

2011

The political origins and development of Australia's people smuggling legislation: Evil smugglers or extreme rhetoric?

Jack H. Smit
Edith Cowan University

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The Political Origins and Development of
Australia's People Smuggling Legislation:

Evil Smugglers or Extreme Rhetoric?

Masters by Research (SocSc) Thesis

Jack H Smit

Edith Cowan University

Social Justice Research Centre

School of Psychology and Social Science

“The community has been bombarded with government statements that the boat people are queue jumpers, that they are the victims of unscrupulous entrepreneurs in other countries who are making money by providing boats, that they are being used by touting lawyers who want to make money out of the misery of others, and that they are not refugees anyway.” (Senate Hansard, 1996d, p. 2566)

WA Greens Senator
Christabel Chamarette
28 June 1996

Authenticity Declaration

I certify that this thesis does not, to the best of my knowledge and belief:

- (i) incorporate without acknowledgement any material previously submitted for a degree or diploma in any institution of higher education;
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Date: Friday, 30 September 2011

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List of Acronyms

ACM	Australasian Correctional Management
ADF	Australian Defence Force
AEZ	Australian Exclusive Economic Zone
AG	Attorney-General
AHRC	Australian Human Rights Commission
AMSA	Australian Maritime Safety Authority
APS	Australian Protective Services
ASEAN	Association of Southeast Asian Nations
ASIO	Australian Security Intelligence Organisation
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship (2007 -)
DIEA	Department of Immigration and Ethnic Affairs (1976-87 & 1993-96)
DILGEA	Department of Immigration, Local Government and Ethnic Affairs (1987-93)
DIMA	Department of Immigration and Multicultural Affairs (1996-2002)
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs (2002-07)
DORS	Determination of Refugee Status Committee
DP, DPs	Displaced Person(s)
EEZ	Exclusive Economic Zone
EXCOM	Executive Committee of the United Nations High Commissioner for Refugees
FCA	Federal Court of Australia
G4S	Group 4 Securicor
GSL	Global Solutions Limited
HCA	High Court of Australia
HQNORCOM	Headquarters Northern Command (Defence Force)
HREOC	Human Rights and Equal Opportunities Commission
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IRO	International Refugee Organisation
IRPC	Immigration Reception and Processing Centre
MHQ	Maritime Headquarters
MHR	Member of the House of Representatives
MRT	Migration Review Tribunal
NAA	National Archives of Australia
NM	Nautical Mile (1 nautical mile = 1.852 kilometres)
NORCOM	Northern Command (Defence Force)
ONA	Office of National Assessments
PM&C	Department of the Prime Minister and Cabinet
PNG	Papua New Guinea
RACS	Refugee Advice and Casework Service (Victoria)
REEFREP	Great Barrier Reef and Torres Strait Ship Reporting System

List of Acronyms

RRT	Refugee Review Tribunal
SAR	Search and Rescue
SCSB	Senate Standing Committee for the Scrutiny of Bills
SIEV	Suspected Illegal Entry Vessel
SLCAC	Senate Legal and Constitutional Affairs Committee
SLCLC	Senate Legal and Constitutional Legislation Committee
SLCRC	Senate Legal and Constitutional References Committee
SOLAS	[International Convention for the] Safety of Life At Sea
SOP	Standard Operating Procedure
SUNC	Suspected Unlawful Non-Citizen
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
US (USA)	United States of America

Acknowledgments

As a social worker with a longstanding commitment to the framework of *the community development of accountable engagement*, I hold firm views on organisations as networks for change: I think it's more often than not the case that some individuals who are not in charge of running an organisation are actually its builders and change catalysts. Thirty-five years ago it meant that I made sure to get on well with the front-desk secretary, those who look after the stationary supply and the people who make sure that there's coffee and cake. The contemporaries of these central organisers are often the people in administrative roles whose remarkable work is often overlooked when formal directions processes are formulated in NGO's and government organisations. Having conducted the research at a distance of 200 kms from ECU's Joondalup Campus, I acknowledge the consistent efficiency of the fabulous Nicky Kemp who knows how the University works and who always had the answers when I needed them. In the Graduate School Nicky's equivalent is Clare Ashby, who felt just fine when I fielded the myriad of questions of someone who has always shied away from Universities, being all too aware of their conservative culture and concentrations of undue power. My thanks must also go to the Research Students & Scholarships Committee who, trusting the elaborate case I had presented, granted me the ECU Postgraduate Research Scholarship; I hope my resulting product does not disappoint you. My supervisor Peter Hancock's most outstanding feature has always been his fast and efficient turn-around time for my submitted work: I could always count on my chapters being returned to me within 24 hours. Thanks Peter, you've been a great example of *accountable engagement* in this respect. Finally, this thesis was never going to add to the vast body of knowledge of Australia's "*asylum seeker policy*" but about unwinding Australia's far right-spun manipulative "*asylum seeker politics*". More than anyone concerned with these issues, it is my friend and colleague Ian Rintoul who, as my sounding board during this period, understands this with a relaxed and open mind, acknowledging my attempt to tackle this issue. To Ian and some others, I extend my warm thanks for the generous support I have received.

Abstract

This thesis explores the Australian State response to the voyage facilitators of maritime asylum seekers, commonly known as ‘people smugglers’. It does so by examining a number of Parliamentary debates and previously confidential Cabinet papers. Negative depictions of asylum seekers and their voyage facilitators as well as the prevailing political discourse is critically explored while Parliamentary debates are analysed using Critical Discourse Analysis. The research questions the ways Australian legislators justified the criminalisation of these voyage facilitators and investigates whether political elites were sufficiently informed about the circumstances of maritime asylum seeker journeys and the unique nature of their travel arrangements. The analysis is conducted within the container of established asylum seeker rights as formulated by the United Nations in its 1951 Refugee Convention. Within the Australian context these are framed as the “*rights of unauthorised arrivals*”.

By examining de-classified Fraser government documents, the thesis presents evidence of the State’s intent to criminalise ‘people smugglers’ as part of a two-fold strategy, aiming to also punish maritime asylum seekers for arriving uninvited. This strategy was first proposed under the Fraser government soon after the first asylum seeker vessels arrived in Australia during the late 1970s. The research findings indicate that the increasingly harsh measures imposed by successive Australian governments targeting smugglers and passengers represents an increasingly punitive and continuous series of policy proposals and parliamentary discourse, where the voyage facilitators became the recipients of criminal labels such as “traffickers” and “smugglers” while 1980 legislative measures determined them to be serious criminals.

The research also analyses legislative measures aiming to impose criminal sanctions implemented by the Howard government in 1999, and legislation that established a wide range of extended powers to Australian border officials in dealing with ‘unauthorised’ vessels entering Australian waters. Both legislative measures were responses to a number of undetected entries by vessels with Chinese migrants in the lead-up to the 2000 Sydney Olympic Games. This section of the research explores the dominant “*national security*” narrative constructed by Australia’s conservative political elites in order to justify the legislation criminalising ‘people smugglers’. The research presents documented evidence that the Howard government withheld details of the Chinese

arrivals from Parliament for ‘operational reasons’ and that the Immigration Department attempted to influence political debates by means of distributing a manipulative briefing document in the Parliament. Post-research participant interviews present evidence that Prime Minister John Howard’s Immigration Minister Phillip Ruddock held the view that nobody has the right, neither by air nor by boat, to enter Australia to seek asylum. The 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.

Keywords: asylum seekers, refugees, people smuggling, unauthorised arrivals, illicit migration

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1. Introduction

1.1. Chapter overview

This chapter introduces the parameters of this thesis, research which explores the development of Australia's "anti-people smuggling legislation". It reflects on some extreme statements about 'people smugglers' by well-known Federal politician and former Prime Minister Kevin Rudd and the vigorous community reaction these statements triggered. Using this context, it argues that rather than formulate counterpoint and debate, it may be more worthwhile to ask how Australia's political elites came to depict 'people smuggling' ventures as criminal enterprises. It suggests doing this by following the relevant Parliamentary debates, subjecting them to a thorough process of scrutiny and analysis. Considering that political discourse consists of rhetoric containing labels in order to portray issues in a certain way, it raises the issue of labelling and suggests critical social researchers must unpack such labels. The chapter establishes that on the 'Australian routes' smugglers mainly bring asylum seekers to the protection of Australia as a UN Refugee Convention country, marking a difference with European routes. It proposes that this single type of passenger gives rise to a differentiation of 'criminal liability', and it suggests that the current legislation is not effective in that it merely prosecutes and convicts the ventures' lowest ranking agents who are barely connected to the organisation – the ship's crew.

The chapter reveals that unexpectedly new information became available after declassification of 1979 Fraser Cabinet documents. This information changed the direction of the research, suggesting that the criminalisation of the 'voyage facilitators' was closely linked to harsh and punitive measures aimed at the passengers and that these harsh measures were proposed by Australian immigration officials. The chapter notes that, based on the Cabinet documents, analysis of the Parliamentary discourse about maritime asylum seekers increases in relevance. This in turn increases the relevance of human rights protections for asylum seekers – depicted as 'unauthorised arrivals' – formulated in Article 31 the UN Refugee Convention. The chapter also formulates a number of questions which ought to underpin the analysis of the political discourse during the debate of a number of legislative instruments intending to sanction maritime smuggling ventures. Finally, it formulates four questions for the research, drawn from the many questions raised by the material presented in the chapter sections.

1.2. Explosive political talk

On April 17, 2009, former Labor Prime Minister Kevin Rudd¹ called people smugglers “*the absolute scum of the earth*” and he called their enterprise “*the world's most evil trade*”. He added they should “*rot in hell*” (ABC, 2009) – remarkably strong words for a self-confessed Christian Prime Minister. The following day the media widely reported his overtly pointed language. CNN International/Asia quoted him as having said:

People smugglers are engaged in the world’s most evil trade and they should all rot in jail because they represent the absolute scum of the earth ... We see this lowest form of human life at work in what we saw on the high seas yesterday. That’s why this government maintains its hardline, tough, targeted approach to maintaining border protection for Australia. And that’s why we have dedicated more resources to combat people smuggling than any other government in Australian history (CNN, 2009).

Rudd’s remarks, partly in response to an explosion aboard an intercepted asylum seeker vessel (SIEV36²) that resulted in five deaths – while a large number of passengers were rushed to hospitals with serious burns (Dodd, 2009) – were followed by a flurry of opinion pieces in the Australian media. Regular independent writers such as human rights lawyer Greg Barns suggested in *Crikey* (Project SafeCom, 2009g) that while people smugglers may be exploiting vulnerable people, they may actually help to save lives. The Canadian Council for Refugees had expressed exactly that sentiment nine years earlier:

People smuggling, despite its evils, has also been life-giving. It has made it possible for significant numbers of people to flee persecution and reach a place of asylum when no government was willing or able to offer an escape route. It has allowed them to exercise their human right to seek and to enjoy in other countries asylum from persecution (Article 14, Universal Declaration of Human Rights). For others, smugglers have offered a way out of a situation of misery and an opportunity for a new life of dignity (CCR, 2000).

¹ Labor’s Federal Member for Griffiths Kevin Rudd was the 26th Prime Minister of Australia from 3 December 2007 to 24 June 2010

² Australian Border Protection Command nomenclature for *Suspected Illegal Entry Vessel*, followed by an ascending number, indicating the numeric order of the arrival

The Australian's National Affairs Editor Mike Steketee reminded his readers that “...however evil the people-smugglers may be, 90 per cent of the people they bring to Australia turn out to be refugees” (Project SafeCom, 2009g). Former ALP speech writer Bob Ellis, on the *ABC Unleashed* web section, reminded Kevin Rudd of notable ‘people smugglers’ such as the biblical leader Moses who had led the Israelites in the escape from Egypt, and of others such as Oskar Schindler, the Scarlet Pimpernel and Sydney Carbon (Project SafeCom, 2009g), while freelance writer Guy Rundle reminded the PM in *Crikey* that his hero, German Lutheran priest, theologian and martyr Dietrich Bonhoeffer (Rudd, 2006) was also a ‘people smuggler’ and had been arrested for helping Jews in Nazi Germany escape to Switzerland (Project SafeCom, 2009g). *Overland* magazine editor Jeff Sparrow wondered – against the backdrop of a deteriorating situation in Sri Lanka, where displaced Tamils found themselves locked up in barbed wire camps while the government waged a fierce war on Tamil Tigers – whether the displaced and imprisoned Sri Lankans would regard people smugglers as “*the vilest form of human life*” or as agents who could offer opportunities by means of a way out of their dire circumstances (Project SafeCom, 2009g).

Academics also formulated responses to Kevin Rudd’s statements. By the end of April 2009 Australian National University’s Kim Huynh suggested that “*vitriol is a blunt rhetorical weapon*”, reminding Rudd that some people smugglers convicted and jailed by Australia such as Iraqi national Ali Al Jenabi (Al Jenabi, 2004) even to date claim to not have profited from the venture (Project SafeCom, 2009g). Murdoch University PhD candidate Sue Hoffman wrote that during the last decade people smugglers working Australian routes had provided free fares to Australia and given financial aid to families with sick children, and that sometimes they are ‘*mum and pop operations*’, connected to their passengers through family and ethnic ties (Hoffman, 2009). Latrobe University law academic Savitri Taylor, in response to the PM’s harsh remarks aimed at smugglers, provided an outline of Australia’s keen and rather harsh implementation of the UN Smuggling Protocol (United Nations, 2001b) before comparing it with the relatively slow implementation of the UN Trafficking Protocol nearly two years after Australia ratified the Palermo Convention³ – the Convention that includes both protocols (United Nations, 2001a). In this context Taylor wondered whether Australian

³ Officially known as *The United Nations Convention against Transnational Organised Crime*. The widely accepted, shorter and more colloquial term ‘*Palermo Convention*’ is also in use.

legislators are more interested in the protection of Australia's borders than in “*the hapless irregular migrants' plight*”. (Taylor, S., 2009).

Although Kevin Rudd's comments escalated the people smuggling debate, he was not the first senior Australian political leader to use extreme language to describe those who assist asylum seekers to come to Australia to claim refugee protection – nor would he be the last: his successor Julia Gillard⁴ called “*people smuggling ... an evil trade to be punished*” (Gillard, 2010). It appeared that in political circles condemnation of the maritime travel facilitators was universal; but the damnation of ‘smugglers’ stretched outside politics and political leaders’ language. In *Troubled Waters*, Ruth Balint (2005) argues that in 2001 sympathy for asylum seekers trying to arrive in Australia by boat was developing on many levels in the community in the context of growing anger about their treatment by the Howard Government. Australia's border protection at the time was harshly implemented through *Operation Relex*, the government's maritime ‘deter and deny’ operation (ABC-TV, 2002), but contrasting with the sympathy that followed the growing reports of “*human rights abuses in detention centres and at sea*” (p. 141), Balint states:

...there was one group that received no sympathy. People smugglers, according to the media, the politicians, the academics, even the asylum seekers themselves, epitomised the most degenerate and immoral examples of the human race, ‘scum of the earth’, to quote the South Australian premier John Olsen, who even went on to say that they were reason enough for the reintroduction of capital punishment in Australia. (Balint, p. 141).

The question must arise what has happened to the image of the ‘people smugglers’ who were famous following the Second World War. Then they were described as “*altruistic personalities*” and “*rescuers*” (Oliner, S. P. & Oliner, 1988) and they were regarded as people with high levels of “*heroic altruism*” (Oliner, P. M., Oliner, Baron, Blum, Krebs, & Smolenska, 1992). It appears that in Australia an almost complete consensus exists about those we now call ‘people smugglers’; it appears they ply a trade the most recent former Prime Minister labelled as ‘evil’, calling them ‘the scum of the earth’. Yet those who helped people in danger of the Nazi regime escape from Germany were heroes in

⁴ Labor's Federal Member for Lalor Ms Julia Gillard was sworn in as 27th Prime Minister following Kevin Rudd's stepping down as party leader on 25 June 2010

World War II, just before the world agreed to establish the *United Nations Convention for the Status of Refugees* (UNHCR, 2006, 2008). With that Convention the world community sought to prevent a recurrence of the nasty events, where even Allied countries at war with Germany sent refugees, or refugee boats (Project SafeCom, 2005b), back to the horrors of the Holocaust. How did the world's perception around people who assist others to flee unbearable regimes where they fall foul to persecution by the state, change so dramatically? Where are the Oskar Schindlers of today? Have they just received another label from the world community? Have they just been 're-packaged and re-classified' so they could fit into our prisons? And, why did we do this in our modern societies?

1.3. Critical Social Research and labels

Critical social research must concern itself with the labels that define reality and with the agenda that defines a label, its meaning and its intent: the 'truth' is not the label, just like Oliner's 'altruistic personality' above is not the personality type but a label for a typology of personality types. "*The map is not the territory*", argues Alfred Korzybski (Levinson, 2009), and the world of labels calls forth the world of 'semantics with a purpose'. While some may argue that the issue of refugees and their search for protection and safety should be handled by less politically contentious portfolios of humanitarian aid, today's reality is that this issue often stands out in politics and for politicians. And the world of politicians is governed, whether we like it or not, by spin and semantics, where fact and agenda engage in a marriage of convenience, and where reality meets perceived credibility and the need for re-election by the majority of voters.

Former High Court justice Michael Kirby issues an apt warning about this issue when he said "*In his day, Mahatma Gandhi was certainly called a terrorist. So was Nelson Mandela...*" (Kirby, 2004); Deery (2003) shows how far the British - from a covertly placed office in Singapore, secretly funded from the MI6 budget - were prepared to go to manipulate local language to discredit Malayan uprisings during the Cold War during their colonial days between 1948-52, and Poole (2006) warns us about the semantics of doublespeak in the context of the Iraq war and the age of terrorism.

Given this precarious positioning of language and labels, the research in this thesis starts from the premise that those who are now labelled 'people smugglers' should be

called ‘*travel agents*’, ‘*travel brokers*’ and ‘*travel facilitators*’ to reduce the political bias of the ‘people smuggler’ label. Hoffman (2007) and others describe their ventures first and foremost as ‘informal travel’ businesses. Even while some maintain stark descriptors indicating a transnational criminal nature (Schloenhardt, 1999, 2003a, 2003b), others see these businesses as successful and as inevitable responses to market-driven demands, responding to the needs of its client base because western democracies attempt to restrict entry of asylum seekers and other migrants (Grewcock, 2003, 2007, 2009; Hathaway, 2008; Koser, 2008, 2009). That Australian claims of severe criminality are primarily locally defined and by no means universally accepted is further evidenced by Koser’s field research in Pakistan, Afghanistan and African countries. Koser notes how in some countries “*smuggling is advertised in newspapers and on billboards in supermarkets*” (Koser, 2009, p. 9) and that in Pakistan authorities assisted him in locating their premises:

So I would speak to policemen and they’d say, well you need to speak to the guy who works at that travel agent, and perhaps go at 6pm and have a chat with him. (Koser, 2009, p. 9).

It is tempting for researchers responding to extreme political claims and statements such as those uttered by Kevin Rudd to counter with elaborate and in-depth studies about the nature of ‘people smuggling’. Several responses to the former Prime Minister’s claims as illustrated above are attempting to establish that Rudd’s statement ignored many other more positive elements of the reality of smuggling asylum seekers. While this has tremendous value, there are no requirements on Rudd or any other politician to retreat from the hyperbole and the exaggerated claims. Rudd was under no pressure to appear in public and apologise for his extreme statements or to confess that the opinion writers and academics were right, and that he had been wrong to say the things he had said. Complex reasons may underpin the use of hyperbole and exaggerated political claims, and it appears that politicians act with privileges not accorded to ordinary citizens. We live in a world where ‘political spin’ and rhetorical utterings do not necessarily conform to the full range of factual realities that build knowledge claims. Nevertheless, the issue of accountability for political claims is a persistent issue, also, if not especially, in the Parliament, and during Parliamentary debates. Perhaps research needs to ask how Australian politicians – and not just former Prime Minister Kevin Rudd – came to make their claims about people smuggling. One of the central research questions then

becomes one that asks how Australian political elites came to believe their claims of extreme criminality of people smugglers. Currently, legislation ensures that anyone who “...organises or facilitates the bringing or coming to Australia ... a group of 5 or more people into Australia...” (CofA, 1999e) is punished with a maximum prison sentence of 20 years. How did Australian politicians justify these extremely harsh penalties? And, how did they inform themselves of the international phenomenon of ‘people smuggling’? What knowledge did they have of the nature of ‘people smuggling’ and the levels of criminality? Did they have expert advice available to them?

1.4. The nature of smuggling

The main characteristic of ‘people smuggling’ is defined by illicit or clandestine border crossings and associated activities to enable such crossings. Smugglers assist others with such border crossings in order to escape a dangerous environment – they are ‘*escape facilitators*’. For example, Oskar Schindler (Keneally, 1982, 2007) made a list of Jewish friends before committing himself to get them to safety from the Nazis. German pastor Dietrich Bonhoeffer, Kevin Rudd’s hero and guru (Rudd, 2006), was arrested in 1943 by the Gestapo for helping 14 Jews to escape Germany. Many people in the world cannot openly leave their countries, unable to travel using formal means because they risk arrest. This is especially true, by definition, of many people who are subject to persecution in the country they wish to flee from. Others grow up without birth certificates or official ID papers. Elsewhere departure without approval is a criminal offence, making travel by air – or bus, train, ferry – impossible, or impossible without false papers. Only smugglers and false papers can help the travellers while, for refugees, their only ‘home’ is a country that has signed the UN Refugee Convention. In an attempt to formulate a simple definition, people smugglers have been compared to local pawnbrokers or payday lenders (Smit, 2010a, 2010c). Just like pawnbrokers assist people who cannot access small bank loans, smugglers operate successful businesses because people use their services. Their travel services are often overpriced. Using old and at times barely seaworthy boats in our region, service quality is inferior, customer service is on many occasions very questionable – but smugglers (contrary to slave labour ‘traffickers’) operate on mutual terms. Customers know what they offer; they choose what the agreement brings – because a smuggler is the only travel operator who can assist them.

With the exception of Hoffman (2007, 2009, 2010a, 2010b, 2011), most research into the nature of ‘people smuggling’ and into the responses by destination countries to passengers using ‘people smugglers’ concentrates on the ‘European routes’. Such research is informed by the inbound journeys from Asia, the Middle East and Africa into Europe and North America. Throughout his work in this context, Koser calls the phenomenon “*migrant smuggling*” while claiming the migrants’ journey using smugglers is motivated by a variety of reasons. These ‘*mixed migrants*’ may be seeking a “better life” for their families as *economic migrants*; they may try to find a country that offers *employment opportunities* – illicit or not – in order to send *remittances* back to their families; they may want to seek lives in a *democratic country* or they may be seeking protection from persecution under the UN Refugee Convention as *asylum seekers* (Koser, 2008, 2009, 2010). For Australia however, this situation is markedly different. Inbound maritime travellers targeting Australia using informal travel brokers can be regarded as a single purpose group; they are *asylum seekers*. The singularity of this group is also reinforced through Australian State actions. First, all maritime entrants are intercepted by authorities on or before making landfall and apprehended, and since the early 1990’s, detained under powers defined under the Migration Act (CofA, 1958). Second, interviews by Customs officials, AFP and the Immigration Department will determine whether they are asylum seekers or not. Anyone who is not an asylum seeker and accorded the right to submit refugee protection claims under the terms of the United Nations Refugee Convention (UNHCR, 2006) is scheduled for removal from Australia.

The high number of successful asylum claims for Australian boat arrivals confirms the nature of this singular class of the group. Testifying at a 1996 Senate Inquiry, Solicitor Ross McDougall from the *Victorian Refugee Advice and Casework Service* cited Immigration Department outcomes for three years prior to 1996 and noted that, after excluding the boats whose passengers were ‘returned’ to China from the count, about 59% of boat arrivals were granted refugee status after assessment. He concluded: “*we have legitimate refugees arriving on these boats*” (Committee Hansard, 1996, pp. 173-174). These outcome percentages sharply increased from 1999 onwards, when more people travelling from Iraq, Iran and Afghanistan arrived. Of those arriving by boat in 1999, 78.2% received protection visas (Project SafeCom, 2009e), during 2000 81.8% of them received protection (Project SafeCom, 2009f), while in the following six years more than 95% of those travelling by boat were found to be refugees under Australia’s assessment system. For example, during 2001, the now convicted ‘smuggler’ Hadi

Ahmadi was accused of assisting to bring 900 passengers on four boats to Australia; 97% of them were declared refugees by Australian authorities (Project SafeCom, 2010a). This rate remained at similarly high levels throughout the decade: a 2011 media report notes that between October 2008 and December 22, 2010 the Immigration Department issued visas to 94% of boat arrivals (Edwards, 2011). If ‘smugglers’ merely organise and assist this single group – asylum seekers – to reach the safety of Australia as a Refugee Convention signatory country, perhaps there are implied questions for the Australian State. After all, these asylum seekers, becoming refugees upon assessment by the Australian authorities, arrived in Australia at no cost to the State. Is it unreasonable for Australian politicians to raise this issue as a factor when deliberating placing serious indictments upon the organisers of these ventures? Did politicians consider, when deliberating punitive legislation, that the smugglers generally bring asylum seekers into Australia as a signatory to the UN Refugee Convention?

In 2000 the United Nations established the ‘Smuggling Protocol’ (United Nations, 2001b) which defined the smuggling of migrants, but criticisms have included suggestions that smuggling is a “*relatively benign market-based*” phenomenon, while the Protocol provided “*states with a reason - or [...] rationalization for the intensification of broadly based efforts to prevent [unauthorised] arrival or entry*” (Hathaway, 2008). London-based civil liberties lawyer Claire Brolan suggests that the Smuggling Protocol may even imply that “*the smuggling of persons found to be refugees may not be so ‘illegal’*” (Brolan, 2003, p. 592), and there are those working in the Australian courts (Hunyor, 2001, pp. 223, 227), who argue that people smugglers who assist asylum seekers to arrive in Australia may not be people smugglers at all.

Evidence has been provided that the generalised label of ‘people smuggler’ covers everything from a small family affair, a ‘*mum and pop operation*’ (Hoffman, 2009; Koser, 2009, p. 5) to the Chinese Mafia and Snakehead gangs (Brolan, 2003, p. 590). During 1999, under the Howard⁵ government, several laws were passed in Parliament criminalising the facilitation of entry of ‘unlawful non-citizens’ to Australia. The laws were debated and passed following the dramatic entry of a number of boats arrived reportedly linked to those European transnational criminal networks (Brolan, 2003, p. 590; David, 2000, p. 15; Hunyor, 2001; Schloenhardt, 1999; Taylor, S., 2009) – but

⁵ Liberal Federal Member for Bennelong John Winston Howard was the 25th Prime Minister of Australia from 11 March 1996 to 3 December 2007

since then no boats arrived in Australia that were evidently linked to those networks. A 2009 interview with ‘Indonesian migration experts’ by *The Australian* (Toohey, 2009) notes that they “dismiss the notion that there is a ‘snake-head’ - that is, a major international criminal syndicate moving Afghans and Iranians from Afghanistan, Pakistan or Iran to Australia.” Paul Toohey goes on to quote his source:

If there was a snake-head, we could simply cut off the head. But it's not like that. It's the lack of any highly organised structure that is in fact its strength. It's more like a series of travel agencies.

The issue of penalising the crew of vessels rather than the organisers has been ignored in Australia’s current legislation. Just like any organisation or venture, the travel venture consists of one or more organisers who recruit operators, other middlemen and what Taylor (2009) has called the ‘*footsoldiers*’, those who bring the boats to Australia. These predominantly young sailors are consistently recruited from impoverished Indonesian fishing villages – from the island communities who would traditionally fish around Ashmore Reef (Balint, 1999, 2005, 2007; Hunyor, 2001, p. 224; Taylor, S., 2009), and who lost these fishing grounds as a result of what Bruce Campbell (Campbell, 1995), cited by Ruth Balint calls “*Australia’s last colonial act*” (Balint, 1999, p. 30). Despite the fact that the Australian Federal Police has stationed more than 200 officers in Indonesia and other locations to assist in Australia’s fight against people smuggling, just one or two ‘organisers’ have been extradited and prosecuted under current Australian laws. Instead, all crew are subject to the extremely harsh laws with mandatory prison terms, but these Indonesians are mostly illiterate, young, broke young men, who on many occasions did not know the nature of the venture they became involved with, and who are paid as little as possible by the organisers. Increasingly, the judiciary is expressing its dismay about the legislation and its mandatory sentencing aspects (see Gosford, 2009). At the time of writing – 12 years after the first harsh laws passed the Parliament – around 300 Indonesian crew members are either awaiting prosecution or are in Australian jails serving harsh prison sentences. Doubts linger about the age of no less than 60 of these crew members, who claim to be less than 18 years of age (Project SafeCom, 2011). Did any Parliamentarian bring up the issue of the heavy penalties for the crew when the laws were debated? Did anyone raise the spectre that the legislation may not catch the organisers, but instead just those who do the sailing? Did the Parliament when formulating the legislation consider that the crew,

who are not normally part of the organisation, simply cannot bear the brunt of Australia's fury with smugglers as expressed in the legislation?

1.5. A Human Rights Framework

Having established that the passage to Australia comprises asylum seekers rather than *mixed migrants* significantly reduces the complexity of the research in this thesis. If this research is to have underpinnings which include a human rights framework for asylum seekers rather than mixed migrants, no defence is needed for the right to seek employment in a country of one's choice; no arguments need be built around the universal right to live in the peace of democratic rule; neither need concerns arise about formulating the right to live in a country of one's choosing. When the passengers set foot on Australian soil, the Australian State itself acknowledges that the *United Nations 1951 Convention relating to the Status of Refugees* (UNHCR, 2006) and its *1967 Protocol* to which Australia is also a signatory (UNHCR, 2008) may be invoked. This is fortunate, because our human rights underpinnings can now regard the passengers as asylum seekers or 'potential' asylum seekers; their landing in Australia as a signatory country to the Refugee Convention establishes a legal rights framework for them, and it invokes legal obligations for Australia as a State. This is spelled out in the Convention, established in Australian law and clarified in *International Refugee Law* (Goodwin-Gill & McAdam, 2007; Hathaway, 2005). This remains the case, even though a myriad of legal constructs and mechanisms have been inserted in Australian law since maritime asylum seekers first started arriving on Australian shores. All of these can be viewed as direct attempts by the Australian State to reduce or undermine the scope of the legal reach of the Refugee Convention for those who arrive 'without prior authorisation' or "*unauthorised arrivals*" as we have come to call the maritime asylum seekers.

Countless Australian politicians have consistently attempted to depict those arriving by boat negatively, labelling them as "*bogus refugees*", "*illegal refugees*", "*queue jumpers*", "*illegal arrivals*", "*illegal entrants*", "*unlawful entrants*" or as "*unlawful non-citizens*". Nevertheless, the Refugee Convention is unambiguous about obligations on signatory States for their treatment. This is especially clear from Article 31. The article states, in full:

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 (UNHCR, 2006).

This article is often referred to in international law and human rights discourse as the “*mode of arrival*” clause. The meaning of Article 31 is further explained, and also revised, in several documents issued by the United Nations High Commissioner for Refugees (UNHCR) since the Convention was first formulated. UNHCR has also issued explanations and interpretations of Article 31’s notion of “*coming directly*”. Australia’s relatively isolated location from the European continent has given rise to comments by Australian politicians about this notion: for example, around Australia’s 2001 Federal election, they attempted to justify withholding the right of entry for refugees arriving from Indonesia after using the Indonesian archipelago as a transit point for their journey to Australia. Politicians argued that none of them ‘came directly’ from the countries they had fled. Perhaps it is not just coincidence that in the week before the 10 November 2001 election, one that would be nicknamed the ‘Tampa Election’ following a stand-off with a Norwegian containership that had rescued Afghan refugees (Marr & Wilkinson, 2004; Smit, 2009), the Geneva Expert Roundtable of UNHCR issued a significant document (dated 8-9 Nov. 2001) clarifying Article 31, restating its intention and revising its interpretation, in that “...*refugees shall not be penalised solely by reason of unlawful entry or because, being in need of refuge and protection, they remain illegally in a country*” and that “*refugees are not required to have come directly from territories where their life or freedom was threatened.*” (UNHCR, 2001, Specific Considerations - 10)

1.6. Passengers – or ‘smugglers’?

One may well question the usefulness of a human rights framework for the passengers, and question why the introduction to this research would apparently divert its attention to a side issue, where it should instead keep focusing on the travel facilitators – the smugglers. Such criticism would have been valid when the research was first formulated, and when, in line with claims in most of the literature (see e.g. Crock, Saul, & Dastyari,

2006), assumptions were held that the development of Australia's legislation intending to criminalise 'people smugglers' had made its first serious start during 1999. This research direction was interrupted in a spectacular way on New Year's Day 2010, when the 1979 Fraser⁶ Cabinet documents were de-classified after 30 years. The documents and submissions showed many responses to 'unauthorised boat arrivals' proposed and presented to Fraser's Cabinet, including legislation to criminalise skippers and crew of vessels entering Australia with asylum seekers from Vietnam following the 1975 fall of Saigon. While the implementation of these laws was a matter of public record – the *Immigration (Unauthorised Arrivals) Act 1980* (CofA, 1980b) was passed by the Parliament in 1980 and proclaimed in 1981 – most sources, including those of a historical nature, remained silent on them. This was perhaps partly as a result of the inbuilt sunset clause: the legislation was phased out one year after proclamation. Nevertheless, the laws were Australia's first legislation criminalising voyages deemed 'commercial' and 'organised'. Most remarkably was the name of the proposed legislation, which in the Cabinet submission prepared by the Immigration Department is titled "*Legislation against Unauthorised Arrivals*". This curious title implied that the underlying intent of the proposed laws were not necessarily targeting any 'smugglers' or 'traffickers' – but that action was to be taken against those who 'dared' to arrive in unauthorised ways: the 'smugglers' and the 'smuggled' alike were the target. Other submissions outline proposals to impose severe penalties on the passengers of such vessels. The documents conveyed the overwhelming impression of an Immigration Department deeply offended that 'unauthorised' vessels made it to our shores and that they held the view we should not accord them with any dignity and respect, but instead punish them. Suddenly, Article 31 of the Refugee Convention became a central theme against which the authorities seemed to lean as hard as they could. No longer was the fight against '*smuggling*' as a crime the central theme. Instead, the indignant fury of the Immigration Department as Australia's 'expert border guards' seemed to have gained the highest importance, setting their agenda, convincing their Minister and attempting to have legislative proposals accepted.

The 1979 Cabinet documents do not just reveal the Immigration Department's central role in setting policy agendas, but they can be viewed as containing the template for all future legislative measures dealing with boat arrivals and their voyage organisers. Thirty

⁶ Liberal Federal Member for Wannon John Malcolm Fraser was the 22nd Prime Minister of Australia from 11 November 1975 to 5 March 1983

years later former Immigration Minister Philip Ruddock made claims about the success and authorship of his “*suite of [policy] measures*” (Ruddock, 2010) – wide ranging measures restricting rights for boat arrivals legislated by the Parliament between 1996 and 2002. Yet Ruddock’s claims are discredited when compared with the proposals tabled in Fraser’s Cabinet meetings in 1979. The many proposed initiatives to ‘punish’ unauthorised arrivals and the voyage organisers constitute a unifying key to understanding most future legislation imposing restrictions and punitive measures on the passengers – who are always labelled as ‘*unauthorised*’ or ‘*illegal arrivals*’ – and who were soon labelled ‘*queue jumpers*’. Malcolm Fraser’s resistance against the Immigration Department (see Fraser & Simons, 2010), which had just emerged from its period as the ‘enforcer’ of the White Australia Policy but which maintained a hardline – if not racist – undercurrent can be explained against its determination to push their agenda, which included a determination to ‘stop the boats’ from arriving on Australian shores. As a result of the information presented in the 1979 Cabinet documents, the direction of the research would now be compelled to identify not just how politicians talked about the voyage facilitators, but it would also need to scrutinise how politicians talked about the passengers. On the one hand, the determination by the Immigration Department to punish unauthorised arrivals and those who brought them to Australian shores was likely to pull the discourse in one direction, while on the other hand Article 31 of the Refugee Convention would, should or could be the moderating dictum in that it compelled Member States to not discriminate against those who ‘arrive illegally’ or punish them for having done so. This leads to the question, whether or not the Parliamentary discourse about asylum seekers be influenced when discussing those who bring them to our shores? Did the dictum of Article 31 of the Refugee Convention influence the debate? Were the passengers in any way get depicted negatively, did they receive criminal labels by association because they had arrived using smugglers?

1.7. Research Questions

This chapter examined and proposed a number of questions emerging from the political development of punitive measures targeting the travel facilitators of maritime asylum seekers. When former PM Kevin Rudd’s extreme statements about ‘people smugglers’ are juxtaposed against statements about ‘escape organisers’ who assisted Jews escape from Nazi Germany, questions arise about the demise of ‘the good smuggler’ which on closer inspection seems to be linked to political talk and rhetoric: while labels may be

just that, negative or punitive depictions in political rhetoric may provide answers beyond a debate that may escalate, limit itself and instead create two opposing camps – while politicians gather in one corner, critical commentators group in the opposite one. If instead we attempt to trace the development of the politicians' argumentation that underpin their claims of extreme criminality on the part of people smugglers (which led to the anti-people smuggling legislation), central questions emerged which may be useful in an investigation. These four questions were:

- How did Australian politicians justify [these] extremely harsh penalties?
- How did they inform themselves of the international phenomenon of 'people smuggling'?
- What knowledge did they have of the nature of 'people smuggling' and the levels of criminality?
- Did they have expert advice available to them?

Issues raised in this chapter established that on the Australian routes smugglers generally bring asylum seekers within the reach of UN refugee protection in Australia as a signatory country. Consequently questions arose whether politicians (who represent the Australian State) would consider the arrival of refugees without a cost to the State as a factor once the smugglers were thought to be criminals. This raised the question:

- When considering the legislation, did politicians consider that the smugglers generally bring asylum seekers into Australia as a UN Refugee Convention signatory?

Closer examination of the phenomenon of people smuggling raised suggestions that different criminal liabilities may exist for lower-ranked recruits of the organisation or venture. While the legislation purports to tackle people smuggling, it has instead prosecuted and jailed countless Indonesian fishermen attempting to eek out a living in poor circumstances. This produced the question:

- Did any Parliamentarian bring up the issue of heavy penalties for the crew when the laws were debated?

The release of 1979 Fraser Cabinet documents reframed the research; the documentation offered up many historical details not previously available, and it provided evidence of the Immigration Department's dominant role in framing policy in relation to 'unauthorised arrivals' and the facilitators of their journeys. As a result the role of Article 31 of the Refugee Convention, dictating that those arriving 'illegally' should not be discriminated against or punished became more essential as a monitoring device throughout the research: it provided a human rights framework. Additionally, the origins of parliamentary discourse of boat arrivals were exposed, and the way politicians talked about maritime asylum seekers became as important as the parliamentary discourse about the travel facilitators and the organisers of asylum seeker journeys. This produced the questions:

- Did the dictum of Article 31 of the Refugee Convention influence the debate?
- Were the passengers in any way get depicted negatively, did they receive criminal labels by association because they had arrived using smugglers?

The questions raised in this chapter were brought together in four main research questions. These four questions are researched in the analysis of a number of parliamentary debates of legislation intending to impose criminal sanctions on 'people smugglers'. These questions are:

1. How did politicians inform themselves of the international phenomenon of 'people smuggling' and what knowledge did they have of the nature of 'people smuggling'?
2. When considering the legislation, did politicians consider that 'people smugglers' generally bring asylum seekers into Australia as a UN Refugee Convention signatory?
3. Did politicians consider that lesser criminal liabilities may exist for boat crew as opposed to organisers during the debate?
4. Were the passengers negatively depicted by association because they had arrived using smugglers, and did Article 31 of the Refugee Convention play a role in legislative considerations?

1.8. Chapter summaries

The questions formulated throughout this chapter and summarised above share the common theme of being directed at Australia's political decision makers. They have been designated as 'guiding topics' throughout the text and form the primary research questions, detailed in Chapter Two, which outlines the methodology of the research. For the research, Parliamentary debates as recorded in Hansard transcripts of the House of Representatives, the Senate and relevant Committees and Inquiries are used as sources for primary research data. In addition, all relevant Reports commissioned by governments are presented as additional evidence. A number of 'external' non-government reports and documents have been included for scrutiny in the research. Analysis of the primary research data is conducted using Critical Discourse Analysis. The methodology chapter addresses theoretical and conceptual research frameworks while research limitations and data sampling methods are clarified.

Chapter Three presents the material from the 1979 Fraser Cabinet documents. The documents are the central theme in a comprehensive historical overview and analysis, set in the context of the first Indochinese asylum seeker boat arrivals from 1976 onwards. This previously published material (Smit, 2010b) first presents significant policy aspects representing racial exclusion measures from the beginning of white Australian settlement as a British Colony. The chapter then notes the establishment of the White Australia Policy under Federation, a policy enforced by Australia's Immigration Department. Following this, it notes significant early resistance by the Immigration Department against Article 31 of the Refugee Convention before this resistance re-appears following the first arrival of maritime asylum seekers from Vietnam. Due attention is then given to the policy responses to passengers and voyage organisers as proposed by the Immigration Department. The chapter also attends to the first emergence of one of Australia's most-used punitive labels describing the 'boat people' – the term 'queue jumper'. In this the chapter corrects widespread but erroneous claims in the literature about its first public rhetorical use by politicians. The remainder of the chapter analyses and discusses the Parliamentary debate of Australia's first legislation imposing criminal sanctions on asylum seeker voyage organisers, the *Immigration (Unauthorised Arrivals) Act 1980* (CofA, 1980b). In analysing the Parliamentary discourse it gives due attention to the labels used to describe the

passengers and associated rhetoric as well as those used to describe the voyage organisers and the rhetoric employed to depict them.

Chapter Four introduces the Howard government's unique positioning *vis-à-vis* human rights, human rights instruments and human rights bodies on international level and within the domestic sphere. Following this presentation, corroborating evidence of this positioning is provided by means of discussion of a report written about the circumstances of detained asylum seekers by Australia's human rights watchdog, the Human Rights and Equal Opportunities Commission (HREOC). Discussion of this report is presented because of its background role in the presentation of the first of two legislative instruments analysed in Chapter Five, nicknamed⁷ the *Sealed Envelopes Bill*. At the same time, the report provides evidence of the Howard government's view of these detained asylum seekers when juxtaposed against the negative depiction of asylum seekers and the Parliamentary rhetoric employed during the debate of this Bill. Chapter Four also includes a sample of Parliamentary rhetoric by Howard's Immigration Minister, the Hon Philip Ruddock, under whose Ministership the legislation under scrutiny was presented to Parliament. This sample analysis provides evidence of his outlook on maritime asylum seekers, forming the background against which harsh legislation limiting the legal rights of asylum seekers was presented to Parliament, including the Bill under scrutiny in Chapter Five.

Chapter Five analyses the debate from 1996-1999 in Senate and House of Representatives of the *Sealed Envelopes Bill*. The analysis supports the claim that negative depiction of asylum seekers was contextual and functions to support the purpose of the legislation – restricting rights to access independent legal advice. This negative depiction of asylum seekers changed to labelling passengers as victims of extreme criminals during the debate of last-minute amendments in 1999 that sought to impose harsh increases to 'people smuggler' sentences. These sudden amendments were a response to the illicit and undetected arrival of a number of Chinese vessels with migrants from December 1998 onwards. Corroborating evidence is presented of several conventional as well as more controversial Parliamentary devices used by the government to guarantee support and passage for the legislation.

⁷ The *Migration Legislation Amendment Bill (No. 1) 1999*, previously presented under three additional titles

Chapter Six analyses the debate in the House of Representatives and the Senate of the *Border Protection Legislation Amendment Bill 1999*. While previous chapters provided evidence that a range of manipulative rhetorical devices were used during the debate of ‘people smuggling’ legislation, this chapter also presents evidence that the Prime Ministers’ Department (by means of a commissioned Inquiry report), the Immigration Department (by means of a briefing document) and Immigration Minister Ruddock (through the use of negative and hostile stereotypes in speech) actively intervened to construct the parliamentary discourse. The trigger for the legislative measures in Chapters Five and Six was the illicit arrival of a number of Chinese vessels with migrants reportedly seeking jobs associated with the 2000 Olympic Games (the “*Olympic Games arrivals*”). The undetected arrival of these vessels was portrayed by the Howard government as a national security emergency. This portrayal strengthened the perceived need to respond with a number of “*border protection*” measures.

Chapter Seven presents transcripts of the participant interviews conducted in May 2011 and analyses the information presented by participants during these interviews. The open-ended reflective interviews were structured as post-research instruments; they were conducted in Parliament House in Canberra and at the private Melbourne dwelling of one of the participants. The two selected participants who agreed to participate in the research were both Liberal Federal Members of Parliament during 1999 when the legislation was debated and became law. The information offered during these interviews validates research findings presented throughout the chapters of this thesis.

Chapter Eight is the concluding chapter that summarises the findings and conclusions. The conclusions reflect the complexities of the research. The investigation encompasses three legislative measures and associated debates, while a number of important documents surrounding these debates were central in defining the context. As a result of this multi-layered nature of the research, many findings emerged from the research that had not been part of the initial research planning. Twelve initial summaries of findings form the initial section of this chapter, while the last part addresses the four research questions.

2. Methodology

2.1. Introduction

Chapter One presented an example of strident language uttered by prominent Australian Labor politician Kevin Rudd when he depicted those assisting asylum seekers as ‘people smugglers’. It argued that while a range of responses by commentators and academics undermined his claims, these do not undo politicians’ depictions of Australia’s maritime asylum seeker voyage organisers. Contemporary Australian discourse almost universally depicts asylum seeker voyage organisers as “*vile and heinous criminals*”, in stark contrast to the discourse used following the Second World War they were described as “*heroes*” and “*altruistic personalities*”. Consequently, the importance of scrutinising labels and language in political discourse emerged as an instrument central to an investigation of this considerable *hero to villain* transformation of the depiction of voyage organisers. While the chapter acknowledged that some illicit activity is inevitably associated with the practice of smuggling, this illicit activity is part of a *product uniqueness* not available elsewhere in the process of escape from environments of oppression and persecution.

Chapter One also established that the voyage organisers bring a single-purpose group of passengers to Australia – asylum seekers. This evidence invokes certain human rights protections unambiguously defined in Article 31 the *United Nations Convention for the Status of Refugees*, which stipulates that signatory States should not punish asylum seekers for “*illegal arrival*” or discriminate against them for this illegal arrival. These human rights protection criteria for the *passengers* give rise to a monitoring role for any research which investigates the development of political discourse leading to criminal sanctions imposed on the *voyage organisers*. This *a priory* link between the *passenger political discourse* and the *people smuggler discourse* was defined as part of the research. Its importance significantly increased after the release of 1979 declassified government documents, where Australia’s Immigration Department proposed harsh punitive measures aimed at passengers as well as voyage organisers, and drafted legislation against ‘*unauthorised arrivals*’.

2.2. *Research questions and terminology*

The issues raised in Chapter One introduced the research framework and the chapter concluded by formulating four research questions underpinning the research. Responses to these questions will be presented as part of the conclusions of the chapters scrutinising three legislative measures and parliamentary debates (Chapters Three, Five and Six) in this thesis. The questions are:

1. How did politicians inform themselves of the international phenomenon of ‘people smuggling’ and what knowledge did they have of the nature of ‘people smuggling’?
2. When considering the legislation, did politicians consider that ‘people smugglers’ generally bring asylum seekers into Australia as a UN Refugee Convention signatory?
3. Did politicians consider that lesser criminal liabilities may exist for boat crew as opposed to organisers during the debate?
4. Were the passengers depicted negatively by association because they had arrived using smugglers, and did Article 31 of the Refugee Convention play a role in legislative considerations?

It is important to establish a range of terms as “*correct terminology*”, that is, terms without embedded rhetorical value or political bias. For example, the term “*asylum seeker*” originated first in the 1948 drafting of the Universal Declaration of Human Rights (United Nations, 1948), where Article 14(1) states that “*Everyone has the right to seek and to enjoy in other countries asylum from persecution*”. Like many other terms and standard expressions, the term has become well-established in International Law and UN Guidelines (see also UNHCR, 1979). For this purpose a list of terms – accompanied by descriptions and usage explanations – frequently used in Australian discourse has been provided in the Appendix (Table 1: Labels and terms used in Australian maritime asylum seeker discourse).

2.3. *Rationale*

This thesis explores the development of language and labels used in the depiction of maritime travel brokers who transport asylum seekers to Australia's border. In doing so, it focuses on political discourse. The research is not merely undertaken to understand the dominant discourse pertaining to asylum seekers and their travel brokers; it also seeks to establish whether or not the dominant discourse assists or undermines the human rights of asylum seekers arriving 'without prior approval' as defined in Article 31 of the UN Refugee Convention. The Convention establishes clear rights for asylum seekers, also in active terms if they seek to organise their arrival, assisted by their chosen 'third parties' to Australia. The research maintains this perspective, and therefore also scrutinises whether Australia implicitly or actively blocks or prevents such initiatives.

2.4. *Significance*

The research is significant for a number of reasons. First, a considerable body of work analysing parliamentary debates exists, and many analytical studies of parliamentary refugee and immigration discourse have been conducted, also in Australia. However, no known studies exist analysing the political discourse of asylum seekers and their "*travel brokers*" – commonly known in Australia as "*people smugglers*". Second, this research presents new and highly significant evidence emerging from the release of previously classified government documents for the year 1979. Asylum seeker boats from Vietnam first arrived in 1976, and the 1979 Fraser Cabinet documents contain the first policy responses in proposals and submissions. They represented a comprehensive initiative to "*stop the boats*" and the research argues these documents form the policy blueprint for Australia's response to asylum seeker vessels arriving on its shores. Immigration officials constructed the underlying dominant discourse depictions of these boats as "*unauthorised arrivals*", while further measures proposed harsh treatment of the passengers and the imposition of harsh criminal sanctions on skippers and crew of the vessels.

