

FLINDERS UNIVERSITY

COLLEGE OF BUSINESS, GOVERNMENT AND LAW

OFFSHORE PROCESSING

ASSESSING THE SUCCESS OF AUSTRALIA'S

OFFSHORE PROCESSING OF ASYLUM SEEKERS IN

TERMS OF POLICY OBJECTIVES

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Abstract

Seeking asylum is not a new phenomenon as people have been seeking asylum throughout history. However, the reasons for seeking asylum have varied throughout history, from country to country and for individuals. At least three things changed since the Westphalia Treaty. One is the notion of the nation state and the principle of state sovereignty within border lines drawn between countries. Second is the magnitude of people movements around the world. Lastly, people are able to move not only to neighbouring countries but to far more distant countries like Australia, Canada and the United States of America due to cheaper and more accessible transportation facilities. Destination countries, like Australia, have tried different measures to deter people from randomly coming to their shores or borders from time to time. Since the early 1990s, Australia has taken many measures to stop people from coming by boat without valid visa. The most recent measure is to take them to Pacific countries in order to process their claims for protection. This thesis will argue that the government's main objective of its various deterrence measures is to control the flow of refugees. The costs are also analysed in terms of the treatment of asylum seekers, the health issues developed by asylum seekers, and the financial burden, which leads to the Australian taxpayers having to foot the bills. The thesis explores whether the 'Offshore Processing' policy has been successful in serving its objectives or whether it has failed to meet those objectives. In answering this question, the thesis endeavours to test 'Offshore Processing' policy objectives against the current literature, commentary, newspapers, the Parliamentary Hansard and general knowledge of past experiences. The thesis will conclude that the policy failed to meet its objectives in its entirety but has been successful stopping the boats from coming to Australia.

Keywords: Offshore Processing policy, asylum seekers, refugees, Nauru, Manus Island, boat people, irregular maritime arrivals and illegal maritime arrivals.

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Acronyms

AHRC – Australian Human Rights Commission

The Convention – 1951 Refugee Convention and its 1967 Refugee Protocol

DIBP – Department of Immigration and Border Protection

HRC – Human Rights Council

HREOC – Human Rights and Equal Opportunity Commission

HRW – Human Rights Watch

IHL – International Humanitarian Law

IMAs – Irregular Maritime Arrivals

IMAs – Illegal Maritime Arrivals (called by the Coalition government)

IPPR – Institute for Public Policy Research

NGOs – Non-government Organisations

OHCHR – The Office of the High Commissioner for Human Rights

OSB – Operation Sovereign Border

The policy – Offshore Processing policy

RSO – Regional Support Office

UK – United Kingdom

UN – United Nations

UNC – United Nations Charter

UNGA – United Nations General Assembly

UNHRC – United Nations Human Rights Council

UNICHI – UN Independent Commission on International Humanitarian Issues

UNSC – United Nations Security Council

UDHR – Universal Declaration of Human Rights

US – the United States of America

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Introduction

In 2001, the Australian Government decided to process the claims of Irregular Maritime Arrivals in third countries. Irregular Maritime Arrivals (IMA) is the policy name for people who come to Australia via the high seas and they are also called asylum seekers.¹ Furthermore, people who came to Australia by airplane and claim Australian protection, are also called asylum seekers. For the sake of clarity and better understanding, terms such as asylum seeker and refugee will be defined in the first chapter. The government amended the *Migration Act 1958* (Cth) to allow processing IMAs in a ‘declared country.’² ‘Declared country’ is a term used in the legislation to empower the minister for immigration to send IMAs to a third country in the Pacific region for their claims to be processed.³ The thesis will endeavour to critically examine Australia's ‘Offshore Processing’ policy, and particularly whether the policy has been successful and resulted in being financially viable.

‘Offshore Processing’ policy is an important piece of legislation for several reasons. First, the policy deals with real people’s life because it allows the government to detain asylum seekers. It disregards their human rights, under the Universal Declaration of Human Rights, to seek asylum, and ignores Australia’s international legal obligation to grant protection to those in need. Second, the policy authorises the government to lock up asylum seekers indefinitely in offshore processing facilities. Being locked-up and the long processing time of IMAs’ claims have a long lasting impact on all asylum seekers whether positive or negative. Third, the policy gives commentators and historians insights into the government’s intention and enables them to either criticise or analyse the government’s action in respect to people whose lives are affected by the policy. Last but not least, Australia's treatment of asylum seekers projects an image of Australia internationally, which can give the nation a favourable or bad reputation as an international citizen. To sum up, the government will

¹ Australian Government DIBP, ‘Migration Amendment Regulation 2012 (No. 5)’, 17 August 2017, <http://www.legislation.gov.au/Details/F2012L01961/Download>.

² House of Representatives, ‘Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001’, text, *Parliament of Australia*, (n.d.), http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0102/02bd070.

³ Janet Phillips, ‘A Comparison of Coalition and Labor Government Asylum Policies in Australia since 2001’, text, *Parliament of Australia*, (n.d.), http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/AsylumPolicies.

either be praised for respecting the principle of the rule of law or being criticised for breaking international law by being too harsh or subjecting some of the most vulnerable people on the planet to inhumane treatment only because they seek Australia's protection. The principle of the rule of law means that Australia has a legal obligation under international law because it has signed almost all international treaties. Australia is a citizen of the world who has to respect the international laws, norms and treaties.

The policy also helps public understanding as to why the government has come to a particular decision and what the government's justifications are. It is equally important to look at the policy from the prism of other contributors to asylum seekers and refugee debates because they provide historical flavour and thoughts to the asylum seeker issues. Other contributors include public servants, refugee advocates, newspapers, magazines and sometime religious organisations such as the Catholic Church and other religious denominations and media organisations in general. Public opinions are also crucially important in shaping the Australian government's refugee policy because this nation is a democratic country, and it is the Australian people who elect the government. For this reason, public opinion is not just important but it is undoubtedly a vital part of the formation for government policy in a mature democracy like Australia. The public will look at the issues from the national interest prism or may even perceive it as a security threat. As a result, the Australian people may think that unauthorised boat arrivals on Australia's shores violate their sovereignty, and they would rightly expect the government to respond to boat arrivals, in order to guarantee Australian citizen's safety and protecting the integrity of Australia's borders.

This thesis endeavours to analyse Australia's 'Offshore Processing' policy from historical, cultural and political prisms and to analyse the justification that has been made by the government for the policy. The thesis is divided into five chapters. The first chapter is devoted to defining terms like 'Offshore Processing', 'Pacific Solution', 'Refugee' and 'Asylum Seekers.' These terms are inevitably going to be used in the thesis because these are the terms which 'Offshore Processing' policy, itself, uses in dealing with IMA. Therefore, it is imperative to define the terms for the sake of clarification and better understanding because lay people use some of the terms, like asylum seekers and refugees, interchangeably in the

public domain. Furthermore, clarifying of these terms would help the reader with better understanding of the meaning of those terms so the readers would be able to follow the discussion in the thesis. The second chapter will set the scene for the thesis and will have a holistic discussion about the ‘Offshore Processing’ policy in general. The thesis will briefly look at the historical record of Australia’s refugee policy, detention centres, the origin of ‘Offshore Processing’ policy and the reasons why the government decided to process IMA in a ‘declared country.’ Historical factors that has given birth to the policy will be examined in relation to global refugee context, Australia’s humanitarian programmes, and debates around issues such as why people seek asylum, regional initiatives and issues around detainees. Moreover, in chapter two, the thesis will inspect issues about detaining children, media access, restriction of access to detention information as well it will look at the *Expert Panel* report which was set up by the Labor Gillard Government to look at best ways forward, in 2012.

Chapter three is focused on the outcome and impact of the policy on IMA and what the literatures have to say about the policy. Some of the issues will be discussed in chapter three are as follows; the rule of law principles in relation to international law, the consequences of prolonged detention on IMA, characterisation of offshore detention facilities, and some of the accusations that have been made such as sexual and physical assaults, medical issues and mental issues. This chapter will mainly look at the impact and consequence of detaining people in third countries, controversies related and indefinitely. In short, the endeavour has been to examine the literature on the ‘Offshore Processing’ policy.

Chapter four will look at the debates and controversies surrounding the policy on IMA through the prism of literature and Hansard. Issues that will be analysed in this chapter are resettlement, parliamentarian debates, TPVs and the language used to call asylum seekers. The thesis will discuss these issues in the light of international law and human rights, the Pacific region human rights issues and their relation to the 1951 *Refugee Convention* (*Convention*). Australia’s cultural and political mentality from a historical perspective will also be analysed in chapter four, along with other issues such as asylum seekers’ demonization, discrimination of asylum seekers, the media coverage of asylum seekers issues, and the ‘White Australia’ mentality. These matters will be discussed in light of their

effects on IMA detained in Nauru and Manus Island processing facilities. The academic literature is mostly critical of the policy from different angles such as; international law, human rights perspective, and health issues in general and mental health in particular. This literature has dealt with a wide range of issues such as the legality of seeking asylum to Australia by boat, public prejudice, cruel and inhumane treatment of IMA by the Australian Government. Chapter five, like chapter one, is relatively short and will summarise the overall finding of the thesis and draw conclusion from the analysis of the ‘Offshore Processing’ policy made throughout the thesis.

1 - Chapter one – definition of terms

1.1 - Introduction

This chapter will look at the historical factors that has caused the ‘Offshore Processing’ policy to come about and will clarify the confusion about some of the terminology used in asylum seekers debates. It will provide a brief discussion on what ‘Offshore Processing’ policy is and what is the aims and purposes of the guidelines. It examines and provides a short definition of the terms asylum seekers and refugee and clarifies the difference between the two terms.

1.2 - What does Offshore Processing Mean?

The idea of processing asylum seekers claims in third countries was initially introduced at the end of 2001 under the Howard Government, which became known as the ‘Pacific Solution’. The Howard Government, then, introduced an amendment bill to the *Migration Act 1958 (Cth)* to the Australian Parliament in September 2001 which was called the *Migration Amendment (Excision from the Migration Zone) Bill 2001*.⁴ The amendment excised many Australian islands such as Christmas, Ashmore, Cartier and Cocos (Keeling) Islands from Australia’s migration zone. In Kaitlyn Pennington-Hill words, the *Act* ‘introduced a new concept of place, the excised offshore place, and a new concept of asylum seeker, the offshore entry person.’⁵ In 2012, the Labor Government took it one step further and extended the excision well beyond the Howard Government’s 2001 ‘Pacific Solution’ policy. The Labor Gillard Government excised Australia's mainland from the immigration zone through the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012*.⁶ The government argued that the purpose of the *Migration Act*

⁴ Australian Government DIBP, ‘Migration Amendment (Excision from Migration Zone) Act 2001’, *Federal Register of Legislation*, n.d., <https://www.legislation.gov.au/Details/C2004A00887/Html/Text>, <http://www.legislation.gov.au/Details/C2004A00887>.

⁵ Kaitlyn Pennington - Hill, ‘Australia Makes a U-Turn with the Revival of the Pacific Solution: Should Asylum Seekers Find a New Destination?(Offshore Processing Policy)(The Legal Challenges of Globalization: A View from the Heartland)’, *Washington University Global Studies Law Review* 13, no. 3 (2014): 591.

⁶ Australian Government DIBP, ‘Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013’, *Federal Register of Legislation*, n.d., <https://www.legislation.gov.au/Details/C2013A00035/Html/Text>, <http://www.legislation.gov.au/Details/C2013A00035>.

amendment was to ‘implement Recommendation 14 from the report by the Expert Panel on asylum seekers 2012’.⁷

The excision of Australian Islands and the mainland means that anyone who comes to these places would be taken to a ‘declared country’ outside Australia for processing their claims for asylum.⁸ Furthermore, anyone who arrives in these excised places from overseas is banned from making valid visa application, unless the application is considered to be in the Australian national interest by the Minister for Immigration.⁹ The policy initially was known as the ‘Pacific Solution’ because the government intended to process asylum seekers claims for protection in declared Pacific region countries.¹⁰ Then, the ‘Pacific Solution’ became known as ‘Offshore Processing’ policy, which means that anyone that would come to one of those islands or was intercepted in the high sea by the Australian Navy will be taken to a third country and their claims for protection will not be processed in Australia.¹¹ The purpose was to send a strong and clear message to those who were inspired to take the same means to come to Australia that there is no way they would be resettled in Australia.¹²

Critics have commented on the implications of the policy for the right to seek asylum. For instance, Richard Devetak argues that the Australian Government ‘redrew the map of Australia by excising certain islands from the migration zone. ... the *Border Protection and Migration Amendment* acts were elaborate pieces of a legal footwork designed by the government to justify its self-congratulatory ‘tough stand’ against asylum-seekers and to keep them at a safe distance.’¹³ Pennington-Hill argues that the *Act* gave the Prime Minister the discretion to declare even certain Australian ‘Territories to be outside the migration zone’ because the government was determined to ‘prevent asylum seekers from exploiting these locations in order to disembark and claim asylum.’¹⁴ Therefore, anyone who

⁷ Ian McCluskey, ‘Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012’, text, (n.d.), http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd084.

⁸ Representatives, ‘Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001’.

⁹ Phillips, ‘A Comparison of Coalition and Labor Government Asylum Policies in Australia since 2001’, n.d., 3.

¹⁰ Ibid.

¹¹ Ibid.

¹² Phillips, ‘A Comparison of Coalition and Labor Government Asylum Policies in Australia since 2001’, n.d.

¹³ Richard Devetak, ‘In Fear of Refugees: The Politics of Border Protection in Australia’, *The International Journal of Human Rights* 8, no. 1 (2004): 105, doi:10.1080/1364298042000212565.

¹⁴ Pennington - Hill, ‘Australia Makes a U-Turn with the Revival of the Pacific Solution’, 591.

arrives in the excised places is called an irregular maritime arrival. It also meant that IMAs are not able to claim protection from Australia because they are ‘deemed not to have entered Australia’s migration zone.’¹⁵ The government claimed that the purpose of the legislative change is to deter people but Devetak argues that it is ‘fully consistent with the logics of camps, counting and control, and the well-established system of deterrence, demonization and detention.’¹⁶ Moreover, the policy has been accused of having a domestic implication for the Australian Government as well because the government wanted to prevent asylum seekers applications being reviewed using Australian law for those who received a negative decision.¹⁷

1.3 - Definition of Refugee and Asylum Seeker

The term refugee and asylum seeker are often used interchangeably in the public domain, therefore defining the term for the sake of better understanding is helpful. The term ‘asylum seeker’ refers to people whose status as refugee has not been determined yet and these are the people who normally come to Australia's doorsteps for either humanitarian or political reasons.¹⁸ According to Klaus Neumann, political asylum has existed throughout human history whereas humanitarian asylum is a product of the twentieth century.¹⁹ According to Neumann, the word ‘asylum’ has its roots in the Greek word ‘*asylon*’, which means the ‘absence of *sylon*.’²⁰ *Sylon*, in Greek means ‘robbery; theft; pillage.’²¹ Neumann argues that the term ‘*sylon*’ was used for a site in which ‘objects must not be removed.’²² It means that anyone who fled into those places and sought refuge was safe and no one was allowed to remove them.²³ These places of refuge and the definition of asylum were initially intended for Greek citizens only, and was later extended and applied to people who were not

¹⁵ Ibid.

¹⁶ Devetak, ‘In Fear of Refugees’, 105.

