,¹⁵⁸ while others viewed this group as a potential threat to cultural, social and economic society and therefore deserving of their fate, whether placed in detention, or returned from whence they came. Many subscribing to this view provided public support for Howard’s policies of stringent entry control.¹⁵⁹

Whether or not one favoured Australia’s policies of mandatory detention and a flawed determination process leading to possible *refoulement*, there is little doubt that there were substantial costs in human terms for those seeking protection from Australia, a nation prepared to exercise sovereign right over who may or may not enter the country. It also

¹⁵³ *Ibid.*, p.51

¹⁵⁴ *Ibid.*, p.52

¹⁵⁵ *Ibid.*, pp.52-54

¹⁵⁶ This comment was made by Sydney-based Social Justice Network spokesman Jamal Daoud. See also “This man feared ...”, p.19

¹⁵⁷ Betts, “Boatpeople”, p.46

¹⁵⁸ Paul Kelly. “The New Ground Rules of Australian Politics” in Wilson, Peter. (ed.) *The Australian Political Almanac*, South Yarra, Vic: Hardie Grant Books, 2002, p.4

¹⁵⁹ Russell Blackford. “Racism and Refugees”, *Quadrant*, Vol.46, Issue 4, 2002, pp.7-14

demonstrated Australia's preparedness to cleverly craft policies of exclusion against those facing adversity, regardless of international obligations.¹⁶⁰

People Smuggling

There have been significant costs in human terms associated with people smuggling during the Howard era. Before considering this issue, it is necessary to define people smuggling. The *United Nations' Global Programme Against Trafficking in Human Beings* defines people smuggling as "the procurement of illegal entry of a person into a State of which the latter person is not a national with the objective of making a profit".¹⁶¹ While smuggling and trafficking in persons both involve the movement of people,¹⁶² there is a distinct difference between the two.¹⁶³ The smuggling of people "always involves an illegal border crossing" while "[t]rafficking does not require an illegal border crossing, nor is it necessarily transnational, such as in cases of internal trafficking".¹⁶⁴ Trafficking "can be defined as the recruitment, transportation or receipt of persons through deception or coercion for the purpose of prostitution, other sexual exploitation or forced labour".¹⁶⁵

¹⁶⁰ Kingston, *Woomera*, p.3/12

¹⁶¹ *Global Programme against Trafficking in Human Beings - An outline for action* -Centre for International Crime Prevention Office for Drug Control and Crime Prevention, United Nations Interregional Crime and Justice Research Institute, February 1999, p.6; Article 3(a) of the *Protocol Against The Smuggling of Migrants by Land, Sea and Air*, Supplementing the United Nations Convention Against Transnational Organized Crime, United Nations, 2000, p.2, defines "Smuggling of migrants" as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."

¹⁶² Australian Government. Australian Institute of Criminology, *People smuggling versus trafficking in persons : what is the difference?* Transnational crime brief no. 2, Canberra, January 2008; Article 3(a) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children*, Supplementing the United National Convention Against Transnational Organized Crime, United Nations, 2000, p.2, defines " "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

Victims of trafficking are therefore more akin to exploited commodities and often represent a form of slavery.¹⁶⁶

People smuggling represents an illegal activity offered by organised criminal groups or syndicates and, like all criminal activities, embodies threats, violence, danger, and unscrupulous and unsafe practices. People are equal to clients paying for a service.¹⁶⁷ Payment assumes a financial agreement voluntarily reached between the smuggler and client and, “[a]lmost without exception, people smuggling occurs with complete consent”.¹⁶⁸ It constitutes a domestic and international dilemma,¹⁶⁹ reaping around US \$20 billion annually for the perpetrators.¹⁷⁰ The illegal smuggling of people during the Howard era (as now) frequently involved abuses of human rights, impacted upon established migration policies of the receiving state and the process of orderly legal migration, and had the deleterious effect of undermining public confidence in the system.¹⁷¹ It created a negative image of migration and migrants when linked to smugglers, generated antagonistic and even xenophobic reactions, and eroded “the democratic and pluralistic institutions and value systems” of the receiving country.¹⁷² Such negative consequences have also led to problematic adjustment and participation for asylum seekers in the host country, with human dignity compromised in a hostile environment.¹⁷³ The UNHCR has refused to

¹⁶⁶ *Global Programme – project document*, p.3

¹⁶⁷ *People smuggling versus trafficking*.

¹⁶⁸ Brian Iselin & Melanie Adams, *Distinguishing between human trafficking and people smuggling*, Bangkok: United Nations Office on Drugs and Crime, Regional Centre for East Asia and the Pacific, 10 April 2003, p.3; Australian Government. Department of Immigration and Citizenship. *Managing Australia’s Borders: Irregular Entry Prevention*

¹⁶⁹ Peyser, *op. cit.*, p.454

¹⁷⁰ *Ibid.*, p.454. Earlier estimates made in 1994 were between 5 billion and 7 billion United States dollars annually. See G. Gunatilleke. *Summary of the Report of the rapporteur. International cooperation in fighting illegal immigration networks*, IOM Seminar on International Responses to Trafficking in Migrants and the Safeguarding of Migrant Rights, Geneva, 26-28 October 1994, p.11; Paul Mooney. “Human smuggling is big business” in Fennell, Tom. “Canada’s Open Door”, *Macleans*, Vol.112, Issue.34, August 1999, p.12-18

¹⁷¹ *Global Programme – project document*, p.3; Peyser, *op. cit.*, p.454; Gunatilleke, *op. cit.*, p.3

¹⁷² Gunatilleke, *Ibid.*, p.3

¹⁷³ Gunatilleke, *Ibid.*, p.3

become the international body of control in the matter, instead leaving responsibility with individual states.¹⁷⁴

People smuggling became an issue for Australia by the 1990s and in 1998, in a speech to the Forum of Human Rights and Immigration, Minister Ruddock highlighted the growing problem:

It has been apparent for quite some time now that there are smuggling networks operating throughout China, South-East Asia and Australia to assist illegal immigrants to enter Australia. Increasingly, even boat arrivals in Australia have tended to come from outside the region. Characteristically, these arrivals fly into the region and gather in small groups ready for transshipment by boat on the last leg to Australia. Those who use these smuggling schemes undoubtedly pay heavily for the opportunity.¹⁷⁵

With a further intensification of people smuggling and an influx of unauthorised boat arrivals in 1999 to 2001,¹⁷⁶ concomitant with a shift to Middle Eastern source countries, the government did not want to appear “soft” but, at the same time, hoped to reduce some of the “pull” factors.¹⁷⁷ It was clear that powerful market forces supported the growth of people smuggling, with countries of origin having compelling “push” factors and Australia, as a receiving country, having strong “pull” factors, such as wealth, freedom and citizenship rights.¹⁷⁸

Early political efforts to disrupt smugglers had relied predominantly on regional and international co-operation, intelligence-sharing and aid, remote detention, and interception

¹⁷⁴ Peyser, *op. cit.*, p.454

¹⁷⁵ Philip Ruddock. *The plight of Australia's illegal immigrants*, Address to the Forum of Human Rights and Immigration, Sydney, 14 May 1998, cited in York, *Extended version*, pp.52-53

¹⁷⁶ *Ibid.*, p.84. 440 unauthorised arrivals entered Australia unlawfully in the first five months of 1999, while in 1998 only 200 arrived in the whole of 1998. In 1999, people smugglers were operating to assist Somalis to leave their country and travel to Australia at a cost of \$US2,300.

¹⁷⁷ Some efforts to reduce the “pull” factor included media campaigns highlighting threats and menaces present in Australia, such as deadly spiders, crocodiles. See ABC 7.30 Report. Transcript, *Ads to dissuade would-be boat people*, 15 June 2000, an interview with Kerry O’Brien and Phillip Ruddock. See also Commonwealth of Australia. Parliament of Australia Senate, Senate Legal and Constitutional Legislation Committee, *Consideration of Additional Estimates*, Tuesday, 20 February 2001, p.275

¹⁷⁸ Gunatilleke, *op. cit.*, p.9. This included the need for illegal cheap labour. See also Millbank, *op. cit.*, p.6-7/7

measures, though these had proven inadequate.¹⁷⁹ Part of the rise in the smuggling problem was caused by efforts to tighten restrictions on legal migration, which increased rather than decreased the illegal flow.¹⁸⁰ For example, the introduction of more stringent citizenship application and qualification conditions made it less likely that aspiring migrants would gain entry into Australia through lawful channels. In a flow-on effect, the desperate turned to alternative measures, and the stronger the systems of control Australia developed and imposed to combat illegal entrants, the more superior and advanced the smuggler networks became to outmanoeuvre them.¹⁸¹ Under such circumstances “organised crime has enjoyed a strong comparative advantage to enter the field.”¹⁸²

In this highly profitable business,¹⁸³ organisations delivered different services, from small-scale operators providing straight-forward border crossing transport, to large-scale networks offering a full range of assistance, including transport, fraudulent documentation, temporary accommodation, and even illegal employment in the receiving country.¹⁸⁴ For those who were desperate and had little choice but to flee their country, the risks presented by a dangerous illegal journey outweighed all other considerations. There is little doubt that the vulnerability of refugees was compounded by the traumatizing experiences of being smuggled and that their overwhelming sense of powerlessness came at the mercy of smugglers.¹⁸⁵ Added to this, people smuggling further damaged the perception of asylum seekers in the minds of Australians. Conforming to the moral panic and “folk devils” principles of Cohen’s theory, Australians upheld a negative attitude that those deviants being smuggled were not genuine, were manipulating the system for personal advantage,

¹⁷⁹ York, *Extended version*, p.53

¹⁸⁰ Gunatilleke, *op. cit.*, p.9

¹⁸¹ *Ibid.*, pp.9-10

¹⁸² *Ibid.*, p.10

¹⁸³ *Global Programme against Trafficking - An outline for action*, p.6

¹⁸⁴ Gunatilleke, *op. cit.*, p.2

¹⁸⁵ *By Invitation*, p.29-30

and didn't deserve sympathy because, if in danger, they could be returned to Indonesia by the people smugglers.¹⁸⁶ The public belief that they were "cashed up" with the ability to pay thousands of dollars for being brought illegally angered many, indicating they weren't the deserving, desperate, innocent people they made out to be.¹⁸⁷

People smugglers were also cast as the deviant group outside the normal realms of society.¹⁸⁸ They were associated with "exploiting immigration policies",¹⁸⁹ referred to as "despicable" and the "scum of the earth",¹⁹⁰ and called ruthless and "unscrupulous opportunists".¹⁹¹ The true smugglers were the "invisible organisers" with international connections who plied their trade and established connections with corrupt officials.¹⁹² These labels were also applied to the crew bringing their human cargo to Australia, yet these people were more often than not impoverished fishermen, frequently little more than children.¹⁹³ Many were unaware of the serious task they were undertaking,¹⁹⁴ were ill-equipped for the job,¹⁹⁵ were not told of the destination till the last minute,¹⁹⁶ were threatened by the smugglers,¹⁹⁷ and never received the full remuneration promised by the

¹⁸⁶ Betts, "Boatpeople", p.45

¹⁸⁷ *Ibid.*, p.45

¹⁸⁸ Cohen, *op. cit.*, pp.18, 74-75, 163-164; McKay, et al., *op. cit.*, pp.611-612

¹⁸⁹ *Ibid.*, p.615

¹⁹⁰ Motta, *op. cit.*, pp.19, 21; McKay, *op. cit.*, pp.607-626; Jack Smit. *The Political Origins and Development of Australia's People Smuggling Legislation: Evil Smugglers or Extreme Rhetoric?* Edith Cowan University, 2011. Smit's research concludes that the legislative measures criminalising 'people smugglers' were not presented in order to fight transnational people trafficking but that they were instead presented and passed by the Parliament to 'stop the boats' and to further deter assisted asylum voyages into Australia by regarding such ventures as illegal without due regard for the UN Refugee Convention.

¹⁹¹ Human Rights Watch, *op. cit.*, pp.30, 32. Refugees frequently placed themselves in debt to these people, meaning that a more prosperous country of destination, such as Australia, would be beneficial in helping them pay back their debt within a prescribed time.

¹⁹² ABC, "The People Smugglers' Guide", p.6/15

¹⁹³ And as late as 2011, the problem was still present. For example, see "People-smuggling laws lead to tragedy, say lawyers and refugee advocates", *The Australian*, 18 December 2011, in which it was stated that "... heavy penalties for people-smuggling meant the smugglers often hired untrained "stooges", many of them children, who had no idea what they were doing".

¹⁹⁴ Brenden Hills. "The inside story of people smuggling to Australia", *The Sunday Telegraph*, May 15 2011

¹⁹⁵ *Ibid.*; ABC Television, "The People Smugglers' Guide", pp.5-6/15

¹⁹⁶ *Ibid.*, pp.5-6/15

¹⁹⁷ *Ibid.*, pp.5-7/15

organisers.¹⁹⁸ In general, the label of “folk devils” was therefore inaccurately attached to mainly destitute fishermen taking advantage of a financial opportunity.¹⁹⁹

The government, in the late 1990s and early 2000s, increasingly focussed on preventing unauthorised arrivals and obstructing smuggling operations, arguing that for every “back-door” arrival whose application was successful, an offshore refugee waiting patiently and going through the correct channels lost his or her chance to come to Australia.²⁰⁰ Yet smuggled asylum seekers, according to some, were often in the greatest need of immediate resettlement,²⁰¹ and were desperate people prepared to take any avenue to safety. In the context of human costs, these people suffered greatly. Journeys to distant lands meant being exposed to threats and unsafe modes of transportation, and for those trying to reach Australia travel in rickety, leaky and overcrowded unseaworthy boats was common.²⁰² Because asylum seekers were in the hands of people smugglers, many did not even know or were deceived about their destination,²⁰³ were forced to follow orders, and remained completely under the control of the smugglers. Instructions were not negotiable, such as destroying identification documents or departing when seas were dangerously rough, so often leading to horror and tragedy in the latter case.²⁰⁴

¹⁹⁸ *Ibid.*, pp.6-7/15

¹⁹⁹ ABC Television. “The People Smugglers' Guide”

²⁰⁰ York, *Extended version*, pp.53-54. This is in fact incorrect, as there have been allocated maximum numbers for offshore applicants and allocated numbers for those approved through the onshore process. See Millbank, *op. cit.*, 1999-2000, p.5/7. It also assumes that those waiting in refugee camps were more deserving.

