“Go back to where you came from”:
Australia’s asylum seeker policy, 2007-2015

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Isaac Ichila Eyalama

(BA, Mak; MSc, IHSU)

School of Global Urban and Social Studies

College of Design and Social Context

RMIT University

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Declaration

I certify that except where due acknowledgement has been made, the work is that of the author alone; the work has not been submitted previously, in whole or in part, to qualify for any other academic award; the content of the thesis is the result of work which has been carried out since the official commencement date of the approved research program; any editorial work, paid or unpaid, carried out by a third party is acknowledged; and, ethics procedures and guidelines have been followed.

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Dedication

I dedicate this work to my lovely wife Angella, and our beautiful daughter Danielle. We are on a journey together. It is not yet over. Great things are yet to come; greater things are still to be done in our lives. Thank you for your enduring patience throughout the course of this study.
Glossary of key Terms

Asylum seeker (s) or boat people—unless otherwise specified in this document, these refer to persons who have either arrived in to Australian mainland or excised territories by boat, including those who have been returned at sea while seeking to enter Australia or its territories. These persons are taken in to the context of asylum seekers as defined or classified by the United Nations Refugee Convention.

The Department—refers to the Australia’s Government Department for Immigration.

Applicant(s)—any person(s), usually arriving in Australia by boat who has sought or has applied for protection in Australia as either an asylum seeker or refugee. These may be further classified by the department as Unaccompanied Minors (UAMs), Irregular Maritime Arrivals (IMAs) or Unauthorised Maritime Arrivals (UMAs).


The Act/Migration Act—refers to the Migration Act 1958.


Deterrence—is used to refer to any part or whole of Australia’s government policy that is or has been intended at keeping boat arriving asylum seekers from entering Australia. These include polices of off shore processing, turning away of asylum seeker boats at sea and also refusal of protection visa grants other than temporary protection for those living in the Australian mainland.

The Minister—refers to the Minister for Immigration in Australia.

The ICCPR (the Covenant)—the Second Optional Protocol to the International Covenant on Civil and Political Rights.

The CRC—the Convention on the Rights of the Child.

The CAT—the Convention Against Torture and other cruel, inhumane and degrading treatment or punishment.

TP/TPVs—Temporary Protection Visas.

WTP approach —refers to Bacchi’s “What’s the problem represented to be?” approach to policy analysis.
Abstract

Australia’s asylum seeker policy in recent years has been contentious in nature. It is arguably designed to send asylum seekers back to wherever they came from and if not detain them in a third country. How and why deterrence has become the hallmark of Australia’s asylum seeker policy while Australia had a well-deserved reputation as a country accepting of refugees, is something that needs to be explored. In exploring deterrence as a central aspect of Australia’s asylum seeker policy, I have employed an analytic framework comprising Bacchi’s “What’s the problem represented to be” and Lakoff’s account of the role of metaphors. For research data the thesis draws on seventeen asylum seeker bills presented to the Australian Federal Parliament between 2007 and 2015, as well as speeches, press releases and media events involving Prime Ministers and a range of Ministers for the period 2007 and early 2015.

This research builds on existing research on asylum seekers in two ways. It builds on work already done analysing successive government’s policies since 1992. It also analyses these policies using a new framework and emphasis on political discourse.

I have identified the representation of asylum seekers as a security problem. There are also five key metaphors that explicate what successive Australian governments have treated as the key problems and the course of action it took based on its problematisations. The first metaphor is the “country as home” metaphor that represents the problem of “illegal” boat arrivals by constructing Australia as a house/home under threat from asylum seekers. The second metaphor is the “queue” metaphor where the asylum seeker system is depicted as though it is a queue, which has formed out the front of the “Australian home”. The third metaphor constitutes the arrival of asylum seeker boats as a “natural disaster” that leads us to believe that like any disaster, they pose a serious threat, but in the form of insecurity, and also issues of identity. The fourth metaphor justifies the government’s chosen course of action. The fifth and final metaphor is the “war” metaphor with the depiction of boat arrivals as an “invading army”.

While these metaphors are not isolated but are well bounded, they originate from the Australian/western understanding of a home and privacy. Each metaphor relies on the existence of the other metaphors for support and reinforcement for representing what the problem is and what action is required. The first three metaphors serve to represent Australia as a home, a home that is under threat and what it is under threat from.

The findings from this analysis are that there are specific ideologically (mis)informed representations of asylum seekers in the context of metaphors. This research has busted these representations and findings should guide policy makers and advocates to rethink the current approaches to asylum seekers.

Key words: Asylum seekers, policy, deterrence, metaphors, Australian Federal Parliament, mandatory detention, offshore processing.
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CHAPTER ONE: INTRODUCTION

It was on Tuesday 29 March 2011 that I first came to Australia. It was something I had been looking forward to with intense pleasure and not a little anxiety. It was my first venture into what back in Uganda I was used to referring to as the “developed world”. I really did not know what life would be like for me in Australia. It certainly helped that I was going to be reunited with my wife who had been awarded an academic scholarship and had come to take up her post-graduate studies in Australia earlier in that January. I was going to be here for two years and would have to look for a job.

A few weeks passed by and I was now actively engaged in the process of making some job applications. I was looking for a job in youth services, having previously worked with young people in Uganda. I sent out a number of job applications but many got negative responses, perhaps because most of my previous work experience had been in the HIV and AIDS health sector. Eventually one of my applications to work with asylum seeking young men with a not-for-profit agency in Melbourne was successful. I was invited for an interview and I got the job.

This process of preparing for the interview brought back some memories from my journey to Australia. In my flight from Dubai to Melbourne, Australia, my inflight entertainment involved watching movies and then checking international news clips. One news item that dominated that time inflight was about an asylum seeker who had taken his own life in an Australian detention centre.\footnote{http://www.abc.net.au/news/2011-03-28/detention-death-puts-centre-on-edge/2637766- accessed 09/05/2015} The dead man had been detained for some period and his claim for asylum in Australia had been rejected. There was a narrative about asylum seekers protesting in detention centres.\footnote{http://www.refugeeaction.org.au/?p=750- accessed 09/05/2015} There were stories about refugee advocates marching in protest.\footnote{http://www.smh.com.au/federal-politics/political-opinion/for-forgotten-asylum-seekers-riot-is-the-only-way-to-be-heard-20110328-1cdeh.html- accessed 09/05/2015}

I owed my new job to the fact that the Australian Labor government (under Prime Minister Julia Gillard) had made some changes to Australia’s mandatory detention policy at the end of 2010. The policy removed children and vulnerable families from
detention and released them to the community in the care of community agencies—a move that had been welcomed by many refugee agencies, advocates and activists. I now had a frontline job working with asylum seekers classified as Unaccompanied Minors (UAMs) who had come to Australia by boat. Those asylum seekers had been passed over into the custodianship of selected non-profit agencies, while the Australian Federal Government minister remained their guardian under the then-Department of Immigration and Citizenship (DIAC), (and later the Department of Immigration and Border Protection (DIBP) now under the Australian Border Force (ABF).

It proved an exciting job working with young people from culturally diverse backgrounds. It was time to learn another language and culture. These were amazing young men. They were very friendly and they told a lot of stories -some of the stories were funny, some were horrifying. They told of terrifying moments at sea, or while on their journey by boat to Australia. Some of these young people were also very gifted. They were eager to engage, and be engaged with people and activities in the wider Australian society, especially, in sports and other youth social activities.

Apart from the extraordinary, sometimes horrifying stories told me by these young people, I could not help but be aware that their presence in Australia has been and was still central to one of the most significant and longest-running political controversies in Australia’s recent history. Both the experiences of these people and the controversies attached to Australia’s asylum seeker policy have joined up to provide the intellectual motivation that led to this thesis, namely a sense that here was something that needed some kind of deep understanding.

The choice of the title of my study is based on an award winning Australian Television documentary series “Go back to where you came from”, broadcast in 2011 (Season One), Season Two in 2012 (Douglas and Graham 2013) and Season Three in July 2015. These television series document the experiences of some selected Australians with

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http://www.border.gov.au/- accessed 22/08/15
varying views on refugees/asylum seekers who are taken through the experience of life in a reverse journey through the path that people seeking asylum/refuge in Australia have come from\(^7\). It is some of the differencing and strongly anti-asylum seeker (boat arrivals) views presented by some participants in this award winning documentary that I will argue, are in resonance with the core of Australia’s asylum seeker policy in recent years. In each series, the participants were taken to some countries reputed to be the most dangerous places on in the 21\(^{st}\) century such as Somalia, Pakistan and Afghanistan, countries which the Australian Department of Foreign Affairs and Trade often puts on high alerts based on the prevailing security situations and advises its citizens not to travel there\(^8\).