¹⁷ Phillips, ‘A Comparison of Coalition and Labor Government Asylum Policies in Australia since 2001’, n.d., 3.

¹⁸ Refugee Council Australia, ‘Who Are Asylum Seekers?’, *Refugee Council of Australia*, 11 May 2016, <https://www.refugeecouncil.org.au/getfacts/international/definitions/who-are-asylum-seekers/>. Also look at Australian Human Rights Commission, ‘Asylum seekers and refugee guide’, www.humanrights.gov.au, available: <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/asylum-seekers-and-refugees-guide#who>., accessed: 25 Jul. 17, viewed at: 1118am.

¹⁹ Klaus Neumann, *Across the Seas: Australia’s Response to Refugees: A History*, 1st edition (Collingwood, Vic, Australia: Black Inc, 2015), 8.

²⁰ Ibid.

²¹ Ibid.

²² Ibid., 9.

²³ Ibid., 8.

Greek citizens.²⁴ The term asylum in its current usage, applies to people who fled tyrants in their own country, or were forced to leave for other political and social reasons.²⁵

The term refugee means that the status of refugee as described by the 1951 *Refugee Convention* (*Convention*) has been established.²⁶ The *Convention* defines the refugee as someone who fears persecution for reasons of ‘race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.’²⁷ In other words, refugees are people whose status as a refugee has already been accepted by the United Nations High Commission for Refugee (UNHCR) and who are waiting to be offered resettlement. This does not mean that asylum seekers are not refugees, but it means that the asylum seekers’ status has not been determined yet against the definition of refugee under the United Nations *Refugee Convention* (UNRC).²⁸ One of the reasons that asylum seekers are not refugees is that some of them may not be able to satisfy the refugee definitions under the *Convention*.²⁹

Mirko Bagaric and Athula Pathinayake argue that the definition of refugee under the *Convention* is very limited and narrow because it protects very specific people.³⁰ It requires refugees to be outside of their country of origin. Additionally, it requires applicants to have entered a second or third country which means it does not include people who face ‘(even) imminent death in their country as a result of famine, natural disaster or military action.’³¹ A more inclusive definition of refugee is provided by the International Refugee Organisation

²⁴ Ibid.

²⁵ Ibid.

²⁶ Australian Human Rights Commission, ‘Asylum Seekers and Refugees Guide’, *Australian Human Rights Commission*, n.d., <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/asylum-seekers-and-refugees-guide>. and also look at Refugee Council of Australia, ‘Who are asylum seekers?’, www.refugeecouncil.org.au, available: <http://www.refugeecouncil.org.au/getfacts/international/definitions/who-are-asylum-seekers/>, accessed: 25 Jul. 17, viewed at: 1118am.

²⁷ United Nations High Commissioner for Refugee, ‘UNHCR - The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol’, accessed 20 September 2016, <http://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>.

²⁸ United Nations High Commissioner for Refugees, ‘The 1951 Refugee Convention’, *UNHCR*, accessed 20 September 2016, <http://www.unhcr.org/1951-refugee-convention.html>.

²⁹ Australian Government, ‘Who Are Asylum Seekers?’

³⁰ M. Bagaric and A. Pathinayake, ‘Mandatory Harsh Penalties for People Smugglers in Australia: Time for Reform’, *The Journal of Criminal Law* 76, no. 6 (1 December 2012): 504, doi:10.1350/jcla.2012.76.6.806.

³¹ Ibid.

(IRO) because it defines ‘lack of national protection’ as a case for being refugee.³² Antonio Fortin argues that in section 6(B) of the Statute of the Office of UNHCR provides an ‘almost identical definition’ of refugee to IOM with ‘the only difference being that the Statute does not include the ground ‘membership of a particular social group.’³³

1.4 - Conclusion

This chapter provided some background knowledge about the inception of ‘Offshore Processing’ policy and a brief historical sketch on the evolution of the policy from the ‘Pacific Solution’ to its current name ‘Offshore Processing’ policy. The government claimed that it responded to a surge in boat arrivals, therefore the government wanted to prevent people from coming to Australia by boats. This chapter clarified the term ‘Offshore Processing’ policy as a policy that enables the Australian navy to intercept boats and take them and their human cargo of asylum seekers to a ‘declared country’ where their claims can be processed. The government’s justification for processing asylum seekers offshore has been briefly discussed, and that Australia has a humanitarian program in place to settle refugees. This chapter provided definition of the terms asylum seekers, refugee and offshore processing to enable a better understanding of the terms and what the differences are between them. The next chapter will discuss a brief history of ‘Offshore Processing’ policy, political debates over asylum seeker’s issues and the objectives of the policy.

³² Antonio Fortin, ‘The Meaning of “Protection” in the Refugee Definition’, *International Journal of Refugee Law* 12, no. 4 (2000): 549, doi:10.1093/ijrl/12.4.548. Also look at the Constitution of the International Refugee Organisation (IRO). Section A(2) of Annex I of the Constitution provided that the term ‘refugee’ should apply.

³³ Fortin, ‘The Meaning of “Protection” in the Refugee Definition’.

2 - Chapter two – setting the scene

2.1 - Introduction

The number of asylum seeker arrivals in Australia significantly rose from 2008 to 2013. For instance, 3096 people arrived in Australia by boat between 1990 and 1998, and 12176 people arrived in Australia between 1999 and the end of 2001.³⁴ This compares to 44156 people arriving in Australia by boat between 2009 and the end of 2013.³⁵ Surges in the number of people coming to the nation by boat put pressure on the incumbent government to respond to maritime arrivals, regardless of the sitting Coalition or Labor. This is because the government would worry that a dew drop would become a flood and it is also an indication that the government of Australia has lost control of immigration and border. Therefore, the government adopts measures to maintain the integrity of Australia's border, to address the security concerns, and to 'combat people smuggling' and 'stop the boats'.³⁶ The government always wants to curtail the number of boats coming to Australia's shores, and both major political parties have supported severe deterrence measures to respond to the pressures of boat arrivals.³⁷

³⁴ Janet Phillips and Harriet Spinks, 'Boat Arrivals in Australia since 1976', *Department of Immigration and Citizenship, Parliamentary Library: Australian Government*, 2013, 22, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals.

³⁵ Ibid.

³⁶ Janet Phillips, 'A Comparison of Coalition and Labor Government Asylum Policies in Australia since 2001', *Australian Parliamentary Library*, 2014, 3, http://apo.org.au/files/Resource/ParliamentaryLibrary_AComparisonOfCoalitionAndLaborGovernmentAsylumPoliciesInAustraliaSince2001_Feb_2014.pdf.

³⁷ Janet Phillips, 'A comparison of Coalition and Labor government asylum policies in Australia since 2001', *Parliament of Australia, Department of Parliamentary Services, Social Policy Section*, pp. 3.

Table 2.1 Asylum seeker boat arrivals 2009 – 2013

Year	Number of Boats	Crew	Number of People (excludes crew)
2009	60	141	2726
2010	134	345	6555
2011	69	168	4565
2012	278	392	17202
2013 (to 30 June)	196	407	13108

Source: Phillips and Spinks 2013³⁸

Australia's refugee policy has gone through a major change since 2001 due to a number of factors. One of them was the aftermath of the 9/11 event and the concerns for the border security. Secondly, the *Tampa* incident in August 2001 prompted political debates about allowing asylum seekers to enter Australia and thirdly, the government embarked on a rhetoric that labelled asylum seekers are 'queue jumpers', and 'illegal arrivals.' This has caused changes in the *Migration Act 1958* (Cth) and later created the idea of processing asylum seekers offshore which became the 'Pacific Solution', and later, the 'Offshore Processing' policy. Finally, the government's emphasis on border security and the political debates surrounding the spontaneous arrivals of asylum seekers has caused the government to come up with measures to deter people from taking the voyage coming to Australia.³⁹ Therefore, this chapter will examine the 'Offshore Processing' policy and the evolution of the policy since 2001. Then it will analyse in relation as to why people seek asylum and the government's justification for border protection. The chapter concludes by looking at some of the consequences that have been caused by indefinite detention of people in Manus Island and Nauru in terms of health, detaining children and unaccompanied minors, detention centres secrecy and condition of offshore detention facilities.

³⁸ Phillips and Spinks, 'Boat Arrivals in Australia since 1976', 22.

³⁹ Maria O'Sullivan, 'The Ethics of Resettlement: Australia and the Asia-Pacific Region', *The International Journal of Human Rights* 20, no. 2 (17 February 2016): 245, doi:10.1080/13642987.2015.1103523.

2.2 –The Emergence and Evolution of Australia's Offshore Processing Policy

The United States (US) initiated the idea of processing asylum seekers offshore and was the world's first country to use military bases by host countries for migration. Guatemala City is one of the cities used by the US for detention centres and funded for 'basic living conditions' and the US used the Caribbean for offshore processing facilities long before Australia.⁴⁰ In this country, the idea of processing IMA offshore started on the 26th August 2001, when the Australian rescue authorities located the 'biggest boatload of asylum seekers ever to attempt to reach' Australia between Indonesia and Christmas Island.⁴¹ It was a container ship from Norway called *Tampa*.⁴²

After days of standoff with the vessel, and international pressure, the government came up with the 'Pacific Solution' policy.⁴³ Processing asylum seekers in third countries colloquially became known as the 'Pacific Solution' and was initiated under the Howard Government in 2001.⁴⁴ Then, the government declared that anyone who came to Australia without a visa would be taken to a 'declared country'.⁴⁵ 'Declared country' means that the Immigration Minister will designate a country where asylum seekers should be taken to have their claims processed.⁴⁶ The Administrative Agreement was signed with Nauru on the 10th of September to accommodate and process asylum seekers in Nauru and was later replaced with a Memorandum of Understanding by the two countries (MOU), in 2001. Then, Australia established offshore processing centres through these agreements and immediately started accommodating asylum seekers in Manus Island.⁴⁷

⁴⁰ Michael Flynn, 'There and Back Again: On the Diffusion of Immigration Detention', *Journal on Migration and Human Security* 2, no. 3 (2014): 39.

⁴¹ Katharine Betts, 'Boat People and Public Opinion in Australia', *People and Place* 9, no. 4 (2001): 39.

⁴² Pennington - Hill, 'Australia Makes a U-Turn with the Revival of the Pacific Solution', 591.

⁴³ von Doussa John, 'Human Rights and Offshore Processing', in *Offshore Processing of Asylum Seekers: The Search for Legitimate Parameters*, ed. S. K. N Blay, Burn, and Patrick Keyzer, UTS Law Review, No. 9 (Broadway, NSW: Halstead Press, 2007), 41.

⁴⁴ Australian Parliament, 'Chapter 1 - Border Protection: A New Regime', text, (n.d.), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/maritimeincident/report/c01.

⁴⁵ von Doussa John, 'Human Rights and Offshore Processing', 41.

⁴⁶ Ibid.

⁴⁷ Australian Parliament, 'Chapter 10 - Pacific Solution: Negotiations and Agreements', text, (n.d.), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/maritimeincident/report/c10.

The policy initially enjoyed bipartisan support, but in the lead up to the 2007 election, the Labor Party claimed that ‘Offshore Processing’ policy was too expensive and not sustainable.⁴⁸ In 2008, the Rudd Labor Government declared that the facilities in Nauru and Manus Island would no longer be used for processing asylum seekers’ claims and the government would use Christmas Island for a future processing centre.⁴⁹ This was basically the end of the Howard Government’s controversial ‘Pacific Solution’ policy.⁵⁰ However in 2012, the Labor Government announced that it would use Nauru and PNG for processing centres due to implementing the Expert Panel recommendation⁵¹ and proceeded with offshore processing policy to deal with unauthorised boat arrivals.⁵² Sharon Pickering and Leanne Weber argue that ‘Offshore Processing’ policy was the reintroduction of the ‘Pacific Solution’, which is the ‘second incarnation of Australian offshore processing, deterrence narratives that have come increasingly nuanced and combative.’⁵³ Despite the fact that Kevin Rudd once believed that offshore processing policy was immoral, unsustainable and too expensive, it surpassed the Howard Government’s Pacific Policy by declaring that even refugees would not be resettled in Australia.⁵⁴ Mr Rudd in his second term as Prime Minister, announced that asylum seekers who came to Australia by boats would be sent to offshore processing centres; they will not be resettled in Australia even if they are found to be refugees; and those who are found not to be refugees will be deported to their native countries.⁵⁵ In 2012, the Labor Government justified the reintroduction of the Howard

⁴⁸ Sharon Pickering and Leanne Weber, ‘New Deterrence Scripts in A Ustralia’s Rejuvenated Offshore Detention Regime for Asylum Seekers’, *Law & Social Inquiry* 39, no. 4 (2014): 1007, doi:10.1111/lsi.12088.

⁴⁹ Elibritt Karlsen, ‘Australia’s Offshore Processing of Asylum Seekers in Nauru and PNG: A Quick Guide to Statistics and Resources’, text, *Law and Bills Digest Section*, (n.d.), http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore.

⁵⁰ *Ibid.*

⁵¹ Julia Gillard and Chris Bowen, ‘ParlInfo - Transcript of Joint Press Conference with Prime Minister Julia Gillard: Canberra: 13 August 2012: Houston Expert Panel on Asylum Seekers’, accessed 18 August 2017, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2280021%22>.

⁵² Chris Evans, ‘ParlInfo - Last Refugees Leave Nauru.’, accessed 18 August 2017, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FYUNP6%22>.

⁵³ Pickering and Weber, ‘New Deterrence Scripts in A Ustralia’s Rejuvenated Offshore Detention Regime for Asylum Seekers’, 1007.

⁵⁴ Katharine Murphy, ‘Kevin Rudd Reworks Labor’s Asylum and Border Protection Policy - as It Happened’, *The Guardian*, 19 July 2013, sec. World news, <http://www.theguardian.com/world/2013/jul/19/kevin-rudd-labor-asylum-border-protection>.

⁵⁵ *Ibid.*

Government's 'Offshore Processing' policy because of the loss of life at sea.⁵⁶ Preventing the loss of life at sea was one of the main objectives of the 2012 *Report from the Expert Panel on Asylum Seekers* because it has been reported that between '2001 to June 2013', 964 lives were lost including crew, of which 604 people died since October 2009, according to Lisa Jane Archold.⁵⁷ Therefore, the government's primary justification for offshore processing was to deter them from undertaking the voyage journey to come to Australia as well as reducing the people smugglers' business.⁵⁸

The policy has been controversial and has been criticised for many reasons. For instance, Savitri Taylor argues that Australia follows three policy objectives with 'Offshore Processing' policy.⁵⁹ First, it allows the government to 'live up to' the government's obligation under the 1951 *Refugee Convention*. Second, Australia wants to 'live up to' its most important duty of border protection for the Australian community, and lastly to 'live up to' Australia is honouring its foreign policy commitment with the neighbouring countries.⁶⁰ Third, Australia transferred obligation under the *Convention* with regard to asylum seekers by sending them to third countries. John von Doussa also believes that the Australian government was pursuing three aims with the offshore processing policy but his reasoning is different from Taylor. Von Doussa states that there are three safeguards for the asylum seekers claims to be processed in Australia and these safeguards do not exist when their claims for refugee are processed overseas.⁶¹ One is that legal advice that is available for asylum seekers in Australia and the second is the merit reviews that are available to asylum seekers, if their protection claims are processing in Australia.⁶² These rights are not available to asylum seekers when their claims are processed in third countries.⁶³ Third, onshore detention centres are subject to independent scrutiny but the offshore processing centres are

⁵⁶ Lisa Jane Archbold, 'Offshore Processing of Asylum Seekers – Is Australia Complying With Its International Legal Obligations', *QUT Law Review* 15, no. 1 (2 November 2015): 139, doi:10.5204/qutlr.v15i1.579.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Savitri Taylor, 'Australia's Pacific Solution Mark II: The Lessons to Be Learned', in *Offshore Processing of Asylum Seekers: The Search for Legitimate Parameters*, ed. Sam Blay, Jennifer Burn, and Patrick Keyzer, UTS Law Review, no. 9 (Ultimo, N.S.W: Halstead Press, 2007), 113.