²⁰¹ Peyser, *op. cit.*, p.454

²⁰² Marg Hutton. *Drownings on the Public Record of People Attempting to Enter Australia Irregularly by Boat 1998-2011*, 30 September 2011. See also Hills, *op. cit.*, an article which reports on the massive risks involved in people smuggling and the exploitation by smugglers.

²⁰³ *Global Programme against Trafficking- An outline for action*, p.6; *By Invitation*, p.32. This report states that most asylum seekers were never told where they were being taken.

²⁰⁴ Hills, *op. cit.*

The government, consistent with Cohen's theory, shifted the onus onto the asylum seekers and the people smugglers, condemning them as the root cause of the problem. They were the "illegals", the "queue jumpers" and the "backdoor" entrants taking places from "genuine" offshore refugees.²⁰⁵ Under this interpretation, they were the undeserving offenders who bought the services of criminal syndicates, fuelled an immoral and illegitimate trade in the movement of people, and undermined the credibility and integrity of the established migration programme. This position ignored the principle that, until assessed, everyone has the right to flee to another country and seek refuge. Instead the government attributed the problem to the most vulnerable and the "wretched of the earth" – the asylum seeker.

²⁰⁵ See Maley, "Asylum-seekers", p.197, who states that "the Australian strategy of removing an offshore resettlement place for each protection visa issued onshore, while effective as a cost-saving device, simply played into the hands of people smugglers by cutting off 'legal' routes of refugee resettlement."

CHAPTER 8: FURTHER COSTS

In addition to the human price already outlined, further intangible and tangible costs stemmed from the government's policies. These included a compromised departmental culture, a tarnished international reputation, and the need for massive funding. It is argued that these outcomes were undesirable, and reflected a disproportionate level of attention and commitment compared to the actual small number of unauthorised boat arrivals. They represented expensive, distorted and counterproductive policy,¹ especially when compared to the lack of effort devoted to the tens of thousands of overstayers.² Let us consider these further costs in turn.

Departmental culture

There were unquestionably negative impacts on the department responsible for implementing and delivering the government's stricter refugee policies. DIMIA was unavoidably dragged along with the thrust of the conservative government's position. It developed a unique bureaucratic culture which was compliant with government, yet detrimental to those it was charged with assisting – asylum seekers.

When considering the notion of culture in this context, we need to ask whether organisations, governments and government departments can assume a particular culture which may impact upon the shaping and the implementation of relevant policies.

There is reasonable evidence to suggest the answer is “yes”.³ While the concept is

¹ Distorted policy because it never achieved the desired outcome, never stopped unauthorised people coming, demonised those who did, compromised international responsibilities, and cost the nation billions of dollars.

² Crock, *Immigration*, pp.1, 163, where Crock notes Australia's lack of understanding of the issues.

³ Within the social sciences scholarship, a number of definitions are offered on the complex concept of “culture”. For example, see M.J. Mazarr. “Race and Culture: A World View”, *The Washington Quarterly*, Vol.19, No.2, Spring 1996, pp.177-180, 187-188; A. Touraine. “A Method for Studying Social Actors”, *Journal of World-Systems Research*, Vol.1, No.3, Fall/Winter 2000, pp.911-917. See also

frequently discussed in relation to society, this can also be applied more broadly to government and public service departments, where a pattern of preferred attitudes, traditions and operations may develop as the cultural norm. It can extend to language which defines those within through the use of specific corporate phrases and acronyms.

During a period of greater scrutiny on increased numbers of unauthorised arrivals in Australia in the late 1990s and early 2000s, this resulted in broader public awareness, more complex monitoring and reporting procedures, and the need for additional staff to deal with rapid changes in administrative processes. These developments required the allocation of increased funding. The pressure to respond swiftly in accordance with explicit measures resulted in the need to meet quantitative standards subordinate to qualitative requirements. This approach manifested itself deep within the department's culture and was sustained by the highest echelons of government authority.⁴ It affected integrity and credibility⁵ and saw a political agenda favoured over the humanitarian component.

C. Geertz. *The Interpretation of Cultures*, Basic Books: Harper Collins, 1973, p.89, who observes that culture "denotes an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by knowledge about and attitudes toward life". Other scholars explain culture as the particular way in which a group of people differentiates itself from others, through the sharing of certain behaviours, values and beliefs. A cultural norm is established where practices, methods and attitudes become accepted over time. A group therefore distinguishes itself by sharing these ideals, where others may not (I. Wallerstein. *Geopolitics and geoculture: Essays on the changing world-system*, Cambridge University Press: Cambridge, 1991, pp.158-9). Culture eventually "comprises socially transmitted ideas, attitudes, traditions, habits of mind and preferred methods of operation". See C.S. Gray. "Strategic culture as context: the first generation of theory strikes back", *Review of International Studies*, Vol.25, 1999, p.51

⁴ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Matters of Public Importance, Department of Immigration and Multicultural and Indigenous Affairs, Speech, Wednesday 12 October 2005, pp.80-82; Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Migration and Ombudsman Legislation Amendment Bill 2005, Second Reading, Speech, Wednesday 2 November 2005, pp.124-128.

⁵ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Matters of Public Importance, Department of Immigration and Multicultural and Indigenous Affairs, Speech, Wednesday 12 October 2005, pp.80-82

It can be argued that this was an inevitable outcome. Government rhetoric had publicly cast the asylum seekers as the root of the people smuggling problem, used the politics of fear to create a level of moral panic, and had labelled asylum seekers illegal and opportunistic among other negative descriptions. Departmental staff would have been acutely aware of the public hostility towards these unauthorised arrivals⁶ and one can be in little doubt that negative attitudes may have been embraced, explicitly or implicitly, by some bureaucrats consistent with the government's position.

Evidence to support the assertion that DIMIA developed a particular culture to the detriment of its core client was provided in the findings of the Palmer and Comrie Reports in 2005.⁷ Having found the existence of primary deficiencies in DIMIA's approach as well as serious structural problems,⁸ the Palmer Report identified that the "culture and mindset" of the department brought about "failures in policy implementation and practices".⁹ It concluded that there were "serious problems with the handling of immigration cases" and that these stemmed "from a deep-seated culture

⁶ As evidenced by talkback radio, newspaper survey voteline results and letters to the editor.

⁷ Palmer, *op. cit.*, in particular pp.160-175. As previously noted, this report resulted from an Inquiry in 2005 into wrongful detention of Australian citizens. See *Evaluation of the Palmer and Comrie Reform Agenda – including Related Ombudsman Reports*, Commonwealth Ombudsman, September 2005; Commonwealth Ombudsman. *Inquiry into the circumstances of the Vivian Alvarez Matter*, Report under the *Ombudsman Act 1976* by the Commonwealth Ombudsman, Prof. John McMillan, of an inquiry undertaken by Mr Neil Comrie AO APM, Report No. 03/2005, Commonwealth Ombudsman: Canberra, Australia, September 2005. The Comrie Report was released shortly after the Palmer Report and undertaken under the *Ombudsman Act 1976*. It supported many of the recommendations in the Palmer Report, and "agreed with Palmer on issues of culture". See also Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Main Committee, Migration and Ombudsman Legislation Amendment Bill 2005, Second Reading, Procedural Text, Wednesday, 30 November 2005, p.160, which states both the Palmer and Comrie Reports "conclude that the cultural problems became entrenched in the years leading up to 2001".

⁸ Palmer, *op. cit.*, p.107-9

⁹ *Ibid.*, p.160

and attitudes and a failure of executive leadership in the compliance and detention areas”.¹⁰

While many avenues of review existed to ensure departmental accountability in humanely and lawfully detaining persons,¹¹ the inquiry found that the culture of DIMIA lacked concern and practices which upheld detention principles,¹² casting doubt on the “application of the principles to the immigration detention population more generally”.¹³ As previously noted, this culture of denial was ostensibly ingrained right to the very top echelons of the government.¹⁴ In a damning indictment, the report stated that there was evidence of “deafness” to stakeholders and a view that the processes and procedures were paramount. This enabled a departmental culture to develop which ignored criticism, was overly defensive, process-oriented and reluctant to question actions.¹⁵

The culture accommodated a political agenda favouring a particular outcome, enabling government priorities to transfer to departmental staff and creating an opportunity for

¹⁰ *Ibid.*, p.160-161, 163. The investigation revealed that such problems were not exclusive to the wrongful detention cases of Rau and Alvarez, as discussed above, but were the very basis of many other incidents.

¹¹ For example, the Commonwealth Ombudsman, the Human Rights and Equal Opportunity Commission, and the ANAO.

¹² Palmer, *op. cit.*, p.163

¹³ *Ibid.*, p.164. Among other things, the report found that, due to the heavy burden of responsibility DIMIA carried in a complex and difficult function, tensions existed in a number of areas, including custody and health care issues, high workloads, considerable pressure, the speed of change, the development of policy and procedures “on the run”, and a lack of assertive leadership in an area where the integrity of the system was paramount.

¹⁴ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Matters of Public *op. cit.* Importance, Department of Immigration and Multicultural and Indigenous Affairs, Speech, Wednesday 12 October 2005, pp.80-82; Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Migration and Ombudsman Legislation Amendment Bill 2005, Second Reading, Speech, Wednesday 2 November 2005, pp.124-128

¹⁵ *Ibid.*, pp.164, 168; This was labelled an “assumption culture”, where matters were not questioned, where denial and self-justification were normal, and rigid and narrow thinking restricted initiative and creative resolutions to new situations. See also Commonwealth of Australia, *Parliamentary Debates*, The Senate, Government Accountability Speech, Thursday, 2 March 2006, p.107, where Senator Faulkner commented on the culture of assumption and denial, saying that the Comrie report had called it “failed, catastrophic and dehumanised”.

systemic problems of ingrained bias and prejudice.¹⁶ The core departmental process was compromised through a lack of cohesion and co-ordination in compliance and detention functions generally, in a strong culturally focussed “rule-driven operational practice”.¹⁷ In such an environment and at the expense of humanitarian priorities, sensitive and effective humanitarian outcomes were overtaken by a dominant culture, subordinate to the greater need of processes and procedures and quantitative rather than qualitative measures.¹⁸

Importantly, what did the departmental culture mean for asylum seekers in detention? Clearly this environment was extremely costly for all detainees. It resulted in a failure to deliver firm and fair outcomes, and showed a lack of respect for human dignity.¹⁹ It constrained departmental staff thinking, flexibility and initiative, which, in turn, inhibited policy outcomes, and dulled any sense of urgency.²⁰ While the failure of DIMIA’s processes was made clear in relation to the high-profile wrongful detention cases of Cornelia Rau and Vivian Alvarez, there were ramifications for other detainees such as the Hwang children,²¹ even after the release of the Palmer and Comrie Reports.

Indications were that, while the intention was to apply fair, just and equitable policy to all unauthorised arrivals, there was a compromise of the government’s obligations with

¹⁶ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, Matters of Public Importance, Department of Immigration and Multicultural and Indigenous Affairs, Speech, No. 17, 2005, Wednesday 12 October 2005, pp.80-82

¹⁷ Palmer, *op. cit.* 165-167

¹⁸ *Ibid.*, p.169-170

¹⁹ *Ibid.*, p.170-171

²⁰ *Ibid.*, p.171

²¹ Matters of Public Importance, Speech, 12 October 2005, pp.80-82. This debate addresses the fact that the “culture of assumption and denial has continued ever since the Palmer report was brought down” and provides the Hwang children as an example. These children were taken from classrooms and placed in Villawood detention centre, only to be there for four months without access to schooling and being witness to attempted suicides. The minister of the time, Minister Vanstone, later admitted they were not unlawful noncitizens and had been detained in error.

bias against those seeking protection.²² Fundamental principles, such as establishing reasonable effort, carrying out prompt and thorough inquiries, and applying consistent and effective medical care, were not adhered to.²³ This presented a situation where an overly self-protective and defensive culture, unwilling to challenge organisational norms or to engage in genuine self-criticism or analysis,²⁴ allowed humanity to take second place to systems and processes. There seems little wonder that the situation led to asylum seekers' increased frustration, self-harm, arson and riots in an effort to raise awareness of their plight. Responses such as these were to prove extremely expensive in economic terms and added to the overall financial costs of maintaining tough refugee policy. This will be dealt with in the section, "The price in financial terms".

Australia's host reputation

Australia's good international reputation on refugee policy was established due to its high standard of settlement programmes and its ability to offer safe haven qualities.²⁵ However, it is contended that sovereignty, nation and conservatism underpinned the national thinking and these factors dominated to bring about inward-looking, state-centric solutions rather than a more humanitarian global perspective. While Australia has not been alone in this respect,²⁶ the conflict between international obligations and a nation state's domestic agenda becomes clearer if considered in terms of host country requirements. This is vital to the debate on human protection and it allows us to further

²² Palmer, *op. cit.*, pp.161-162

²³ *Ibid.*, p.162

²⁴ *Ibid.*, pp.171-172

²⁵ Jupp, *From White Australia*, p.197; see also Menadue, *op. cit.*, in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, p.87

²⁶ See, for instance, James C. Hathaway. (ed.) *Reconceiving international refugee law*, M. Nijhoff Publishers, 1997, p.xvii. Hathaway comments that Australia was not unique in arguing the case for state sovereignty. He states: "International refugee law rarely determines how governments respond to involuntary migration. States pay lip service to the importance of honouring the right to seek asylum, but in practice devote significant resources to keep refugees away from their borders. Although the advocacy community invokes formal protection principles, it knows that governments are unlikely to live up to these supposedly minimum standards. ... So long as there is equivocation about the real authority of international refugee law, many states will feel free to treat refugees as they wish, and even to engage in the outright denial of responsibility toward them."

evaluate costs relating to refugee policy and how Australia, as a wealthy host nation, has allowed its international commitment to be subordinate to national priorities.

There is no doubt that significant demands are placed on host countries, including Australia, and these have been recognised at an international level.²⁷ The manner in which a country deals with an influx of those seeking protection depends on the particular state, and can be internally and externally driven.²⁸ In addition, the call from major international players in the refugee relief system²⁹ to assist a seemingly endless number of long-term refugees has become all too familiar. Events have come about through an increase in more difficult and complex international circumstances, leading to a relief system which has been overwhelmed by persistent demands and extreme numbers.³⁰ While offering protection and assistance to refugees has been a critical world issue,³¹ repeated calls for assistance have resulted in government and public resistance, compassion fatigue, and diminished tolerance.³² Such negative consequences have also led to problematic adjustment and participation for asylum seekers in the host country, with human dignity compromised in hostile environments.³³

²⁷ See UN General Assembly, *International Conference on Assistance to Refugees in Africa (ICARA I): Report of the Secretary-General*, 11 June 1981, A/36/316.