**Australia and Refugee Intake**

Australia has a long history of offering protection to refugees. In the second half of the twentieth century, it emerged as one of the many destinations for people seeking refuge in the world. It is reported that Australia received more than half a million refugees and asylum seekers between 1945 and 1990 (Ackleson 2005). Other scholars argue that in the post-second world war, it assisted in international efforts in the resettlement of 600,000 refugees (Hugo 2002a). Other figures also suggest that Australia has resettled 750,000 refugees since world war two (Bowen 2011). In 1954, Australia like many other countries ratified the 1951 United Nations Convention on the status of Refugees and in 1973 also ratified its 1961 Protocol (UN 2007). This convention was a legal and binding instrument of the United Nations that defined who a refugee is; spelling out their rights and the legal obligation of states to protect those rights (UNHCR 2007). This act of ratification set up certain obligations for the Australia to respect and abide by its guidelines to protect refugees/asylum seekers such as the rights to enter a country or a territory to seek asylum and the right not to be forcibly returned or non-refoulement (UNHCR, 2007).

Within the broader classification and context of refugees is a component of people referred to as asylum seekers. The distinction between a refugee and an asylum

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seeker is not markedly different. The 1951 United Nations Convention relating to the status of Refugees defines a refugee as any person who has left their country of origin or habitual residence because they claim to have suffered (or fear) persecution on account of race, nationality, religion, political opinion or because they are a member of a persecuted social group. Refugees are people who have applied and are assessed to be in need of protection while they are still outside of a resettling country or territory usually through an international agency like the United Nations High Commissioner for the Refugees (UN 2007). Asylum seekers on the other hand apply for protection after reaching the territorial borders of a country or territory they seek to gain protection, usually without valid documentation. Yet the precise nature of those obligations has proved one of the many complicating factors in Australia.

Australian governments still continue to resettle refugees and asylum seekers, although their intake is quite minimal in terms of numbers compared to other countries like the United States and Canada. According to the UNHCR 2011 report, Australia was at the bottom of the ladder in terms of per capita for the numbers of asylum seekers. However this is not the whole story nor does it quite catch the controversial character of that aspect of Australia’s refugee policy dealing with asylum seekers. It wasn’t that way in the years after the cessation of the Second World War. For a decade or so while the issue of asylum seekers occupied successive Australian governments the initial spate of people seeking asylum after the 1976 US-Vietnam War, was carried out under UN guidelines with asylum seekers simply placed in the community while their claims for asylum were processed.

Beginning in 1989 the Australian government decided that people seeking asylum have to be detained and established detention centres (Costello 2012; Edwards 2005). It is hardly a secret that the development of Australia’s recent and current asylum seeker policy has become one of the most bitterly divisive, discursive and discussed issues in the history of modern Australia (Douglas and Graham 2013; Fletcher 2014; Fozdar and Torezani 2008; Freeman 2004; Gavrielatos 2011; Gerard and Vecchio 2012; Murphy 2009, 2011).

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10 See http://www.unhcr.org/4fd6f87f9.pdf accessed 14/04/15
It is the duty of the Australian government under its Department of Immigration to assess the validity of each asylum seeker’s claims in line with the obligations under the 1951 UN Convention (UNHCR 2007) once they have logged their applications for protection – as people in need of protection and seeking asylum in Australia. The current Australian government continues to accept approximately 13,750 people\textsuperscript{11} from refugee backgrounds\textsuperscript{12} annually through its humanitarian program and other programs\textsuperscript{13} although this was revised back from 20,000 in the 2012-2013\textsuperscript{14}, a single increment that was resulted from the report of the recommendation of the Expert Panel on asylum seekers\textsuperscript{15}.

People in need of protection are resettled through the Special Humanitarian Program which covers both onshore protection and offshore resettlement\textsuperscript{16}. The onshore component is established for people who enter Australia and subsequently apply for protection of the Australian government in line with the provisions of relevant United Nations (UN) conventions to which Australia is a party (UN 2007). This means that on arrival or interception in Australian territory, Australia, like some other countries of the developed world detains individuals and families claiming asylum seeker status while their claims to refugee status are assessed. The Australian Department of Immigration and Border Protection classifies these people as “Irregular Maritime Arrivals”. Mandatory Detention has been defended on the grounds that it is part of the process of having health and security checks done by the Department of Immigration and Border Protection (DIBP) as their (people arriving by boats) claims for asylum seeking are being verified before IMAs are either granted visas or returned to wherever they came from (usually country of origin).

However the issue of asylum seekers became increasingly contentious in the late 1980s fuelled by evidence of popular anxiety about the numbers of arrivals by boat of

\textsuperscript{11}http://bhutanesesa.org.au/uploads/2014/04/SPH-Handout.pdf\textsuperscript{ - accessed 09/05/2015
\textsuperscript{13}https://www.immi.gov.au/media/fact-sheets/60refugee.htm\textsuperscript{ - accessed 09/05/2015
\textsuperscript{14}https://www.immi.gov.au/media/publications/pdf/shp-client-info-sheet.pdf\textsuperscript{ - accessed 09/05/2015
\textsuperscript{15}http://artsonline.monash.edu.au/thebordercrossingobservatory/files/2015/03/expert_panel_on_asylum_seekers_full_report.pdf\textsuperscript{ - accessed 09/05/2015
\textsuperscript{16}For more information https://www.immi.gov.au/visas/humanitarian/offshore/shp.htm \textsuperscript{ - accessed 14/04/2015
people seeking asylum/protection (Hudson-Rodd 2009). This anxiety occurred in spite of the fact that Australia’s intake especially when compared to other host countries is negligible as previously mentioned. The Fraser coalition government (1975-1983) treated refugees with exemplary generosity without mandatory detention or temporary protection (Colebatch 2010). In the late 1980s the Hawke-Keating governments began a process to tighten up its asylum seeker policy with specific elements as will later be detailed in this thesis. There are two controversial aspects of this policy namely; the policy of mandatory detention and that of offshore processing.

The Policy of Mandatory Detention

Whilst the guidelines of the 1951 UN Convention and its 1967 Protocol, do not conceive of the possibility of illegal entry as a problem, people arriving in Australia as asylum seekers have been subjected to mandatory administrative detention since 1992. This was a policy that was created by the Keating Labor Government in 1992. It was introduced to deal with the spate of Indochinese boat arrivals after the Vietnam war. These increased boat arrivals were a concern for the government(s) which had initially been receptive to those fleeing the war.

However when the numbers of boat arrivals increased, the Australian government began to detain all new arrivals to distinguish between those who have submitted themselves for offshore processing prior to entry to Australia and those who had not. This was intended “to support the integrity of Australia’s Migration Program” and to allow the government to effectively control the composition of, and overall numbers in Australia’s immigration program” as explained in the explanatory memorandum of the Migration Reform Bill 1992 ¹⁷ of “Australia’s borders”. This policy was strengthened by the Migration Reform Bill 1992 ¹⁸ which received bipartisan support from both sides of Australia’s major political parties. This legislation made some major changes to the Migration Act 1958. Mandatory detention was to ensure that

anyone who arrived in to Australia with no valid documentation especially by boat would be detained indefinitely till their claim for asylum had been assessed.

Detention of any illegal entrants to Australia was justified for assessment processes, including security and health checks to establish their legitimacy to stay and be resettled in Australia. Those detained were given the opportunity to opt to depart Australia for their country of origin at any time. Over time, and with the change in Australian governments and that in themselves brought a number of policy changes in the Australian asylum seeker policy trajectory, some categories of asylum seekers eventually get referred to the community detention program. These live in the community under the custodianship of certain contracted agencies who provide the necessary casework support to ensure that asylum seekers' needs and vulnerabilities are appropriately identified and addressed whilst the DIBP do background and or health check through the different mechanisms.

**Off-Shore Processing Policy**

Off-shore processing is the other even more controversial aspect of the policy that started during the Howard Coalition government in the early 2000s in what was termed as the Pacific Solution. The "Pacific Solution" was Australia's asylum seeker policy response that was born from the August 2001 crisis of the TAMPA event, a Norwegian vessel that rescued a large number of asylum seekers destined to mainland Australia from an ill-fated and sinking boat (Beeson 2002; Billings 2011). The government under Prime Minister John Howard was determined to stop the TAMPA from entering Australian waters when it became an international issue (Beeson 2002). Determined not to let the asylum seekers in its territory, and while enjoying some electoral advantage with the masses, the government had to swiftly come up with new legislation in this regard. This marked the beginning of the “Pacific Solution” as a change to the Australian asylum seeker policy, largely meant to process all entrants by boat outside of the Australian legal territory (Mathew 2002).

Because of the popularity that the Howard Liberal Coalition government enjoyed with the Australian electorate, they radically changed the policy as the Coalition parties made dealing with the asylum seeker problem the top priority in their campaign which subsequently saw the Howard Coalition government re-elected in 2001. In the
wake of that election triumph many islands were excised from Australia’s immigration zone and asylum seekers were removed off-shore to third countries like the tiny island nation of Nauru and Papua New Guinea’s Manus Island in order to determine their refugee status (Billings 2011; Hugo 2002b).