⁶⁰ Ibid.

⁶¹ John von Doussa, 'Human Rights and Offshore Processing', in *Offshore Processing of Asylum Seekers: The Search for Legitimate Parameters*, ed. Sam Blay, Jennifer Burn, and Patrick Keyzer, UTS Law Review, no. 9 (Ultimo, N.S.W: Halstead Press, 2007), 41.

⁶² Ibid.

⁶³ Ibid.

not able to monitor the human rights of asylum seekers in the third country.⁶⁴ Under the Pacific Solution, the overwhelming majority of asylum seekers processed offshore was found to be refugees and resettled in Australia.⁶⁵ It means that by implementing the rule that refugees from offshore processing centres cannot be settled in Australia, the government disregards the rights of the refugee to protection and tries to stop anyone who comes to Australia by boats. Sharon Pickering and Leanne Weber argue that the guiding logic of offshore processing policy is to deter people from coming to Australia, but the Australian Government avoids using the language of deterrence.⁶⁶ This is because there are systematic human rights abuses, which the government is trying to hide from the public discourse.⁶⁷

The government used the *Tampa* incident to create fear and insecurity in Australia and in doing so the government then created a common threat of ‘societal fear and insecurities about migration.’⁶⁸ Therefore, the government skilfully ‘draws upon a powerful nationalist discourse because it labelled asylum seekers as the Australian enemy.’⁶⁹ Therefore, the more the intensity of the animosity toward the asylum seekers, then it was ‘accompanied by more general measures aimed at border protection being advanced in the name of national security.’⁷⁰ As a result, the ‘Tampa Crisis’ brought to light the ‘close affinity between discourses of security and populist – nationalism by virtue of their strong emphasis on policing boundaries and identifying threats.’⁷¹

2.2.1 - Deterrence

The main aim and ‘at the heart of the government’s’ offshore processing policy is to deter people from coming to Australia by boats. This purpose is not just summed up in deterring asylum seekers from ‘embarking on their journey to Australia, but also at making it

⁶⁴ von Doussa, ‘Human Rights and Offshore Processing’.

⁶⁵ Pickering and Weber, ‘New Deterrence Scripts in A Ustralia’s Rejuvenated Offshore Detention Regime for Asylum Seekers’, 1007.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Patrick van Berlo, ‘Australia’s Operation Sovereign Borders: Discourse, Power, and Policy from a Crimmigration Perspective: Table 1.’, *Refugee Survey Quarterly* 34, no. 4 (December 2015): 101, doi:10.1093/rsq/hdv011.

⁶⁹ Devetak, ‘In Fear of Refugees’, 104.

⁷⁰ van Berlo, ‘Australia’s Operation Sovereign Borders’, 98.

⁷¹ Devetak, ‘In Fear of Refugees’, 104.

as difficult as possible for them apply for refugee status, let alone be granted it.⁷² However, those that do manage to come to an Australian territory, then under the offshore processing policy, have to be taken to an offshore processing centre and their claims for protection will be assessed by the hosting country.⁷³

The Greens, like the Democrats Party, has always opposed the government's offshore processing policy and the Greens is the third major political party in the Senate. The Greens maintained their objection of the 'Offshore Processing' policy because of the brutal treatment of asylum seekers by 'both the past and the present by using lexical items of brutality and cruelty, referring to Nauru as an 'island prison' or a 'prison camp.'⁷⁴ Their second concern is mainly the 'abandonment of 'care and compassion,' however their support of asylum seekers is mainly based on the 'ethic of care rather than one of human rights.'⁷⁵

2.2.2 - Border Protection

Controlling borders and people movement across the borders have also been an objective of the 'Offshore Processing' policy. There is majority consensus by the two major parties that the border threat by asylum seekers is real, therefore the insecurity of the border has to be addressed and taken seriously. Therefore, it is necessary to protect Australia from outsiders invading Australia's borders, therefore 'asylum seekers and refugees are not only threat to Australian values but they are also threats to Australia's physical border security.'⁷⁶ The former Prime Minister, Julia Gillard, had said the following about protecting Australia's borders:

We are discussing a matter of national interest and I presume all members of the House would be interested in this discussion. I may be wrong about that, but I will

⁷² Ibid.

⁷³ Ibid., 105.

⁷⁴ Australian Parliament, 'House of Representatives Official Hansard: No. 13, 2011', 14 September 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fdb12227e-c808-4b45-8e11-e59ca86f689e%2F0000%22>.

⁷⁵ Pickering and Weber, 'New Deterrence Scripts in A Ustralia's Rejuvenated Offshore Detention Regime for Asylum Seekers', 1023.

⁷⁶ Elizabeth Rowe and Erin O'Brien, "'Genuine' Refugees or Illegitimate 'boat People'": Political Constructions of Asylum Seekers and Refugees in the Malaysia Deal Debate', *Australian Journal of Social Issues* 49, no. 2 (2014): 178.

assume that all members of this House have an interest in securing Australia's borders and in the best possible policy in relation to refugees and asylum seekers.⁷⁷

Elizabeth Rowe and Erin O'Brien also argued that some Coalition MPs believed that the dismantling of the 'Pacific Solution' put Australia's border security at risk by allowing more asylum seekers and refugees coming to Australia by boats.⁷⁸ For instance, MP Barry Haase has stated the following in relation to border protection:

I believe in doing the effective things to manage our borders. By that the people of Australia thought she would manage the borders to make them secure, to make them non-porous, to create a barrier between those that would come to this country illegally, unannounced and often unwelcome and those that would come instead as refugees went through the formal process.⁷⁹

Sharon Pickering and Leanne Weber argue that the border control or protection argument is a strategy to utilise public support for the major political parties, especially the Coalition, and it is done in a way to cover their 'poorly checked and implemented practices, publicise success, and shape debates about federal border control.'⁸⁰ Moreover, the border protection debate is mainly intended 'in some ways antithetical to secrecy, requiring large-scale public spectacles of interception to communicate the worth and purpose of securing borders for the Australian people.'⁸¹

2.2.3 - Boat Turnarounds

Turning around boats is one of the significant major policy differences between Labor and the Coalition. This was an initiative of the Howard Government and started with

⁷⁷ Australia, 'House of Representatives Official Hansard: No. 13, 2011', 10075.

⁷⁸ Rowe and O'Brien, "'Genuine' Refugees or Illegitimate 'boat People'", 178.

⁷⁹ Australian Parliament, 'Parliamentary Debates: House of Representatives Official Hansard No. 9, 2011', 22 June 2011, 6931,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fd78cdc58-c20e-4fbf-a147-88f30644229d%2F0000%22>.

⁸⁰ Pickering and Weber, 'New Deterrence Scripts in A Ustralia's Rejuvenated Offshore Detention Regime for Asylum Seekers', 1007.

⁸¹ Ibid.

the infamous *Tampa* incident and reintroduced in 2012. Tony Abbott vowed to instruct the Australian Navy to turn back the boats within a week of taking the highest office in the country. He insisted that he would prevent unauthorised boats from entering Australia's waters or arriving onshore:

Within a week of taking office, I would give new orders to the navy that, where it is safe to do so, under the usual chain-of-command procedures, based on the advice of commanders on-the-spot, Indonesia flagged, Indonesian crewed and Indonesian home-ported vessels without lawful reason to be headed to Australia would turn around and be escorted back to Indonesian waters.⁸²

Turning around boats practically is very difficult and complex and that is why under the Howard Government there were few instances of successful boats 'turnarounds'.⁸³ The later Abbott Government stated in regards to dealing with unauthorised boat arrivals that the issue was highly secret and his government refused to provide any information about his policy of boats 'turnaround' since coming to power in September, 2013.⁸⁴ Mr Abbott in January 2014 made the following comments to explain the government's position:

If stopping the boats means being criticised because I'm not giving information that would be of use to people smugglers, so be it ... if we were at war we wouldn't be giving out information that is of use to the enemy just because we might have an idle curiosity about it ourselves.⁸⁵

⁸² Tony Abbott, 'ParlInfo - The Coalition's Plan for More Secure Borders: Address to the Institute of Public Affairs, Melbourne', 27 April 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1603644%22>.

⁸³ Australian Government, 'Breaking the Deadlock The Report of the Expert Panel on Asylum Seekers', text, *Report of the Expert Panel on Asylum Seekers*, (August 2012), 125, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2012/August/Breaking_the_deadlock_The_Report_of_the_Expert_Panel_on_Asylum_Seekers attachment 8.

⁸⁴ Ibid.

⁸⁵ Jonathan Swan, 'Abbott Goes to War with Press Release Diplomacy.(News)', *The Sydney Morning Herald* (Sydney, Australia), 2014.

2.2.4 - Operation Sovereign Border

In the run up to the 2013 election, the Coalition claimed that Australia is ‘experiencing a border protection crisis that is ‘a national emergency.’⁸⁶ This was done under the premise that ‘the scale of this problem requires the discipline and focus of a targeted military operation, placed under a single operational and ministerial command and drawing together all the necessary resources and deployments of government agencies’.⁸⁷ The newly elected government’s first action was ‘to appoint a three star general, Angus Campbell, to lead the operation.’ Additionally, the government wanted to create a co-ordination between ‘more than a dozen Federal Government departments and agencies involved in border protection.’⁸⁸ Angus Campbell was the Deputy Chief of Army when launching Operation Sovereign Border, meanwhile he was ‘promoted to a three-star general’ to be empowered to ‘bypass normal defence force command structures.’⁸⁹ Requiring a three star general to directly answer to the Immigration Minister raised concerns about the conventional idea of the separation of the military from civil control and there was concerns expressed over the probable breaches of ‘the Defence Act.’

The Coalition Government then rebranded the immigration department from the ‘Department of Immigration and Citizenship’ (DIAC) to the ‘Department of Immigration and Border Protection’ (DIBP). The government changed the name of the immigration department in order to reflect the government’s policy and subsequently DIBP was ‘merged with the Australian Customs Agency to form the Australian Border Force (ABF),’ in July 2015.⁹⁰ One of the elements of the OSB was to turn back the boats ‘when it is safe to do so,’ however, the policy met with Indonesia’s strenuously objection. Indonesia argued that the policy is a threat to their sovereignty and to, unilaterally, turn back the boats is ‘offensive.’ Moreover, ‘the Australian Foreign Minister said that Australia is not asking for Indonesia’s permission, we’re asking for their understanding.’⁹¹ However, the OSB policy has been criticised for being a misguided policy because irregular maritime arrivals are not Australia’s

⁸⁶ J. McAdam, ‘Australia and Asylum Seekers’, *International Journal of Refugee Law* 25, no. 3 (1 October 2013): 441, doi:10.1093/ijrl/eet044.

⁸⁷ McAdam, ‘Australia and Asylum Seekers’.

⁸⁸ Ibid.

⁸⁹ Amy Nethery and Rosa Holman, ‘Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres’, *The International Journal of Human Rights* 20, no. 7 (2 October 2016): 1023, doi:10.1080/13642987.2016.1196903.

⁹⁰ Ibid., 1024.

⁹¹ McAdam, ‘Australia and Asylum Seekers’, 441.

enemies. In other words, the role of the ‘defence is to deal with our enemies but customs, policing and all the rest of it deal with people on internal security matter,’ and asylum seekers are not attacking Australia.⁹²

2.3 - Why People Seek Asylum

Why people seek asylum in Australia is a fundamental question however; the issue is very complex and there is no simple answer to it. The *Panel* report tried to answer the question, and stated that the driving force behind people movement can be ‘political, economic, social and humanitarian.’⁹³ The report acknowledges that conflict and social unrest are the main reasons for people displacement around the globe because it causes violence and political instability in societies. Human networking through social media websites and widespread access to country information are also some of the reasons for people seeking asylum to Australia because it highlights the existence of inequality in the world. The inequality includes wealth, lifestyle and other social welfare issues that exist between developing and developed countries, which will force some people to look for a better life beyond their country of origin. In other words, people who are less fortunate than those in the developed countries would be driven to seek for a better life beyond their borders and this is just a human tendency for survival. Australia, after ‘Western Europe, North America, and even parts of Eastern Europe,’ is an attractive destination country for asylum seekers and that is why some people seek asylum to Australia.⁹⁴ Therefore, rich countries such as Australia are a target destination because of their wealth, prosperity and lifestyle.

Finally, there are scarcely other means to seek refuge from danger because the prospect of being accepted through UNHCR is next to none. This is because the waiting time for resettlement in a refugee hosting country is far too long and if refugees are lucky enough then they would be resettled within four or five years. For instance, Kim’s family, Rohingya refugees, were granted refugees status by the UNHCR ‘eight months after arriving in Indonesia’, because of religious persecution in Myanmar.⁹⁵ Then, it took them not less than

⁹² Ibid.

⁹³ Australian Government, ‘Breaking the Deadlock The Report of the Expert Panel on Asylum Seekers’, 19.

⁹⁴ Ibid., 68.

⁹⁵ Jane McAdam and Fiona Chong, *Refugees: Why Seeking Asylum Is Legal and Australia’s Polices Are Not* (Sydney, NSW: New South Publishing, 2014), 88–112.

three years to be resettled but before their resettlement, they were waiting and their future was in limbo.⁹⁶ They had thought about the option of coming to Australia by boat because of the long waiting time and their precarious situation.⁹⁷ The number of irregular maritime arrivals granted refugee status in Australia is pretty high, and around 90% of the irregular maritime arrivals were successfully granted a protection visa either at the primary application or at review stage.⁹⁸ It indicates that the large majority of asylum seekers are refugees and Australia is obliged under the *Refugee Convention* and the *1967 Protocol* to provide them protection visas.

2.4 - People Smugglers

Asylum seekers normally pay someone to get them to their destination country such as Australia. Therefore, people who get money from asylum seekers to take them to countries like Australia and they are categorised and called people smugglers because they do not use the legal channels, like applying for visas, to get asylum seekers to their destination countries. The Howard Government argued that people smugglers are criminals for two reasons; first, they put the life of innocent people in danger; second, they compromise the integrity of Australia's borders. One way of fighting people smugglers is to increase regional co-operation with countries such as Indonesia and Malaysia to create 'harsher anti-smuggling measures' in the Pacific region.⁹⁹ Second is a tougher border protection by which the government spends lots of money towards tougher 'border protection, regional co-operation and anti-people smuggling measures in the region for many years'.¹⁰⁰ Third, the government 'increased border surveillance and a people smuggling 'disruption' campaign,' aimed at preventing people smugglers from sending boats to Australia.¹⁰¹ For instance, the Labor Government sometimes claims that asylum seekers are being lured by unscrupulous criminals which are people smugglers because asylum seekers are vulnerable people. The Labor Government normally talks about breaking the people smugglers business models whereas

⁹⁶ Jane McAdam and Fiona Chong, 'Mandatory Detention', In *Refugees: Why Seeking Asylum Is Legal and Australia's Policies Are Not*, 88-112. UNSW Press, 2014. <http://www.jstor.org/stable/j.ctt14jxx12.10>.