²⁸ For example, important internal aspects can include the ability to accommodate and support, demands on resources and infrastructure, the potential impact on citizens, and perceived threats to security. See Maley, "Asylum-seekers", p.190. At the time of writing, Maley declares that none of these issues was "remotely relevant" to Australia; Myron Weiner. "Bad neighbours, bad neighbourhoods: an inquiry into the causes of refugee flows", *International Security*, Vol.21, No.1, 1996, p.5. External pressures may include diplomatic tension when providing refuge, as this constitutes a global acknowledgement of a particular state's failure to protect its own citizens. The author suggests that an alternative is to "influence countries whose internal conditions have put people to flight". External pressure may also arise if countries appear to shirk their burden-sharing responsibilities.

²⁹ For example, through Non-Government Organisations (NGOs)

³⁰ Zetter, *op. cit.*, in Ager, pp.60-62. NGOs are a primary source for flexible and responsive assistance delivery to refugee assistance, and which today constitute a major actor on the international stage; Hage, *Against Paranoid Nationalism*, pp.1-3

³¹ See Appendix H – UNHCR persons of concern

³² Zetter, *op. cit.*, in Ager, p.63; Hage, *Against Paranoid Nationalism*, p.7

³³ Gunatilleke, *op. cit.*, p.3

Australia's rationale has consistently been to retain the right to controlled entry combined with quality assistance.³⁴ Conforming to this approach, the introduction of harsher refugee policies went hand-in-hand with political priorities of sovereign right to control not only how many but also who could, or could not, enter the country. While this agenda may have appeased the voting electorate by contributing to more insular, populist policies,³⁵ it resulted in damage to Australia's international reputation.³⁶ For example, Australia had been enviably described as a "pioneer in effective multiculturalism, as a safe haven for thousands of refugees, [and] as a pioneer in settlement services and as a humane liberal democracy".³⁷

Why would a nation with such an established well-regarded reputation, working through a respected international organisation such as the UNHCR, introduce new, controversial, punitive measures inviting criticism on its standing towards those it had formally agreed to protect? The answer lies in the host nation's domestic agenda to deter, control and restrict.³⁸ These were the priorities at the heart of the Howard government's policies.

As a host society, Australia successfully put its domestic agenda at the forefront and circumvented its international obligations because, put simply, it had the legal and political ability to do so. Having promoted fear and negative rhetoric towards asylum

³⁴ Errington, *op. cit.*, pp.335, 373; Birrell, "Immigration Control", pp.106-109; Maley, "Asylum seekers", p.199, suggests that the preoccupation with control and border protection has led to rigidity in refugee policy.

³⁵ While popular policies appeased many Australians, negative outcomes were nevertheless the result, e.g., detainee protests and riots, hunger strikes, alienation of organisations and representatives working within the refugee environment, and an entrenched departmental culture which served a political agenda and ignored its humanitarian *raison d'être*.

³⁶ Maley, "Asylum-seekers", p.191, on the damage the Tampa affair in particular cost Australia.

³⁷ Jupp, *From White Australia*, p.197

³⁸ Zetter, *op. cit.*, in Ager, p.67; Perera, *op. cit.*, pp.4-5, 14, Chapters 2, 6 and 7; Crock, *Immigration*; Betts, "Immigration Policy", pp.169, 179, 187; Brennan, *Tampering with Asylum*

seekers, the government risked its reputation and acted assiduously to lawfully overcome obstacles in its path, identifying issues and employing cleverly-crafted tactics accordingly.³⁹ It did so because the voting public, often with inadequate information,⁴⁰ supported this approach. It also did so because of the nature and structure of the UNHCR.

The UNHCR has been acknowledged as the most experienced and best-placed organisation to co-ordinate international refugee assistance, for its role in managing and monitoring relief programmes and fundraising, and in dealing with new challenges which have evolved in recent years.⁴¹ However, there can be a conflict for the UNHCR in balancing state sovereignty and nations' compliance with international agreements.⁴²

As Roger Zetter, editor of the *Journal of Refugee Studies*, remarks:

The international community has created an elaborate legal and institutional structure in which UNHCR is the servant to the world's humanitarian conscience. This allows individual states – both host governments and those that generate forced displacement – to abdicate fundamental responsibility for structural and proactive responses to this global problem.⁴³

Zetter identifies a key problem as the “carefully crafted and enduring financial dependency” of the UNHCR on signatory states, claiming this compromises its effectiveness, “... inhibits its power and ensures that, behind its humanitarian *raison d'être*, the organization acknowledges the political interests it must serve”.⁴⁴ The situation has not favoured the refugee.

³⁹ Hinsliff, *op. cit.*, page 32. For example, the Temporary Protection Visa.

⁴⁰ Crock, *Immigration*, p.163; Langham, *op. cit.*, p.656

⁴¹ Zetter, *op. cit.*, in Ager, pp.56-59. These include voluntary repatriation, urgent issues of forced displacement and, with globalization, the need to operate more closely with other international agencies.

⁴² The issue has been dealt with previously in this thesis.

⁴³ Zetter, *op. cit.*, in Ager, p.60. Non-compliance by states when a national agenda takes precedence has been discussed previously in this thesis.

⁴⁴ *Ibid.*, p.60. The UNHCR has a monitoring role only and cannot impose penalties on states which do not fully comply.

As a contributor of millions of dollars over time,⁴⁵ it is argued that Australia benefitted from its strong, influential financial position by asserting state sovereignty over international obligations, while strongly denying that it was acting contrary to its responsibilities. For example, in response to one UN report criticising Australia as non-compliant in international law,⁴⁶ Australian government ministers stated they “did not accept ... practices were contrary to its international obligations”⁴⁷ and that greater attention would have been better directed to other gross human rights abuses “elsewhere in the world”.⁴⁸ The government disputed it had acted irresponsibly, and instead shifted the blame. It suggested it was the UN which was in need of a major overhaul in its human rights committee systems, and provided a number of suggestions to assist with improved measures.⁴⁹

Some have claimed that this stance by Australia as a wealthy and influential nation, has forfeited its good global citizen status.⁵⁰ The nation has, instead, paid lip service to responsibilities while preserving sovereignty rights and shirking obligations.⁵¹ It is argued that, with no serious penalties applied by the UNHCR for non-compliance other

⁴⁵ M MacKellar, House of Representatives, *Debates*, 24 May 1977, pp.1713–1716, cited in York, *op. cit.*, pp.12-13, also 20-21; Karlsen, et al., *op. cit.*, pp.2-3

⁴⁶ “Report of the Working Group on Arbitrary Detention: Visit to Australia”, *United Nations Economic and Social Council*, E/CN.4/2003/8/Add.2, 24 October 2002. For example, this report states (point 63): “The Working Group hopes that the Government will take the initiative to review the laws in order to bring them into compliance with international standards, now that HREOC and the adoption of its founding Act have opened the way, and to fulfil its obligations with regard to article 2 of the International Covenant on Civil and Political Rights.”

⁴⁷ Joint Media Release, Minister for Foreign Affairs, Mr Downer, and Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock, “Government Rejects UN Report on Arbitrary Detention”, 13 December 2002

⁴⁸ *Ibid.*

⁴⁹ Joint Media Release, Minister for Foreign Affairs, Mr Downer; Attorney-General, Mr Williams; and Minister for Immigration and Multicultural Affairs, Mr Ruddock, “Australian Initiative to Improve the Effectiveness of the UN Treaty Committees”, 5 April 2001

⁵⁰ Hathaway, *op. cit.*, p.xvii

⁵¹ *Ibid.*, p.xvii.

than strong criticism,⁵² Australia invoked the formal protection principles of the *Convention*, while simultaneously choosing to engage in behaviour in its own national interest.⁵³

This conduct reflected Australia's desire to maintain control of its intake of people through sophisticated and complex laws, and tight regulations to deal with migration and the flow of refugees.⁵⁴ This approach extended Australia's preferred method of integration through a highly regulated offshore intake complemented by planned and financed support services, yet represented inflexibility by not taking into account mass movements of people at specific critical times.⁵⁵ Built into the control was a quota system accommodating a "selection" process, which can be said to demonstrate explicit political partiality.

Selection, by its very nature, reflected upon Australia's position and was labelled by some as "cherry picking".⁵⁶ The process involved Australian "Selection Officers",⁵⁷ and implied some refugees were chosen over those in greater need. Australia was not within its rights as a signatory to its international obligations to effectively separate those in need and those the nation preferred or favoured.⁵⁸ The selection process compromised the offer of humanitarian protection based on need and, instead,

⁵² Maley, "Asylum-seekers", pp.187, 191-192. Maley states that "in what was universally interpreted as a stinging repudiation of Australian policy after the *Tampa* incident, Captain Rinnan, his crew, and the company for which he worked received UNHCR's highest honour, the Nansen Award".

⁵³ For example, the *Tampa* incident, and the issuing of temporary protection visas. See also Zetter, *op. cit.*, in Ager, p.60

⁵⁴ Zetter, *op. cit.*, in Ager, p.68; Maley, "Asylum-seekers", pp.195-196. As we have already seen, Australia chose to excise territory, described as a "bizarre exercise in national self-mutilation ... designed to insulate departmental decision making ... from judicial criticism"

⁵⁵ Zetter, *op. cit.*, in Ager, p.55

⁵⁶ Browne, *op. cit.*, pp.141-142; Cox, "Australia's Immigration Policy" in Birrell, *op. cit.*, p.8

⁵⁷ Viviani, *The Long Journey*, pp.125-127; J. Ribarow. (ed.) *From Eritrea to Australia: The recollections of Abraham Hadgu, a refugee from Africa*, Inner Western Region Migrant Resource Centre Inc., 2001, pp.242-244; Neumann, *Refuge Australia*, p.32, on strict selection criteria.

⁵⁸ UNHCR, *Definitions and Obligations*; Browne, *op. cit.*, p.11. The author notes some countries have selected favoured nationalities such as Christian Sudanese over mainly Muslim Somalis.

orchestrated a suitable intake of people for resettlement,⁵⁹ with the main purpose being to maintain control and favour those the nation preferred. One commentator has suggested the quota and selection system have served to demonstrate humanitarian credentials but were, in fact, methods to limit the intake flow.⁶⁰

The new policies which dealt with unauthorised onshore arrivals gave political expression to a situation which “shed light on fears the government saw alive in the electorate”.⁶¹ The national agenda took precedence regardless of international criticism on Australia’s stance. Evidence of public resistance and lack of empathy were confirmed when Howard’s hard-line decisions caused a soar in the Coalition’s popularity.⁶²

According to Anthony Richmond,⁶³ while governments in the 1990s espoused humanitarian rhetoric, the hidden agenda of host countries, including Australia, was not to welcome either group – the offshore refugee and the unplanned onshore arrivals.⁶⁴ Richmond asserts that implicit in their approach was the attitude of racism, the concern that living standards be threatened with the influx of “self-selected” people, that national values were at risk (or at least, diluted), and even concern over vulnerability of the country’s independence.⁶⁵ Though not all commentators agree that racism is an

⁵⁹ The Parliament of the Commonwealth of Australia. *Australia and the Refugee Problem*, pp.4-9. The term in relation to the selection process has also been “factory fodder” – see Viviani, *The Long Journey*, pp.124, 236.

⁶⁰ Zetter, *op. cit.*, in Ager, p.67

⁶¹ Maley, “Asylum-seekers”, p.193

⁶² Betts, “Boatpeople”, pp.41-42. This reveals the political element, an issue which has been previously discussed in this thesis. See also Manne, “The Howard Years: A Political Interpretation”, in Manne, *op. cit.*, p.39

⁶³ Anthony Richmond was Professor Emeritus of Sociology, York University, Toronto and, following his retirement in 1989, an Associate of the York University Centre for Refugee Studies until 2007.

⁶⁴ Richmond, Anthony H. *Global Apartheid: Refugees Racism and the New World Order*, Toronto: Oxford University Press, 1994

⁶⁵ *Ibid.*, 1994; Phillips, in Kramer, *op. cit.*, p.5

issue,⁶⁶ Zetter concurs with Richmond.⁶⁷ He observes that a national agenda of deterrence, control and restriction has reflected cynical and implicitly racist attitudes, where the nation feared refugees may threaten living standards and ethnic hegemony. These observations did not enhance Australia's international reputation.

As a host country, Australia has been keen to avoid accusations of racism but has found it hard to throw off the long-established historical shackles of "whiteness".⁶⁸ Peter Gale observes:

[W]hiteness has been a significant historical marker of national identity in Australia. The recent debate surrounding the Government policy and practice towards refugees and in particular asylum seekers arriving by boat, reflects the ongoing significance of the social construction of whiteness in contemporary Australia.⁶⁹

Australia was keen to maintain social cohesion and a "common civic identity".⁷⁰ This was not always easy. For example, where refugees lacked good English language skills, the result was often reflected in difficulties securing employment or restrictions to low-skilled jobs.⁷¹ This signalled that the refugees represented a section of the population to which entrenched discrimination and rejection applied. In turn, the inability to successfully gain meaningful employment added to newcomers' frustrations and put

⁶⁶ See Betts, "Boatpeople", p.46. The author states that for "the Government's critics, reminding voters of its respect for borders was a disgraceful appeal to the ever-present racism of the Australian people. This is not the correct way to see it. Liberal democracies that care for their members, and for outsiders, must have a high level of social cohesion."