As a result of these significant points above, the research reframes the asylum seeker debate. The evidence supports the notion that Australian government policy responses from the early days of boat arrivals were not constructed as piecemeal and reactionary

measures by successive governments, but that all responses were first formulated in 1978-79. The thesis argues that since the Fraser government was first presented with these proposals they were progressively implemented during the next three decades, using increasingly harsh and punitive measures.

Third, the research presents evidence of the central role of the Immigration Department in proposing policy settings, and presents evidence that it intervened in parliamentary discourse. Departmental officials were the initiating actors of important proposals in the 1979 Cabinet submissions, and they directly intervened in Parliamentary debates during 1999, proposing manipulative and counterfactual rhetorical constructs depicting asylum seekers as “*forum shoppers*” passing through other safe countries but instead selecting Australia. Finally, the research corrects academic consensus about the construction of one of Australia’s most powerful and persistent rhetorical devices in refugee and asylum seeker discourse, the “*queue jumper*” label; it presents evidence that the Fraser government and the Immigration Department colluded in the deliberative construction of this manipulative label.

2.5. *Theoretical Framework*

The counter culture revolution of the 1970’s did not just present a revolt against the establishment, pop music by *The Beatles* and *Procol Harum* or entertainment from *Monty Python’s* comedy sketches and movies. The social upheavals politicised French psychologist Michel Foucault (Seidman, 1994, p. 213), who initially encountered the *culture of sexuality* and the portrayal of *homosexuality as an identity* in America (p. 217) before embarking on an analytical exploration of its cultural origins. Foucault posed that the Catholic and Christian practice of ‘confession’ had framed sex “*as the domain of discrete desires and acts*” and that the practice had linked sex with guilt (p. 220). He also noted how the confession practices were replaced and complemented by clinical, medical and psychotherapeutic “*examination*” practice in the construction of sexual identities and that these represented the newer structures of social control – while they framed homosexuality as *deviance* (p. 221). Foucault’s analysis and deconstruction of contemporary sexuality (and several other) discourses (Cook, 2008) and discursive practices (Potter, 2008b), identified by his key terms of *genealogies* and *archaeology* (Foucault, 1972) suggest notions of tracing origins and unearthing not just histories (see Park, 2008) but also notions of dominant power in discourse (Miles, 2010). His work is

known as Foucauldian Discourse Analysis (Cheek, 2008). Foucault's deconstruction (Gough, 2008a) work developed in parallel with others who analysed the construction of dominant ideology: American sociologist Peter Berger is one of Foucault's influential contemporaries. Berger's work identified the socialisation process, arguing that integration of learnt behaviour led to '*objectivation*' of learnt things, called '*reification*' (Berger & Luckmann, 1966). The work of Kenneth Gergen (Gergen, 1985, 1997, 1999) on *Social Constructivism* (Gergen & Gergen, 2008) built on the work of Foucault and Berger & Luckmann (1966), and argued that "*knowledge claims*" had "*communal origins*" and that "*meaning-making*" was the "*product of human relationships*" (see Gergen & Gergen, 2008). For Foucault, Berger, Gergen and many others, social reality was understood to be constructed by dominant ideology.

Although he is ranked amongst them, Foucault never acknowledged himself to be part of the phenomenologists (see Adams & van Manen, 2008) on the European mainland – in France, Germany, the Netherlands, Belgium, Switzerland. One of the Dutch proponents in a significant precursory group of the phenomenology movement at the *University of Utrecht* was psychiatrist Jan Hendrik van den Berg. He argued that sudden changes to human nature take place, and that such changes are accompanied by changing views and a new outlook on society. He argued such changes emerge simultaneously on different continents and in different countries and societies, finding expression not only in new academic explorations and movements, but also in art forms, scientific breakthroughs, literary and architectural movements and styles. He argued that the initial manifestations of such changes become integrated by means of a wider concentric circular spread throughout society after 45 years, while they become part of commonsense notions after 75 years. His *Science of Changes or Metabolics* (Van den Berg, 1961) is also expressed as a changing human psychology throughout history (Van den Berg, 1975). In the latter work Van den Berg poses that '*child labour*' and the expulsion of women from the workplace are a function of industrialisation, where the (male) industrialists maintained that the mechanised workplaces posed too much danger to women and children. He argues that the modality claim of child labour *as something to be condemned* was constructed to maintain male dominance by the industrialists who owned the factories. The setting apart of the child with its own "*childlike nature*" was part of this construction. In support of his claim, Van den Berg presents an example of pre-medieval text – a treatise about the right of a married woman to abstain from sexual congress with her husband – written by a seven-year old boy (Van den Berg, 1975).

The ideological shift of the 1970's had moved the world of social psychologists and sociologists towards a poststructuralist (Fawcett, 2008), postpositivist (Fox, 2008) and postmodernist (Russell Olsson, 2008) world, where their task was to “*uncover and critique the technologies of power*” (Park, 2008). Dominant ideology was seen as constructed (and it could be deconstructed) and one of its primary vehicles was the dominant discourse (Cook, 2008). In this new paradigm the quest was no longer to “*arrive at the truth*”, which had been undermined by the notion that “*truth*” is the product of dominant ideological positioning, but to “*identify meanings that are context-specific*” (Fawcett, 2008). In this paradigm, social reality is not static but changes, develops or transforms over time; similarly, human nature is not a constant but is subject to change.

This theoretical framework explains the claims made in Chapter One about the task of critical social research in relation to labels. High Court Justice Michael Kirby warned about the portrayal of Mahatma Gandhi and Nelson Mandela as “*terrorists*” (Kirby, 2004). Under *Apartheid South Africa* Nelson Mandela, the activist lawyer demanding an end to black oppression, was framed as a terrorist and sent to jail on Robben Island. Under *British Colonial Rule*, Indian lawyer Mahatma Gandhi, fighting to end the domination of the British in his home country, was equally depicted as a terrorist. Dominant culture in South Africa and British-controlled India formed dominant ideology which supported the depiction of Mandela and Gandhi as terrorists. Equally, Alfred Korzybski's comment that “*the map is not the territory*” (Levinson, 2009) can be regarded as a confusion between portrayal and reality: when dominant ideology becomes integrated as “*truth*”, distinction between depiction and fact is lost. An example of this is reflected in the discourse around Australia's policy of *mandatory detention*, where all maritime asylum seekers are imprisoned until their refugee claims are finalised. Australia's *mandatory detention* discourse has resulted in some Australians regarding ‘unauthorised arrivals’ as “*criminals*”; they ‘*apparently are criminals*’ because they are locked up. When dominant discourse is promoted with political spin that includes counterfactuals or is not sufficiently based in fact, national discourse enters into dangerous and disturbing territory. In relation to American *Tea Party* politics, this phenomenon has been labelled as “*post-truth politics*” (Roberts, D., 2011).

Depiction of ‘people smugglers’ is equally dependent on the dominant discourse. During WWII ‘people smuggling’ included many of the same characteristics as contemporary people smuggling. Amongst these are ‘*illicit border crossings*’, ‘*false identity papers*’ and often an ‘*exchange of money*’ not only with passengers but also with border guards. Those who assisted Jews were arrested by the German government, yet they were welcomed in Allied countries, and as noted in Chapter One, considered heroes. Even so, the treatment of several boats attempting to sail from Germany was not just questionable, but in some cases outright criminal. Nations at war with Germany refused entry to vessels and passengers in deplorable ways. Throughout the war years, between 1939 and 1947, the voyages of the *St Louis*, the *Patria*, the *Struma* and the *Exodus* (see Project SafeCom, 2005b) became harsh reminders not just of the Holocaust, but also of shocking racial discrimination against Jews by countries other than Germany. They are also stark reminders of the power of borders and the closing of such borders as depersonalised instruments of exclusion. While many aspects deserve attention when embarking on a full inquiry into people smuggling, this thesis maintains a focus on the construction of dominant discourse. The research does not attempt to complete the construction of an ontology (Noonan, 2008) about the nature of crime or the notion of borders. Instead, it focuses on the political depiction and the political discourse and the construction, maintenance and dominance of this discourse.

2.6. *Conceptual Framework*

If dominant ideology is formed and constructed, maintained or consolidated by means of its main vehicle of *discourse*, then social reality can be understood by means of the understanding of discourse, or by analysing relevant discourse(s). The development of Text Analysis (Ten Have, 2008) and Discourse Analysis in all its variants (Cheek, 2008; Jacobs, 2010; Park, 2008; Potter, 2008a; Weninger, 2008) was a logical result of exploration of the new paradigm that emerged following the shift during the 1970’s. Such analysis of discourses can assist in the research undertaken in this thesis, because the thesis explores language and labels used by politicians to depict the journey organisers of asylum seekers. The research investigates the dominant discourse about asylum seekers and these journey facilitators and scrutinises the relationship between the dominant discourse and the human rights of ‘unauthorised arrivals’: Chapter One noted that the UN Refugee Convention establishes unambiguous rights for such asylum seekers. Consequently, the research critically explores the increasingly criminalised

depiction of the travel brokers as well as the tension between such criminal depictions and Australia's maintenance of the "*rights of unauthorised arrivals*". It investigates how Australian political discourse resolves this tension. Analysis of the discourse needs to include a critical perspective; therefore Critical Discourse Analysis (CDA) represents a suitable methodology to undertake the research, because CDA is "*a critical perspective that is geared toward examining the subtle ways in which unequal power relations are maintained and reproduced through language use*" (Weninger, 2008). In other words, the research investigates the balance between State power as expressed in underlying ideology and the power of defined human rights of asylum seekers and their travel brokers.

Around any issue in society, many '*discourses*' may develop in many groups or organisations. Often there is a *media discourse*; there may be a *community agency discourse*; the discourse of certain *ethnic groups* may develop. When issues become controversial or when governments are lobbied about an issue, a *lobby group discourse* may develop. The focus of the current thesis research however is on *political discourse*. In most democratic governments, political discourse often primarily exists in a predictable format of formalised speeches during parliamentary debates or public statements made by politicians. Not only is their relative formality and standard format recurring; they are known by "*rhetoric*" (Pigrum, 2008). Significant research of discourse analysis has been conducted at *Loughborough University* and elsewhere in the UK by Jonathan Potter, Margaret Wetherell and others (Antaki, Billig, Edwards, & Potter, 2003; Edley, 2001; Fairclough, 2001; Hart, 2005; Potter, 2004, 2008b; Potter & Wetherell, 1987; Wetherell, Taylor, & Yates, 2001). In the USA James Paul Gee presents authoritative CDA with strong reference to linguistic aspects and text analysis (Gee, 2005). Research of rhetoric as a special communication category has been carried out by Michael Billig (Billig, 1985, 1987, 1997). Amongst others Van Dijk and Wodak (Van Dijk, 2000a, 2000b, 2000c; Wodak & van Dijk, 2000) stand out because of their CDA of Parliamentary debates on immigration and refugees. In Australia, analyses of Parliamentary immigration and refugee debates using CDA have also been conducted (Every & Augoustinos, 2007; Guilfoyle, 2009; Guilfoyle & Hancock, 2009). Guilfoyle also explored the "*new racism*" (see Every & Augoustinos, 2007, p. 411; Hanson-Easey & Augoustinos, 2011, p. 247) in the discourse of One Nation leader Pauline Hanson MP (Guilfoyle & Walker, 2000). Others have explored refugee racism in Australian media discourse (Saxton, 2003) or have analysed, using discursive psychology (Billig, 1997;

Potter, 2008b, 2008c) the role of ‘*sympathy talk*’ in *shock-jock* radio talkback (Hanson-Easey & Augoustinos, 2011).

Political discourse and Parliamentary debates are central and powerful instruments that frame public discourse. In an investigation of political discourse of European immigration and refugee debates Van Dijk argues that “*discrimination against immigrants or minorities*” by elite groups has considerable consequences: they “*will not be allowed into the country in the first place, or they will not get a job, or they will not be promoted in their job, will not get decent housing*”, while “*the mass media or textbooks will spread negative stereotypes about them*”. He clarifies:

In other words, the role of leading politicians, journalists, corporate managers, teachers, scholars, judges, police officers and bureaucrats, among others, is crucial for the (un)equal access to material or symbolic resources in society (Van Dijk, 2000c, pp. 15-16).

Van Dijk does not just consider that such groups influence access to resources and levels of discrimination; he also considers the construction of discourse by leading societal groups, and clarifies that political elites are the primary initiators of national refugee and immigration discourse:

politicians usually first control public definitions of social issues, formulate policies and their definition of the situations and solutions of problems, legitimize their actions, and conduct debates on legislation (Van Dijk, 2000c, pp. 17-18).

Van Dijk’s comments validate the importance of scrutinising the political discourse as a primary instrument that constructs, establishes and maintains dominant discourse. In addition, political discourse also consists of “*rhetoric*” and, as extensively argued by Billig, is characterised by argument and counter-argument (Billig, 1987). In this contest of oratory, many things are not expressed, and the discourse is “*often incomplete and implicit*”, with “*norms and values not expressed. In immigration debates these are often left out if they are ‘face-threatening’ or could lead to a negative impression of the speaker*” (Van Dijk, 2000a, pp. 61-62). Political debate includes many generalisations that “*often include prejudices*” (Van Dijk, 2000a, p. 60) and hidden claims that include

intended discrimination and racist elements. Consider the familiar racist declaration in the semantic disclaimer “*I’m not racist, but...*” (cited by Van Dijk, 2000a, p. 57). This semantic construction appears in many forms in parliamentary debates. For example, when a politician first claims ‘benevolence’ in the phrase “*the government wants to help genuine refugees, but...*” (Van Dijk, 2000a, pp. 62-63) the audience is being prepared for what may come next; this could be a ‘contrast’ claim (Van Dijk, 2000a, p. 66) where “good” refugees are juxtaposed with “unauthorised arrivals”: “*but those who breach our border are not welcome*”, or a ‘counterfactual’ and ‘persuasive scare tactic’: “*they’re coming by the thousands*” (Van Dijk, 2000a, p. 72).

These examples of hidden constructs underlying political rhetoric in parliamentary debates constitute a convincing argument to conduct careful analysis of politicians’ statements. Guilfoyle defines the aims: “*analysing discourses has as one of its central aims to unpack and bring to light the often subtle ideological inclusions from texts or oratories*” (Guilfoyle, 2009, p. 146), and others argue we must “*unpack these rhetorical devices*” that are intended to exclude alternatives (Bryman & Burgess, 1994, p. 48; Saxton, 2003, p. 111). The examples above are presented with the identifiers of such constructs in single quotation marks followed by an in-text reference; this method is maintained throughout the thesis chapters where analysis of parliamentary debates takes place – the Chapters 3, 4, 5 and 6. The research draws its identifiers from the work of Wodak & Van Dijk (Van Dijk, 2000a, 2000b, 2000c; Wodak & van Dijk, 2000) and James Paul Gee (Gee, 2005), and from the Australian work by Guilfoyle and others (Guilfoyle, 2009; Guilfoyle & Hancock, 2009; Guilfoyle & Walker, 2000) and Every, Augoustinos and others (Every & Augoustinos, 2007; Hanson-Easey & Augoustinos, 2011; O’Doherty & Augoustinos, 2008).

No ‘*Catalogue of Rhetorical Constructs and Devices used in Parliamentary Discourse*’ exists, but they are not difficult to find; nor are the labels used to identify them – used by a considerable number of discourse analysts. Close reading of the sources cited above quickly produced the list of identifiers that have been used to assist analysis throughout the chapters.

2.7. Limitations

Choosing (Critical) Discourse Analysis as a research methodology is not without risks or pitfalls. Salient warnings about under-analysis, over-quotation, and purist analysis without context, “*over-quotation*” and “*isolated quotation*” have been published by leading discourse analysts (Antaki, Billig, Edwards, & Potter, 2003). The scope of the research in this thesis makes it impossible to resort to purist CDA: the scrutiny of parliamentary debates of three legislative measures presents more than 2,500 pages of primary data from Government Hansard transcripts, accompanying documentation and surrounding media reports. Liberating warnings have come especially from Australian social researcher Maggie Walter (Walter, 2009, 2010), who urges researchers using CDA to not “*overstate the case*” or become tempted by “*imbuing too much significance into the text and not taking wider social and political contexts into account*” (Walter, 2009, p. 17). This thesis certainly regards these contexts as essential framing environments for the discourse, and gathers surrounding reports and social contextualisation as appropriate containers of the political discourse under scrutiny. In fact, the research dedicates considerable space to reports and related material; in this, it represents an historical investigation into Australia’s response to boat arrivals from the vantage point of its development of criminal sanctions against the boat organisers.

From this historical perspective this thesis is far from a complete account; it only scrutinises the beginnings of Australian legislation targeting the travel brokers of asylum seekers. It does not analyse parliamentary discourse of legislation introduced in later years, such as the *Border Protection (Validation and Enforcement Powers) Bill 2001* or recent measures under the *2010 Anti-People Smuggling and Other Measures Bill 2010* (see CofA, 2010; Evans, 2010; Smit, 2010a, 2010c). Neither does the thesis discuss or outline the development and implementation of the United Nations *Trafficking Convention against Transnational Organised Crime* (United Nations, 2001a) and its associated ‘*Smuggling Protocol*’ (United Nations, 2001b).

Amongst the implications of social research in a postmodernist paradigm (Russell Olsson, 2008) is the retreat of the classical objectivity-subjectivity debate. Its replacement includes notions acknowledging the presence of researcher subjectivity as an asset of strength, suggesting that “*critical persuasiveness*” (Siegesmund, 2008) is of more value. This research has been written from a human rights perspective, and as

noted in Chapter One, it elevates what may well be Australia's most denied section of the UN Refugee Convention – Article 31 (UNHCR, 2006). While successive Australian governments have reiterated the Convention's Article 33 (UNHCR, 2006) notion of “*non-refoulement*” as its cornerstone, it is the view of the researcher that the continuous denial and breach of Article 31 by the Australian State is to be condemned in the strongest possible terms. Therefore, this thesis engages a great deal of “*critical persuasiveness*” in relation to this ongoing denial.

Critical Discourse Analysis as a methodology does not aim to be clinically objective. Neither do the participant interviews (see 2.9 below and Chapter Seven) claim freedom of subjectivity (Siegesmund, 2008). This is borne out in many ways; one of them is worth illustrating. Two Members of Parliament confirmed their willingness to participate in the research. The researcher had never spoken to one of them prior to the interview in Parliament House in Canberra. However, he has an entirely different relationship with the second MP. Since 2001, when the researcher founded the small activist and advocacy group Project SafeCom (Project SafeCom, 2002), he has spoken by phone to this MP probably twenty times, and has met with him on several occasions in Parliament House. If a clinical and *clinically detached* research interview was to be carried out in “*sterile, value-free*” conditions, he would have been forced to assign an interviewer who could comply with the requirement to be free of subjectivity – someone entirely unknown to the MP's and someone who had never heard of the two MP's either.

The post-research participant interviews were conducted as open-ended reflective interviews about the legislation under scrutiny. No set questions were formulated; instead, topics associated with the legislation and parliamentary debates were identified. Sampling is detailed below in section 2.9, while Chapter Seven contains the interview transcripts and analysis. For the most part, a “*non-directive*” response approach was maintained during the interviews, allowing participants to talk at length, assisting with only minor interruptions while affirming the responses with many “*yes-es*” and “*yup's*”. While this produced many detailed responses and encouraged open conversations, limitations were identified, in that not all topics were sufficiently discussed as a result of time limits.

2.8. Sampling Frame and Data Collection

Having determined that the primary research data would consist of parliamentary debates of legislative measures relating to ‘people smuggling’, selecting data initially appeared a simple process. Preliminary scrutiny of relevant literature (e.g. Crock, Saul, & Dastyari, 2006) appeared to indicate that legislation dealing with ‘people smuggling’ had first developed during 1999 under the Howard government. However, media reports following the January 2010 release of classified 1979 Cabinet documents noted that former Prime Minister Malcolm Fraser had “*introduced legislation to outlaw people smuggling*” (Steketee, 2010). Consequently, the Cabinet documents became primary data, and the parliamentary debate of Fraser’s legislation – the *Immigration (Unauthorised Arrivals) Bill 1980* (CofA, 1980c) – which appears to have escaped due attention by many academics, was included in the research. Discourse analysis of debate of this legislation is presented in Chapter Three.

A second selection of parliamentary rhetoric is presented as part of the introduction to the Howard government’s positioning *vis-à-vis* human rights and asylum seekers in Chapter Four. This selection analyses sections of a 1996 Refugee Week speech by the Howard government’s Immigration Minister Philip Ruddock MP. The speech was selected because of its particular portrayal of “unauthorised arrivals” by the Minister.

The third set of primary data consists of the parliamentary debate of legislation first presented as the *Migration Legislation Amendment Bill (No. 2) 1996*. The Bill was subsequently known as the *Migration Legislation Amendment Bill (No. 2) 1998*, the *Migration Legislation Amendment Bill (No. 2) 1998 [1999]* and *Migration Legislation Amendment Bill (No 1) 1999* before becoming law as the *Migration Legislation Amendment Act (No. 1) 1999*. Analysis of debate of this legislation is presented in Chapter Five. The fourth and final dataset consists of the Hansard record of the debate of the *Border Protection Legislation Amendment Bill 1999*.

Parliamentary Bills are supported by a number of standard publications to clarify the legislative proposal. Non-party political ‘*Bills Digests*’ are published by the Research Section of the Parliamentary Library, while ‘*Explanatory Memoranda*’ are issued by the relevant Minister. Additionally the Scrutiny of Bills Committee (SSBC, 2010) considers human rights implications and constitutional issues arising from legislation and may

issue an ‘Alert’ or mention a Bill its ‘Alert Digest’. All these documents are included as data. In addition, a number of significant external reports and documents are included to reflect “*wider social and political context*” (Walter, 2009, p. 17). All external documents were selected because Members or Senators mentioned or quoted them during the debates. In discourse analytical terms, they were ‘intertextuality’ (Van Dijk, 2000b; Shank, 2008, p. 217) occurrences or were cited to support ‘authoritative claims’ (Van Dijk, 2000b, p. 215).

The January 2010 release of declassified 1979 Fraser Cabinet documents (CofA, 1979c) was reason to include the main documents in the research data. The *Legislation Against Unauthorised Boat Arrivals* (CofA, 1979b) and the *Review of the Indo-Chinese Refugee Situation* (CofA, 1979a) unexpectedly became primary data for the research.

2.9. Participant sampling

The sample population for post-research interviews was drawn from all Members and Senators who participated in debates of the legislation *and* who were electoral representatives in the Federal Parliament when their participation was requested in March 2010. Parliamentary debates of the three Bills took place between 1996 and 2001 and many MP’s and Senators have since resigned, retired, or have passed away.

Nobody remains in the Parliament of the Senators and MP’s who participated in the debate of the *Immigration (Unauthorised Arrivals) Bill 1980*. For the *Migration Legislation Amendment Bill (No. 1) 1999*, nine of these MP’s and Senators participated in the debates. Two MP’s and Senators were asked to participate in a post-research interview. For the *Border Protection Legislation Amendment Bill 1999*, 25 MP’s and Senators participated in the debate; nine of these MP’s and Senators were asked to participate in a post-research interview. Another four MP’s and Senators were asked to participate when initially the *Protection (Validation and Enforcement Powers) Bill 2001* was included in the research design. Analysis of this Bill was not conducted when the research schedule indicated that inclusion of this fourth Bill was not feasible.

Consequently, a total of fifteen MP’s and Senators were asked to participate by postal mail. Of these fifteen, ten responded. Six MP’s and Senators declined to participate while four MP’s and Senators agreed to an interview. Following an unexpected August

2010 Federal election, one of the selected and confirmed subjects retired from politics and could not be contacted; this MP was unable to be interviewed. Another confirmed subject retired from politics, and was interviewed at his private residence in Melbourne. The third subject was interviewed in Parliament House in Canberra. The fourth confirmed subject cancelled the interview five hours before it was scheduled to take place in Parliament House. Following the unforeseen election, the mailout was repeated, restricted to those who had not yet responded.

The mail-out response rate of 66% (10/15) could be no more than an indication of good office administration efficiency. The claim that 40% (4/10) of those who responded agreed to participate is deceiving: of all those who were approached, 26% (4/15) agreed to an interview, and corrected for the late cancellation this percentage changes to 20% (3/15). Viewed conversely, 33% (5/15) did not respond to the mail-outs at all, and 60% (6/10) of those who responded, confirmed they would not participate.

Many factors can have contributed to respondents not responding or declining to participate. If clashing appointments are ignored, then the degree to which a parliamentary issue becomes a politically live and contested one may be a factor; in April 2010 the Rudd government struggled with controversial and fiery issues over asylum seekers (Project SafeCom, 2009h) while it introduced new anti-people smuggling legislation (Smit, 2010a). Following the 2010 ousting of Kevin Rudd as Prime Minister, the minority Gillard government redefined responses to people smuggling and extraterritorial processing of asylum seekers and it remained a controversial issue (ABC-TV, 2011; Gillard, 2010). Requesting politicians to participate in a review – by ‘*an outsider*’ – of legislation of a politically contentious issue may constitute a challenge in itself. Politicians may feel comfortable during debates of such issues in the Parliament, but a researcher’s interview may constitute a considerable challenge to their ‘*comfort zone*’. One of the two respondents appeared uncomfortable during the first half of the interview and the researcher had the impression that the resulting attitude was one of ‘aggressive-defensiveness’.

2.10. Ethics

The research conducted in this thesis, *The Political Origins and Development of Australia's People Smuggling Legislation (4563)*, was approved under NMHRC guidelines and Edith Cowan University's associated Policy on Ethical Conduct in Human Research, which is underpinned by the Australian Code for Conducting Responsible Research. Notice of Approval was received on Wednesday, 10 February 2010.

2.11. Data analysis

Throughout Chapters Three to Six, text selections from speeches by Members of Parliament and Senators are analysed using Critical Discourse Analysis. Systematic selection of paragraphs and sections of the Hansard transcripts took place following a number of readings of the Hansard transcripts of the parliamentary debates in the House of Representatives, Senate and Committees. The same process was followed for Bill Digests and Explanatory Memoranda. These transcripts and documents were initially scrutinized using a number of criteria drawn from the Four Research Questions. First, the question was asked how the *travel facilitators* transporting asylum seekers were described – whether they were simply called ‘people smugglers’ or whether other labels and descriptions were used. Second, they were scrutinized by investigating how *asylum seekers* were depicted and which labels were used to describe them. Third, the documents were scrutinised about whether they included references to *crew and skippers as opposed to organisers*. Fourth, any mentions of the UN Refugee Convention, especially *references to Article 31*, were scrutinised. Fifth, the debate transcripts were scrutinised in relation to *how depictions of asylum seekers related to depictions of people smugglers*, and questioning if there were any links.

The above five debate scrutiny criteria were formulated in the early stages of the research; they reflected the formulated Four Research Questions. Introductory speeches – *Second Reading speeches* and *Second Reading Reply speeches* (usually delivered) by the Opposition spokesman for Immigration – were accorded a higher level of importance because of their formal nature; they contain government justifications for introducing the legislation and the level of opposition support offered for the proposed measures.

This initial investigation extended the inquiry of primary sources to a number of external documents noted by MP's and Senators during the debates. Citations were noted, and these documents were requested from the Parliamentary Library with the help of some MP's and Senators who had declared their preparedness to assist in acquiring these documents. Upon release, the January 2010 classified 1979 Cabinet documents were added to the collection of primary data. The scrutiny process outlined above was also applied to the external documents. In doing so, it appeared that some documents contained terms and labels used with '*saturation levels*'. The *saturation level* findings from the 1979 Cabinet documents were tabularised (see Appendix 2: Language use in two 1979 Fraser Cabinet Documents). Finally, Chapter Four of this thesis was designed as an introduction to the Howard government's relationship with human rights and UN Conventions. In view of the legislation enacted during his government with the Hon Philip Ruddock as his only Immigration Minister, one more Hansard transcript was added as primary data: the Minister's first UN Refugee Week speech in June 1996.

Following this initial selection and scrutiny, all Hansard debate transcripts were revisited from a Critical Discourse Analysis (CDA) perspective. Those sections of the speeches that contained references to the subject matter of the Four Research Questions were selected for CDA analysis. Using CDA they were investigated for the presence of manipulative usage of labels and the presence of rhetorical constructs. Those that stood out in the analysis using this process were included in the chapters of the thesis. However, not all suitable sections of parliamentary discourse during the debates have been included in this thesis. The huge collection of data forced a restrictive representation; there simply was no space for a complete, step-by-step analysis of the many speeches by all parliamentarians. Sufficient space was provided to maintain a clear, historical perspective for the development of the legislative measures, and considerable effort has been invested to maintain contextual cohesion.

3. Historical Overview

3.1. Introduction

This thesis investigates the development of Australia's formalised responses to maritime voyage organisers as framed in its current 'people smuggling' legislation. However, the origins of these State responses are not merely located in the years 1999-2001 when several measures were approved as Acts of Parliament. If Australia's current responses to 'people smuggling' are to be investigated, then the response to uninvited maritime asylum seekers also needs a broader investigative inquiry. Australian anxieties around the uninvited arrival of asylum seeker vessels and the State response have some of their roots and origins in earlier State responses and community reactions to 'outsiders'. Therefore, while this chapter highlights the responses to the first boat arrivals during the 1970s, it sets out by highlighting some early responses of the colonies to those who were regarded as 'the other'. These 'other' groups were often Chinese workers and non-Caucasians: anxieties as well as legislated attempts to exclude some 'outgroups' from Australian society predate Australian Federation, and they continued when the States shared their *Common Wealth*. Therefore this chapter also includes little known evidence that responses to 'the Chinamen' even caused the Constitution's drafters to dramatically leave out central notions of 'equality under the law' from Australia's central Federation document.

Considering these historical factors, this chapter begins with a section on the development of Australia's national character since British convicts and settlers first arrived. It then explores issues from the 1901 Federation of Australia via the "White Australia Policy" through to WWII until the mid 1970s. Additionally, the chapter attends to responses by immigration officials to the 1951 UN Refugee Convention when Australia acceded to the UN Treaty in 1954. Following this section, the chapter presents the specific context of Fraser's response to maritime asylum seekers attempting to reach Australia. This section highlights some hitherto unpublished aspects of this period. First, it challenges commonly accepted claims about the origins of the term 'queue jumper', presenting new evidence around the term's first usage as one of Australia's most frequently used political rhetorical devices. Second, it presents material from newly declassified 1979 Fraser Cabinet documents (CofA, 1979c). These documents – submissions to Cabinet and January (CofA, 1979a) and June (CofA, 1979b) Cabinet Minutes – provide new evidence of the first response to boat arrivals. They confirm

intentions by immigration officials to severely punish asylum seekers for arriving without prior authorisation and to impose harsh criminal sentences on their vessels' skippers and crew. These proposals can be viewed as a blueprint for future Australian responses to asylum seeker vessels: almost all measures presented to the 1979 Fraser Cabinet meetings were gradually implemented during the following three decades or returned as political considerations.

Throughout this chapter the Immigration Department's dominant role in determining policy settings emerges as a recurring theme. While similar claims based on government documents research have been made elsewhere (Hickey & Shackelford, 2010; Morgan, 1992; Palmer, 2009), the central position of immigration officials, charged with implementing measures in response to boat arrivals has generally been underestimated. Having just emerged from its often cruel and strongly punitive role as the 'enforcers' of the White Australia Policy, its 'culture of control' has been acknowledged (Jupp, 2002, p. 63), but its role as *lobbyists* of successive governments has been underestimated in critical reviews of Australia's responses to boat arrivals. In retirement Fraser emerged as a fierce critic of the Immigration Department (Fraser & Simons, 2010), yet his own 1979 Cabinet documents support the claim that immigration bureaucrats maintained their initial punitive response to boat arrivals under his government and beyond, attempting to implement harsh measures through successive Immigration Ministers.

While this chapter presents Australia's first response to boat arrivals, it also functions as a critical review of Fraser's response to the Indochinese "*boatpeople*". In retirement, since mandatory detention of 'unauthorised arrivals' escalated under the Howard government (Marr & Wilkinson, 2004; Smit, 2009), Fraser joined many others who spoke out against the harsh policies, especially after detention incidents escalated in 2001 (Mares, P., 2001; O'Neill, 2008). Fraser advocated for moderate policies, frequently recalling his own policy initiatives supporting multiculturalism from 1978 onwards. He advocated for a return to fuller compliance with international legal obligations to asylum seekers, while criticising contemporary lack of refugee policy bipartisanship. Fraser maintained his outspoken voice during the first decade of the century (See e.g. Fraser, 2010), even advocating for better treatment of 'boat arrivals' (ABC-AM, 2011; Fraser, 2011). Many describe him as an example of how under good leadership Australia could respond to refugees and asylum seekers, describing him as an "*unacknowledged humanitarian*" (Steketee, 2010). Others such as Manne & Corlett

argue that Fraser acted with “*political decency*” (2004, p. 2), while Manne (2010) declares the period of his handling of the Indochinese refugee influx “*the halcyon years for boatpeople*”.

Fraser’s contemporary advocacy ought not to be undermined, but a romanticised outlook on his Government can lead to serious factual and historical distortions and omissions. Barrister and refugee advocate Julian Burnside QC claimed (Burnside, 2010) that Fraser took in 25,000 “*boatpeople*” per year during the Vietnamese outflow years: while Burnside’s numbers are not erroneous, labelling them as “*boatpeople*” belies their arrival by plane after selection from ASEAN⁸ refugee camps. Compassion and generosity to “*boatpeople*” repeatedly bestowed on Fraser distorts the fact that Fraser implemented a fully developed policy to “*stop the boats*”, intended to prevent them from arriving in Australia – including sabotaging their departure in Malaysia (Martin, 1989; Morgan, 1992). To juxtapose Fraser and hardline Liberal Prime Minister John Howard portray Howard negatively while Fraser receives high acclaim, but this widely accepted juxtaposing framework limits a fulsome and objective debate about Australia’s obligations to unannounced asylum boat arrivals. If Australia wants to adhere to United Nations obligations outlined in the 1951 Refugee Convention (UNHCR, 2006) then questioning how the discourse around maritime asylum seekers developed since the first arrivals under Fraser should not be limited by romantic views of past governments. This chapter attempts to remove this restriction, assisted by Fraser’s 1979 Cabinet documents and his 2010 *Political Memoirs* (Fraser & Simons, 2010). In addition, Dr Nancy Viviani’s critical investigation of Australia’s response to Vietnamese refugees (Viviani, 1984, 1996; Viviani & Lawe-Davies, 1980) became a frequently cited credible source.

Unbeknownst to many – including those researching his response to the Indochinese refugee outflows – Malcolm Fraser is Australia’s first PM depicting asylum seeker voyage organisers as ‘traffickers’, imposing harsh prison sentences on them. Using Critical Discourse Analysis, this chapter analyses sections of the parliamentary debates of the legislation criminalising organised – and deemed ‘commercial’ – voyages by sea to Australia: the *Immigration (Unauthorised Arrivals) Bill 1980* (CofA, 1980a). It

⁸ ASEAN: Association of Southeast Asian Nations, a regional cooperative economic and social framework group, established in 1967 by Indonesia, Malaysia, Philippines, Singapore and Thailand. See <http://www.aseansec.org/>

provides evidence from politicians' statements and Parliamentary debate⁹ and investigates the development of the Parliamentary discourse of asylum seekers and their voyage organisers. Results are measured against the four research questions formulated in Chapter 1 and argued in Chapter 2. The chapter concludes with a section describing the arrival and deportation of the only vessel that was deemed to be such a 'trafficker's enterprise' and to which the legislation was applied: the VT 838, a vessel which found its six crew and all 140 passengers deported under a media ban on Boxing Day 1981.

⁹ An extensive chronological study of the Parliamentary debate of the Bill was published elsewhere (see Smit, 2010b).

3.2. From the Colonies to Fraser

3.2.1. Racism, Exclusion and Fear

To say that Australia is ‘*a racist country*’ need not be a statement with derogatory intent. Since British convicts and settlers arrived in the late 18th Century, Australia developed deliberate measures to exclude groups seen as ‘outsiders’. Several decades before independence from Britain, the colonies implemented legislation confirming these exclusionist attitudes. Mike Stuchbery’s summary (2010) of Australian asylum seeker fears details implementation of the New South Wales *Chinese Immigration Act of 1861*, the Victorian *Chinese Immigration Act of 1855* and describes resentment about the presence of Chinese amongst supporters of the conviction that the colonies should maintain their British dominance. Immediately upon Federation in 1901, Australia’s government proclaimed a national policy of racial exclusionism, the *Immigration Restriction Act of 1901* (CofA, 1901b) which defined what became known as the “*White Australia Policy*”. The policy was to establish the foundation for one race, supporting the establishment of a British-only society. “*White Australia was based on the paradox*”, argues Latrobe’s Dr Marilyn Lake, “...*that democratic equality required racial exclusion.*” Lake continues “*that meant ... the exclusion of ... ‘servile races’*” (Hickey & Shackelford, 2010). A documentary about the *White Australia Policy* and the Immigration Department includes a comment about Australian attitudes around the beginning of the 20th century: “*to many, it seemed, it would always be that way; Australia would always be British and white*” (Morgan, 1992). Although this thesis cannot do justice to the material by means of including a full exploration of the White Australia Policy, it is essential to note its central role in the definition of Australia’s responses to outsiders: “*it cemented*”, argues Burke, “a pivotal image of the Other into the foundations of the Australian identity” (Burke, 2008, p. 36).

Exclusion of the ‘*unwelcome Chinese*’ in Australia played a significant role in deliberations when Australia’s *Founders* came together during the 1897-98 Australasian Federal Convention. Australia’s Constitution could have provided a unique opportunity to create *equality for all* in the new Commonwealth nation, but several motions to achieve this were rejected. Drawing from transcripts of the debate, David Marr contends during his 2010 Victorian Human Rights Oration that during “*one auspicious February 1898 afternoon*” the gathering rejected three motions proposed for inclusion in the

Constitution by NSW delegate Richard O'Connor. These precluded the States from making laws "*abridging any privilege or immunity of citizens of the Commonwealth*", depriving anyone "*of life, liberty, or property without due process of law*" and denying any residents "*the equal protection of its laws*" (Marr, 2010, p. 7). Victorian Delegate Isaac Isaacs, representing O'Connor's opponents, argued that equal rights provisions in the USA Constitution were designed "*to protect the blacks*", and the danger would be that such clauses would "*protect Chinamen in the same way*".

These latent fears of the Chinese or Asians lingered far beyond the days of Federation, and they resurfaced during the Second World War. The fears of 'yellow hordes' invading Australia from the north escalated during the bombing of Darwin by 188 Japanese aircraft on 19 February 1942 (NLA, 2001) escalated these fears. The extreme nature of this fear for a Japanese invasion is depicted in a 1941 war mobilization poster – see Plate 3.1 below – where Japanese warships and aircraft are depicted not just as approaching Australia from the north, but surrounding Australia in its entirety. In post-war decades this deep-seated fear found its expression in the term "*Yellow Peril*", and during the Cold War years they were expressed as fears of communist invasions: "*Reds Under the Beds*" (Morgan, 1992).



Plate 3.1 – Australian Aircraft Manufacturing poster produced during WWII, depicting Australia being “Ringed with Menace” – surrounded by Japanese warships and aircraft (see DAP, 1941)

When Australia signed the *1951 UN Refugee Convention* in 1954, the Immigration Department had been – and remained – the enforcer of the *White Australia Policy* (Hickey & Shackelford, 2010; Morgan, 1992) under the *Immigration Restriction Act* (CofA, 1901b) since its 1945 establishment. Additionally it was now charged with the operation of the Refugee Convention, Australia’s most frequently activated human rights instrument. Serious conflicts of interest could be expected, and, disturbingly so, were already present. In Morgan’s documentary (1992), historian Dr Suzanne Rutland¹⁰ presents her discovery of documents used by departmental officers assessing Displaced Persons in Europe, where they were required to ask whether applicants were “*of Jewish origin*”, not because they should apply preferential treatment to them, but so they could exclude them: of all 170,000 Displaced Persons accepted since 1947, Australia selected just 500 Jews. The same form then asks whether applicants are “*of pure European origin*” before asking officers to determine whether any family member “*is not of pure Aryan descent*”. This form was used by the Immigration Department until the mid-1950s.

There is evidence of entrenched resistance during the 1950s in the Immigration Department against several aspects of the Refugee Convention, including Article 31. Article 31 implores participating States to not punish refugees for arriving ‘illegally’ to seek asylum or to discriminate against them on that basis. Quoting an immigration official in 1950, Palmer (2009) depicts the reluctance by Australia following circulation of a draft of the Convention by the *Ad Hoc Committee on Refugees and Stateless Persons*:

It is rather ridiculous to ask any State to subscribe to a convention which would deter it from imposing a penalty on an undesirable refugee who deliberately flouted its immigration law. To my mind it would be a definite step towards abandoning effective control over immigration (Palmer, 2009, p. 292).

About ‘unauthorised arrivals’ Immigration Department Secretary Tasman Heyes noted:

[that they] should not be discriminated against and should not be subjected to any penalty for illegal entry, would be a direct negation of the immigration

¹⁰ Associate Professor, department of Hebrew, Biblical and Jewish Studies, Faculty of Arts, the University of Sydney. See http://sydney.edu.au/arts/hebrew_biblical_jewish_studies/staff/suzanne_rutland.shtml

policy followed by all Australian Governments since Federation (Palmer, 2009, p. 292).

Australia's 22 January 1954 accession to the Refugee Convention had no visible impact on the Immigration Department, nor did it herald any changes in directions. No government press release announced Australia's accession (Palmer, 2009, p. 292), no flags waved from public buildings; no directives came from Prime Minister Robert Menzies¹¹. Immigration officers kept "*simply treating refugees as ordinary immigrants*" (Price, 1986, p. 82) and rejected European Displaced Persons if they were "*too swarthy*" (Morgan, 1992); or, as was the case with "*a very dark gypsy with crinkly dark black hair*", because he was thought to become a "*stare object*" at Sydney's Martin Place (Martin, 1989, pp. 32-35). The White Australia Policy was never publicly named – the label "*non-European policy*" was used – but it dominated attitudes of immigration officials, as it had since Federation. Exclusionism, harsh measures, keeping out "*undesirable races*", or carrying out large-scale deportations (Nicholls, 2007) were central operational tools in the Immigration Department (Morgan, 1992). It had been a department governed by controlling strategies and control measures, and this control remained part of its strategic responses and kept defining its corporate culture. As recently as 2002 Jupp (2002, p. 63) claimed that "*a culture of control certainly exists and is usually shared by the Minister, regardless of party*".

The White Australia Policy officially ended during 1972 (Jupp, 2002, p. 37) under Malcolm Fraser's predecessor, reformist Prime Minister Gough Whitlam¹². Whitlam's colourful Minister for Immigration Al Grassby, enthusiastically pursuing changes in direction, was the energetic activist politician who in many ways embodied the notion of Australia's new multiculturalism. Jupp argues that at the time Whitlam and Grassby thought the Immigration Department was so committed to White Australia, that it was "*beyond redemption*" (2002, p. 62). Whitlam's reformist purpose for the department cost Grassby dearly: in 1974 he lost his seat following what Whitlam claims to be "*the most intensive and virulent racist campaign yet recorded in Australia*" (Grassby, 1979, p. ix). Following Grassby's election loss, Whitlam was unable to convince any of his MP's or Senators to take responsibility for the Immigration portfolio. His decision to

¹¹ United Australia Party (1st term) and Liberal Member for Kooyong, Robert Gordon Menzies, was the 12th Prime Minister of Australia from 26 April 1939 to 28 August 1941 & 19 December 1949 to 26 January 1966

¹² Edward Gough Whitlam, Labor's Federal Member for Werriwa, was the 21st Prime Minister of Australia from 2 December 1972 to 11 November 1975

devolve duties to other departments marked the 1974-1976 abolition of the Immigration Department since its 1945 inception (Jupp, 2002, p. 37).

When Fraser came to power following the 1975 election he reinstated the *Department for Immigration and Ethnic Affairs*. It was to be expected that its culture of control would still be present and that considerable ambivalence about the White Australia Policy's abolition would linger. The test of its harsh control culture against its resolve to treat asylum seekers in accordance with Article 31 of the Convention soon arrived. The first Vietnamese refugee boat with six passengers (Marr & Wilkinson, 2004, p. 45), the *Kiến Giang*, arrived near Darwin on 28 April, 1976 (Viviani & Lawe-Davies, 1980, p. 4), unannounced, “*unauthorised and unexpected*” (Rodd, 2004, p. 3).

3.2.2. *The first boat arrivals*

The *Kiến Giang*'s arrival went largely unreported, but more boats followed, and public opinion about these unexpected arrivals developed with a mixture of negativity, invasion fears and fears of Asians. A December 1977 Morgan Gallup poll showed overwhelming public hostility about Vietnamese refugee arrivals. Ninety eight percent of respondents had heard of the arrival of Vietnamese “*boatpeople*”, 80% wanted to stop or limit them. Only 20% of those who wanted to set arrival limits wanted a 2,000 limit (Morgan Gallup, 1977). At the time of the survey around 1,000 Vietnamese had already reached Australian shores following the *Kiến Giang* (Project SafeCom, 2010b). In July 1978 the *Canberra Times* found that 57% opposed accepting Darwin's boat refugees (Viviani, 1984, p. 84). When subsequent surveys were conducted in January and February 1979 asking similar questions (Morgan Gallup, 1979b, 1979c), similar limit-imposing percentages were recorded, but now respondents wanted to fix annual limits between 10,000 and 15,000. This survey was conducted following the Fraser government's announcement of an annual intake of 10,000 refugees. In a detailed study during June 1979 (Morgan Gallup, 1979a; Stokes, 2010) 53% of respondents thought Australia should accept boat refugees while 28% thought they should be sent back. People were shown cards with annual intake quotas (values: 1,000, 2,000, 5,000-7,500, 10,000, 12,000-15,000 and 20,000), but 37% wanted to reduce the 10,000 intake quota and 25% didn't want any quotas at all. The survey results are significant: they seemed to be influenced by government policy. The first survey showed respondents limiting the intake to 2,000 (after 1,000 Indochinese had arrived); the subsequent survey

showing a limit of 10,000–15,000 followed Fraser’s announcement of a 10,000 annual intake. From the surveys, it appeared Australians were willing to accept political leadership about the issue of Vietnamese asylum seekers.

In July 1978 the Fraser government intensified its ‘border protection’ measures along the northern coastline between Geraldton and Cairns. Transport Minister Peter Nixon explained the measures were needed because of “*increased evidence of smuggling, unauthorised landings, quarantine breaches and other illegal activities along the northern coastline*”. *The Australian’s* 10 July 1978 edition (Holden, 1978) summarises the program: 13 chartered surveillance aircraft would increase annual civilian surveillance flying time from 400 to 21,000 hours, and nine instead of seven naval patrol boats would monitor the coastline. Nixon linked these significant border surveillance increases to the forthcoming proclamation of a new 200 nautical mile fishing zone surrounding Australia (known as the *Exclusive Economic Zone*). While the newspaper headline declares a “*war on smugglers*”, it asserts that the principal role of fleet and aircraft “*will be quarantine checks but they will also provide a service for fisheries, customs, immigration and other authorities*”. Further to increased aircraft sorties and naval activity, Nixon announced another element of the initiative. He claimed the program sought “*maximum practical effectiveness at reasonable cost*” - through Australian civil engagement in the program by developing a “*volunteer coast watcher system*”. Announcing a dedicated toll free Canberra telephone number, Nixon envisaged that “*licensed operators*” would be “*reporting illegal intruders*” (Holden, 1978).

The July 10 *Australian* also reports (Atherton, 1978) comments by Opposition leader Bill Hayden, speaking at the end of a tour through the ASEAN region. Hayden comments that most accepted in Australia under its annual refugee intake would be ‘boatpeople’ while many thousands still awaited resettlement in Thailand and Malaysia. Hayden depicts those attempting to reach Australia by boat as “*those with money could jump the queue*”. Hayden also alleges that those trying to reach Australia through voyages organised by Chinese businessmen in “*a lucrative racket*” are “*hijackers*” sailing under “*the ostensible but deceitful guise of being refugees*”, and he calls for an “*overhaul of refugee policy*”. He warns Immigration Minister Michael MacKellar that he “*could get a frosty reception in Thailand*”. *The Australian* uses the phrase – attributed to Hayden, but not repeated in the interview – “*Grafters aid boatpeople, says*

Hayden” in the newspaper headline. Mr Hayden’s statement and the report of Minister Nixon’s announcements need scrutiny and their rhetorical utterings are analysed below.

3.2.3. Nixon and Hayden: Analysis

Both media statements deserve analysis because they are early examples of *the new political rhetoric* about boat arrivals. The statements were delivered just two months after a significant Immigration Department’s briefing of government and opposition MP’s (discussed below, see “*Queue Jumpers*”). This meeting had argued that Vietnamese boat arrivals should be called *queue jumpers*. With this, the meeting had proposed public use of one of Australia’s most powerful and enduring rhetorical devices. Hayden and Nixon’s media statements were examples of similar rhetoric in action.

