



# **ASYLUM SEEKERS AND AUSTRALIAN POLITICS, 1996-2007**

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

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

A Thesis  
Presented to the School of History and Politics  
In the Faculty of Humanities and Social Sciences for the Degree of Doctor of Philosophy

## **Contents**

DECLARATION .....	i
ACKNOWLEDGEMENTS .....	ii
ABSTRACT .....	iii
INTRODUCTION .....	v
CHAPTER 1: CONCEPTUAL FRAMEWORK .....	1
Sovereignty, the nation-state and stateless people .....	1
Nationalism and Identity .....	11
Citizenship, Inclusion and Exclusion .....	17
Justice and human rights .....	20
CHAPTER 2: REFUGEE ISSUES & THEORETICAL REFLECTIONS .....	30
Who is a Refugee? .....	30
Australia and sovereignty .....	36
Theoretical Reflections on Refugees .....	42
CHAPTER 3: AUSTRALIA'S HISTORICAL DEVELOPMENTS .....	52
Policies of exclusion .....	52
Ideology and maintaining “whiteness” .....	62
Adapting to a changing world .....	74
Reform put to the test .....	79
Waning tolerance .....	85
CHAPTER 4: THE HOWARD ERA .....	89
Catalysts for change .....	91
The Hanson Factor .....	92
Temporary Protection Visa (TPV) .....	96
The Tampa incident .....	98
11 September 2001 .....	104
CHAPTER 5: DIFFERENT GROUPS, DIFFERENT TREATMENT .....	110
Identifying different groups .....	111
Group 1 – the offshore refugee .....	113
Group 2 – the onshore groups .....	116
CHAPTER 6: THE POLITICS OF FEAR – MORAL PANIC .....	130
Asylum seekers and preconditions of fear .....	135
Heightened concern – the media and rhetoric .....	138
The asylum seeker menace, hostility and consensus .....	154
CHAPTER 7: COSTS IN HUMAN TERMS .....	168

Mandatory indefinite detention .....	168
The determination process .....	183
People Smuggling .....	197
<b>CHAPTER 8: FURTHER COSTS.....</b>	<b>204</b>
Departmental culture .....	204
Australia's host reputation .....	209
The price in financial terms.....	221
<b>CHAPTER 9: CONCLUSION.....</b>	<b>232</b>
<b>APPENDICES .....</b>	<b>238</b>
Appendix A – Chronology of government legislation on asylum seekers.....	238
Appendix B(a) – Boat arrivals since 1976 by calendar year.....	239
Appendix B(b) - Boat arrivals since 1976 by financial year.....	240
Appendix C – Unauthorised Arrivals to Australia by Air, 1989-2007 .....	241
Appendix D – Overstayers and unauthorised arrivals, 1997-2008 .....	242
Appendix E – Health incidents Nauru & Manus Island.....	243
Appendix F – Australia's immigration ministers.....	247
Appendix G – Estimate of unlawful non-citizens in Australia as at 30 June 2009.....	249
Appendix H – UNHCR persons of concern.....	250
<b>BIBLIOGRAPHY .....</b>	<b>251</b>

## **TABLES**

Table 1: Australian statistics .....	112
Table 2: Stock of temporary migrants .....	118
Table 3: Unauthorised air arrivals .....	122
Table 4: Overstayers by Top 5 Countries of Citizenship .....	124
Table 5: Unauthorised boat, air arrivals and overstayers .....	149

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

## DECLARATION

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

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## **ACKNOWLEDGEMENTS**

My supervisors, Associate Professor Felix Patrikeeff and Professor Timothy Doyle, are acknowledged for their wonderful support, assistance, guidance and encouragement. I would particularly like to thank Assoc Prof Patrikeeff for his unwavering confidence in me and his willingness to be available at every point in time to discuss my progress.

I also wish to thank Lee Anne Jones and Sharon Mae Lenne for their support and Christopher Reilly for dedicating a considerable amount of his time reading the thesis as it evolved, discussing issues, and providing comments.

## ABSTRACT

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

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

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

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

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

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

## INTRODUCTION

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

**John Menadue<sup>2</sup>**

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

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

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

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

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

taken steps to demonstrate it was maturing as a nation, for example, through dismantling the prejudicial “White Australia” policy in 1974<sup>5</sup> and announcing a comprehensive refugee policy in 1977.<sup>6</sup> In addition, the worst fears of Australians were proven unfounded when, for the first time, large numbers of refugees with different characteristics (Asians), the “significant other”,<sup>7</sup> successfully resettled after the Vietnam War. Australia’s culture and national cohesion prevailed regardless, and a catastrophe did not result from the influx of “others”. This facilitated improved attitudes and greater tolerance over time.

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

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

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

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

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

Major events are discussed in Chapter 4 and the manner in which they represented catalysts for change during the Howard era. The opportunity was seized upon by the government to exploit these events which were couched in terms of a national threat to security and borders. The events selected for discussion are the rise of Pauline Hanson and the One Nation Party, the development and implementation of the Temporary Protection Visa (TPV),<sup>9</sup> the *Tampa* incident, and the terrorist attacks on the U.S.A. 11 September 2001. It is argued that the government used these significant developments to politicise a fundamental human rights issue<sup>10</sup> for political advantage. A consequence of this was the formation of a two-tiered system for asylum seekers, an issue which is dealt with in Chapter 5.

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

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

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

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

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

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

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

Using the *Tampa*'s invading asylum seekers as an example, the Government's rationale was to convince Australians that new policy directions would maintain the integrity of the system, ensure the floodgates were shut to new arrivals, and tackle the people smuggling activities which threatened Australia's borders.<sup>14</sup> The strategy was devised to provoke national anxieties and targeted one group against whom the nation must be protected. Such thinking is explored in Chapter 6, which analyses the tactic adopted by the

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<sup>11</sup> This incident is discussed in Chapter 4.

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

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

<sup>14</sup> Jupp, *From White Aust*, p.197

government to convince the Australia public it needed protection against the undesirable, illegal and unlawful “other”. The tactic revealed that values and attitudes enshrined in the past “White Australia” policy<sup>15</sup> endured, with exclusion of “others” still alive in the electorate’s mind. Drawing upon the works of authors such as Stanley Cohen,<sup>16</sup> John Street<sup>17</sup> and Colin Hay,<sup>18</sup> the theory of moral panic and “folk devils” is utilised, examining how the government invoked old passions of fear, intolerance and exclusion against unauthorised boat arrivals, the powerless and “wretched of the earth”.<sup>19</sup> The role of the media is a critical element in this analysis.

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

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

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

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

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

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

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

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

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<sup>20</sup> John Howard on Melbourne talkback radio, 17 August 2001

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

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

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

## **Methodology**

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

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

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

Egon F. Kunz and Tom Kuhlman<sup>24</sup> have been drawn upon. In addition, the theoretical reflections of Stanley Cohen and John Street<sup>25</sup> have been utilised to explore the politics of fear, moral panic and “folk devils”. These theories allow us to gain a better understanding of events and expose a form of persuasion adopted by the government and media. The methodology highlights where politicians have devised self-serving policies to maintain power and control in Australia, exploiting certain events to promote and elevate public anxiety for a desired political outcome on what is, ultimately, a fundamental human rights issue.

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

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

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