⁹⁷ Jane McAdam, and Fiona Chong, 'Mandatory Detention', In *Refugees: Why Seeking Asylum Is Legal and Australia's Policies Are Not*, 88-112. UNSW Press, 2014. <http://www.jstor.org/stable/j.ctt14jxx12.10>.

⁹⁸ Glenda Kwek, '90% of Asylum Seekers Win Refugee Status', *The Sydney Morning Herald*, 22 April 2009, <http://www.smh.com.au/national/90-of-asylum-seekers-win-refugee-status-20090422-af2d.html>.

⁹⁹ Phillips, 'A Comparison of Coalition and Labor Government Asylum Policies in Australia since 2001', n.d., 8.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

the Coalition is mainly using slogans such as ‘stopping the boats.’ However, both the Coalition and Labor parties are not much different in their policy justification for border control which is a reflection and characteristic of ‘both deterrence and risk avoidance.’¹⁰² Murphy believes that breaking people smugglers’ business is an ingenious device made by the government to divert and distract the public attention from the key issues which are the rights of refugees and their human dignity and protection.¹⁰³

Mirko et al., argue that people smugglers are doing a great service to asylum seekers because the benefits asylum seekers will receive after their resettlement in Australia outweighs the crime committed by them.¹⁰⁴ Moreover, it will enable ‘desperate people to apply for refugee status’ and if their applications are successful then they will ‘live far more prosperous lives,’ here in Australia. This is due to the fact that the vast majority of asylum seekers are subsequently founded to ‘be genuine refugees.’ Therefore, for Mirko et al., ‘deterrence of people smugglers clearly has the knock-on effect of deterring asylum seekers, who presently have a right under both international and Australian law to seek asylum here.’¹⁰⁵ Mirko et al., add that in essence criminalising people smugglers means that we are preventing genuine refugees from reaching safety and this is basically against the refugee convention, ‘unless effective, alternative or substitute protection is provided for them elsewhere.’¹⁰⁶ In other words, the government should not criminalise people smugglers because they are helping genuine refugees to a safe place.

Sharon Pickering and Leanne Weber argue that the tragedy of losing one’s life in the sea has had ‘an instrumental value’ for the Australian Government because ‘it lent moral legitimacy towards the deterrent approach.’¹⁰⁷ The Labor Government instead of dismantling the ‘Pacific Solution’, proposed alternative arrangements for offshore processing sites such as a processing centre in East Timor. The Labor Government did not want to back down from

¹⁰² Pickering and Weber, ‘New Deterrence Scripts in A Ustralia’s Rejuvenated Offshore Detention Regime for Asylum Seekers’, 1009.

¹⁰³ Kerry Murphy, ‘How Not to Treat Asylum Seeker Kids’, *Eureka Street* 21, no. 11 (17 June 2011): 39–40.

¹⁰⁴ Bagaric and Pathinayake, ‘Mandatory Harsh Penalties for People Smugglers in Australia’, 507.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Pickering and Weber, ‘New Deterrence Scripts in A Ustralia’s Rejuvenated Offshore Detention Regime for Asylum Seekers’, 1009.

its resolve of dismantling the ‘Pacific Solution’, in 2012, but the rise of the number of boat arrivals made it impossible for them to resist reintroducing the ‘Pacific Solution’ which once they called it inhumane, unethical and too expensive. As a result, the Australian and Indonesian governments established the Bali Process initiative out of the concerns to restrict people smugglers’ activities in the region and to develop a regional co-operation on people smugglers. The Bali Process is a forum made up of more than 48 members including the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM).¹⁰⁸

2.5 - Public Opinion

Public opinion survey analysed by Katharine Betts suggest that Australians were more sympathetic towards Vietnamese refugees in the late 1970s and were happy for limited number refugees who came by boats to stay in Australia. For instance, around 60 percent of Australians were happy for the government to let a ‘limited number of boat people’, however 13% wanted to let ‘any number’ to stay in Australia. However, the number of people wanted to stop asylum seekers to stay in Australia were between 20% and 32% and some people were happy to ‘put those boats back to sea.’ This number rose in 1993, to around 44% of Australians that were happy to ‘send the boatpeople back’, and people who did not share this view were advocating for the asylum seekers to put in detention centres while being processed. In the surveys, 90% of respondents wanted to send irregular maritime arrivals back, including 86% of migrants who ‘wanted either to send the boatpeople back or to detain them while their claims were assessed.’¹⁰⁹

In relation to the *Tampa* incident back in 2001, the A.C. Nielson poll showed that ‘between the 31st of August and the 2nd of September it was found that 77 per cent of Australians supported the decision to refuse entry to the *Tampa*,’ and the Howard Government handling of the *Tampa* incident was approved by 74% of people. Around 50% of survey respondents were happy for the Howard Government to turn back asylum seeker’s

¹⁰⁸ The Bali Process, ‘Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime’, accessed 19 August 2017, <http://www.baliprocess.net/>.

¹⁰⁹ Katharine Betts, ‘Boat People and Public Opinion in Australia’, 41.

boats.¹¹⁰ This indicates that public opinions are also shaped by national and international events as well as the number of asylum seekers arrived in Australia.

2.6 - Conclusion

Dealing with refugees is not only Australia's issue but challenges all destination countries such as Germany, UK, France and the US to name few. Keski-Nummi argues that all destination countries seriously struggle to maintain a balance between 'the perceived need to control national borders while still fulfilling protection obligations towards the millions of displaced people in need of assistance.'¹¹¹ Keski-Nummi adds that the destination countries share a common struggle as to how to come to terms with but all of them increasingly resort to tougher and restricted policy measures to control their borders and disrupt 'the movements of 'irregular' migrants.'¹¹² Keski-Nummi argues that these countries think that all of these people movements take place behind their borders but refugee issues have a more complex and substantive cause to be addressed. Therefore, they need to address issues such as war, social unrest and injustice, which means they have to find a mechanism to address the root of the cause that makes one to become a refugee. Former United Nations Assistant High Commissioner for Protection, Erica Fellerhas criticises the restriction measures in protecting borders:

Investment in deterrence as the preferred solution to the challenge posed [to]... States by irregular boat arrivals is doomed to failure ... boats ... have long been and remain a lifeline for the desperate ... the boats will continue as long as the root causes of departure remain unresolved.¹¹³

¹¹⁰ Ibid., 42.

¹¹¹ Arja Keski-Nummi, 'A Place of Refuge: Responses to International Population Movements', *Australia21 - Shaping the Future*, n.d., 97–98, <https://australia21.org.au/product/refugees-and-asylum-seekers-finding-a-better-way-2/>.

¹¹² Ibid.

¹¹³ Erika Feller, 'Boats: What to Do? A Practitioner's Viewpoint', *Australia21 - Shaping the Future*, n.d., 46–47, <https://australia21.org.au/product/refugees-and-asylum-seekers-finding-a-better-way-2/>.

3 - Chapter three – outcome and impact of the policy

3.1 - Introduction

Australia is a mature democracy which means the government and politicians are accountable to their citizens. In other words, the Australian Government does not feel any responsibility under the *Migration Act 1958* (Cth) to ‘unlawful non-citizens’¹¹⁴ which is IMAs. Therefore, Australia's legal obligation, first and foremost, falls to its own citizen under Australia's Constitution and the *Migration Act 1958*. Nonetheless, in a democratic country like Australia, people can play a crucial part in terms of policy formation for asylum seekers because if they demand the government to change the asylum seekers policy then the government would definitely modify its ‘Offshore Processing’ policy. There is a precedent for change of policy by the government in relation to the example of the Vietnamese refugees. Australian people were sympathetic towards them because they thought that Vietnamese refugees were desperate people who only fled war. In other words, to change Australia's asylum seeker policy requires to ‘convince its citizens to place a greater value on human rights and international solidarity that they presently do’.¹¹⁵

The aim of this chapter is to evaluate the outcome and achievement of the policy on asylum seekers by examining the literature. Therefore, it will examine the processing facilities that have been established in Nauru and Manus Island and some of the controversies that these facilities and detention practices have caused in the Australian public debate. One of these is the detention of unaccompanied minors. This chapter will look at characteristics of those processing facilities and concludes by briefly examining the cost of offshore detention centres.

¹¹⁴ Australian Government, ‘MIGRATION ACT 1958’, accessed 19 August 2017, [http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/ss13\(14\)](http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/ss13(14)).

¹¹⁵ Natasha Stott Despoja, ‘ParlInfo - Parliamentary Debates, Senate Official Hansard: No. 14, 2001’, 25 September 2001, 27853, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansards/2001-09-25/0000%22>.

3.2 - Nauru and Manus Island Detention Centres

One of the outcomes of the ‘Offshore Processing’ policy is the establishment of processing facilities in Nauru and Manus Island. The total number of asylum seekers held in these processing facilities was 1600 people until July 2015, of which 655 were held in Nauru and 945 detainees were held in Manus Island detention centres, including 88 children held on Nauru. Christmas Island also had 173 detainees and it could be considered as offshore detention because Christmas Island is an excised place, which means the land legally is not part of Australia for the migration processing purposes. Christmas Island is approximately 2600 km North-West of Perth and is a remote Australian Territory. In 2014, the number of detainees held in Nauru and Manus Island were significantly high, for instance there were 2273 people detained in those facilities including 183 children. Similarly, the number of people who were held in Christmas Island were significantly high too. For instance, 1004 adults and 148 children were detained on Christmas Island and the Cocos Keeling Islands.¹¹⁶

Despite the fact all states in the Asia Pacific region are members of the United Nations but there is scant respect for human rights of asylum seekers and refugees, argues Elizabeth Biok.¹¹⁷ This is because the Asia Pacific region countries are either not a signatory to the *Refugee Convention* or they signed the *Convention* conditionally. Therefore, refugees’ basic rights such as ‘freedom of movement, right to work, and access to education and health services are denied’ in Nauru and Manus Island and there is no mechanism to protect refugees from violence.¹¹⁸ This is due to their residential status in Nauru and Manus Island and the path to gaining citizenship does not exist for all refugees. As a result many refugees suffer from mental issues, anxiety and guilt because they leave their families behind in persecution situations.¹¹⁹

¹¹⁶ Ryan Essex, ‘Healthcare and Clinical Ethics in Australian Offshore Immigration Detention’, *The International Journal of Human Rights* 20, no. 7 (2 October 2016): 1039, doi:10.1080/13642987.2016.1192538.

¹¹⁷ Elizabeth Biok, ‘The Regional Perspective: Exporting Deterrence and Negating Human Rights Standards’, in *Offshore Processing of Asylum Seekers: The Search for Legitimate Parameters*, ed. Sam Blay, Jennifer Burn, and Patrick Keyzer, UTS Law Review, no. 9 (Ultimo, N.S.W: Halstead Press, 2007), 81.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

3.3 - Mandatory Detention of Unaccompanied Minors

I think the overriding obligation is to stop unaccompanied minors risking their lives on that dangerous boat journey to Australia. The overriding obligation is to say to parents, 'Do not risk the lives of your children to get the prospect of a visa in Australia.'¹²⁰

It is clear from the above statement that the government justifies its policy of detaining children in detention centres as a deterrence measure to prevent other parents doing the same thing. Furthermore, the government argued that exempting children would provide an incentive to smugglers to fill up the boats with children and send them to Australia. This will give them the rights to be reunited with their families and parents. Nevertheless, some people do not buy into such an argument because the government expressed similar concerns with the TPVs, in 1999.¹²¹ However, people were separated from their families for years and 'TPV led to a new pattern of boat arrivals, with women and children' who were coming on perilous boats.¹²² Notwithstanding, the Immigration Minister is the legal guardian of unaccompanied children to protect their best interests and children's human rights who are mostly the collateral damage of the refugee issues. Murphy argues that Australia should think morally as well as legally to establish a fair system and the focus should be on people who seek Australia's protection.¹²³ Australia has a legal obligation (non-refoulement principle) to provide protection to those whose lives are in danger and they are not able to return to the countries that they have fear of persecution from.

Caroline Fleay et al., narrate the story of an asylum seeker child Dawood Jan of Hazara ethnic background from Afghanistan who came to Australia by boat in May 2010.¹²⁴

¹²⁰ Chris Bowen and Julia Gillard, 'ParlInfo - Transcript of Joint Press Conference with Prime Minister Julia Gillard: Canberra: 13 August 2012: Houston Expert Panel on Asylum Seekers', accessed 19 August 2017, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2280021%22>.

¹²¹ Michael Leach, 'Back to the Future on Temporary Protection Visas', *The Conversation*, 27 August 2013, <http://theconversation.com/back-to-the-future-on-temporary-protection-visas-17316>.

¹²² Ibid.

¹²³ Murphy, 'Kevin Rudd Reworks Labor's Asylum and Border Protection Policy - as It Happened'.

¹²⁴ Caroline Fleay, Lisa Hartley, and Mary Anne Kenny, 'Refugees and Asylum Seekers Living in the Australian Community: The Importance of Work Rights and Employment Support', *Australian Journal of Social Issues* 48, no. 4 (2013): 474.

He spent 18 months in a detention centre in remote north-western Australia, in which he developed mental health problems while in the detention centre.¹²⁵ The extent of his mental health problems was such that he had to take antidepressant medication and he had to receive regular ‘counselling to cope with the trauma of potentially indefinite detention and waiting for his protection claim to be finalised.’¹²⁶ He was released from immigration detention centres in October 2012, however the anguish of detention did not go away for quite a long time. The anguish manifested itself as ‘frequent nightmares, which meant he spent many nights reliving the violence he had fled in Afghanistan’ and after fleeing he had to endure the long term mandatory detention.¹²⁷

Despite receiving supports from ‘extended family members and friends, case workers and psychologists when he was released from the detention centre system , his nightmares persisted as the initial feelings originating from immense relief at being released from detention soon gave way to boredom and anxiety.’¹²⁸ He said that ‘when I am in community detention I had lots of nightmares.’¹²⁹ In relation to children and unaccompanied minors, the former Labor Government Immigration Minister, Chris Bowen, said that he did not ‘want to send the message that it’s OK to get on a boat if you fit one sort of particular category.’¹³⁰ He meant that he does not want to send messages to the children’s parent that it is okay to send their children by boats to Australia and they will be accepted as refugees, and then can sponsor their parents. Murphy argued that whether the former Minister Bowen understood about the ethical dilemmas of his statement in relation to unaccompanied children or not but he was the legal custodian of unaccompanied minors.¹³¹

¹²⁵ UNICEF Australia, ‘At What Cost? The Human, Economic and Strategic Cost of Australia’s Asylum Seeker Policies and the Alternatives’, *Save the Children Australia*, September 2016, http://www.savethechildren.org.au/__data/assets/pdf_file/0009/159345/At-What-Cost-Report-Final.pdf.

¹²⁶ Fleay, Hartley, and Kenny, ‘Refugees and Asylum Seekers Living in the Australian Community’, 474.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*, 475.

¹³⁰ Chris Bowen, ‘Children Part of Refugee Swap: Bowen’, *ABC Lateline; Interview by Tony Jones*, 2 June 2011, <http://www.abc.net.au/lateline/content/2011/s3234302.htm>.