⁶⁷ Zetter, *op. cit.*, in Ager, p.67

⁶⁸ As we have seen, the *Immigration Restriction Act c1901* effectively enshrined the White Australia Policy with its intent to exclude. Cheeseman, *Australia: In Danger of Ourselves*. The author states the main motive to exclude was to "nourish the fear that has run deep through Australian society ... dark-skinned foreigners could penetrate Australia's borders and pose a threat to the white man's version of civilisation"

⁶⁹ Gale, *op. cit.*, p.334

⁷⁰ Phillips, in Kramer, *op. cit.*, p.7

⁷¹ For example, overseas qualifications were often not recognised by Australian authorities. See York, *Extended version*, p.143; Phillips, in Kramer, *op. cit.*, pp.4-5, asserts that some say the low-skilled jobs were those the indigenous population was unwilling to do. A recent report, Australian Government. *Settlement Outcomes of New Arrivals – Report of findings*, Study for Department of Immigration and Citizenship, Policy Innovation, Research and Evaluation Unit, April 2011, states that many years after settling in Australia, up to 85% remained on welfare benefits of some nature. See also Today Tonight, Channel 7, *Refugees remain unemployed study*, 5 May 2011. The programme notes that, despite the smaller number of the asylum seeker and refugee intake compared to the planned immigrant intake, these two groups have far greater problems relating to employment, lack of English skills, and education.

additional pressure on the host nation as a public service provider. Such negative consequences also led to problematic adjustment and participation for asylum seekers in the host country, with human dignity compromised in a hostile environment.⁷² The juggling act for Australia as a host nation was to maintain social unity while absorbing a culturally different minority, ambitious and exasperated when unable to work productively in their new society.⁷³

Some commentators have subscribed to the view that appropriate arrival numbers meant integration was an enriching experience⁷⁴ and too many could be destructive.⁷⁵ A successful outcome was likely when minorities were willing to accept the values of the host culture and adopted a common identity. The view advocated that newcomers owed the host nation, and where cultures did conflict the host nation should win.⁷⁶ Others have made the analogy of nation and family,⁷⁷ with cohesion and shared values required to function effectively. Refugees could enrich a host nation through complimentary qualities and loyalties.⁷⁸ However, if the intake group was too diverse or lacked social cohesion, this was a risk or liability for the host nation.⁷⁹ Additionally, an incoming

⁷² Gunatilleke, *op. cit.*, p.3

⁷³ Phillips, in Kramer, *op. cit.*, p.5

⁷⁴ *Ibid.*, pp.5-7; Harries, in Kramer, *op. cit.*, pp.55-57;

⁷⁵ Phillips, in Kramer, *op. cit.*, p.7

⁷⁶ *Ibid.*, pp.3-8. The author suggests lack of assimilation creates a crisis for Western liberalism, posing questions on national identity and liberal society; Harries, in Kramer, *op. cit.*, pp.55-57; John O'Sullivan. "How Not to Think about Immigration" in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, pp.48-49. The author concludes that "immigrants should adapt to the needs and values of the host nation rather than the reverse". His message is that a shift has wrongly occurred where the host nation now seems required to adapt, not the immigrant, and that this transfers the obligation from immigrant to host nation. He also supports immigrants with appropriate skills and those prepared to assimilate.

⁷⁷ Betts, "Boatpeople", p.46

⁷⁸ Geoffrey Blainey. "Laughing Jackass or Kookaburra" in Kramer, Leonie. *The multicultural experiment: immigrants, refugees and national identity*, Paddington, NSW: Macleay Press, 2003, p.19

⁷⁹ *Ibid.*, p.20-21

minority may, at some future stage, become a majority, potentially leading to cultural and/or political destabilisation.⁸⁰

These issues were highly pertinent for many Australians, who were afraid their national identity was at risk.⁸¹ They feared that minorities did not accept national values, formed enclaves, and retained practices from their countries of origin which were not the Australian way of life.⁸² Consistent with Cohen's theory of moral panic, the government was quick to capitalise on this public anxiety.⁸³ It was prepared to jeopardise its reputation and introduced more internally driven and insular refugee policies, reinforcing that the priority was nation and national identity. The dilemma has therefore been to accommodate a national agenda first and foremost while technically complying with international requirements.

Australia's approach to the principle of burden sharing has also affected its reputation. Burden sharing between states is a key plank of the *Refugee Convention* and a major international issue.⁸⁴ However, it has been a discretionary system set within a "very weak legal and normative framework"⁸⁵ compared to asylum which has been a well-established principle set within a strong legal, normative framework.⁸⁶ States therefore have little incentive to burden share even when committed to international standards of

⁸⁰ Maley, "Asylum-seekers", p.190

⁸¹ Many of these concerns were repeatedly voiced in talkback radio programmes (refer earlier discussion)

⁸² As previously noted, Howard used this tactic frequently

⁸³ Perera, *op. cit.*, p.62, asserts that "[r]enewed anxieties over the legitimacy of the Australian state, unresolved issues of native title, and a sense of Anglo-Australia as an anomalous racial/ethnic presence in the region all contribute to a disproportionate and hysterical response to the arrival of a few hundred asylum seekers in its surrounding waters or "backyard".

⁸⁴ Penovic, et al., *op. cit.*, p.8. See also UN General Assembly, *International Conference on Assistance to Refugees in Africa (ICARA II): Report of the Secretary-General*, Geneva, 22 August 1984, A/39/402. This second conference resulted in an initiative of burden-sharing to strengthen the "economic and social infrastructure of countries" to increase their ability to cope with mass movements of people; Zetter, *op. cit.*, in Ager, p.71

⁸⁵ Betts, *Protection by Persuasion*, p.3

⁸⁶ *Ibid.*, p.3

protection, preferring instead to “shirk individual responsibility and free-ride on the contributions of other states”.⁸⁷

Putting this into perspective, Australia’s part of the international share has not been disproportionately high. It has, in fact, been comparatively low.⁸⁸ Yet certain actions by Australia have raised questions on the nation’s willingness to comply with the principle.⁸⁹ For example, a case in point was outsourcing the processing of asylum seekers to neighbouring Nauru and Papua New Guinea. Neither country was a signatory to the *Convention* at the time, and the action generated debate on Australia’s position. The transfer of asylum seekers to islands in the Pacific region, while not technically illegal according to some,⁹⁰ represented a clear evasion of obligations and was regarded, in fact, as more akin to “burden dumping”.⁹¹ Another case in point was the negotiations between Australia and the U.S. to “swap” one group of asylum seekers for another, with the U.S. resettling those in Australia’s offshore detention centres in return for Australia accepting people held at Guantanamo Bay, Cuba.⁹² These actions did nothing to elevate the nation’s international reputation.

⁸⁷ *Ibid.*, p.8

⁸⁸ See L. Boscardi. “Helping Refugees: An Introduction to UNHCR”, *United Nations High Commissioner for Refugees*, Geneva, 2004, cited in Penovic et al., *op. cit.*, p.8, for details on a geographical distribution of people of concern and Australia’s portion of the burden.

⁸⁹ *Ibid.*, p.9; see also Bem, et al., *op. cit.*, pp.46-47; James Milner. “Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security”, *Refugee Studies Centre*, RC Working Paper No. 4, May 2000, pp.1-28; Perera, *op. cit.*, pp.14, 120-121

⁹⁰ Mansted, *op. cit.*, pp.1-13. Mansted’s conclusion (particularly p.11) is that while it is a “politically and ethically charged matter” and it is a “unique legislative scheme”, it “appears to be in compliance with international law”. There is, in her assessment, no legal proof that the Pacific Solution is illegal.

⁹¹ Amnesty International Australia, *Australia winds up the Pacific Solution*; Perera, *op. cit.*, p.66, states that the export of the refugee problem created a problem in an area in which there previously was none; Maley, “Asylum-seekers”, p.197. Maley describes this as “burden-shifting”.

⁹² Dastyari, “Trading in refugees”, p.1

The UNHCR has been keen to foster greater co-operation between host states and has convened conferences to work towards better international collaboration.⁹³ The organisation has acknowledged difficulties in relation to burden sharing of asylum seekers,⁹⁴ and has clearly shown concern over Australia's handling of the issue, stating:

UNHCR is aware of the difficulties and shares the concerns governments face dealing with people smuggling and managing irregular arrivals in their territories, including unauthorized boat arrivals. However, these proposed new measures raise some serious concerns. In particular the stated intention that persons who land on the Australian mainland – who should normally fall under the migration act and have their claims processed in Australia – will be taken offshore for assessment of their claim, with Australia's responsibilities to bona fide refugees deflected elsewhere.

If this were to happen, it would be an unfortunate precedent, being for the first time, to our knowledge, that a country with a fully functioning and credible asylum system, in the absence of anything approximating a mass influx, decides to transfer elsewhere the responsibility to handle claims made actually on the territory of the state.⁹⁵

Such actions have raised questions on Australia's commitment to human rights, and international obligations, and cast a shadow on the nation's reputation and international standing. Questions have also been raised on the nation's conduct in relation to double standards where a generous and "humanitarian decent country"⁹⁶ on the one hand must, at the same time, not allow itself to be taken advantage of or become a soft touch. Acts which justified detention, exclusion, and denial of access to legal processes and human rights were carried out in the name of 'good conscience' while simultaneously raising the borders around the nation higher and higher to secure what lay within.⁹⁷

⁹³ Betts, *Protection by Persuasion*, p.3; UN General Assembly, *International Conference on Assistance to Refugees in Africa (ICARA I): Report of the Secretary-General*, 11 June 1981, A/36/316. See pp.3,6,10,11,19. ICARA I had 107 participants, 5 observers and 145 government and non-government organisations in attendance. The conference noted the critical and urgent situation facing host countries, and that they were confronted by almost insurmountable difficulties. See also Suhrke, Astri. "Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action", *Journal of Refugee Studies*, Vol.11, No.4, 1998, pp.396, 398-400

⁹⁴ Betts, *Protection by Persuasion*, p.16. Betts asserts that the UNHCR role in burden sharing is one of political facilitation with no source of permanent funding. Betts also states: "Without any binding obligation to contribute to burden-sharing, states have selected their priority areas and earmarked their contributions to UNHCR projects and programs in accordance with their own perceived interests".

⁹⁵ UNHCR Media Release, "Proposed new Australian border control measures raise serious concerns – UN", Briefing Notes, 18 April 2006

⁹⁶ Burke, *Beyond Security*, p.213

⁹⁷ *Ibid.*, p.213

The price in financial terms

The overall cost of deterrence policies in economic terms came at a high price. It is asserted that determining a dollar value presents a quantifiable case and can better facilitate an evaluation of whether intended outcomes met objectives, or were counterproductive. In an environment which embraced negative attitudes, the notion of deterrence and denial of rights, there is little wonder asylum seekers became increasingly frustrated. Hopelessness, self-harm, arson and riots occurred in an effort to raise awareness of their plight. Responses such as these added millions of dollars to the overall financial costs of maintaining tough refugee policy. Yet the government and the public seemed prepared to accept the measures regardless of the cost. Let us consider how expensive the government's policies were in financial terms and that allows us to assess whether the investment justified the outcome in terms of successful policy.

Attempting to accurately establish costs is fraught with difficulty. No single source exists to which one can turn, nor has there been one specific programme incorporating and reporting total overall expenditure.⁹⁸ Instead, government policies have spanned various departments and authorities, including the Departments of Immigration and Citizenship (and Immigration, Multiculturalism and Indigenous Affairs), Defence, Foreign Affairs and Trade, Finance and Administration, and the organisation of AusAID. This diverse structure has not only created difficulties in establishing financial costs, it has also presented issues of accountability, transparency, and factual information. While it would be unreasonable to suggest that lack of financial clarity

⁹⁸ Bem, et al., *op. cit.*, p.29; Spinks, et al., *op. cit.*, p.X

was an intentional strategy, some evidence suggests that the government was not unhappy about this situation.⁹⁹

In an attempt to piece together an analysis of financial costs, a number of aspects must be considered. These include the building, maintaining, upgrading and servicing of onshore and offshore detention facilities; Department of Defence interception programmes and processes and subsequent transportation costs; co-operative agreements with regional countries, such as the IOM; and returning failed applicants to their last country of embarkation or country of origin. This section highlights areas of expenditure, how funding was allocated and, due to the very nature of this analysis, presents detailed figures and statistics.

Onshore processing centres

The policy of mandatory detention in onshore processing centres has been expensive. Sites were commissioned from various organisations, such as the AFP and the Department of Defence.¹⁰⁰ DIMIA provided details of direct costs of asylum seeker immigration detention and immigration reception detention centres in Australia.¹⁰¹ In relation to how expenses are calculated, Mr Bob Correll PSM, Deputy Secretary (Department of Immigration) stated:

⁹⁹ For example, refer the expenditure on Nauru in this thesis, where details have been elusive during the Howard era through the routine of updating budget estimates after the May Budget, as well as the practice of not allowing information to be released.

¹⁰⁰ Joint Standing Committee, *op. cit.*, pp.14-15. Villawood facility opened in 1976 with expansion and refurbishment occurring through to 2001; Maribyrnong was another such facility that came into operation in 1981 and Woomera, with improvements and upgrades carried out to meet the increase of detainees around the year 2000, consisted of demountable and permanent buildings built in the late 1950s/early 1960s (see also Commonwealth of Australia. Parliament of Australia Senate, Senate Legal and Constitutional Legislation Committee, Consideration of Additional Estimates, Tuesday, 20 February 2001, p.218, where parliamentary debate states that the final expenditure at Woomera on phase 1 was “just over \$7 million, phase 2 was in the order of \$10 million, and the palisade (razor wire and double fencing) was \$1.7 million); the Perth centre was constructed in 1981 with later improvements applied to its facilities, while in 1991 the Port Hedland site was purchased and then refurbished, with a further major upgrade carried out in 1996-1997; in 1995, Curtin was commissioned but later returned to the Department of Defence

¹⁰¹ Commonwealth of Australia. Official Committee Hansard, *Senate Legal and Constitutional Legislation Committee*, Budget Estimates, Monday 22 May 2006, Canberra, p.153

The actual cost per day is a calculation which represents the total expenses involved in the centre divided by the total number of detainee days. That means that if you have relatively small numbers of detainees in some centres the unit cost is at a much higher level. It is important to understand that – rather than it being a cost per day based on 100 per cent utilisation of facilities.”¹⁰²

For the financial year 1999-2000, the overall figure was \$A96,650,701 and represented 929,210 total detainee days at a cost per day per individual detainee of \$104.01, broken down as follows:

DETENTION CENTRE COSTS AND DETAINEE DAYS 1999-00			
	Total Expenses	Total detainee days	Cost per day
Immigration Detention Centres			
Villawood	\$9,141,760	113,528	\$80.52
Maribyrnong	\$4,605,915	27,309	\$168.66
Perth	\$2,850,248	11,258	\$253.18
Sub total	\$16,597,923	152,095	\$109.13
Immigration Reception and Processing Centres			
Port Hedland	\$18,531,842	268,147	\$69.11
Curtin	\$28,205,096	260,168	\$108.41
Woomera	\$31,929,333	248,800	\$128.33
Sub total	\$78,666,271	777,115	\$101.23
Central Office direct costs	\$1,386,507		
Total	\$96,650,701	929,210	\$104.01

Source: Question on Notice, Q.44, *Additional Estimates*, Senate Legal and Constitutional Affairs Committee, 20 February 2001

The amount in excess of \$96 million did not include capital costs or damage to centres due to riots or protests.¹⁰³ For example, in 2000 and 2001, Woomera riot incidents cost Australian taxpayers in excess of \$1 million.¹⁰⁴ Another incident at Woomera in 2003