Nixon justifies the increased border protection measures because of “*increased evidence of smuggling, unauthorised landings, quarantine breaches and other illegal activities along the northern coastline*”. By linking these issues he performs a “*multi-part listing*” (Guilfoyle & Hancock, 2009) or “*four-part listing*” (Guilfoyle & Walker, 2000). Such constructs are used in political rhetoric to “*manipulatively conjoin several elements to achieve a purpose*” (Guilfoyle & Hancock, 2009, pp. 125, 129). Using this construct, Nixon assures Australians that the government looks after the border – but in doing so, he paints the Vietnamese boat arrivals as “*illegal activities*”, even alleging “*smuggling activity*” – without detailing whether he’s talking about smuggling of products, produce, black market items, or whether he intends to convey a message about ‘*people smuggling*’. The headline “*War on Smugglers*” amplifies Nixon’s implied message. Nixon also pairs “*unauthorised landings*” with “*other illegal activities*” in his multi-part listing. With this he conveys the message that the government regards Vietnamese boat arrivals as “*unauthorised arrivals*” which are, or may be regarded, as “*illegal activity*”. Nixon’s announcement of a “*Volunteer Coast Watch*” completes his intent. Following his claim of “*increased evidence of smuggling*” and “*unauthorised landings*” while downplaying the principal role of the task force to conduct “*quarantine checks*” Nixon locked in asylum seeker vessels in the category of “*illegal activity*” while proposing the civil community could report them to Canberra authorities. In this he validated any negativity around asylum seeker vessels and mobilized the community. He had created an outlet for those with fears for a ‘*northern invasion*’ and those who clung to their ‘*Yellow Peril*’ anxieties. With the announcement, Nixon validated the

notion that those arriving unannounced were doing something ‘illegal’, and that they were linked to ‘smugglers’. Nixon’s announcement of the planned proclamation of the 200 nautical mile fishing zone was a confirmation that the Fraser government planned to shift the active border for any vessel, including asylum seeker vessels, away from the shoreline – effectively clearing the way for any future initiatives to prevent landfall of boats. Once this *Exclusive Economic Zone* was proclaimed, unknown or unidentified vessels inside this zone could be declared ‘Suspected Illegal Entry Vessels’¹³. Its proclamation – shifting the border 200 nautical miles from the shoreline – was a government measure strengthening the perception of ‘illegality’ and ‘intrusion’ for Indochinese boat arrivals.

Hayden uses strong language in his statement. His blunt warning to Immigration Minister Michael MacKellar, that he “*could get a frosty reception in Thailand*” underlines the claim that he used strong oppositional rhetoric while suggesting a laissez-faire entry policy by the Fraser government to justify his attack. His only direct quote is recorded in two paragraphs:

1. “*It’s quite clear from what I’ve heard that a lucrative racket has been developed in providing facilities for those who can afford to buy a passage to Australia.*”

Hayden first establishes an authoritative source (“*from what I’ve heard*”) to strengthen his claim (Van Dijk, 2000b, p. 215) but refrains from identifying his source or asserting conclusive authority. Taken with the next paragraph, the labels “*lucrative racket*” and “*buy a passage*” are loaded labels. The use of derogatory, negative and punitive depictions of asylum seekers and refugees ‘*who have money*’ as ‘*fake*’ or ‘*bogus*’ refugees first developed as a rhetorical device under the Fraser government. The omitted element in such asylum seeker debates is the fact that anyone who travels pays someone else for the journey. Those who charge for journeys do not become “*racketeers*” when they transport asylum seekers, but by implication Mr Hayden – as will many other politicians in the ensuing years – seeks to depict travel agents or brokers this way.

¹³ For “*SIEV*” See the List of Acronyms and also Chapter 4 and 5 below

2. “*It is thoroughly undesirable that the Government has allowed hijackers to leave for and to settle in Australia under the ostensible guise of being refugees.*”

In the second paragraph Hayden uses extreme labelling to depict asylum seekers paying those in the “*lucrative racket*”. Using an ‘extreme case formulation’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) he calls the asylum seekers “*hijackers*” who travel to Australia “*under the ostensible guise*” of presenting as refugees; he uses a nasty variant of the ‘*fake*’ or ‘*bogus*’ label. Hayden’s statement is indeed extreme, and this July 1978 news report may well represent the first public example of ‘people smuggler’ rhetoric. Hayden’s statement also represents the first example of a negative or even ‘criminalising’ asylum seeker label *by association* – because they used ‘*racketeers*’. *The Australian* amplifies the extreme nature of Hayden’s rhetoric by using the headline “*Grafters aid boatpeople*”.

Transport Minister Nixon had referred to the forthcoming proclamation of the *Exclusive Economic Zone*. This would shift the border away from the 3-mile limit – to 200 miles from the shoreline. Six months later, in a January 23, 1979 submission to Cabinet, the *Task Force on Refugees from Indochina* – the interdepartmental committee chaired by Immigration and Ethnic Affairs – noted the 3-mile limit imposed restrictions on taking forceful action against vessels:

Currently, countries may not use force to intercept or interfere with the passage of vessels on the high seas. Australia could not therefore turn around refugee boats until they had entered territorial waters (currently 3 miles from Australia). Consideration should be given to the possibility of securing change to international maritime law to allow effective action involving force against vessels such as those which might ferry unauthorised arrivals to Australia; such powers might even extend to the forcible return of such a vessel to its previous port of call, the country of its registration or some other country. This would inevitably be a long-term exercise (CofA, 1979a, Attachment C, p. 22, §18).

The 23 January Cabinet Minutes endorsed that the Task Force

Consider and recommend legislative changes to provide effective powers over unauthorised boat arrivals in Australian waters and severe penalties on persons involved

in the use of vessels bringing people to Australia without prior authority, particularly for profit (CofA, 1979a, p. 3, item c).

3.3. 1979 and the Cabinet documents

Two 1979 Fraser Cabinet meetings received significant submissions and proposals (CofA, 1979a, 1979b) suggesting a range of policy responses to Indochinese boats arriving in Australia. While small vessels had regularly arrived since 1976, their number was negligible in comparison with the total number of Indochinese departing Vietnam attempting to make landfall in Malaysia, Singapore, Thailand, Hong Kong and Indonesia. The precise number of boats making landfall in Australia between 1976 and 1981 is unclear. Phillips & Spinks (2009, p. 17) note that no data specifying boat numbers are available prior to 1989, Schloenhardt (2000) puts the number at 55, Betts (2001, p. 34) and Viviani (1984, p. 85) just cites passenger numbers, and Fraser's Immigration Minister Ian Macphee¹⁴ informs Parliament in May 1980 (House Hansard, 1980c, p. 2517) that 53 boats had arrived since 1976. An all-time table of boat arrivals developed by the author lists the number at 56 (Project SafeCom, 2010b), supported by Immigration Department reports cited by Grewcock (2009, p. 97). According to these tables, they carried 2,059 passengers.

The Cabinet submissions (CofA, 1979a, pp. 2,3) include proposals to

- reduce migrant benefits for those arriving without prior authority;
- persuade other countries to cease prioritising passenger resettlement from *“trafficked vessels”*;
- ensure that *“providing first refuge should be left to other countries”*;
- explore securing changes to international maritime law, allowing forcible return of unauthorised vessels: *“forcibly remove unauthorised boat arrivals”*.

The submissions included a proposal to establish an *“international reception centre”*, adding that *“under no circumstances should Australia offer ... such a centre on its territory”* in order to *“diminish the likelihood of boat people seeking first refuge in Australia”*. A remote island location *“with natural protection”* is suggested *“to secure*

¹⁴ Fraser's Immigration Minister Ian Macphee replaced Michael MacKellar in the portfolio at the end of 1979.

containment” (CofA, 1979a, p. 25, Attachment 3). Notably, British government documents reveal 1979 telephone communications from Prime Minister Margaret Thatcher to Fraser, suggesting purchase of an island “*as a place of settlement*” for them all in Indonesia or the Philippines (Narushima, 2009).

In his *Political Memoirs* (Fraser & Simons, 2010) Fraser emphasises that many legislative proposals were not from MacKellar but from immigration officials (p. 419). Fraser is not just adamant about the origin of the legislative proposals, but he also claims a presence of “*ultra-conservative and reactionary elements*” in the department, arguing sections were marked by a “*strong racist streak*”. Frasers’ biographer Margaret Simons claims that the Fraser government observed its international obligations under the Refugee Convention prohibiting “*imposition of penalties on those seeking asylum for arriving without permission or papers*” (p. 419). Yet immigration officials, as evidenced from the Cabinet documents, were determined to impose those same prohibited penalties on ‘unauthorised arrivals’ and their skippers (CofA, 1979a, 1979b, 1979c). Fraser also claims to have strongly rejected many legislative proposals from immigration officials. In relation to proposals for the compulsory detention of all boat people on arrival in a proposed reception centre, Simons claims that Fraser confirmed to her that “*MacKellar did not push it*” but that “*it originated within the Department of Immigration and Ethnic Affairs.*” Fraser comments: “*We disposed of it within thirty seconds. I thought it was a piece of racist barbarism*”. Simons claims Fraser’s own department “*consistently advised against the ideas of a reception centre*”, and opposed “*refusing refugees social security*”, because it would not work as a deterrent against desperate people. There were also “*grave reservations*” about any reception centre, as it would “*damage Australia's international reputation*”. “*...it was not humane*” or “*in accordance with Australia's international obligations...*” (Fraser & Simons, 2010, p. 419).

Following the book’s publication Fraser reminded radio (ABC-RN, 2010) and television (ABC-TV, 2010) audiences he had held his ground faced with community hostility against Vietnamese refugees, unlike Australian Prime Ministers succeeding him. However, Fraser did not reject all proposals: he supported other Immigration proposals that would affirm and validate its inflexible, hardline and punitive policy intent for ‘unauthorised arrivals’. There is no evidence that Fraser implored the Immigration

Department that such ‘unauthorised arrivals’ had distinct, clearly expressed and unambiguous rights under the Refugee Convention’s Article 31.

According to Fraser, the 1979 Cabinet submissions paint a picture “*apocalyptic in their predictions*” (Fraser and Simons, 2010, p. 418). The papers propose the scenario, given that Malaysia has turned boats away, that “*boats could head for Australia*”. The documents suggest that “*five large freighters*” could arrive in Australia, and they point to the departure in 1978 of five large vessels where “*in excess of AUS\$1 million*” was made by the organisers (CofA, 1979b, p. 3), suggesting that profiteers of such “*organised refugee movements*” should be made subject to “*severe penalties*” (CofA, 1979a, p. 19). The documents however do not identify any known smuggling syndicates: they in fact refer to paid departures organised by the Vietnamese government (CofA, 1979b, p. 3). Vietnam encouraged the outflow of dissidents and specific population groups, especially its ethnic Chinese minority, and the numbers of residents waiting to depart had swelled to half a million by mid-1979. During 1979, the Vietnamese government had reportedly made up to US\$250 million from those buying their way out of the country (CofA, 1979c, p. 177).

Remarkably, Australia’s immigration officials justified proposals for the first legislation imposing criminal sanctions on those who organized voyages ‘*for profit*’ in response to the Vietnamese ‘paid departures’ policy. They painted threatening scenarios of large boats – boats that had not arrived in Australia – while not acknowledging what appeared as a sensible policy by the Vietnamese government, which organized the paid departures for those that did not approve of its policies and directions, “*particularly ethnic Chinese and small businesspeople who were out of sympathy with the communist regime*” (Fraser & Simons, 2010, pp. 416-417). According to Viviani,

...there are numerous refugee reports, supported by reports from foreigners resident in Vietnam, that after the Chinese incursion of February 1979, ethnic Chinese were encouraged, persuaded, and in some cases forced to leave their homes by local officials. [...] There are also reports of transport to the ships being arranged in government vehicles. Many accounts state that ‘exit fees’ were paid to officials at government offices. It was also said, in the case of large ships, that officials were present at loading and embarkation (Viviani, 1984, p. 92).

The Vietnamese government's initiative to organise paid departures facilitated by outside operators was a convenient coincidence, manipulatively used by the Immigration Department to formulate a harsh and extreme response. This agenda would have coincided with Fraser's dilemma about hostile media and community responses in Australia. However, where Fraser's *Memoirs* claim the Cabinet documents are "apocalyptic in their predictions" (p. 418) he carefully selects the elements he calls extreme. His *Memoirs* are silent about the suggestions that the "five large freighters" with between 2,500 and 3,000 passengers "could head for Australia", but York (2003b), strongly countering assumptions that under Fraser Australia was more humanitarian than under PM Howard, claimed Fraser "took swift action" against unauthorised arrivals who used 'smugglers'. Less than two years after the proposals reached his Cabinet, Immigration Minister Ian Macphie named each of these vessels, painting a frightening scenario when introducing new legislation in the House of Representatives. Macphie's laws imposed criminal prosecutions and harsh prison sentences on operators and skippers of any 'commercial' venture bringing asylum seekers to Australia's shores, but Fraser's *Memoirs* are silent about this Bill, which successfully passed both Houses of Parliament during 1981.

3.3.1. *Queue Jumpers*

In analysing Parliamentary discourse, the development of the label "queue jumper" denoting maritime asylum seekers deserves due attention. First formulated during the arrival of Indochinese asylum seeker vessels under the Fraser government, the label has become a permanent fixture in political and public discourse, repeatedly used as a powerful political weapon in parliamentary rhetoric and media discourse. The label originated in 1978, and Fraser identifies the label as a distinction marker separating those coming in through the "front door" (Indochinese in refugee camps e.g. in Bidong, Malaysia and Nong Khai, Thailand) from those arriving through the "backdoor" (boat arrivals). As Fraser states, "The solution to people coming in the backdoor was to open the front door wider" (Fraser & Simons, 2010, p. 420). However, the term needs 'unpacking' as a *Negative Other-Presentation* which developed as a powerful *Semantic Macro-Strategy* (Van Dijk, 2000b, p. 221) by all governments since Fraser. As Van Dijk clarifies, it is a "categorization of people in ingroups and outgroups" and useful as a "division between good and bad outgroups" (p. 221).

Fraser claims the label first surfaces in May 1978 Immigration Department communication (Fraser & Simons, 2010, p. 417) and in June in a column in *The Australian* by the ALP opposition spokesman for immigration Dr Moss Cass (1978). York (2003a, p. 28) also claims the newspaper column was its first public use; as did Grewcock (2009, p. 100). These assertions are incorrect, but the omission by Fraser of how his own government first used the label in May 1978 is an attempt to rewrite history. Viviani had already publicly written in 1984:

Several boats reached Darwin in April 1978 and in May, 321 people arrived, the worst month ever for unauthorised arrivals. The government in broadcasts through Radio Australia to Southeast Asia spoke sharply about ‘queue jumpers’ and ‘strong action’ but the voyagers were not deterred (Viviani, 1984, p. 83).

In communications with the author, Cass (2011) clarifies having first learnt about the term from a delegate “*most likely from the Immigration Department*” during a meeting in MacKellar’s office – a briefing on Government discussions with UNHCR about the refugee situation. The meeting argued “*how the ‘boat people’ were ‘queue jumpers’, for there were [many] refugees in various refugee camps*” who were “*waiting to be resettled after escaping or being displaced*”. Cass confirms agreement was reached that “*those who languished in camps for long periods should have a prior claim to resettlement*” over those who “*were able to afford to purchase a passage*” (Cass, 2011).

The term quickly established as a rhetorical device by government and opposition. As reported above, 1978 media reports cite opposition leader Bill Hayden suggesting paying passengers were “*posing as refugees*” juxtaposing those in camps against those paying fares, who “*jumped the queue*” (Atherton, 1978). Government usage of the term queue jumpers was maintained until April 1979, when MacKellar told *The Australian* that he “*no longer considered refugees arriving by boat to be queue jumpers*” (*The Australian*, 1979, p. 3). The news report claims that MacKellar’s statement is a policy reversal of four months earlier, when he spoke of queue jumpers when a vessel with 3,000 passengers (the *Hai Hong* - discussed below) was reported to be headed for Darwin.

York (2003a, p. 28) claims Fraser's Immigration Minister Macphee becomes the first¹⁵ politician using the label in Parliament in March 1982. Neither Fraser & Simons nor York clarify context: Macphee does not juxtapose boat arrivals against those waiting in the camps. Unlike Cass (1978), Macphee describes 'economic migrants' trying their luck as refugee status claimants:

...people now leaving their homelands were doing so to seek a better way of life rather than to escape from some form of persecution. ... their motivation is the same as over one million others who ... migrate to Australia. To accept them as refugees would in effect condone queue-jumping as migrants (Macphee, 1982, p. 39).

The establishment of "*queue jumper*" as a rhetorical device entrenched the rhetorical status of boat arrivals as '*unauthorised arrivals*', depicting them as 'undeserving' and 'opportunistic' asylum seekers breaching Australian border protocols. If the label originated in the Immigration Department as suggested, its establishment would have represented a major victory for immigration officials. The '*act of uninvited arrival by boat*' further supported a punitive response by '*the authorities at the border*'. Politicians gained too: the presentation of the label as a succinct rhetorical device would have been welcomed; it was a neatly packaged device, and using this label, politicians could portray themselves as serving national interests: the label suited nationalistic discourse (O'Doherty & Augoustinos, 2008), supporting claims of protecting the border against intruders while looking after the population, especially those frightened about 'invasions'. For immigration officials it supported future development of the two-tiered punishment of passengers and their travel facilitators. Those that did arrive were treated with decency under Fraser – he did not approve legislation for compulsory detention or withholding social benefits as proposed by the Department. However, Fraser's support for the "*queue jumper*" his use of the label in Government broadcasts locks him in as an active participant in the border play, wedged between the arch-conservatives rejecting a multicultural Australia and those who welcomed refugees.

¹⁵ York makes this claim with the qualifier 'possibly'

3.3.2. *Stopping the boats*

The Cabinet documents convey the impression that for MacKellar and the Immigration Department ‘*stopping the boats*’ attempting to reach Australia was a primary agenda. Other sources (Martin, 1989; Morgan, 1992) confirm that sinking boats and deliberate sabotage was an Immigration Department strategy. Officer Greg Humphries stated twelve years later that in 1977 he “...*was given overall responsibility for responding to Vietnamese refugees including those who soon began arriving on Australia's northern shores by boat...*” (Martin, 1989, p. 100). He admits how he “*was sent to Malaysia with virtually my term of reference to stop these boats from coming to Australia...*” Humphries reveals how he, with other immigration officers and “*boys*” actively sabotaged and sunk boats “*on many occasions*” in order to prevent their departure to Australia (p. 109). In a documentary Humphries reveals about the actions:

I was given the task of stopping these boats from arriving in Australia. That was pretty simple, I suppose, in terms of reference, but... eh, so, off I went again to the South China Sea with a team, and we located many a boat coming down the Malaysian peninsula. We encouraged the Malaysians to land them, put them in the camps so that they could be processed. There were still a percentage of the boats, eh, people themselves, who were determined to push on to Australia. Well, we took a pretty broad interpretation of the terms of reference to stop these boats; we did... because we had some very capable fellows with their screwdrivers and brace and bit. We bored holes in the bottom of the ships, of the boats, and they sank overnight, so they had to be landed. And we were very successful in stopping many of the boats, by one way or another (Morgan, 1992).

Claimed sea voyage mortality rates in the Cabinet documents deserve scrutiny; they played an important role in MacKellar’s justification of the ‘*boat-holding*’ policy, an assertively coordinated attempt to persuade ASEAN countries to prevent departure of boats for Australia. The Cabinet documents claim the British estimated two-thirds of the boats perished and cite a Red Cross official who noted mortality rates between 50-70% (Memorandum 380, CofA, 1979c, p. 177). Viviani (1984, p. 89) however, presenting evidence that MacKellar’s boat-holding policy eventually came unstuck, disputes this high mortality. While MacKellar referred to these high mortality rates in public statements, Viviani (1984, p. 95) cites an investigation in the October 1979 *Far Eastern*

Economic Review by Michael Richardson (1979), who claims a percentage of deaths of 10-15%, suggesting that the extremely high Australian and US estimates may have been politically motivated.

In describing MacKellar's 'boat-holding' policy, Viviani (1984, pp. 83, 84, 89) argues the policy may initially have been successful, but it was for self-interested and political purposes – to stop the boats. Viviani also claims that suggestions were made the Fraser government engaged US Vice-president Walter Mondale to negotiate the boat-holding policy in Indonesia while visiting Australia in 1978:

Mondale's visit coincided with the increase in boat traffic to Darwin and the gathering momentum of public criticism. Mondale had come to Australia from Bangkok and Jakarta where he had held top-level talks on refugee matters. Press reports suggested that [Australia] had approached the US government prior to Mondale's departure from Washington to ask him to use his influence in talks with President Suharto (p. 83).

3.3.3. Large steel-hulled vessels

Viviani's account (1984) of Australia's response to the Vietnamese refugee outflow shatters the illusion that the June Cabinet submission titled "*Legislation against Unauthorised Boat Arrivals*" (CofA, 1979b, p. 6) might have been prepared by a hardline Immigration Department before being 'reluctantly' presented to Cabinet by Fraser's Immigration Minister. She recalls details of the large, steel-hulled vessels described in the Cabinet papers. Two years later Minister Ian Macphie named these vessels (House Hansard, 1980c, p. 2517) when introducing the legislation in Parliament. The *Hai Hong* (Viviani, 1984, pp. 85-87) appeared in the South China Sea in November 1978 with 2,500 Vietnamese passengers; it caused a shockwave throughout ASEAN nations: questions were raised about "*the motive of owners, agents and captain of the ship concerned*" (Viviani, 1984, p. 85), even by UNHCR; the debate raged about whether paying passengers could be classed as refugees at all. Landing was refused by Malaysia and Indonesia, even while many on board were in need of medical care. MacKellar was quick with public statements "*claiming the boat as evidence of profiteering in the Indochinese refugee situation*" (p. 85), and Australia took no action –

nor did many other countries, even after UNHCR declared the passengers should be treated as refugees – a position supported by the USA. According to Viviani,

The idea that the exchange of money should disqualify boat people from refugee status was challenged in Australia by editorials in the press, but MacKellar stuck firmly to his position (p. 86).

Eventually all *Hai Hong* passengers were resettled by Malaysia, the USA, France and Canada (p. 86) – but Australia played no part. The *Hai Hong* drama was not an isolated incident. At the end of 1978 two more freighters with about 2,700 Vietnamese passengers aboard sought entry to Manila and Hong Kong (pp. 88-89). The *Sky Luck* ('*Skyluck*' in Viviani) and *Tung An* confirmed the fears that the *Hai Hong* was not the only large organised Vietnamese vessel departing its shore. According to Viviani,

As in the case of the *Hai Hong*, the Australian government promptly refused to accept any people from the ships on the grounds that it would not 'give support or encouragement to schemes organized by unscrupulous merchants in human cargoes whose aim was financial gain'. Fears that these and other freighters might turn up in Darwin were clearly the major motivation for this approach (p. 89).

A fifth vessel, the *Huey Fong* is mentioned where Viviani claims involvement of the Hanoi government in paid departures. :

The Hanoi government had established a special department to 'co-ordinate' refugee exit in June 1978. The fee for each individual ethnic Chinese was 10 taels or strips of gold worth at the time about US\$2670 (together with additional payments up to US\$2000 for internal travel documents). Ethnic Vietnamese were faced with a surcharge of up to 50%, making their initial costs about US\$4000. Senior government officials played no direct part in the transactions which were handled by Chinese businessmen from Cholon. Five taels of gold were paid to the government for each adult Chinese who left; the remainder was for the businessman to cover the costs of the voyage and allow him to make a profit. The *Tung An* and the *Huey Fong* had been part of the scheme, which involved complicated links between the ethnic Chinese communities in Hong

Kong, Taiwan and Cholon. These ships had moored openly in the Mekong Delta and taken aboard about 5000 people ‘under the gaze of local officials’ (pp. 91-92).

Australia assisted just once, resettling passengers of the first large ‘paid passage’ vessel. In September 1978, when the *Southern Cross* ended its first voyage – after landing had been refused by Malaysia and Singapore – Australia made a shared resettlement commitment with Canada and the USA to its passengers who had disembarked on the Indonesian island of Pengibu (Grant, 1979, p. 117). Australia refused to assist the passengers of the boats that sailed later that year: the *Hai Hong*, the *Sky Luck*, the *Tung An* and the *Huey Fong*, and Fraser refused to share the resettlement burden with France, Canada, the USA and Malaysia, to whom it was left to carry out the protection and settlement of the vessels sailing within Australia’s region. If Australia would have participated in the resettlement effort, responding to UNHCR’s declarations that the passengers “*should be treated as refugees*” (Viviani, 1984, p. 86), it would not have placed MacKellar at odds with the USA (p. 86). Significantly, interviews with passengers might have produced stories of extortion through ‘exit fees’ by Vietnamese government officials; Australians might have heard about those fleeing or coerced to depart, being forced to leave financial assets behind prior to departure (p. 93), and Australia might have learnt that forcible boarding may have taken place before departure (p. 92). If Australia would have played its part in resettling the passengers and heard their stories, it is unlikely that the *Immigration (Unauthorised Arrivals) Bill 1980* would have been presented to the Parliament.

3.4. The Immigration (Unauthorised Arrivals) Bill 1980

The legislation proposed in the June 1979 Cabinet documents is listed as “*Legislation against Unauthorised Boat Arrivals*” (CofA, 1979b, p. 6) and not, for example, “*Legislation against trafficking*”. The name unambiguously reflected the Immigration Department’s agenda, and Fraser’s approval to bring the laws before Parliament reveals his acceptance of this agenda, even in the face of the Refugee Convention’s clearly defined rights for such arrivals. The Immigration Department’s firmly established term “*unauthorised arrivals*” confirmed their dim view of such vessels, but Fraser did not challenge it. The Parliamentary Library’s *Short Bill Digest* explains the purpose of the

Bill is “*to prevent commercial attempts to bring to Australia, by air or by sea, passengers who have not received previous permission to enter*” (CofA, 1980c, p. 1).

The *Immigration (Unauthorised Arrivals) Bill 1980* imposes ten years imprisonment and/or a AUS\$100,000 fine on owners, charterers, agents or crew who bring more than 12 people to Australia without prior authority. The laws (CofA, 1979b, p. 6) would operate with a 12-months sunset clause from proclamation. Immigration Minister Ian Macphee introduces the Bill to Parliament on May 1, 1980. His introductory speech clarifies the punishable number of unauthorized passengers is reduced from twelve to five (House Hansard, 1980c, pp. 2517-2520), that this number “*may be increased or decreased by regulation*” (p. 2518), and that the laws will be proclaimed ‘if needed’, coming “*into operation on a date to be proclaimed and remain in force for a period of 12 months, unless sooner repealed*” (p. 2520).

Language analysis of the 1979 Cabinet documents (Appendix, Table 2) supports the claim that the Immigration Department wanted to paint a frightening picture of boat arrivals. Repeated usage of labels like “*large vessels*”, “*steel-hulled vessels*”, introducing concepts like “*trafficking*”, “*profiteering*”, the submission had argued that laws needed to pre-emptively deal with possible arrivals. When tabling the legislation, Macphee describes the vessels:

Towards the end of 1978 five large freighters filled with Vietnamese arrived in parts of South East Asia. The Southern Cross sailed into Indonesian waters, the Hai Hong arrived off Malaysia, the Huey Fong and the Sky Luck showed up in Hong Kong and the Tung An went to the Philippines. Each carried between 1,500 and 3,000 passengers who had paid to leave their homeland with the sanction of their government (p. 2517).

Referring to “*countries*” (without mentioning Vietnam) first expelling their unwanted populations then allowing them to leave, Macphee argues that “*this sort of situation can lead to rackets involving the clandestine importation of illegal immigrants flouting the laws of the country of entry*” (p. 2517).

According to Macphee the legislation will enable the government “*to take firm, responsible action against those profiteering from human distress*” and “*provide for the*

first time for adequate controls on vessels which might sail without invitation to Australia” (p. 2518). Confirming that the laws are not referring to actual arrivals but to ‘potential arrivals’, Macphee clarifies:

We have no reason to believe that any vessel [of this kind] is currently sailing towards Australia but we cannot afford to assume that in the future no such vessels might try to make their way here (p. 2518).

Macphee adds that Australia would not

always be in a position to accept without question large numbers of refugees who push their claims for resettlement ahead of those of their compatriots [sic] who wait patiently in the camps (p. 2518).

3.4.1. Macphee: Analysis

With his speech Macphee risked that fellow MP’s or reporters would know the story of the five vessels and launch a stinging critique of his depiction. First, at the time of his tabling speech it was nearly two years ago that the boats had sailed in the South China Sea, and many of the passengers might have been resettled as refugees. Second, none of the boats had arrived in Australia. Third, Melbourne’s *The Age* had published an investigation of the Vietnamese ‘boatpeople’ (Grant, 1979); the publication included a chapter about the five vessels (p. 108), even featuring a photo of the *Huey Fong* (pp. 118-119). Fourth, a small beginning of a positive national discourse about the five vessels had developed from 1978: claims that those paying passage could not be refugees had been “*challenged by editorials in the press*” (Viviani, 1984, p. 86). However, assisted by Macphee public discourse had moved in the opposite direction: he had received wide acclaim for a January 1979 public statement. Viviani argues his condemnation of “*Vietnam’s involvement and reaffirming his refusal to take refugees from large ships met almost universal approval in the Australian press*” (1984, p. 94). A Federal election was forthcoming (18 October) and “*the political need to deter a proliferation of large boat arrivals in Southeast Asia, and even in Australia, dominated the government’s stance*” (Viviani, 1984, p. 94). Macphee explains “*each carried between 1,500 and 3,000 passengers*”. It appeared Australia’s long held and deep-seated fear of “*invasion by hordes*” needed a political response.

Next, Macphee engages a powerful four-element ‘multi-part listing’ (Guilfoyle & Hancock, 2009; Guilfoyle & Walker, 2000), suggesting in one sentence the organisers could represent “*rackets*”, the intent of the venture may represent a “*clandestine importation*”; continuing to depict the passengers as “*illegal immigrants*” before suggesting they could be “*flouting the laws of the country*”. The picture Macphee paints bears no relationship to the facts of the four vessels he had named. The Vietnamese government had links to the organisers, they organized the paid passages; reports alleged forced embarkation directed by Hanoi government officials, while none of the attempts to land the passengers had been “clandestine”. The passengers were not “*illegal immigrants*” – UNHCR had stated they ‘should be treated as refugees’ – and the suggestion they may be “*flouting the laws*” of Australia had no foundations in fact. Indeed, Macphee’s construct is ‘counterfactual’ (Van Dijk, 2000a, p. 72) and qualifies as a ‘persuasive scare tactic’ (Van Dijk, 2000a, p. 72). He needs this ‘extreme case formulation’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) to protect himself from any conflicting views.

Macphee assures The House that the government “*for the first time*” will take “*firm, responsible action*” He does so by setting up a ‘modality claim’ (Van Dijk, 2000a, p. 65), where the government ‘finally’ takes action (that ought to be taken) in a ‘responsible’ manner. In doing so, Macphee takes out ‘insurance’ affirming the legislation’s validity. He does not tell The House the government wants to “stop the boats”; instead he claims the legislation provides “*for adequate controls on vessels*”: thus his ‘legitimation’ (Van Dijk, 2000a, p. 54) ensures the legislation is presented as legitimate government activity. He includes the view that such vessels “*sail without invitation*”, omitting that sailing or traveling without prior invitation is a usual marker of refugee escape (Harding, 2000). Macphee however strengthens his claim by depicting the passengers as “*illegal immigrants*” who may soon be “*flouting the laws of the country*”. Macphee’s depiction is essential in this context, and the frequently used construction of asylum seekers as “*illegal immigrants*” and “*uninvited*” arrivals has proven persistent in Australia’s political discourse on asylum seekers. Macphee’s careful ‘subject positioning’ (Guilfoyle & Hancock, 2009, p. 126) returns during the debate – other MP’s and Senators will repeat him, and positioning asylum seekers as *illegals* is to become an essential rhetorical device during many debates about those who try to reach Australia by boat to seek protection under the UN Refugee Charter.

Macphee depicts the voyage organisers as “*those profiteering from human distress*”. Here he sets up a familiar ‘contrast structure’ (Van Dijk, 2000a, p. 66; Every & Augoustinos, 2007, p. 423) between the passenger and the travel agent, arguing a ‘victimisation’ (Van Dijk, 2000b, p. 224) of asylum seekers by their travel agents. Yet he had just offered up a generalisation about “*illegal immigrants*” who may be breaking “*the laws of the country*”. This shift is not in error or coincidental. In Macphee’s ‘pairing’ (Guilfoyle & Walker, 2000) of voyage organisers and passengers he intends to sharpen a contrast, *where the passenger is victimized while the organiser is a low-life individual* depicted as a criminal. Like “*queue jumpers*”, Macphee’s pairing will occupy a central place in the parliamentary discourse about ‘people smugglers’, developing to the level of ‘*Topos*’, a “*premise that is taken for granted, self-evident and a sufficient reason to accept the conclusion*” (Van Dijk, 2000b, p. 215) that the voyage organisers are criminals.

The *victim-criminal* pairing occupies a central position as a rhetorical device in contemporary parliamentary discourses about maritime asylum seekers. It requires further scrutiny because of its strength and persistence as a *Topos*. Politicians use this device because it depicts them as *compassionate*, and for Macphee and others it serves as a ‘positive self-presentation’ and is part of an ‘impression management’ (Van Dijk, 2000a, p. 54, 2000b, p. 223). The fact that this device predominantly remains unchallenged may be linked to the absence of a fully-fledged Australian civil ‘refugee rights’ movement which includes a fully considered ‘asylum seeker rights’ framework. Although there is a positive minority discourse of *refugee rights* in Australia, where the “*right to seek asylum*” is derived from the *Universal Declaration of Human Rights* (United Nations, 1948), civil society divides itself between ‘*advocates*’ and ‘*activists*’ where the former are more part of a ‘*compassion movement*’ than the latter’s asylum seeker rights movement. Some proponents of international law argue that Refugee Law itself is based on compassion rather than rights, identifying this as a weakness of the Refugee Convention (Henkin, 1994), but this thesis maintains that Article 31 dictates clear asylum seeker rights, especially for those who arrive “*without invitation*” and “*illegally*”. Compassion alone does not define nor guarantee any universal rights, and the absence of coherent political definitions – in any Australian political party – of rights for asylum seekers underpins the nature of Australia’s political discourse, especially around those who organize and facilitate the journey of asylum seekers. For

Macphee, his positioning of the passengers as victims also belies many of the stories of those who fled Vietnam to seek protection. West Australian journalist Norm Aisbett (Aisbett & Tanner, 1981) investigated one of the planned and organized maritime journeys, where *taels of gold*, a common currency for Vietnamese asylum seekers, paid the way to freedom. Those who stand up and organise the departure from oppression for themselves and their families, by whatever means, commit considerable acts of courage. They choose to not be victims, but instead become ‘activists’ in seeking their liberation from persecution.

In the final segment Macphee juxtaposes two groups to justify government policy. He depicts those on the large vessels as “*refugees who push their claims for resettlement*” and pairs them to “*their compatriates [sic] who wait patiently in the camps*”. Using this ‘contrast structure’ (Van Dijk, 2000a, p. 66; Every & Augoustinos, 2007, p. 423) Macphee actually composes ‘*queue jumper rhetoric*’ before using a ‘*we can’t take them all*’ construct, identified by Van Dijk as an ‘extreme case formulation’ (2000b, p. 219). His credibility is reinforced through the use of “*large numbers*”, which builds on his previous statement detailing passenger numbers.

3.4.2. *Opposition and Bipartisanship*

While Fraser’s Liberal-National coalition government enjoyed a majority in both Houses in this 53rd Parliament (National Archives, 2009), Labor’s Immigration spokesman Moss Cass declares Labor’s in-principle support for the legislation (House Hansard, 1980d, p. 520), informing the House the opposition received advance briefings (House Hansard, 1980d, p. 533). Consequently, the legislation moves through Parliament without obstacles. In the Lower House just two Members respond to Macphee’s tabling speech (House Hansard, 1980d). Labor, proposing amendments under Cass also forms a meager line-up of speakers. The Senate seems equally lackluster about the Bill: following introduction (Senate Hansard, 1980a) by Attorney-General Peter Durack two Liberals rise (Senate Hansard, 1980b) and following ALP Senator Don Grimes’ reiteration of the amendments just one Labor Senator responds. After moving the amendments the debate adjourns per standard protocol to the ‘*In Committee*’ stage in the House (House Hansard, 1980d, p. 531) and the Senate (Senate Hansard, 1980b, p. 446). While Labor bipartisanship may have muted the debate, ample evidence still emerges about fierce opposition within the ALP. Gordon Bryant MP

expresses this unambiguously, claiming it “*an unnecessary piece of legislation*”, suggesting there are “*other ways of handling these problems*”. Referring to Australia’s origins, he notes all “*our ancestors came without documents ... to find refuge, paying little heed to the people who already lived here*”. He concludes by noting the sunset clause: “*I hope ... it sets well and truly*” (House Hansard, 1980d, p. 531).

Labor’s Les Johnson MP (noted as government UN delegate in 1982¹⁶) stresses Australia is “*a signatory to an international convention which places the onus of humanitarianism on us in a very justifiable way*” (House Hansard, 1980d, pp. 524-525). He cites the full text of Article 31 of the Refugee Convention and suggests obligations may rest with UNHCR and the Red Cross to facilitate refugee outflows when needed, arguing:

If we do not like the fact that people with ships are moving in to shift refugees from the shores of Indo-China to Asian ports or to Australia, we have to consider who should undertake that process (p. 527).

With uncanny clarity he pinpoints the ‘*label extremisation*’ of the debate, suggesting the legislation’s purpose is to “*heap our venom and our hostility on the people who move in to facilitate the transportation of refugees*” (p. 527).

For the Opposition, Cass proposes several amendments. First, he notes concerns the legislation imposes equal criminal liability on crew and skippers/masters of a vessel. Cass argues for “*reassurance that everyone will not be considered guilty*” and implores efforts be made “*to differentiate between the person really responsible and the crew members ... innocently doing their job*” (House Hansard, 1980d, p. 521). Second, he argues that the onus of proof should not be on the defendant but on the prosecution. Third, Cass argues that due judicial process is circumvented because Immigration Department testimony at a magistrate’s hearing can lead to the imposition of charges, avoiding normal rules of evidence. Citing the Bill, Cass claims this creates “*an inquisition-style hearing before a magistrate ... without regard to legal forms, and shall not be bound by any rules of evidence, but may inform himself of any relevant matter as he thinks fit*” (p. 522). Fourth, he raises concerns about the fact that prosecutions need

¹⁶ According to the online resource Wikipedia, he was “an adviser to, and member of, the Australian Delegation to the United Nations General Assembly” in 1982. See http://en.wikipedia.org/wiki/Les_Johnson

prior approval from the Attorney-General. Regardless of Labor's amendments, the legislation passes both Houses without changes.

3.4.3. *Label Extremisation*

The debate includes frequent use of '*label extremisation*' and '*victim-criminal*' pairing. Repeatedly the 'contrast structure' (Van Dijk, 2000a, p. 66; Every & Augoustinos, 2007, p. 423) is linked to 'victimisation' constructs (Van Dijk, 2000b, p. 224) in the debate. Cass uses 'label extremisation', arguing "*we have to do something about stopping the trade that is occurring in human bodies and misery*" (House Hansard, 1980d, p. 520) and "*...scurrilous characters bringing refugees here*" (p. 522), later seeking to "*prevent the traffic in bodies*" (House Hansard, 1980a, p. 431).

Billy Graham (Liberal, Member for North Sydney) uses unrelated illegal migrant smuggling illustrations when arguing the debate deals "*with people who engage in criminal operations*". He claims they "*prey upon their victims*" and offer entry "*provided so much money is given*". Referring to "*Mexico and the USA*" where they take "*millions of people*" from "*one country and into another*" working "*highly organized*" (House Hansard, 1980d, p. 528), his 'extreme case formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) seeks an unrelated 'authoritative source' (Van Dijk, 2000b, p. 215) on the other side of the world. Peter Falconer (Liberal, Member for Casey) argues the legislation targets "*who would traffic in human lives, namely, those of refugees*", using '*victim-criminal*' pairing as 'impression management' (Van Dijk, 2000a, p. 54, 2000b, p. 223) and contrast in "*those who would seek to profit from the tragic circumstances in which those refugees find themselves*" (House Hansard, 1980d, p. 522). Using contrast structure ('*racketeers*' vs '*small boats*') he wonders "*how to distinguish between racketeers and the occupants of small boats*" claiming they arrive "*on a spontaneous basis*", being "*small fishing vessels*". Suggesting a 'national threat' he suggests small boats "*do not really constitute the same sort of threat posed on Australia by large vessels containing ... 3,000 people*" (pp. 523-524).

Gordon Bryant (ALP, Member for Wills) doubts the need for the legislation, "*wondering whether all of this is necessary. How many of the people on those ships have been involved in what I might call the vulture side of the refugee system? Are we not using a sledge hammer to crack a nut in this issue, and putting on the statute books*

a piece of legislation which I think could be best described as draconian..." (House Hansard, 1980d, p. 529).

3.5. Arrival and Deportation of the VT838

On February 24, 1981 the legislation gains Royal Assent (House Hansard, 1980a, 1980b, 1980d, p. 1087), before it went dormant in accordance with the intent to seek proclamation “*if and when needed*”. That did not take long. Seven months later Governor-General Sir Zelman Cowen signed the proclamation. The VT838 had been spotted and was on its way to Darwin.

An 18 September phonecall from Malaysia’s UNHCR to Australia may have sealed the fate of the VT838: it had sailed via Malaysia, and UNHCR’s suggestion to not proceed to Australia but remain at the Pulau Bidong refugee camp (House Hansard, 1981) was declined (Oct. 7: Sydney Morning Herald, 1981, p. 7). A surveillance aircraft was deployed and HMAS Assail monitored the vessel (Northern Territory News, 1981), while Macphee confirmed that the *Immigration (Unauthorised Arrivals) Act 1980* (CofA, 1980b) was proclaimed on September 30 (House Hansard, 1981). With this, Macphee had also compelled the discourse direction: the passengers and crew now had to “*fit the Bill*” – and any findings had to justify proclamation of the Act.

A combination of ‘departmental sources’ and partial statements by Macphee rapidly achieved this change in media discourse. Initially the *NT News* was gentle, mentioning the boat’s “*unofficial entry*” rather than “unauthorised arrival” (Northern Territory News, 1981, pp. Oct 5, p. 1); the *Canberra Times* claimed “*passengers would be accepted as refugees*” (Canberra Times, 1981). Within days two alleged organisers, 47-year old Tho Tu Knanh and his 46-year old wife Hugna Duc Tai were detained in Darwin police cells, while headlines screamed *Money Found on ‘Refugees’* after reports claimed passengers carried up to \$US25,000 in cash (Northern Territory News, 1981). Following this report Macphee claimed they had “*not come directly*” from Vietnam (Canberra Times, 1981), invoking the UN Convention clause justifying claims rejection. Passengers’ physical conditions were deemed “too good” for refugees, and “too many healthy young men” were amongst them. Within weeks Macphee’s allegations of a “*extremely serious racket*” (Canberra Times, 1981) completed the vilification process.

None of the accusations made against crew and passengers were tested in court, nor is there evidence of a “magistrate’s hearing” under the terms of the Act. A December 16

headlined report “*Bogus boat people on their way*” (Northern Territory News, 1981) clarified the organiser was served a *Notice of Determination* and ordered to repay \$165,000 in government costs, preventing his re-entry of Australia. The group was deported to Taiwan on a QANTAS flight during Christmas under a media ban.

The treatment of the VT838 and the deliberative criminalisation of organisers, crew and passengers marked an unsavoury end to Australia’s Vietnamese boat arrivals. The ‘removal’ of the passengers from Australia would have been possible without the grave yet untested allegations Macphee, in concert with immigration officials, had unleashed. Political and media discourse (Barker, 1981) started to view Vietnamese refugees as “*economic migrants*” while Macphee was finalising major refugee policy changes (Macphee, 1982). Since the start of the Vietnamese refugee outflow, the western world regarded everyone as ‘refugees’ without testing these claims – a strategy endorsed by UNHCR. While this appeared generous, it undermined the principles of the UN Refugee Convention, granting refugee status indiscriminately to all. This issue is critically explored in a review of the *Comprehensive Plan of Action* by Hathaway (1993) who accuses UNHCR of undermining itself during this period. When the VT838 arrived, Australia was developing policies to replace these blanket approvals with a claims testing process of “*individual status determination*” (Macphee, 1982). Macphee repeatedly denied any relationship between the fate of the VT838 passengers and his policy review, but motives remain open to interpretation: it seems likely that immigration officials wanted to close the book on the Indochinese refugees, as policy changes aimed to grant entry only to those qualifying for family reunion reasons (see Macphee, 1982).

The *Immigration (Unauthorised Arrivals) Act 1980* (CofA, 1980b) was proclaimed as soon as impending arrival of the vessel was reported; authorities used powers to detain the accused organisers, yet none of the accusations reached a court; nobody was charged, no allegations were tested. All passengers and crew were deported; none of their finances were confiscated. Perhaps most importantly, the VT838 saga affirmed the sole discretionary power of Australia’s border officials, who had been able to prevent entry into the country of those who were, to achieve this end, depicted as border criminals. They had achieved this power by excluding any scrutiny of the courts.

3.6. Conclusion

The first sections of this chapter provided evidence that State measures in response to the arrival of maritime asylum seekers were partially informed by deep-seated convictions that non-Caucasians such as Chinese should be kept out of Australia as a predominantly white and British nation. It also argued that the historically powerful Immigration Department ignored caution with respect to the treatment of ‘unauthorised arrivals’ as defined in the UN Refugee Convention’s Article 31, which urges signatory states to not punish illegal arrivals or discriminate against them.

Further, it argued that most measures proposed to the Fraser Cabinet in 1979 in response to boat arrivals can be viewed as a template for future policy directions dealing with such arrivals. The chapter argued that the Department of Immigration maintained its powerful and influential role in presenting most, if not all of these proposals for policy directions. The chapter presented evidence of the first State response to boats arriving from Vietnam under the Fraser government. These included policies to stop boats from arriving in Australia and sabotage vessels in Malaysia; the strengthening of ‘border protection’ and, by means of establishing the *Exclusive Economic Zone*, shifting the border 200 nautical miles from the shoreline.

Measures aimed at influencing public discourse included the promotion of negative stereotypes of asylum seekers and the establishment of “*extremised labels*” depicting organisers of ‘commercial’ maritime asylum seeker voyages and their passengers. Using Critical Discourse Analysis the chapter analysed the development of such negative depictions in parliamentary discourse and how these were used as rhetorical devices to justify government actions. It argued how in “*victim-criminal*” pairings the travel organisers were depicted as “*traffickers*” and “*racketeers*” and the passengers as victims. However, outside such “*victim-criminal*” pairings passengers were depicted as “*illegal immigrants*”, “*lawbreakers*”, “*subjects of clandestine entry*” and “*queue jumpers*”. The chapter analysed the parliamentary debate of Australia’s first legislation imposing criminal sanctions on crew and skippers of paid voyages. It found that Fraser’s Immigration Minister presented a ‘counterfactual’ depiction of five “*Large, Steel-hulled Vessels*” in order to justify the legislation. Faced with community hostility about Vietnamese boat arrivals in the context of a looming election, the Fraser government imposed harsh criminal sanctions on voyage organisers of ‘commercial’

refugee voyages. In this it used the Australian Criminal Code for electoral survival, whereas its sole purpose is to ‘fight crime’.

3.6.1. Research Questions

This section lists the four research questions and presents evidence drawn from the Parliamentary Debate of the *Immigration (Unauthorised Arrivals) Bill 1980* and other relevant material from this chapter in the responses to these questions.

1. How did politicians inform themselves of the international phenomenon of ‘people smuggling’ and what knowledge did they have of the nature of ‘people smuggling’?

This chapter has presented evidence that the presentation of the status of the ‘five large vessels’ underpinning the Bill and its debate in Parliament is based on ‘counterfactuals’. During the debate of the legislation, one MP referred to unrelated migrant smuggling ventures in the USA. The vessels were depicted as “*trafficking*” ventures by the Immigration Department in submissions to the Fraser Cabinet in 1979, and presented by Immigration Minister Macphee as “*rackets*” or “*racketeers*” to Parliament in 1980, while passengers were described as victims, “*illegal immigrants*”, “*lawbreakers*”, “*subjects of clandestine entry*” and “*queue jumpers*”. While an Australian book containing a media investigation of the vessels was publicly available, the Fraser government maintained its counterfactual presentation of the large vessels and its negative depiction of passengers and ventures, in order to pass legislation that imposed criminal sanctions on the travel organisers. They chose to falsely inform themselves, the Parliament and the public for political reasons; faced with an election they presented the legislation as a political construct to silence fear about the “*Large, Steel-hulled Vessels*” carrying thousands of passengers, and they presented the legislation as a response to hostile community opinion about boat arrivals.

2. When considering the legislation, did politicians consider that ‘people smugglers’ generally bring asylum seekers into Australia as a UN Refugee Convention signatory?

The Fraser government was aware of UNHCR statements that the passengers of the ‘five large vessels’ should be treated as refugees. MP’s and Senators repeatedly asserted that the legislation under debate did not target refugees but crew and skippers. Nevertheless, in rhetoric during the debate of the legislation, government and opposition representatives maintained their negative depictions of the passengers as ‘queue jumpers’, illegal immigrants and lawbreakers, and used rhetorical devices depicting them negatively because of their association to those they depicted as “traffickers” and “racketeers”.

3. Did politicians consider that lesser criminal liabilities may exist for boat crew as opposed to organisers during the debate?

Amongst the amendments proposed by the Labor Opposition were considerations that distinctions should be made between skipper and owner of boats and the crew “*innocently doing their job*”. None of the proposed amendments were considered or accepted by the Fraser government.

4. Were the passengers negatively depicted by association because they had arrived using smugglers, and did Article 31 of the Refugee Convention play a role in legislative considerations?

Passengers were frequently negatively depicted because they were associated with the ventures deemed to be “trafficking rackets”. They were depicted as victims, illegal immigrants, lawbreakers, clandestine entrants and queue jumpers. One Member of Parliament, Leslie “Les” Royston Johnson AM (Member for Hughes) referred to the Refugee Convention: he cited the Convention’s Article 31 in its entirety during his speech, where he called on UNHCR and the Red Cross to take action, arguing that if refugees need to leave countries, the High Commissioner for Refugees has responsibilities to assist them. No other Parliamentarian responded to this MP or made any reference to Article 31, but several times MP’s and Senators affirmed the legislation did not target the passengers.