The Howard coalition government also introduced a system of granting temporary protection visas to asylum seekers and initiated a policy of turning back boats where possible. This was followed up a range of legislation providing the Australian government with the powers to remove any ship in its territorial waters and guaranteed that no applications for asylum could be made by people on board these boats (Billings 2011). Other legislation reinforced the practice of mandatory detention, providing for the indefinite detention of those seeking asylum in Australia. Immigration detainees were held in the many immigration detention facilities in Australia or on Manus Island or Nauru as part of the “Pacific solution” (Hugo 2002b; McAllister 2003).

Asylum Seeker Policies, 2007-2015

The years between 2010 and 2015 have proved to be a tumultuous period in the Australian asylum seeker policy environment as successive governments have either introduced new policies or reverted to the old ones. While the Rudd Labor government (3 December 2007- 24 June 2010) was hailed for having officially disbanded the Howard era (March 11, 1996- December 3, 2007) “Pacific Solution” policy, the Gillard Labor government (24 June 2010- 27 June 2013) soon reverted back to what looked a lot like Howard era policies, by attempting to send asylum seekers to other countries like Malaysia in what was referred to as the “Malaysian Solution” 19.

What is even more intriguing for many is that upon his return as Prime Minister of Australia, Kevin Rudd (June 27, 2013- September 18, 2013), who had disbanded the

19See - http://www.smh.com.au/national/gillard-announces-malaysian-solution-20110507-1ed0h.html-
Pacific Solution “re-invented” it in his *Regional Resettlement Agreement*\(^{20}\) with the governments of Papua New Guinea and Nauru not only to process asylum seekers but to resettle them there. Finally we saw the Abbott Coalition government introduce what is called the *Operation Sovereign Borders*\(^{21}\) policy since winning the Australian Federal election in September 2013. It is government policy to intercept and turn back at sea any vessel with persons destined to Australia back to where it came from—usually Indonesia. This also means that detention now takes place in a number of offshore facilities in other countries outside Australia’s legal territorial boundaries.

In this study I want to “put a spotlight” on Australia’s response to asylum seekers and in particular to illuminate the motivations driving these policy responses over the last few years as well as clarify why there seems to be such a gap between Australia’s international obligations to asylum seekers and its actual treatment of them. This forms the central nature and context of my thesis. Let me spell out my key research questions.

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Key Research Questions

In analytic terms the large central question central to this thesis is this:

How and why has asylum seeker policy in Australia since 2007 been effectively oriented first to Mandatory Detention and Off-Shore processing and now to complete total deterrence of asylum seekers from coming to Australia?

This central question is then broken down into a series of smaller questions. These include:

1. What kinds of problems are there in the recent and current scholarship dealing with Australia’s asylum seeker policy?

2. In particular how do scholars explain the current preoccupation with deterrence and the absence of any policy commitment to meet Australia’s human rights obligations in international law?

3. In what ways if any, do Lakoff’s (1980) analytic on metaphors Bacchi’s (2009) “What is the problem represented to be” approach and to studying policy making, help to explain the preoccupation with deterrence?

Justification for This Research

My research project is designed to help explain how and why Australia’s asylum seeker policy objective has moved away from compliance with international law and has become much more oriented towards deterrence or seeking to prevent asylum seekers making claims for asylum. We need to understand what possibly helps best explain why successive governments, at least from 2010 reverted to the policy of deterrence of those seeking asylum in Australia when policies of mandatory detention, temporary protection and offshore processing came to play. It is my conviction that choosing “What’s the problem represented to be” approach and mixing its use with the analysis of metaphors will to enable us better understand the underpinnings or unperceived situations that arise from problem representations in policies or policy proposals on asylum seekers.
Recent and current research on asylum seekers

The number of bibliographies addressing the issue of Australian asylum seekers points to a large body of research work (as well as commentary and polemic) that touches directly on the issue of asylum seekers and refugee policy in Australia. Academic research on this theme has been conducted by a large number of scholars from fields such as sociology, law and legal studies, psychology, human rights and political science. And while this body of work pursues different themes and issues, much of this literature shares a common assumption namely that immigration in general and asylum seekers in particular is inherently a controversial topic (Boulos et al. 2013) (Crock and Ghezelbash 2010).

A good deal of academic research has concluded for example, that recent or current asylum seeker policies in Australia emphasising either deterrence or detention do not meet international human rights standards (Schloenhardt 2002). In examining developments in Australian border policing policy since the election of a Labor government in November 2007. Grewcock (Grewcock 2013) argues for example that despite the formal cessation of the “Pacific Solution”, there are fundamental continuities in policy that ensure systemic human rights abuses by the Australian state against unauthorised refugees. This is because of the many cases of physical injury, trauma and re-traumatisation, self-harm, suicide and death that have been caused to asylum seekers by Australia’s border policing and mandatory detention strategies. Grewcock wonders why successive Australian governments refuse to take responsibility or are not held accountable for the many violations of asylum seekers’ human rights. Some of this research has documented human rights abuses (Fleay and Briskman 2013) Asylum seekers in Australia’s Curtin detention centre have narrated the different human rights violations from indefinite detention, rejection of asylum claims to complexities and inconsistencies in the refuge processing system (Fleay and Briskman 2013). Other research has addressed issues like separation from family, dependence on anti-depressants and long waits for security clearance even in the instances where one was found to be a genuine asylum seeker.

One observation about this work is that much of the current body of academic work in relation to asylum seekers policy seems to be more reactive than diagnostic. That
is, while addressing asylum seeker policy in Australia, much of the literature has tended to limit the scope of inquiry to fixing the problems arising from the policy rather than addressing the policy itself. Equally this is not to deny of course that there is a large body of research work which has addressed the political process especially to do with public opinion and the role of the media in shaping public opinion towards the arrival of asylum seekers as will be later covered in the subsequent chapters (Aly 2007; Bartlett 2012; Brown; Burney 2009; Louis et al. 2007). However this existing literature needs to be complemented by establishing what is at the motivational core of Australian policy on asylum seekers over the years, especially from the years 2007 onwards.

What cannot be doubted as much recent commentary, for example (Bartlett 2012; Billings 2011; Davies 2013; Douglas and Graham 2013; Mares 2011) have insisted is that Australia’s asylum seeker policy has come to emphasise deterring the arrival by sea of asylum seekers by any means available to the Australian government. This research tells us that asylum seeker policy in Australia especially since 2007 is: a) More about creating a policy designed to deter potential asylum seekers from seeking entry into Australia and b) that once the key elements of that policy like the use of aggressive naval patrols to detect, apprehend and divert boats carrying asylum seekers, or processing asylum seekers claims in off-shore detention centres in Nauru or Manus Island) has been applied, its effects on the lives of people seeking asylum are detrimental (Bartlett 2012; Davies 2013; Douglas and Graham 2013). However what is less clear is what this research tells us about the why of this policy.

Scholars like Ahlawat (Ahlawat 2012) for example have tried to explain the development of Australia’s population policy since the origins of British settlement. Beginning with an all-white Australia policy in 1901 after federation, Ahlawat points out that Australia, while located in Asia, has always worked to establish its “British” identity and attachments. This was exemplified in its 1901 policy of “white Australia” where an English dictation test was required to be undertaken by anyone other than white arriving in Australia. Ahlawat argues that this policy was adopted to address the challenge posed by threat of possible migration from the surrounding Asian countries. He further goes on to discuss the transitions that occurred after the Second World War that saw the resettlement of south European immigrants mainly from Italy.
and Greece. And then there was a shift from white Australia to the policy of multiculturalism in the 1970s. The Whitlam government formally declared the white Australia policy to be “dead and buried” and asserted that it was necessary to recognise and accept the culture that migrants carried with them rather than dismissing their distinctiveness\footnote{http://www.whitlam.org/gough_whitlam/achievements/foreignaffairsandimmigration-accessed 20/09/14} while his predecessors extensively implemented the policy of multiculturalism. He identifies the circumstances and the antecedents that resulted in a policy of multi-culturalism in Australia in the 1970s shaped by ideas about social cohesion, cultural identity and equal opportunity and access for all.

What Ahlawat’s work suggests is that Australia moved away from an all-white policy and reinvented its identity as an inclusive Australia. Yet this account does not help to explain why successive governments, from 1992 on adopted a policy that moved away from compliance with international law and ended up in a policy of deterring those seeking asylum in Australia.

My research is based on the need to address a central problem, namely why has Australia adopted a policy of deterring asylum seekers from coming to Australia since 2007? The objective of my research is to bridge the gap, in scholarly terms, that currently exists in relation to the subject of recent and current asylum seeker policy in Australia. Whereas there is some body of work examining the motivational core of the asylum seeker policy, my work comes as a modest addition and expansion of this body of work, from another theoretical lens. This research builds on existing research on asylum seekers in two ways. It builds on work already done analysing successive government’s policies since 1992. It also analyses these policies using the framework of “What’s the problem represented to be” analytic postulated by Carol Bacchi (Bacchi 2009) together with the analytic work on metaphors as presented by Lakoff and Johnston (1980).