¹⁰² *Ibid.*, p.153. See also media reports such as *The Advertiser*, “Detainee bill to taxpayers more than \$400 daily”, Wednesday, April 17, 2002, p.16, which reported Ruddock stating “some of the cost of the Pacific solution of processing asylum seekers overseas would be offset by a drop in the number of boat people entering Australia

¹⁰³ *Ibid.*; The Parliament of the Commonwealth of Australia. *A report on visits to immigration detention centres*, Joint Standing Committee on Foreign Affairs, Defence and Trade, Canberra, June 2001, Printed by CanPrint Communications, Pty Limited, Canberra, Commonwealth of Australia, 2000, p.30

¹⁰⁴ Commonwealth of Australia. Parliament of Australia Senate, Legal and Constitutional Legislation Committee, *Examination of Additional Estimates 2000-2001, Additional Information Volume 2*, Immigration and Multicultural Affairs Portfolio, September 2001; Questions on Notice, Q.52, Output 1.3: Enforcement of Immigration Law, 20 February, 2001. No charges were laid against detainees – see *Ibid.*, Q.51. Curtin cost less than \$1,000, and Port Hedland experienced troubles which were initially valued at \$80,000 damage incurred, but eventually this was revised downwards to \$12,000 and \$16,000 respectively.

was reported to have cost taxpayers \$8 million.¹⁰⁵ While it is normal for costs to escalate over time, the cost per detainee per day increased significantly, from an average in 1994-1995 of \$69, to nearly double in 1995-1996 to \$105. By 2004 this had increased to \$111 at the least expensive centre, Villawood, while at Port Hedland it was \$2,229.¹⁰⁶ By 2006 the average cost in Villawood detention centre in Australia per detainee was \$190 per day while it had risen to \$2,895 per day at Christmas Island.¹⁰⁷ According to one document, which listed detainee days and average number of detainees, the overall cost for the defined period was therefore \$67,237,410.¹⁰⁸

Offshore processing centres

Offshore asylum seeker management at Nauru and Manus Island, Papua New Guinea,¹⁰⁹ was significantly more expensive than onshore centres.¹¹⁰ From 2001 to 31 May 2006,

¹⁰⁵ *The Australian*, "Fires bill tops \$8 m as detainees run riot", Wednesday January 1, 2003; *The Australian*, "Poor policy doesn't justify arson", Wednesday, January 1, 2003, p.5; *The Advertiser*, "Send in the troops", Saturday, January 4, 2003, p.4; *The Advertiser*, "Woomera Detention Centre to close – but kept on hold", Thursday, March 13, 2003, p.22; *The Advertiser*, "Baxter escapees scaled electric fence", Tuesday, March 11, 2003; *The Sunday Mail*, "Detention plays a significant role in the integrity of our borders", November 16, 2003, p.79

¹⁰⁶ Questions taken on notice, Additional Senate estimate Hearing, 17 February 2004; Dastyari, Azadeh. *The Liability of Immigration Detainees for the Costs of Their Detention*, Submission to the Department of Immigration and Citizenship, Finance and Policy Section; The Hon Nick Minchin, Minister for Finance and Administration and Senator the Hon Richard Colbeck, Parliamentary Secretary to the Minister for Finance and Administration, Castan Centre for Human Rights Law, Monash University, Melb, c.2007, pp.10-11

¹⁰⁷ Commonwealth of Australia. Official Committee Hansard, Senate Legal and Constitutional Legislation Committee, Budget Estimates, Monday 22 May 2006, Canberra, p.153; Budget Estimates Hearing, 22 May 2006, Immigration and Multicultural Affairs Portfolio, Q.166, Output 1.3: Enforcement of Immigration Law. A breakdown of 2006 operational costs was reported as \$24,108,378 for Villawood, \$5,509,293 for Maribyrnong, \$4,642,854 for Perth, \$3,836,721 for Darwin, \$24,560,624 for Baxter and \$4,579,540 for Christmas Island.

¹⁰⁸ Commonwealth of Australia. Official Committee Hansard, *Senate Legal and Constitutional Legislation Committee, Budget Estimates Hearing*, Monday 22 May 2006, Question Taken on Notice, No. 166, Output 1.3: Enforcement of Immigration Law. A breakdown of 2006 operational costs was provided in government documents for the onshore detention centres, including the contractual management payments and additional expenses, such as telephones and interpreting costs.

¹⁰⁹ As noted earlier, Nauru was not, and still is not, a signatory to the *Convention*, although Papua New Guinea did accede to it and the *Protocol* in 1986.

¹¹⁰ Margot Kingston. "Terror, boat people and getting old", *Sydney Morning Herald*, 15 May 2002, p.5. Kingston notes that the government claimed savings by ceasing onshore processing of asylum seekers and, instead, sending them to offshore facilities. This resulted in a reduction in savings of \$85.8 million in 2002/3, \$86.9 million in 2003/4, \$88 million in 2004/5 and \$89.3 million in 2005/6. The author's claim is that Australian taxpayers would spend an extra \$300 million per year under this arrangement to "reduce the number of boat people trying to get here by a mere 1,000 a year". See also p.3 - according to the author, these mainland reduction offsets were more than "consumed by the massive costs for offshore processing in the excised zones of Australian territory and in third countries (Nauru and Papua New

it was officially reported that “the costs of processing asylum seekers on Nauru and Manus Island ... have been \$235.5 million, including departmental costs in Australia”,¹¹¹ and by 31 May 2007, was “\$288.5 million, including departmental costs in Australia”, broken down as follows:

CENTRE	YEAR					
	2001-02	2002-03	2003-04	2004-05	2005-06	2006-31/05/07
NAURU	48.5	45.0	33.6	34.4	26.4	24.3
MANUS	29.4	20.6	6.2	1.8	2.4	1.1
NATIONAL OFFICE CO-ORDINATION	7.8	2.3	1.5	1.3	1.0	0.9

Source: Budget Estimates Hearing, 2006-2007, Q.244, Output 1.5: Offshore Asylum Seeker Management, 21 May 2007

From January-September 2006, a supplementary budget estimates hearing noted that:

... the cost of managing, maintaining and refurbishing the Nauru Offshore Processing Centre (OPC) was approximately \$16.3 million (an average of approximately \$1.8 million per month of which refurbishment has been around \$400,000 a month). This cost comprises payments to the International Organisation for Migration for managing, maintaining and refurbishing the OPC, to the AFP-UP for security services, for projects to assist Nauru maintain essential health and medical services, and for DIMA staff salaries and office expenses in Canberra and Nauru.¹¹²

An overall operational cost from 2001-2007 of maintaining *only* Nauru was put at \$212.2 million, with departmental costs for administering centres on both Nauru and Manus Island, Papua New Guinea, at a further total of \$14.4 million.¹¹³

Although costings for Nauru have occasionally been dealt with through Parliamentary Questions Taken on Notice, details have been elusive due to the Howard Government’s

Guinea). Noll claims that, “[a]gainst this backdrop, the claim that there will be leftover funds from decreasing spontaneous arrivals in the North, which can be reallocated to improve refugee protection in the South is untenable.”

¹¹¹ Budget Estimates Hearing: 22 May 2006, Question on Notice, Q.244, Output 1.5: Offshore Asylum Seeker Management

¹¹² Commonwealth of Australia. *Supplementary Budget Estimates Hearing*, Immigration and Multicultural Affairs Portfolio, Question Taken on Notice, Q.227, Output 1.5: Offshore Asylum Seeker Management, 30 October 2006

¹¹³ Budget Estimates Hearing, 21-22 May 2007, Question Taken on Notice, Departmental Costs of Administering All OPCs – Nauru and PNG. See Bem, et al., *op. cit.*, p.32, which states that the figure reported in the budget document may or may not include the initial cost for both Nauru and Manus of approximately \$10 million each, and any extension or further refurbishment required; Dastyari, *The Liability of Immigration Detainees*, p.9, claims that another \$218 million was spent on detention of “unlawful non-citizens” by the Department of Immigration between August 2001 and July 2004

practice of routinely upgrading figures after the May Budget. Instead, the government released a “Nauru additional” in supplementary estimates,¹¹⁴ an action which meant the public had scant information at budget time, requiring the details to be researched at a later date. This compromised accountability and transparency.¹¹⁵ At times, information was simply unavailable, with government documents on Nauru stating that: “The funding details of the assistance package are not for publication”.¹¹⁶

Funding was also required at times to keep processing centres operational and in a state of readiness, whether holding detainees or not. One such centre was Manus Island which was kept open for six months in 2003 with one sole detainee. This came at a cost of \$4.3 million.¹¹⁷ According to Senator Amanda Vanstone, the figure included “maintenance, water and power projects that benefited both the facility and the local community, and some back pay”.¹¹⁸ For the twenty-five year old single detainee, Aladdin Sisalem, the estimated monthly cost of feeding and accommodating him was \$216,666, amounting to \$1.3 million over the six month period.¹¹⁹ A spokesman commented that the costs were not high considering the centre’s remoteness, associated security issues, and the fact the centre was kept ready for operation.¹²⁰

¹¹⁴ Bem, et al., *op. cit.*, p.31,

¹¹⁵ *Ibid.*, pp.4, 36-37, 39, 61

¹¹⁶ Commonwealth of Australia. Statement by The Honourable Alexander Downer MP, Minister for Foreign Affairs, 9 May 2006, *Australia’s Overseas Aid Program 2006-07*, Table 4, point 2; Table 5, 3, point 3. These points state: “This does not include Nauru Additional. Funding for Nauru Addition is provided under the MOU which is negotiated on an annual basis with the Government of Nauru.”; Bem, et.al., *op. cit.*, p.31

¹¹⁷ Andra Jackson. “Manus Island’s \$1m man”, *The Age*, February 11, 2004. This resulted in a monthly cost of \$716,666.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.* This compares to an average of keeping a person in detention in Australia at \$4,800 per month. The question could be asked, why was Sisalem not transferred? A possible answer is that he may have been eligible for support in the form of access to legal assistance, etc., and this was to be avoided.

¹²⁰ *Ibid.*

The construction of the detention centre on Christmas Island in 2002, contracted by the Department of Finance and Deregulation, also attracted a substantial price tag which increased significantly from initial estimates. An Audit Report states:

The project approved in March 2002 had been for a 1200 person facility to be built in 39 weeks for an indicative budget of \$242.9 million. By June 2002, architects and a Construction Contractor had been appointed. However, delays in the project timelines and increases in project costs had begun to emerge. By September 2002, the project estimate had increased to \$427 million with a delivery period in the order of 120 weeks.¹²¹

Other related expenses must be added to the mix, such as millions of dollars spent on Comcover premiums and payout claims in relation to immigration law.¹²² For example, compensation for mental and physical health problems as a consequence of long-term detention reached the tens of thousands.¹²³ In addition, Migrant Resource Centres (MRCs) and Migrant Service Agencies (MSAs) received core funding amounting to millions of dollars.¹²⁴

In relation to transporting asylum seekers to or from an offshore facility, whether for interception or medical evacuation reasons, in 2005-2006 alone charter flights to or from Christmas Island, Nauru and Manus reached \$4,992,807.¹²⁵ During the previous

¹²¹ Australian National Audit Office, The Auditor-General Audit Report No. 43, 2008-2009, *Construction of the Christmas Island Immigration Detention Centre*, Department of Finance and Deregulation

¹²² For example, Senate Estimates, *Legal and Constitutional Affairs*, Hansard, Monday, 12 February 2007, pp.112-113 lists compensation cases between July 2005 and 1 November 2006 in relation to false imprisonment (\$10,000), costs for false imprisonment (\$25,000), personal injury (80,000), and for further personal injury claims (\$400,000). See also Budget Estimates Hearing, Question Taken on Notice, 22 May 2006, Immigration and Multicultural Affairs Portfolio, Q.161, Output 1.3: Enforcement of Immigration Law. This response outlined the increases from 2001. For example, in the years 2001/2, 2002/3, 2003/4, and 2005/6 premiums *increased* by amounts of \$28,665.87, \$704,902.44, \$2,818,980.00, and \$838,727 respectively. Only 2004/5 had a reduced premium of \$259,840.00.

¹²³ Commonwealth of Australia. Official Committee Hansard, *Senate Standing Committee on Legal and Constitutional Affairs, Additional Budget Estimates*, 21-22 May 2007, Question Taken on Notice, Q.142, Output: Internal Product. This document states that in the previous year, \$40,000 was paid to an asylum seeker for personal injury claims.