4. The Howard Government and human rights

4.1. Introduction

The previous chapter established that the first arrival of asylum seeker vessels from Vietnam triggered hostile community reaction and negative depiction of those arrivals by Australia's political elites. It presented evidence that the Fraser government and the Immigration Department collaborated to develop some of Australia's most persistent rhetorical devices such as the "*queue jumper*" label to justify government measures and to influence public discourse. The chapter established that government measures included policies to stop boats from arriving in Australia, including the sabotage and sinking of vessels in Malaysia. Further measures included the strengthening of 'border protection' and, by means of establishing the *Exclusive Economic Zone* (EEZ), shifting the border 200 nautical miles from the shoreline. The Fraser government justified establishment of the EEZ using manipulative rhetorical devices depicting the entry of Vietnamese asylum seeker vessels as amongst other "*illegal activities*".

The previous chapter also explored declassified documents including submissions presented to Cabinet during 1979. It argued that many proposals suggesting harsh penalties for passengers, crew and skippers of "*unauthorised arrivals*" contained in these documents can be viewed as a template for future policy directions. Further, the chapter analysed the parliamentary debate of Australia's first legislation imposing criminal sanctions on crew and skippers of paid voyages, the *Immigration (Unauthorised Arrivals) Bill 1980*. This analysis established that parliamentary discourse included rhetorical devices promoting negative stereotypes of asylum seekers and the establishment of "*extremised labels*" and "*victim-criminal*" pairings when politicians depicted organisers of 'commercial' maritime asylum seeker voyages and their passengers. Fraser's Immigration Minister Ian Macphee in his May 1980 introductory speech, supported by government MP's and Senators during the parliamentary debate of the legislation, presented a '*counterfactual*' depiction of five "*Large, Steel-hulled Vessels*" which he used to justify the legislation. Faced with hostile community opinion about Vietnamese boat arrivals and negative media opinion about the 'five large vessels' the Fraser government, fearing an electoral backlash prior to an upcoming election, chose to impose criminal sanctions on the facilitators of 'commercial' asylum seeker vessels. In this it used the Australian Criminal Code for electoral survival, whereas its sole purpose is to 'fight crime'.

Chapter Four represents an eagle-eye overview of some pertinent issues relevant for this thesis emerging from the Howard government's response to human rights and maritime asylum seekers. The chapter is by no means an exhaustive summary of the Howard government's responses to human rights in the years spanning its administration (1996–2007). To do so, would not do justice to one of Australia's longest continuous government administrations; the material presented in this chapter merely attempts to cover some aspects relevant to the issues addressed in this thesis. Its inclusion in this thesis is necessary for two reasons. First, the next two chapters analyse political discourse and parliamentary debates of two legislative “anti-people smuggling” measures; both measures passed into law under the John Howard government, and an overview of his government's broad philosophy and responses to human rights is justified.

Second, Howard's response to boat arrivals prior to the 2001 Federal election triggered one of the most divisive debates about the treatment of ‘boat arrivals’ in recent Australian history. Refugee advocates turned into activists, lawyers turned into advocates, academics marched in protest rallies, advocates became authors, reporters wrote award-winning books, while retired public servants and diplomats raised their voice – all vehemently protesting Howard's asylum seeker policies. While hostile rhetoric about asylum seekers in public media statements by his Immigration Minister Philip Ruddock triggered ongoing controversy (Everitt, 2008), a rapidly growing body of literature developed covering the wide range of issues raised by Howard's asylum seeker politics. Howard's 2001 military response to an asylum boat rescue at sea by Norwegian containership ‘Tampa’ became a national trigger point (Brennan, 2003; Marr & Wilkinson, 2004) while the foundering of an asylum seeker vessel en route to Australia seemingly ignored by government authorities sparked a major exploration by a retired diplomat (Kevin, 2004). Others gave testimony and collated voices from advocates and refugees (Mares, S. & Newman, 2007; Sparrow, 2005) or conducted investigations into the circumstances of detention (Briskman, Latham, & Goddard, 2008; O'Neill, 2008). Arguments were built to define Australia's treatment of unannounced arrivals as a *State Crime* (Grewcock, 2009) while a prominent barrister argued that political rhetoric and government spin developed ways and means of embedding obfuscation and denial (Burnside, 2006). Some wrote comprehensive overviews or updates of Australia's response to asylum seekers (Coghlan, Minns, & Wells, 2005; Crock, Saul, & Dastyari, 2006; Lusher & Haslam, 2007; Mares, P., 2001); a teacher

wrote about traumatising experiences in Woomera's remote detention centre (Mann, 2003) and a journalist revealed how asylum seekers suffered while detained on the remote Island nation of Nauru under Howard's so-called 'Pacific Solution' (Gordon, 2005). A high-profile asylum seeker case, publicly depicted by Minister Ruddock in multiple media interviews with highly charged negativity, mobilised the case lawyer who successfully sued the Minister and compiled the material (Everitt, 2008). Others attacked what they portrayed as Howard's assault on Australia's public debate (Marr, 2007) or argued that the media failed to vigorously question the issues (Manne, 2005), while the torturous aftermath effecting those who had been deported triggered new research and international investigations (Corlett, 2005; Manne & Corlett, 2004; Nicholls, 2007).

In such a highly charged environment, it seems sensible to identify both John Howard and Philip Ruddock politically insofar their politics are relevant for this thesis. This has been achieved in three ways. First, Howard's public responses to human rights and human rights treaties are unambiguous from public statements throughout his political career, and some of these have been presented in this chapter's first section. The relevance of this section is reinforced in the second section of this chapter, which discusses a major 1998 investigation into human rights breaches in Immigration detention facilities, particularly in Port Hedland, by Human Rights and Equal Opportunities Commissioner Chris Sidoti (HREOC, 1998). The decision to include this report is not arbitrary: it is frequently cited during the parliamentary debate of the *Migration Legislation Amendment Bill (No. 2) 1996* analysed in Chapter Five. Additionally, the report depicts the treatment of "*unauthorised arrivals*" by the Immigration Department. Since 1991 they were compulsorily detained after arrival following the Keating government's decision to introduce *mandatory detention* for all boat arrivals (Jupp, 2002, pp. 183-186). The HREOC Report is a stark example of the damage this imprisonment inflicted on those detained and how government officials treated them with arbitrary disdain.

The final section presents extracts of one of the first speeches by Howard's Immigration Minister Philip Ruddock. When Ruddock, at the time of writing *the Father of the House*¹⁷, became Immigration Minister in 1996, he had served in Australia's Parliament

¹⁷ The *Father of the House* in Australia's Westminster system is the parliamentarian with the longest period of continuous service

for more than 23 years, first elected in September 1973. Consequently, he was an experienced politician. In addition, he was the only Immigration Minister under the Howard government, serving this portfolio for the duration of all Howard government terms. Ruddock proved to be a seasoned orator and master of parliamentary rhetoric. Using Critical Discourse Analysis this last section analyses extracts from his June 1996 Refugee Week speech. The analysis highlights his rhetorical constructs denoting maritime asylum seekers as “*illegal arrivals*”. As a vocal long-term Immigration Minister, his depictions of detained asylum seekers indicate the Howard government’s political directions *vis-à-vis* asylum seekers.

4.2. *The Howard government*

Prime Minister John Howard led a conservative Liberal-National Coalition government for eleven years, winning office following the March 2, 1996 Federal election. Howard’s ideological positioning found ongoing expression in legislation passed under his government relating not just to asylum seekers as ‘unauthorised arrivals’, but also to broader human rights issues, and to human rights instruments and their place in Australian society. Howard’s response to policies implemented before he became Prime Minister have been extensively recorded and reviewed. For example, he was Malcolm Fraser’s 45-year old Treasurer in 1979, when under the Fraser government proposals responding to boat arrivals – as described above – were discussed in Cabinet. In this role he was privy to all discussions and Cabinet deliberations. In his *Political Memoirs* Fraser reveals how Howard showed concerns about the intake of Indo-Chinese refugees:

John Howard sat silently through the debate, but sidled up to me afterwards in a corridor and said, “We’re not going to take too many of these people, are we?” And I just looked at him and said, “John, we have just had a debate in cabinet”. And he said, “Yes, but we’re not going to take too many of them, are we? It is just for show, isn’t it?” (Fraser & Simons, 2010, p. 425)

Fleay (2010) argues that Howard had voiced opposition to Asian immigration and increased refugee intakes, and that he ‘reportedly’ had been the only opponent to Fraser’s decision to accept Indo-Chinese refugees in 1976 (pp. 1-2). Fleay also provides evidence of Howard’s dissent over the role of international law and UN treaties in Australia. She cites a 1993 speech by Howard (1993) where he “*had decried*

Australia's ratification of 'so many international conventions and treaties',” claiming it had led to a “*massive erosion of national sovereignty.*” In this speech Howard left no doubt about his views of UN treaties, arguing that Australia’s sovereignty would be curtailed as a result of them, and he bemoaned Prime Ministers Hawke¹⁸ and Keating¹⁹’s ratification of the Optional Protocol (UNHCHR, 1966c) to the International Covenant on Civil and Political Rights (UNHCHR, 1966a) “*to allow Australians to litigate their differences before a UN Committee*” (Howard, 1993). Fleay also argues that in 1975 John Howard had opposed Prime Minister Gough Whitlam’s “*efforts to enshrine obligations of the UN Convention on the Elimination of All Forms of Racial Discrimination (UNHCHR, 1965) in Australian legislation,*” (Fleay, 2010, p. 1) and how he had led the opposition to the Racial Discrimination Bill and subsequent Act (CofA, 1975).

Both Howard’s early positioning under Fraser and his later statements confirm that he was a ‘*conservative*’ Prime Minister in the traditional sense of the word, preferring to conserve the old and resist the new. Howard must be understood in the context of his opposition to Fraser’s multiculturalism, his resistance against Whitlam’s racial equity legislation and his reluctance about the intake of the Indo-Chinese under Fraser: he embodied the old, and he was an example of a perhaps still present desire in the mind of some, for an undoing of the political changes of the 1970s and a return to the time, as argued above, of the days when “*to many, it seemed, it would always be that way; Australia would always be British and white*” (Morgan, 1992). According to Jupp (Jupp, 2002, pp. 106-107) Howard affirmed his predispositions about multiculturalism in 1988, and he argues that Howard’s political assertions of *One Australia* (Howard, 1988) marks the end of political bipartisanship in relation to multiculturalism and immigration. Howard’s rejection of multiculturalism was shared by some far-right groups in Australia as well. Such groups maintained their presence in Australian society following the changes under Whitlam and Fraser. In May 2011, *The Australian* featured an opinion article by John Pasquarelli, who acted as advisor to One Nation²⁰ leader Pauline

¹⁸ Labor’s Federal Member for Wills Robert James Lee “Bob” Hawke was the 23rd Prime Minister of Australia from 5 March 1983 to 20 December 1991

¹⁹ Labor’s Federal Member for Blaxland Paul John Keating was the 24th Prime Minister of Australia from 20 December 1991 to 11 March 1996

²⁰ One Nation is a far-right and nationalist political party in Australia, experiencing its ascendancy in the late 20th Century. It was formed in 1997 by Pauline Hanson, David Oldfield and David Ettridge

Hanson²¹ in the late 1990's. He wrote with poisoned disdain about the end of the White Australia Policy and the beginning of multiculturalism:

The years of Al Grassby, Malcolm Fraser, Petro Georgiou and all the other multiculturalists who linked arms with their lefty mates in our schools, universities and parliaments and imposed their version of a Brave New World on the rest of us (Pasquarelli, 2011).

Howard was too politically astute to publicly express such views, but as Prime Minister he was accused of adopting racist One Nation policies. Fleay argues that the Howard government's response to human rights bodies was

...reminiscent of the arguments of Australian governments from the late 1940s to 1972, particularly those of the Menzies government (Fleay, 2010, p. 167).

Australians elected John Howard as Prime Minister for eleven years over four government terms (1996-2007). This could be taken as evidence that Australians had not fully embraced a multicultural Australia and had not moved to a position where they accorded a significant place to international human rights instruments or valued them as foundations for Australian society. Previous governments had made considerable achievements through Australia's accession to United Nations Conventions and by ratifying UN treaties – although most had also shown ambivalence in their commitment to the role of the UN and human rights instruments (see Fleay, 2010). Consequently, when he came to power, Howard would predictably embody a government position where United Nations treaties and associated Australian human rights bodies were viewed as 'interfering' with the governing of the country – rather than that they 'added' to the governing of Australia. Soon after winning office, the Howard government introduced the "*Human Rights Bill*" (SLCAC, 1997) attempting to reduce power and influence of the Human Rights and Equal Opportunities Commission (HREOC) by reducing the number of Commissioners and by removing its power to intervene in court cases (see Fleay, 2010, p. 173). One of the changes as a result of this and later legislation, changing some HREOC functions and structures, stipulated that the

²¹ Hanson, a Liberal Party candidate for the seat of Oxley (Qld) at the 1996 federal election, was disendorsed by the party shortly before the elections due to comments opposing "race-based welfare" published in a local newspaper in Ipswich (Qld). Regardless of her disendorsement she was successful and was elected as an independent Member of Parliament

Attorney-General would need to approve Commission interventions in court proceedings involving human rights or discrimination issues.

Within this context, the Howard government was likely to give more weight to the long-held border officials' view on 'unauthorised arrivals' than promote discourse congruent with the UN Refugee Convention, or to commit to UN-inspired international refugee law (Goodwin-Gill & McAdam, 2007; Hathaway, 2005). It was more likely that a political discourse depicting maritime asylum seekers as 'illegal immigrants', 'unlawful entrants' and 'unlawful non-citizens' would be vigorously pursued. Maritime entrants were more likely to be depicted as 'border breachers' and as 'invaders' arriving without prior entrance permission than as persecuted human beings at the border activating their protection rights under UN terms. Consequently, the view of their voyage facilitators would be a function of this depiction of maritime asylum seekers.

4.3. Those Who've Come Across the Seas

Two years after the Howard government came to power Australia's HREOC released a major report resulting from complaint investigations conducted in Australia's Immigration detention centres. Viewed from a human rights perspective, the report would have been unwelcome by the government. Howard's outlook on human rights as outlined above was clear, and even while HREOC was an Australian-legislated body rather than a European United Nations authority, Howard had begun to curtail its national power and influence since he came to power. An overview of some points the report made has relevance: during the parliamentary debate of the *Migration Legislation Amendment Bill (No. 1) 1999*, several Senators and MP's make references to it during their speeches.

The 184-page report "*Those Who've Come Across the Seas: Detention of Unauthorised Arrivals*" (HREOC, 1998) was written with forensic precision by HREOC's Human Rights Commissioner Chris Sidoti. At the outset, and referred to in all chapters, the report unambiguously outlined how its government mandate under the 1986 HREOC Act (CofA, 1986) compelled it "by law" to take remedial action if the human rights of someone in immigration detention were breached. In detail, the reports stipulated that its jurisdictional mandate extended under the Act to the International Covenant on Civil and Political Rights (UNHCHR, 1966a), the Convention on the Rights of the Child

(UNHCHR, 1989), the Convention Relating to the Status of Refugees and its 1967 Protocol (UNHCR, 2006), the International Covenant on Economic, Social and Cultural Rights (UNHCHR, 1966b) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNHCHR, 1984).

Those Who've Come Across the Seas was the report of investigations of dozens of complaints against the Immigration Department and the (then) detention services provider Australian Protective Services (APS). The collected data spanned more than a decade, from 1989 onwards. Of all 58 complaints received since 1989, 29 were from 'boat people', and at least 23 of these originated in Port Hedland (HREOC, 1998, p. 5). There were complaints of physical assault by APS; the report detailed that APS breached the detention centre guidelines, that the Immigration Department breached the Migration Act and, for example in Port Hedland, the "*Department's own Port Hedland Station Instructions*" (p. 131). Seventeen complaints were received from arrivals – or groups of arrivals – who had come from The People's Republic of China.

The fact that many were Chinese arrivals, a seemingly minor detail, warrants noting in the context of this chapter. The detail stands in the context of Australia's historical responses to the presence of Chinese, and gains significance in the context of earlier statements, comments and opinions expressed by Prime Minister John Howard about Australia as a country for 'Asians'. A June 1999 government report (Moore-Wilton, 1999) includes a table showing that of the 2,930 people who arrived by boat in Australia between July 1, 1990 and May 20, 1999, 2,335 passengers or 80 per cent arrived from China. Many of these had come from the southern Chinese provinces while others were Sino-Vietnamese (HREOC, 1998, p. 6). The arrival of these groups was complicated by 1994 legislation, the *Migration Legislation Amendment Act (No. 4) 1994* (CofA, 1994). This Act stipulated that asylum seekers, including Sino-Vietnamese, who had been resettled under the *Comprehensive Plan of Action* (see also Hathaway, 1993) could no longer claim refugee protection (McMaster, 2002, pp. 90-91) in Australia from 27 January 1995. Many hundreds who arrived after this date were detained "*in isolation and incommunicado*" before deportation; Australia was "*turning around boatloads of Chinese*" (Committee Hansard, 1996, pp. 174-175). Even so, the notion that Chinese boat arrivals would – and perhaps, in the eyes of some "could" or "should" – be treated indifferently or with less regard than others *because of their nationality* needs further consideration.

During the 1990s the Immigration Department systematically undermined basic human rights standards for boat arrivals in grotesque ways. HREOC noted that since mid-1994 (HREOC, 1998, p. 25), Port Hedland centre management simply stopped informing new arrivals that legal assistance was available “*and only provided it at the request of the detainee*” (HREOC, 1998, p. 5). The report claims that “*almost 70 per cent of the complaints received from Port Hedland raise the issue of the accessibility and/or quality of legal advice*” (HREOC, 1998, p. 205). It does not take much imagination to consider what this meant for the Chinese, who were unlikely to speak English, who would have been unlikely to know anything about Australia’s legal system, and who had not grown up within the comfortable surrounds of human rights protections in their homeland. Interpreters were available to all detained arrivals, but the HREOC report details how a minor misunderstanding over a piece of fruit in the dining room escalated into allegations of physical assault of a female detainee by detention officers and how it “*turned a minor event into a major security incident*” (HREOC, 1998, p. 94) because detention staff and management were unable to timely call on interpreters to bridge the language barrier.

While all maritime arrivals receive an ‘intake interview’, immigration officers’ bias can easily enter the process of seeking to assess if UN refugee protection obligations are invoked. This hinges on ‘the right word or words’: “*If no-one in a boat group says words that could engage Australia’s protection obligations, the whole group is returned*” (HREOC, 1998, p. 23), and the report notes that from 1996 onwards, most boat arrivals from China were removed “*without obtaining independent legal advice or applying to stay in Australia*” (HREOC, 1998, p. 23). That this bias was present and that it had almost led to the deportation of Chinese arrivals who had rightful entitlements to protection, was noted in the Senate in the June 1999 debate of the *Migration Legislation Amendment Bill (No. 1) 1999* by Greens Senator Dee Margetts (Senate Hansard, 1999e, p. 6845). The 84 passengers of the ‘*Cockatoo*’ were about to be deported in November 1994, but last-minute legal advice ensured that 32 of them successfully claimed asylum in Australia. The Senator stated:

It almost defies belief that we could be doing this on the basis of efficiency or some odd idea of justice. In other words, around 40 per cent of those people who

have now been granted refugee status in Australia would have been deported (Senate Hansard, 1999, p. 6845).

HREOC's damning report was not just an indictment of the Immigration Department's arbitrary treatment of the predominantly Chinese boat arrivals; it also exposed its culture of autocratic self-rule. The department's "*pre-screening interviews*" (HREOC, 1998, p. 24) divided boat arrivals into two groups. Based on this interview, one group became 'potential refugee claimants', while the other group kept their original label of 'unlawful arrivals' or 'illegal entrants'. It appears that not only the majority of boat arrivals but also all Chinese arrivals were part of the latter group: it assisted the maintenance of the department's status quo that boat arrivals should be labelled as "*illegal arrivals*", and it justified its contention that no further legal advice should be provided to those 'screened out' from refugee protection under the Refugee Convention.

The HREOC report should have been a wake-up call indicating that the department was acting more within its role as 'border guards' than as a government authority charged with the application of Australia's most frequently activated human rights instrument, the UN Refugee Convention. Regrettably under the Howard government those arriving by boat seeking safety from arbitrary rule were in the prevailing political discourse described as "illegal arrivals" and "illegal entrants". In this context, the HREOC report is likely to have been a central factor leading to the drafting of the *Migration Legislation Amendment Bill (No. 2) 1996*, later presented as the *Migration Legislation Amendment Bill (No. 2) 1998* before passing both Houses as the *Migration Legislation Amendment Bill (No. 1) 1999*. It is likely that John Howard's direction and intent for the place of human rights monitoring in Australia was not only supported by his Immigration Minister Philip Ruddock, but also applauded by the Immigration Department. Actions by HREOC lawyers in Immigration Department affairs who, as government Senator Rod Kemp would claim in a Senate speech, "*subvert the intention of the Migration Act*" (Senate Hansard, 1996b, p. 1884) were not appreciated.

4.4. A Refugee Week Dorothy Dixier

Howard's Immigration Minister Philip Ruddock was a seasoned politician and experienced rhetorician. Approaching the celebration of his fortieth anniversary of continuous service in the House of Representatives at the time of writing, Ruddock

already had more than two decades political experience when Howard appointed him to the portfolio.

During the last week before the 1996 winter recess, Minister Ruddock ensures Australia's refugee resettlement is raised in Parliament. UN Refugee Week starts on June 21, and Ruddock has arranged a *Dorothy Dixier* for the Member for Petrie, Ms Teresa Gambaro – a newly elected Member. Ms Gambaro's 24 June question also foreshadows Minister Ruddock's aims with the "*Judicial Review Bill*" which he would introduce to Parliament in May 1997: this Bill sought to "*severely restrict access to Federal and High Court judicial reviews of negative administrative decisions*" (CofA, 1998).

In response to Ms Gambaro's question, Mr Ruddock reminds the House that it is Refugee Week, before claiming Australia is "*assisting bona fide refugees*". "*Of course Australia has been very generous in a number of ways in ensuring that people who have been displaced and persecuted are resettled in Australia*" (House Hansard, 1996, p. 2555). Ruddock deliberately chooses this opening for the speech, displaying generous 'national self-glorification'. Van Dijk affirms that in "*parliamentary speeches on immigration, positive self-presentation may routinely be implemented by various forms of national self-glorification*" as "*praise for the country, its principles, history and traditions*" (Van Dijk, 2000b, p. 220).

Ruddock does not present details about Australia's generosity, nor does he quote refugee resettlement facts or figures. His generalisation is an essential introduction to what follows. Rhetorically, Ruddock not only offers some national glory and claims of Australia's 'humanitarian perspective' (Van Dijk, 2000b, p. 219) but he also presents it as what Potter and others have called a 'stake inoculation' (Guilfoyle & Walker, 2000; Potter, 2004, p. 212; Wetherell, Taylor, & Yates, 2001, p. 155): he takes out insurance against any undermining of the strong claims he presents following the introduction. He continues:

I think that we need to look at the way in which some people come to Australia and seek to advantage themselves by accessing programs that are there for those who have particular needs. There are a large number of people who enter Australia illegally. Many more come here outlining circumstances such as a

bona fide visit leading to them being able to access Australia. Then of course they seek to stay here, often not advancing any claims for protection but simply wanting to access a system that enables them to press claims that are not bona fide (House Hansard, 1996, p. 2555).

In this paragraph Ruddock asserts a duty (“*we need to look at the way*”) to question the integrity of “*some people*” who “*seek to advantage themselves*”. He alleges they use services they are not entitled to, claiming they are designed “*for those who have particular needs*”. As he continues he generalises (Van Dijk, 2000a, pp. 60-61) when claiming a “*large number*” have entered “*illegally*”, before stating that “*many more*” arrive through “*bona fide visits*” so they can “*access Australia*”.

Van Dijk claims that generalisations “*often include prejudices*” (2000a, p. 60). These prejudices had started in Ruddock’s phrases “*some people*” and “*seek to advantage themselves*”, and they continue when Ruddock makes allegations about those who “*enter Australia illegally*”, those who came on “*a bona fide visit*” and those who “*access Australia*”. He first asserts “*of course*” they “*seek to stay here*”, then continues by claiming they are “*often not advancing any claims for protection*”, but instead they attempt to “*access a system ... to press*” their “*not bona fide ... claims*”.

Immigration Minister Ruddock’s speech attempts to convince fellow MP’s, particularly those in the opposition, to support the notion that the Australian courts are used by those who should not have access them. He constructs and advocates a ‘commonsense’ (Guilfoyle, 2009, p. 148) view to the Parliament. This commonsense view asserts that many people come to Australia and, having discovered they like the country a lot, do whatever it takes to not leave, including mounting challenges against Immigration Department decisions that they ought to leave Australia. However, in the claim, Ruddock does not just single out this group: his generalisation includes visitors arriving first “*legally*” and others who arrived “*illegally*”. However the fact is that, in Ruddock’s terms, only ‘boat arrivals’ arrive “*illegally*”. This is the reason an analysis of his statement is important.

Further deconstruction (Gough, 2008a) of Ruddock’s statement becomes simpler by providing some background facts. Those with “*illegal*” status in Australia are not just the ‘boat arrivals’. Most of that group – Ruddock’s “*many more*” – arrived by regular

means, entering Australia on a valid visa, but they did not depart when that visa expired. Their presence is “*illegal*” from the moment their (e.g. holiday, work or student) visa expires. It is unusual for these “*illegals*” to be detained in immigration detention centres; in fact, in 1994 the former Keating government introduced ‘Bridging Visas’ (Millbank, 1999) to ‘regularise’ their presence, assist their departure from Australia or assist with visa renewals. The figures are high and the issue has always been somewhat problematic for Australia, but their presence is of little cost to the State. In 1999 the Parliamentary Library clarified: “*Most of Australia’s current illegal population of about 53,000 have entered the country legally and overstayed their visa*”. They estimated that in June 1999, 53,143 people remained illegally in the country, a 5% increase over December 1998 numbers (50,600), while the June 1997 figure stood at 46,232 (Millbank, 1999). By comparison, 1995 boat arrivals comprised a mere 237 passengers on seven boats (Project SafeCom, 2009a) while in 1996 another 660 people arrived on 19 boats (Project SafeCom, 2009b). This was the small group detained under Australia’s mandatory detention policy for boat arrivals in the Port Hedland Detention Centre.

Ruddock’s generalisation continues in the next extract, where he claims 559 appeals are before the courts and that “*detention and processing*” costs millions of dollars:

My department is involved at the moment in something of the order of 559 cases before the courts ... They have been made by people who have primarily come here illegally or who have misled us as to their intention when they have come to Australia. Last year my department spent something of the order of \$60 million in financing detention and processing procedures in relation to this very large number of people (House Hansard, 1996, p. 2555).

Two days later Minister Ruddock’s claim that the courts were dealing with 559 appeals comes under question from HREOC Commissioner Chris Sidoti during a Senate Committee Inquiry hearing (CofA, 1996a, 1996b). Disputing Ruddock’s claims, Sidoti shares with the Inquiry Immigration Department figures confirming “*as of early last week there were 70 unauthorised boat arrivals in current litigation*” (Committee Hansard, 1996, p. 152). In other words, Ruddock’s claims are either false, or he had generalised when mentioning the 559 cases, counting “all groups” – including “*boat arrivals*”.

By ‘pairing’ (Guilfoyle & Walker, 2000) those who “*come here illegally*” and those “*who have misled us as to their intention*” the Minister is able to cast dispersions from one group (“*illegal*” arrivals) on the other (the “*misleaders*”) and vice versa. With his comments, the Minister uses exaggeration, perhaps even an ‘extreme case formulation’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) about “*illegal arrivals*” accessing Australian court resources, referring to 559 appeals before the courts and finances “*in the order of \$60 million*” needed to detain them.

Ruddock’s claims can now be better understood. Using a generalisation construct, the Minister manipulatively mixes “*boat arrivals*” with other groups before making them a target of his accusations. He accuses those who “*come here illegally*” of ‘using’ the court system, yet this group comprised only a very small number of “*boat arrivals*”; these few passengers would hardly cause congestion of the courts. The Minister’s rhetoric evades essential differentiation between distinctly different groups, allowing his “*\$60 million*” detention costs and the use of court time to apply equally to “*who have misled us as to their intention*”, those arriving in a “*bona fide*” manner, and to those who “*come here illegally*”. Assisted by keen reporters interpreting the ambiguous spaces in his speech, conservative voters could make up their own mind about who’s ‘*more illegal*’ – the young and glowing ‘visa-overstaying’ backpackers from Great Britain, Denmark, the Netherlands or France, the Polish factory worker working without a visa, or foreigners from China who sailed in on a dilapidated boat. To the voters it would be clear that the Chinese passengers’ language is the most foreign, while their intentions are unknown and will not be clarified or explained by immigration officials or the Minister or by the media, because, as HREOC Commissioner Sidoti would assert to the Senate Committee during this Refugee Week, they are “*held incommunicado*” (Committee Hansard, 1996, pp. 155-156) when outsiders such as HREOC and the Ombudsman are prevented from communicating with them.

With his ambiguous statement Minister Ruddock presents the Howard government’s view on maritime asylum seekers. Instead of honouring refugees and successful “*boat arrivals*” who had been accepted and resettled in Australia during his Refugee Week speech, he implicitly and manipulatively voiced a condemning view about maritime arrivals “*coming here illegally*” and then having access to the courts and having rights of appeal against Immigration Department decisions. Minister Ruddock’s views in the

House also reflect the government's intention for a Bill under debate in the Senate (analysed in Chapter Five), the *Migration Legislation Amendment Bill (No. 2) 1996* (CofA, 1996a, 1996b). The Howard government buried – a little deeper than previous governments – the implications the Refugee Convention's Article 31, which stipulates the obligation to not discriminate against asylum seekers based on the mode of their arrival or punish them based on their 'illegal' arrival.

4.5. Conclusion

This chapter explored several characteristics and trends of the Howard government relevant for this thesis. It reflected on Howard's trends and directions in relation to international and local human rights instruments and Conventions, which generally indicated a rejection of those aspects perceived as interfering with sovereignty of Executive Government. His early administration started to return control of national human rights bodies from self-governance and independent authority to increased control by the Executive. Within the context of this direction, where United Nations treaties are viewed as potentially 'interfering' with Executive government, the Howard government's outlook on "unauthorised arrivals" is more likely to primarily portray them as 'border breachers' and 'illegals' rather than as asylum seekers claiming UN protection.

The chapter also presented elements from an HREOC report into human rights breaches in immigration detention centres. The report's investigation found that detention centre operators and immigration officers withheld legal advice and did not inform detainees that legal assistance was available. It also found that availability of interpreters for its largely Chinese population of maritime arrivals was not in accordance with minimum detention standards, while it was critical of departmental interview arrangements, where those "screened out" in an initial interview were regarded as 'unauthorised arrivals' to whom Australia's protection obligations were not applicable. This section is relevant to legislative measures analysed in the next chapter of this thesis; it was noted that several Senators quote from the report during the debate of those measures.

An analysis of a 1996 speech extract by Immigration Minister Philip Ruddock has been included in this chapter's final section. It confirms that in his outlook on maritime asylum seekers Ruddock failed to differentiate them from others who entered the

country and breached Australian visa conditions, and that he, even in a speech commemorating UN Refugee Week, implicitly ignored their rights to land in Australia under the Refugee Convention. His speech was delivered as he lobbied for legislation that would severely curtail rights of Federal and High Court appeal against Immigration Department determinations, also for asylum seekers. As the Howard government's sole Immigration Minister, Ruddock's early political positioning confirmed his government's directions *vis-à-vis* maritime asylum seekers.

5. The Sealed Envelopes Bill - and an Amendment

5.1. Introduction

The previous chapter presented some trends and directions characterising Prime Minister John Howard and analysed statements by his Immigration Minister Philip Ruddock. Howard's leanings were identified from statements and comments during his career. Similarly, Ruddock's outlook was identified by means of analysis of a Parliamentary speech during 1996 UN Refugee Week. The analysis of Ruddock's speech found evidence of a manipulative depiction of maritime asylum seekers, where he listed them together with thousands of other temporary entrants as having "*come here illegally*", accusing them of wasting court resources and causing sixty million dollar costs of immigration detention. The chapter found that Howard's opposition to Australia's implementation of UN treaties prior to becoming Prime Minister was congruent with the measures he implemented while in government. It argued that he favoured returning control of national human rights bodies from self-governance and independent authority to increased control by the Executive, and that he held the view UN-derived human rights instruments interfered with Australia's sovereign autonomy.

Chapter Four also presented evidence from a HREOC investigation into human rights breaches in immigration detention centres. The report found that availability of interpreters for the (largely Chinese) asylum seeker population did not accord with minimum detention standards. Additionally, the Immigration Department's practice of conducting "*screening out*" interviews placed everyone in the "*screened out*" category out of reach of further refugee protection pathways. Finally, the report claimed that immigration officers withheld legal advice and did not inform detainees that legal assistance was available.

Chapter Five explores and analyses the debate of a legislative measure first tabled and presented in the Senate on June 20, 1996. The legislation was initially debated in the Senate but only reached the House of Representatives more than three years later (June 30, 1999) before passing both Houses later that day. New legislation (a "Bill") carries a generic title, which includes a number and the year of presentation. As a result of the delays, the Bill accumulated four name changes²² before becoming law. To avoid all

²² The legislation was first presented as the Migration Legislation Amendment Bill (No. 2) 1996. Subsequently it carried the names *Migration Legislation Amendment Bill (No. 2) 1998*, *Migration*

confusion, this chapter will call the legislation the “*Sealed Envelopes Bill*”, a phrase used in a successful Federal Court challenge against the Immigration Minister by the detained passengers of the *Teal*. The *Sealed Envelopes Bill* intended to stop access by HREOC and the Commonwealth Ombudsman to detained boat arrivals for purposes of legal assistance unless this was requested by those in detention. It intended “*to remove the statutory right ... to initiate confidential contact with people held in immigration detention ... and to ensure that officers are under no duty to give visa applications to such detainees unless a request by the detainees is made*” (CofA, 1996a).

As an early Howard government initiative, the *Sealed Envelopes Bill* was an expression of Howard’s human rights directions. The Bill’s introduction and debate coincided with the HREOC investigation into human rights breaches in immigration detention centres discussed in Chapter Four. When the *Sealed Envelopes Bill* passed in 1999, the report had been presented to Parliament and was in the public domain (HREOC, 1998). The Bill expressed Howard’s determination to alter scope and influence of UN-derived human rights instruments and representative bodies. Following enactment of the Bill, a review by Taylor (2000) suggested that with its proclamation Australia may set its “*feet upon a path that leads us all towards the perils of arbitrary government*”. She went on to say:

We have not as yet truly accepted the premise of equal human worth which underlies the international human rights treaties to which we have become party (Taylor, 2000).

The dramatic nature of the legislation increased when as the result of the arrival of a number of vessels with unauthorised migrants from China, the government added last-minute amendments to the legislation in 1999. These amendments increased criminal sanctions for bringing five or more ‘unauthorised’ people into Australia from two to twenty years. On June 30, 1999 the Bill with amendments passed after a debate of less than two hours in the Senate, and after eleven minutes of debate in the House of Representatives. This chapter analyses the debate using Critical Discourse Analysis.

5.2. *Sealed Envelopes*

Viewed superficially, inclusion of the *Sealed Envelopes Bill* appears to fall outside the scope of this thesis. The Bill sought to curtail HREOC's mandate under the HREOC Act (CofA, 1986) and the Commonwealth Ombudsman under its Act (CofA, 1976) in immigration detention centres. The government argued that HREOC and the Ombudsman should be stopped from offering unsolicited legal advice to detained boat arrivals. It argued this should only take place if formal requests for such advice were issued to HREOC or the Ombudsman by the detained person(s). In the Senate, the Bill had been tabled on a number of occasions for debate but had not progressed. On the very last day of the debate on June 30 1999 however, a surprising amendment had suddenly been added to the Bill. This extraordinary last-minute addition became one of the main legislative instruments targeting maritime journey facilitators. The amendment increased the maximum jail term for those facilitating asylum seeker voyages into Australia *from two to twenty years*.

When introducing the legislation, the government acknowledged that the Bill responded to Federal Court challenges by detained asylum seekers. In the so-called *Teal*²³ *Case* (FCA, 1996a) HREOC successfully challenged the Immigration Minister, and the *Albatross Case*, brought by asylum seeker *Wu Yu Fang and 117 Others* (FCA, 1996b) was a second challenge supported by HREOC. Assistant Treasurer and Victorian Senator Jim Short tables the *Sealed Envelopes Bill* on June 20, 1996, and in his Second Reading speech (Senate Hansard, 1996b, pp. 1934-1935) he explains its background. During March 1996 the Victorian Refugee Advice and Casework Service (RACS) wanted to contact the *Teal* passengers (see also Project SafeCom, 2009b) to provide legal advice. The Immigration Department had refused RACS' request "*as no such advice had been sought*" by the detained passengers. RACS complained to HREOC, which then sought to have delivered "*to the captain, crew and passengers*" a confidential letter ("*sealed envelope*") using its powers under paragraph 20(6)(b) of the HREOC Act (CofA, 1986). Following consultation with the Attorney-General, the Immigration Department refused to deliver the letter and HREOC took action in the Federal Court. On June 7 the Federal Court had ruled in *Human Rights and Equal Opportunity Commission & Anor v Secretary of the Department of Immigration and*

²³ *Teal* and *Albatross* are 'nicknames' of boats that arrived in Australian waters. The nicknames are given to every vessel intercepted by Australian authorities, usually in alphabetical order of their arrival per year.

Multicultural Affairs (FCA, 1996a), that the letter should be delivered. Mr Short told the Senate that the HREOC Act could now “*be used to override the intention of the Migration Act*” (Senate Hansard, 1996b, p. 1934).

One of the statutory duties of the Parliamentary Library’s *Information and Research Services* is to prepare background documentation for Parliament. Its *Bills Digest* summarises the changes proposed by the Bill:

To remove the statutory right of the Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman to initiate confidential contact with people held in immigration detention under s189 of the Migration Act 1958 ... and to ensure that officers of the Department of Immigration and Multicultural Affairs are under no duty to give visa applications to such detainees unless a request by the detainees is made (CofA, 1996a).

The *Sealed Envelopes Bill*’s central guidelines provide evidence that the human rights principles of the Refugee Convention’s Article 31 were not just ignored, but actively undermined. Both the Bill’s 1996 Explanatory Memorandum (CofA, 1996b), issued by Minister Ruddock, and the Scrutiny of Bills Committee Alert (SCSB, 1996) summarise the Bill’s purpose, noting the justification for the government’s intentions to strip HREOC and the Ombudsman from its statutory right to provide unsolicited legal advice to immigration detainees. It is **because** those in detention have arrived ‘unlawfully’ that they are denied this access: the phrasing establishes a causal link between the two elements “*ensure that these provisions do not apply*” and “*having arrived as unlawful non-citizens*”. The Memorandum proposes amendments to the Migration Act

...to ensure that these provisions of the Human Rights and Equal Opportunity Commission Act 1986 and the Ombudsman Act 1976 do not apply to persons who are in immigration detention, having arrived in Australia as unlawful non-citizens (CofA, 1996b, p. 2; SCSB, 1996).

The Scrutiny of Bills Committee (SSBC, 2010) is tasked to “*assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety*”. The Senate Standing Orders (see SSBC, 2010) formulate principle 1(a)(i):

“trespass unduly on personal rights and liberties”. The Committee issues an Alert Digest whenever it deems such action appropriate. Its 26 June Bulletin²⁴ issues a warning in the *Bills Alert*:

The committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference (SCSB, 1996, p. 17).

While the Committee’s Alert draws on the *International Covenant on Civil and Political Rights* (UNHCHR, 1966a), it does not mention Article 31 of the Refugee Convention. During the three-year passage of the Bill, neither government nor opposition expresses concerns about the *Bills Alert*.

5.3. An Urgency Race against the Court

The government attempted to use various mechanisms to hurry the *Sealed Envelopes Bill* through the Parliament, but it took three years before the legislation passed both Houses. Scrutiny is warranted for its scheduled debating dates in the Parliamentary calendar. Table 3 (Appendix) simplifies its progress to passage: on two occasions debate was scheduled one day prior to the start of Parliamentary Recess, the start of MP’s winter or summer holidays; a third time it was tabled three sitting days prior to Winter Recess. It is fair to describe the last Parliamentary session day as “*going home on time day*”: politicians themselves do this. MP’s are keen to return to their families, their pre-booked flights from Canberra are scheduled to depart by days’ end. In addition, the agenda of Parliament’s last day is often crammed with legislation to be passed before it rises. Bills previously debated and returning from the Senate may be tabled, and when the government enjoys a majority in The House or Senate, the practice of last day tabling of Bills can easily become a political ploy to ensure passage: the government can apply the “*guillotine*” or “*gag debate*” and force a vote when the turn of the debate threatens passage of legislation.

²⁴ From January to July 1996 the Scrutiny of Bills Committee Chair was Senator Barney Cooney (ALP, Victoria); and Members were Senators Robert Bell (Democrats, Tasmania), Ian Campbell (Liberal, Western Australia), Winston Crane (Liberal, Western Australia), Michael Forshaw (ALP, New South Wales), Sandy Macdonald (National Party, New South Wales)

When introducing the Bill, Senator Short appears to have succinctly summarised the background to the legislation and the government's intentions. However, nobody reveals that the government had already lodged an appeal before the Full Federal Court following its *Teal Case* defeat. Only a week later (27 June) this is revealed during *Legal and Constitutional Legislation Committee* Inquiry hearings (Committee Hansard, 1996, p. 150) and is reported in a single sentence (SLCLC, 1996, p. 5). Additionally, the government is quiet about a second aspect of the legislation: the Bill includes a "*retrospectivity clause*" (see SCSB, 1996, p. 13), ensuring its operative powers commence on June 19, 1996 – a day before the legislation was introduced. The third aspect is revealed at the conclusion of Senator Short's tabling speech. The Manager of Government Business in the Senate, Senator Rod Kemp, immediately tables an *Urgency Motion* seeking to exempt the Bill from the "*cut-of-motion*"²⁵. Normal procedure dictates that debates adjourned on the last day of a Parliamentary session are rescheduled for resumption at the start of the next session. If the government could find support for the Urgency Motion, it could flex its muscles by demanding it should be debated and pass the Senate and House of Representatives before Parliament would rise. A supported Urgency Motion could even provide a justification to recall Parliament to pass the legislation. A successful Urgency Motion had a second benefit for the government. Having been liberated from the obligation to immediately present the legislation at the start of Parliament, it could now table it again ... at the end of the Parliamentary year, or in the middle, or ... on whatever day it would choose. The Bill would survive *for a future, most opportune, occasion*.

Senator Kemp argues that speedy debate and passing before the start of Parliamentary Recess is essential. The Senator claims that this is required

to ensure that ... management of unauthorised boat arrivals is not obstructed. Without such amendments the timely removal of current unauthorised arrivals may be frustrated with consequent increases in the period of detention and associated costs ... the management of persons in immigration detention, particularly its management of unauthorised boat arrivals, is likely to be obstructed (Senate Hansard, 1996b, p. 1884).

²⁵ Since 1995, legislation introduced into the Senate is, unless specifically exempted, automatically adjourned until the next period of sittings (by order of the Senate of 29 November 1994). See <http://www.aph.gov.au/senate/pubs/briefs/brief07.htm>

In this extract Kemp establishes a number of good government duties that are “*obstructed*”; he sets up a ‘modality claim’ (Van Dijk, 2000a, p. 65). These *good duties* include “*management*” and “*timely removal*” of ‘unauthorised arrivals’. He continues to claim these duties could be “*frustrated*” before adding a little pinch of ‘persuasive scare tactics’ (Van Dijk, 2000a, p. 72); it all could lead to “*increases in the period of detention*” – but he quickly clarifies he’s talking about “*associated costs*” – lest anyone think he’s proposing a ‘compassion argument’. Kemp continues, claiming the Federal Court case “*highlighted a fundamental conflict*” between the Migration Act and the HREOC Act. He argues the Bill guarantees the “*Parliament’s intention*” under the Migration Act relating to “*the management of unauthorised arrivals in immigration detention*” is “*not able to be subverted*” by the HREOC Act, and warns the Ombudsman Act “*could also be utilised to subvert the intention*” of the Migration Act (Senate Hansard, 1996b, p. 1884).

With the *Sealed Envelopes Bill* the Howard government placed three equally weighted *Acts of Parliament* alongside each other: the HREOC Act (CofA, 1986), the Ombudsman Act (CofA, 1976) and the Migration Act (CofA, 1958), before declaring a concerning partiality by asserting the two former Acts “*obstructed*” and “*subverted*” the latter Act. The Federal Court had determined that immigration officials were acting unlawfully in their refusal to deliver *sealed envelopes* to detained boat arrivals, yet the government interpreted the court’s determination as “*subverting*” the “*Parliament’s intention*”. With this it elevated the Migration Act to a position of higher authority than the HREOC and Ombudsman Act. Mr Henry Burmester, representing the Attorney-General’s Department, confirmed the government’s view at a Senate Inquiry into the Bill:

All I am saying is that parliament ... is clarifying the idea that it does not intend the two to stand alongside each other, if it is passed, but it does intend the Migration Act to have primacy (Committee Hansard, 1996, p. 211).

Implicitly, this also affirmed a dominant position for the Immigration Department. This was a disturbing aspect in view of the damning findings in the HREOC (1998) inquiry into immigration detention, especially because the Immigration Department was well aware of the inquiry: it had been conducted in detention centres since 1989. The Howard government’s choice of preferring the Migration Act over the two other Acts

confirms the claims about its directions proposed in Chapter Four – it chose autonomous power of the Executive over UN Conventions, it ignored human rights and it sought to control Australian statutory bodies, while placing the Executive on a more dominant footing than the Judiciary.

The *urgency debate* continues on June 27 and 28 (Senate Hansard, 1996a, 1996c) but following Short's Second Reading speech and Kemp's Urgency Motion, government benches remain largely silent. Just two opposition Senators rise; the crossbench Senators dominate the debate. Five Democrats rise to their feet²⁶ and two Greens Senators speak to the motion²⁷. They are incensed, furiously expressing their displeasure, claiming the government engages in undue and unsavoury haste attempting to hurry the Bill through before Parliamentary Recess. West Australian Greens Senator Christabel Chamarette hits out by tabling a Motion, condemning the government for aiming to "*pre-empt a matter before the courts*" and "*allowing the Department of Immigration and Multicultural Affairs to consider itself above the law*" (Senate Hansard, 1996c, p. 2322). Speaking to her motion Chamarette claims that "*one reason this matter is urgent is that the parliament wants to do something that is presently illegal*" (p. 2356). She lashes out, claiming government and opposition are

supporting a government department's attempt to block the hole it perceives in our courts ...we have to suddenly make something that has been found illegal legal, so we had better act fast... That we should be considering exempting a bill in order to prevent the department of immigration carrying out the order of the Federal Court is an unutterably dishonourable position (Senate Hansard, 1996c, pp. 2355, 2358).

Speaking to the Urgency Motion, Senator Short contrasts the Senate's duty with lawyers 'having their own way' with detained boat arrivals:

Passage of the bill is urgently required as steps are in train to take advantage of this inconsistency once again. The Victorian Refugee Advice and Casework Service (RACS) have requested access to another group of detainees and, presumably, will continue this process with all new arrivals. To delay the

²⁶ Democrats Senators Sid Spindler, Vicky Bourne, John Woodley, Natasha Stott Despoja and Robert Bell

²⁷ West Australian Greens Senators Christabel Chamarette and Dee Margetts

amendment to the Migration Act contained in the bill would mean that access would be possible to detainees who are already at Port Hedland but have not entered the decision making process – who have not claimed asylum – and any other boat people who might arrive in the next few months (Senate Hansard, 1996c, p. 2351).

In the extract Short attempts some ‘persuasive scare tactics’ (Van Dijk, 2000a, p. 72). Very subtly, he depicts RACS as acting inappropriately – as some underground action group infiltrating (“*steps are in train*”) detention centres – when he claims they are to “*take advantage of this inconsistency*”, amplified with “*again*”. Of course they would. The Federal Court had ruled the Immigration Department had acted unlawfully by barring RACS from accessing detainees for legal purposes, so RACS knew the road to legal advice was now clear. Additionally, in HREOC’s hands was a wealth of empirical findings, not yet public, detailing Immigration’s legal advice intransigence. That evidence would soon discredit Short’s claim that RACS sought access to “*detainees ... at Port Hedland*” who had not entered “*the decision making process*”, who “*have not claimed asylum*”; HREOC would present evidence that the Immigration Department excluded them from that “*process*” by means of their “*screening out*” interviews. Short’s sentence construction is a neat but nasty manipulation: his ‘subject positioning’ (Gee, 2005, p. 55; Guilfoyle & Hancock, 2009, p. 126) depicts the Port Hedland detainees as central actors who made a decision to not enter “*the decision making process*”, who “*have not claimed asylum*”, while it was the Immigration Department that had been the sole actor in this process.

Van Dijk’s work on racism in European parliamentary debates (2000a, 2000b, 2000c) attributes most negative stereotyping of migrants and refugees in the UK to Tories and other conservatives. He provides evidence that in the House of Commons positive depictions and advocacy discourse in migrant and refugee debates primarily resides within British Labour. However, parliamentary debate analysis of the *Sealed Envelopes Bill* does not support Van Dijk’s British experiences – and that appears to be the case for most of the *asylum seeker* parliamentary debate in Australia. Without providing justifying arguments Senator Kim Carr responds for Labor: “*The opposition will be supporting this bill and supporting the exemption from the cut-off motion*” (Senate Hansard, 1996c, p. 2352). Perhaps Carr’s brevity deliberately makes space for the

opposition's own former Immigration Minister, Senator Nick Bolkus²⁸. The next day (June 28) Bolkus asserts:

We do not want a situation where people from outside the centre can go in and ignite claims for asylum status when that is not what is on the people's minds when they come here. I have seen records of transcripts when people have come here. I have looked through them closely, and I have noticed that the words 'asylum', 'in fear of persecution' and those sorts of things do not appear (Senate Hansard, 1996a, p. 2558).