¹³¹ Murphy, ‘How Not to Treat Asylum Seeker Kids’, 39–40.

Linda Briskman et al, argued that ‘Australia's mandatory detention system is cruel, inhumane and degrading; and it is most obviously so for children.’¹³² Mental health professionals repeatedly advised the government to remove children from detention centres but the government failed to either implement or ignore their recommendation all together.¹³³ Moreover, Mary Crock and Mary A. Kenny argue that children asylums have been lost in the ‘rhetoric about deterrence measures’ as a result children are punished because the government wanted to adopt the punitive measures to deter asylum seekers.¹³⁴ Some argue that the measures failed to serve its purpose as it did in 1992 when the Labor Government took a similar measure to deter people sending their children on a dangerous journey. Crock and Kenny argue that the measure has kept asylum seekers in detention for a long time which was harmful as well as being an ‘inefficient and exorbitantly expensive, Australia's mandatory detention regime.’¹³⁵ Furthermore, the system has caused ‘disadvantages, generates mental illness and encourages societal disharmony’ which means that the system is designed to make children to suffer.¹³⁶

3.4 - Characteristics of Offshore Detention

One characteristic of offshore processing policy is a high level of secrecy. There is a low level of accountability and transparency with little or no opportunities for external independent oversight of Australia's immigration detention centres. This has created an environment that has been strictly controlled and closed to refugee advocates, NGOs, human rights advocates.¹³⁷ Environments such as this ‘created a closed, controlled environment, in which people are routinely neglected and harmed.’¹³⁸ To a Senate inquiry on Manus Island, a former Salvation Army employee described the conditions there in this way:

¹³² Linda Briskman, Deborah Zion, and Bebe Loff, ‘Challenge and Collusion: Health Professionals and Immigration Detention in Australia’, *The International Journal of Human Rights* 14, no. 7 (December 2010): 1092–1106, doi:10.1080/13642980903007649.

¹³³ UNICEF Australia, ‘At What Cost? The Human, Economic and Strategic Cost of Australia’s Asylum Seeker Policies and the Alternatives’.

¹³⁴ Mary Crock and Mary Anne Kenny, ‘Rethinking the Guardianship of Refugee Children after the Malaysian Solution’, *Sydney L. Rev.* 34 (2012): 441.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Nethery and Holman, ‘Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres’, 1019.

¹³⁸ UNICEF Australia, ‘At what cost? The human, economic and strategic cost of Australia's asylum seeker policies and the alternatives’, *Save the Children Australia*, September 2016, pp. 3, viewed 30 Jan. 17, at 926am.

When I arrived on Manus Island during September 2013, I had previously worked on Nauru for one year. I thought I had seen it all: suicide attempts, people jumping off buildings, people stabbing themselves, people screaming for freedom whilst beating their heads on concrete. Unfortunately, I was wrong; I had not seen it all. Manus Island shocked me to my core. I saw sick and defeated men crammed behind fences and being denied their basic human rights, padlocked inside small areas in rooms often with no windows and being mistreated by those who were employed to care for their safety.¹³⁹

The culture of secrecy and under reporting came to light when the Senate Committee found instances of abuse that ‘were not known to the department due to the absence of a clear and mandatory reporting procedure between Wilson Security, Transfield Services and the department.’ These companies did not have ‘mandatory reporting frameworks between these organisations, or with DIBP.’¹⁴⁰ This resulted in ‘systemic under reporting of serious, including medical emergencies, self-harm and abuse’ which all contributed towards a culture of secrecy.¹⁴¹ Moreover, Wilson Security have been accused of operating ‘without an internal computer server’ for six months in 2013 – 2014, which means crucial ‘documents, including incident reports and health records,’ were not saved to their computers. Furthermore, Wilson Security were also accused of destroying incident reports that were made by ‘Save the Children and Transfield Services by placing them into ‘File 13,’ which is ‘a codename for the shredder.’¹⁴² There was not a report in relation to force used by the Wilson Security officers to check whether the force used was reasonable or not.¹⁴³

The Australian Government has always claimed that it does not run the Nauru regional processing centre and further argued that the processing centres are managed by the

¹³⁹ Nethery and Holman, ‘Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres’, 1031.

¹⁴⁰ Nick Evershed et al., ‘The Nauru Files: The Lives of Asylum Seekers in Detention Detailed in a Unique Database – Interactive’, *The Guardian*, n.d., <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>.

¹⁴¹ Ibid.

¹⁴² Nethery and Holman, ‘Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres’, 1027.

¹⁴³ Ibid.

government of Nauru, under Nauruan law. However, the Australian Government supports the government of Nauru to assess asylum claims and, where persons are found to be in need of protection, arranges settlement. The government of Nauru is specifically responsible for security and good order and the care and welfare of persons residing in the centre.¹⁴⁴

Professor William Maley argued that the Nauruan Government's weakness in accountability which is 'associated with poor governance' has been beneficial to Australia for processing asylum seekers.¹⁴⁵ Australia has taken advantage of the fact that Nauru was on the verge of the 'collapse of the rule of law.'¹⁴⁶

Australian Human Rights Commissioner Gillian Triggs tried to access Nauru in 2014 in order to 'investigate the ways in which life in immigration affects the health, wellbeing and development of children.'¹⁴⁷ But, the request was turned down on the grounds that it is not under her jurisdiction to investigate human rights in Nauru.¹⁴⁸ The second instance is the cancellation of the UN Special rapporteur on the Human Rights of Migrants, Francois Crepeau. Mr Crepeau was invited by the Commonwealth to inspect Australia's immigration detention centres in Nauru and PNG in September 2015.¹⁴⁹ These are classical examples of the Australian Government's restriction of independent and external oversight of its offshore processing centres. Mr Crepeau requested the Australian Government to provide him with a written guarantee that he should be free to interview anyone without facing the consequences under the Australian *Border Force Act 2015* (Cth), but the government refused his request.¹⁵⁰ Crepeau then had to cancel his investigation due to the legal impediment that prevented him from 'fully and freely carrying out my duties during the visit', because the contracted staff would have been faced by the consequence of 'two-year court sentences' for

¹⁴⁴ Nethery and Holman, 'Secrecy and Human Rights Abuse in Australia's Offshore Immigration Detention Centres'.

¹⁴⁵ Professor William Maley and Australia The Senate, 'Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru', ISBN: 978-1-76010-288-3, (August 2015), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report.

¹⁴⁶ Ibid.

¹⁴⁷ Michael Gordon, 'Human Rights Commission Boss Gillian Triggs Blocked from Visiting Nauru', *The Sydney Morning Herald*, 4 February 2014, <http://www.smh.com.au/federal-politics/political-news/human-rights-commission-boss-gillian-triggs-blocked-from-visiting-nauru-20140203-31xg6.html>.

¹⁴⁸ Ibid.

¹⁴⁹ Matthew Doran, 'United Nations Special Rapporteur for Asylum Seeker Human Rights Delays Australian Visit, Cites Border Force Act', ABC News, *ABC News*, (26 September 2015), <http://www.abc.net.au/news/2015-09-26/un-human-rights-investigator-australia-visit-border-force-act/6807146>.

¹⁵⁰ Ibid.

disclosing information in relation to their work in detention centres.¹⁵¹ The Human Rights Law Centre's executive, Hugh de Krestler, commented that Mr Crepeau's cancellation to visit offshore processing detention facilities was 'unprecedented for Western Liberal democracy.'¹⁵²

Ryan Essex argues that allegations of abuse have been known for 17 months on Nauru as a 'number of former employees signed an open letter alleging the government knew about allegations of abuse',¹⁵³ but the government failed to take action. The government in return then attacked the staff who made the accusations but 'then later was vindicated by the Moss Review which found a number of these allegations credible.'¹⁵⁴ Further evidence of the Australian Government's neglectful and abusive attitude is the release of the AHRC Forgotten Children Report, which has criticised the government for the detaining of children in its offshore detention centres. The Coalition Government then attacked the AHRC President Gillian Triggs numerous times after the release of the report. Ryan Essex mentions that multiple raids took place on the office that carried out the Save the Children's report in Nauru because they wanted to find out who the journalists' sources were on Nauru.¹⁵⁵ One of the bodies that provided independent oversight of the health and healthcare of detainees was the Immigration Health Advisory Group which was barred from going to Nauru.¹⁵⁶ Finally, it shows how difficult life is for the detainees in the detention centres and the level of cover up is quite unprecedented.

3.4.1 - Health issues and detention centres

Prolonged detention of IMAs contributed to the asylum seekers' mental problems because they became despondent, angry, and frustrated. The severity of these issues has been such that the mental health professionals reacted and they were, especially concerned about

¹⁵¹ Ibid.

¹⁵² Jane Lee, 'UN Cancels Australia Visit over Border Force Laws', *The Sydney Morning Herald*, 26 September 2015, <http://www.smh.com.au/federal-politics/political-news/un-postpones-australian-visit-over-failure-to-guarantee-protection-of-detention-centre-whistleblowers-from-recrimination-20150926-gjvjm2.html>.

¹⁵³ Essex, 'Healthcare and Clinical Ethics in Australian Offshore Immigration Detention'.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid., 1047.

the impact of prolonged detention on children.¹⁵⁷ The detainees mental issue had caused ‘distress’ and challenges to the professional service providers and brought about the questions of engaging in ‘a broader political debate’ about the detention of asylum seekers.¹⁵⁸ The Joint Standing Committee of Inquiry (the Committee) expressed their concerns about the mental health of the detainees because the Committee witnessed despair and depression with asylum seekers and some of the detainees even said that they do not know why they were there.¹⁵⁹ The Committee admitted that the processing centres are very isolated and the conditions are far too harsh.¹⁶⁰ The health professionals expressed concerns about the psychological impact of the detention on asylum seekers because ‘collective depression syndrome’ has been one of the most prevalent health issues in the detention centres. These issues have deteriorated due to being denied family reunion in many cases and there is no rights to judicial review of their cases in case of negative decision.¹⁶¹ Concerns have been expressed about the absence of judicial control, the indefinite detention and its legality by NGOs, refugee advocates and human rights lawyers.¹⁶²

All these factors added together and the prolonged despondency of the detention centre system eventually give rise to widespread protest and riot.¹⁶³ As an act of despair, detainees resort to self-harm and sewing their lips.¹⁶⁴ However, the government normally responded to such a situation by blaming the detainees and portraying them unsuitable people who do not deserve Australian entry visas. Interestingly, there is no acknowledgement of the harsh reality of the condition of detention centres which contributes to riot and protest.¹⁶⁵ This claim has been supported by a HREOC report that there are ‘high rates of self-harm

¹⁵⁷ L. K. Newman, M. Dudley, and Z. Steel, ‘Asylum, Detention, and Mental Health in Australia’, *Refugee Survey Quarterly* 27, no. 3 (1 January 2008): 110–27, doi:10.1093/rsq/hdn034.

¹⁵⁸ *Ibid.*, 114.

¹⁵⁹ Australian Parliament, ‘Completed Inquiry: Visits to Immigration Detention Centres’, Joint Standing Committee on Foreign Affairs, Defence and Trade, (18 June 2001), 103–6, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jfadt/IDCVisits/IDCindex Chapter 7.

¹⁶⁰ Australian Parliament, ‘Completed Inquiry’ Chapter 7 and 8.

¹⁶¹ United Nations Human Rights, ‘Civil and Political Rights, Including the Question of Torture and Detention: Report of the Working Group on Arbitrary Detention Addendum Visit to Australia’, *United Nations Human Rights Office of the High Commissioner*, April 2014, <http://www.ohchr.org/EN/Issues/Detention/Pages/Visits.aspx>.

¹⁶² UNICEF Australia, ‘At What Cost? The Human, Economic and Strategic Cost of Australia’s Asylum Seeker Policies and the Alternatives’, 3.

¹⁶³ Leigh Sales, ‘Scott Morrison Describes “Secrecy with a Purpose” in Asylum Policy’, *ABC 7.30 Report*, 14 January 2014, <http://www.abc.net.au/7.30/content/2013/s3925614.htm>.

¹⁶⁴ *Ibid.*

¹⁶⁵ Newman, Dudley, and Steel, ‘Asylum, Detention, and Mental Health in Australia’, 116.

amongst detainees, and clinicians have identified the exposure of children to this self-harming behaviour and suicide attempts as particularly traumatising'.¹⁶⁶ In particular:

Staff reported ... children who are in the centre for long periods manifest a significant regression over the period of detention ... many factors contribute to this regression, over and above the issues within individual families. These factors include cognitively impoverished conditions, with little opportunity for play and legitimate academic pursuits; reduced availability (physical and emotional) of attachment figures; interference with normal family rituals of feeding and caring; hostile and deprived physical environments with intimidating and ever present security measures; dehumanising use of numbers rather than names; and exposure to violence (not only witnessing intermittent full scale riots, but also equally disturbing episodes such as men burying themselves and inviting their family to sit with them and watch them die). It is hard to conceive of an environment more potentially toxic to child development.¹⁶⁷

3.4.2 - Bali Process

Bali Process is a regional body and was established in 2002. The purpose was to create a framework for co-operation in areas such as people smuggling, human trafficking, and asylum seekers. The Bali Process was established between the 'migrant sources, transit and resettlement states' and co-chaired by the Indonesian and Australian governments.¹⁶⁸ The Bali Process is a ministerial agreement on asylum seekers issues which has been described as a 'crucial breakthrough' in the region because it acknowledged the rights of refugees and asylum seekers to protection.¹⁶⁹ Second, it recognised the principle of 'non-refoulment',¹⁷⁰ and the Bali Process agreed on discussing about creating frameworks to reflect the principle of the Bali Process agreement.

¹⁶⁶ Australian Human Rights and Equal Opportunity Commission, *A Last Resort?: National Inquiry into Children in Immigration Detention* (Human Rights and Equal Opportunity Commission, 2004), 397.

¹⁶⁷ Ibid.

¹⁶⁸ Sara Davies, 'Protect or Deter? The Expert Panel on Asylum Seekers in Australia', *Social Alternatives* 32, no. 3 (2013): 30.

¹⁶⁹ Ibid.

¹⁷⁰ Refugee, 'UNHCR - The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol' article 33.

The Bali Process initiative initially had three main aims. Firstly, it was intended to look for practical arrangements and enhancing a regional response to what they call them ‘irregular movement’ of people and consistance solution to process refugees.¹⁷¹ Secondly, to target people smugglers and process asylum seekers application, and returning those who receive negative decisions on their applications.¹⁷² It was an initiative by the Australian Government to tackle people smuggler issues and stop asylum seekers using their services and coming to Australia. Thirdly, a Regional Support Office (RSO) was opened in Bangkok in September 2012 and the initiative was supported by both Australian major parties. However, it has not been as effective as the member states hoped for but it introduced tougher penalties for people smuggling offences.¹⁷³ It means that no country members of the Bali Process has taken a genuine step towards implementing the aim and spirit of the Bali Process initiative in the Pacific region.¹⁷⁴

Many commentators criticised the measures and argued that the initiative did not target the ‘smuggling syndicates,’ but it will punish small offenders such ‘unsuspecting Indonesian fishermen who operate the boats’.¹⁷⁵ The UNHCR is one of the critics and argued that the member countries concentrated too much on ‘regional deterrence’ instead of ‘humanitarian, ethical and legal basis of asylum’ and this would have an inadvertent effect on the regional cooperation framework to progress.¹⁷⁶ Sara Davies argues that the Bali Agreement was very good in principle but there has been no progress on protection principles.¹⁷⁷ Finally, it shows that there is not a genuine intention in tackling the asylum

¹⁷¹ Process, ‘Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime’.