¹²⁴ For example, in 2003-2004 this amounted to \$8.2 million and, under the Community Settlement Services Scheme (CSSS), funding provided to organisations amounted to \$18.8 million: Commonwealth of Australia. *Supplementary Budget Estimates Hearing*, Immigration and Multicultural and Indigenous Affairs Portfolio, Question Taken on Notice, No. 187, 1 November 2005

¹²⁵ Senate Estimates, *Legal and Constitutional Affairs*, Hansard, 12 February 2007, p.116

three financial years (before 2005), travel and associated costs for refugees as part of IOM's overall expenses was listed as being \$18,562,192.08.¹²⁶ Other incidents, such as the West Papuan asylum seeker event, cost dearly.¹²⁷ Estimates in government documents outline that transporting people from Nauru was between \$20,000 and \$100,000,¹²⁸ prompting the observation:

[I]t would have cost between \$300,000 and \$1.5 million to transport the 15 asylum seekers that the department admitted to transferring for medical treatment between September 2001 and February 2003 and another half a million to \$2.5 million to transfer the 25 detainees brought to Australia in October 2005 on the advice of health professionals.¹²⁹

Supplementary budget estimates provided details indicating that mental health advisory group visit costs in 2005 were \$12,895, in 2006 \$76,660, and an ongoing cost of \$42,000 a month for psychiatric services in Nauru.¹³⁰

Interdiction/interception

Services delivered by IOM, as part of the government policy to push irregular maritime arrivals back to Indonesia, were also expensive. According to government documents in 2005, the "total amount paid to IOM for services to the department over the past three

¹²⁶ Commonwealth of Australia. *Supplementary Budget Estimates Hearing*, Immigration and Multicultural and Indigenous Affairs Portfolio, Questions on Notice, Q.178, Output 2.1: Settlement Services, 1 November 2005

¹²⁷ At the time of the West Papuan asylum seeker incident, when forty-three sought protection from Australia, the cost to the government of transporting this group by the Air Force for the mission from Weipa, Queensland to Christmas Island, was listed as \$4,926. This incident not only cost in financial terms, but also created considerable diplomatic tension between Australia and Indonesia, such that the Indonesian diplomat was withdrawn from Australia. Commonwealth of Australia. *Senate Foreign Affairs Defence and Trade Additional Estimates 2005-2006*, Answers to Questions on Notice from the Department of Defence, Question W29, Operation Relex, (b)

¹²⁸ Commonwealth of Australia. Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, Public Hearing 26 May 2006, Response to Questions on Notice, Q.9. This document states various medical evacuation methods could be carried out from Nauru, from charter (for example, if the destination were Cairns) to commercial carrier (if the destination were Brisbane). "The total costs could range between \$20,000 for non-charter flights and \$100,000 depending on arrangements";

¹²⁹ Bem, et al., *op. cit.*, p.33

¹³⁰ Commonwealth of Australia. *Supplementary Budget Estimates Hearing*, Immigration and Multicultural Affairs Portfolio, Question Taken on Notice, Q.225, Output 1.5: Offshore Asylum Seeker Management, 30 October 2006

financial years [was] \$150,911,706.60”.¹³¹ This was in addition to a further funding arrangement with IOM to the tune of “\$20,417,061.31 to provide capacity building services to other Governments in the region”.¹³² The overall funding allocation included refugee travel, medical costs, a structured loan scheme, cultural orientation, training and publications.¹³³

The two agencies with responsibility for intercepting irregular maritime arrivals and transporting these people to detention centres were the Department of Defence and the Australian Customs and Border Protection Service.¹³⁴ While the annual funding for these departments ran into the hundreds of millions of dollars, there is no scope to identify or isolate a precise figure or associated costs in relation to irregular maritime arrivals during the period under discussion, because activities were absorbed within a range of programmes with multiple objectives.¹³⁵

Nonetheless, in 2011 the overall cost of government policies of deterrence since 2000 has been put at \$24 billion.¹³⁶ This figure is claimed to be conservative as it excludes massive costs incurred by detention facilities, border security measures or compensation and litigation costs involved in the wrongful detention cases of Cornelia Rau and Vivien Alvarez.¹³⁷ It does not include the injection of aid to Nauru and Papua New Guinea,

¹³¹ Commonwealth of Australia. *Supplementary Budget Estimates Hearing*, Immigration and Multicultural and Indigenous Affairs Portfolio, Questions on Notice, Q.178, Output 2.1: Settlement Services, 1 November 2005; Bem, et al., *op. cit.*, pp.30-31

¹³² Question on Notice, 178, *op. cit.*; Bem, et al., *op. cit.*, pp.30-31

¹³³ Question on Notice, 178, *op. cit.*; Bem, et al., *op. cit.*, pp.30-31

¹³⁴ Spinks, et al., *Australian Government spending*, see Section “Coastal surveillance and interception”

¹³⁵ *Ibid.*, pp.1-6

¹³⁶ Bernard Keane. “Cost of detention? \$113,000 per asylum seeker”, *Crikey*, 17 August 2011

¹³⁷ A high public profile was afforded to detention through the two cases of Cornelia Rau and Vivien Alvarez. The debate on detention centres began to shift in the public perception with these two examples of wrongful detention, both featuring Australian citizens. Due to health issues, both were unable to

which “amounted to more than \$120 million since 2001”,¹³⁸ nor the costs of the High Court challenge to its policies of offshore detention.¹³⁹ The figure also excludes the Reintegration Assistance package.¹⁴⁰ According to one government document, over the three financial years before 2005, the IOM was responsible for reintegration and return packages amounting to \$6,450,352.86.¹⁴¹

The government attempted to justify deterrence policies and the financial burden they incurred on Australian taxpayers by playing politics of fear and maintaining a level of moral panic in relation to unauthorised boat arrivals. It continued to ignore the tens of thousands of overstayers and instead funded millions of dollars in promotional campaigns against terrorism,¹⁴² smuggling, and the dangers boat people faced when they came to Australia.¹⁴³ The latter involved a campaign, targetting major source

defend or represent themselves in an effort to escape incarceration. See *The Advertiser*, “Alvarez to get millions”, Friday, December 1 2006, p.5; *The Australian*, “Asylum-seeker set free”, Friday, August 16 2002, p.2, which set out the case of on a Palestinian asylum seeker and a Federal Court order to release him due to “unlawful” continued detention; *The Australian*, on the wrongful deportation of Vivien Alvarez, Tuesday, June 20, 2006, p.33; Palmer report, *op. cit.*

¹³⁸ Bem, et al., *op. cit.*, p.34-35

¹³⁹ *Ibid.*, p.35

¹⁴⁰ *Ibid.*, p.35. This initiative offered an inducement for repatriation to unauthorised arrivals, a policy which has potentially cost Australia around \$4 million between 2001 and 2007. The authors note that “The Reintegration Assistance Package includes a cash grant of \$2,000 per asylum seeker up to a maximum of \$10,000 for family groups with dependants. By the end of 2003, 408 Afghans had taken up the package, according to DIAC fact sheet 80. This accounts for the vast majority of the total of 482 asylum seekers on Nauru and Manus Island who have been repatriated to their home country or a third country between 2001 and February 2007. This suggests that between \$1 and \$4 million would have been spent on encouraging asylum seekers to go home in this way.”

¹⁴¹ Commonwealth of Australia. *Supplementary Budget Estimates Hearing*, Immigration and Multicultural and Indigenous Affairs Portfolio, Questions on Notice, Q.178, Output 2.1: Settlement Services, 1 November 2005. This document states that the reintegration and return packages total “includes packages paid to individuals returning to their home countries where IOM facilitated the payments on the Department’s behalf”.

¹⁴² Transcript of press conference held by Prime Minister, John Howard, *Howard announces \$15 Million ‘Terrorist Threat’ Advertising Campaign: Public To Be Encouraged To Report ‘Suspicious Behaviour’*, Sydney, December 27, 2002. This campaign was to last approximately three months.

¹⁴³ ABC 7.30 Report, *Ads to dissuade*; Commonwealth of Australia. Parliament of Australia Senate, Senate Legal and Constitutional Legislation Committee, Consideration of Additional Estimates, Tuesday, 20 February 2001, p.275 (Mr Farmer responding to Senator McKiernan)

countries, to “scare off would-be boat people”.¹⁴⁴ It featured sharks, crocodiles, and snakes and attempted to eliminate “many of those pull factors”.¹⁴⁵

On the facts presented, can we say that the investment of billions of dollars was justified and that harsher policies were successful? One would be inclined to say they were not. The approach was a means to stop the boats and, more importantly, to shore up public support. The government benefitted by appearing tough, protective and strong, but stopping the boats was never achieved for any length of time. As the Australian electorate became more aware of the facts and costs, the government’s approach was questioned. Public policy proved distorted because it never achieved the desired outcome long-term, never stopped unauthorised arrivals, required the politics of fear and demonization of those who did come, compromised international responsibilities, and cost the nation billions of dollars.

¹⁴⁴ ABC report, *Ads to dissuade*, Kerry O’Brien opening paragraph

¹⁴⁵ *Ibid.*, Ruddock

CHAPTER 9: CONCLUSION

The Howard Coalition enjoyed the best position a political party could experience at election time – a strong economy.¹ Despite this, the Party lost power to the Rudd Labor Government on 24 November 2007. A number of Howard’s exclusionary refugee and asylum-seeker related policies were subsequently dismantled or reviewed. These included the so-called “Pacific Solution”,² the detention of refugees on Nauru,³ a review on cases where the length of detention appeared unjustified,⁴ a review of intervention powers,⁵ and the abolition of the TPV enabling holders to be eligible to apply for a permanent visa.⁶ There was a “general softening of immigration policy by the Rudd Government”;⁷ however, there was no cessation of mandatory detention.⁸ Labor legislated for an increase in the humanitarian visa program,⁹ and some practices improved.¹⁰

¹ Kerr, “John’s Party”, pp.1-24,

² *The Sydney Morning Herald*, Xavier La Canna & Ilya Gridneff. “ ‘Pacific Solution’ to end on Friday”, February 6 2008; Amnesty International Australia. *Australia winds up the Pacific Solution*; “Australia’s ‘Pacific Solution’ to end?”, *workpermit*, 26 November 2007

³ Minister for Immigration and Citizenship, Senator Chris Evans Media Release, “Last Refugees Leave Nauru”, 8 February 2008

⁴ Amnesty International. *Government to review long-term detention cases*, 13 March 2008; Minister for Immigration and Citizenship, Senator Chris Evans Media Release, “Minister to Review Long-term Detention Cases”, 12 March 2008

Minister for Immigration and Citizenship, Senator Chris Evans Media Release, “Long-term detention review completed, 23 May 2008

⁵ Minister for Immigration and Citizenship, Senator Chris Evans Media Release, “Ministerial Intervention Powers Under Review, 9 July 2008

Australian Government, Department of Immigration and Citizenship. *Visas, Immigration and Refugees: Ministerial Intervention*

⁶ DIAC Fact Sheet 68. *Abolition of Temporary Protection visas (TPVs) and Temporary Humanitarian visa (THVs)*, 9 August 2008; *Abolition of Temporary Protection visas (TPVs) and Temporary Humanitarian visas (THVs): Amendment of Resolution of Status (ROS) visas for current TYPV holders*, 9 August 2008 – Legislation Change

⁷ For example, those who overstayed their visas were invited into the department to discuss their situation, frequently receiving Bridging Visas instead of possible detention. See Wayne Flower & Ben Packham. *Herald Sun*, “Illegal immigrants who overstay visas will no longer be put in detention camps”, May 4, 2009

⁸ Minister for Immigration and Citizenship, Senator Chris Evans Media Release, “Labor Unveils New Risk-based Detention Policy, 29 July 2008; Mandatory detention was to continue by processing unauthorised boat arrivals in excised territory on Christmas Island

⁹ Martin Ferguson. *Border Protection*, Communication to Labor Branch Members, Thursday, 15 September 2011. Other border protection measures from 2007, which were aimed at deterring people-

While changes and reviews appeared significant it is suggested that, for asylum seekers, very little actually changed when the new government took office. Detention remained mandatory, centres continued to be fenced and guarded,¹¹ processing continued to be carried out in isolated and remote locations,¹² medical, transport and boredom issues lingered, and dilapidated infrastructure caused concern.¹³ In addition, incidents of wrongful detention did not cease.¹⁴ In one embarrassing case under Minister Kevin Andrews in 2007, Tony Tran was wrongfully held for five and a half years.¹⁵

Opposition criticism was levelled at the Rudd Government for being too “soft” on border protection,¹⁶ rhetoric which perpetuated politicisation of the issue by attacking the new government’s more humanitarian course of action. The suggestion was that the government had lost control.¹⁷ In an effort to address the surge in boat arrivals in

smuggling and hazardous boat travel, included increased penalties for assistance to people smugglers and for exploitation, death or serious harm in relation to people smuggling; offshore arrests of people smuggling suspects; additional patrol vessels; agreements to return unsuccessful Afghan asylum seekers; increased detection and interception of boat arrivals; and legislation for offshore processing as a clear deterrent to people-smugglers.

¹⁰ Michelle Dimasi. “Back to the mainland”, *Inside Story*, 18 March 2009. For example, Christmas Islanders were given the opportunity to farewell refugees (not possible under Howard), processing turnaround times improved, and children were no longer in immigration detention centres. In addition, legislation introduced during the Howard era to charge asylum seekers for their detention costs was scrapped – see ABC News. Lane, Sabra. *Senate showdown looms over detention fees*, Tuesday 8 September, 2009

¹¹ Amanda Hodge. “Australia ‘barely rates’ for refugees”, *The Australian*, The Nation, Wednesday April 22 2009, p.6. Note: some areas were unfenced and used by families, women and children. See Ben Packham. “More housing needed for boat arrivals on Christmas Island”, *Herald Sun*, August 25 2009.

¹² Australian Human Rights Commission. New report highlights ongoing problems in immigration detention, *Media Release*, 13 January 2009

¹³ AHRC, New report, *Ibid.*, p.1

¹⁴ ABC Online. Lindy Kerin. *New case of alleged wrongful immigration detention emerges*, Tuesday 13 November 2007. Tony Burke, then Labor immigration spokesman, stated: “Sadly, we’ve now had 240 cases of people who’ve spent part of their lives inside immigration detention, only to find that at the end of the process, that they were in Australia lawfully the whole time”.

¹⁵ *Ibid.*

¹⁶ See articles such as: *Brisbane Times*. Jonathan Pearlman. “Call for inquiry after two boats of asylum seekers intercepted”, September 14 2009; *The Age*, “Turnbull accused of scare tactic on refugees”, December 9, 2008; *The Australian*, “UN urges Rudd Government to resist calls for tougher measures on asylum-seekers”, December 9, 2008; *International Herald Tribune*, “Australia defends new refugee laws”, 9 December 2008; *The Australian*, “Still a destination to die for”, December 13, 2008

¹⁷ *The Australian*. Nicola Berkovic. “A cash cow for smugglers”, September 14 2009; *The Advertiser*. Lewis, Steve. “Liberals attack Rudd’s asylum boat century”, March 30 2010, p.24. This article states that the 100th boat to arrive since Rudd’s watch “has been seized on by the Opposition as proof that Labor

2009,¹⁸ further funding was announced by Labor to strengthen border control,¹⁹ and frequent articles appeared denigrating people smugglers.²⁰ These actions epitomised past attitudes and practices and reflected a continuation of an earlier mindset.

It has been argued that the nation's cultural and historical experiences have shaped Australian responses and attitudes of deep-seated bias, prejudice and fear which have been translated into political policies. One outcome was a divisive two-tiered system where those who arrived without documentation or authorisation were targeted and had extreme limitations placed on their rights. Government rhetoric, terminology and the manipulation of events had the effect of elevating public fear, concern and anxiety, and catalysts during the Howard era provided a pretext to legitimise the introduction of harsher refugee policies. Not only were more state-centric political decisions implemented, the era clearly created a specific historical point in time which established a hardening of attitudes towards asylum seekers and refugees. The Coalition's use of negative and damaging rhetoric lodged firmly in the consciousness of the electorate, and from that point in time there has been no going backwards.

Public intolerance on the issue, post-Howard, did not diminish and compassion continued to remain in short supply. Lack of empathy for asylum seekers²¹ became

has lost control of Australia's borders" while Labor claimed the "surge in boat people arrivals [was] due to global factors".