In this excerpt Bolkus spruiks his access to departmental "*records of transcripts*", depicting both the Immigration Department and himself as 'authoritative sources' (Van Dijk, 2000b, p. 215) to strengthen his claims. His rhetoric confirms that Labor acts in unison with the government: under this 'bipartisanship' he depicts RACS' refugee lawyers as a vigilante band of outsiders who "*can go in*" and are "*igniting claims where none exist*", while implicitly slurring HREOC and the Commonwealth Ombudsman. Using his established 'authority', Bolkus asserts that the word "*asylum*" does not appear in the Immigration Department documents he viewed, as is "*in fear of persecution*" – it is not "*on the people's minds*". However, Bolkus' claims do not stack up against findings in the HREOC report to be published two years later. As noted in Chapter Four, the Immigration Department's refugee claims assessment hinged on passengers using 'the right word or words' in their interviews with assessment officers: "*If no-one in a boat group says words that could engage Australia's protection obligations, the whole group is returned*" (HREOC, 1998, p. 23).

A single thoughtful dissenter emerges from opposition ranks. While ALP Party protocol dictates that all MP's and Senators vote with their party on legislation, former practicing solicitor ALP Senator Barney Cooney informs the Senate that he will vote for the Bill with reservations. Cooney regards taking away "*the universal right to know the law*" as "*a matter of considerable concern*" (Senate Hansard, 1996a, p. 2589). Without the ALP protocol, Cooney may have been a vigorous opponent instead. Greens Senator Chamarette sympathises:

²⁸ Senator Nick Bolkus (South Australia) was Minister for Immigration during the Paul Keating government, from 24 March 1993 to 11 March 1996

Senator Cooney is in the invidious situation of having to support his party when he has a clear understanding of the difficulties with and complexities of the law in this area (Senate Hansard, 1996c, p. 2356).

The Senate's Legal and Constitutional Legislation Committee conducts a hurried one-day Inquiry into the legislation (Committee Hansard, 1996). On June 27 Senator Chris Ellison tables its Report (Senate Hansard, 1996c, p. 2374); he notes the Inquiry received a number of written submissions from legal and community groups, many of whom testified during hearings on 26 June²⁹. In a highly embarrassing error, expressing the haste of the Inquiry and its Report preparation, the text identifies Sino-Vietnamese asylum seekers having arrived in Australia as "*fugitives*" (SLCLC, 1996, p. 20).

As Democrats Senator Stott Despoja noted, the Committee secretariat, who prepared the report "*worked for 36 hours straight. They had no sleep the night before...*" and "[there was] *no adequate consultation, feedback or negotiation, despite people's pleas and their willingness...*" (Senate Hansard, 1996a, p. 2552). In the submissions and hearings, NGO's and community representatives express serious concern about the legislation and the government's haste. Nevertheless, the Report ignores them and concludes that the legislation should be passed without amendments.

None of the Howard government's attempts to rush the legislation through Parliament before its 1996 Winter Recess came to fruition. With fury and fire, incensed Greens and Democrats had dominated the debate but the government ignored them. Instead, the government had shown its unquestioning support for the dominance of the Immigration Department's control and its insistence on maintaining autocratic and single-minded control of its treatment of "*the uninvited*", even if the court had found its actions unlawful. The June 1996 drama in the Senate confirmed, not for the first time, not for the last time, Jupp's summary of the Immigration Department's culture:

A culture of control certainly exists and is usually shared by the Minister, regardless of party. That nobody should enter without a visa clearance, that there should never be an amnesty for overstayers, and that unvisaed asylum seekers should be interned awaiting final clearance or deportation marks Australia as

²⁹ The Committee Hansard (1996) includes testimony from Mr Ross McDougall, Refugee Advocacy Service; Father Frank Brennan, Jesuit Social Justice Centre; Mr David Bitel, President, Refugee Council of Australia; Mrs Marion Le, Independent Council for Refugee Advocacy; HREOC Commissioner Mr Chris Sidoti; and Commonwealth Ombudsman, Ms Philippa Smith

having one of the most restrictive control systems of any democracy. This is maintained by frequently changing the rules to close loopholes, in an elaborate bureaucratic game of snakes and ladders (Jupp, 2002, p. 63).

Government and Opposition Senators did not speak of “*asylum seekers*” or “*refugees*” during the 1996 debate; only Greens and Democrats used these descriptors. To justify the removal of access to legal advice, suitable labels and depictions were repeatedly presented as supporting agents, and their ‘situated meanings’ (Gee, 2005, pp. 53-70) dominated government and opposition claims. Minister Ruddock’s 1996 Explanatory Memorandum (CofA, 1996b) uses “*person in immigration detention*” and “*detained as an unlawful non-citizen*”. The Senate Committee Report (SLCLC, 1996) describes them as “*unlawful arrivals*” who “*tried to enter Australia unlawfully*” and uses “*unauthorised arrivals*”, and Senator Short had manipulatively described them as people “*who have not claimed asylum*”.

On December 3, 1998 Senator Ian Campbell reintroduces the Bill. Campbell claims RACS was “*encouraged by the Federal Court ruling*”, had tried gaining access to all boat arrivals and “*mounted a direct attack on the fundamental capacity of the government to manage effectively the boat people issue*”. He claims “*the management of unauthorised arrivals cannot be subverted through the HREOC or Ombudsman Act*” (Senate Hansard, 1998b, pp. 1159-1160). No debate takes place, but the 9 December Report of the *Selection of Bills Committee* refers the Bill again to the Senate Committee (Senate Hansard, 1998c, pp. 1563-1564). Its report is tabled on April 21, 1999 recommending “*that the Bill stands as printed*” (SLCLC, 1999), but seeks changes to the Explanatory Memorandum; a new version is issued (CofA, 1999f). The new Committee report is comprehensive and clear, summarising all 1996 submissions and community hearings, increasing its credibility. It concludes with a dissenting report from Greens and Democrats, rejecting the legislation (SLCLC, 1999, pp. 57-64).

The Committee’s 1999 report contains a remarkable six-page chapter of “comments” by ALP Senator Barney Cooney (SLCLC, 1999, pp. 49-55). In the chapter, Cooney identifies nine ‘*innuendoes*’ in Senator Campbell’s December 1998 speech and in comments made during the 1996 debate and Senate Committee hearings, claiming they are misguided. Cooney claims they were aimed at the *Teal* passengers, RACS, HREOC and its Commissioner Chris Sidoti, the Ombudsman and at Federal Court judge Justice

Lindgren who presided over the *Teal* case (FCA, 1996a). Using this chapter, Senator Cooney positions himself as gently but decisively rejecting the tone of the debate. He claims the government's discourse – and implicitly also the opposition's – represented an undermining of the validity of the Ombudsman and HREOC's position; he questions the opinions expressed about Justice Lindgren's judgment. As an ALP Senator he cannot dissent with the Bill: he would have risked Party expulsion. His writing expresses exquisite brinkmanship: he launches a vigorous critique without repercussions. Upon his departure from Federal politics some time later, Greens leader Bob Brown will call him “*a pillar of humanitarianism*” (ABC-AM, 2001), recalling Cooney's human rights law advocacy.

5.4. *Invasion of the Frightening Boats*

The June 30, 1999 renewed debate of the *Sealed Envelopes Bill* could be predictable. Its intent was known, government was assured of opposition support, Greens and Democrats would oppose the Bill, but this would not concern the government. Debate scheduled on this last day of the 1996-99 Senate maximised urgency for its passing amongst Senators who knew the Bill, unlike the new Senators to be sworn in and take their places following the 1998 election. Senator Kay Patterson – the Immigration Minister's Parliamentary Secretary – opens the debate and tables the Explanatory Memorandum (CofA, 1999f) at 9:31am. A message is relayed between both Houses seeking “*concurrence of the debate*”, which is granted (House Hansard, 1999e, p. 7845). Both Houses will now commit to the debate – but how predictable would the process be with seven new amendments related to “people trafficking” and “people smuggling” attached to the Bill; amendments drafted less than a week ago?

The emergence of these amendments was triggered by the arrival of a number of boats between December 1998 and June 4, 1999. Their arrival had shocked the nation, especially since March, when one of them stranded at *Holloways Beach* near Cairns. Sensational reporting dominated media coverage (Kennedy, 1999; Kennedy & Metherell, 1999; Lagan, 1999; Roberts, G. & Martin, 1999; Wilson, 1999, 2000) for a number of reasons. First, they were large steel-hulled vessels, unlike the boats that usually sailed to Darwin or made landfall in adjoining areas. Second, they were not asylum seekers, but, as reports claimed, migrants trying their luck finding jobs associated with the 2000 Sydney Olympic Games (Kennedy & Metherell, 1999). Third,

they did not sail for Darwin, but they arrived in Australia's populated areas, visible to all: near Nambucca Heads, in the Hawkesbury River and near Port Kembla in New South Wales. Fourth, they were arrivals from China. The boats represented a new phenomenon, and they escalated the Immigration Department's agenda. The bureaucrats' border protection agenda coincided with the government's position, which had, particularly (but not exclusively) aided by Immigration Minister Ruddock, increasingly depicted boat arrivals as "illegals", "illegal entrants" and "illegal non-citizens". As far as the Immigration Department was concerned, Australia was being targeted by "illegal immigrants". That they were Chinese supported rather than undermined their outlook on the detained Chinese who had arrived in previous years, who they did not regard as refugee claimants or asylum seekers. The arrivals steeled Howard's determination; perhaps it even triggered his own ambivalence about Asians. McMaster notes the national *border panic* aroused by these arrivals:

they were greeted with headlines such as 'Invaded' and 'Outcry Over Illegals' ... The underlying fear of the Asian 'other' had surfaced, creating a perceived threat of invasion (McMaster, 2002, p. 2).

Former Prime Minister Gough Whitlam's Immigration Minister Con Sciacca, Labor's spokesman for Immigration during 1999, described the nation's astonishment and fury later that year:

The Australian public witnessed the spectacle of a large boat carrying boat people beaching itself at Holloway's Beach near Cairns in Far North Queensland ... a newsagent first spotted them walking along a North Queensland road. Not long thereafter a similar occurrence saw a bowls green keeper alert authorities when another ship was seen off the coast of Nambucca Heads in Northern New South Wales. These two incidents sparked a furore amongst the Australian public (Sciacca, 1999).

Howard commissioned Max Moore-Wilton to review Australia's Coastal Surveillance and make recommendations (Moore-Wilton, 1999); Customs and Justice Minister Amanda Vanstone commissioned Alan Heggen to inquire into the Nambucca Heads and Holloway's Beach arrivals (Heggen, 1999). The Moore-Wilton and Heggen reports

informed the drafting of amendments while the nation's *border panic* helped to justify the urgent passing of the Bill with its new amendments.

In reply to Senator Patterson, Labor Senator Jim McKiernan baulks at the government's inconsistency, having pressured the Senate in 1996 because "*there was a tremendous hurry*" while showing "*there was no hurry*" for the Bill's passage. He berates Senator Patterson for tabling an outdated Explanatory Memorandum. He expresses dismay with the Prime Minister's insistence that Moore-Wilton's Inquiry report is secret, claiming "*the arrogance of the government is unforgivable*" stating nobody "*had the decency to show it to the opposition*". Nevertheless, he declares Labor's support for the Bill "*despite the insults*", stating "*we know what is involved in this, we know the urgency that is involved we make no bones about the fact*". He states:

However, the problem is almost out of control. In the last financial year ... some 40 boats have come onto our shores illegally, many at the behest of people smugglers – people who are profiteering from trafficking human beings around the world and to Australia ... The government is taking some action through the amendments in this bill, and heavy penalties will be imposed upon those who are caught and convicted of people smuggling (Senate Hansard, 1999e, p. 6837).

With this surprising statement, McKiernan confirms that without the opposition having perused Moore-Wilton's report Labor supports the amendments. Moore-Wilton and Heggen's inquiries were responses to the "*Olympic Games arrivals*". He does not respond to the national anxiety about the intrusion of these boats – as opposed to previous maritime arrivals – but he gives Howard far more than indicated thus far. McKiernan's Labor supports the discourse that all boats "*have come onto our shores illegally*" before making a not substantiated claim that many came "*at the behest of people smugglers*". Having asserted "*the problem is almost out of control*" as an 'extreme claim formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124), he identifies the number of boats (40) to substantiate his claim – which only stands because he uses the label "*illegal*". He ends the claim by using the familiar "*victim-criminal*" 'pairing' (Guilfoyle & Walker, 2000) which surfaced when the Fraser government introduced legislation seeking to impose criminal sanctions on boat organisers (see Chapter Three). First used by Fraser's Immigration Minister Ian Macphee, this pairing is partly a 'contrast structure' (Van Dijk, 2000a, p. 66; Every &

Augoustinos, 2007, p. 423) and partly an ‘implicit victimisation’ (Van Dijk, 2000b, p. 224) construct, where passengers are depicted as victims, so politicians can depict themselves as *compassionate* towards refugees while contrasting them sharply with their voyage facilitators, who are depicted as criminals.

In his next claim McKiernan reiterates claims from an earlier people smuggling Adjournment Speech (Senate Hansard, 1998a). He had argued that they profited even beyond their court convictions. Claiming comments from “*a magistrate in Broome*” he establishes an ‘authoritative source’ (Van Dijk, 2000b, p. 215) to back his claim. He attacks convicted smugglers “*those engaged in that awful trade*” for using their prison allowance to purchase goods and taking these home after serving their sentence.

That daily rate equated to the rates that people might have been paid back in their home country. They were provided with a bed, accommodation and food and there was little expenditure. Therefore, they were able to transfer that money into goods and take the goods back to their home country (Senate Hansard, 1999e, p. 6838).

In this construct, McKiernan refers to the Corrections Department’s weekly expenses allowance policy for all inmates. He avoids noting the allowance is universal in prisons before claiming that convicted smugglers build an income stream from this allowance. It is a remarkably nasty ‘extreme case formulation’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124). McKiernan’s claim is undermined in several ways, first because he fails to distinguish between ‘boat crew’ and ‘people smugglers’ – the voyage organisers, and second, because the magistrate had talked about fishermen, not smugglers. The “*Broome magistrate*” had commented that neither prison sentences nor allowances of \$13.44 per week (Senate Hansard, 1998a, p. 3678) were deterring convicted Indonesian fishermen *without* depicting the fishermen as financial opportunists. The newspaper McKiernan cited had interpreted and ‘coloured’ magistrate Col Roberts’ observations, while McKiernan’s speech had not distinguished between Indonesian boat crew and other ‘illegal fishermen’. Those convicted as ‘people smugglers’ are all ‘crew members’ – the often poor, illiterate and unemployed Indonesian fishermen mentioned in Chapter One. While his is an easily challenged claim, McKiernan uses it for the second time in the Senate. That his claim remained unchallenged may indicate that negative depictions of voyage facilitators as ‘*extreme*

financial opportunists’ was easily established as a ‘commonsense’ (Guilfoyle, 2009, p. 148) in parliamentary discourse.

5.5. *Democrats, Greens and that other dissenter*

Australian Greens and Democrats have a well-established dissenting asylum seeker discourse, but would their human rights foundations withstand the “*Olympic Games arrivals*” phenomenon? How strong were their fundamentals of asylum seeker rights regardless of their “*mode of arrival*” conform to Article 31 of the Refugee Convention? Would their identity as “*refugee advocates in the Australian Parliament*”, as two Critical Discourse Analysts (Every & Augoustinos, 2007, p. 428) called them, mark their difference? The publication of the HREOC report (HREOC, 1998) provided a rich critique of the *Sealed Envelopes Bill*; so did community submissions in the 1999 Senate Committee report (SLCLC, 1999). What would they argue *vis-à-vis* the amendments?

Democrats Senator Andrew Bartlett reiterates his colleagues’ 1996 arguments opposing the Bill (Senate Hansard, 1996a, 1996c, 1996d). Predictably, Bartlett declares his opposition to the Bill – but then declares his party will support the amendments. He does this not just once, but seven times throughout the day (Senate Hansard, 1999e, pp. 6840, 6841, 6842, 6845, 6964).

We hope these amendments will go some way towards reducing the pain of those who have been exploited and smuggled into Australia only to find themselves promptly returned to their country of origin ... will serve to reduce the incidence of this practice and send a message to those who are involved in organising it that it is not a profitable activity and not an activity that is likely to be of worth to them (Senate Hansard, 1999e, p. 6840).

Bartlett depicts the passengers as “*exploited*” victims who have been “*smuggled into Australia*” before being “*promptly returned to their country of origin*”. He accepts the “*victim-criminal pairing*” as factual. He accepts they will be “*returned to their country*”.

He does not scrutinise the “*promptly returned*” notion. The now published HREOC report, available to him too, had shattered the Immigration Department’s integrity,

supporting their intent *to return them all*. During the three years preceding 1999 around 80% of those arriving by boat were removed from Australia after arrival (Project SafeCom, 2009a, 2009b, 2009c). According to Bartlett, Minister Ruddock wanted to, “*almost without exception*”, simply remove them to the country they came from. Would that number have been different if RACS, the Commonwealth Ombudsman and HREOC had been able to deliver their *sealed envelopes*? Would it have been seventy-five per cent, fifty per cent, or perhaps forty-five per cent?

Bartlett continues, affirming he shares “*government and community concerns in relation to the practice of people smuggling*” (Senate Hansard, 1999e, p. 6840). He joins the apparent hegemony and dominant discourse *vis-à-vis* voyage facilitators: in his statement, Bartlett affirms the ‘modality claim’ (Van Dijk, 2000a, p. 65) the government attempted to construct: *something needed to be done about the boat arrivals*. Bartlett’s statement confirms that during this debate about a new phenomenon, a nearly established ‘commonsense’ (Guilfoyle, 2009, p. 148) had developed: the passengers were “*victims*” and the organisers were “*criminals*”.

During Committee deliberations, Bartlett presents a “*victim-criminal*” pairing: “[*they*] might be called the innocent victims of misrepresentation or unfair coercion by the people who are involved in the trade itself” (Senate Hansard, 1999e, p. 6965). He declares support for the amendments “*to reduce the level of people trafficking and people smuggling*”:

We think there is a benefit from that, not just to the Australian community but also to people who are genuine users of, and have genuine connections with, our refugee and humanitarian program. I think it is beneficial for them (Senate Hansard, 1999e, p. 6964).

Bartlett argues that criminalising “*trafficking and smuggling*” benefits the “*genuine users of [the] refugee and humanitarian program*”. He uses the program title of Australia’s annual humanitarian intake. Yet the Howard government strongly promoted the notion that maritime asylum claimants “*stole*” the places of offshore refugees; in this context they used the term “*queue jumpers*” to denote boat arrivals. This discourse aspect increases the dramatic quality of Bartlett’s ‘ambiguity’ (Van Dijk, 2000a, p. 62): his statement, constructed with ‘vagueness’ (p. 65) may express support for the

government's debate 'contrast rhetoric' (p. 62) between "real" refugees and "queue jumpers"; he may support the intake of 'offshore refugees' in preference over those who had arrived as asylum seekers by boat using 'smugglers'. In the absence of his clarification Bartlett 'hedges' (p. 65) between a dissenting human rights discourse and support of the dominant government and ALP opposition discourse.

Democrats Senator John Woodley:

We certainly agree with any move to restrict people smuggling. In effect it is akin to slavery - I think you can make that sort of comparison without going over the top (Senate Hansard, 1999e, p. 6967).

Senator Woodley constructs an 'extreme case formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) claiming people smuggling is "*akin to slavery*" before taking out some 'stake inoculation' insurance (Guilfoyle & Walker, 2000; Potter, 2004, p. 212; Wetherell, Taylor, & Yates, 2001, p. 155) with his phrase "*without going over the top*".

With a blistering speech WA Greens Senator Dee Margetts condemns the Bill's passage history and intent. Citing the HREOC report (1998, p. 28), Margetts tells the Senate about a November 1994 vessel, the *Cockatoo*:

In January 1995, arrangements were made to deport all 84 members of the group back to China. Legal assistance was received at the last minute, and 32 people from this boat were found to be refugees. Under our stringent rules in relation to refugees in Australia, if 32 people from that boat were found to be refugees, what would the implications have been if we had sent all 32 of those people back? Potentially, there were implications for their lives, their freedom or their families. It almost defies belief that we could be doing this on the basis of efficiency or some odd idea of justice. In other words, around 40 per cent of those people who have now been granted refugee status in Australia would have been deported (Senate Hansard, 1999e, p. 6845).

Senator Margetts aptly portrays the essence of the *Sealed Envelopes Bill* in this excerpt. However, she also clarifies the Greens support the amendments:

We have ... heard of the government's amendments in relation to trafficking in people, and as this is an issue which is not about punishing refugees – it is about punishing those people who would seek to profit from the heartbreak of potential refugees – we have no objection to this (Senate Hansard, 1999e, p. 6842).

In the excerpt Margetts uses 'subject positioning' (Guilfoyle & Hancock, 2009, p. 126) while setting up a 'contrast structure' (Van Dijk, 2000a, p. 66; Every & Augoustinos, 2007, p. 423). By using the labels "*trafficking*" and "*potential refugees*" she constructs a "*victim-criminal*" pairing, failing to construct a fact-based depiction. Yet, within this a deviation from the dominant emerges: Margetts is the first Senator to label the passengers "*refugees*" and "*potential refugees*". Throughout the day the Greens maintain this dissenting discourse: Senators Margetts and Bob Brown use the term "*asylum seeker*" seven times and "*refugees*" thirteen times. By comparison, Democrats Senator Bartlett uses the word "*refugee*" six times, but only as part of the program title 'Refugee and Humanitarian Program'.

Using the phrase "*trafficking in people*" Margetts supports the amendments. She then adds the disclaimer the amendments are not about "*punishing refugees*". She clarifies "*punishing those people who would seek to profit*". She then stresses the passengers' victimisation by claiming facilitators are profiting "*from the heartbreak of potential refugees*". In this process she also ensures her positioning as 'the compassionate politician', strengthening it with the use of "*heartbreak*".

During the Committee debate Senator Margetts makes a claim that smugglers promote false expectations in the minds of their passengers ("*that they will be well received*") and that they 'sell' the notion that using their service assists their asylum claims upon arrival ("*their cases might be helped*"):

It has obviously been agreed that [the amendments] may stop the hurt and disappointment of many people who may have been led to believe that they will be well received in Australia, that there might be opportunities or that, if they are real refugees, their cases might be helped if they come using these traffickers ... I think it is a step in the right direction to stop those people who

might otherwise be trafficking or benefiting from treating other people badly or from building up their hopes. But it might mean that real refugees will get treated badly simply because they are part of a trafficking process. It is very sad to think that that might happen (Senate Hansard, 1999e, p. 6965).

In the segment's second part Margetts uses this alleged 'misleading marketing' to justify the harsh amendments, claiming they may stop "*those people*" from "*benefiting from*" their passengers or from "*treating other people badly*". Like Senator Patterson above, who implied that "*drug smuggling*" could be part of 'people smugglers' activity, Margetts constructs an implication (Van Dijk, 2000b, p. 220) about business practices of the migrant travel facilitators; she does not back her claim with evidence. It could even be argued that Margetts creates an 'extreme case formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) in order to 'contrast' (Van Dijk, 2000a, p. 66) this with the 'victimization' (Van Dijk, 2000b, p. 224) of the passengers before she expresses partisan compassion for them in "*it is very sad to think...*" in the final sentence.

Later in the day, Senator Bob Brown's speech on the Bill marks his complete silence about the amendments. Perhaps the Greens had no time to study the amendments and develop a party direction. While the Bill's survival was irrelevant – the Greens opposed it while it passed with Labor support – a burning question remained for Greens and Democrats: where was their dissenting discourse, elsewhere vigorously pursued with regards to the rights of *unauthorised arrivals*? Where were the insights of the Greens, that the severe punishment of the voyage facilitators was made possible in an environment where the passengers, "the smuggled", were punished and vilified by the government?

West Australian Greens Senator Christabel Chamarette was not part of the 1999 debate; her term ended in June 1997 following the 1996 election. If she would have been present, her propositions could have signified a powerful narrative to be adopted by her colleagues. Three years earlier, she had prophetically captured the essence of the major parties' rhetorical constructs, exposing the link between the negative depiction of the passengers and the criminal labelling of the voyage organisers. She had exclaimed:

The community has been bombarded with government statements that the boat people are queue jumpers, that they are the victims of unscrupulous entrepreneurs in other countries who are making money by providing boats, that they are being used by touting lawyers who want to make money out of the misery of others, and that they are not refugees anyway (Senate Hansard, 1996d, p. 2566).

Labor Senator Barney Cooney speaks briefly. He reiterates his earlier critical comments about the Bill's debate and its implied vilification of HREOC, the legal profession and the Ombudsman, summarising his Senate Committee report chapter (SLCLC, 1999, pp. 49-55). He does not retreat as he notes:

There has been a campaign ... suggesting that the legal profession is trying to pervert the law and the immigration system ... and ... a direct attack on the Human Rights and Equal Opportunity Commission and a direct attack on Chris Sidoti, the Human Rights Commissioner. Both attacks are most unjustified and both should be corrected (Senate Hansard, 1999e, p. 6847).

Senator Cooney also maintains silence about the Bill's amendments. He has however delivered a thorough critique, positioning himself as an outspoken dissenter. His dissent would cease for the vote on the legislation, because his party would prevent him from doing so.

Following Senator Cooney's speech the debate that had started at 9:31am is adjourned at 10:40am. Debate is resumed at 4.38pm when Greens Senator Bob Brown rises for his speech (Senate Hansard, 1999e, p. 6960), declaring his opposition to the Bill. He does not refer to any particular elements of the Bill; neither does he mention the proposed amendments.

5.6. *Bring five people, get twenty years*

232A Organising bringing groups of noncitizens into Australia

A person who:

- (a) organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of 5 or more people; and
- (b) does so knowing the people would become, upon entry into Australia, unlawful non-citizens;

is guilty of an offence punishable, on conviction, by imprisonment for 20 years or 2,000 penalty units, or both.

At 4:54pm the Senate is declared to be *In Committee*, and Senator Kay Patterson tables the amendments (Senate Hansard, 1999e, p. 6962). One amendment inserts a new section 232A into the Migration Act (CofA, 1958). Previously, section 233 was used to convict those “*bringing non-citizens into Australia*”, triggering a maximum prison sentence of two years imprisonment. The new section 232A imposes a maximum 20-year sentence for “*bringing a group of 5 or more people*” into Australia.

Senator Patterson’s speech displays a mixture of rhetorical devices. As the Immigration Minister’s Parliamentary Secretary, the Senator’s speech may have been written by Minister Ruddock; this certainly would explain its apparently advanced rhetorical complexity.

The amendments ... simply reflect the serious nature of people trafficking. It has become more common. It is a relatively new phenomenon in this day and age, though it might have happened in the olden days ... and a number of unscrupulous people are benefiting from those people who see themselves as in a desperate situation, often a desperate economic or social situation (Senate Hansard, 1999e, p. 6961).

Senator Patterson claims the amendments are a “*simple*” response: they “*simply reflect the serious nature of people trafficking*”, and she states that people trafficking “*has become more common*”. She attempts to establish a ‘modality’ (Van Dijk, 2000a, p. 65) for the “*seriousness*” of “*people trafficking*”, portraying the amendments’ extraordinary sentence increase as a ‘common sense’ (Guilfoyle, 2009, p. 148) response,

seeking a ‘legitimation’ (Van Dijk, 2000a, p. 54) of the measures (they “*simply reflect*” the situation).

She continues, claiming that people trafficking is “*relatively new*” before adding it also took place “*in the olden days*”. With this construct she undervalues the claim that it is new while at the same time claiming it is not new. She tries to justify the ‘new’ legislation while also avoiding disquiet which may undermine the credibility of the new legislation: she builds ‘ambiguity’ (Van Dijk, 2000a, p. 62), ‘vagueness’ (p. 65) and a dose of ‘reasonableness’ (Van Dijk, 2000b, p. 223). Next, Senator Patterson sets up ‘contrast’ (Van Dijk, 2000a, p. 66) between the “*unscrupulous*” smugglers and the “*desperate*” passengers – presenting a “*victim-criminal*” pairing. However, she also depicts the passengers being “*in a desperate situation*” as a self-perception of the passengers: they are people “*who see themselves*” as desperate: introducing a victimisation disclaimer, she depicts them as empowered ‘actors’. In conclusion she describes their self-perceived predicament: it is “*often a desperate economic or social situation*”. Patterson protects herself using ‘impression management’ (Van Dijk, 2000b, p. 223), depicting the passengers as “*economic*” migrants or wishing to improve their “*social situation*”. She avoids the suggestion they may be ‘asylum seekers’ or ‘potential refugees’; as Minister Ruddock’s Parliamentary Secretary that would carry a much greater risk.

The criminal organisations behind this terrible trade are well organised. Apart from anything else, they are placing people at great risk by putting them on unseaworthy vessels and sending them to other countries, including Australia (Senate Hansard, 1999e, p. 6961).

In this extract Senator Patterson constructs a number of elements, presenting them as fact. She claims the “*terrible trade*” of the voyage facilitators receive backing from “*criminal organisations*” before claiming they are “*placing people at great risk*” by using “*unseaworthy vessels*”. The Senator combines some ‘persuasive scare tactics’ (Van Dijk, 2000a, p. 72) and – using the “*terrible trade*” label – an ‘extreme case formulation’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124).

The government acknowledge the support of the opposition in our determination to give our police forces the tools they need to detect and prevent these crimes (Senate Hansard, 1999e, p. 6962).

Senator Patterson does not just acknowledge the Labor opposition, but also lobbies for their ongoing cooperation. She seeks a consensus with them, using “*ingroup unification, cohesion and solidarity against Them*” (Van Dijk, 2000b, p. 216), where the “*Them*” are the smugglers. She utilises ‘*law and order discourse*’: the bipartisan ‘good law and order’, giving “*our police forces the tools they need*” is a widely used and very safe move for politicians in Australian political discourse. She maintains this framework when commenting on increased telecommunication interception powers proposed in one of the amendments:

We need to be able to pinpoint the people onshore who are facilitating these crimes and working in cooperation with the people smugglers offshore. This tool will strengthen Australia’s ability to monitor and, hopefully, prevent some of the most dangerous criminal activities currently being pursued (Senate Hansard, 1999e, p. 6962).

Here Senator Patterson introduces a ‘situated meaning’ (Gee, 2005, p. 64); she does not just mention the Australian Federal Police; *she becomes its voice*. She has introduced a widely approved Australian ‘cultural model’ (Gee, 2005, p. 59), using Federal Police terminology: “*pinpointing*” the spread of “*crimes*” and “*monitoring*” development of “*some of the most dangerous criminal activities*”. Her claim construct is understood by her fellow Senators and reporters – it will also be easily grasped by an audience at home. The Senator utilises one of Australia’s ‘dominant discourses’ (Guilfoyle, 2009, p. 148). *Law and order* discourse may perhaps even represent a *Grand Narrative* (Jensen, 2008) for Australia. By including one of “*the most dangerous criminal activities*” into her claim, Patterson did not only reflect a dominant discourse, but also actively promoted the inclusion of “*people smuggling*” and “*trafficking*” in that discourse.

We know that other sorts of smuggling often goes with people smuggling, including drug smuggling. For that reason, I believe this measure is appropriate I commend the Bill to the Chamber (Senate Hansard, 1999e, p. 6962).

In the following eleven years since Patterson's speech, no known evidence indicated or emerged that Australian-route 'people smugglers' had links to "*drug smuggling*". It does not prevent the Senator making the link, creating an 'implication' (Van Dijk, 2000b, p. 220) of "*other sorts of smuggling*" and an 'extreme case formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124). By inserting "*often*" she presents the implication as a 'generalisation' (Van Dijk, 2000a, p. 61).

Tasmanian Independent Senator Brian Harradine declares opposition to the Bill and expresses concerns that the amendments are "*tacked onto this piece of legislation*". He notes he does "*not really know how else to deal with this*" and concludes this is "*rather awkward*" while the amendments "*are regarded as being important and will be supported*" (Senate Hansard, 1999e, p. 6965). Similarly, Senator Bartlett expresses dismay that the amendments were not presented as separate legislation. He declares being "*strongly opposed to the vehicle that the amendments are being attached to as a mechanism for getting them through the parliament*", and asks a question about "*the actual effect*" of the amendments, wondering whether they target "*the organisers of people trafficking or people smuggling activities rather than the people who are being trafficked*" (p. 6964).

Senator Patterson provides the closing remarks for the passage of the amended Bill.

I believe that there are messages that have to go out. People are profiteering by charging people anything up to \$US40.000 to travel to Australia on an unsafe boat. There have been some cases where ships have sunk, and people have had their lives put at risk by being placed in ships not fit for live cattle. On inspection, the hygiene in those ships is appalling and the food is atrocious. The people who are benefiting are those who are involved in people smuggling, and it is now a worldwide trade. The message that the whole world has to put out is that that is not on (Senate Hansard, 1999e, p. 6967).

In closing, Patterson presents seven 'extreme case formulations' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) and 'generalisations' (Van Dijk, 2000a, p. 63) about the journey and its conditions. They are: the price tag for the journey ("*anything up to \$US40.000*"), the quality of the boats ("*on an unsafe boat*"), a 'perished at sea' claim ("*some cases where ships have sunk*"), the passengers jeopardising their life

(“*had their lives put at risk*”), inhumane travel surrounds (“*ships not fit for live cattle*”), shocking provisions (“*the food is atrocious*”) and unhygienic conditions (“*hygiene ... is appalling*”). These are strong claims for which she provides no examples or evidence: it is strong enough to call the travel facilitators (“*the people who are benefiting*”) by one of the labels vigorously promoted during the Senate debate: “*those who are involved in people smuggling*”. She finishes by making another universalised and untested claim: “*it is now a worldwide trade*”. She finishes the segment as she had started (“*there are messages that have to go out*”) with a strong ‘truth modality claim’ (Van Dijk, 2000a, p. 65; Jacobs, 2010, p. 365), concluding that the increased penalties are messages to “*the whole world*” that “*that is not on*”.

At 5:29pm, 35 minutes after Senator Patterson tabled the amendments, the *Sealed Envelopes Bill* passes the Senate *with amendments*. Total Senate debating time for Bill and amendments throughout the day is just 1.45 hours. Labor support comes as predicted; Senator McKiernan noted the opposition had “*considered the bill and its predecessor very carefully*” (Senate Hansard, 1999e, p. 6968). While Democrats, Greens and one Independent oppose the Bill, they either fully support or remain silent about the amendments, although Independent Harradine and Senator Bartlett had protested the fact that these amendments were not presented as separate legislation. No division is called and no votes are recorded. The amended Bill now proceeds, for the first time since 1996, to the House of Representatives.

5.7. An Eleven-minute Refugee Convention Waltz

At 7.29pm the Hon Peter Slipper tables the *Sealed Envelopes Bill* in the House of Representatives. He informs the House that the Bill, previously debated in the Senate, now includes amendments “*to strengthen offence provisions in the Migration Act dealing with the increasing problem of people trafficking*” (House Hansard, 1999e, p. 7992).

The legislation is new to the House of Representatives, but Mr Slipper’s Second Reading speech lasts just three minutes. Slipper summarises the Bill’s background and intent to restrict outsiders’ legal assistance access to boat arrivals, and explains the amendments, particularly the increased penalty:

Organised crime groups are involved in people trafficking, and the penalty reflects the seriousness of the offence. These new provisions are primarily aimed at those who profit from people trafficking – those who, for a fee, organise individuals or groups to enter Australia illegally. Refugees are not at risk from these provisions. As a signatory to the refugees convention, the Australian government will ensure that refugees are not subjected to penalties on account of illegal entry or presence in Australia as first refuge (House Hansard, 1999e, p. 7992).

Slipper's references to "*refugees*" and the "*refugees' convention*" are not attempts to improve the government's human rights credentials. During the Bill's debate, government and opposition had continually depicted boat arrivals as "*unlawful arrivals*" and "*unlawful non-citizens*", never calling them "*asylum seekers*", "*potential refugees*" or "*refugees*". When justifying access restrictions to detained boat arrivals by lawyers, both major parties employed rhetorical constructs depicting them as *non-deserving entrants*. In his 1996 Explanatory Memorandum Minister Ruddock had even promoted the causal link between their '*mode of arrival*' and the legislation's imperative: he promoted justification of the measures **because** they had "*arrived as unlawful non-citizens*" (CofA, 1996b, p. 2; SCSB, 1996). However, right now Slipper needs a new 'contrast structure' (Van Dijk, 2000a, p. 66; Every & Augoustinos, 2007, p. 423) to justify the enormous increase of the maximum imprisonment for "*those who profit from people trafficking*" proposed in the amendments.

In closing his sentence, Mr Slipper makes one of the debate's most audacious moves. Directly quoting from the Refugee Convention's (UNHCR, 2006) Article 31, he guarantees the government "*will ensure that refugees are not subjected to penalties on account of illegal entry or presence*". It is an astounding claim, and 'counterfactual' (Van Dijk, 2000a, p. 72), contrasted with the core intention of the Bill, particularly because Minister Ruddock's Explanatory Memorandum had clearly defined the legislation as a punitive measure **because** of the '*mode of arrival*' of asylum seekers. Slipper constructs this false reassurance as a 'stake inoculation' (Guilfoyle & Walker, 2000; Potter, 2004, p. 212; Wetherell, Taylor, & Yates, 2001, p. 155) and a 'reasonableness' move (Van Dijk, 2000b, p. 223) before he justifies the insertion of Section 232A in the Migration Act, which "*introduces a more severe penalty of 20*

years imprisonment ... for the trafficking of groups of five or more people” (House Hansard, 1999e, p. 7992).

The government is committed to protecting the integrity of the nation’s borders and to stopping the work of people traffickers who think nothing of exploiting people with the false promise of entry into Australia (House Hansard, 1999e, p. 7992).

In this excerpt Mr Slipper claims the operators “*think nothing of exploiting people*” before alleging they offer “*the false promise of entry into Australia*”. Slipper prefers usage of “*traffickers*” over “*smugglers*” in his speech; its usefulness is its “*extremisation*”. The two labels are clearly distinct: the notion of “*trafficking*” has a connotation to ‘*coercion and forced travel*’, while “*smuggler*” or “*people smuggler*” has an underlying meaning related to ‘*illicit border crossings*’. Mr Slipper’s preferential usage of “*traffickers*” in the debate functions to establish an ‘extreme case formulation’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124). The use of this label in the debate may indicate insufficient knowledge of the nature of informal travel ventures, but its persistent use in parliamentary rhetoric functions as an “*Extremisation label*” to justify the criminal sanctions. The separation of these terms in political discourse further develops in the following years. During 2001 the *United Nations Convention against Transnational Organised Crime* (United Nations, 2001a) and its *Smuggling Protocol* (United Nations, 2001b) will be ratified by many countries. Throughout the day however, the terms ‘*trafficking*’ and ‘*trafficked*’ will be used 28 times in the Senate, while the term ‘*people smuggler*’ or ‘*smuggling*’ will be used 27 times; in the House of Representatives ‘*trafficking*’ or ‘*trafficked*’ is used eight times; ‘*people smuggler*’ or ‘*smuggling*’ is used two times.

In reply to Slipper, Labor’s Immigration spokesman Con Sciacca offers his party’s support for the Bill and its amendments and praises the government’s initiatives. The government had repeatedly claimed that “*outsiders*”, HREOC, the Ombudsman and lawyers were “*subverting*” the intent of the Migration Act if given access to detained boat arrivals. Suggestions had been raised that “*lawyers were touting for business*”. These suggestions had been fiercely criticised by Labor Senator Cooney in his speech and the Senate Inquiry report (SLCLC, 1999, pp. 49-55). Sciacca’s rhetoric however is excessively strident and not congruent with the facts.

Summarising the legislation's intent, Sciacca claims "*the right to confidential access to legal advice is maintained*" but "*nevertheless strictly regulated*". He claims this prevents "*greedy lawyers from touting for business and initiating vexatious class actions*". His extraordinary assertions about "*greedy lawyers*" ignores evidence presented at the Senate Inquiry (Committee Hansard, 1996, pp. 151, 173, 177; SLCLC, 1999). At the Inquiry, NGO's and legal bodies had testified that lawyers assisting detainees primarily worked pro bono and not for profit, yet Sciacca continues his unfounded attack of "*this small but very active group of lawyers*", claiming "*each detainee represents a few hundred dollars*". He claims the proceeds "*represent millions of dollars*" when multiplied "*by a few thousand detainees and illegal immigrants*". He claims they "*end up in the coffers of a few law firms*" after being "*duped out of these poor people*" (House Hansard, 1999e, p. 7993).

It would be easy to identify Mr Sciacca's rhetoric as merely an 'extreme case formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124). While this is not inaccurate, more is at play. His manipulation surfaces when he identifies the "*duped*", quantifying them as "*a few thousand detainees and illegal immigrants*". With the construct he heaps disparaging innuendos on boat arrivals *and other "illegal immigrants"*. Sciacca does not construct his argument about detained *boat arrivals* – evident from his numbers "*a few thousand*" – yet the legislation is specific for this target group. While Mr Sciacca's claim is inaccurate and inappropriate, it is identical to the constructs employed by Immigration Minister Ruddock during his 1996 Refugee Week speech (see Chapter Four). The Bill does not target the "*few thousand*" illegal entrants; it aims to exclude "outsiders" from providing legal assistance to just *a few hundred* detained boat arrivals, and his rhetoric is manipulative and inappropriate. The "*few thousand*" have nothing to do with the *Sealed Envelopes Bill*.

Sciacca claims the Bill deters "*people smuggling operations*" that "*over time have become more and more serious*" and the "*problems*" have "*threatened the integrity of our judicial appeals system and the integrity of our national border*". He commends the government's implementation of the proposals "*to combat this disgraceful trade in human misery*" claiming Labor had repeatedly called for such measures (House Hansard, 1999e, p. 7993). He ensures to "*reaffirm the bipartisan spirit*" in "*this portfolio*", but not without expressing his condemnation about other "*ideologically*

unsound” legislation – referring to the “*Judicial Review Bill*” (CofA, 1998). This Bill was the driving motive for Minister Ruddock’s constructs during his 1996 Refugee Week speech (see Chapter Four).

Sciacca displays some skilful rhetoric, which needs close scrutiny and careful deconstruction (Gough, 2008a, 2008b). First, he employs a ‘political consensus strategy’ by acclaiming the “*bipartisan spirit*”. Van Dijk comments on Sciacca’s ‘political consensus’ professions: “*Facing the threat of immigration ... the country should hold together, and decisions and legislation should ideally be non-partisan or bipartisan*” (Van Dijk, 2000b, p. 216). However, while Sciacca generously praises the government, he adds considerable restrictions when condemning the *Judicial Review Bill* as “*ideologically unsound*”. When he claims the opposition’s Labor Party “*had been calling ... repeatedly*” for measures like the proposed amendments, he ensures his ‘actor role’ (Van Dijk, 2000c, pp. 51-52) clearly defines him as a member of his party and opposition member. When he launched unfounded allegations at the feet of “*greedy lawyers*” with their “*vexatious class actions*”, he used a ‘generalisation’ (Van Dijk, 2000a, p. 61) to safeguard himself from attack. He had added a qualifier or ‘disclaimer’ (Van Dijk, 2000a, p. 62) to his ferocious attack by claiming that “*these people need legal advice*” but only “*if they are ... genuine asylum seekers*”. He even took out insurance against anyone would might undermine him on that by using the adjective “*genuine*”, using an ‘ingroup-outgroup polarization’ (Van Dijk, 2000b, p. 214), where the outgroup consists of, as he calls them, “*nongenuine refugees*”.

Sciacca’s complex constructs can be explained against some presumptions. The amendments were formulated at the last minute, but earlier in the day Labor Senator Jim McKiernan had confirmed that the opposition was briefed. This hurried process makes it plausible that many Labor backbenchers had not been informed of the amendments, or had only just become aware of them. In other words, Sciacca speaks to the Bill, vigorously defending its necessity; he offers bipartisanship while applauding the government; and hopes to convince the majority of his fellow Labor MP’s in The House. For the government, Mr Slipper, being aware of this process, assists the opposition, employing the safe move of supplying “*rich lashings of Refugee Convention talk*” – and both MP’s are telling everyone *it’s going to be just fine*. Mr Peter Slipper and Mr Con Sciacca act in unison to achieve their purpose – the passing of the legislation.

Over the past 18 months Australia has increasingly been seen as a soft target to gangs of people traffickers in a number of countries. Overall in 1997-98 some 157 illegal immigrants arrived by sea on our shores. In 1998-99 this figure increased eightfold to 859, and more are coming every day. This increase in people smuggling in the operation of the so-called ‘snakeheads’ signifies that Australia’s penalties for these offences do not go far enough to deter those who assist these criminal warlords on our shores (House Hansard, 1999e, p. 7993).

Mr Sciacca claims the arrivals in “*the past 18 months*” sailed in at the behest of “*gangs of people traffickers*”. He makes a generalised claim, but does not present evidence or facts. He then notes an “*eightfold increase*” in arrivals before adding another generalised claim: “*more are coming every day*”. His numbers are generalised to increase rhetorical effectiveness: the first boat (with 52 Chinese) that increased the arrival rate arrived not “*18 months ago*” but on December 24, 1998 (Project SafeCom, 2009d), and since that date more had come (Project SafeCom, 2009e). He continues with another generalisation to justify harsh criminal sanctions and introduces ‘pairing’ (Guilfoyle & Walker, 2000) so the two elements – “*people smuggling*” and “*snakeheads*” – assume equal value before labelling both as actions of “*these criminal warlords*”.

The opposition will monitor these provisions to ensure that genuine refugees escaping their country of origin, often illegally, and in fear of lives, will not be prosecuted for doing so under these new penalties. We have made it clear that we will not tolerate any breaches to any of the international conventions on refugees. To do so would be to tarnish Australia’s hard-won reputation as a generous, humanitarian nation. With these considerations in mind, the opposition gives its full support to this bill (House Hansard, 1999e, p. 7994).

In the final excerpt, Mr Sciacca assumes the ‘actor role’ (Van Dijk, 2000a, pp. 51-52) as a member of the opposition which “*will monitor these provisions*” of the legislation: he ‘engages in opposition’ (Van Dijk, 2000a, p. 50), a comfortable role where he portrays himself as a competent politician by his Labor colleagues – and the voters at home. He voices the opposition’s commitment to “*monitor very closely*” the application of the “*new tougher penalties*” only to “*those who gain financially or materially from people trafficking*”. His references to the Refugee Convention however, (“*escaping their*

country of origin, often illegally, and in fear of lives”) are not inserted because he promotes the UN treaty; they are a vehicle for his rhetorical constructs. Using these references, Sciacca attempts to achieve ‘positive self-presentation’, at the same time seeking ‘legitimation’ (Van Dijk, 2000a, p. 54) for his insistence “*we will not tolerate any breaches to any of the international conventions on refugees*”. His final reference also, engages ‘national self-glorification’ (Van Dijk, 2000b, p. 220) with his claim “*tarnish Australia’s hard-won reputation as a generous, humanitarian nation*”.

In his acceptance remarks Mr Slipper briefly responds to Mr Sciacca, but not without referring once more to Article 31 the Refugee Convention “*to which Australia is a party*”, stressing that refugees “*are not at risk*” from the heavy prison sentences imposed on the “*traffickers*”, because the Convention “*provides that refugees are not to be subjected to penalties on account of their illegal entry or presence in the country of first refuge*” (House Hansard, 1999e, p. 7994). The use of this ‘legitimation’ (Van Dijk, 2000a, p. 54) was needed in the context of the heavy penalties imposed on the “*criminal warlords*” who were “*victimizing*” their passengers. The debate on the penalties needed another ‘contrasting structure’ (Every & Augoustinos, 2007, p. 423), even if it required one more usage of the “*refugee*” label in *the Bipartisan Waltz with the Refugee Convention*.

Eleven minutes after opening the debate – at 7:40pm – Mr Slipper moves the motion for the third reading. The *Migration Legislation Amendment Bill (No. 1) 1999* passed the House of Representatives, without ever having been tabled, presented, introduced or debated before June 30, 1999, within eleven minutes. The Bill is now ready to become the *Migration Legislation Amendment Act (No. 1) 1999* (CofA, 1999e).

5.8. Conclusion

This chapter analysed the parliamentary debates of a parliamentary Bill first tabled in 1996 and passed by Parliament in June 1999. First introduced in the Senate, the legislation, nicknamed the *Sealed Envelopes Bill*, proposed to remove unsolicited legal assistance access for maritime asylum seekers in immigration detention by the HREOC, Commonwealth Ombudsman and any other legal representatives. The Bill was first introduced to Parliament while a HREOC Inquiry into human rights abuses in Australia’s detention centres was ongoing. This inquiry included investigations in the

facility where maritime arrivals were detained. Under HREOC's powers it could conduct such investigations and compel detention services providers and the Immigration Department to cooperate and respond. Its report, discussed in Chapter 4, had relevance during the parliamentary debate and may have influenced the drafting of the legislation by the Immigration Department or by its Minister the Hon Philip Ruddock.