\textit{A problem with conventional policy studies}

There is a conventional account of policy making which stresses that it is a “rational”, evidence-driven process often involving technical experts (found in the policy making...
community like the officials employed by a government) aided by the external experts
drawn for example from the media, consulting firms and the social sciences.

This is sometimes referred to as the comprehensively rational model of policy decision
making. The model presupposes an actor, for example the decision maker, which may
be a policy community or agency searching for "utility maximizing (hence, optimizing)
solutions". Further this model assumes or presupposes:

- A well-defined problem;
- A full array of alternatives to consider;
- Full baseline information;
- Full information about the consequences of each alternative;
- Full information about the values and preferences of citizens; and,
- Fully adequate time, resources, and infinite cognitive capacity (Forester 1984).

In this model of policy-making it almost seems as if there is in fact no decision to be
made. Once the analysis is complete, the “optimal decision” is chosen, as it is
apparently the only rational course of action. On this account, states or governments
are assumed to be exemplars of rationality whose personnel engage persistently in a
kind of empirical or objective process of policy-making often deploying a utilitarian
rational calculus is operating. In a major survey of state repression Davenport
(2007:4) for example, notes in typical fashion that:

Political leaders carefully weigh the costs and benefits of coercive action … when
benefits exceed cost, alternatives are not viewed favourably, and there is a high
probability of success, repressive action is anticipated. When costs exceed
benefits, alternatives exist, and the probability of success is low, no repression is
expected.

This approach to policy making means for example, that “data” is transformed into
“technically defined ends to be pursued through administrative means” (Fischer,
1998, p. 133-134). While such accounts of policy making have been subjected to steady
criticism by writers like Rittel and Webber (Rittel 1974), these assumptions about the
relationship between social reality and social science methods used to describe and measure it are still largely operative in policy analysis.

This is so in spite of several decade of important criticism by Lindblom Simon and others for example Lindblom (1959 p.80) argued that the policy-making process is inherently more complex. Lindblom observed in terms that seem to need being recalled more often than it is that the comprehensively rational model:

... assumes intellectual capacities and sources of information that men simply do not possess, and it is even more absurd as an approach to policy when time and money that can be allocated to a policy problem is limited, as is always the case.

Simon too argued for what he called a *boundedly rational* model. Here, Herbert Simon(Simon 1959) argued that decision makers were cognitively bounded, and were faced with the following conditions:

- Ambiguous and poorly defined problems;
- Incomplete information about alternatives;
- Incomplete baseline information, the background of the “problem”;
- Incomplete information about the consequences of supposed alternatives;
- Incomplete information about the range and content of values, preferences and interests; and
- Limited time, limited skills, and limited resources.

Additionally Simon argued that far from seeking maximizing solutions, policy and decision makers simply tried to satisfy whatever criteria they have set for themselves in advance (this became known as the “satisficing” heuristic). Hence, once a solution is found which meets the minimum criteria set by the decision maker, the search process is stopped, and a decision is taken. Kingdon’s model of the policy making process likewise rejects a rational, linear view of the policy process, in which actors first identify problems and then elaborate solutions for them. Kingdon is clear on this point: “Agendas are not first set and then alternatives generated: instead, alternatives must be advocated for a long period before a short-run opportunity presents itself on
an agenda” (Kingdon 1984: 215). Kingdon says problem recognition is crucial to agenda-setting. Socio-economic “conditions” or events for example come to be defined as problems only when political actors believe that something should be done to change them. Interpretation is critical in classifying an event into one category or another. He also claims that independently of problem recognition, political events have their own dynamics: elections, interest group behaviour, ideological conflict set up specific developments in the political sphere, thus modifying existing agendas, or structuring completely new agendas.

Much of this critique, while it is acknowledged has failed to change the conventional and mainstream academic approach. Lindblom (1959: 80) proved prescient when he remarked that the teaching of public administration was so devoid of reality that it left decision makers “in the position of practicing what few people preach.”

Davis, Wanna, Warhurst and Weller (1993), Bardach (2000), and Althaus, Bridgman and Davis (2007) all offer accounts of the policy-making process couched in terms that stress the broadly rational framework. Policy analysis texts such as these treat the policy-making process in ways that give little weight to how people make sense of the “facts” that inform a particular policy approach, why certain issues are constituted as “problems” and not others, and why certain kinds of issues are privileged over others (Mintrom 2007), pp. 153 – 154).

Policy making studies of the conventional kind focuses on the “objective” description or measurement of social issues. Part of this relates to the artificial divisions made between “facts” and “values”, or “objectivity” and “subjectivity”. People necessarily construct these distinctions because knowledge cannot be divorced from personal experience (Ryan, 2006, p. 16).

As I have already argued there is a good case made over a long time by a tradition that talks about the “social construction of reality” for bypassing this approach (Berger and Luckmann 1966; Hacking 1999; Gergen 2009). If reality is a social construction, policy makers need to focus more on “the discursive processes which shape the construction of policy” (Hajer & Wagenaar, 2003, p. 217). Put simply, we need to take into account the constitutive processes involved in policy making and the role that language plays in shaping the way we make sense of reality.
Arguably the most fundamental element in the policy-making process involves discourse. Without it, policy could simply not be made (Bessant et al. 2006, p. 301). Whether in formal or informal settings, language, and particularly metaphor, shapes the way we think, indeed we think using language. Language is thus a key ingredient in the construction of a “problem” that policies address. As Bessant et al (2006, p. 305) contend, “thinking about the role of talk (especially metaphors) can heighten awareness that the knowledge of the social world is constituted and shaped through talk about “it”. This is also the same thing that (Lakoff 2002) echoed that “words don’t have meanings in isolation. Words are defined relative to a conceptual system” (Page 29).

For this reason my research project is focussed on the way asylum seekers, arriving by boat are talked about in Australian politics (policy responses). And indeed “one of the most fundamental results in cognitive science, one that comes from the study of common-sense reasoning, is that most of our thought is unconscious - not unconscious in the Freudian sense of being repressed but unconscious simply in that we are not aware of it. We think and talk too fast at a rate and at too deep a level to have conscious awareness and control over everything we think and say” (Lakoff 2002).

To do this in this research project, I will examine the use of metaphor in the policy-making process, which led to the development of policies like the “Pacific Solution” but more importantly the 2010 “East Timor Solution”, the 2011 “Malaysian Solution”, the 2013 “PNG solution” - from the Rudd Labor government’s Regional Resettlement Agreement with the Papua New Guinea and more recently, the Liberal Coalition’s “turning back the boats policy” known as the Operation Sovereign Borders from September 2013. The examination of the use of metaphors is also extended to analyse the asylum seeker bills presented, debated or passed in the two levels of the Australian Federal Parliament from 2007-2015. I will do this in order to highlight how the issue was problematised and provide some insight into why these policies were adopted.

Metaphors are commonly used by humans to make tangible, intangible or less tangible concepts by using those things that humans easily think about, such as aspects of our bodies or social relationships, and transposing them in relation to those things that
are more complex or remote, such as the day-to-day experiences in our social worlds (Lakoff and Johnston, 1980).

**Research approach**

In investigating the evolution of Australian asylum seeker policy especially in the years 2007-2015, I decided to employ a particular kind of qualitative research method which relies on the version of policy discourse analysis developed by Bacchi (Bacchi 2009). It is usually referred to as the “What’s the problem represented to be” analytic.

Bacchi (Bacchi 2009) has developed a distinctive approach to understanding the policy making process by way of a systematic inquiry into a number of dimensions. This is an interpretative and analytic framework that encourages the researcher to identify implied problem representations in specific policies or policy proposals and thus guide in identifying the problem representations or perhaps the dominant theme in each policy proposal. Bacchi’s interpretative approach leads us to identify and examine the presuppositions or assumptions underlying the representation of the problems that the policies seek to address, in this case-Australian government(s) policies on asylum seekers arriving by boat since 2007.

In terms of method, my thesis offers a qualitative content analysis that involves analysis and interpretation of documents drawing on the analytic framework of the “What’s the problem represented to be” approach. I employed a systematic analysis of selected key asylum seeker policy documents generated by successive Australian governments for the period under study (2007-2015).

A variety of written and published documents were employed in this study. I sought to identify key government documentation that directly targeted asylum seekers for the period under study. These documents are distinguished between primary and secondary documents/sources. Primary sources are materials produced first hand regarding asylum seekers by successive Australian governments between 2007 and 2015. These consist of parliamentary records, speeches by government leaders, reports, policy statements, government action plans and policies on asylum seekers
at federal level. Policy statements and strategies on asylum seekers by the DIAC now DIBP during the period of study were considered for analysis as primary sources.

Alongside the primary sources were the secondary sources. Documents that provide commentaries and analysis on the original/primary sources were considered secondary sources. Secondary sources are further be categorised into public or private documents. Public documents consist of media sources such as newspaper articles while private sources are commentaries made by individuals or organisations at the forefront of asylum seeker advocacy and service provision in Australia.
Below is the flow-chart illustration of how final documents to be analysed were selected.