¹⁷² Ibid.

¹⁷³ John Menadue, Arja Keski-Nummi, and Kate Gauthier, ‘A New Approach. Breaking the Stalemate on Refugees and Asylum Seekers’, *Centre For Policy Development*, August 2011, 313, https://cpd.org.au/wp-content/uploads/2011/08/CPD-Refugee_Report_Web.pdf.

¹⁷⁴ Ibid.

¹⁷⁵ Mary Crock and Daniel Ghezelbash, ‘Do Loose Lips Bring Ships? The Role of Policy, Politics and Human Rights in Managing Unauthorised Boat Arrivals’, *Griffith Law Review* 19, no. 2 (2010): 238–287.

¹⁷⁶ United Nations High Commissioner for Refugees, ‘UNHCR Calls for Compassion and Legal Principles to Be at Centre of Policy Responses’, *UNHCR*, 23 November 2012, <http://www.unhcr.org/news/press/2012/11/58101d507/unhcr-calls-for-compassion-and-legal-principles-to-be-at-centre-of-policy.html>.

¹⁷⁷ Davies, ‘Protect or Deter?’, 30.

seeker issues seriously and finding a way to protect asylum seekers and provide a mechanism to an orderly process of their claims for protection.

3.5 - Financial Costs of Deterrence Measures

‘Offshore Processing’ policy at its heart was a measure to deter people from taking boats and coming to Australia. In other words, the policy is a deterrence measure, therefore it needs funding to be implemented. Australia's offshore processing policy is exorbitantly expensive because the policy has to fund to ‘stop the boats’, paying the ‘declared countries’ for processing and resettling asylum seekers and other services. The government’s own expenditure estimation is as follows:

- ⇔ Over AU\$1 billion to run detention centres from 2012 to 2013 financial year.
- ⇔ AU\$119,000 for each asylum seekers per year.¹⁷⁸
- ⇔ It rose to AU\$2.124 billion dollar in February 2013. This is due to the increase in the number of asylum seekers and the administration costs of detention in Nauru and Papua New Guinea.¹⁷⁹
- ⇔ AU\$316 million dollars spent on building facilities for 750 people in Nauru.
- ⇔ AU\$1 million spent per person in Manus Island since 2012.¹⁸⁰

According to UNICEF the economic costs of managing asylum seekers offshore is a lot larger than the government’s estimation. UNICEF claims that it costs Australian taxpayers \$9.6 billion between 2012 – 2016 as the figure has been broken down in the table below:¹⁸¹

¹⁷⁸ Sienna Merope, ‘The Economic Cost of Our Asylum Seeker Policy’, *Right Now*, 15 April 2013, <http://rightnow.org.au/opinion-3/the-economic-cost-of-our-asylum-seeker-policy/>.

¹⁷⁹ Ibid.

¹⁸⁰ Adam Gartrell, ‘The Manus Island Detention Centre May Be Closing but It’s Already Cost Taxpayers \$2 Billion’, *The Sydney Morning Herald*, 20 August 2016, <http://www.smh.com.au/federal-politics/political-news/manus-island-bill-2-billion-and-counting--1-million-for-each-detainee-20160820-gqx8do.html>.

¹⁸¹ UNICEF Australia, ‘At What Cost? The Human, Economic and Strategic Cost of Australia’s Asylum Seeker Policies and the Alternatives’.

POLICY SETTING	ECONOMIC COST (2013-2016)
Offshore processing in Nauru and PNG (see part 5.1)	At least \$3.6 billion
Mandatory immigration detention (onshore) (see part 5.2)	\$5.6 billion
Boat turn-backs (see part 5.3)	At least \$295 million
Other programs (see part 5.4)	\$112 million
Total	\$9.6 billion

In addition to these human and economic costs, the offshore processing policy present a significant risk to Australia's international reputation and strategic interests both within the region and globally, and are likely to hamper, rather than aid, in the creation of more sustainable system of responsibility sharing and co-operation in the region. Some of the strategic costs have been to 'Australia's global reputation as a rights-respecting country,' damaging Australia's 'ability to influence global human rights issues,' and it has 'impaired ability to influence regional respect for human rights.'¹⁸²

The Expert Panel was set up to suggest a solution to number of irregular maritime arrivals and provided a cost estimate to the then Labor Government. Their forecast forward estimates were \$5 billion based on the assumption that there were irregular maritime arrivals of 'around the level of 45 per month from 1 July 2012'.¹⁸³ The forward estimates were broadcast from 2011 -12 to 2015 – 16 and they warned the incumbent government (Labor) that if the number of IMAs were to surge then the cost of dealing with irregular maritime arrivals 'would likely be significantly larger amount than the costs of the recommendations'.¹⁸⁴ The Report claimed that their recommendation was trying to provide and 'promote greater efficacy, fairness and good management in Australian policy making on protection and asylum issues.'¹⁸⁵

¹⁸² Ibid.

¹⁸³ Australian Government, 'Breaking the Deadlock The Report of the Expert Panel on Asylum Seekers', 143.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

3.6 - Conclusion

The measures described in this thesis taken by the Australia government were meant to do one thing-and that is to deter people from coming to Australia by boats and provide disincentive to people who are inspired to come to Australia by sea. This can be seen in the government using languages such as ‘border control’, ‘stopping the boats’, ‘saving lives’, and combating the ‘people smugglers business model.’ Acknowledgement of this reality is essential and taking IMAs’ experiences seriously is also important because it helps to reduce ‘the impacts of deterrent-based policies on those most affected.’¹⁸⁶

This chapter endeavoured to outline some of the critical elements of the ‘Offshore Processing’ policy and to provide a brief and fair analysis of the outcome of the policy. It has highlighted some of the critical issues that caused health issues to detainees in offshore processing facilities. The legal and ethical issues of detaining children have also been discussed and we have seen that Australia's treatment of unaccompanied children and minors in those detention centres have been severely criticised. The difficult times IMA have gone through have also been discussed here. Finally, the chapter looked at the costs of processing asylum seekers offshore and it would be worthwhile thinking that whether this money was well spent or not.

¹⁸⁶ Fleay, Hartley, and Kenny, ‘Refugees and Asylum Seekers Living in the Australian Community’, 475.

4 - Chapter four – literature review, debates and controversies

4.1 - Introduction

Chapter four is slightly different from the three previous chapters because the focus is particularly relevant to critically look at debates on the policy from different angles. The main focus of this chapter is based on Hansard debates because ‘Offshore Processing’ policy has been very controversial. It is controversial because there are many stakeholders who look at the asylum seeker issues from lots of different angles. The government decision to process asylum seekers claims for protection offshore has made it more controversial because of Australia's obligation under international law and asylum seekers human rights and the rights to be granted protection. Therefore, analysing Hansard is important because it provides inside perspective from policy makers perspective. The Australian Parliamentary debates are about asylum seekers and issues that Australians are concerned about such as border integrity, national identity, protecting the integrity of Australia’s humanitarian program, and security issues.

It is worth noting that not every Parliamentarian holds the same view about asylum seeker issues even being member of the same party like, Labor and the Coalition. Therefore, this chapter looks at the Australian government’s use of language in labelling asylum seekers, and the different use of language by the two major parties. The legal issue of seeking asylum is also tackled and the purpose of sending asylum seekers to third countries to be processed is also critically examined. The conclusion will be on how a pure humanitarian issue has become political and the reasons why the asylum seekers issues have been politicised.

4.2 - Parliamentary Debates Over Asylum Seeker Issues

Elizabeth Rowe and Erin O’Brien argue that asylum seekers are constructed around threat perception ‘to Australia’s national identity analysing Hansard is useful because one can ‘identify the underlying themes and constructions that permeate political discourse about asylum seekers and refugees.’¹⁸⁷ This is because the asylum border security, and asylum

¹⁸⁷ Rowe and O’Brien, “‘Genuine’Refugees or Illegitimate’boat People’”, 171.

seekers have been labelled as ‘illegitimate’.¹⁸⁸ Therefore, controlling and protecting Australia's border integrity has been one of the objectives of ‘Offshore Processing’ policy and is one of the most dominant issues debated in the Australian parliaments. According to the Coalition Government ‘illegal maritime arrivals’ compromise the integrity of Australia's borders and humanitarian program, which is designed to serve Australia's interests in an orderly manner and it is proved to be working. Therefore, asylum seekers are threats to Australia's national interests because they are violating the integrity of the nation’s migration system as well as disrespecting the sovereignty of Australia by crossing the border without proper documentation.¹⁸⁹

Some Parliamentarians believe that asylum seekers are rich because they have money to pay for people smugglers services to get to Australia. Therefore, to let them in is unfair for refugees who are in the refugee camps and cannot afford to pay people smugglers to get to Australia.¹⁹⁰ Therefore, people who have money jump ahead of genuine refugees. Asylum seekers make the situation worse for genuine refugees who are living in the refugee camps around the world because they have to wait for quite a long time until being resettled.¹⁹¹ The Greens and Independent Members of the Parliament have been analysed because to their contribution to the debate as minor parties is crucial and contribute to public discourse about irregular maritime arrivals. Through analysis of these debates there were ‘three key elements’ in which the two major parties were basing their justification on deterring people from coming to Australia by boats, first national interest, border security, and ‘the illegality, or illegitimacy’ of asylum seekers.

Richard Devetak argues that the concept of security has been stretched too far when the government took measures in dealing with the *Tampa* incident.¹⁹² For him the security

¹⁸⁸ Ibid.

¹⁸⁹ Gary Hardgrave, ‘Parliamentary Debates: House of Representatives Official Hansard No. 14, 2001’, 20 September 2001, 31105, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-20/0000%22>.

¹⁹⁰ De-Anne Kelly, ‘Parliamentary Debates: House of Representatives Official Hansard No. 14, 2001’, 19 September 2001, 30970, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-19/0000%22>.

¹⁹¹ Ibid.

¹⁹² Devetak, ‘In Fear of Refugees’, 102.

concern has a challenge to the notion of nation-state to control its borders because uncontrolled immigration is conceived to be a threat to peace and security of a state.¹⁹³ This is due to the fact that post-Cold War pressures have created a great deal of regional instability because the organisation of states have been fragmented or collapsed ‘under pressure of civil war, ethnic cleansing and genocide in place such as Sierra Leone, Rwanda, Somalia and the former Yugoslavia.’¹⁹⁴ According to Rowe and O’Brien the entire aim of the government in treating asylum seekers is enshrined to protect Australia's values, therefore Parliamentarians consider IMAs as outsiders. It follows then outsiders pose danger to values in which Australians hold dear and one of these values is Australia's national identity.¹⁹⁵

4.3 –Offshore Processing policy debates

One of the staunch critics of IMA is Mr Hardgrave who does not explicitly accuse asylum seekers to be criminal but charges them for having ‘no regard at all for the laws of this country.’¹⁹⁶ He believes that IMAs are not the kind of people Australians want to see them in here and have the ‘same status that they have.’¹⁹⁷ He argues that asylum seekers violate Australia's interests and have disrespect for Australia's interest and borders. He sees evidence of this here because it is connected to the people smuggling point which is a criminal activity because people smuggling along with human trafficking is a crime, according to Mr Hardgrave.¹⁹⁸ In other words, asylum seekers are part of the people smugglers criminal activity because asylum seekers use their services. Former Opposition Labor leader ,Kim Beazley, argued that Australians are quite generous towards refugees, therefore they do not want people to jump ahead of others who are waiting to be orderly processed and more deserving.¹⁹⁹ According to Mr Albanese, a Labor Party member, to characterise Afghan refugees who came to Australia by boats, particularly the Hazaras, as ‘queue jumpers’ ‘is comprehensively spurious’.²⁰⁰ He adds that what the offshore processing

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Rowe and O’Brien, “‘Genuine’ Refugees or Illegitimate ‘boat People’”, 176.

¹⁹⁶ Hardgrave, ‘Parliamentary Debates: House of Representatives Official Hansard No. 14, 2001’, 31105.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Kim Beazley, ‘Parliamentary Debates: House of Representatives Official Hansard No. 14, 2001’, 19 September 2001, 31015,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-19/0000%22>.

²⁰⁰ Anthony Albanese, ‘Parliamentary Debates: House of Representatives Official Hansard No. 14, 2001’, 19 September 2001, 31015,

of refugees offer is not a settlement place but ‘a ticket in a lottery.’²⁰¹ In other words, the resettlement places offered to refugees around the world are limited whereas the number of people waiting to be resettled is enormous. Mr Albanese stated that to defeat terrorism Australia needs to ‘support its antithesis’ which means being open to welcome people in need of our help and being tolerant,²⁰² and showing humanity and compassion ‘in our nation’s domestic policy as well as in our attitude to international affairs’.²⁰³

Christopher Pyne believes that the ‘proliferation sweatshops’ are the reason for people seeking asylum to Australia as well as the activities of the ‘transnational organised crime syndicates’.²⁰⁴ By ‘proliferation sweatshops’, he means that the privileges people enjoy in Australia once they are granted protection visas are huge and that is why so many asylum seekers are coming to Australia. Additionally, people are induced by smugglers by promising a better life ‘to more prosperous countries’.²⁰⁵ Mr Pyne like Mr Hardgrave believes that asylum seekers are rich people because they have the money to fly to Malaysia, Indonesia or the Philippines. His concern is that ‘true refugees’ will be disadvantaged and this is not fair for those refugees who are waiting in the camps in other countries.²⁰⁶ Mr Prosser, like Mr Pyne, argues that people who can pay \$16,000, and to make a calculated decision such as packing their personal effects, saying good bye to their families, get airline tickets and fly to Malaysia or Singapore to make their way to Indonesia, is very hard to believe that they are genuine refugees.²⁰⁷ However, Malaysia and Indonesia are not a signatory to the 1951 *Refugee Convention* and has no mechanism in place to resettle refugees. Whereas, Australia is a signatory to the 1951 *Refugee Convention* and has a mechanism for refugee resettlement.

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-19/0000%22>.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid. Mr Albanese quotes Professor William Maley from the Australian National University here.

²⁰⁴ Pyne Christopher, ‘Parliamentary Debates, House of Representatives Official Hansard: No. 14, 2001’, 20 September 2001, 31113–14,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-20/0000%22>.

²⁰⁵ Ibid., 31114.

²⁰⁶ Ibid., 31115.

²⁰⁷ Geoffrey Prosser, ‘Parliamentary Debates, Senate Official Hansard: No. 14, 2001’, 20 September 2001, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-20/0000%22>.