Analysis of the legislation found that government and Labor opposition MP's and Senators justified the legislation in rhetorical terms by constructing a persistent discourse depicting maritime asylum seekers as "*unlawful entrants*", "*unlawful arrivals*", "*illegal entrants*" and "*illegal arrivals*". Further, they depicted the statutory powers vested in HREOC, the Ombudsman and other legal representatives *vis-à-vis* detained asylum seekers as "*subverting*" and "*obstructing*" the "*Parliament's intent*" to "*manage unauthorised arrivals in detention*" under the Migration Act. Lawyers seeking to assist detainees were depicted as "*greedy lawyers touting for business*" and "*extremised labels*" also extended to allege they could earn "*millions of dollars*" with "*vexatious class actions*". The government ignored a Senate Committee Alert, suggesting the legislation may breach international human rights conventions, and failed to incorporate serious community and legal concerns expressed in a Senate Inquiry hearing by means of including amendments to the legislation. The government won Labor support for an Urgency Motion, but did not progress the 1996 Senate debate by introducing the Bill to the House of Representatives so its 'urgency' could be implemented. Instead, the government postponed the Bill, because as a result of the Urgency Motion it could reintroduce the Bill at any time of its own choosing.

Between December 1998 and June 1999, a number of large boats with Chinese migrants entered Australia, reportedly to find jobs associated with the 2000 Sydney Olympic Games. These boats, called the *Olympic Games arrivals* in this chapter, caused community fury and astonishment, invoking notions of 'border panic', while their arrival without prior detection in populated areas received enormous media attention and public condemnation. The government responded by tabling legislation to increase criminal sanctions for bringing non-citizens to Australia from two to twenty years. While the arrival of these *Olympic Games arrivals* triggered the measures, the government applied these criminal sanctions to all boats, and opposition politicians supported the universal nature of these measures, citing previous vessel numbers as

illustrations. The government did not present this legislation as a Bill, but as an amendment attached to the *Sealed Envelopes Bill*, reintroduced to Senate and House of Representatives on the last day of Parliament before Winter Recess. The legislation and amendments passed the Senate after one hour and 45 minutes, while it took just eleven minutes for the laws, never presented before in this Chamber, to pass the House of Representatives without any debate.

Analysis of rhetoric employed in the Senate found that the voyage organisers were repeatedly depicted as extreme criminals and their passengers as victims in “*victim-criminal pairings*” while Senators frequently used “*extreme case formulations*” to justify harsh criminal sanctions. These extreme depictions were repeatedly presented as “*generalisations*” alleging the criminal nature of such voyages. ‘*Horror depictions*’ were presented about the vessels, the voyage cost, the food presented to passengers and the dangers at sea, while alleged links to drug crimes were presented without details or evidence. In the House of Representatives, debate was avoided beyond a Second Reading speech and an opposition reply, by means of using strongly worded endorsements of the legislation and its amendments and frequent references to the UN Refugee Convention as “*legitimation*” by government and opposition spokesmen. Voyage organisers were presented with “*Extremised labels*”, while the Labor opposition spokesman also described lawyers assisting detainees using “*extreme case formulations*”, using untested and generalised accusations they generated “*millions of dollars*” in profit from their interventions.

5.8.1. Research Questions

This section lists the four research questions and presents evidence drawn from the Parliamentary Debate of the *Sealed Envelopes Bill* and other relevant material from this chapter in the responses to these questions.

1. How did politicians inform themselves of the international phenomenon of ‘people smuggling’ and what knowledge did they have of the nature of ‘people smuggling’?

Politicians provided no verified information about the nature of any of the vessels’ organisers, past or present. While the arrival of the *Olympic Games arrivals* could have

motivated the government to present reports, for example from Australian Federal Police investigations or from the Department of Customs, detailing the nature of these Chinese arrivals or the organisation(s) backing the arrivals, they did not present any material which would count as ‘evidence’. The government did not clarify whether or not any prosecutions were pending or planned. It did not clarify what the reason had been for the recent Chinese arrivals. While media reports investigated some of the incidents, these found no backing by statements of Ministers or border control authorities. Instead, politicians employed rhetorical labels depicting extreme criminality and they alleged Chinese criminal entrepreneurs, the ‘Snakeheads’, were connected to the arrivals, but they presented no evidence to inform the Parliament.

2. When considering the legislation, did politicians consider that ‘people smugglers’ generally bring asylum seekers into Australia as a UN Refugee Convention signatory?

Government and Labor opposition depicted asylum seekers as ‘illegal arrivals’ when debating the principal Bill. They depicted passengers as ‘victims’ during the debate about the amendments imposing increased criminal sanctions on the voyage organisers. They did not distinguish between those who brought asylum seekers and those who brought other types of migrants.

3. Did politicians consider that lesser criminal liabilities may exist for boat crew as opposed to organisers during the debate?

No suggestions were raised in the House of Representatives or the Senate that diminished criminal responsibilities may exist for crew as opposed to skippers, organisers or business owners of any ventures.

4. Were the passengers negatively depicted by association because they had arrived using smugglers, and did Article 31 of the Refugee Convention play a role in legislative considerations?

During debate of the principal Bill, which aimed to remove legal rights for detained boat arrivals, government and Labor Senators consistently avoided labelling detained arrivals as “*refugees*” or “*asylum seekers*”; only Greens and Democrats used these

labels. During the debate of the 1999 amendments however, ‘*victimised*’ depictions of asylum seekers associated with *informal travel ventures* were frequently used. Government and Labor opposition politicians as well as Greens and Democrats frequently used “*victim-criminal pairings*”. A government Senator, depicting passengers as ‘victims’ in many ways, depicted them as “*economic*” migrants or wishing to improve their “*social situation*”, also a “*victim-criminal pairing*” because their travel facilitators were depicted as “*unscrupulous people ... benefiting from*” them. During the 1999 eleven-minute Second Reading and opposition reply in the House of Representatives, the Refugee Convention was cited by both MP’s, the government MP quoting from Article 31. However, these citations played no role in a debate about the legislation, instead serving “*national self-glorification*” rhetoric and “*legitimation*” of extreme yet unfounded claims of a politician, and of the extreme criminal sanctions proposed under the laws.

6. Protecting Borders in the War against the Uninvited

6.1. Introduction

Chapter Five scrutinised parliamentary processes and analysed the debate of a legislative measure nicknamed the *Sealed Envelopes Bill*. The Bill sought to prevent legal actions supporting asylum seekers in immigration detention by HREOC and the Commonwealth Ombudsman. The chapter found that during the debate, asylum seekers were consistently depicted using the labels “*unlawful entrants*”, “*unlawful arrivals*”, “*illegal entrants*” and “*illegal arrivals*”, and that this depiction served the purpose of constructing a parliamentary discourse supporting the legislation seeking to restrict access to legal advice. The chapter established that Immigration Minister Ruddock supported the notion that such restrictions should be applied as a form of discriminatory punishment because the asylum seekers had arrived unlawfully. Lawyers seeking to assist asylum seekers in this group were described as “*subverting*” and “*obstructing*” the operations of the Migration Act. The *Sealed Envelopes Bill* was selected for analysis because last-minute amendments added to the legislation in 1999 significantly increased existing criminal sanctions to those bringing people unlawfully into Australia. The amendments were a government response to community outrage and fears following the arrival of a number of vessels with illicit Chinese migrants in the lead-up to the 2000 Sydney Olympic Games. Analysis of this last phase in the three-year debate found that asylum seeker depictions changed, where they were now depicted as “*victims*” in “*victim-criminal pairings*” by politicians of all persuasions.

The parliamentary deliberations under scrutiny in this chapter are in many ways a continuation of the June 1999 debate of the *Sealed Envelopes Bill* and its last-minute amendments. The *Border Protection Legislation Amendment Bill 1999* was a second response to the *Olympic Games arrivals* and the ensuing *national border panic*. Just like in the previous debate, Members and Senators refer to John Howard’s *Prime Minister’s Coastal Surveillance Task Force Report* written by Max Moore-Wilton (Moore-Wilton, 1999). The legislation was a result of this report as well as the Alan Heggen Inquiry (1999) into ‘*undetected landings*’ at *Holloways Beach* and *Nambucca Heads* (Customs, 1999), commissioned by Justice and Customs Minister Amanda Vanstone. Both reports were released prior to the *Border Protection* measures debate under scrutiny in this chapter. The legislation proposes increased enforcement powers for border authorities in order to intercept and apprehend foreign vessels bringing

'unauthorised arrivals'. The debate of the legislation appeared chaotic; opposition MP's attack Minister Ruddock's Second Reading speech and express dismay about other aspects of the Howard government's proposed harsh legislative measures in response to boat arrivals or suggest he has adopted racist policies. Jupp (2002, pp. 120-136) and others have suggested that following Pauline Hanson's 1998 demise Howard started to adopt One Nation policies to capture up to one million politically disenfranchised voters.

Previous chapters identified that Australian politicians used a range of manipulative rhetorical devices in the parliamentary 'people smuggling' discourse; these devices were also used in refugee and immigration political discourse in other countries (Wodak & van Dijk, 2000). This chapter presents a new aspect to the development of Australian political discourse: the deliberative attempt by Australian public servants in the service of Prime Minister John Howard and his Immigration Minister Philip Ruddock to reconstruct parliamentary debates and present new rhetorical constructions of asylum seekers. It argues that Howard prevented a Parliamentary or Senate Inquiry into the '*undetected landings*' by means of announcing two inquiries. One was conducted within the Department of Prime Minister and Cabinet (PM&C) and another by his Justice and Customs Minister. These announcements and inquiries constructed a national security emergency narrative. In addition, the delivery of an Immigration Department document to all MP's and Senators created another discourse construction where asylum seekers arriving unauthorised were depicted as "*forum shoppers*" attracted to Australia's perceived generous provisions for asylum seekers.

If the *Olympic Games arrivals* triggered old Australian fears of an "*invasion from the north*", then the political response to the national *border panic* delivered no new paradigm other than a control and punishment response. This chapter presents evidence that the creation of the people smuggler as "*heinous criminal*" was strongly promoted and created by the government and by Australian politicians of most persuasions in a context where the governing Prime Minister created a national security emergency narrative prior to the commencement of the Parliamentary debate. In doing so, he equated all boat arrivals as "*illegal arrivals*" and remained unresponsive to the needs of asylum seekers. In this, Howard responded to asylum seekers, refugees and multiculturalism in similar ways as the Australian generations who held those invasion fears as intensely as they held their abhorrence of multiculturalism.

6.2. Howard's National Security Blindfold

Surprisingly, neither the Moore-Wilton nor the Heggen report provides any useful evidence of the nature of the *Olympic Games arrivals* or of the passengers' intentions. They do not provide an insight into the intent of the passengers and their organisers; they do not disclose any insight into the operations, or into their plans or *modus operandi*: Howard had stripped all details from both reports. The Task Force had been chaired by Max Moore-Wilton, Secretary of the Department of PM&C; other members were the agency heads of the Attorney-General's Department, Customs, Federal Police, Defence, Foreign Affairs, Immigration and the Office of National Assessments (Moore-Wilton, 1999, p. i). Perhaps the Prime Minister had provided the full details to a few Ministers; barring this, no elected representatives would ever know the full details of the vessels that had landed without prior detection. MP's and Senators were prevented from developing an insight into the reasons for the passengers' arrival and how they themselves felt about their journey and its reasons. Prime Minister John Howard had blindfolded the Parliament, and by depicting the vessels' landings as a national security threat, he justified the total operational secrecy of Australia's State response. According to media reports, Australia's Maritime Safety Authority and the Customs Department had been directed not to comment on the *Holloways Beach* arrivals (Roberts, G. & Martin, 1999). Moore-Wilton, one of Australia's most senior bureaucrats at the time, notes in his introduction:

The Heggen report has been withheld because it contains a considerable amount of operational detail which if released would compromise future operations against people smuggling syndicates. Similarly, the Task Force's report has been amended to protect operational and intelligence matters (Moore-Wilton, 1999, Introduction).

The 46-page Moore-Wilton report does not distinguish between generalised groups of illicit migrants and asylum seekers. It uses the labels '*illegal immigration*', '*illegal immigrants*' and '*illegal entry*' 48 times while the label '*illegal (boat) arrivals*' is used 24 times; it makes no mention of '*asylum seekers*'. The intrusive *Olympic Games arrivals* may well have provided the trigger that established the Prime Minister's Task Force, but it is clear that its brief was much wider. Moore-Wilton does not just identify all boats as *illegal arrivals*, but he represents the view that the border protection

measures proposed are to encompass *all for one*. The report does not differentiate the recent '*undetected landings*' from previous arrivals throughout the decade, even while these are clearly different categories; Moore-Wilton's numerical overview of "*illegal arrivals*" by boat and air (Moore-Wilton, 1999, Appendix 4, 5) tallies all arrivals since 1990 in a single table. It is not surprising that the report does not discuss the UN Refugee Convention, or that it discusses the issues raised in international law in relation to unauthorised arrivals, but it urges active support of the UN Smuggling Protocol (United Nations, 2001b):

Recommendation 7: That a high priority be accorded to conclusion of the People Smuggling Protocol to the draft UN Convention on Transnational Organised Crime and its ratification be encouraged in our region and beyond (Moore-Wilton, 1999, p. 4).

The Prime Minister's Task Force inquiry also provided a convenient insurance against any unforeseen developments in the Parliament. It was now unlikely that an '*outbreak of activism*' would take place, where the opposition would insist on a parliamentary inquiry, or that the *unrepresentative swill* of Senators (ABC1-TV, 2010) would demand one. It would be likely that everyone in the Parliament would keenly comply with the *national security discourse framework* designed by Prime Minister Howard's Task Force. In addition, the Task Force and its report had broadened the focus from the few undetected landings of the Chinese vessels to include all boat arrivals regardless of their purpose. This was a significant and considerable agenda shift: the 1999 undetected landings in populated areas were of an entirely different nature and quality than the boats that usually landed in Darwin or Ashmore Reef. Those boats and passengers immediately reported to authorities if they had not already been intercepted, and in doing so they complied with the dictum of Article 31 of the Refugee Convention. They always sailed in "*without authorization*" but they did nothing wrong "*provided they present themselves without delay to the authorities and show good cause*" (UNHCR, 2006, Article 31) for their unauthorised arrival.

As noted above, the second Inquiry into the '*undetected landings*' at *Holloways Beach* and *Nambucca Heads* was commissioned by Justice and Customs Minister Amanda Vanstone. In what is left from retired Air Vice-Marshal Alan Heggen's Inquiry report after removal of most of its contents, just one characteristic of the two '*undetected*

landings’ is identifiable. The report notes in its summarised Findings that the *Min Ping Yun* may have included a “*possible resort to evasive routing by the Master of the vessel*”, while the *Zhou Gang Tao 106* had an “*uncharacteristic routing ... beyond the northern and eastern boundaries*” of the Exclusive Economic Zone (i.e. in international waters) (Heggen, 1999, p. ii). Both statements are of a speculative nature.

6.3. *War on the Uninvited*

Several critics, including independent journalist John Pilger, have sought to depict the Howard government’s response to maritime asylum seekers as “*John Howard’s war on refugees*” (Pilger, 2002). Pilger asserts this when writing about the 2001 military action against the Norwegian containership ‘Tampa’ that had rescued hundreds of asylum seekers at sea (see Marr & Wilkinson, 2004). These descriptions are not just rhetorical depictions or hyperbole. The *Border Protection Legislation Amendment Bill 1999* proposes a wide range of amendments of the Migration Act (CofA, 1958), the Customs Act (CofA, 1901a) and the Fisheries Management Act (CofA, 1991). It justifies the amendments by invoking the rights of nation states to implement measures under UNCLOS, the *United Nations Convention on the Law of the Sea* (United Nations, 1982). In its relevant sections UNCLOS defines the maritime powers of sovereign states *vis-à-vis* foreign vessels, and as the Bill Digest clarifies (CofA, 1999a, p. 5), it defines what actions can be taken in the various maritime border zones surrounding nation states. However, UNCLOS was not designed to take hostile actions against asylum seekers and view them as a threat to a *State Party* to the Convention. It was instead designed to preempt and prevent tensions and eruption of hostilities between states over maritime resources, fishing grounds or maritime installations and prevent hostile border incursions. As its Preamble notes, the State Parties to the Convention were prompted by a desire to make

an important contribution to the maintenance of peace, justice and progress for all peoples of the world ... a just and equitable order ... which takes into account the interests and needs of mankind as a whole (United Nations, 1982, p. 25).

The legislation makes amendments to the Migration Act, defining new powers to “*board, chase, search, move and destroy ships and aircraft involved in people*

smuggling operations”; under the new Act, Australian government vessels could under specific circumstances engage in “*hot pursuit*” and “*use necessary and reasonable force, including firing at a ship in order to disable it*” (CofA, 1999a, p. 8).

Amendments to the Customs Act create new provisions giving authority for Customs officers to carry weapons, and under amendments to the Fisheries Management Act they could act as armed fisheries officers, using the same weapons (CofA, 1999a, p. 21).

Using war-like strategies against asylum seeker vessels could only be achieved because Howard had depicted the initial trigger for the legislation as a *national security invasion emergency*. As noted in Chapter Five, the undetected entry of Chinese vessels at *Holloways Beach* and *Nambucca Heads* had triggered sensational reportage while it had invoked Australia’s deeply embedded national invasion anxiety. Howard’s engagement of one of his most trusted senior public servants, Department of PM&C Secretary Max Moore-Wilton had kept control of the *national security invasion narrative* within his own Prime Ministerial department. His report had not disappointed: according to Moore-Wilton, the issue at hand had nothing to do with asylum seekers but, as noted above, everything to do with ‘*illegal immigration*’, ‘*illegal immigrants*’, ‘*illegal entry*’ and ‘*illegal arrivals*’. Moore-Wilton had confirmed this, 72 times over 46 pages. As Secretary of the Department of PM&C, Moore-Wilton’s immediate boss was John Howard. The over-saturated use of the “illegal” labels in Moore-Wilton’s report strongly suggests that he was under direct instructions by Howard to apply saturation levels of the labels.

6.4. Criminals Attempting Intrusions

Table 6.1: 1998 and 1999 Chinese boat arrivals

date	location	determination	number
19 Febr 1998	off NW Kimberley Coast	11 deported	10 adults 1 child
21 Febr 1998	off NW Kimberley Coast	7 deported	7 adults
24 Dec 1998	Coburg Peninsula, Northern Territory	52 deported	52 adults
11 Mar 1999	Gove, Northern Territory	57 deported	51 adults 6 children
12 Mar 1999	Holloways Beach, Cairns (<i>Min Ping Yun</i>)	26 deported	26 adults
10 April 1999	Scott's Head (Nambucca Heads) Macksville NSW (<i>Zhou Gang Tao 106</i>)	60 deported	60 adults
17 May 1999	near Port Kembla, NSW Coast	83 deported	82 adults 1 child
27 May 1999	Doughboy River, Cape York Peninsula, NT	78 deported	78 adults
4 June 1999	Broken Bay, Hawkesbury River NSW	108 deported	108 adults
	totals	100% deported	474 adults 8 children

Source: (Heggen, 1999; Project SafeCom, 2009d, 2009e, 2010b).

On September 22, Minister Ruddock tabled the *Border Protection Legislation Amendment Bill 1999* in the House of Representatives (House Hansard, 1999a). Under parliamentary protocol the Explanatory Memorandum (CofA, 1999b) to the legislation was distributed to Members and Senators. Throughout the debate and the subsequent introduction of amendments to the Bill, two more updated versions of this briefing document, issued by Minister Ruddock, were circulated. None of the 88 pages of the Explanatory Memorandum (CofA, 1999b) or the 91 pages of the Revised Explanatory Memorandum (CofA, 1999c) and Supplementary Explanatory Memorandum (CofA, 1999d) used the terms ‘*refugee*’ or ‘*asylum seeker*’, while in the Bill Digest (CofA, 1999a) the word ‘*refugee*’ occurred twice – in an organisation’s name. After tabling the legislation, the Minister proceeded with his Second Reading speech. Although Ruddock did not mention it, the arrival of a vessel at *Nambucca Heads* in April 1999 had triggered Howard’s announcement of his Prime Ministerial Task Force, and many aspects of the Bill were a direct implementation of the recommendations in Moore-Wilton’s report.

The Immigration Department lists the *Nambucca Heads* vessel in its public statistics of boat arrivals as having arrived near Scott’s Head, Macksville NSW (Project SafeCom, 2009e). It was not the first vessel with Chinese passengers landing in unusual locations:

just before Christmas 1998³⁰ a boat had landed at the Coburg Peninsula in the Northern Territory (Project SafeCom, 2009d). Table 1 above shows all boat arrivals of the type described by Minister Ruddock. According to the Minister,

The first of the influx of Chinese boats arrived in December last year, travelling at the conclusion of the monsoon season in the Northern Hemisphere. A total of 471 Chinese nationals arrived, most targeting our eastern coastline. This could happen again this year. We need this legislation to be able to respond should it re-occur. (House Hansard, 1999a, p. 10148)

Minister Ruddock's claim that the "*influx of Chinese boats*" had started in December 1998 provides the clue that the *Olympic Games arrivals* had begun with those 52 passengers (see Table 6.1 above). However, in the first paragraphs of his speech Minister Ruddock clarified that the Prime Minister's June 1999 announcements had been the precursors of the legislation and a "*response to a massive increase in the numbers of attempts at illegal entry to Australia*" and that the Bill would "*maintain the integrity of Australia's borders against attempted intrusions of the criminal elements behind most people smuggling activities*" (House Hansard, 1999a, p. 10147). The resulting legislation used the trigger of the *Olympic Games arrivals* to achieve something different; *it was targeting all unauthorised vessel landings*. That shift was also embedded in Moore-Wilton's Task Force report. And Moore-Wilton's Task Force worked under terms of reference defined by Prime Minister Howard.

Ruddock did not inform The House of the 1999 Immigration Department boat arrival outcomes – because they did not yet exist. The table of 1999 boat arrivals (Project SafeCom, 2009e) shows arrival dates, passengers' nationality and refugee claim outcomes – and it records more details than the Minister could provide. First, the figures show that the Chinese vessel sailing up the Hawkesbury River and landing at Broken Bay on June 4 was the very last of the vessels arriving from China. Second, the 1999 table shows that 78.2% of the 1999 boat arrivals would be granted protection, while 21.2% would be deported. Mr Ruddock may well have depicted them as "*attempts at*

³⁰ Project SafeCom's 1998 and 1999 tables of annual boat arrivals have added bright yellow highlights to the vessels mentioned in connection with the legislation; several of these boats are mentioned during the Parliamentary debates

illegal entry”, but the facts show that of all arrivals during 1999, more than three-quarters were found to be refugees.

Ruddock continues by reminding the House of “*recent events in East Timor*”. He recalled the influx of East Timorese as an “*illustration of circumstances that can drive people to leave their normal places of residence and seek safe haven elsewhere*”. This was an easy rhetorical move: Australian troops had recently assisted Timor Leste with its independence; a number of residents had been welcomed in Australia for temporary shelter during the conflict with Indonesia. By recalling these events Mr Ruddock could mobilise some ‘national self-glorification’ (Van Dijk, 2000b, p. 220) while doing some ‘positive self-presentation’ (Van Dijk, 2000a, p. 54): the East Timorese were “the good refugees”. His positive, sentimental and agreeable reminder is the immediate springboard for a deep dive into murky waters. He continued:

There is, however, another side to the mass movement of people. This is the cynical worldwide trade in smuggling people from one country to another. It is a trade which preys on the misery and hopes of people. It is a criminal industry that the United Nations estimates has a turnover of \$7 billion a year and involving up to four million people. It is a trade which is increasing in scale and sophistication, and one which is now targeting Australia. It is a trade which taxes the ability of law enforcement agencies to respond effectively. It is a trade which requires a strong, determined response from governments. The trade is often closely related to extortion, prostitution, drug trafficking and other criminal activities (House Hansard, 1999a, p. 10147).

Minister Ruddock’s statement forms a fantastic crescendo in seven parts with an ever-increasing volume on *the scale of criminality*. However, *there’s an out-of-tune instrument in Part Four*: the Prime Minister’s Task Force report also notes the same “*four million people*” in the opening paragraph, but that report claims the industry’s monetary value is not “\$7 billion a year” as Ruddock claims but “*ten million dollars*” (Moore-Wilton, 1999, p. i); three billion dollars has gone missing in Ruddock’s statement. It is a serious discrepancy, but only those Parliamentarians who are closely scrutinising Moore-Wilton’s report would have noted it. This ‘multi-part listing’ (Guilfoyle & Hancock, 2009, pp. 124, 129; Guilfoyle & Walker, 2000, p. 72) has to be presented as a ‘generalisation’ (Van Dijk, 2000a, p. 71): the construct ensures Ruddock

does not need to present evidence and distinguish between criminal groups or those who assist asylum seekers to reach their destiny. In addition, as shown in Chapter Five, all sorts of crime allegations are thrown together, including those that may be part of criminal trafficking gangs, e.g. the traffickers who forcibly smuggle women for the purpose of sexual servitude or prostitution.

When scrutinising Ruddock's above quote in more detail, its credibility level further diminishes. The second sentence phrase "*cynical worldwide trade*" mixes Ruddock's opinion ("*cynical*") with "*trade*" – as in "*trade in people*". Here the Minister employed the familiar "*victim-criminal pairing*" also displayed in previous chapters as a construct depicting asylum seekers' voyage organisers as criminals preying on people as commodities. Ruddock used the same construct ("*a trade which preys on the misery and hopes*") in the next sentence; the phrasing is a perfect match with the 1980 Fraser government debates (Chapter 3.4), where Immigration Minister Ian Macphie and Labor's immigration spokesman Moss Cass used it in equal measure. Next, Mr Ruddock engaged one of the most credible 'authoritative source' (Van Dijk, 2000b, p. 215) an Immigration Minister can use to strengthen rhetorical claims: *the United Nations*, but the error in his financial claim undermines his authority. In his next claim ("*increasing in scale and sophistication*") Ruddock increased the volume of his *criminal crescendo* a little more, using a 'persuasive scare tactic' (Van Dijk, 2000a, p. 72), especially where he ends the sentence with the claim that the trade "*is now targeting Australia*". Now that the volume has increased sufficiently, Ruddock can claim that "*law enforcement agencies*" need the ability "*to respond effectively*", in the next sentence demanding it "*requires a strong, determined response from governments*". Here the Minister used the plural "*governments*" not just as a generalisation but also to establish a 'modality claim' (Van Dijk, 2000a, p. 65; Jacobs, 2010, p. 365), suggesting good "*governments*" would take "*strong*" action. Having established this, the Minister was able to apply vilification and engage in slander of the "*cynical worldwide trade*": ensuring that his claims remained generalised in his 'three-part listing' (Guilfoyle & Hancock, 2009, pp. 124, 129; Guilfoyle & Walker, 2000, p. 72) he connects smugglers to extortion, prostitution and drug trafficking.

In the beginning of his speech Minister Ruddock noted that "*471 Chinese nationals*" had arrived since December 1998. This is not a large number of arrivals, and to convince the Parliament he will need more persuasive data. To achieve this he switched

from the *Olympic Games arrivals* to cite “all” boat arrival numbers for 1997-98 (157 passengers on 13 “unauthorised” boats) and the increased numbers for 1998-99 (926 “unauthorised people” on 42 boats), before citing 1999 numbers to date (“50 boats carrying 1,267 people”). He further strengthens his justification for the legislation by adding an additional picture, proposing a suggestive yet not realised “threat” to Australia of the planned arrival of a ‘large vessel’. In this, Ruddock employed a similar device as Fraser’s Immigration Minister Macphée (see Chapter Three) when he presented the *Immigration (Unauthorised Arrivals) Bill 1980* to the House on May 1, 1980 (House Hansard, 1980c, p. 2517). He informed the House:

These criminals can also deal in large numbers of people. Earlier this year, a ship was organised which was to leave Kenya with around 2,000 people of Somali descent on board. These people were all on their way to Australia (House Hansard, 1999a, p. 10148).

The claim, regardless whether they are factually accurate or not, is another aspect of Minister Ruddock’s ‘persuasive scare campaign tactics’ (Van Dijk, 2000a, p. 72). It’s a standard device, used in this context to depict a threatening scenario impacting on national security issues. Ruddock’s claim cannot be easily checked or discredited, and the scenario did not eventuate. The security threat depiction forces the opposition to adopt a serious concern and it urges consent for the notion that ‘the nation’ ought to take action. Ruddock continued, describing “these criminals” from the Kenya venture:

The activities of these criminals violate the sovereign rights of states to determine who can enter their territory. The people being smuggled are, in most cases, not genuine refugees seeking haven in the first available safe country. They are instead young migrants from less developed countries who are seeking to work in developed countries. Australia is increasingly a preferred destination and unwilling recipient of the attention of these people (House Hansard, 1999a, p. 10148).

In this quote Ruddock again presented a generalisation, and he does so after having elaborated on all unauthorised boat arrivals of recent years. By implication he claims that all those arrivals are “in most cases” not “genuine refugees”, but just migrants. His claims therefore need to be identified as manipulative claims. News of illicit migration

movements from China to Europe and the USA was indeed widely reported around the turn of the century, and such reports often included claims that suspect Chinese *Snakeheads* and *Triads* criminal organisations were highly active in these hybrid forms of forced trafficking and consensual people smuggling. These journeys took place under objectionable conditions and used ‘*move now, pay later*’ contracts, forcing migrants into situations of bonded labour (see Current Events, 2000) after their journey. However, the Minister made no attempts during his Second Reading speech to distinguish between the movement of illicit migrants and the journeys of asylum seekers, who had never arrived in Australia using criminal networks such as the Snakeheads. It seems that the Minister was more interested in “*making people illegal*” (Dauvergne, 2008).

Earlier this year ‘snakeheads’ – as they are called in China – or people smugglers, from Fujian, conspired to bring a boatload of would-be illegal entrants to Australia. The Fujian group were attempting a totally clandestine entry, attempting to avoid detection and to disappear into the Australian community (House Hansard, 1999a, pp. 10148-10149).

Minister Ruddock’s claim may have been true and factually accurate. It may also not have been a factual claim, because the Minister did not provide evidence. Ruddock’s strategy of depicting the threat of arrivals’ and his generalised claims conformed to the Prime Minister’s framework of secrecy and tight control of the facts. The strategic cost of stripping the contents from Moore-Wilton’s Task Force report is reflected in ambiguity during the debate, but it is only expressed by Labor Senator Barney Cooney:

Why not tell us what is happening there and give us facts and figures instead of going into something that is of some concern? ... A little bit of evidence, a little bit of balance and a proper approach to this issue would have been a better way of getting the legislation that is needed to properly enforce the laws that we pass (Senate Hansard, 1999b, p. 10650).

Politically however, the cost to the Howard government as a result of its secrecy was not disastrous to the legislative proposals. Howard and Ruddock were seen to be taking firm action and the Labor opposition had already notified the government it would support the legislation. Apart from Senator Cooney, nobody raised any issues about *the blindfolded Parliament* during the debate of the Bill.

The Prime Minister's Task Force report noted that Deputy Prime Minister Tim Fischer (Trade) and Minister John Moore (Industry, Science and Tourism) had visited China in 1998, while the Beijing Embassy "*pursued a media strategy using media outlets in selected provinces*" (Moore-Wilton, 1999, p. 3). Minister Ruddock had also visited China's Fujian province. A Seattle-based US current affairs magazine reported his visit, even according him a new name:

Foreign officials are going straight to China to discourage illegal emigration. Australia's immigration minister, Paul Ruddock, visited Fujian last year and distributed 5,000 posters warning against dealing with smugglers (Current Events, 2000).

6.5. *The unwanted Chinese*

The treatment of boat arrivals from China had not just a questionable history during the 1990's, but the Immigration Department had an *ugly* track record *vis-à-vis* Chinese arrivals *per se*. Evidence provided in Chapter Four and Five confirmed that the Immigration Department's duty to provide assessment of refugee protection needs for Chinese arrivals had been deliberately ignored for many years. The 1993 closure of the Comprehensive Plan of Action (see Hathaway, 1993) was marked by the *Migration Legislation Amendment Act (No. 4) 1994* (CofA, 1994), preventing any Sino-Vietnamese settled elsewhere from seeking protection in Australia. The 1998 HREOC report "*Those who've Come Across the Seas*" (HREOC, 1998) as well as testimony to a 1996 Senate Inquiry (Committee Hansard, 1996) had provided damning evidence that many Chinese arrivals since 1994 had been held "*incommunicado*" and that the Immigration Department had, at best, acted with a great deal of resistance and unwillingness to assess any of their claims. The HREOC report revealed some very uncomfortable facts about the department:

In 1996, the people from most boats from China were removed from Australia without obtaining independent legal advice or applying to stay in Australia. As at 30 September 1997 people from two of the three boats of Chinese nationals who arrived in 1997 had been deported. Of the third boat, 135 of a total of 139 people were removed (HREOC, 1998, p. 25).

HREOC also claims that under this denial of information, new Chinese arrivals in the Port Hedland detention centre were not informed of their right to test an asylum claim, resulting in less than 6.1% being recognised as refugees (HREOC, 1998, p. 33). It comments on one of the boats:

The 'Cockatoo' arrived in Australia in November 1994. In January 1995 arrangements were made to return the 84 members to China. At this time last minute legal proceedings were lodged and members of the group received legal assistance. Applications for protection visas were made. Thirty-six people from the 'Cockatoo' who would have been returned to China were granted entry to Australia, 32 as refugees (HREOC, 1998, p. 26).

Throughout the 1990's the Immigration Department was determined to deport all Chinese arrivals. The 70 Chinese who arrived in 1998 were all deported (Project SafeCom, 2009d), and 253 Chinese who arrived during 1997 were sent back (Project SafeCom, 2009c). Of the 572 Chinese who arrived during 1996, 569 were deported, while just three were settled in Australia as refugees (Project SafeCom, 2009b); and of the 208 Chinese and Ethnic Chinese from Vietnam (Sino-Vietnamese) who arrived during 1995, just 3 were accepted (Project SafeCom, 2009a). The determination to deport Chinese had led to intolerable jailing without court intervention or human decency. According to HREOC,

Fifteen people from the 'Labrador' were held in detention at Port Hedland for almost five years from 25 August 1992 until 14 July 1997, when they were removed from Australia to the People's Republic of China (HREOC, 1998, p. 80).

Solicitor Ross McDougall from the *Victorian Refugee Advice and Casework Service*, giving testimony at a 1996 Senate Inquiry had claimed, using Immigration Department data, that "*between one-third and two-thirds*" of boat arrivals had valid protection claims. Mr McDougall went on to claim that entire boatloads of Chinese were "*turned around*" by Australian authorities:

In the last two months, we have turned around approximately eight boats, with about 350 Chinese people on them ... it is quite probable that we have now what is called ‘refouled’³¹ over 100 refugees in the last two months (Committee Hansard, 1996, p. 174).

Against this background, Minister Ruddock would have received departmental briefings as Immigration Minister and developed the same outlook on the Chinese boat arrivals as the Immigration Department. Chapter Four presented him to be an Immigration Minister who, during 1996 UN Refugee Week, claimed that boat arrivals, like all other “*illegal arrivals*”, were accessing court resources they should not be accessing; Chapter Five had confirmed that, because they had arrived “*unlawfully*”, they should not have freely provided access to independent legal advice from HREOC and the Ombudsman, and Ruddock had claimed that the fundamental reason to deny them court time was causally linked to their “*unlawful entry*”. In this, Ruddock denied that the “*mode of arrival*” rights expressed in Article 31 of the Refugee Convention *vis-à-vis* unauthorised arrivals were applicable to them.

6.6. Forum Shoppers and Pert Two-in-One Shampoo

Minister Ruddock was an ‘activist’ Minister with a determined campaign agenda. His comments a decade later (Ruddock, 2010, 2011) that he regarded his “*suite of measures*” during his long period as Immigration Minister as successes that should be maintained confirmed this determination. During the 1999 Parliamentary debates Minister Ruddock actively lobbied the Parliament for its support of three campaigns. The first measure is the legislation under scrutiny in this chapter; the second one constituted of his campaign to achieve successful passing of the *Judicial Review Bill* (CofA, 1998), and his third project was the introduction of changes to Regulations to establish a three-year *Temporary Protection Visa* for boat arrivals who were successful refugee claimants. From this activist campaign perspective, the 1999 *Olympic Games arrivals* constituted a fantastic opportunity for Ruddock to advance his agenda, and it was reflected in his Second Reading speech. As he continued his speech, the Minister argued:

³¹ From the French verb *refouler*, literal meaning is “*making dirty again*”. *To refouler* is the accepted UNHCR term for the act of sending refugees back to a situation where they are persecuted or persecuted again

At this time, I would remind the chamber that there is a qualitative difference between organised people smuggling and the irregular movement of people in need of safe haven (House Hansard, 1999a, pp. 10149-10150).

The Minister's statement was a perfectly accurate assessment, but what purpose did it serve if this qualitative difference – a central thesis in this chapter – was not reflected in the legislative measures? The legislation under scrutiny in this chapter as well as the measures considered in Chapter Five sought to depict the travel organisers as criminals; it did not differentiate whether they transported asylum seekers or illicit migrants; it did not regard whether they had connections to trans-national criminal networks. Only from the first three words (“*At this time*”) and what follows it becomes clear that Ruddock has turned a page and develops a new argument; his opening gambit ensures a ‘positive self-presentation’ (Van Dijk, 2000a, p. 54) in order to gain legitimacy for himself in view of what follows. His next sentence, “*Australia recognises that genuine refugees...*” presents some ‘national self-glorification’ (Van Dijk, 2000b, p. 220) before noting they can get “*caught up*” in smuggling operations, but that Australia's system accords them protection “*irrespective of how they gain entry*”. Next, he argued that “*the very generosity of our refugee determination system*” represents an “*incentive*” that encourages illegal entry. Below is the central theme of the Minister's argument:

I was disturbed to hear reports of some of these arrivals asking for Pert 2-in-1 shampoo immediately upon arrival in Australia. Some of them have arrived with details of medical treatment that they wanted to receive whilst in detention, including dental work, and often asking to see orthodontists (House Hansard, 1999a, p. 10150).

This paragraph *is* the central theme; it is not a side remark. As One Nation Senator Len Harris would later note (Senate Hansard, 1999b, p. 10648), the Minister had also issued a media release about the ‘*shampoo sensation*’; he wanted *all of Australia* to know about this. He wanted to depict boat arrivals as arrivals seeking “*migration outcomes*” with ulterior motives. He adds that they expected “*the Australian taxpayer would foot the bill*” (House Hansard, 1999a, p. 10150).

Minister Ruddock ended his September 22 Second Reading speech with some comments about legislative details, and in the House the Bill's debate took place on

October 21 and November 22 (House Hansard, 1999b, 1999c, 1999d). In the Senate, Senator Judith Troeth re-reads the Minister's Second Reading speech on November 23 (Senate Hansard, 1999a), while debate and consideration of some amendments took place on November 25 (Senate Hansard, 1999b, 1999c). However, in this period a remarkable document found its way to all Members and Senators. Amongst other Members and Senators, Labor's Member for Batman Mr Martin Ferguson cited an Immigration Department document, noting it was delivered to his office on Thursday November 18 (House Hansard, 1999c, p. 12315). The nine-page *Effective Protection in Australia: the Facts* (DIMA, 1999) was an extraordinary attempt to not just guide the debate but to exert considerable influence over it, not by means of impartial fact delivery, but by inserting an agenda steeped in considerable subjectivity and disturbing bias. Distributed just prior to a scheduled "Disallowance Motion" debate brought by Senator Andrew Bartlett (Senate Hansard, 1999d), it lobbied for the introduction of 3-year *Temporary Protection Visa* (TPV). It argued this using a similar depiction of boat arrivals – as *economic migrants* and *opportunity seekers* that could also find a place elsewhere – as Minister Ruddock had suggested in his Second Reading speech.

Following a short introduction the document poses a number of questions and proceeds to answer them. The first section responds to "*changes to the category of residence for some refugees*". The introduction of TPV's did not need legislation; it was achieved by changing the Migration Regulations. The document claims:

The increasing flows of irregular asylum-seekers disrupt and frustrate the international community's attempts to implement a coordinated response to refugee problems (DIMA, 1999, p. 1).

The Immigration Department's claim implied that irregular asylum seeker movements were "*disrupting and frustrating*" the international community's refugee response. The manipulative nature of this claim is better understood by citing information from the Prime Minister's Coastal Surveillance Task Force report. Moore-Wilton had noted that

DIMA has embassy-compliance officers in Beirut, Beijing, Guangzhou, Hong Kong, Manila, Bangkok and Jakarta. In addition there are airport liaison officers stationed at key overseas airports: Hong Kong, Bangkok, Kuala Lumpur and Singapore (Moore-Wilton, 1999, p. 3).

Moore-Wilton went on to recommend that additional DIMA compliance officers should be placed in seven key Asian cities: Shanghai, Guangzhou, New Delhi, Colombo; In Africa: Nairobi, Pretoria, and in the Middle East: Ankara.

Moore-Wilton's recommendations were implemented: during June 28 Question Time Prime Minister Howard announced he had approved not seven, but eleven additional internationally stationed compliance officers (House Hansard, 1999f, p. p. 7568). If this announcement was a direct response to Moore-Wilton's recommendations, Australia would be preventing people to travel to Australia *from at least eighteen international locations*; there could have been several more locations than suggested by Moore-Wilton. These officers would try to stop anyone who may be suspected departing these countries in order to seek asylum in Australia. Australia's '*border guards*' were preventing unwanted individuals from using formal travel in eighteen locations around the world; if anyone wanted to depart these locations for Australia they could not do so using official travel – they would be forced to travel by informal means. They could only use informal travel brokers – or smugglers – to bring them to Australia. For asylum seeker purposes, Australia is known for three features: that it is one of *many* countries around the world who are signatories to the UN Refugee Convention, and that it is one of the very *few* countries that also offers an annual refugee intake quota. It also has a substantial annual immigration quota; for asylum seekers pondering where they could find safety, these factors would be important reasons to consider travelling to Australia for protection reasons. The Immigration Department's international *border guards* contributed in forcing them to become "*irregular asylum seekers*". In its document, the Immigration Department continues:

It is clear that people seeking a migration outcome in a developed country have identified Australia as a soft touch. Numbers of people arriving without prior authorisation, by boat and by air, are at record levels (DIMA, 1999, p. 1).

The document states that 1999 boat arrival numbers are higher "*than for the entire six-year period of Vietnamese boat arrivals from 1975 to 1981*", and notes that the current arrivals "*are predominantly Iraqis, Afghans and Turks*" who are "*being smuggled to Australia as their destination of choice*". It continues to assert

For as long as destination countries continue to provide immediate permanent resettlement for forum-shopping refugees and thereby sweep under the carpet this lack of appropriate action, UNHCR and other countries will feel no pressure to organise effective international solutions (DIMA, 1999, pp. 1-2).

It continues to claim that those irregular arrivals who “*breach Australia's migration law to achieve that outcome*” regard Australia as “*an attractive destination in the world*” compared to other choices:

Australia’s generous approach to family unity is one of the obvious incentives that would attract such forum shoppers (DIMA, 1999, p. 4).

These were extraordinary claims and allegations. Boat arrivals had been increasing rapidly during the year, and passengers started to include Afghan Hazaras persecuted by the Taliban, Iraqis fleeing Saddam Hussain’s regime, or displaced Iraqis who had sheltered in Iran (see Project SafeCom, 2009e). During the debate of the Bill, Senator McKiernan noted (see Senate Hansard, 1999b, p. 10658) that Iran had announced the 500,000 Iraqis would soon have to remove themselves from the country. Now, Australian Immigration officials were, instead of dealing with the issues, promoting the notion the arrivals could have gone elsewhere, but that these “*forum shoppers*” instead selected Australia because of what it offered. The facts showed that the Immigration Department was simply *crying wolf*: UNHCR statistics published in July 2000 indicate that the overwhelming number of 1999 asylum applicants from Afghanistan had sought protection in Germany (60,380), the Netherlands (27,620), Denmark (15,790) and the United Kingdom (9,120). Australia ranked fifth in the table with 4,880 applicants; this included also those who arrived by air. For Iraqis, Australia also ranked fifth in 1999 (UNHCR, 2000).

The Immigration Department document continues to argue that the notion of ‘family reunion’ is not compellable under the UN Refugee Convention. Citing a clause from UNHCR’s Handbook for Determining Refugee Status (UNHCR, 1979, para 183), it omits other urgent considerations in this section of the Handbook. While the Handbook is cited and referenced, the document lists a number of quotations, using them in support of the TPV introduction, citing these as “*Hathaway, page 51*” and “*Goodwin-Gill, page 305*”. While these are citations from the International Refugee Law opus by

renowned authorities Goodwin-Gill and Hathaway (e.g. Goodwin-Gill & McAdam, 2007; Hathaway, 2005), no references are provided. The document gives the impression of having been cobbled together in haste and it suggests that some *quick copy & paste action* had created the submission.

The departmental document is also significant in terms of what it omits and perhaps deliberately avoids. Its introduction provides no commissioning rationale. It does not state that or if it was written following a request by the Minister; that it was distributed to Members and Senators in the Parliament could only have taken place if Ruddock would have approved it or asked for it. The document attempted to influence, and actively construct the parliamentary debate rather than inform the Parliament about options. With that act, Immigration Department public servants ceased their mandate of independence, acting *frank and fearless* – and instead practiced connivance and manipulation. Its distribution to all parliamentarians was, by default, an act of the Department's Minister, Philip Ruddock.

One more aspect of Ruddock's speech, one which created an unusual "*incident*" warrants mentioning. It supports the notion that the Minister engaged his ongoing determination as an "*activist*" to achieve implementation for his "*suite of measures*". During Monday June 28 Question Time, the Prime Minister had urged the opposition to "*drop its opposition ... to certain legislation*". Howard referred to Labor's opposition of the *Judicial Review Bill* (CofA, 1998), and linked this to the national duty to deter illegal immigrants, because Australia was "*an attractive place to come to*". It was a subtle accusation the opposition was not supporting the national interest. Howard urged Labor to "*to drop its negativity towards the minister's legislation*". Later that day, Labor's Con Sciacca rose during the Grievance Debate and lashed out at Ruddock and "*his friend who is bailing him out of the problems that he has got at the moment*" (House Hansard, 1999f). During his Second Reading speech, Ruddock raised the issue again, this time linking the *Judicial Review Bill* to the fight against people smuggling "*to assist in combating this heinous trade*", because it would "*provide a clear message*" that "*the judicial review system*" should not be available for unauthorised arrivals "*to prolong their stay in Australia*" (Senate Hansard, 1999a, p. 10149). His reference to the *Judicial Review Bill* in the speech resulted in a Parliamentary Researcher (Andrew Grimm) expressing criticism of the Minister's comments and

noting the Judicial Review Bill had “*attracted considerable criticism*” at the end of the Bill Digest (CofA, 1999a, p. 24).

6.7. *Parliament’s House of Horrors and a Witch Hunt*

It is tempting to illustrate the wide range of rhetorical constructs delivered by Members and Senators during the debate of the Bill with many examples; this is not possible in this thesis. Many of the speeches contain disturbing examples of the damage to the asylum seeker discourse resulting from the mixing of the recent arrivals of Chinese illicit migrants with the entire boat arrival cohort. For Liberal *Member for Hindmarsh* Chris Gallus they are all “*illegal immigrants*” who are now “*being attracted to Australia*”. Referring to the UK, he claims that “*unprecedented numbers of illegal immigrants [are] being smuggled in*” and that “*46,000 people have claimed asylum in the past year*”. He informs the House of the horrors of “*illegal aliens from China*” who are now in New York being “*indentured or forced into crime or prostitution*” or “*kept in basements in appalling conditions*” or “*often shackled and handcuffed*” (House Hansard, 1999b, p. 12129).

Liberal *Member for Sturt* Christopher Pyne claims that for “*organised people smugglers, it is all about debt bondage*”. Pyne argues “*the debt can be the equivalent of \$A50,000*”, which has to be paid, “*usually through illegal activities such as prostitution and drug smuggling*”. According to the Member for Sturt they “*face a life of servitude at the hands of organised crime gangs*”. He continues:

Their servitude can also take other forms, such as loan sharking, protection rackets, money laundering operations, importation and distribution of narcotics, kidnapping, fraud, vice, extortion, contract killing, slave trading and the tragic practice of child prostitution.

Pyne isn’t quite finished. Before he informs the House of the latest developments in the battle against Transnational Crime in the lead-up to the UN Convention (United Nations, 2001a), he claims the *Sydney Morning Herald* has reported that “*hundreds of new brothels have opened across Sydney*” before warning the House that “*transnational organised crime*” is “*a major international epidemic, continually evolving ... the tentacles of organised crime are never far away*” (House Hansard, 1999b, pp. 12135-

12137). However, Mr Pyne does not tell the House that the same Sydney newspaper had also reported that some of those who had arrived in Australia on one of the vessels were not debt bondage slaves but that they “*had paid \$US2,500 (\$3,900) to join the boat*” (Kennedy & Metherell, 1999).

Labor’s Member for the Northern Territory Warren Snowdon does not participate in the generous showering of ‘extreme case formulations’ (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, p. 124) presented by government MP’s in the House. Instead, he applies discernment in warning the Parliament that “*we need to be very careful*”. He argues some ships may bring “*people who for their own legitimate purposes seek to come to Australia as refugees*”, and suggests they “*may have their own vessels*”. His constituents in Darwin know about refugees and boats, and Snowdon would have been well aware of the positive responses some had displayed whenever they landed. However, he also notes the familiar northern quarantine fears and the invasion anxiety from others:

there are undoubtedly vessels ... dropping off their human cargo ... which we will never learn about; I am absolutely 100 per cent certain of that (House Hansard, 1999b, pp. 12138-12141).