¹⁸ This figure rose from 161 in 2008 to 2,849 in 2009. Also, see Sources: 1976-1988: Betts, "Boatpeople", p.34. 2009-2011: figures compiled by the authors from ministerial and departmental press releases; Phillips, et al., *Boat arrivals*

¹⁹ *The Australian*. Mark Dodd. "Boost in funding to help tighten Southeast Asian border controls", September 15 2009; *The Weekend Australian*. Paul Maley. "Border security for big upgrade", April 25-26 2009, p.1

²⁰ For example, see *The Australian*, "Refugees 'too poor' to pay smugglers", *The Nation*, Monday April 27 2009, p.5; *The Weekend Australian*, "Accused people-smugglers 'thought they carried fishermen' ", April 25-26 2009, p.10; *The Australian*. Stephen Fitzpatrick. "People-smuggling baron seized in action", Thursday May 7 2009, pp.1-2; *The Advertiser*. "Syndicates that profit from asylum seekers", Tuesday April 13, 2010, pp.1, 4-5

ingrained in contemporary Australian political and public discourse. With this persistent public attitude, the Labor Government's preferred line of approach to abolish many refugee policies became disjointed. The dismantling of Howard's border protection strategy, which was supposed to reduce the "pull factors",²² became an embarrassing and confusing backflip by Labor. For example, offshore processing,²³ the highly criticised "Pacific Solution",²⁴ the "Malaysia Solution",²⁵ and turning the boats around,²⁶ were all debated as options under Labor.

The creation of moral panic in the Australian electorate has become indelibly printed in the minds of voters. The strategy has ignored the massive group of illegal overstayers totalling 50-60,000 every year and, instead, appealed to the psyche of conservative Australians by targetting the smallest group of unauthorised boat arrivals. The tactic was successful. Labor rhetoric was not matched by actions and, having previously strongly opposed the Howard border protection network,²⁷ much remained constant or was reintroduced. What Labor policy has reflected post-Howard is the continuation of

²¹ Errington, *John Winston Howard*, p.viii

²² Annabel Crabb. "Compromising positions: asylum seeker trade-off", *ABC News*, Tuesday 14 August 2012

²³ Susan Metcalfe. "Labor resurrects the dark history of the Pacific Solution", *Sydney Morning Herald*, Opinion, August 16 2012

²⁴ UNHCR Media Release, "Proposed new Australian border control measures raise serious concerns – UN", Briefing Notes, 18 April 2006; Penovic, et al., *op. cit.*, pp.8-10; Anna Caldwell. "Offshore asylum laws through Parliament", *News, AAP*, August 16 2012

²⁵ The Malaysia Solution plan was for Australia to accept 4,000 approved refugees and Malaysia to take 800 asylum seekers who found their way to Australia's shores. See Maria O'Sullivan. "Malaysia Ruling: High Court ruling explained", *The Conversation*, 31 August 2011. The failure for this option to go ahead was only stymied late in negotiations by the High Court decision which labelled it unlawful. See High Court of Australia. Plaintiff M70/2011 v Minister for Immigration and Citizenship, Plaintiff M106 of 2011 By His Litigation Guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship, [2011] HCA 32; O'Sullivan, Maria, *op. cit.*

²⁶ Australian Government. *Report of the Expert Panel on Asylum Seekers*, August 2012. This panel was led by Air Chief Marshal Angus Houston, AC AFC (Ret'd), and is often referred to as the "Houston Report". Turning the boats around was rejected by Labor, (see pp.53-54) but under certain conditions or circumstances, the report stated, this disincentive may be plausible. The report outlined that, if certain conditions were met, turning boats back was achievable and could serve as a disincentive. For example, the country to which the boat was returned would have to consent to this, and a return must be carried out in compliance with international law.

²⁷ Crabb, *op. cit.*

an entrenched and firmly embedded mindset of nation and conservatism both within the government and the population. The refugee policies continue to be updated at an enduring cost in human and financial terms. Yet boat people keep coming regardless.²⁸ Appreciating the nature of the Australian public, it would be a huge undertaking and a brave government of any persuasion to soften border protection. The legacy of the Howard Coalition has therefore been to set in stone the current thinking on refugees and asylum seekers, from which no sudden reversal is foreseeable.

In response to global events, there is no doubt irregular maritime arrivals will continue to ebb and flow as they have for the last thirty years.²⁹ The aim of this work has been to show that measures adopted during the Howard era (and continued by Labor) have not only compromised international obligations, but have also come at too great a cost in human, economic and social terms. Bad policy-making, such as the TPV and off-shore processing, have done nothing to enhance Australia's reputation as a good global citizen and have proven highly damaging to those who seek Australia's protection. This work offers a critique and an opportunity to scrutinise policy outcomes. Based on the consequences, it is proposed that there is room for much improvement.

The debate at the time of writing suggests that the TPV may be reintroduced. This would be a backward, negative step and would once again damage the international reputation of Australia. There needs to be further open and frank debate on the massive costs involved in offshore processing. These appear significant when the majority of detainees ultimately receive approval to settle in Australia. Australia has the facilities,

²⁸ Manne, et al., "Sending them home", p.91. Manne and Corlett consider that further waves of asylum seekers should not be treated in the "cold and brutal way the Iraqis, Afghans and Iranians have been treated by Australia since 1999"

²⁹ Phillips, et al., *Boat arrivals*, p.17

workforce, space and infrastructure to process asylum seekers onshore.³⁰ Offshore processing centres are proving counterproductive and reflect a political, not a humanitarian agenda. The purpose of being a signatory with international obligations is reduced to a farce if efforts are instead directed towards shirking *Convention* responsibilities. Lastly, the government has the power to be more honest and accountable in relation to asylum seekers. The focus on boat people could take on less of the fear factor and be considered in proportion to overstayers. The lack of scholarly contribution on this area is worthy of further study.

There will always be tension between the desire to protect borders while attempting to control the arrival of unplanned asylum seekers. More work needs to be done to achieve this balance, perhaps through the establishment of improved co-operative agreements with regional neighbours, and exploring alternative deterrence processes.³¹ Politicians need to cease the political exploitation of human rights issues. However, until there is a more balanced and informed, intelligent debate in Australia, asylum seekers will continue to be used as a political football to shore up electoral support.³² New and challenging responses will be required by government. The perception is that an “enclosed and coercive model of sovereignty”³³ and a security-oriented pretence mean that stronger borders will protect us. This is not necessarily the case. Australia should resist the temptation to consider only what is right and good for its people and, instead, consider a broader value system.³⁴ The government has the power to more positively influence public opinion by framing the debate in a way which persuades people away from current thinking towards a more flexible, humanitarian mindset.

³⁰ UNHCR Media Release, “Proposed new Australian border control measures”2006

³¹ *Ibid.*, p.17

³² Motta, *op. cit.*, p.27

³³ Burke, *Beyond Security*, p.217-8

³⁴ *Ibid.*

APPENDICES

Appendix A – Chronology of government legislation on asylum seekers

1st July 1996 Minister announces a global 'quota' system for on and offshore refugee and special humanitarian programs, nominally allocating 2,000 places to onshore refugees and 10,000 to entrants under the offshore Refugee and Special Humanitarian Programs.

20th August 1996 Introduction of a range of processing measures at primary level

20 August 1996 Withdrawal of *Asylum Seekers Assistance* (financial support administered by the Australian Red Cross) after rejection at primary stage

21 March 1997 Minister attacks independence of Refugee Review Tribunal

25 March 1997 Government announces intention to introduce a 'private clause' to remove the entire jurisdiction of the Federal Court to hear refugee appeals and as much of the High Court's jurisdiction as is constitutional, thus rendering the Refugee Review Tribunal the final point of appeal

1 July 1997 Withdrawal of permission to work (and therefore access to Medicare) to anyone who does not apply for refugee status within 45 days of arrival in Australia

1 July 1997 Introduction of \$1,000 post application 'fee' for unsuccessful applicants to the Refugee Review Tribunal

13 July 1997 Announcement that holders of temporary visas for those from Sri Lanka and former Yugoslavia would not be further

Sept 1997 Immigration detention centres ... privatised and contracts awarded to ACM

1 May 1998 Tightening of character requirements legislation, reversing the onus of proof so that visa applicants are required to show they are of good character.

8th May 1998 Government tables Human Rights and Equal Opportunity Commission report 'Those Who Have Come Across the Seas' ... The report found ... detention centres breached Article 7 of the ICCPR

1st July 1998 Removal of eligibility for Legal Aid for all asylum seekers except in cases before the Federal or High Court

1 July 1998 Removal of permission to work ...

1 December 1998 Removal of eligibility for a bridging visa

1999 Legislation to overcome the Federal Court's decision that the Human Rights and Equal Opportunity Commission have the power to send a sealed letter to an immigration detainee advising them of their right to seek asylum.

30 April 1999 'Safe Haven' legislation passed by Senate denying holders of safe haven visas the right to seek asylum ... , or the right to make any other kind of migration application (including spouse applications), the right to review decisions

May 1999 *Senate Legal and Constitutional References Committee* initiate(sic) an inquiry into the refugee determination process

13 May 1999 Minister wins High Court case

26th May 1999 Decision by *United Nations Committee Against Torture* against Australia

29 June 1999 Minister angrily denies finding of *Human Rights Equal Opportunity Commission*

June-December 1999 2839 asylum seekers ... arrive by sea without regular documentation. Intense publicity, fuelled by the Government ... Terms such as 'illegal immigrant', 'forum shopper', 'queue jumper', 'designer refugees'

20 October 1999 Introduction of three year temporary visa

16th Dec 1999 ... *Border Control Amendment Act* applies to 'lawful' and 'unlawful' asylum seekers indiscriminately

Early Feb 2000 Reports of asylum seekers ... sewing their mouths together

Late Feb 2000 ... Minister ... announces the freezing of the offshore refugee and special humanitarian programs

Source: Adapted from data provided by Graydon, C. "A Decade of Dismay: Good Bye to Refugee Protection", *Human Rights Defender*, Issue 9, No.1, 2000, pp.17-25

Appendix B(a) – Boat arrivals since 1976 by calendar year

Year	Number of Boats	Number of people
1976		111
1977		868
1978		746
1979		304
1980		0
1981		30
1982–88		0
Year	Number of Boats	Number of people (excludes crew)
1989	1	26
1990	2	198
1991	6	214
1992	6	216
1993	3	81
1994	18	953
1995	7	237
1996	19	660
1997	11	339
1998	17	200
1999	86	3721
2000	51	2939
2001	43	5516
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161
Year	Number of Boats	Number of people (includes crew)
2009	61	2849*
2010	134	6879**
2011 (to 30 June)	28	1675***

Notes: Boat numbers exclude boats returned from whence they came. *Includes five deceased at sea 16 April 2009 and 12 deceased at sea 1 November 2009. Arrival figures do not include; 2 arrivals in an 'esky' on 17 January 2009; 4 on Deliverance Island with no boat on 29 April 2009; and 78 on board Oceanic Viking intercepted in Indonesian waters in November 2009.

**Arrivals from the boat tragedy on 15 December 2010 where a boat sank on approach to Christmas Island include the 42 people saved and the 30 bodies recovered, but do not include the unknown number of those who drowned, estimated at 18.

***The first boat after the Government announced its proposed regional arrangement with Malaysia arrived on 14 May 2011.

Sources: 1976-1988: K Betts, 'Boatpeople and public opinion in Australia', *People and place*, vol. 9, no. 4, 2001, p. 34. Numbers of boats and crew members not specified. 1989–2008: DIAC advice provided to the Parliamentary Library on 22 June 2009.

2009–2011: figures compiled by the authors from ministerial and departmental press releases.

Source: Adapted from data in Phillips, Janet & Harriet Spinks. *Boat arrivals in Australia since 1976*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 11 February 2011. www.aph.gov.au/binaries/library/pubs/bn/sp/boatarrivals.pdf

Appendix B(b) - Boat arrivals since 1976 by financial year

Year	Number of boats	Number of people
1989–90	3	224
1990–91	5	158
1991–92	3	78
1992–93	4	194
1993–94	6	194
1994–95	21	1071
1995–96	14	589
1996–97	13	365
1997–98	13	157
1998–99	42	921
1999–00	75	4175
2000–01	54	4137
2001–02	19	3039
2002–03	0	0
2003–04	3	82
2004–05	0	0
2005–06	8	61
2006–07	4	133
2007–08	3	25
Year	Number of boats	Number of people (includes crew)
2008–09	23	1033*
2009–10	118	5609*
2010–11	89	4940**

Notes:

Data from 2001–02 onwards includes arrivals at both excised and non-excised places. *Includes the 5 people killed following an explosion on board a boat on 16 April 2009, but does not include the 2 men found drifting in an ‘esky’ in the Torres Strait on 17 January 2009, or the 4 people found on Deliverance Island with no sign of a boat on 29 April 2009. 2009–10 figures include the 12 people who died when a boat sank on 1 November 2009, but do not include the 78 asylum seekers on board the Oceanic Viking intercepted in Indonesian waters in October 2009 or the 5 who reportedly drowned before a boat was rescued and towed to Cocos Islands in May 2010. **Arrivals from the boat tragedy on 15 December 2010 where a boat sank on approach to Christmas Island include the 42 people saved and the 30 bodies recovered, but do not include the unknown number of those who drowned, estimated at 18.

Source: Adapted from data in Phillips, Janet & Harriet Spinks. *Boat arrivals in Australia since 1976*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 11 February 2011. www.aph.gov.au/binaries/library/pubs/bn/sp/boatarrivals.pdf

Appendix C – Unauthorised Arrivals to Australia by Air, 1989-2007

<i>Year</i>	<i>No. unauthorised arrivals by air</i>
89 – 90	n/a
90 – 91	n/a
91 – 92	529
92 – 93	452
93 – 94	409
94 – 95	485
95 – 96	699
96 – 97	1550
97 - 98	1,558
98 - 99	2,106
99 - 00	1,695
00 - 01	1,512
01 - 02	1,193
02 - 03	987
03 - 04	1,241
04 - 05	1,632
05 - 06	1,598
06 - 07	1,388
07 - 08	1,451

Note: The number of overstayers is estimated by DIAC at 30 June of each year.