Using this approach, I treated Australian asylum seeker policies from 2007-2015 as the sum of the words, language and talk selectively describing circumstances in ideologically informed ways. My assumption in this interpretative framework is that social actors in the policy process have their own assumptions, knowledge and understandings of policy issues. This mix of value-based interpretations means that the policy process can be described as a struggle over ideas.
Conclusion

In this introduction, I have provided a background to my research topic, defined the purpose of the research and the questions it seeks to answer. I have also outlined the research approach and provided an overview of the current and recent literature.

In the next chapter, I will provide a more detailed assessment and review of recent and current academic literature. Subsequent chapters will encompass a detailed explanation of the techniques or social science methods used in the design, selection and analysis of documents in this research, based on the key objective and research questions outlined above. There are also chapters to detail the contemporary Australian asylum seeker policy over the years, a presentation of analysis and findings and the final chapter on conclusions and recommendations for further study.
CHAPTER TWO: LITERATURE REVIEW

In this chapter, I provide a detailed review of the recent and current literature on the subject of asylum seekers. It is paramount to acknowledge that there is a large body of work that is focused on asylum seekers and refugees in general. There are a number of scholars who have contributed to this subject from the different disciplines and perspectives including policy discourse analysis, human right abuses or state crime framework, race and intercultural perspectives and ethnography. I also want to highlight some of the problems with the literature.

*Migration history in Australia*

The history of Australia's immigration policy in the twentieth and twenty first centuries is generally acknowledged to be full of paradox. On the one hand the general shape of that history especially since 1901 has been characterised by the overt expression of "white racist" sentiment. From the time when the modern Australian Constitution was being developed in the 1890s, the regulation of migration into Australia proved to be a chronic site of national anxiety and later of deep political controversy fuelled by fear that Australia’s British identity was threatened by its proximity to Asia. That anxiety was on full display between 1901 and 1974 when Australia introduced and defended a bi-partisan "White Australia" policy (Kelly, 1994). This was a policy designed to maintain a “racially” homogenous white society.

Yet paradoxically, it could also be argued that Australia earned a well-deserved reputation for its long and creditable history of offering protection to refugees after 1945. In the decades after the Second World War Australia assisted international efforts to address the global problem of "displaced persons" (as refugees were then referred to), by resettling at least 600,000 refugees (Hugo 2002a): other scholars like Bowen (Bowen 2011) suggest a larger number closer to 750,000 refugees. Into the early 1980s the Fraser Coalition government (1975-83) treated refugees with exemplary generosity (Colebatch 2010).
Then as I indicated in the introduction, there was a dramatic reversal of policy. Since the late 1980s the controversial character of Australia’s immigration policy was once more accentuated. It was then that Australia, like so many other developed societies, was again required to deal with the expansion in the numbers of refugees and asylum seekers. The Hawke Labor government introduced mandatory detention for all asylum seekers in 1989. This was the precursor to moves adopted since 2001 to deter asylum seekers by making any attempt to arrive on the mainland of Australia increasingly onerous if not impossible. After 1989 migration became the excruciating site of profound tensions between the exercise of executive power used to promote national sovereignty and to uphold the rule of law. This tension has since come to be one of the most defining features of modern Australian politics. That tension sits alongside a bi-partisan consensus between the two major parties about the necessity of making asylum seekers a security problem. How Australia reached the point where both major political parties got caught up in a “race to the bottom” to ensure that Australia ceased to be understood as place for refuge for people who take to the sea is a major question that has puzzled, even baffled, some scholars (Manne 2013; Markus 2010; Mcadam and Purcell 2008).

The Puzzle Outlined

What is very clear in the literature is a concern shared here that recent and current Australian current policies and practices addressing the problem of asylum seekers, like the use of mandatory detention, temporary protection and offshore processing is so clearly at odds with a human rights perspective. This is said in recognition that although the Executive Committee of the UNHCR recommends “temporary detention” as a minimum protection an asylum seeker should receive, it is only to be applied in situations and contexts of “mass influx” pending the resolution of such causes of movement of people (Edwards 2012). Scholars who have addressed Australia’s Immigration history point to the fact that immigration detention has become an increasingly routine practice and process of handling asylum seekers especially in the developed world. (Bashford and Strange 2002). Indeed it has been pointed out that

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23 It is for this reason that these scholars have argued that Australia and its regional initiatives need to focus more on protection of those seeking asylum and not on deterrence Sara Davies, ‘Protect or Deter? The Expert Panel on Asylum Seekers in Australia’, Social Alternatives 32/3 (2013), 26-33.
Australia may be the only signatory of the 1951 Convention on Refugees that has a policy and practice of indefinite mandatory detention of asylum seekers (Flohm 2014). And although this does not necessarily explain why Australia has taken hard-line stance on asylum seekers (Eltham 2011), the issue of people arriving by boats in Australia cannot be taken or treated in the contexts of influx of very large numbers of asylum seekers as has been be the case of Congolese and Sudanese refugees in Uganda or Sudanese and Somali refugees in Kenya.

International human rights law clearly spells out the obligation of state signatories to human rights covenants to protect persons from arbitrary arrest and detention (Costello 2012). That said, scholars also acknowledge the tensions between universal human rights to liberty and the state’s sovereignty and border protection prerogatives. Others have questioned the scope of protections offered to persons seeking asylum in the 1951 Convention relating to the status of Refugees in the light of the increasingly restrictive and hard-line policies and practices of deterrence and detention of those seeking asylum by various governments (Edwards 2005).

Whereas it is true that hard-line and restrictive asylum seeker policies and practices of mandatory detention call into question the scope of protections offered to asylum seekers in the 1951 Convention and its 1967 Protocol to which the Australian government is a signatory (Edwards 2005), it falls short of explaining why these hard-line policies have become the Australian norm.

Since the Hawke government (1983-91), successive governments have championed the proposition that Australia has the right to shape its population profile as it sees fit. Prime Minister Howard claimed famously in 2001 to exemplify this position when he said, “we will decide who comes to this country and the circumstances in which they come”. That proposition was framed by heightened anxiety about national security. The aftermath of the 2001 Federal election saw the birth of the “Pacific Solution” as a new and central feature of Australia’s asylum seeker policy as a number of Pacific islands were excised from Australia’s immigration zone and asylum seekers were removed to third countries in order to determine their refugee status. The Howard government also introduced a system of temporary protection visas for boat arrivals and a policy of turning back boats where possible. This was followed by a raft
of legislation introduced into parliament. One bill provided the Australian government with the powers to remove any ship in its territorial waters and guaranteed that no applications for asylum could be made by people on board these boats. The other bill reinforced the practice of mandatory detention, providing for the indefinite detention of those seeking asylum in Australia. Immigration detainees were held in the many immigration detention facilities in Australia or on Manus Island or Nauru as part of the Pacific solution.

To date no leader of an Australian government has articulated an equivalent regard for upholding Australia’s international human rights obligations. Indeed the most recent variations of these policies adopted under the Rudd and Gillard governments (2006-13) and now the Abbott government (2013-) has led many international observers to argue that Australia is now in breach of its international legal obligations. This was the burden, for example, of findings of the UN Special Rapporteur who found that various aspects of Australia’s asylum seeker policies violate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Anonymous 2015a).

Here it seems is a puzzle: how are we best to explain the reversal of what had once been a policy characterised by a regard for the protection of basic human rights claimed by those seeking asylum informing a policy accepting asylum seekers which after 1989 became a punitive policy involving mandatory detention that turned into one of deterrence? In this chapter I review recent and current research to establish what light, if any, this literature sheds on this puzzle.

As I indicated in the introduction, much of the current body of academic work in relation to asylum seeker policy appears to be concerned to document the treatment of asylum seekers rather than explain the evolution of asylum seeker policy, especially since the late 1980s and early 1990s. Much of the recent and current scholarship is preoccupied with documenting the problems experienced by asylum seekers after they have arrived in Australia (or more recently after they have been housed in offshore detention centres (like human rights abuses, the lack of adequate housing, or inadequate access to services or income support, as well as seeking or offering solutions to address these and other problems which are a consequence of on
Australia’s asylum seeker policies. These studies have documented how harmful indefinite mandatory detention is to the lives of those seeking asylum (Dudley 2003).

**In Search of Explanations**

There does not seem to be a lot of work which directly addresses the problem of explaining how it was that into the 1980s Australia had a good reputation for its generous response to asylum seekers which then turned after the late 1980s into a punitive policy involving detention and other elements emphasising the need for deterrence.

Certainly there is some research literature while truly depicting that there a resentment to asylum seekers and refugees in Australia from the perspective of discourse analysis; yet it does not dig deep to the root as why there is asylum seeker or refugee sentiment. One early yet influential examination of media discourse about asylum seekers and refugees in the Australian press by Pickering (Pickering 2001) for example, showed that refugees were viewed not just as a "problem" but as a "deviant" population representing a threat to the integrity of the nation-state and the Australian community.