Liberal Member for Deakin Phil Baressi adopts the proposed Immigration Department discourse and reformulates the manipulative claims from its document. Noting that Australia has become a “*destination of choice*”, he claims “*the news about our land being one of ‘milk and honey’ has spread beyond our shores*”. He claims there is a “*right way*” of arriving in Australia, and there is a “*wrong way*” when he notes that “*there are two ways to enter Australia*”. He contrasts the queue jumpers “*who have the resources*” to arrive illegally with other “*offshore refugees*” who will “*have to wait a little longer*” with Australia’s limited annual refugee intake quota. Bruce Baird MP, the Liberal Member for Cook, uses the “*queue jumper*” label, applying it to all boat arrivals, and claims “*the bill today deals with those people who wish to jump the queue*”, enter illegally and “*ignore the legal requirements*” (House Hansard, 1999b, pp. 12141-12144). National Party MP Dee-Anne Kelly (Member for Dawson) creates her own version of extreme case formulations in a virulent attack on Labor *vis-à-vis* its refusal to support the *Judicial Review Bill*, calling it “*a deliberate and disgraceful delay*” following generalised claims that imply the opposition is to blame for “*allowing*

automatic entry to anybody who simply turned up would be nothing short of catastrophic” (House Hansard, 1999c, p. 12306). Duncan Kerr, Labor’s Member for Denison, takes revenge on her by noting “*there is an idiot who has just joined the front bench*” warning one Minister that “*there is a dopey person behind you making dopey comments*” (House Hansard, 1999c, p. 12323). In an at times bizarrely constructed speech, Labor’s Martin Ferguson professes bipartisanship on immigration issues no less than eleven times and claims the legislation is designed to “*deal genuinely with the problem of queue jumping and non-genuine refugees seeking asylum*” (House Hansard, 1999c, p. 12314).

Government MP’s either repeat the Immigration Department document claims or use extreme case formulations in making their rhetorical claims, not distinguishing between ‘people smuggling’ and extreme trafficking. Labor MP’s attempt to depict the legislative measures are ‘reactionary’, instead promotion the notion that Australia is better served by a comprehensive Coastwatch. Others do not mention the legislation but attack the Immigration Minister’s proposed introduction of TPV’s or condemn him for proposing the Judicial Review Bill is essential in the fight against people smuggling.

Examples of confused, contradictory and chaotic discourse constructions also emerge in the Senate. One Nation Senator for Queensland Len Harris adopts the Immigration Department’s discourse intervention document and makes liberal use of the “*forum shoppers*” label. He claims there are two groups of “*illegal immigrants*”, one group trying “*to evade capture by arriving undetected and ... blending into the population*” and another group wanting “*to be detected in order to access Australia’s general health, welfare and legal benefits*”. He wants to “*stop refugees bypassing safe havens in order to rot our system and exploit our generosity*”. He suggests adding some “*hard labour*” to the legislation:

These criminals should be given hard labour and, if they are not Australians by birth, they should be immediately deported on completion of their sentence and their assets confiscated and forfeited (Senate Hansard, 1999b, p. 10647).

Independent Senator for Tasmania Brian Harradine condemns the legislation (“*generated by an irrational fear, and is bad policy*”) and the debate, claiming the government “*has something to answer for. Why is it whipping up hysteria amongst the*

public?” He cites an article from *The Australian* by reporter Dennis Shanahan, reflecting the extreme hysteria:

Australia is under siege from criminally manipulated, disease-carrying, job-stealing, tax avoiding, illegal economic refugees arriving by boat in northern Australia. Waves of these illegal aliens are threatening the fabric of our society to such an extent the Federal Parliament is introducing draconian laws to impose longer jail sentences on the crews of these ill-fated fishing vessels than applied to some of Australia’s most notorious rapist-murderers (Senate Hansard, 1999b, p. 10660).

Labor Senator Barney Cooney was shackled in two ways but found a way to critically speak his mind. First, Cooney was limited by his allegiance to Labor, which had indicated its support for the legislation well before it was tabled; he could not oppose the laws. Second, his ongoing commitment as a highly informed human rights advocate, also expressed through his role as Chair of the Scrutiny of Bills Committee (SSBC, 2010) presented a willingly adopted set of constraints. Consequently, he concentrated his attack not on the legislation but on the way it had been presented in Ruddock’s Second Reading speech:

The language used is consistent with the witch-hunt language. Witch-hunting did not go away with the end of the Salem episode; it is still with us (Senate Hansard, 1999b, p. 10648).

Cooney attacks Minister Ruddock for making unfounded allegations (“*It is an assertion not supported by evidence*”) against boat arrivals where he had claimed that they in most cases were “*not refugees seeking haven in the first safe country available*” but instead “*young migrants from less developed countries who are seeking to work in developed countries*”. He protests Ruddock’s assertion that Australia was “*a preferred destination and unwilling recipient of the attention of these people*” and condemns the “*emotional underpinning*” of the legislation, “*with statements such as ‘We have hoards coming’; suggesting that thousands of people are coming and therefore we need all these powers to combat this*” (Senate Hansard, 1999b, p. 10648).

Viewed from a human rights perspective, the debate of the *Border Protection Legislation Amendment Bill 1999* comes across as a series of mismatched and contradictory rhetorical contortions. The classical position had long been the insertion of *queue jumper rhetoric* juxtaposed with notions of some decorum of decency *vis-à-vis* boat arrivals. This had been politically useful and worked as a rhetorical ebb and flow with a semblance of functionality. The debate scrutinised in this chapter however was marked by a primary narrative about a national security emergency constructed by Howard's Department of PM&C, leaving no space for oppositional positioning unless a political representative or party had a fully developed discourse framework defining "*the rights of unauthorised arrivals*".

In addition, the Immigration Department had inserted itself in the debate, presenting a repackaged notion of queue jumpers as "*forum shoppers*" who had bypassed other safe settlement options. While it was a lie, it was not discredited or vehemently attacked by Labor. Ruddock had launched his own offensive, promoting – in congruence with his department – the notion asylum seekers arrived for the dentist and one of Procter & Gamble's most promoted and successful product lines in 1999 – *Pert 2-in-1 shampoo* – but he was not ridiculed for it. Politically, Labor had nothing to offer than repeatedly asserting its bipartisanship mantra on refugee issues, as exemplified by Martin Ferguson MP's speech. A single suggestion – made at the right moment, constructed in the right way – that Ruddock should perhaps inform the House whether or not his promotion was "*cash for comment*" sponsored by Procter & Gamble could have caused his house of cards to violently crash to meet with reality. Labor's lack of consistent and comprehensive oppositional discourse was borne out a day before the *Border Protection Legislation Amendment Bill 1999* passed the Parliament. During the debate several Labor MP's and Senators spoke scathingly about and condemned Ruddock's implementation of the Three-year TPV's under *Migration Amendment Regulation (No. 12) 1999* (CofA, 1999g), yet when Australian Democrats Senator Andrew Bartlett moved a Senate motion to disallow the regulation (Senate Hansard, 1999d, p. 10599), Labor opposes his motion, allowing Ruddock to proceed.

The Howard government worked hard to implement an agenda of hostility and rejection *vis-à-vis* boat arrivals. It may well be viewed as a manipulative agenda and one in breach of all human rights conventions that applied to asylum seekers, but both discourse coherence and consistency were clearly present. Ruddock acted as the hands-

on activist Minister, implementing in determined ways the notion that boat arrivals should not be accorded any legal rights, while Howard as the Prime Minister had shown increasingly tight control of refugee policy. During the debate of the *Border Protection Legislation Amendment Bill 1999* the discourse was reconstructed into a national security narrative, in no small part as a result of Max Moore-Wilton's Inquiry report. Jupp claims (Jupp, 2002, p. 52) that Moore-Wilton's role in PM&C was part of Howard's strategic plan. Ruddock, the activist Immigration Minister, was also in full control of his plan, yet Labor, while proffering bipartisanship, had failed to develop its own oppositional policy frameworks. This is in line with George Lakoff's thesis (Lakoff, 2005) about the discourse dominance of conservative parties. Lakoff, with reference to the years leading up to the 2005 publication of his book, claims that conservative politics dominated the framing of public debate and discourse because conservatives have a better understanding of *the power of political metaphors used in rhetorical framing devices*.

Chapter Five had concluded that "*victim-criminal pairings*" defined the discourse of the dominant during the *Sealed Envelopes Bill* debate: the depiction of travel facilitators as smugglers and their passengers as victims was universally adopted. In view of this, the legislation faced no opposition. During the debate of the *Border Protection Legislation Amendment Bill 1999* in the current chapter, Australian Democrats joined with the Greens and Independent Harradine in an amendment to condemn the government for "*measures aimed at 'cracking down' on boat people*", arguing that support for the TPV policy was evidence that both major parties showed "*support for the principle underlying the One Nation party's policy on the treatment of refugees*" (Senate Hansard, 1999b, p. 10651) but Bartlett declares his party's support for the Bill. Not a single word is spoken about the Bill by the Greens. That left Independent Senator for Tasmania Brian Harradine as the only person in the Parliament to declare his opposition to the legislation.

6.8. Conclusion

This chapter scrutinised the parliamentary debate of legislation which proposed increased enforcement powers for border authorities in the apprehension of foreign vessels suspected of bringing illicit migrants or asylum seekers. Previous chapters analysed political discourse during parliamentary debates, providing evidence that

labels were manipulatively used to depict asylum seekers and their travel facilitators; this chapter however has presented evidence of the construction of parliamentary discourse by agents supporting the Howard government, and that these agents engaged to deliberately influence the discourse. The chapter identified a number of factors in this discourse construction.

First, a Task Force commissioned by the Prime Minister tasked to review coastal surveillance and a second confidential Inquiry into “*undetected landings*” depicted all unauthorised arrivals as “*illegal arrivals*” breaching the border. By means of stripping much of the contents from the reports for “*operational reasons*” the Prime Minister maximised his control of information in an attempt to strengthen a *national security incident narrative* that justified information secrecy. Second, the Task Force report did not distinguish between a small number of vessels bringing “*illicit migrants*” and other vessels bringing asylum seekers; instead, it constructed a narrative that could regard all unauthorised arrivals as ‘invasion incidents’. Third, the Immigration Department issued a subjectively written document to all Members and Senators in the Parliament suggesting asylum seekers arriving by boat were “*forum shoppers*” who self-selected Australia as a preferred destination and who, in doing so, undermined the United Nations and world community’s refugee resettlement work. Fourth, immediate past practices of the Immigration Department *vis-à-vis* unauthorised boat arrivals from China, where they held them incommunicado before returning all boat passengers to China, had entrenched the view amongst politicians that they were not asylum seekers. This view was maintained in the face of strong evidence to the contrary emerging from investigations by the Human Rights and Equal Opportunities Commission. The chapter also analysed sections of Immigration Minister Philip Ruddock’s Second Reading speech where he promoted negative asylum seeker discourse. It found that Ruddock manipulatively attempted to establish a national view of asylum seekers as migrants from less developed countries who bypassed other safe countries, selecting Australia as their preferred destination. The Minister manipulatively proposed that asylum seekers arrived because of Australia’s generosity in providing free health care for asylum seekers. His discourse keystone was the suggestion they arrived for “*Pert 2-in-1 shampoo*”.

Government MP’s and Senators reflected the newly presented discourse labels and depictions presented in the documents presented to them. Throughout the debate they

also frequently used *extreme case formulations* when depicting ‘smuggling operatives’, but did not present verified or factually complete accounts of the recently arrived Chinese vessels that brought illicit migrants. Instead they described extreme examples of trafficking operations from China to the US as reported in media reports. These operations had reportedly been organised by criminal operatives such as the ‘Chinese Mafia’ and ‘Triads’. Labor opposition MP’s responded to the legislation in various ways, promoting the notion that a comprehensive Coastguard should instead be advanced; several MP’s and Senators did not respond to the legislation, instead attacking the Immigration Minister’s Second Reading speech or other measures such as the introduction of Temporary Protection Visas.

If the manipulative reconstruction of an issue is a political skill, then the Howard government’s skills far outweighed the skills of the Labor opposition during the *Border Protection Legislation Amendment Bill 1999* debate. The Labor opposition’s oppositional discourse seemed to consist of a promotion of a Coastguard, but this was not consistently maintained. If oppositional discourse was one of heckling Immigration Minister Ruddock over the presence of manipulative constructs in his Second Reading speech, then it was not clear whether this was an opposition party strategy. If it was one where the Howard government was attacked for its ambivalent insertion of the extreme right-wing policies of disendorsed Liberal candidate, One Nation’s Pauline Hanson, then Martin Ferguson MP made an indirect attempt. If oppositional discourse contained the repeated promotion of the generosity of political bipartisanship, then it was also Martin Ferguson who had the call. If it was advocacy for the passengers as potential refugee claimants, then it was just one single MP, Mr Warren Snowdon, who warned about this issue being ignored. If the ALP’s oppositional discourse contained a human rights discourse, then this was relegated to one or two backbenchers lead by its primary protagonist Senator Barney Cooney. The sum total of Labor’s oppositional discourse appears as a hotchpotch of approaches without as much as a hint of a coherent discourse or political framework. By comparison, the Howard government was in full control. First, it had constructed all boat arrivals as *illegal arrivals* in the Moore-Wilton report; it then brought to bear the considerable rhetorical skills of its activist Immigration Minister Philip Ruddock, who depicted asylum seekers as seekers of *Pert 2-in-1 Shampoo* while depicting their travel facilitators as extreme criminals linked to the Chinese Snakeheads. Meanwhile, the Immigration Department inserted itself in the debate with the depiction of asylum seekers as *forum-shoppers* who bypassed other

countries in search of the enviable and desirable country that is Australia. Labor's *a priori* offer to pass the laws offered a passive and uncritical bipartisanship that left it limping along with this array of masterfully constructed manipulative political discourse. With the exception of Senator Cooney, not a single MP or Senator had an awareness of the parliamentary blindfold John Howard had applied. No calls came from the Labor opposition – or from the Greens or Democrats – for an Inquiry where some of the passengers of the Olympic Games arrivals could testify in the Parliament to explain why they had arrived, and whether they felt manipulated by their ship's master or the voyage organisers. No calls were made for senior officers of the AFP to appear and elaborate on their findings. No calls were made for skippers or organisers to appear before Parliament to testify as to the purpose of their undetected landings at *Holloways Beach*, the *Hawkesbury River* or *Nambucca Heads*.

6.8.1. Research Questions

This section lists the four research questions and presents evidence drawn from the Parliamentary Debate of the *Border Protection Legislation Amendment Bill 1999* and other relevant material from this chapter in the responses to these questions.

1. How did politicians inform themselves of the international phenomenon of 'people smuggling' and what knowledge did they have of the nature of 'people smuggling'?

Some government politicians seemed to have a limited knowledge of some extreme examples, mainly of trafficking from China to the USA. Their knowledge was limited and appeared to be informed by media reports. The majority of MP's and Senators, especially those in opposition or cross benches, did not show any evidence of fact-based knowledge of 'people smuggling' as a phenomenon. No evidence of the ventures travelling to Australia emerged during the debate, because the Prime Minister had instructed all details of recent arrivals from China to be kept from the public and from MP's and Senators. Only media investigations were part of the public record, and the Howard government had instructed relevant authorities to refrain from speaking to the media. Politicians also failed to distinguish between 'trafficking' and 'smuggling', and there was difficulty ascertaining their level of knowledge of 'people smuggling' because

examples were used for rhetorical purposes.

2. When considering the legislation, did politicians consider that ‘people smugglers’ generally bring asylum seekers into Australia as a UN Refugee Convention signatory?

One Labor opposition Member of Parliament, Warren Snowdon MP, urged caution to be applied with the legislation; his comments had no bearing on his party’s position. The Australian Democrats supported the legislation but raised the issue of refugee protection during the debate.

3. Did politicians consider that lesser criminal liabilities may exist for boat crew as opposed to organisers during the debate?

This issue was not raised during the debate. While Mr Warren Snowdon’s comments can be logically extended to encompass this distinction, he did not elaborate on it.

4. Were the passengers negatively depicted by association because they had arrived using smugglers, and did Article 31 of the Refugee Convention play a role in legislative considerations?

Passengers and potential passengers were negatively depicted and vilified in portrayals where they were described by the Howard government and the Immigration Department as “*economic migrants*” and “*forum shopping*” entrants arriving to benefit from generous healthcare provisions. They were also depicted as “*illegal immigrants*”, “*queue jumpers*” and, in a report by the Immigration Department, as entrants undermining UNHCR resettlement programs and the “*world community’s*” resettlement initiatives. There is no evidence that Article 31 of the Refugee Convention was considered in the drafting of the *Border Protection Legislation Amendment Bill 1999* or during the debate.

7. Participant Interviews

7.1. Introduction

This last thesis chapter discusses and analyses the interviews with research participants, referred to in Chapter Two (Methodology). Chapter Two outlined the process by which participant sampling was carried out for interviews conducted as post-research instruments. This chapter differs in many ways from all others, because for a number of reasons I have written it in the first person. Writing in the first person allows me to “*share the phenomenon (Adams & van Manen, 2008) of my experience*”. Things “*happened*” during the interviews, and by deliberately phrasing it like this, I emphasise that I also have become one of the interview subjects. My mannerisms may be many and varied during the interview, and the influence of my existing relationship with one MP cannot be replicated when I interview another one. I co-create the responses of the MP’s, regardless of my awareness of them. The interview style is also determined by the interview model. No questionnaire with fixed questions was designed, but instead an open conversation was planned about the legislative measures under analysis and questions emerging from some of my research findings, in open-ended reflective interviews.

Two MP’s participated by agreeing to an interview. I interviewed former Immigration Minister Philip Ruddock in his office in Parliament House and former Liberal backbencher Petro Georgiou MP at his home in Melbourne. Both MP’s granted permission to be identified and to have their interview electronically recorded. The formal pre-interview privacy questions that established this agreement are reprinted in the Appendix (9.4). As the result of early changes to the research data selection, Mr Georgiou was not amongst those MP’s and Senators who had participated by means of a speech in the legislative debates of any of the Bills analysed in this thesis. Nevertheless, he had readily agreed to participate, and there were sufficient other reasons to interview him. Prior to his retirement from politics in 2010, Mr Georgiou was a well-known refugee advocate in the Federal Parliament (see Project SafeCom, 2005a), and he had worked as a Senior Advisor for former Prime Minister Fraser from 1975-1979 before entering politics as the Member for Kooyong in 1994.

Most of the contents of the taped interviews has been transcribed in the extracts in this chapter following the style of Wetherell’s conversation analysis (see Wetherell, Taylor,

& Yates, 2001, pp. 62-63). Even though this thesis does not conduct *conversation analysis* (Ten Have, 2008), Wetherell's transcription symbols assist to better reflect both contents and style aspects of the interviews. Not all symbols have been used: characterisations such as speech volume, voice inflection and in/out-breath have not been recorded in the transcripts. Essential elements of my own speech are printed using *italics* preceded by "Interviewer", but my many affirmations, acknowledgments, "yes-es" and "yup's" have not been transcribed in order to maintain full focus on the statements of both MP's.

Legend for all interview transcript extracts:

(2)	The number in brackets indicates a time gap in seconds
(.5)	The number in brackets indicates a time gap in tenths of a second
()	Empty parentheses indicate the presence of an unclear fragment on the tape
(inaudible)	Word or phrase is inaudible and cannot be transcribed
<u>Under</u>	Underlined fragments indicate speaker emphasis
-	A dash indicates the sharp cut-off of the prior word or sound

Adapted from: (Wetherell, Taylor, & Yates, 2001, p. 62)

7.2. *Turn your thing off*

The interview with former Immigration Minister Ruddock exemplified both strengths and limitations of the interview style. Before I had addressed the privacy questions (see section 7.5) I felt that Ruddock insisted to be in control of the interview and deduced that this was possibly linked to a degree of defensiveness. Consequently, I adopted a "non-directive" approach and let him talk at length, assisting him with only minor interruptions while affirming his otherwise generous information-sharing with many "yes-es" and "yup's". Mr Ruddock talked at length and in-depth, providing invaluable confirmation of claims made in previous chapters about his positioning in relation to 'unauthorised arrivals'.

The first extract below responds to my three-minute introduction of the 1996 Senate debate of the *Sealed Envelopes Bill*. I had just pointed to Senator Rodd Kemp's Urgency Motion (see Chapter Five) which sought to block legal intervention in immigration detention by HREOC and the Commonwealth Ombudsman. It begins where I ask Mr Ruddock why the Bill did not progress to the House of Representatives before the end of the Parliamentary sitting. The Urgency Motion had suggested the government urgently wanted the Bill to pass; the one-day Senate Inquiry had taken place in the 12-day period following the Second Reading speech, and it seemed the Bill should have passed to the House. During my introduction, Ruddock had already

indicated he had no memory whatsoever of the legislation. This was not remarkable: Ruddock never spoke to the Bill or issued press releases during its three-year progress. Yet as Immigration Minister the Explanatory Memoranda were issued by him (CofA, 1996b, 1999f). Initially, it appears Ruddock tries to access his memory bank of the legislation introduced 12 years ago, speaking slowly, choosing a word-by-word response, hesitating, before committing himself to his views and thoughts.

Extract 1 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

1 *Interviewer: It seems, you know, that everything was done [in the Senate]. If you go back to your memory can you guess or have an indication or sort of an answer why it didn't go to the House before the end of the term in 1996?*

2 No.

3 *Interviewer (laughs) Do you have any memory of, of that ... that episode of that Bill?*

4 (inaudible)

5 I just have no recollection

6 I mean that's the reality

7 I mean I don't want to mislead you

8 umm (2)

9 most of these things (3)

10 uhh (3)

11 that we ended up dealing with

12 related to (5)

13 issues that (2)

14 arise (4)

15 umm (3)

16 in relation to determining

17 claims

18 in which (2)

19 in which (2)

20 umm (2)

21 eh

22 you (.5) you do have some views that you want to get genuinely what people have to say about the nature of their claims without a degree of coaching (2) and ehh (1) and ehh (2) ehh (2) and influencing (1) those matters umm (1)

23 and I'm not saying HREOC or the Ombudsman umm necessarily complicit in those things but umm

The 1996-1999 *Sealed Envelopes Bill* specifically targeted only boat arrivals – maritime asylum seekers – so we will assume Mr Ruddock is talking about that distinct group. However, analysis of his 1996 Refugee Week speech had established (see Chapter Four, section 4.4) that he did not distinguish between asylum seekers arriving by boat and others like backpackers overstaying their holiday visa or those who had arrived on other visas, and who then engaged Migration Agents or others in relation to their stay in Australia, or those arriving by air before declaring themselves as persons seeking asylum. The central theme Ruddock starts to unfold (line 22) is the notion that attempts to “*genuinely*” hear asylum claims should not be open to “*coaching*”. That is, “*coaching*” from outsiders – those who are not “inside” – inside the Immigration Department. line 23 contains a version of the semantic disclaimer (“*I'm not racist,*

but...”) that nonetheless uses the accusatory term not raised before – “*complicit*” – and declares HREOC and the Ombudsman as “*outsiders*” – even while both are Statutory Government bodies monitoring human rights breaches and public service standards breaches. Ruddock continues:

Extract 2 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

24 I mean I did have some issues about umm (2) the extend to which (2) umm surplus claims could
arise
25 people might be making statements (1) to various people and agencies umm (2) now which uhh
(1) at a later point in time would be argued (1) uhh have given rise to claims umm and ehh (2)
26 I guess my (1) my view has been that if people were genuinely refugees (1) umm and were
worried about not only themselves but also their family and the people they left behind they
don't necessarily want their identity to be known
27 They don't necessarily want to be uhh in a situation where (1) umm it is thought that they are (1)
saying things about their uhh about their government umm for which others will be held
responsible if they're here and that sort of thing
28 You know there were a whole lot of issues of that sort that uhh that arose because you had all
sorts of groups and people who would like to be able to (1) access facilities and get at people and
tell them do this say that and so on

After having mentioned the issue of “*coaching*” by “*outsiders*” Mr Ruddock now raises the issue of “*surplus claims*”, an accepted legal term, in Extract 2. In common parlance, a *surplus claim* is made when additional information is rendered to a court that was not part of an original case claim. Mr Ruddock doesn’t like it when “*people are making statements to various people and agencies*” (line 25) and when “*all sorts of groups and people*” gain access to people (i.e. those engaging the Immigration Department). He claims they might “*get at people and tell them do this, say that and so on*” (line 28). That happens indeed – Mr Ruddock is right. However, it happens every day in the ordinary world. If suggestions are made while someone works with an appropriately trained and experienced lawyer, then it is this lawyer who will sift through the information and assess with the client whether any of the “*do this, say that*” stuff is nonsense or whether it is important information.

In raising the issues of “*coaching*” by “*outsiders*” and “*surplus claims*”, is Mr Ruddock still talking about boat arrivals? He cannot be; the 1998 HREOC report “*Those Who’ve Come Across the Seas*” (HREOC, 1998) discussed above (see Chapter Four, section 4.3) had provided evidence that boat arrivals in detention were “*screened out*” by Immigration officials and that they were “*held incommunicado*” – i.e. away from lawyers and legal advice. It appears that Mr Ruddock has already made a leap from boat arrivals to the other groups. He will clarify more about these issues in the Extracts below. First I attempt to bring his focus back to the *Sealed Envelopes Bill* in

Extract 3. However, my mention of Chinese asylum seekers and the *Olympic Games arrivals* (see Chapter Five and Six) results in Ruddock's *Turn your Thing off* (the digital recorder) request:

Extract 3 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

29 Now I don't know whether any of this was related to it
 30 Ehh I don't know whether the urgency was related to it
 31 Umm but I suspect
 32 *Interviewer: It was following a court case*
 33 Was it?
 34 *Interviewer: Yeah, there were two court cases, Federal Court cases against the Immigration Minister*
 35 Mmm yeah
 36 *Interviewer: They're called the Teal Case and the Albatross Case*
 37 Mmm well Teoh
 38 *Interviewer: Teal*
 39 Thele
 40 *Interviewer: Teal, T-E-A-L. That's the nickname of the boat*
 41 Mmm. OK. Yeah
 42 *Interviewer: Teal and Albatross. They were two Federal Court cases. The Teal case argued that uhh sealed envelopes passed on to the Immigration Department by HREOC ought to be passed on to the person in detention (1) or the groups, and the Albatross Case was uhhh brought by 117 boat arrivals (1) who said that they could not be deported because they had not received proper legal advice before decisions were taken to deport them*
 43 Yeah what were the boat arrivals?
 44 *Interviewer: That was the Albatross*
 45 And what's the Albatross? Chinese?
 46 *Interviewer: Yep. Yeah.*
 47 Mmm (4) Well (1) Let me say that uhh there were a lot of issues in relation to Chinese boat arrivals that I prefer not to discuss
 48 *Interviewer: Yeah, I'm actually really interested in that*
 49 Yes I guessed that
 50 *Interviewer: Because it was of course the time when there were a lot of boat arrivals from China. The small boats. I'm not talking about that what I call in my research the Olympic Games arrivals (.5) you know (.5) the Hawkesbury River - the intrusion boats*
 51 No I remem- look I remember the ones at Holloways Beach and Hawkesbury River. Hawkesbury River the Hawkesbury River one was going to come to my Electorate
 52 Turn your thing off and uhh
 53 *Interviewer: Alright*

I cannot divulge what Mr Ruddock discussed with me after my digital recorder was switched off. However, I am at liberty to say *what Mr Ruddock did not talk about*. He did not talk about the Holloways Beach or Hawkesbury River arrivals or about any other vessels amongst the *Olympic Games arrivals*. He did not claim that any of the Chinese boat arrivals held in the detention centre in Port Hedland made asylum claims; nor did he claim any or some or none of them had valid asylum claims. In fact, nothing of the information he shared appeared to be controversial at all. Mr Ruddock had just stated (line 47) that he would “*prefer not to discuss*” a lot of “*issues in relation to Chinese boat arrivals*”. Mr Ruddock's concerns about discussing the Chinese boat arrivals did not have apparent links to privacy concerns for the individuals – who mostly were promptly returned ‘*by the boatload*’ to China (see Chapter Six). It appeared

to me that good diplomatic relations with China were at the core of his secrecy – and these diplomatic relations – whether that was ethical or not – may have even influenced the Immigration Department in its decision-making process to permit any asylum claims to be made.

7.3. *The activist and the UN Convention*

Chapter Six claimed that Ruddock was an “*activist minister*” in the implementation of his responsibilities for the Immigration portfolio. The claim was made in the context of his determined effort to progress a number of legislative measures simultaneously, both in the House and the Senate. While the debate of the *Border Protection Legislation Amendment Bill 1999* unfolded, he insisted the opposition should support the *Judicial Review Bill*; at the same time he promoted and introduced the 3-year Temporary Protection Visa for asylum seekers who had arrived unlawfully. He raised indignation and fury amongst the Labor opposition (House Hansard, 1999f, p. 7597) when he accused them of undermining the fight against people smuggling because no opposition support was forthcoming for the *Judicial Review Bill*. Ruddock’s attempt to depict the *Judicial Review Bill* as a measure “*to assist in combating this heinous trade*” of people smuggling even caused a researcher at the Parliamentary Library to break its protocol to not comment on political matters. As noted in Chapter Six (section 6.6), the Library’s writer Andrew Grimm had questioned the validity of Ruddock’s spurious claim in his Second Reading speech in the Bill Digest (CofA, 1999a).

In Extract 4 below Mr Ruddock reveals that the origins of his activism are located in the years before he became Immigration Minister in the Howard government. His determination did not originate from issues related to boat arrivals but from “*the rorts in relation to marriages*” (line 64). Ruddock’s information broadens the understanding of his 1996 Refugee Week speech (see Chapter Four, section 4.4), where he condemned access to Australian courts by those who initially arrive for “*bona fide visits*”. Ruddock’s 1996 speech details his campaign to remove court access and “*the judicial review system*” from those who “*seek to advantage themselves*”. During the interview Ruddock reveals he “*drove the need for reform*” in this area during the early 1990’s as a member of the Migration Regulations Committee (line 64) and that he “*continued that emphasis*” as Immigration Minister (line 65). However, the analysis of Ruddock’s 1996 speech in Chapter Four remains intact. His generalisations failed to separate a number

of clearly distinct entrant groups: legal entrants, “*unlawful*” entrants including boat arrivals and visa over-stayers. Consequently, the legislative weapons he developed were blunt instruments with universal purpose that ignored the “*rights of unauthorised arrivals*” as set out in the UN Refugee Convention.

Ruddock also reveals in the extract below that John Howard’s “*earlier statements*” had led to his appointment as Immigration Minister. He refers to Howard’s comments about and “*opposition to Asian immigration*” (see Chapter 4.2) in his claim detailing Howard’s intentions with “*I’ve given the job to Ruddock*” (line 62).

Extract 4 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

- 54 *Interviewer: Arrright. Now, if you look at your period as Immigration Minister, it is safe to presume we could call you in US terms the ‘Bill Sponsor’ of most legislation relating to Bills such as the Judicial Review Bill, the Sealed Envelopes Bill I mentioned before; which is kind of saying, you know, we want to stop the meddling by –*
- 55 Look, I mean, I will, I will take responsibility for having umm serious concerns about umm about the (1) extent to which umm ehh those who are unelected umm and who wanna make policy decisions (1) ehh I’m not saying legal decisions, I’m saying policy decisions by expanding the remit umm and you would do your best to contain it (1) and yes I was quite active in relation to that and if you want to know umm where the impetus for that came from (.5) yes it would have come through my Department and me (.5) I don’t think it was generated by Darryl Williams
- 56 *Interviewer: No, OK. But I, I really am interested in the division of interests. You say me and my Department – there you have two parties; there is also umm John Howard who came with a specific view –*
- 57 Forget Howard
- 58 *Interviewer: Right. Let me finish what I’m saying though. He came with a specific view of not being interested in Geneva bodies controlling what happens in Australia –*
- 59 Nah. Look (1) emm (1) I took I take the view that we have international obligations and they’re genuine obligations we umm (1) we observe them
- 60 The only time in which Howard became umm actively involved in decisions that impacted upon my Department were ehh on three issues. One was dual citizenship; two was the actual immigration numbers; ehh and three umm when we had Tampa (1) the management of that particular issue (1) and ehh and the run-up to that the number of boat arrivals generally
- 61 Emm (1) Howard used to say of me that- and has written in his book that I was a safe pair of hands umm umm there was little second guessing and essentially if there had been direction to be discriminatory to ignore international obligations ehh I wouldn’t have been the Minister ehh and uhh uhh I would say that with uhh a great deal of uhh conviction
- 62 Emm cause I’d crossed the floor on immigration issues- race and Howard knew that understood it and that’s why he wanted me in the role because it enabled him to be able to walk away (1) from (2) his earlier statements by saying I’ve given the job to Ruddock
- 63 Now, and that’s that’s the truth of the matter and you ought not to assume that in relation to ehh ehh integrity in the immigration program where I had very strong views emm that they were not my own or that I was being driven by Howard (1) that would be totally wrong
- 64 And if you want to find out umm you’re an academic- if you wanna find out you read some of the reports (.5) on immigration written between nineteen ehh in the 1990’s up till ’96 umm dealing with the rorts in relation to marriages umm and there are a whole lot of reports there written by the Migration Regulations Committee of which I was a party in which I drove the need for reform
- 65 When I got into the (1) role as Minister I continued that emphasis

The more interesting claim however is his reference to the Australian courts in his assertion about “*those who are unelected who wanna make policy decisions*” (line 55).

Ruddock constructs a not unusual but typical portrayal of the Judiciary by the Executive. However, the judiciary do not make policies; politicians do. They never do, they may want to, but they don't. The *Sealed Envelopes Bill* of Chapter Five was drafted in the week after the Immigration Department lost the Teal Federal Court case (FCA, 1996a), and there are many other regrettable examples of governments supporting the Immigration Department initiating an "*attempt to block the hole it perceives in our courts*" and making "*something that has been found illegal legal*" as Greens Senator Chamarette had claimed during the debate of the Bill (Senate Hansard, 1996c, p. 2355).

In Extract 5 and 6 I question Mr Ruddock about his understanding of Article 31 of the UN Refugee Convention. Although Australia incarcerates all boat arrivals in prison-like conditions (without the human rights safeguards and rights available to all Australian prison inmates) Mr Ruddock maintains Australia is not in breach of Article 31. First though, I have to remind him after he suggests: "*Remind me of Article 31*" (line 68). His two affirmations of my statement (line 70, 72) are also his claims that we do not punish unauthorised arrivals or discriminate against them for arriving illegally. This is credible only because the political discourse amongst Liberal-National Coalition and Labor politicians pertaining to the imprisonment of unauthorised arrivals finds safe cover under sanitised, often-practiced terminology. No imprisonment takes place under the Criminal Code, but instead the detention is arranged under the Migration Act and is called "*administrative detention*". In Extract 6, line 81 Mr Ruddock does not pause when he "*recites*" the clauses in relation to an imaginary air arrival (line 80) who, after dropping "*their stuff down the aircraft toilet*", tells the authorities "*I'm an asylum seeker*". I have removed his "*umm's*" and "*ehh's*" from the sentence and introduced some punctuation:

we're not able to punish them for doing that- we don't do that, we say you've arrived unlawfully, we're going to detain you, we need to know who you are, we need to be able to ascertain the nature of your claims, we'll assess those claims, and yes there are issues about whether you get permanent or temporary visas...

Before he changes the topic to another obligation (line 75) under the Refugee Convention ("*non-refoulement*") Ruddock inverts (line 74) his disagreement ("*that doesn't mean that I agree*") about the rights of unauthorised asylum seekers, stating he disagrees that "*people have a right to enter Australia unlawfully in order to lodge*

claims". The semantic reconstruction of what may well constitute considerable courage by an asylum seeker when booking a flight or embarking on a boat owned by a stranger, into the phrase "*to lodge a claim*" is worth noting. By phrasing the asylum journey as a purposeful attempt "*to lodge a claim*" Ruddock also includes a hint of "*choice*", "*transaction*", "*making a bid*", comparable to an property auction. There is also a hint of "*opportunism*" in this depiction of the asylum seeker journey.

Ruddock's quick diversion in line 75 to the notion of "*non-refoulement*" is a safe move: the principle that confirmed refugees ought not to be returned to places where they fear persecution is one endorsed by Australia as a core principle under the Refugee Convention. This principle remains uncontested in Australian refugee discourse. Ruddock then asserts that asylum seekers are "*entitled to make*" – perhaps he means "*entitled to invoke*" that obligation of non-refoulement "*if they are in the jurisdiction*" (line 76). However, in the same sentence he adds a qualification that it "*doesn't mean that you have to allow people in Australia*" to invoke that obligation.

Extract 5 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

- 67 Interviewer: I would be able to assume now that you (1) hold the view that Article 31 of the
Refugee Convention does indeed apply to boat arrivals in Australia
- 68 Remind me of Article 31
- 69 Interviewer: Article 31 - for those who arrive illegally (1) the principle holds that you shall not
discriminate against them for having arrived illegally
- 70 No we don't
- 71 Interviewer: or punish them for having arrived illegally
- 72 No
- 73 Interviewer: and that nothing of having arrived illegally (1) voids any aspect of ehh the validity
of a possibility of an asylum claim
- 74 Absolutely- (2) but that doesn't mean that I agree (1) ehh that people have a right to enter
Australia unlawfully in order to lodge claims
- 75 I mean I think there is a distinction ehh and ehh ehh I would assert (1) positively that our
obligation is a non-refoulement obligation- you do not return a person to a situation of
persecution
- 76 that is our obligation (.5) and that obligation ehh they are entitled to make if they are in the
jurisdiction (1) but that doesn't mean that you have to allow people in Australia in order to make
claims
- 77 I mean- otherwise you might as well say to the ehh ehh ehh twelve million people who are
refugees we'll give you all a visa so you can make your claims in Australia
- 78 I mean it doesn't work that way

In line 77 Ruddock creates the scenario as an 'extreme case formulation' (Van Dijk, 2000b, p. 219; Guilfoyle & Hancock, 2009, pp. 124, 129) involving *all of the world's twelve million refugees*. He suggests that allowing asylum seekers into the country to make asylum claims "*in the jurisdiction*" is similar to making an open offer to all twelve million refugees to be granted visas to arrive in Australia legally to claim asylum. Historical reality does not support Ruddock's case. While one factor may predict that

another could follow may be a proposition with logical validity, UNHCR figures (UNHCR, 2009, p. 13) show that broadly speaking 99% of the world's refugees do not come or try to come to Australia, but go elsewhere.

As he continues, Ruddock maintains his hard line. He doesn't think Australia is "obliged to allow people into Australia to make claims" (line 84), and goes even further by imagining an Australian Immigration Compliance Officer in another country thinking aloud about someone at an airport: "if you tell us we're going to make a claim then we won't put you on the plane". He reiterates the point that "there is no right to come here to seek" asylum (line 86) and illustrates it "you're in Indonesia and you stay" in Indonesia "because we think you're going to make an asylum claim" (line 88).

Extract 6 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

- 79 *Interviewer: Arriving illegally and presenting themselves forthwith to the authorities would give a different colour to the arrival than for instance let's-*
- 80 Well some people by plane do that- (.5) I mean they (.5) they come in (.5) having had a visa they sometimes drop their stuff down (.5) aircraft toilet or whatever ehh and they arrive and they say I'm an asylum seeker
- 81 Some people do that- emm and ehh we're not able to punish them for doing that- we don't do that emm we say emm you've arrived unlawfully we're going to detain you we need to know who you are we need to be able to ascertain ehh the nature of your claims we'll assess those claims umm and ehh yes there are issues about whether you get permanent or temporary visas
- 82 I mean my view is- it is a non-refoulement obligation (.5) you don't return a person to a situation of persecution
- 83 But that doesn't mean you give them permanent residency emm emm you know- it's about protection and ehh ehh
- 84 But (.5) I don't think we're obliged (1) ehh to allow people into Australia to make claims- that's that's if you tell us we're going to make a claim then we won't put you on the plane
- 85 *Interviewer: it's a right to seek asylum- it's not a right to be granted asylum*
- 86 No but it's the right- and it's not the right- there is no right to come here to seek it- that's the point I'm trying to make
- 87 Umm because if there were, you'd have to put them on the plane
- 88 But we don't- (1) we say (.5) you're in Indonesia and you stay here- (2) because we think you're going to make an asylum claim
- 89 Go and report to the UNHCR
- 90 And I take the same view in relation to boats

Ruddock finishes by *telling the people at that Indonesian airport* to "go and report to the UNHCR" (line 89). He does not balance his hardline positioning by means of illustrating Australia's effort to take in people from UNHCR's caseload in Indonesia after they had "reported to UNHCR". However, the figures are available, and they show that Australia is not interested in assisting UNHCR with the thousands stranded there. Figures published in October 2009 suggest that 2,107 asylum seekers were registered with UNHCR in Jakarta. Yet during the years 2006-07 Australia resettled just 32 people from Indonesia, in 2007-08 89 people were accepted and in 2008-09

Australia resettled just 35 people from the Jakarta UNHCR caseload (Taylor, J., 2009, p. 5).

The final line (line 90) of the extract is Ruddock's *'afterthought'* about boats. The brevity of his statement contrasts against his extensive elaborations about other issues and air arrivals. His brief comment supports the notion that the origins of Ruddock's *activism* is grounded in his pre-ministerial work in the Migration Regulations Committee related to holiday visa entrants and others (see line 64), who (in his words) were the "*marriage rorts*" entrants by engaging Migration Regulations and the courts. Throughout the interview, Mr Ruddock does not seem inspired to talk about boat arrivals, but he keenly shares his views on those arriving by air.

7.4. *Snakeheads and secrets*

The seventh and final extract of the Ruddock interview records the questions I asked relating to the 1999 Chinese vessels, including those that arrived at Holloways Beach and the Hawkesbury River. I was however left with the impression Mr Ruddock appeared a little defensive or over-assertive in response. At least four times (line 92, 94, 96, 100) he interrupts me, responding before I finish asking my questions. Yet at the same time he avoids answering my question posed in line 95, where I query the parliamentary debate. I question that MP's talked about Snakeheads, illustrating their rhetorical persuasions with extreme European examples without presenting evidence drawn from the experience of the five boats that had arrived in Australia. In line 96 Ruddock brings my question into doubt before I have actually phrased it by asserting the label "*Snakeheads*" was used appropriately, while it wasn't what I questioned and while I did not question its use; I merely had noted it in line 95.

Ruddock's qualification in line 105 that his information "*is totally off the record*" is reason for the transcript interruption. Yet again, the information he shares appears uncontroversial. He provides some details in relation to the apprehension of passengers and crew of the vessel that had entered the Hawkesbury River, the "*one was going to come to my Electorate*" (see line 51). They were eventually brought to Garden Island, Sydney Harbour's Naval Base north of the suburb of Potts Point, before being transported to be formally arrested at Randwick Police Station. When I query the

availability of reports in relation to this vessel, he avoids being helpful by means of responding passively using “*I haven’t seen them*” responses (line 106, 109, 111).

Extract 7 – Former Immigration Minister Philip Ruddock (May 24, 2011, Parliament House)

- 91 *Interviewer: Arright- now, Olympic Games arrivals. You know, the Holloways Beach (1.5) Hawkesbury River, the Olympic Games arrivals I call them*
- 92 (interrupting) Well I don't. I'd never known that, but, go on-
- 93 *Interviewer: It was frequently reported by the papers (1) now (0.5) during the debates-*
- 94 (interrupting) They weren't coming here for the Olympics, but anyway
- 95 *Interviewer: But- during the debates (1) you and many others including Christopher Pyne and (0.5) other Members in the House (0.5) and Senate (0.5) emm illustrate this by examples of of ehh reported Snakehead activities in Europe prices of forty thousand dollars a head (0.5) horrible circumstances on the boats*
- 96 (interrupting) Well Snakeheads was a term that was extensively used in Asia- Extensively used
- 97 *Interviewer: Yeah but (0.5) let me (0.5) finish what I'm saying (1) most of the examples during the debates came from the European experience (0.5) yet little evidence came from the reports of AFP, the interception officers, the Customs officers who dealt with those five boats*
- 98 *Interviewer: Umm were they not ready with those interviews what happened to the- can you recall whether there were reports-*
- 100 (interrupting) I can't
- 101 *Interviewer: Whether reports later came to government-*
- 102 There may have been but I can't recall umm and ehh I wouldn't I wouldn't assert that (0.5) in relation to those matters umm that ehh one would be comfortable about putting a lot of information about people (0.5) whose claims ehh (1) people who may have been prosecuted (1) for people smuggling umm I would not be happy about putting matters in the public arena that may lead to (0.5) a court (0.5) arguing that you would try to influence potentially a judicial outcome
- 103 *Interviewer: Yep I can see that (1) but now, eleven years later twelve years later can you recall whether any prosecutions took place against those five organising groups of Holloways Beach (0.5) Cairns (0.5) Hawkesbury River*
- 104 I believe so (0.5) I believe so
- 105 Umm all I can say is I'm - and again this is totally off the record but I'm told that -----
entry not recorded
- 105 (paused)
- 106 *Interviewer: I would of course love to get my hands on those reports*
- 107 I'm sure you would but I don't have them
- 108 *Interviewer: Are none of these reports public?*
- 109 I haven't seen them
- 110 *Interviewer: No that's not the same- are these in the public domain or are they not in the public domain?*
- 111 I haven't seen them in the public domain

My interview with Mr Ruddock took place two weeks before the 12th anniversary of the arrival of the Chinese vessel in the Hawkesbury River, arriving in the Berowra electorate – the Federal seat Mr Ruddock represents. It appears hardly credible that Mr Ruddock does not remember or is ill-informed about the intricate details of the handling of this Chinese arrival. His evasive answers and “*off the record*” responses also seem unlikely to be a function to protect his constituents, although he appears to portray them in this way. More likely is the assertion that Mr Ruddock is “*keeping the secret*” for

Prime Minister John Howard, who had, by means of the Inquiries by Max-Moore Wilton (Moore-Wilton, 1999) and Vice-Marshall Alan Heggen (Heggen, 1999) ensured that the discourse in relation to the *Olympic Games arrivals* had been constructed, as argued in Chapter Six, as major *national security emergency* incidents.

7.5. *The gravely voice from Kooyong*

I interviewed the former Liberal Member for Kooyong Petro Georgiou in his Melbourne home on May 30, 2011. As noted above, Mr Georgiou had not participated in the 1996-1999 debates by means of parliamentary speeches. Like Mr Ruddock, he had no memory of the Bills under scrutiny in my research. Consequently, my questions were more topic-based than that they expressed aspects of the legislation and the process of their parliamentary progress.

Extract 8 – Retired former Liberal Member for Kooyong Petro Georgiou (May 30, 2011, Hawthorn, Victoria)

- 201 *Interviewer: Now if you look at these people smuggling Bills and the Bills dealing with people in detention- immigration detention- restricting their rights (1) if you say there are three parties at work- Howard, the Immigration Department and Ruddock (1.5) who would have most interest and influence in compiling the legislation (0.5) would that mainly come from Howard mainly from Ruddock or mainly from the Immigration Department (0.5) where is the strongest vested interest there*
- 202 Well- OK on on on (0.5) Howard I think that Howard had some general predispositions ahhh I don't think that John knew the detail of a lot of the things that were going through firstly people may have anticipated his reactions ahhh and so that I'm not-
- 203 you know Prime Ministers have got a lot on their plates and a lot of the time there is a general attitude (0.5) which is then picked up by (0.5) Ministers and picked up by the bureaucracy
- 204 It's really difficult disentangling you know the the the immediate (0.5) input (0.5) or the direct input- it just is-
- 205 *Interviewer: Allright yep OK allright- so that leaves us then with-*
- 206 But also- but also- you mustn't- sorry (0.5) you mustn't forget that a lot of this- a lot of the stuff about human rights as such was carried by the Attorney-General and- and by the Attorney-General's department
- 207 *Interviewer: yah- yap- OK (0.5) but- if we talk about boat arrivals (0.5) we're talking about the unauthorised maritime arrivals*
- 208 Yeah
- 209 *Interviewer: The first (0.5) authority they cross (0.5) is the Immigration Department- so how strong- I'm trying to establish because I don't have the answer I have a feeling (0.5) and I'm kind of doing a tentative thesis here that it's the Immigration Department has most influence there in the legislation (0.5) if we're talking about people in immigration detention it's mostly coming from the Immigration Department- the legislation*
- 210 The details may come from (0.5) the department ahhh and there's an inter- sorry I'm not trying to be difficult- but there's an interaction between (0.5) the Minister and the Department that ehh- sometimes it's very difficult to sort out cause and effect

I started by asking him about the location and division of power between the Prime Minister, the Immigration Minister and the Immigration Department during the Howard government. The question forms part of a recurring theme in the research where it questions the power of the Immigration Department as a government department that not only recommends, but also dictates policy settings, and where it appears to lobby its Ministers to implement their policy proposals.

Additionally, evidence presented in Chapter Six confirms that the Immigration Department also acted to intervene in the parliamentary debate. It did so by means of issuing documents that depicted asylum seekers as *“forum shoppers”* targeting Australia, thereby actively constructing parliamentary discourse. In Extract 8 above Mr Georgiou depicts the influence of Prime Minister Howard in relation to legislative measures pertaining to boat arrivals. However, he only identifies that influence in generic terms, acknowledging Howard exerted *“some general predispositions”* (line 202), which were communicated as *“a general attitude which is then picked up”* (line 203). He assigns more weight to the interaction of the Immigration Minister and the Immigration Department, in that *“there’s an interaction between the Minister and the Department”* where initialization is *“very difficult to sort out”* (line 210).

Georgiou is more explicit in his depiction of Immigration Minister Philip Ruddock. As the leader of what has been described as *“The Georgiou Group”* (see Project SafeCom, 2005a) the Member for Kooyong led a backbench revolt against the hardline immigration detention policies under Howard and Ruddock. In Extract 9 he dispels a myth often promoted, that Ruddock transformed himself from a moderate “small-l” Liberal to a hardline Immigration Minister. Such portrayals were also argued by Gillard government Immigration Minister Chris Bowen in 2008 when he claimed that *“Moderate Liberals such as Philip Ruddock had to shed their heritage to retain their place of preferment”* (Bowen, 2008). Georgiou denies such a transformation took place, pointing to *“his speeches in 1992-93”* stating that *“Ruddock wasn’t a soft touch in opposition and became hard touch in government”* (line 212). Georgiou’s claim and his reference to pre-ministerial speeches correlated with the statements Ruddock made to me in his interview when explaining what had driven and activated him as Immigration Minister: *“if you wanna find out you read some of the reports ... written ... in the 1990’s up till ’96”* (Extract 4, line 64).