Sources:

1. DIMIA (2005), *Population Flows: Immigration Aspects 2003-2004 Edition*, p. 35
2. DIMIA (2004), *Population Flows: Immigration Aspects 2002-2003 Edition*, p. 73
3. DIMIA (2002), *Population Flows 2001 Edition*, p. 57
4. DIMIA (2001), *Population Flows 2000 Edition*, p. 56
5. DIMIA (2004), *Fact sheet 74: Unauthorised Arrivals by Air and Sea*

Source: Adapted from main source Australian Bureau of Statistics, 1301.0 - Year Book Australia, 2004 <http://www.refugeecouncil.org.au/arp/stats-02.html>

Appendix D – Overstayers and unauthorised arrivals, 1997-2008

<i>Year (fin yr)</i>	<i>No. overstayers</i>	<i>Total no. unauthorised arrivals</i>	<i>No. unauthorised arrivals by sea (and boats)</i>	<i>No. unauthorised arrivals by air</i>
97 - 98	50,950	1,715	157 (3)	1,558
98 - 99	53,150	3,027	921 (42)	2,106
99 - 00	58,748	5,870	4,175 (75)	1,695
00 - 01	60,000	5,649	4,137 (54)	1,512
01 - 02	60,400	4,842	3,649 (23)	1,193
02 - 03	59,800	987	0	987
03 - 04	50,900	1,323	82 (3)	1,241
04 - 05	47,800	1,632	0	1,632
05 - 06	46,400	1,654	56 (4)	1,598
06 - 07	46,500	1,523	135 (5)	1,388
07 - 08	48,500	1,476	25 (3)	1,451
<u>TOTALS</u>	583,048	13,337	16,361	29,718

Note: The number of overstayers is estimated by DIAC at 30 June of each year.

Note: Main Source Australian Bureau of Statistics, 1301.0-Year Book Australia, 2004

<http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/e6aff66c68ced997ca256dea000539d6!OpenDocument>

Refugee Council, <http://www.refugeecouncil.org.au/arp/stats-02.html>

For further information, see Sources: 1976-1988: K Betts, "Boatpeople and public opinion in Australia", *People and place*, vol. 9, no. 4, 2001, p. 34. Numbers of boats and crew members not specified. 1989-2008: DIAC advice provided to the Parliamentary Library on 22 June 2009. 2009-2011: figures compiled by the authors from ministerial and departmental press releases.

Source: Adapted from data in Phillips, Janet & Harriet Spinks. *Boat arrivals in Australia since 1976*, Background Note, Parliament of Australia, Department of Parliamentary Services, updated 11 February 2011. www.aph.gov.au/binaries/library/pubs/bn/sp/boatarrivals.pdf

Appendix E – Health incidents Nauru & Manus Island

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 Public Hearing 26 May 2006

Q2: Are you able to provide any statistical information to the committee about how many cases have been opened, what the type of mental illness might have been and any other matters that would arise? I am sure you have kept that type of information – in fact, I am positive that you have. Is that available to the committee? Compare with statistical norms that exist in Australian cities or detention facilities.

Answer

DIMA has received information about the mental wellbeing of asylum seekers and incidents of self harm from two main sources in Nauru and Manus, namely the International Organization of Migration (IOM) and the Australian Federal Police -Protective Service (AFP-PS). DIMA has requested information on mental health among the OPC caseload on a number of occasions.

The information reported below details actual reported incidents between 2001 and 2003, and thereafter various snap shots of the mental health status of the Nauru OPC population. The data are not mutually exclusive so a person treated for insomnia may also be counted as a person presenting with depression.

DIMA is unable to provide statistical norm comparison data in the timeframe set by the Committee Secretariat.

Nauru

DIMA received reports of incidences of self-harm in Nauru. The definition of self harm for the purpose of reporting incidents included the following:

- Threat of self harm
- Actual self harm
- Threat of suicide
- Attempted suicide, and
- Suicide

2001

In 2001 there were no incidents of self-harm reported in Nauru.

2002

From January to October 2002, 8 incidents of self-harm were reported, namely:

- 4 incidents of threat of self harm
- 3 incidents of actual self harm
- 1 threat of suicide

2003

In 2003, 49 incidents of self harm were reported, namely:

- 45 incidents of self-harm in the form of a hunger strike
- 3 incidents of actual self harm
- 1 suicide attempt

In 2003 the Mental Health Unit diagnosed the following conditions in the Nauru asylum seeker population (not mutually exclusive):

Adult:

- 10 adjustment disorder
- 2 acute stress reaction
- 5 anxiety
- 15 depression
- 1 depression and somatisation
- 1 depression and anxiety
- 5 reactive depression
- 2 severe depression
- 4 post traumatic stress disorder
- 2 insomnia
- 1 obsessive compulsive disorder
- 1 somatisation disorder

Child (not mutually exclusive):

- 1 depression
- 1 severe depression
- 1 acute stress reaction
- 4 adjustment disorder
- 1 anxiety disorder

2004

At Feb 2004

- 33 residents prescribed anti-depressants
- 25 residents prescribed sleep medication

At May 2004

- One adult being treated for a chronic mental illness
- 21 adults prescribed psychotropic medication
- 16 adults prescribed sleeping medication
- 17 adults prescribed anti-anxiety medication

2005

At Feb 2005:

- 19 cases with identified mental health condition
- 7 of the 19 were not prescribed any medication
- 12 of the 19 prescribed anti-depressant medication
 - o 2 of the 12 prescribed anti-psychotic medication
 - o 8 of the 12 prescribed anti-anxiety medication
 - o 4 of the 12 being treated for insomnia

At April 2005

- 9 cases with identified mental health concerns
- 6 of the 9 prescribed anti-depressant medication
 - 2 of the 6 prescribed anti-psychotic medication
 - 4 of the 6 prescribed anti-anxiety medication
 - 2 of the 6 being treated for insomnia
- 2 reports of psychosis since July 2004

At May 2005

- 1 incident of actual self harm

At November 2005

- 27 cases with identified mental health concerns
- 13 of the 27 cases being treated for insomnia
 - 7 of the 13 prescribed anti-depressant medication
 - 4 of the 13 prescribed anti-psychotic medication
 - 10 of the 13 prescribed anti-anxiety medication
- 4 residents have at one stage has a psychotic episode and were currently at risk of self harm
- Threats of self harm and suicide reported, though no exact figure available

After November 2005

Two residents remain at the OPC and both have been identified as being of concern over mental health status, one of which has been referred to as at high risk of self-harm.

Manus

In 2001 there was one incident of self-harm reported in Manus.

From January to October 2002, 7 incidents of self-harm were reported, namely:

- 1 incidents of threat of self harm
- 3 incidents of actual self harm
- 3 threat of suicide

From November to December 2002

- 3 attempted suicide
- 1 self-harm

The Manus OPC population declined significantly after January 2003 and no further data can be provided.

At May 2005

- 1 incident of actual self harm

At November 2005

- 27 cases with identified mental health concerns
- 13 of the 27 cases being treated for insomnia
 - 7 of the 13 prescribed anti-depressant medication
 - 4 of the 13 prescribed anti-psychotic medication
 - 10 of the 13 prescribed anti-anxiety medication
- 4 residents have at one stage has a psychotic episode and were currently at risk of self harm
- Threats of self harm and suicide reported, though no exact figure available

After November 2005

Two residents remain at the OPC and both have been identified as being of concern over mental health status, one of which has been referred to as at high risk of self-harm.

Manus

In 2001 there was one incident of self-harm reported in Manus.

From January to October 2002, 7 incidents of self-harm were reported, namely:

- 1 incidents of threat of self harm
- 3 incidents of actual self harm
- 3 threat of suicide

From November to December 2002

- 3 attempted suicide
- 1 self-harm

The Manus OPC population declined significantly after January 2003 and no further data can be provided.

Source: Commonwealth of Australia. Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, Public Hearing 26 May 2006, Response to Questions on Notice, Q.2

Appendix F – Australia’s immigration ministers

Australia and Refugees, 1902–2002: An Annotated Chronology Based on Official Sources

Table 6: Ministers of Immigration, Ministries and gross annual settler intake, 1945–1991(a)

Ministry	Year	Minister (b)	Intake (c)
Curtin	1945	Calwell (ALP)	
Chifley	1946	Calwell (ALP)	
	1947 (d)	Calwell (ALP)	34 284
	1948	Calwell (ALP)	46 569
	1949	Calwell (ALP)	114 818
Menzies	1950	Holt (Lib)	184 889
	1951	Holt (Lib)	153 290
	1952	Holt (Lib)	130 462
	1953	Holt (Lib)	95 890
	1954	Holt (Lib)	86 468
	1955	Holt (Lib)	124 180
	1956	Holt (Lib)	132 628
	1957	Townley (Lib)	120 601
	1958	Downer (Lib)	107 978
	1959	Downer (Lib)	116 697
	1960	Downer (Lib)	105 887
	1961	Downer (Lib)	108 291
	1962	Downer (Lib)	85 808
	1963	Downer (Lib)	101 888
	1964	Opperman (Lib)	122 318
	1965	Opperman (Lib)	140 152
Holt	1966	Opperman (Lib)	144 055
McEwen	1967	Snedden (Lib)	138 676
Gorton	1968	Snedden (Lib)	137 525
	1969	Snedden (Lib)	175 657
	1970	Lynch (Lib)	185 099
McMahon	1971	Forbes (Lib)	170 011
	1972	Forbes (Lib)	132 719
Whitlam	1973	Grassby (ALP)	107 401
	1974a (e)	Cameron (ALP)	112 712
	1975a	McClelland (ALP)	89 147
Fraser	1976	MacKellar (Lib)	52 748
	1977	MacKellar (Lib)	70 916
	1978	MacKellar (Lib)	73 171
	1979	MacKellar (Lib)	67 192
	1980	Macphee (Lib)	80 748
	1981	Macphee (Lib)	110 689
	1982	Hodges (Lib)	118 030
Hawke	1983	West (ALP)	93 010
	1984	West (ALP)	68 820
	1985	Hurford (ALP)	77 510
	1986	Hurford (ALP)	92 590
	1987	Young (ALP)	113 540
	1988	Holding (ALP)	143 480

Australia and Refugees, 1902–2002: An Annotated Chronology Based on Official Sources

Ministry	Year	Minister (b)	Intake (c)
	1989	Ray (ALP)	145 320
	1990	Hand (ALP)	121 230
	1991	Hand (ALP)	121 690
Keating	1992	Hand (ALP)	107 391
	1993	Bolkus (ALP)	76 330
	1994	Bolkus (ALP)	69 768
	1995	Bolkus (ALP)	87 428
Howard	1996	Ruddock (Lib)	99 139
	1997	Ruddock (Lib)	85 752
	1998	Ruddock (Lib)	77 327
	1999	Ruddock (Lib)	84 143
	2000	Ruddock (Lib)	92 272
	2001	Ruddock (Lib)	107 366
	2002	Ruddock (Lib)	88 900

Notes:

- (a) All figures are for the financial year ending 30 June.
- (b) Ministers indicated are those holding office for the majority of the year. (During the period of the 'caretaker' Government of Malcolm Fraser in November and December 1975, the Minister for Labour and Immigration was Anthony Street).
- (c) The settler intake includes permanent and long-term arrivals before 1958–1959.
- (d) The 1947 figure includes arrivals from October 1945.
- (e) The Department of Immigration was amalgamated with Labour between 1974 and 1976.

Source: York, Barry (Dr). *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, Parliament of Australia Parliamentary Library website, 2003, pp.139-140

Appendix G – Estimate of unlawful non-citizens in Australia as at 30 June 2009

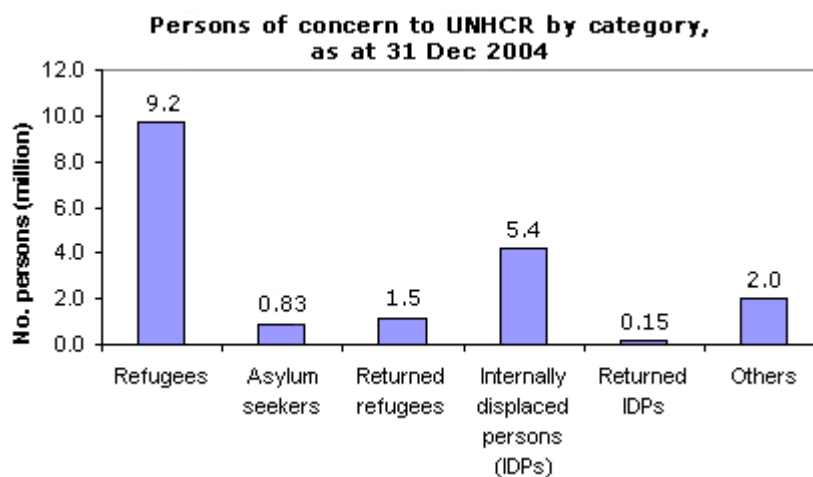
Country of citizenship	Estimate of unlawful citizens at 30 June 2009	Country of citizenship	Estimate of unlawful citizens at 30 June 2009
PRC includes SARs and Taiwan	5 830	Sri Lanka	330
United States of America	4 860	South Africa	320
Malaysia	3 640	Taiwan	320
United Kingdom	3 200	Lebanon	320
Philippines	2 570	Bangladesh	310
Republic Of Korea (South)	2 480	Samoa	300
Indonesia	2 360	Singapore	290
India	1 530	Poland	270
Thailand	1 380	Papua New Guinea	250
Vietnam	1 350	Brazil	230
Germany	1 300	Stateless	230
Japan	1 220	Denmark	220
France	1 130	U.S,S.R.	220
Fiji	900	Yugoslavia	220
Canada	820	Austria	200
Tonga	820	Portugal	200
Italy	730	Norway	200
Ireland	730	Turkey	190
Netherlands	660	Israel	190
Hong Kong (SAR of China)	520	Iran	180
Greece	420	Russian Federation	170
Unknown	400	Nepal	170
Spain	400	Chile	130
Sweden	370	Belgium	110
Pakistan	370	Mexico	100
Switzerland	340	Other	2 670
		TOTAL	48 720

Source: Adapted from Population Flows – Immigration aspects, Appendix C, p.171
<http://www.immi.gov.au/media/publications/statistics/popflows2008-09/pop-flows.pdf>

Appendix H – UNHCR persons of concern

Number of Total Persons of Concern (POC) worldwide, by category

The Total Persons of Concern as at 31 Dec 2004 is 19.2 million.



Source: UNHCR (2005), *2004 UNHCR Statistical Yearbook (provisional)*³⁵

Number of Persons of Concern Worldwide, 1995-2006

Year	Number of POC (million)	Number of refugees (million)
1995	-	15.6
1996	-	14.1
1997	19.8	12.7
1998	19.9	12.1
1999	20.6	12.5
2000	21.9	13.0
2001	19.9	13.1
2002	20.7	11.5
2003	17.0	9.7
2004	19.2	9.2
2005	21.0	8.7
2006	32.9	9.9

Source: USCR (2007), *World Refugee Survey*, Table 12³⁶

³⁵ Refugee Council of Australia, *Global Statistics*, 2004

³⁶ *Ibid.*

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