Some research has documented patterns of negative attitudes in the Australian community to asylum seekers. Pedersen et al (Pedersen et al. 2006) discussed the character of community’s beliefs. Other work has confirmed the scale of prejudice directed at asylum seekers by sections of the Australian community (Pedersen and Thomas 2013). Other research has tried to show that public debate about asylum seekers often minimises the humanity of those involved (Gilchrist 2013). The issue here is what best explains this pattern of negative sentiment.

Some of this research proposes that negative public opinion reflects the role played by federal government policies in reinforcing negative sentiment directed at asylum seekers in Australia. This research has, for example, examined the role played by the representation by governments of asylum seekers as “queue jumpers”, “illegal”, “criminals”, “terrorists”, and “economic refugees”. However this research does not say why governments have adopted this style of negative representation in the first instance (Pedersen et al. 2006).
This difficulty is further enhanced by research relying on discourse analysis on the two major political parties drawing on parliamentary debates. As Every and Augoustinos (Every and Augoustinos 2008) show, constructions of national identity were operating in the language of those both opposed to the entry of asylum seekers into Australia or those supporting the rights of entry to asylum seekers. For some the construction of a nation’s identity is traced through the application of migration laws exemplifying a humanitarian framework (Dauvergne and Ramsarran 2005). Every (2008) has explored the concept of humanitarianism in a discourse analysis of asylum seeker debate in Australia. Her paradoxical conclusion is that the very ambiguity of the concept of humanitarianism when framed in terms of liberal binaries (like reason versus emotion or costs versus duty have tended to justify exclusion rather than inclusion of asylum seekers (Every 2008). Again however this does not shed much explanatory light on the puzzle.

In other research (Briskman 2013) has analysed critical events in Australia’s approach to asylum seekers. She has documented the discursive and policy trajectory with regard to critical events in the recent past that have shaped policy and discourse on asylum seekers in Australia. She argues that increases in the number of arrivals of people by boat to Australia after 2010, and the losses of lives at sea due to boat capsizes resulted in heightened attention politically which assisted in building a foundation for harsher policies. As she points out ironically

“... compassion for asylum seekers can be used opportunistically to portray the tragedy of death at sea as a justification for stricter policies against people trying hard to seek sanctuary in Australia” (Briskman 2013).

This undoubtedly reflects the way both Coalition and Labor politicians have represented the deaths of asylum seekers at sea as a reason for adopting a policy of “stopping the boats” at sea was warranted. This trajectory was evident when Prime Minister Julia Gillard in June 2012 appointed an expert panel on Asylum Seekers to “provide advice on policy options to prevent asylum seekers from risking their lives on dangerous boat journey’s to Australia”. Some pundits (Bagaric 2010) argued the only humanitarian solution to the boat people crisis was to double Australia’s annual
refugee intake and stop all onshore assessment of those without pre-existing refugee status (asylum seekers coming to Australia by boat). Others argued that the 1951 UN Convention Relating to the Status of Refugees was now outdated (Fletcher 2013). In effect, says Briskman, wearing the mask of compassion, concern about the deaths by drowning at sea fuelled a manufactured “crisis” followed up by the adoption of even more stringent policies designed to deter asylum seekers rather than protecting the human rights of those seeking asylum.

Yet this argument is puzzling for a number of reasons. For one thing the evidence suggests that up to 97% of those coming to Australia by boat have been found to be genuine refugees after the verification process (Phillips 2011). Secondly we are still left with a puzzle about the way a “normal” degree of compassion that might be expected in response, for example, to the reports of the way some asylum seekers were dying at sea could be trumped by a concern to “protect” Australia’s borders. (This idea of a “normal” compassion refers for example to the way Australians generally support expensive operations involving naval and air personnel saving the lives of mariners in some kind of trouble). Finally Briskman’s analysis of critical events that have occurred through the course of Australia’s evolving asylum seeker policy ultimately seems to explain the government’s policy of overlooking the humanitarian and human rights aspect of the asylum seeker problem by suggesting that this is all about the politicians doing this for political gain. Yet this does not quite resolve the puzzle. Why would politicians gain political capital from adopting the kinds of harsh policies on asylum seekers they have clearly shown some preference for doing? What is still not being addressed is why politicians who have adopted the deterrence frame, believe this would be popular with the Australian electorate, or why that electorate might favour that position in the first instance.

Other scholars have adopted different kinds of explanatory strategies. Some researchers have tried to use economic factors to explain the shape taken by the policies adopted over the last 20 to 30 years. This has involved pointing to increased

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24 Each year the government sets the number of visas that may be granted under the programme. The 2013–14 programme has 13 750 places comprising:
- a minimum of 11 000 places offshore (including up to 1000 places for women at risk), and
feelings of economic vulnerability sentiments conducive to the growth and popularity of “conservative” or “populist” that are unfavourable to “foreigners” (McNevin 2007). McNevin argues that conservative politics gained increased support from those Australians adversely affected by the radical program of economic reforms of the 1980s and 1990s and of factors like a decline in mineral exports, increased rates of inflation and increased unemployment. The result was a growing resentment directed at immigrants and refugees who were perceived as taking away a diminishing supply of jobs or who were primarily interested in getting economic benefits at the expense of Australians. While asylum seekers may be portrayed as people pursuing economic opportunities as some have argued in the negative rhetoric directed at those seeking asylum, studies conducted elsewhere have shown that the belief that asylum seekers are primarily seeking economic benefits is at odds with the fact that many of those seeking asylum were both highly skilled and had previously enjoyed a higher standard of living in their countries (Burnett and Peel 2001). This notwithstanding, it is clear that this kind of economic argument led to the increasing popularity of Pauline Hansen’s One Nation Party after 1996 promoting “protectionist” policies. This economic insecurity allowed for the mobilisation of support based on a mix of implicit and explicit racial and ethnic criteria. McNevin adds that some of the tenets of One Nation Party were silently adopted by the Liberal-National Party Coalition government since 1996.

Conversely others have argued there is a macro-political context that is shaping contemporary electoral politics in much of the developed world. This context is shaped by a confluence between the mass media and public opinion that then influences the development of policy problems related to non-economic issues. In an exploration of parliamentary politics in two European democracies, scholars like Green-Pedersen and Krogstrup have pointed to the diversification of political debates as non-economic issues such environmental protection, sustainability, immigration and refugees have become central to party politics (Green-Pedersen and Krogstrup 2008). They argue that victory for major parties is now tied to a role played by immigration issues in the political party agenda - something that has been seen in Australia (Duncanson 2003). Subsequently immigration issues become a dominant feature of the political landscape and protracted efforts of governments to deter entry
become engrained in policy agendas. In Australia pundits have often castigated government for resorting to providing "privative clauses" through amendments in the Migration Act laws largely to stymie asylum claims (Hocking and Guy 2010). They argue that the human rights of those seeking asylum are obstructed by the arrows and slings of outraged public opinion. Hocking and Guy (2010) point to the case of Canada which has accepted more refugees per capita in the world than any other country, to argue that rights-based politics grounded in the quest for due process and equal rights for all people (asylum seekers included), have shaped Canada’s migration policy (Anderson 2007).

Some have pointed to the role played by a deeply engrained racist ethos in Australian culture. Some writers have pointed out for example, that race-based exclusionary laws were in place in Australia for the better part of the twentieth century. Equally racially practices like quarantining, internment and incarceration existed in Australia for a longer time and can be traced back to the nineteenth century. It is argued that dating way back to the closure of the 1800s, non-criminal and non-citizen populations like the Chinese entering Australia were held in detention en masse without trial (Bashford and Strange 2002). This, they argue, was linked the ideas of territory, national security and citizenship. Other writers have tried to explain the development of asylum seeker policy after 1992 as a consequence of racialized xenophobia and “moral panics” (Lobo 2013).

Hyndman and Mountz (2008, p245) rely on a Foucauldian kind of explanation when they start by arguing that the issue of how to deal with asylum seekers is increasingly characterized as a security issue, rather than one of protection for refugees as inscribed in international law. And they add this:

“...continuous act of defining asylum in security terms has a performative element, in the Foucauldian sense: “it produces the effect that it names. Its categories, codes, and conventions shape a cultural ethos. Hyndman and Mountz for example, have argued that boat loads of asylum seekers arriving on Australian shorelines have evoked “xenophobic, racialized, well-rehearsed fears and moral panics about the “other”, linked to a desire to control borders and protect one's territory”.

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As they argue, asylum seekers arriving by boat have been treated differently from other people arriving in Australia, something embellished by the rise of Pauline Hansen's One Nation Party in 1996 or by the “war on terror” after 2001, both contributing to a progressive hardening of policy, like a comprehensive detention regime or moves to process asylum seekers’ claims off-shore. As they argue, governments went to some lengths to create misleading portraits of those arriving seeking asylum:

By not releasing the identities of detainees for several years, the Australian government conflated persons, histories, countries of origin and legal status. Through such homogenization emerged the figure of the bogus, criminalized, racialized asylum seeker (Hyndman and Mountz 2008)43, (2, pp. 249–269).