Mr Prosser accuses asylum seekers of being fully aware that their activities are illegal but they still commit such action with intention and full knowledge. Therefore, the Australian government should do all it can to stop this criminal activity.²⁰⁸ Contrary to public perception, asylum seekers do not choose to come to Australia, but the people smugglers decide where and to which country to take them. This is due to factors such as ‘the constraints’ of geography, finances, ‘travel routes and visa options’ and there is scarcely other means available to them.²⁰⁹ Australia is the only country in the region that has the legal framework ‘and technical and financial capacity to offer refugees effective protection’.²¹⁰ Finally, the prospect of being accepted as a refugee in other countries is minimal and sometimes the waiting time is too long like four or five years.²¹¹ Mr Peter Reith, then the Defence Minister, linked asylum seekers who come to Australia by leaking boats to terrorists and said:

There is an undeniable linkage between illegals and terrorists and it is absolutely vital in my view to ensure that we don’t have illegals entering Australia inappropriately because given the fact that some of those people come from country that is centre of terror, I would be particularly concerned if those people allowed to enter Australia.²¹²

4.4 - Illegality and Illegitimacy

Rowe and O’Brien argue that the Australian Government wanted to construct a group threat to society.²¹³ It means, asylum seekers are a threat to the Australian border and national security, therefore they do not deserve our protection. The threat sentiments have been circumvented by events, like 9/11, 2001, as a result of which the parliamentarians were not able to concentrate on the real reasons in which people migrate.²¹⁴ The Howard Government expressly linked asylum seekers with terrorist groups, especially after the hype

²⁰⁸ Ibid., 31119.

²⁰⁹ McAdam and Chong, *Refugees*, 56.

²¹⁰ Ibid., 57–58.

²¹¹ Ibid.

²¹² Con Sciacca, ‘Parliamentary Debates, House of Representatives Official Hansard: No. 14, 2001’, 19 September 2001, 30959,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-09-19/0000%22>.

²¹³ Rowe and O’Brien, “‘Genuine’ Refugees or Illegitimate ‘boat People’”, 179.

²¹⁴ Michael Leach, “‘Disturbing Practices’: Dehumanizing Asylum Seekers in the Refugee “Crisis” in Australia, 2001–2002’, *Refuge: Canada’s Journal on Refugees* 21, no. 3 (1 May 2003): 29, <http://refuge.journals.yorku.ca/index.php/refuge/article/view/21301>.

of 9/11 event and Prime Minister Howard once said that he is ‘not certain that individual asylum seekers were not linked to terrorist groups.’²¹⁵ The 9/11 event coincided with the 2001 Australian election, therefore the government may have been partly politically capitalising on this issue as well because on that occasion the government said that they are not sure that some people who come to Australia by boats are not linked ‘with organisations that we don’t want in this country.’²¹⁶ The politics of ethnic and racial ‘fear merges the invasion anxiety’ which gradually becomes domestic anxieties about multiculturalism and Richard Devetak reminds us of Pauline Hanson’s maiden speech to Parliament in 1996 as an example for such anxieties in which she said ‘I believe we are in danger of being swamped by Asians ... they have their own culture and religion, form ghettos and do not assimilate ... a truly multicultural country can never be strong or united.’²¹⁷ There are widespread fears of identity in Australia and Australians believe that their identity is under attack. In the aftermath of 9/11 and *Tampa*, a AC Nielson pool reported that 41% of Australians believed that the ‘immigration levels are too high’, and they expressed their deep fear of ‘social cohesion and national identity’ being affected by immigration. Richard Devetak argues that these sentiments have ‘found intellectual support in Professor Geoffrey Blainey who has argued that multiculturalism and high levels of immigration are threatening to disperse this nation into many tribes.’²¹⁸ This is what the former Prime Minister Tony Abbott had to say to depict asylum seekers:

We have had 241 boats and 12,000 illegal arrivals ... since the Malaysia people swap was announced we have had more than 1,000 illegal arrivals. Since it was signed we have had 400 illegal arrivals.²¹⁹

Jaffa McKenzie and Reza Hashmath argue that ‘the juxtaposition of the terms ‘genuine refugees’ and ‘irregular arrivals’ appeared to further delegitimise asylum seekers who arrived by boat.’ Therefore, using the term ‘irregular maritime arrivals’ for those who come to Australia by boats and ‘genuine refugees’ to people who are waiting overseas, such

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Devetak, ‘In Fear of Refugees’, 104.

²¹⁸ Ibid.

²¹⁹ Tony Abbott, ‘Parliamentary Debates: Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011 : Second Reading’, 22 September 2011, 11167, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F5b012e56-8181-4d47-8693-e886483f9ac1%2F0040%22>.

depiction of asylum seekers is discriminatory and make them less worthy. Why the government does so because the government is appealing to populous feeling and it encourages 'populist antipathy to their cause'.²²⁰ Samantha Cooper et al argued that the negative perception of public opinion of asylum seekers has been increased overtime due to negative reporting of refugee stories by media.²²¹ Therefore, a 'binary representation of refugees' has been developed which mainly focused on 'the 'legitimacy' or 'illegality' of asylum seekers.' The politics of asylum seekers have also framed ideas 'of 'threats' to employment, social cohesion, national and border security, and the Australian way of life,' therefore the adoption of such language aimed to 'dehumanise refugees and asylum seekers, particularly through the strategic use of loaded language like 'boat people' and 'illegals'.'²²²

4.4.1 - Vilification of Asylum Seekers

Chris Evans, then the Immigration Minister in the Rudd Government stated in a speech delivered at the Australian National University that:

Labor rejects the notion that dehumanising and punishing unauthorised arrivals with long-term detention is an effective or civilised response. Desperate people who are not deterred by the threat of harsh detention – they are often fleeing much worse circumstances. The Howard Government's punitive policies did much damage to those individuals detained and brought great shame on Australia.²²³

The rhetoric used by the Labor Government in relation to asylum seekers has always been positive whereas the Coalition rhetoric has always been negative. The Labor Government always tried not to present asylum seekers a 'threat to family values and the Australian way of life' and they were 'commonly framed in a more sympathetic light, as people who were 'desperate' and the 'victims' of people smugglers.'²²⁴ Whereas, the

²²⁰ Jaffa Mckenzie and Reza Hasmath, 'Deterring the "Boat People": Explaining the Australian Government's People Swap Response to Asylum Seekers', *Australian Journal of Political Science* 48, no. 4 (2013): 421, doi:10.1080/10361146.2013.841124.

²²¹ Samantha Cooper et al., 'Media Coverage of Refugees and Asylum Seekers in Regional Australia: A Critical Discourse Analysis', *Media International Australia*, 13 September 2016, 2, doi:10.1177/1329878X16667832.

²²² Ibid.

²²³ Sharon Pickering and Leanne Weber, 'New Deterrence Scripts in Australia's Rejuvenated Offshore Detention Regime for Asylum Seekers', *Law & Social Inquiry* 39, no. 4 (2014): 1008.

²²⁴ Mckenzie and Hasmath, 'Deterring the "Boat People"', 421.

Coalition Government tried to ‘overtly demonise, asylum seekers arriving in Australia by boat nonetheless remained delegitimised through judgements made of their deservingness; they were implicitly framed as a ‘problem’.²²⁵ Senator Schacht argues that the demonization of asylum seekers by the Howard Government is to get re-elected and they made the case that if we do not stop these people then they will ‘wipe out’ Australians.²²⁶ Sharon Pickering and Leanne Weber argued that the Coalition Governments in Howard’s era and under the Abbott leadership used ‘the simple mantra of ‘stopping the boats,’ which has become the ‘a badge of honour for the Howard Government.’²²⁷ For Senator Schacht, Australia’s asylum seekers policy has ‘an undertone and an undercurrent of racism’ because the government always played ‘the visceral fear of Australians’ by telling them that the Asians or Russians, or Red Chinese, or the Indonesians, or the Japanese would take over Australia in the past 150 years.²²⁸ He argues that if these asylum seekers would have come from Great Britain or America by boats ‘or if they were white farmers from Rhodesia, now called Zimbabwe, we would welcome them’.²²⁹

Devetak argued that the government and media effectively portrays asylum seekers as ‘wilful lawbreakers by labelling them ‘illegals’ and it is a term that ‘catalyses fear of asylum seekers as deviant aliens disrupting Australia’s rule-governed society.’²³⁰ Therefore, ‘it plays upon fears by designating them as inherently outlaws, potentially and actually dangerous.’ An instance of creating such fear is the then the Defence Minister Peter Reith and the Prime Minister who ‘explicitly linked asylum seekers with terrorism.’²³¹ Mr Lawler argues that there are nearly 59,000 people estimated to have overstayed their visas and were illegally present in Australia.²³² But, the debate about ‘unlawful non-citizen’ is mainly

²²⁵ Ibid.

²²⁶ Chris Schacht, ‘Parliamentary Debates, Senate Official Hansard: No. 14, 2001’, 24 September 2001, 27691, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansards/2001-09-24/0000%22>.

²²⁷ Pickering and Weber, ‘New Deterrence Scripts in Australia’s Rejuvenated Offshore Detention Regime for Asylum Seekers’, 1008.

²²⁸ Chris Schacht, ‘Parliamentary Debates, Senate Official Hansard: No. 1, 2002’, 13 February 2002, 175, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansards/2002-02-13/0000%22>.

²²⁹ Ibid.

²³⁰ Devetak, ‘In Fear of Refugees’, 106.

²³¹ Ibid.

²³² Tony Lawler, ‘Parliamentary Debates, House of Representatives Official Hansard: No. 13, 2001’, 27 August 2001, 30294, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2001-08-27/0000%22>.

focused on the asylum seekers who are mostly escaping desperate circumstances and in need of Australia's help.²³³ Senator Schacht believes that the government does not talk about people who overstay their visas because a great majority of them are from the Great Britain. The government does not conduct a fear campaign that we are about to be swamped by 'people coming illegally from Great Britain or anywhere else in Europe'.²³⁴ He argues that, obviously, it is very difficult 'to beat up a fear campaign against people from Great Britain' than people of other race, colour of skin or religion. The European people are white, they are European and like Australians therefore it is okay for them to come to Australia and be here illegally.²³⁵ Senator Brown argues that people who overstay their visas are the better off ones in the world because they can get a tourist visa or any other sort of visa and then stay on in Australia.²³⁶

4.5 - The Purpose of Offshore Detention Facilities

It has been argued that the government had other purposes in mind by sending asylum seekers to offshore processing centres. Duncan Kerr argues that the purpose of establishing offshore processing centres had three elements.²³⁷ First, the Australian Government wanted to prevent asylum seekers using Australia's domestic laws and defend their rights under Australian law and legal system.²³⁸ Second, Australia has removed all 'concomitant legal obligations of Commonwealth officials to process any claims for refugee status and the government did not want officers of the Commonwealth to get involved in processing asylum seekers claims.'²³⁹ Therefore, the government wanted this to be done by third countries which would have no legal obligation to Australia.²⁴⁰ This was a political and legal tactic which the government successfully implemented and got officers of the Commonwealth and especially migration officers to have not taken responsibility for people who came to Australia's excised by landing by boat, unless they get to the mainland. Thirdly,

²³³ Mr Lawler, 'Representatives', Speech, Monday, 27 August 2001, pp. 30294.

²³⁴ Schacht, 'Parliamentary Debates, Senate Official Hansard: No. 1, 2002', 175.

²³⁵ Ibid.

²³⁶ Bob Brown, 'Parliamentary Debates, Senate Official Hansard: No. 5, 2005', 19 June 2002, 2176, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansards/2002-06-19/0000%22>.

²³⁷ Duncan Kerr, 'The Red Queen's Law: Judicial Review and Offshore Processing after Plaintiff S157/2001', in *Offshore Processing of Asylum Seekers: The Search for Legitimate Parameters*, ed. Sam Blay, Jennifer Burn, and Patrick Keyzer, UTS Law Review, no. 9 (Ultimo, N.S.W: Halstead Press, 2007), 65.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

it has also been argued that Australia induced the PNG and Nauruan governments to accept and detain asylum seekers for Australia.²⁴¹ This is due to Australia's generous financial offer to countries like Papua New Guinea and Nauru to establish independent processing facilities for the asylum seekers on behalf of Australia.²⁴²

Amy Nethery and Rosa Holman argue that the aim of offshore detention of asylum seekers and the harsh conditions has had 'two-fold' affects. Firstly, the government hopes that such a harsh detention regime will deter potential asylum seekers from travelling to Australia by boats. Moreover, the creation of a harmful environment would encourage detainees to withdraw their protection application and the ability to return home. Secondly, the government's key objective is then to deter both prospective and existing asylum seekers from reaching and settling in Australia, and this is achieved by creating an environment that harms detainees and restricts access. As Michael Grewcock comments:

there is no acknowledgement of the systematic harm and structural violence associated with border controls. Obstructing safe travel, indefinite detention and forced removal becomes routine practices in pursuit of the organisational goal of denying refugees the ability to seek asylum in accordance with the 1951 Refugee Convention.²⁴³

John von Doussa expresses concerns over the human rights of asylum seekers whose claims are processed offshore.²⁴⁴ He argues that there are three safeguards in Australia for the asylum seekers claims to be processed by which they do not exist when their claims for refugee status are processed overseas. For instance, legal advice and merit reviews are available to asylum seekers but these rights are not available when their claims are processed in the third country.²⁴⁵ The detention centres in Australia are subject to independent scrutiny whereas offshore processing centres are not. Therefore Australia is not able to monitor the

²⁴¹ Sarah Stephen, 'Howard's "Pacific Solution" Is Neo-Colonialism', *Green Left Weekly*, 28 November 2001, <https://www.greenleft.org.au/content/howards-pacific-solution-neo-colonialism>.

²⁴² Ibid.

²⁴³ Nethery and Holman, 'Secrecy and Human Rights Abuse in Australia's Offshore Immigration Detention Centres', 1019.

²⁴⁴ von Doussa, 'Human Rights and Offshore Processing', 41.

²⁴⁵ Ibid.

human rights of asylum seekers in the third country, therefore Australia has to rely on those countries to fulfil their human rights duties.²⁴⁶ Duncan Kerr agrees with Mr Doussa in Australia's purpose of processing asylum seekers offshore and argues that the Australian Government wanted to get around the Australian court intervention and prevent asylum seekers from applying to the court for their cases to be heard.²⁴⁷ Mr Kerr argues that this is due to the insufficiency and problems with the judicial systems of Nauru and Papua New Guinea and the limits to access justice in those countries.²⁴⁸

4.6 - Offshore Processing Policy v International Law

Cathryn Costello argues that the liberty which is human rights grants is 'ubiquitous', therefore it prohibits all sorts of arbitrary detention and arrest.²⁴⁹ The aim of human rights is to protect people from 'arbitrary arrest and detention'.²⁵⁰ However, governments around the globe detain people without a strong justification and it has become increasingly become a routine practice which is a cause for concern, argues Costello. In other words, when one seeks asylum to another country, they are automatically targeted for detention and the governments justify their action based on issues that they are 'illegal'.²⁵¹ But in reality, they committed no crimes or broke any of Australia's laws. Asylum seekers are illegal because they come to Australia's border without holding a valid visa. Therefore, these are indicative of an inherent problem between a state's border protections which the government considers it as its prerogative rights and the 'universal right to liberty', which was granted by human rights law.²⁵²

Article 26 of the ICCPR gives everyone equal rights before the law and grants every person 'equal protection of the law'²⁵³ and the rights to seek asylum is also enshrined in

²⁴⁶ Ibid.

²⁴⁷ Kerr, 'The Red Queen's Law: Judicial Review and Offshore Processing after Plaintiff S157/2001', 65.

²⁴⁸ Ibid.