Extract 9 – Retired former Liberal Member for Kooyong Petro Georgiou (May 30, 2011, Hawthorn, Victoria)

- 211 *Interviewer: What's become a trend really is to paint Ruddock as the evil man (0.5) I don't subscribe to that because you can't do anything with it-*
- 212 But- In fairness to Phil and I'm not- if you go back to Ruddock's (0.5) pre (0.5) government statements uhh Ruddock was very hardline then (0.5) No- very- ehh you go back to- uhh Ruddock was not being in terms of his (0.5) ehh Ruddock wasn't a soft touch in opposition and became hard touch in government. If you go back to his speeches in 1992-93 you see that he was actually critical of the Labor government for not going far enough- that's worth looking at
- 213 So- you can- you can be critical of him in lots of respects but ehh lack of consistency on on these issues is not one of them
- 214 *Interviewer: And I just see him as a man who wants to follow the rule system (1) you know, I'm governed by you do this you need to be consistent there and you need to be consistent there (0.5) and he was probably better at that than previous immigration ministers- at consistency*
- 215 I also think there's one thing we we mustn't loose sight of (0.5) that for most of the time this was a bipartisan policy (0.5) yah and and that's really important because that's the context in which a lot of these actions took place
- 216 *Interviewer: Nothing was resisted by Labor during Ruddock's time*
- 217 But- actually the whole sequence of events had been initiated by Labor

Mr Georgiou also points to the ongoing notion of bipartisanship as a factor that had enabled Ruddock's positioning (line 215). It is an important observation, even while often used as a standard argument by non-Labor politicians who point to the 1992 establishment of mandatory detention of all boat arrivals by the Keating Labor government (Jupp, 2002, p. 183) as an example of hardline responses that, in Georgiou's words, had started "*the whole sequence of events*" (line 217). The notion and the dilemmas associated with the maintenance of bipartisanship emerged in Chapters Three and Six above.

In Extract 10 the issue of different criminal liabilities for crew and skippers as opposed to organisers is raised. During the extensive period served in the Federal Parliament, Mr Georgiou played an important part in deliberations of backbench committees, also in relation to the treatment of asylum seekers. I ask him whether issues in relation to 'people smuggling' were raised in the forums he participated in or in general discussions amongst parliamentarians.

Mr Georgiou keenly responds, interrupting my question (line 218) before I'm finished. His confident and coherent response (and the tone of voice) as he elaborates (line 219, 220), confirms that he enjoys recalling fond memories of the backbench committee work. The *backbench revolt* against the hardline treatment of asylum seekers he had been part of had originated in this committee context.

While I continue to clarify the topic I'm trying to address (line 221, 223, 225, 227, 229, 231) he responds affirmatively, indicating he understands me in line 228 "*Yes. I get it*" and confirming he comprehends my argument in line 230 "*It picks up everyone*".

Extract 10 – Retired former Liberal Member for Kooyong Petro Georgiou (May 30, 2011, Hawthorn, Victoria)

- 218 *Interviewer: ... Hadi Ahmadi, he brought 900 passengers on four boats ... 96 per cent of those were declared to be refugees- bringing refugees to the Convention country (1) so, did anybody in the Parliament in those years say in your time 1999 to 2001- did anybody raise the issue there may be different types of smuggling taking place here (1) did anybody raise the notion that we have to distinguish-*
- 219 Not to my (0.5) recollection because the focus of (0.5) the focus of the concern was actually about people who were entitled- there were two foci one people arriving here ehh without visas and two ehh what we did with those people arriving without visas
- 220 Because the divide and (0.5) there has never been a real issue across parties that if you're not a refugee you're not entitled to anything so the system sought out on the basis of wherever they came from whether they have any grounds to claim asylum here
- 221 *Interviewer: Yes, but the end product of the people smuggling legislation is not that we're catching people smugglers (0.5) we're catching the crew*
- 222 Yes
- 223 *Interviewer: And the crew have barely a relationship with the smugglers*
- 224 Yes
- 225 *Interviewer: They're the ones in jail two hundred and sixty of them at the moment*
- 226 Mmmm
- 227 *Interviewer: Increasingly the Indonesian consular staff are angry who visit them*
- 228 Yes. I get it
- 229 *Interviewer: are angry (0.5) I've spoken to them (0.5) and we're not catching smugglers- we've just extradited the second one in ten years- to Australia- so there is an error in the legislation*
- 230 It picks up everyone
- 231 *Interviewer: Yes. I'm just wondering what the conversations were in parliament around that time*
- 232 I think the discussions were around the broadest level of generalities (0.5) I don't think there was- were distinctions drawn between (1) you know higher ups and and lower downs
- 233 But I'm also not sure how much yeah how much this is a factual issue yeah ehh how many of the people have been ehh you know ordinary crews (0.5) have been prosecuted

However, his answer includes a surprise. Following his response in line 232, indicating that the committee discussions didn't really extend to issues surrounding 'people smuggling', he questions the practical relevance of the issue with "*I'm also not sure how much this is a factual issue*" before wondering how many "*ordinary crews have been prosecuted*" (line 233). Although I respond by explaining that all those confirmed to be eighteen years and over will face prosecution, I've ended the transcript at this significant point. In line 219 Mr Georgiou clarified that the backbench committee restricted itself to issues vis-à-vis boat arrivals and those arriving without visas, and in line 225 I noted that 260 crew members are "*the ones in jail*". In line 232 he wonders whether this is a "*factual issue*". While it is confirmed that the issue of 'people

smuggling’ was not questioned in the backbench committees, Mr Georgiou’s apparent poor knowledge about any associated issues may well be linked to the absence of informed debate in the Parliament during the passing of the legislative measures in 1999 and beyond. While such conclusions cannot be drawn at all from just one response by one Member of Parliament, Chapter Six has provided stark evidence of Howard’s construction of the political discourse in relation to the *Olympic Games arrivals* as a national security issue cloaked in secrecy “*for operational reasons*”. Viewed within this context, it is not unreasonable to suggest a link between this “*secret discourse*” and Mr Georgiou’s response levels.

As Mr Georgiou continues to provide information about the issues discussed in the backbench committees I ask him about the place of Article 31 of the Refugee Convention in discussion in these forums (line 236).

Extract 11 – Retired former Liberal Member for Kooyong Petro Georgiou (May 30, 2011, Hawthorn, Victoria)

- 234 *Interviewer: So (1) your involvement 1999-2001 did you have involvement on any inquiries (0.5) house inquiries committees around that at all*
- 235 No- basically the treatment of ehh (0.5) refugees was always a ahh an issue of (0.5) significant discussion within backbench committees ahh (0.5) and I'd have to- I'll look at my notes for some of the- (0.5) but (0.5) that was ongoing the riots the lipsewing the harshness of the guards (0.5) the winding up of the the legal regime to do with- they were the major foci that some of us had on backbench committees
- 236 *Interviewer: Refugee Convention Article 31 which really says ehh if people arrive illegally or in unauthorised ways you're not gonna punish them for having done so you can't discriminate against them (0.5) yet, we do of course left, right and centre, everywhere (0.5) Article 31 (0.5) has that formed part of the debate like in the backbench committees or in the-*
- 237 I ahh I think that the main focus- I think the major focus of the debate was on our responsibilities as a humane society to ehh asylum seekers and their treatment ehh I don't believe that a critical premise was the state of international law
- 238 Ahh no I'm- from my perspective and from my recollection (0.5) the major issue was (0.5) what obligations do we as Australian- members of Australian society have towards these- these people and that was pretty fundamentalist (0.5) it was you know it did not rest on articles it rested on no we shouldn't be behaving like this

Mr Georgiou’s response confirms the findings confirmed throughout the thesis.

Australian asylum seeker political discourse has not integrated “*the arbiter’s rules*” of Article 31 of the Refugee Convention; even a refugee advocate of Georgiou’s calibre relegates the dictums of Article 31 to outsider status by depicting it as “*the state of international law*” (line 237). He is firm about questioning “*what obligations*” Australia has towards asylum seekers and probably supports the notion that the term “*obligations*” derives directly from the UN Refugee Convention (line 238). Yet, while he depicts the backbench committee discussions as “*pretty fundamentalist*”, the notion

of Article 31's *foundation principle* is not invited around the table, because these discussions "*did not rest on articles*" (line 238).

7.6. Conclusion

Although only two participants took part in the post-research interviews, they provided important validation for aspects of the research undertaken in this thesis. The interview with former Immigration Minister Philip Ruddock was significant in that it displayed his framework of views on 'unauthorised' and 'uninvited' asylum seekers. He keenly outlined his outlook on asylum seekers, depicting them as those "*seeking to enter to lodge claims*", declaring they ought to be stopped from doing so, whether by air or by sea. Ruddock also confirmed that his "*activism*" originated in the early 1990's, before he became Immigration Minister, during which period he "*drove the need for reform*" of Migration Regulations in relation to visa entrants who sought to acquire permanent residency through, in his words, "*rots in marriages*". His hardline positioning as Immigration Minister and his zealousness to remove the rights to legal reviews in Australian courts for 'unauthorised arrivals' can be explained as having formed within this context.

Mr Ruddock also expressed the view that 'outside' lawyers and groups would interfere with claimants during an Immigration Department decision-making process, asserting it would be undesirable for "*coaching*" to take place which could lead to "*surplus claims*". The views he expressed during the interview correlate with the direction and intent of legislation analysed in Chapter Four of this thesis. Although Mr Ruddock had no public role during the debate of this legislation, his views support the claim that he promoted the notion that only the Immigration Department and its Minister, and not the courts or "*those who are unelected making policy decisions*" should arbitrate decisions about 'unauthorised arrivals'. Further, his unwillingness to publicly discuss issues in relation to Chinese boat arrivals, accompanied by a request to "*turn your thing off*" during the interview, raises many questions. These are questions about public policy accountability and secrecy, increasing in significance in the context of claims of serious human rights abuses by HREOC in its 1998 report discussed in Chapter Four, Five and Six. Ruddock wanted sections of the interview to be "*off the record*" about the Chinese arrivals, almost all of whom were returned to China in the years prior to 1999 (see Chapter Six) as well as the 1999 *Olympic Games arrivals*. Ruddock's secrecy in

relation to the latter arrivals appeared congruent with the “*national emergency incident*” discourse constructed by the Howard government during the debate of legislation analysed in Chapter Six.

Mr Ruddock’s “forgetfulness” about Article 31 of the Refugee Convention when he asked during the interview “*remind me of Article 31*” appeared highly implausible. Ruddock was an Australian Immigration Minister with a record eleven year exposure to Australia’s most frequently invoked human rights instrument. However, backbencher Petro Georgiou also relegated Article 31 to the sphere of “*the state of international law*” during the interview. Perhaps further research may confirm that this important principle which formulates the “*rights of unauthorised arrivals*” as defined in Chapter One has been omitted entirely from Australia’s political discourse about asylum seekers and boat arrivals as a guiding principle for policies. During the research interview with Mr Georgiou, he also referred to Ruddock’s pre-parliamentary work, noting his speeches from that period as evidence of his consistent, if hard-line positioning towards asylum seeker policies, denying Ruddock changed from a “*small-l*” or so-called “*wet*” Liberal politician to a position consistent with a hard-line approach.

Finally, the Georgiou interview also confirmed that “*Parliamentary refugee advocates*” like him maintained a single issue focus on the treatment of unauthorised arrivals in their backbench committee policy deliberations. They did not extend their paradigm to also critically consider legislation that criminalised their travel organisers. Especially Chapter Six concluded that the “*people smuggling discourse*” in the Parliament was almost universally adopted as the dominant discourse, and that even strong human rights advocates seemed to unquestionably accept its dominance.

8. Conclusions

The research undertaken in this thesis has not delivered one single and simple overarching conclusion that can be stated at the start of this chapter. While it has attempted to dig into the depths of political discourse to question the justification of Australia's harsh anti-people smuggling legislation by political elites, it stumbled upon many rich veins that helped craft the rhetorical constructions surrounding the relevant parliamentary debates. These surrounding resources form the building blocks of the political debate surrounding asylum seekers and their travel organisers, and they must occupy a seat in the front row of Australia's theatre of public policy machinations. The first section of this chapter brings together a dozen concluding statements that summarise the findings of the thesis. They are mostly cumulatively progressive statements, building on each previous summary. The second and final section of this chapter returns to make concluding comments on the four research questions first formulated in Chapter One.

8.1. Concluding statements on findings

The *political development of Australia's people smuggling legislation* is in many ways the *political development of the people smuggling discourse*. In turn, the people smuggling discourse is closely linked to Australia's asylum seeker discourse. In Chapter Five (§ 5.3 to § 5.6), evidence was presented that asylum seekers were portrayed as unlawful arrivals and illegal entrants in order to build justifications to remove their rights to legal advice. When in June 1999 amendments to this legislation, intending to increase maximum imprisonment for those bringing people 'unlawfully' into Australia from two to twenty years, were presented, the depiction of asylum seekers dramatically shifted. They were no longer portrayed as unlawful entrants but graphically depicted as misguided migrants who had become victims of criminal entrepreneurs.

The *people smuggling discourse* does not have its origins in the final years of the twentieth century, but much earlier, in the years following the first boat arrivals from Vietnam in 1976. The 1979 declassified Fraser Cabinet documents as discussed in Chapter Three (§ 3.3) are most certainly amongst the primary documents which delivered some core findings of this thesis. The documents contain proposals for Australia's first State response to asylum seekers arriving by boat. Four aspects of these

proposals are central principles of the submissions. First, they contain a range of harsh punitive measures to impose on those boat arrivals. Second, they equally target passengers as well as crew and skippers of the vessels. Third, they are drafted by Australia's Immigration Department. Fourth, the arrivals are labelled '*unauthorised arrivals*'. These four aspects form the foundations of Australia's asylum seeker discourse and people smuggling discourse.

As Australia's '*border guards*', the Immigration Department has always had a central role in shaping policy responses to boat arrivals. However, this thesis has also presented evidence of its role in directing political discourse and its initiatives in presenting manipulative rhetorical devices. In 1978, the Immigration Department suggested that asylum seeker vessels arriving in Australia from Vietnam should be called "*queue jumpers*", a suggestion that was keenly accepted by the Fraser government in "*deterrence announcements*" broadcast by radio throughout countries in the ASIAN region. Ministers and other politicians in the Fraser government as well as Labor opposition politicians immediately started using the term, and its manipulative potency as a term in political rhetoric and the national discourse has ensured the term is still current as a powerful manipulative rhetorical device in contemporary asylum seeker discourse. In addition, Chapter Six (§ 6.6) presented evidence that during the 1999 debate of border protection legislation and other measures intending to punish asylum seekers arriving by boat, the Immigration Department delivered a briefing document to all MP's and Senators. This document contained manipulative labels to describe asylum seekers, suggesting they were "*forum shoppers*" who had bypassed other safe countries to reach Australia as their "*preferred destination*". The Department provided no factual evidence to support this; in fact, these bizarre claims are refuted by evidence of refugee movements published by UNHCR at the time the Immigration Department made the claims. The document also suggested that irregular maritime asylum seekers interfered with UNHCR's resettlement programs and the "*world community's*" resettlement initiatives.

The Immigration Department has an ongoing conflict of interest between its archetypal role as Australia's '*border guards*' and its role to implement refugee protection for asylum seekers. It is arguably the Department's central role as "*the enforcer*" of the White Australia Policy between 1945 and 1972 that established many harsh, racist and exclusionary aspects in its operational culture. When Australia acceded

to the UN Refugee Convention in the early 1950's, the first signs of this conflict of interest emerged during drafting negotiations in Geneva. Chapter Three (§ 3.2.1) provided evidence of deep resistance against – if not a stubborn refusal to accept – the implications of the Convention's Article 31 by the Immigration Department, expressed by its first Secretary Tasman Heyes. Heyes and others rejected Convention principles prohibiting the imposition of penalties on “*undesirable refugees*” and punish them “*for illegal entry*”. These departmental predispositions resurfaced in the harsh measures proposed in the 1979 Fraser Cabinet submissions.

The 1979 Fraser Cabinet proposal to impose criminal sanctions against “*traffickers*” of asylum seekers constitutes Australia's first State retaliation against organised “*unauthorised arrivals*”. Like all other proposals in the Cabinet submissions, they must be understood against the harsh, exclusionary and punitive predispositions of the Immigration Department. The unquestioning acceptance of not just the term “*unauthorised arrivals*” but also its underlying sanctioning quality and weighting in Australian political discourse expresses the power of the Immigration Department as ‘*border guards*’ to dictate discourse. The centrality of this label was reflected in the title of the legislative proposal: “*Legislation against Unauthorised Arrivals*”. The legislative proposal manipulatively reconstructed the organised paid passages from Vietnam on large vessels to depict the organisers as “*traffickers*”. The 1979 Cabinet proposals were tabled by Fraser's Immigration Minister Michael MacKellar. When Immigration Minister Ian Macphee introduced the subsequent legislation to Parliament in May 1980 (Chapter Three § 3.4), Malcolm Fraser became Australia's first Prime Minister to manipulatively use legislation in response to boat arrivals. Macphee's illustrations of “*five huge vessels*” intended to persuasively scare the Parliament and the Australian people, even though the vessels had never arrived in Australia. His depiction of the ventures as examples of “*trafficking*” was based on misrepresentation, and his claims ran counter to factual information: in justifying the legislation the Fraser government lied to the Parliament and the Australian people.

Those who favourably compare Malcolm Fraser with John Howard in relation to the treatment of refugees ignore the historical records and continue the failure to critically review Fraser's response to boat arrivals. John Howard may be called ‘*ruthless*’ when he ordered Australian elite SAS troops to storm the MV Tampa in 2001, but Fraser's sinking of many asylum seeker vessels in Malaysia at the hand of Australian

immigration officials to prevent them from arriving in Australia is equally callous. Sinking boats was only one of the many “*stopping the boats*” strategies employed by Fraser. With his Immigration Minister Michael MacKellar, Fraser went to great lengths trying to persuade countries in the ASIAN region to stop boats from departing for Australia. In justifying this strategy, MacKellar presented highly inflated maritime mortality rates for those who left Vietnam by boat. If MacKellar was aware at the time that his claims had already been discounted in the international press, then he lied to the Australian people.

Manipulative justification of legislative measures proposed in response to boat arrivals did not only take place during the Fraser government but also under the Howard government. The border protection measures legislated in 1999 were presented under a “*national security*” secrecy veil for “*operational reasons*” while asylum seekers were described as “*illegal arrivals*” (Chapter Six § 6.2). This labelling of asylum seekers was applied “*to saturation levels*” in a report by Prime Minister Howard’s Department of PM&C. While two investigative reports into “*undetected landings*” were published prior to the commencement of the Parliamentary debates, almost all of their contents were removed by Howard’s Department. Consequently, Parliamentarians could not develop informed opinion about the nature of these arrivals, the intent of the organisers or the purpose of the passengers during the process of their deliberations of the legislative measures. In addition, the Immigration Department distributed manipulative and counterfactual documentation amongst Parliamentarians (Chapter Six § 6.6), which amongst other things depicted asylum seekers as “*forum shoppers*” who bypassed other safe countries while selecting Australia as their destination of choice. These Departmental constructions were liberally cited by politicians during the debates. During the debate Howard’s Immigration Minister Philip Ruddock used manipulative depictions of asylum seekers as economic migrants selecting Australia for its perceived generous healthcare provisions. He appeared to speak with ‘*derision*’ about maritime asylum seekers when he manipulatively suggested the availability of a popular brand of hair shampoo and good health and dental care was the reason that asylum seekers made their way to Australia.

Australia’s longest-serving Immigration Minister Philip Ruddock does not believe anyone should be allowed entry into Australia to seek asylum, regardless of them attempting to do so by air or by sea. He clarified this position to prevent anyone from

entering for this purpose – which he called “*to lodge claims*” – during the post-research interview. During the interview, Mr Ruddock also confirmed that the purpose of Immigration Compliance officers at e.g. Indonesian airports is to prevent people from boarding aircraft if they declare their intention to travel to Australia to seek asylum (Chapter Seven § 7.3, Extract 5-6). As Howard’s Immigration Minister, Mr Ruddock was instrumental in the drafting of the legislation analysed in Chapter Five and Six. In response to recommendations in the Moore-Wilton report (Chapter Six § 6.2), one of the reports underpinning the Chapter Six border protection measures, Howard announced a dramatic increase in the number of Compliance officers in at least 18 international departure points.

The Australian State prevents formal air travel and entry for those people seeking asylum in dozens of locations around the world. This follows from the tasking of International Compliance officers at all international airports where they are stationed. Consequently, asylum seekers wishing to invoke UN protection under the UN Refugee Convention are forced to travel by alternative means. Essentially, Australia forces them to access “*informal travel*” agents. Those known in Australia as ‘*people smugglers*’ are known also as “*informal travel agents*”.

The Parliamentary Labor Party’s ongoing profferations of bipartisanship on asylum seeker policies can be interpreted as a major political failure on the part of the ALP whilst in opposition. All three legislative measures scrutinised in this thesis passed were proposed by Liberal governments, and in each case the Labor opposition declared its *a priori* bipartisanship for the measures. In 1980 Labor proposed amendments to the legislation (see Chapter Three § 3.4.2) which were defeated, yet bipartisanship was offered before the debate commenced. Despite this bipartisanship, several Labor MP’s and Senators expressed considerable reservations about the legislation or expressed outright opposition to the Bill during the debate, some arguing serious concerns in cogent ways from a human rights perspective. In this context, former Prime Minister Malcolm Fraser’s repeated calls to return to his model of bipartisanship on asylum seeker and refugee policy is questionable: the first example of bipartisanship over boat arrivals appears to be the agreement to adopt the Immigration Department’s suggestion to depict boat arrivals with the derogatory term “queue jumpers”. This is not “*bipartisanship*” but an act of “*collusion*” between the two major political parties.

Immigration policy researcher and historian James Jupp argues that bipartisanship on immigration and multiculturalism ended in 1988 with Howard's *One Australia* speech and policy document (see Chapter Four, § 4.2). This should have motivated Labor to start redefining its own political discourse in congruence with the ALP Party platform, not just about immigration and multiculturalism but also about boat arrivals. It failed to do so, beholden as it was to also treat "*unauthorised arrivals*" in a punitive way, continuing the bipartisan political framework first set in motion in response to the Vietnamese boat arrivals under Fraser. Howard's preparatory frameworks, developed in 1988, returned as a coherent and consistent policy approach when he became Prime Minister in 1996, and the ALP opposition was found wanting, having failed to develop its own oppositional discourse as exemplified in Chapter Five and Six. The bizarre and clownesque "*Convention Waltz*" (Chapter Five, § 5.7) in the House of Representatives on June 30, 1999 performed by the Hon Peter Slipper and Labor's Immigration spokesman Con Sciacca expresses this failure, as does Labor's confused "*firing in multiple directions*" during the debate of the *Border Protection Legislation Amendment Bill 1999* (see Chapter Six, § 6.7).

The phasing out of the White Australia Policy during the Whitlam government and its replacement by the notion of multiculturalism has not successfully concluded. Following the dramatic 1975 Whitlam "*dismissal*", multiculturalism was further embraced by the Fraser government, but ambivalence and pockets of resistance against the social changes remained. Chapter Four (§ 4.2) briefly raised this issue, and it can be argued that John Howard's positioning *vis-à-vis* human rights, multiculturalism, Asians in Australia, and UN Conventions is an expression of that ambivalence. Fraser also resurrected the Immigration Department following Whitlam's decision to close it, but he did not engage in significant structural and cultural reforms of the Department. Fraser's Immigration Minister Macphee's introduction of individual asylum claims assessment (Macphee, 1982) by means of the Determination of Refugee Status (DORS) committee was a welcome development, but the Immigration Department remained in charge of this process. Its conflict of interest remained: on the one hand they were "*the offended border guards*" in relation to the landing of "*unauthorised arrivals*" while on the other hand they were charged with the implementation of Australia's most frequently activated human rights instrument, the UN Refugee Convention. The 1996 introduction of the *Sealed Envelopes Bill* (Chapter Five) is further evidence that the Immigration Department demanded, and received from its Ministers, authority to

increase its sole discretionary – and autocratic – role in the fate of asylum seekers arriving by boat, not checked by any outside agency. Perhaps this is the most disastrous structural failing in Australia’s treatment of asylum seekers.

8.2. *The Research Questions*

The four research questions as discussed in Chapter One were formulated shortly following the commencement of the research. As the research progressed, they appeared to become more and more inappropriate, or perhaps appeared to be inadequately formulated. It seemed that they were the wrong questions that were inappropriate in view of the material presented. This seductive process of self-doubt on the part of the researcher was in itself a finding: overall, the Parliamentary debate did not concern itself with the issues posed in the research questions. They might have been formulated as “*The Ignorant’s Questioner’s Questions*”, but this did not detract from their validity. The questions were reprinted and addressed at the end of Chapters Three, Five and Six. The responses from those chapters are incorporated in the conclusions below.

1. How did politicians inform themselves of the international phenomenon of ‘people smuggling’ and what knowledge did they have of the nature of ‘people smuggling’?

During the 1980 debates (see Chapter Three), introduced when Malcolm Fraser’s Immigration Minister Ian Macphée delivered the Second Reading speech, no independent or objective knowledge of any ‘people smuggling’ or ‘trafficking’ phenomenon was presented to the Parliament. In his speech Macphée referred to “*five huge vessels*”, none of which had ever arrived in Australia, but he presented no evidence that they were indeed “*trafficking ventures*”. His speech closely reflected material from the 1979 Cabinet submissions which had proposed “*legislation against unauthorised arrivals*”. Macphée described the ventures as “*rackets*” and the organisers as “*racketeers*” while passengers were described as victims, “*illegal immigrants*”, “*lawbreakers*”, “*subjects of clandestine entry*” and “*queue jumpers*”. During the 1980 debate one MP referred to unrelated migrant smuggling ventures in the USA. Media reportage or published investigations of the “*five huge vessels*” did not receive a mention by anyone during the debate. Instead, Macphée and others used a variety of manipulative rhetorical devices such as “*extreme case formulations*”,

“*persuasive scare tactics*” and repeated usage of “*victim-criminal pairings*” to push the case for the legislation. Macphee manipulatively reconstructed the nature of the ventures described as the “*five huge vessels*” in order to justify the legislation. His claims were counterfactual.

During the 1999 debate of amendments to the *Sealed Envelopes Bill* (Chapter Five) politicians presented no factual evidence in relation to the “*Olympic Games arrivals*” which they claimed were smuggling ventures. No reports from Australian Federal Police, Customs or border agencies were tabled, no details about any prosecution of the purported ‘smugglers’ were discussed. Parliamentarians claimed “notorious criminal organisations” such as the Chinese Snakeheads were connected to the arrivals, politicians resorted to rhetorical devices such as “*extreme case formulations*” and “*persuasive scare tactics*” to describe the arrivals, while the passengers were described as victims in “*victim-criminal pairings*”.

During the debate of the *Border Protection Legislation Amendment Bill 1999* (Chapter Six) some government MP’s and Senators appeared to have some knowledge of trafficking between China and the USA. However, the information they presented may have been from media reports, and they provided no confirmation that the extreme examples presented were in any way related to the recent “*Olympic Games arrivals*”. Details of Government investigations into these reported ‘migrant smuggling ventures from China was kept secret. Politicians used examples of trafficking, but these were presented within rhetorical devices such as “*persuasive scare tactics*” and “*extreme case formulations*”.

2. When considering the legislation, did politicians consider that ‘people smugglers’ generally bring asylum seekers into Australia as a UN Refugee Convention signatory?

The 1980 debate of Fraser’s measures to criminalise those depicted as “*traffickers*” takes place in the shadow of the *new asylum seeker rhetoric*, where those Vietnamese who initiated not just their own exit but also their arrival in Australia were depicted by the Immigration Department, the Fraser government and the ALP opposition as “*queue jumpers*”. This dominant rhetoric, also adopted by the media, created the context where during the Bill’s debate they were depicted as “*illegal immigrants*”, “*lawbreakers*” and

“*subjects of clandestine entry*”. This debate must therefore also be regarded as the first attempt by Australia’s political elites to depict “*self-organising*” asylum seekers arriving “*uninvited*” at Australia’s maritime borderline as “*opportune*” refugees, who were engaging in an “*illegal*” act.

The *Sealed Envelopes Bill* amendments pertaining to ‘people smuggling’ sentencing were debated within an extraordinary brief timeslot on June 30, 1999. During the three years preceding this, asylum had been depicted as “*illegal entrants*” and “*unlawful arrivals*” by Labor as well as Liberal-National MP’s and Senators; only Greens and Democrats had described them as “*asylum seekers*” and “*refugees*”. During the amendments debate, the passengers were primarily depicted in “*victim-criminal*” pairings by all politicians.

During the 1999 Border Protection Bill debate only Labor’s Warren Snowdon MP considered that the legislation should consider that the passengers “*for their own legitimate purposes*” may seek arrival “*as refugees*” and that some may sail “*their own vessels*”. The Australian Democrats, while supporting the legislation, raised general refugee protection issues but maintained “*victim-criminal*” pairings.

3. Did politicians consider that lesser criminal liabilities may exist for boat crew as opposed to organisers during the debate?

The passage through Parliament of Fraser’s legislation included debate of ALP opposition amendments that expressed concerns about a ship’s crew “*innocently doing their job*”. These amendments however were defeated.

Both debates of 1999 analysed in Chapter Five and Six remain silent about differentiation of criminal sanctions for organisers as opposed to crew and skippers. This can be viewed as an expression of the “*discourse of secrecy*” about the *Olympic Games arrivals* from China and the lack of openness around the investigation of the vessels’ arrival reasons.

4. Were the passengers negatively depicted by association because they had arrived using smugglers, and did Article 31 of the Refugee Convention play a role in legislative considerations?

During the 1980 Fraser government debate passengers were negatively depicted by association. They were described as victims in “*victim-criminal pairings*”, they were called “*illegal immigrants*”, “*lawbreakers*”, “*subjects of clandestine entry*” and “*queue jumpers*”. One Member of Parliament delivered a succinct critique of the legislation, citing the full text of Article 31 of the Convention, but his contribution received no response and played no part in the considerations of the legislation.

During the brief debate of the *Sealed Envelopes Bill* amendments in 1999 asylum seekers using travel brokers were frequently depicted as “*victims*”. Politicians of all persuasions often used “*victim-criminal pairings*”. In addition to using “*victim-criminal pairings*”, one government Senator also depicted them as “*economic*” migrants wishing to improve their “*social situation*”, while depicting the travel brokers as “*unscrupulous people ... benefiting from*” the asylum seekers. During the Second Reading speech and opposition reply in the House of Representatives, the Refugee Convention including Article 31 was cited by both MP’s. However, these citations formed part of rhetorical “*national self-glorification*” constructions. These MP’s sought “*legitimation*” of extreme claims and of the criminal sanctions proposed in the amendments.

During the debate of the *Border Protection Legislation Amendment Bill* asylum seekers were depicted as “*economic migrants*”, “*illegal immigrants*” and “*queue jumpers*”. Documentation distributed by the Immigration Department during the debate which attempted to justify the introduction of Temporary Protection Visa’s depicted them as “*forum shoppers*” undermining UNHCR resettlement programs and the “*world community’s*” resettlement initiatives.

8.3. Research Questions Conclusions

The research undertaken in this thesis does not provide convincing evidence that Australian politicians, in presenting the legislative measures responding to “*trafficking*” or “*people smuggling*”, engaged the Criminal Code to fight what was depicted as “*transnational criminal smuggling*” of migrants. No Parliamentary investigations or Inquiries into the nature of ‘people smuggling’ took place; no expert evidence about ‘people smuggling’ was presented. The measures implemented during the Fraser

government reconstructed the Vietnamese paid passages into “*trafficking ventures*” for political purposes. No inquiry took place into the “*five huge vessels*” that had never arrived in Australia; while they had sailed almost two years prior to the introduction of the legislation, no accurate account of their purpose, their organisational details or the outcome for the passengers was tabled in Parliament. Factual presentations were replaced entirely by rhetorical devices in order to convince the Parliament and the people that the laws were needed. The measures implemented by the Howard in 1999 were equally devoid of expert evidence, parliamentary inquiry, or factual information about the “*undetected Chinese vessels*” that had intruded into the country without being intercepted. Howard, even more so than Fraser, ensured no factual information about the vessels was available to the Parliament; here also, rhetorical devices, “*extreme case formulations*” and “*persuasive scare tactics*” replaced factualities in order to convince the Parliament and the people that the laws were needed “*for national security reasons*”.

Most politicians who considered that the passengers who used ‘people smugglers’ were or might be refugees used this in manipulative ways to justify the legislation. During the 1980 Fraser debates, the passengers were depicted as “*illegal immigrants*”, “*lawbreakers*”, “*subjects of clandestine entry*” and “*queue jumpers*”. During the 1999 debates all politicians used “*victim-criminal pairings*” to justify the legislation, while only Greens and Democrats used also “*refugee*” and “*asylum seeker*” labels. However, the second research question considered the relationship between the passengers as potential refugee claimants and the formulation of the legislation. Such consideration played no part in the debate of the legislation. With the exception of Mr Warren Snowdon MP, all politicians failed to consider the notion that travel brokers who transport asylum seekers or refugees may be doing something entirely different than those who import unauthorised migrants. Especially during the 1999 legislative debates, triggered by the *Olympic Games arrivals*, which reportedly sailed in courtesy of the Chinese Snakeheads, this should be interpreted as a failure of the debate or a deliberate avoidance by the opposition to carefully consider the Howard government legislation. It was one thing for the government to keep the issues hidden under a national secrecy cloak; it was another for the Labor opposition to accept this without a single question.

Neither the Fraser nor the Howard government legislation incorporated criminal liability differentiation of owners/organisers of the maritime ventures as opposed to skippers and crew. However, during the Fraser government debates this issue was raised

by the Labor opposition in the debate and reflected in amendments. In itself, the absence of such deliberations during the 1999 debates does not strongly point to something of significance. Taken together with the information control of the nature of the 1999 smuggling ventures by Howard and the lack of debate of legislative detail, the absence may suggest that the proposals did not respond to ‘people smuggling’ as a “*transnational crime*” but to something else. All passengers of all maritime ventures had been portrayed to saturation levels in Moore-Wilton’s report as “*illegal arrivals*”; the legislation was introduced to the Parliament by the Hon Philip Ruddock, the “*activist Immigration Minister*” who held the view, as confirmed by him during the research interview, that nobody should be allowed to enter Australia, neither by air nor by sea, to seek asylum, or – in his words – “*lodge claims*”.

During the 1980 debate of Fraser’s legislation “*against unauthorised arrivals*”, Labor’s Member for Hughes, the Hon Leslie “Les” Royston Johnson AM, stood out like a lonely human rights sentinel at the gatehouse of the border. Regardless of all exhortations by the Fraser government and ALP opposition Members and Senators that the legislation was not “*targeting*” asylum seekers or refugees but only the skippers and crew, he had not overlooked the title of the legislation – the *Immigration (Unauthorised Arrivals) Bill 1980*. The 1980 legislation was targeting unauthorised arrivals, and it encapsulated the fury of the Immigration Department against the “*how dare they come here*” asylum seekers, a fury which had first been tabled at Fraser’s June 1979 Cabinet meeting. Mr Johnston cited the entire text of Article 31 of the Refugee Convention; he asserted that if people “*need to leave countries*” there is a role for the Red Cross and for UNHCR in assisting them. He told his fellow Members of the House that the High Commissioner for Refugees has responsibilities to assist such people. Around Les Johnston, the name-calling continued, at best in rhetorical “*victim-criminal pairings*”, at worst by calling the Vietnamese “*illegal immigrants*”, “*lawbreakers*”, “*subjects of clandestine entry*” and “*queue jumpers*”. The Fraser government had not only set the trend for hostile measures to deal with the “*queue jumpers*”, but it had also exposed that the legislation was not about “*people smugglers*” but about “*unauthorised arrivals*”, and that in order to get the measures approved by the Parliament, Government Ministers were prepared to manipulatively reconstruct the journeys of asylum seekers as “*trafficking ventures*”. Indeed, the “*apocalyptic*” prospect of vessels with 3,000 passengers landing in Darwin was so nightmarish, that, even while the boats

had never arrived, Fraser and his Immigration Ministers were prepared to manipulate the Parliament and the Australian people before the upcoming election.

The 1999 boats from China were not just an apocalyptic threat; they had already arrived. They had done so without prior detection, arriving far outside the ‘normal’ landing areas in Australia’s north-west. The *border panic* may have been palpable, but for Howard it was a fine opportunity to assert his leadership, implement his *national security emergency narrative* and show the country that he was in control of the borders. Max Moore-Wilton of PM&C implemented the strategy, showing “*to saturation levels*” that all uninvited boats were not welcome, that “*they were all illegal*” and that the government was taking action. His Immigration Minister’s philosophy was in complete alignment: Ruddock firmly believed that nobody seeking to “*lodge claims*” should be allowed to enter Australia, and the Immigration Department did not voice any protests – their “*archetypal border guard identity*” demanded that they regarded all “*unauthorised arrivals*” as offenders to their primary professional role. The vessels were “*illegal*”, so the passengers, all of them who had arrived during the 1990’s, were “*illegals*”.

During the debate of the *Sealed Envelopes Bill* amendments, Senator Kaye Patterson was happy to call the passengers “*economic*” migrants and as people wishing to improve their “*social situation*”, taking care to not call them “*refugees*”, liberally resorting to “*victim-criminal pairings*” and “*extremised labels*”. The amendments were a message to “*the whole world*”, that “*that is not on*”. In the House of Representatives, the references to the UN Refugee Convention and to Article 31 sounded like a shrill cacophony of compliance without insight into criteria or understanding of what the Convention really said. Here too, rhetoric seemed to have replaced fact-based analysis and inquiry. Labor was content to comply without scrutiny, without oppositional rigour and without qualm or question.

The *Border Protection Legislation* debate exemplified the government onslaught on “*uninvited*” maritime asylum seekers with a push for new labels to depict them negatively – by the Immigration Department, the Prime Minister’s Department and Immigration Minister Ruddock. Absent from the debate were fact-based evidence, oppositional discourse, respectful regard for asylum seekers organising themselves to seek entry and safety, and any modicum of moderation. Who can forget Christopher

Pyne MP, who talked about “*bondage*”, “*prostitution*” and “*drug smuggling*”, alerting the House to “*narcotics, kidnapping, fraud, vice, extortion, contract killing, slave trading*”, and the “*hundreds of new brothels*” that had opened in Sydney? Gone were the considerations, the references to those needing protection, and gone too were the references to Article 31 of the Convention. Without anger, without outrage, another Sentinel stood up in the middle of this rhetorical hurricane. Senator Barney Coonan stood up to mention the Salem witch-hunts, asking for “*a little bit of evidence, a little bit of balance*”. He didn’t get it. Extremist politics had arrived in Canberra.

9. Four Appendices

This section contains four Appendices. Appendix 9.1, referred to in Chapter Two (§ 2.2) is a Table containing labels and terms commonly used in Australian maritime asylum seeker discourse. Appendix 9.2 is a tabularisation of language use in two 1979 Fraser Cabinet Documents referred to in Chapter Three (§ 3.4), and Appendix 9.3 provides an overview of the three-year passage journey of the Sealed Envelopes Bill as referred to in Chapter Five (§ 5.3). The fourth Appendix 9.4 lists the Privacy Questions from the Participant Interviews as referred to in Chapter Seven (§ 7.1).

Table 9.1. Labels and terms used in
Australian maritime asylum seeker discourse

label or term	example	meaning and evaluation
refugee	"we are refugees, please help us"	1. A person whose refugee claim has been assessed and confirmed by either UNHCR or by a nation's authority in a country that has signed the Refugee Convention 2. A self-declared status by someone who claims to be a refugee
asylum seeker	"A new boat with asylum seekers has arrived near Ashmore Reef"	Someone who seeks shelter in a country from 'persecution' under UN Convention terms
migrant, immigrant	"These immigrants just want to come to Australia using leaky boats"	Example shows incorrect usage of term 'immigrant' – an immigrant seeks approved entry into a new country for permanent settlement, but not under Refugee Convention terms.
illegal immigrant	"...this sort of situation can lead to rackets involving the clandestine importation of illegal immigrants flouting the laws of the country of entry."	Example from immigration minister Ian Macphee (House Hansard, 1980c, p. 2517). A frequently used misnomer, either with intended vilification or in an absence of knowledge of UN Convention's agreements. Macphee couples "illegal" with "immigrants" (i.e. not refugees), "clandestine", "importation" and "flouting" to make his case.
unlawful entrant	"No matter what, they are unlawful entrants"	Term is correct for the legal status of those arriving without prior entry agreement, but for those arriving to seek asylum the term is often used in intentionally punitive ways
non-citizen	"there are too many non-citizens trying to sneak into the country"	Someone without Australian citizenship. Term includes permanent migrants who have not naturalised. Example seeks to suggest desire to clandestinely settle, a false allegation often used in talk about maritime asylum seekers
illegal alien	[a welcome] is generally not extended to those who are called "Asylum Seekers" or another term often used is "Illegal Aliens" or even more objectifying "Boat People".	Example is from a Perth, Murdoch University conference welcome speech (Ang, 1995). Not in frequent use anymore. Indeed an "alienating" label.
unlawful non-citizen	"These people really are unlawful non-citizens and forum-shoppers"	Frequently used by Philip Ruddock MP, the term is a legally accurate label, but in talk about asylum claimants the term suggests criminal status in subtle ways and seeks to eliminate the notion of rights of illegal entry to seek asylum
unauthorised arrival	Term in use by immigration officials for those arriving without prior entry agreement or visa (see also introductory chapter)	
boat people, Boat People	[a welcome] is generally not extended to those who are called "Asylum Seekers" or another term often used is "Illegal Aliens" or even more objectifying "Boat People".	Term first used following the Vietnamese arrivals from 1976 under the Fraser govt. Term seemed to develop as a 'fixed label' for a while, with the use of capitals in the term (see Ang, 1995). A connotation of derogatory use and objectification lingers in some writings

Table 9.1. Labels and terms used in Australian maritime asylum seeker discourse

label or term	example	meaning and evaluation
refugee boat	At times used during Fraser government parliamentary debates. Term seems to presume refugee status, but its use pre-dates Fraser's 1982 laws formulating individual refugee status determination system, giving more credence and validity to its use. Usage is now highly unusual.	
queue jumper	"They've also been called "queue jumpers", even though immigration queues don't exist in some of the places from which they came"	Example from Norm Aisbett at Perth "boat people symposium" (see MUCRCC, 1995). Intentional vilification label, still widely used (See History chapter). The 2010 conclusion by a refugee agency is that, if a worldwide refugee queue exists, it is 135 years long (ASRC, 2010).
illegal asylum boat	"Another illegal asylum boat has been caught off Ashmore Reef"	This radio news report combines the term "illegal" and the word "caught" to reinforce the nasty suggestive message of criminality.
illegal refugees	"...when introducing legislation such as this to control the flow of illegal refugees and the activities of those who seek to profit from human misery."	Example is from Senator Don Grimes during 1980 Parliamentary debates (Senate Hansard, 1980b, p. 440). Term is incorrect usage – there is no such thing as an illegal refugee.
people smuggler	An agent, organiser or travel broker who brings people illicitly or clandestinely through one or more countries to a destination country's border or across that border. Entry across the border into destination country is without prior agreement – but not necessarily clandestinely.	
smuggling	The act of carrying goods or people across one or more national borders until the destination country has been reached, either without prior agreement, or clandestinely and secretly.	
trafficker, trafficking	"Over the past 18 months Australia has increasingly been seen as a soft target to gangs of people traffickers in a number of countries. Overall in 1997-98 some 157 illegal immigrants arrived by sea on our shores."	1999 Example from Con Sciacca, ALP spokesman for immigration (House Hansard, 1999e, p. 7993). Term widely used to also denote 'people smuggling' prior to Palermo Convention (United Nations, 2001a), which separates (consensual) 'smuggling' from 'trafficking', the often coerced, illicit and clandestine movement across borders of forced labour, incl. women and children. Many post-2001 examples exist where politicians prefer an incorrect usage of this term as a rhetorical device to increase severity of criminal intent when they really mean 'people smuggling'.

Table 9.2. Language use in two 1979 Fraser Cabinet Documents

	January 23 papers (37 pages)	June 7 papers (9 pages)	June proportional increase
profiteering (for profit)	FIVE TIMES p1, p2, Sub p7, Sub p10, Sub p19	TWO TIMES p1, p2	5 to 8.32 (166.4% increase)
trafficking	EIGHT TIMES p2, p2, Sub p2, Sub p4, Sub p4, Sub p7, Sub p7, Sub p7	NONE	8 to 0
unauthorised (without authority, prohibited)	TWENTY-SEVEN TIMES p1, p1, p2, Sub p3, Sub p3, Sub p4, Sub p4, Sub p5, Sub p6, Sub p6, Sub p7, Sub p7, Sub p8, Sub p8, Sub p9, Sub p9, Sub p9, Sub p14, Sub p16, Sub p21, Sub p22, Sub p26, Sub p26, Sub p26, Sub p27, Sub p27, Sub p28	TWENTY-THREE TIMES p0, p0, p0, p1, p1, p1, p1, p1, p1, p2, p3, p3, p3, p4, p5, p5, p6, p6, p7, p7, p7, p7, p7	27 to 95.68 (354% increase)
UN Refugee Convention	ONCE Sub p17	TWO TIMES p3, p4	1 to 8.32 (832% increase)
refugee boats, refugee vessels, boat people	NONE	SIX TIMES p3, p3, p4, p4, p4, p6	0 to 24.96

Table 2. Language use in two 1979 Fraser Cabinet Documents

Note about the table: Table 1 compares the frequency of use of five words / terms in Cabinet documentation of January 23 (37 pages) with Cabinet documents of June 7 (9 pages). The last column, labelled “*June proportional increase*” shows the proportional increase in their usage frequency if the June document would also have been 37 pages in length. For example, the term ‘unauthorised’ was used 27 times in January over 37 pages; if the June document would have been 37 pages in length (4.16 times as long as the 9 pages), its frequency of 23 usages would have been $23 \times 4.16 = 95.68$ times: the term would have been used almost 96 times.

Table 9.3. The three-year passage journey of a
Migration Legislation Amendment Bill

<i>date</i>	<i>name of Bill and actions</i>	<i>source</i>
20Jun 1996	<i>Migration Legislation Amendment Bill (No 2) 1996</i>	Introduction, see (Senate Hansard, 1996b, pp. 1934-1935)
20Jun 1996	Senator Rod Kemp: Urgency Motion for Bill, and Debate of Motion	Urgency motion see (Senate Hansard, 1996b, p. 1884)
24Jun 1996	Bill referred to Inquiry by Senate Legal and Constitutional Legislation Committee – SLCLC to report back on June 27	Committee Report due 27 June, see (SLCLC, 1996)
27Jun 1996	Senate Debate of Urgency Motion for Bill Report of SLCLC Committee Inquiry tabled	see (Senate Hansard, 1996c, p. 2351) see (Senate Hansard, 1996c, p. 2374)
28Jun 1996	Senate Debate of Urgency Motion for Bill Senate Debate of Migration Legislation Amendment Bill	Urgency Motion passed with ALP opposition support, see (Senate Hansard, 1996a) see (Senate Hansard, 1998b)
29 June 1996 onwards: Parliamentary Winter Recess		
3Dec 1998	<i>Migration Legislation Amendment Bill (No 2) 1998</i>	Bill tabled, see (Senate Hansard, 1998b)
10 December 1998 onwards: Parliamentary Summer Recess		
30Jun 1999	<i>Migration Legislation Amendment Bill (No 1) 1999</i> House request for concurring Senate Debate granted	<i>Legislation Passed</i> , see (House Hansard, 1999; Senate Hansard, 1999)
1 July 1998 onwards: Parliamentary Winter Recess		
<i>Table 3 - The three-year passage journey of a Migration Legislation Amendment Bill</i>		
All Parliamentary dates of presentation and debate of the Bill and associated motions are presented. The Parliamentary Recess periods (shaded cells) show the Bill was presented close to or on the last day of Parliamentary sessions on several occasions.		

9.4. Participant Interviews: privacy questions

Interviews: privacy questions

Thank you very much for allowing me to spend some time with you for my research.

This is not an interview where we tick lots of boxes or an interview with a “yes or no” questionnaire.

It’s more like an open conversation with you about the things you have already said when some legislation passed through both Houses of Parliament.

All I want to do is to discuss what you said then, and ask you for further clarification of those comments, and then ask some more specific questions about the things you said, relating to my research.

First we need to establish some privacy rules for you. Everything we talk about today can remain anonymous and it can remain entirely off the record, if you would want that. So, I’ll ask you some questions about that first.

I will ask some of these questions again at the end of our conversation. That saves you from being trapped in the answers you give now, and it gives you an opportunity to change your mind at the end of this interview.

Privacy questions	(circle)
1. Do you want your remarks to me today to be completely off the record? <i>(if yes, go to question 4, do not ask question 5)</i>	yes no
2. Do you want your remarks to me today to remain anonymous?	yes no
3. Do you allow me to mention your remarks today as having come from someone of your political party? <i>(skip question 4)</i>	yes no
4. I have a little digital recording device here. If I promise to ask you at the end of the interview whether you want me to delete the recording, can I switch it on now for my own personal use when I study what we discuss today?	yes no
5. I have a little digital recording device here. Can I record our conversation for my own use so I can make written notes later, and so I can quote from it? <i>(do not ask if answer 1 = yes)</i>	yes no

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