Yet this argument still does not explain why governments felt they were warranted in creating or using misleading representations of asylum seekers.

What then of claims made by some scholars who have argued that the development of migration policy as an arm of national security was heightened in the wake of the 11 September terrorist attacks in the United States? It seems clear that in 2001 governments everywhere began to see refugee and asylum seeker issues through the lens of security. The September 11 terrorist attacks in America and the subsequent wars in Iraq and Afghanistan increased the rates at which boat arrivals came from countries like Iraq and Afghanistan. Refugees and asylum seekers were increasingly represented as a security threat to those countries they sought to enter (Dünnwald 2011). The so-called “war on terror” was quickly conflated with the issue of asylum seekers, many of them Moslems, who were fleeing for safety at a time when “terrorism” was globally associated with Islam. This meant that security and integrity of state became hard-line issues both in Australia and elsewhere in the developed world (Boulus et al. 2013). Australia aligned itself to the US in response to the September 11 attacks (Beeson 2002). Post-September 11 saw a toughening in an already hard line policy in Australia.

Here we confront a further puzzle. Granting that the asylum seekers were victims of war and terror within their own homelands why were they able to be redefined as security threats?
Here some scholars have drawn on the concept of moral panics. As Cohen who did much to popularise the use of this concept argued, “Societies appear to be subject, every now and then to periods of moral panics” (Cohen 2002). Cohen defined a moral panic as “a condition, episode, person or group of persons that emerges to be defined as a threat to social values and interests”. Although his work was especially directed at the emergence of youth (sub) cultures in 1960s Britain (especially groups like the Mods and Rockers, his real interest was in exploring the nature of society’s reaction to particular forms of deviance. This entailed looking at ways in which certain groups or kinds of behaviour were perceived and conceptualised by the media, experts and policy makers.

As Cohen (Cohen 2002) argued, the nature of the threat central to a moral panic was typically presented first in a stylised and stereotypical fashion by the mass media. The moral barricades were then manned by the editors, bishops, politicians and other “right-thinking people”. Socially accredited experts then pronounced their diagnoses and solutions. The condition, person or group of persons might then submerge, disappear, or become more visible. Sometimes the object of the panic is new or at other times it may be something that has existed before. Sometimes the panic passes and it is forgotten except in folklore and collective memory. Other times it has more serious and lasting significance producing long term changes in the legal and social policy dimensions or in the way that society regards itself.

One example of the way some researchers have addressed the issue of asylum seeker policy through the lens of the “moral panic” model is offered by Manderson (Manderson 2013). He has likened moral panics and their role in shaping illicit drug policy debate in Australia to the debate about asylum seekers.

Manderson recalls that the “zero tolerance” policy to drug use in the 1970s was framed in language that exaggerated the crisis posed by the threat of a “deluge of drugs” which was at odds with the actual social harm posed by drug use. Zero tolerance drug policy gave rise to hugely expensive law enforcement strategies based on the underlying assumption that enhancing the severity of the laws would deter
people from using illicit drugs.\textsuperscript{25} There could well be some kind of affinity between the arguments made about the development of “moral panics” and the way other scholars have attempted to explain the policy shifts that took place after 1989 by arguing that policy-making institutions are “information-processing” mechanisms. In discussing the politics of attention to explain why some issues take centre stage in policy debates, scholars have argued that political organisations have to interpret signals from their environment in order to create policy outputs (Robinson 2006). Presumably this means paying attention to the way policy makers interprets the discourses and language being used to describe particular problems that become the object of their policy making.

Manderson concludes that Australia does not have an asylum seeker problem so much as an “asylum seeker problem” caused by an unwarranted exaggeration in the way language has been used to create a perception or framework of anxiety and threat. However it is noteworthy that apropos the asylum seeker debate, Manderson avoids explaining why this misrepresentation was able to take place. In this respect he seems content to describe the moral panics leading to the adoption of strong deterrence laws in Australia’s asylum seeker policy. This is a problem too in the original development of the “moral panic” model by Cohen.

Cohen relied on the interactionist tradition in sociology to understanding moral panics and social typing. This approach stresses the role of social processes like stereotyping that enables some people to successfully label others as “rule breakers” or as belonging to certain “deviant” groups. This approach has led to a useful reorientation or rethinking in sociological studies of delinquency, deviance, crime, and drug-taking. Its chief value lies in encouraging social science to question and not take-for-granted the labelling by some powerful groups of other groups or behaviours as deviant or problematic.

However the interactionist approach simply reinstates a sociological truism that the judgment of a deviance is ultimately one that is relevant to a particular group and

\textsuperscript{25} Although the relation between deterrence in Australian drug policy and its counterproductive consequences is more complicated in relation to the subject of asylum seekers, Manderson seems to be implying that harsh laws do not eliminate but merely complicate the whole issue.
spelling out the implication of this labelling. It fails to say why particular groups like teenagers in the 1960s or asylum seekers in the twenty first century come to be identified as “deviant” or as a threat. This approach also fails to say whether there is any rational basis to this process or some kind of economic or political logic or rationality at play in this process of creating a “moral panic”. There is here a personal reflection on the recent Australian history where Gilchrist (Gilchrist 2013) has observed “demonstrates, subtle differences in wording or tone that can generate and reflect very different attitudes that in turn influence the quality of public discourse surrounding refugees”. However, to what extent this public discourse has influenced asylum seeker policy cannot particularly be determined. It is that problem that I think begins to be resolved in the work of Bacchi (Bacchi 2009) which I will turn to in the next chapter.

**Conclusion**

What this brief overview of recent and current research suggests is that we need to understand better why contemporary asylum seeker policy is more about a policy aimed at deterring asylum seekers from coming to Australia rather than finding ways of discharging Australia’s obligations to asylum seekers under international law by protecting those seeking asylum. While there is a considerable body of research that focuses on the plight of people seeking asylum in Australia, there is little or limited specific focus on why Australia has adopted the increasingly punitive and deterrent framework that now characterises its asylum seeker policy. What I have shown is that there is a good deal of descriptive work pointing to the role of racist ideology, economic insecurity, the use of misrepresentations of asylum seekers or even moral panics. What I also suggested was that much of this work was strong in its capacity to describe certain phenomena but was not so strong when it came to generating satisfying explanations. That deficiency I want to begin to rectify in the next chapter when I turn to the work of Bacchi (Bacchi 2009).
CHAPTER THREE: RESEARCH METHOD

In this chapter, I outline something of the approach to my key research questions as well as detailing the social science methods and procedures used in the design, selection and analysis of data in this study. Based on the key objectives and research questions or this study outlined in the introduction, the procedures outlined in this chapter will have a bearing on the value of the findings outlined in subsequent chapters.

**Bacchi and “What’s the problem is represented to be”**

This study relies on an interpretative approach to research based heavily on the work of Bacchi (2009) and the analysis of metaphors as guided by the work of Lakoff and Johnston (1980; also Lakoff 1999) who were arguably among the first scholars to investigate the fundamentally metaphorical nature of our conceptual system. The combination of these two will be the basis for this qualitative research design.

I begin by outlining the nature of Bacchi’s framework.

Bacchi’s is a post-positivist approach. It requires that we focus on the role of language, metaphors and discourse in constituting a given policy problem and the policy to which it gives rise. This approach to policy analysis thus suggests that language, metaphors and discourse “give a particular shape” to the way in which problems and issues are talked about. A recent and very vivid example of these problem representations in policy, or at least in shaping of policy can be seen on how the terms of reference of the Expert Panel on asylum seekers were constituted by the Gillard Labor government in 2012\(^2\). It was framed to provide advice on policy options to prevent asylum seekers from “risking their lives on dangerous boat journeys to Australia”. In essence, the language and discourse focused more on people risking their lives on ill-fated and dangerous and less on those that the government would

later detain or deport those who survived through the “dangerous boat journeys” at sea.

Bacchi tells us that “problems are created or given shape in the very policy proposals that are offered as “responses”. A critical analysis of “prescribed policy solutions” offers a way of making visible the different assumptions and worldviews determining policy outcomes. She further encourages the researcher to bear in mind and recognise that policy “is a set of shifting, diverse, and contradictory responses to a spectrum of political interests”. To demonstrate her approach Bacchi uses the example of drunkenness to highlight the range of possible interpretations of the concept of drunkenness: as health, law and order, family violence, and/or welfare issues. Bacchi’s point is that if drunkenness is viewed as a problem of law and order, policy responses will advocate restricting access to alcohol, licensing regulations and other legal responses. Where drunkenness is viewed as a health issue then responses will include education strategies to make explicit the health impact of drinking, and so on. Importantly, how the issue is framed shapes who has policy responsibility and resource. It is argued that the dominant paradigm around public policy making is focused on discovering what works to “solving problems” i.e. evidence-based policy. This WTP (What’s the problem?) approach to public policy analysis is different in that it seeks to unearth how particular proposals in policy imply certain understanding of problems.