²⁴⁹ Cathryn Costello, 'Human Rights and the Elusive Universal Subject: Immigration Detention under International Human Rights and EU Law', *Indiana Journal of Global Legal Studies* 19, no. 1 (2012): 257.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ United Nations Human Rights, 'OHCHR | International Covenant on Civil and Political Rights', accessed 19 August 2017, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

article 14(1)(a) of UDHR.²⁵⁴ The preamble of the *1951 Refugee Convention* provides ‘a number of fundamental principles, most notably non-discrimination, non-penalisation and *non-refoulement*,’ to the refugee and declares that the provision of the *Convention* applies ‘without discrimination as to race, religion or country of origin.’²⁵⁵ The UN Charter Preamble further notes that the UN has ‘manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms.’²⁵⁶ In other words, both articles do not accept discrimination against anyone and the ‘problem with offshore processing is it results in a distinction between the procedural rights of asylum seekers based on their mode and place of arrival.’²⁵⁷ Von Doussa also draws on the rights of the child under the *Convention on the Rights of the Child* (CRC) and particularly the article 37(b) of the CRC which urges that the detention of a child should be used as the last resort when all other options are exhausted and it must be done in the shortest period possible.²⁵⁸ Article 3(1) of the CRC urges countries to protect the best interests of the child which means there is no insurance that the children’s application for asylum is processed in those detention centres will protect the best interests of children.²⁵⁹ Offshore processing centres are also undermining Australia’s obligation in protecting the rights of unaccompanied minors and it would be almost impossible to protect children who seek asylum.²⁶⁰

4.6.1 - Changing Images of Refugees

Cheryl M. R. Sulaiman-Hill et al, found that the media reporting of the irregular maritime arrivals is heavily influenced by the government as a result of their reporting of refugee issues reflecting the government’s negative references of the refugee.²⁶¹ This is partly

²⁵⁴ United Nations, ‘The Universal Declaration of Human Rights | United Nations’, accessed 23 September 2016, <http://www.un.org/en/universal-declaration-human-rights/>.

²⁵⁵ Refugee, ‘UNHCR - The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol’.

²⁵⁶ A. Edwards, ‘Human Rights, Refugees, and The Right “To Enjoy” Asylum’, *International Journal of Refugee Law* 17, no. 2 (26 April 2005): 297, doi:10.1093/ijrl/eei011.

²⁵⁷ Linda Bosniak, ‘Universal Citizenship and the Problem of Alienage’, *Northwestern University Law Review* 94, no. 3 (2000): 963–982.

²⁵⁸ UNICEF and others, ‘Convention on the Rights of the Child’, 1989, <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1007&context=child>.

²⁵⁹ United Nations Human Rights, ‘Convention on the Rights of the Child’, accessed 23 September 2016, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

²⁶⁰ Bosniak, ‘Universal Citizenship and the Problem of Alienage’.

²⁶¹ Cheryl M. R. Sulaiman-Hill et al., ‘Changing Images of Refugees: A Comparative Analysis of Australian and New Zealand Print Media 1998–2008’, *Journal of Immigrant & Refugee Studies* 9, no. 4 (2011): 347, doi:10.1080/15562948.2011.616794.

due to the media's dependence on government sources and statements which comes out 'in support of the 'propaganda model.'²⁶² However, the worry here is the public's 'repeated exposure to media 'cultivates' or shapes attitudes and individuals' world views,' which means this would inevitably lead to public expression 'of unwarranted disapproval towards particular groups' such as refugees.²⁶³

An example of such exposure to the media cultivated a worldview is the 9/11 events in the United States which has inflamed 'anti-Muslim sentiment ... around the world.'²⁶⁴ Australia's 'Offshore Processing' policy was largely influenced by the events and the majority of irregular maritime arrivals coming to the nation were predominantly from Muslim countries. In contrast, asylum seekers had little influence and power to 'soothe public perceptions of threat regionally or globally, despite a history of humanitarian support for refugees.'²⁶⁵ The Australian print media has always published the 'views of ethnic minorities' in 'combination with professional or political viewpoints.'²⁶⁶ It highlights the power imbalance between the 'political elites and authoritative expert's view' in reporting the refugee issues because the media mainly construct the debate to dehumanise refugees and 'particularly at a time when it was not politically expedient to portray the human face of the asylum seeker problems.'²⁶⁷

4.6.2 - Politics of Asylum Seekers

The fight over 'stopping the boats' has mostly been a struggle of toughness of masculinity between the two major parties and each side wanted to project a message of who is tougher and stronger than the other in tackling the issue. For instance, Mr Hardgrave accused the Labor Government to be a 'soft touch' for people smugglers, therefore they dare to compromise Australia's border integrity and national security by sending asylum seekers.²⁶⁸ Moreover, in the Dobell electorate in Melbourne, posters were warning voters that if you vote Labor then you will get flooded with illegal migrants, and slogans such as 'Vote

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid., 359.

²⁶⁸ Hardgrave, 'Parliamentary Debates: House of Representatives Official Hansard No. 14, 2001', 31105.

Labor; get Taliban for your neighbour' was used to frighten people in the 2001 election.²⁶⁹ Coalition argued that 'illegal boat arrivals' undermine Australians confidence in the government's refugee program and wanted to send a clear message to the electorate that only a Coalition government can 'stop the boats'.²⁷⁰ In the 2013 election, the Coalition wanted the public to trust them over the Labor party in dealing with asylum seeker issues because they stopped the boats under the Howard Government, in 2001. On the other hand, Labor always tried to neutralise the Coalition's strongest points, especially in the election year, which is 'stopping the boats'.²⁷¹ This is evidence that the major parties never were really interested in seeing the issue from a humanitarian prism and to debate why asylum seekers are putting their lives in danger on the high sea to seek Australia's protection.

Asylum seeker issues have mostly been a show ground for the two major parties to prove who is the cruellest and toughest in dealing with the asylum seekers matter. The Howard Government was accused of using the 'children overboard' issues and border protection as an election agenda to win the 2001 election.²⁷² Mr Andren argued that the government and media duped the asylum seekers issue to fit their election agenda and to win the election. However, the government accused asylum seekers of throwing their children overboard to blackmail and dictate their will on Australia.²⁷³ Mr Andren accused the government of disparately appealing to people's 'feeling of insecurity' to get re-elected and argues that to claim asylum seekers do not have any regards to the life of their own children is dangerous and immoral to justify in winning an election. He believes that the children overboard issues were deliberately 'manufactured to exploit the fears and concerns within the

²⁶⁹ Michael Danby, 'Parliamentary Debates: House of Representatives Official Hansard No. 3, 2002', 11 March 2002, 959,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2002-03-11/0000%22>.

²⁷⁰ Ibid.

²⁷¹ Liberal Party, 'Protecting Our Borders', *Liberal Party of Australia*, 22 April 2016,
<https://www.liberal.org.au/our-plan/protecting-our-borders>.

²⁷² Julia Gillard, 'Parliamentary Debates: House of Representatives Official Hansard No. 1, 2002', 14 February 2002, 272,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2002-02-14/0000%22>.

²⁷³ Peter Andren, 'Parliamentary Debates: House of Representatives Official Hansard No. 1, 2002', 14 February 2002, 277,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansardr/2002-02-14/0000%22>.

electorate.²⁷⁴ Senator Faulkner argues that there was not children overboard, and we did not have ‘asylum seekers who ... set their boat on fire’.²⁷⁵

4.7 - Rhetoric and ‘White Australia’ Mentality

Despite the fact, the policy has been criticised significantly by a wide range of professionals and social workers such as mental, human rights, NGOs and refugee advocates, however the policy has undeniably enjoyed huge support by some significant portions of Australian society.²⁷⁶ Newman et al., argued that this is because Australians are worried about the structure of their society as ‘homogenous Anglo Saxon population.’²⁷⁷ Whether rightly or wrongly, Australians may still fear immigration, especially those who came from different cultural and ethnical background, such as Muslims and Asian.²⁷⁸ Newman believes that these sentiments are deeply rooted in xenophobic responses to the asylum seeker issues and some media outlets described IMA arrivals as a ‘tsunami’ of refugees which has justified the Australians’ xenophobic sentiment.²⁷⁹ Savitri Taylor argues that even though Australia has come a long way since the ‘White Australia Policy’, but there are still traces that Australia is concerned about its white ethnical background.²⁸⁰ Therefore, the nature and number of immigrants matters to Australia because the countries’ people are concerned about preserving their culture, and having control over their ‘economic and social rights of citizens.’²⁸¹

4.8 - Conclusion

This chapter has highlighted the unstated aims of the ‘Offshore Processing’ policy and looked at what the Parliamentarians have to say about asylum seekers and their concerns for Australia and Australian humanitarian policy. It has been examined that apart from the stated aim of the policy there have been unstated aims by which the government concerned

²⁷⁴ Ibid.

²⁷⁵ John Faulkner, ‘Parliamentary Debates: Senate Official Hansard No. 5, 2002’, 18 June 2002, 2052, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber/hansards/2002-06-18/0000%22>.

²⁷⁶ Newman, Dudley, and Steel, ‘Asylum, Detention, and Mental Health in Australia’.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid., 113.

²⁸⁰ Taylor, ‘Australia’s Pacific Solution Mark II: The Lessons to Be Learned’, 107.

²⁸¹ Ibid.

itself about other factors. For instance, asylum seekers rights to get their application reviewed in Australia in case of negative decisions by the DIBP and the government's attempt to prevent that to happen. Issues such as culture and events that have had a strong effect on the government's decisions in processing asylum seekers in third countries and the chapter used examples of the 9/11 and children overboard. The power and use of language through which the government used avenues to justify its 'Offshore Processing' policy has also been examined. It has also been argued that some Parliamentarians try to portray negatives images of asylum seekers for many reasons such as not coming through Australia's humanitarian program and the problem with humanitarian program has been discussed. Finally, this is an enormous issue and sometimes very emotive for some people, like refugee rights advocates and human rights advocates, however this chapter has endeavoured to provide many arguments as possible from all stakeholders, such as the Australian government, the Australian Parliaments, and NGOs.

5 - Chapter five – summary of the thesis

5.1 –Conclusion

The aim of this chapter is to summarise what has been argued throughout the thesis. The thesis highlighted Australia's obligation to asylum seekers' human rights under international law and *Refugee Convention* and provided a brief history of the 'Offshore Processing' policy. It has been argued that the policy was a response to the loaded question of how Australia should respond to asylum seeker arrivals by boat. It has also been discussed that the idea of processing asylum seekers all started with the infamous HMV *Tampa*. The *Tampa* incident, 'children overboard' issues and the 9/11 attacks events were the reasons the Government decided to process asylum seekers' claim for protection in the Pacific countries. Critics accused the Australian Government for fabricating the incident for political purposes because the entire 'children overboard' story later turned out to be false.

This thesis has argued that the cruel and inhumane techniques are used in offshore detention centres to degrade and punish detainees in order to break individuals' will to resist going back and 'to dominate and dehumanise' detainees in those facilities.²⁸² Consequently, 'Offshore Processing' facilities gained Australia disrepute for committing cruelties intentionally for political purposes. This treatment includes constant surveillance (comprising both human and video surveillance); handcuffing when making escorted visits outside centres; constant roll calls and reference to detainees by identity number rather than by name.²⁸³ Furthermore, it has been argued that disrespect for detainees' privacy and 'the impact this had on mental health and relationships' of the detainees demonstrate that 'Offshore Processing' policy has not been successful in respecting their dignities and helping them to survive.²⁸⁴ Instead, the impact of prolonged detention on IMAs has been 'collective depression syndrome' and the scars and traces of mental health will remain with the detainees for their entire life and it would cost them financially, emotionally and socially. The quote

²⁸² Briskman, Zion, and Loff, 'Challenge and Collusion', 1097.

²⁸³ Ibid., 1095.

²⁸⁴ Essex, 'Healthcare and Clinical Ethics in Australian Offshore Immigration Detention', 1042.

below provides a succinct description of Australia's offshore processing facilities where around 2000 asylum seekers and refugees have been warehoused and suffer:

Poor and crowded living conditions, limited access to water, facilities beyond repair and exposure to phosphate dust were all raised as issues. Mice, rats and other pests such as mosquitos were noted. After a visit to Nauru, Amnesty International described the conditions there as 'squalid'.²⁸⁵

This study argued that Australia's 'Offshore Processing' policy punishes asylum seekers as a deterrence which is in conflict and contradiction with the spirit of ethic and humanitarian norms of resettlement.²⁸⁶ It has provided the reasons why asylum seekers should be given priority over people who are living in distant a refugee camp, and to whom Australia therefore has a lesser duty.²⁸⁷ Nonetheless, the Australian Government has focused on discouraging people to come to Australia by boats and introduced many deterrent measures to stop people seeking Australia's protection. Some of these measures aim to delegitimise IMAs and tried to depict them as law breakers who do not deserve Australian's assistance and compassion. This was a deliberate and strategic decision by the Australian Government to portray asylum seekers as 'wrong doers' and people who intentionally broke Australian law. Consequently, offshore processing centres gained Australia disrepute because of the dire conditions of the centres and asylum seekers have been abused, raped and developed mental health issues and long-term trauma.²⁸⁸ In short, the policy failed to save lives because the mental health issues will leave long-term scars on the life of the refugees who have already been traumatised and punished despite never committing a crime.

Some of the darkest sites of human cruelty in the offshore detention centres have been highlighted throughout the thesis where children are traumatised, women are raped - there is indignity and suffering.²⁸⁹ That is why the Australian Government and its offshore

²⁸⁵ Ibid., 1043.

²⁸⁶ O'Sullivan, 'The Ethics of Resettlement', 257.

²⁸⁷ Ibid., 256.

²⁸⁸ Amnesty International Australia, 'Australia: Asylum Camp Cruel and Inhumane', 23 November 2012, <https://www.amnesty.org/en/latest/news/2012/11/australia-asylum-camp-cruel-and-inhumane/>.

²⁸⁹ Paul Farrell, 'Twelve of the Most Harrowing Accounts from the Nauru Files – in Pictures', *The Guardian*, 9 August 2016, <http://www.theguardian.com/australia-news/gallery/2016/aug/10/twelve-of-the-most-harrowing-accounts-from-the-nauru-files-in-pictures>.

processing contractors were ordered to pay AU\$70 million in compensation for human rights abuses of 1905 asylum seekers and refugees held on Manus Island.²⁹⁰ This is the largest human rights compensation payout in Australia's legal history and it is an indication of the Australian Government's scant regard to human lives and human rights.²⁹¹ In a nutshell, this thesis argued that the lives and welfare of asylum seekers and Australia's obligation under international laws and treaties does not matter to the Australian Government when it comes to border control.

To sum up, the Australian Government has been successful in 'stopping the boats' from coming to Australia's shores, but the policy has damaged many lives in offshore processing centres. The thesis showed that number of refugees has risen since 2000 which means the policy never helped to stop people from seeking asylum but rather rerouted them to other destination countries. This indicates that the policy failed to destroy the people smuggling business. Lastly, it is still disputable as to whether the policy's objectives materialised in terms of saving lives and combating people smuggles for two reasons; first, there is no credible data to test the claim against, and second, most migrant movements around the globe were carried out by the people smugglers.

²⁹⁰ Ben Doherty, 'Tony Abbott and Peter Dutton Condemn Payout to Refugees Detained on Manus Island', *MSN*, 14 June 2017, <http://www.msn.com/en-au/news/australia/tony-abbott-and-peter-dutton-condemn-payout-to-refugees-detained-on-manus-island/ar-BBCGfVG>.

²⁹¹ *Ibid.*

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