This approach breaks the grounding premise in most conventional policy analysis approaches that policy is purposed at “solving social problems”. Rather it directs our attention to the ways in which particular representations of a “problem” creates a problem itself. The WTP approach in essence is a critical mode of analysis that turns the other sides of the coin, assuming that coins has more than two sides, by interrogating (problematizing) the problem representations. It provides a systematic methodology for looking at the coin the different way hence creating the opportunity to question often taken for granted assumptions that lodge within policy proposals/programs. We need to probe deeply into the rationales for and in asylum seeker policies over the years to unearth the deep seated presuppositions underpinning the proposed change. What possible silences exist in the understanding of what needs to change? What effects are likely to accompany the understanding of what needs to change?
the “problem” in question? Bacchi in her *What’s the problem represented to be* approach to policy analysis urges that, it is important that we explain the particular understanding of the certain words in policy such as “problem of the boats” because of the many ways this is referred to in speech/writing as it can have different meanings. Example “problem child” may refer to a child that is very difficult to deal with while a “problem” can also refer to something puzzling, something that presents a challenge that needs to be “cracked”.

In this approach, “problem” refers to something else. It refers to the kind of change implied or intended in the particular policy proposal. An example to elucidate this could be, say, if a policy proposal is made to train girls in martial arts in order to defend themselves from rape, it means the problem is being represented as lack of training on the part girls that is responsible for their being sexually violated. So in this case of people arriving in Australia by boat and then ending up being referred as the “boat people”, what really is the problem? What needs to be change? And why the change? How are boat people thought as problems? And is it possible that “boat people” are managed (the way government designs its programs) through the problematisations that are resident in policy proposals. In order to flesh out the problematisations (analysing the asylum seekers policy), we will need to open up for scrutiny what the implied “problem” of asylum seekers is and what government has deemed as “needing to be fixed “in subsequent asylum seeker policies over the years especially from 2007 as earlier pointed out, by reading off from the policy itself. We need to understand government’s characterisation of the problem in order to explain how the issue is being understood.

It is these implied problem representations in recent and current Australian asylum seeker policy that this research focuses the spotlight at, with intent to reveal some of the motivations at play in the development of Australian asylum seeker policy.

To unearth how particular proposals in policy imply certain understanding of problems, researchers are encouraged to put that understanding into scrutiny using the following six questions that will form the analysis of key and selected Australian government policies on asylum seekers, especially since 2007.
However, for this research, I will only put emphasis on the Bacchi’s first question in triangulation with Lakoff and Johnstone’s work on metaphors in analysing Australia’s asylum seeker policy. Bacchi’s questions are worth of stating and are as follows:-

1. What’s the problem of asylum seekers arriving in Australia by boat represented to be in specific policy/legislative documents and pronouncements?

The goal of this question is to identify implied problem representations in specific asylum seeker policies or policy proposals over the years. We need to identify the problem representations or perhaps the dominant proposals in each policy proposal. We will need to understand what is assumed? What is taken for granted? What is not questioned?

2. What presuppositions or assumptions underlie this representation of the asylum seeking people arriving by boat in Australia? What effects have been produced by this representation of the “boat people” problem?

The meaning for presuppositions here will refer to the background “knowledge” that is sort of taken for granted. It will include all the epistemological and entomological assumptions. It is important that we critically analyse some categorizations of people in the policy proposals. We must understand the techniques associated with the creation of people categories such as censuses and surveys that form part of the non-discursive practices that allow certain problem representations to gain dominance and hence get policy representation. It is through the examination of these presuppositions that that we are able to understand the conceptual logic that underpin some specific problem representations in the alcohol policy or proposal representations.

3. What effects are produced by this representation of the asylum seekers problem in Australia?

The goal is to identify the effects of specific problem representations so that they can critically be assessed. WTP approach generally starts with the presumption that some problem representations create difficulties and sometimes forms of harm for
members of some social groups more than others. This is the very reason we need to scrutinise the “problematisations” on offer in asylum seeker policies, laws and proposals on offer by the various Australian governments to see where and how they function to benefit some and harm others and what can be done about this. In order to perform this assessment, we will need to direct our attention to the effects that accompany specific problem representations. Again it is worth noting that this form of analysis will not necessarily refer to the conventional standard policy approach to evaluation with a focus on “outcomes”. The WTP approach identifies three interconnected and often overlapping effects that need to be weighed up.

4. What’s left unproblematic in the Australian asylum seekers policy problem presentation? Where are the silences? Can the Australian asylum seekers problem be thought about differently?

The objective is to advance for our reflection and consideration, issues and perspectives silenced in identified problem representations. The purpose here is to problematize the “problematisations” on offer in specific policy proposals by subjecting the problem representations they contain to critical scrutiny in the various policy proposals regarding people arriving by boat and seeking asylum in Australia. The key consideration here is to find out what has failed to be problematized. An example to help us understand this can be drawn from other representations of other social problems like alcohol. We can take for example; the failure to present the aggressive advertisement by the alcohol industry to the “problem” of alcohol than blaming the alcohol problem on people who drink too much simply helps us understand that there is another way to think about the “asylum seekers arriving by boat” which may not be presented in specific policies. The objective therefore is to identify and bring into discussion those issues and perspectives that are silenced in identified problem representations. This kind of analysis will draw our attention to tensions and contradictions in problem representations and helps to highlight the inadequacies and limitations in the way the problem is being represented. We also need to draw our attention to competing problem representations that were not considered in specific policy proposals as they assist us in identifying silences in those problem representations that gain institutional endorsement. Here we also draw cross cultural comparisons to assist us in realising that certain ways of thinking about
problems reflect specific institutional and cultural contexts and hence that problem representations are contingent upon these contexts.

5. How and where has this representation of the asylum seekers arriving by boat problem been produced, disseminated and defended?

The purpose of this question in the WTP approach is to highlight the conditions that allow a particular problem representation to take shape and assume dominance. Here we will need to trace the history of the current problem representation. We need to follow the twists and turns to the asylum seeker policy/problem in Australia. We need to look at the genealogy of asylum seekers policy by identifying specific points in time when key decisions were made; hence we will be able to see that the problem presentation under scrutiny is continent and hence susceptible to change.

Scrutiny of genealogy of asylum seekers policy problem representation over the years has a destabilising effect on problem representations that are often taken for granted. We will need to dig deep in to the power relations that have affected the success of some problem representations and the failure of others. An example is why the John Howard 2001 “Pacific Solution” was not taken up by the Labor Government in 2007 yet they seemed to run something akin to it in 2012? Tracing the genealogy helps us to identify how a “problem” took on a particular shape, with specific emphasis on the process (es). This could be thought differently and we can as well identify some of the influences behind its creation as a “boat people problem”. We will also need to pay attention to the differential power relations where some groups have more influence than others in ensuring that a particular problem representation “sticks” and others get left out along the way. We will direct our attention to arrange of often unmentioned practices or politics, e.g. rules that give some groups institutional authority in some aspects.

6. How can the current asylum seekers arriving by boat problem representation be disrupted or replaced to bring about a practical solution to the boat people problem in Australia?

The goal here is to pay attention to both the means through which some problem representations become dominant, and the possibility of challenging problem
representations that are judged to be harmful. We must therefore direct our attention to practices and processes that allow certain problem representations to dominate with an emphasis on the analysis of means through which particular problem representations reach their target audience and achieve legitimacy. In this respect we must also consider the role of media in disseminating and supporting some problem representations.

**On Metaphors**

The use of metaphor is much more than a figure of speech we employ in everyday conversation, or read in poetry and novels. Metaphors are used widely and often unconsciously in language, action and thought to help us make sense of the world. As pointed earlier, Lakoff and Johnston (1980) were among the first scholars to investigate the fundamentally metaphorical nature of our conceptual system, and others such as Fauconnier (1985), Turner (1987) and Hofstadter and Sander (2013) have since helped develop it. From the cognitive linguistic tradition, these scholars argue that our conceptual system is very much metaphorically structured because most concepts are partially understood in terms of other concepts (Lakoff and Johnston, 1980, p. 56). In other words, metaphors provide a way of conceiving of one thing in terms of another. For example, it is argued that the mind is often thought of in terms of being a machine (Lakoff & Johnston, 1980, p. 27).

Metaphors have traditionally been viewed as “mere” rhetoric, rather than the very means whereby we construct our conceptual system and both construct our social world and make sense of it (Hostadter and Sander 2013). However, as Lakoff and Johnston (1980, p. 145-146) argue, the idea that metaphor is merely a linguistic tool used to explain objective reality ignores the human aspects of reality. From a social constructionist approach, our understanding of the world, often independent of the physical world, is based on our conceptual system which “affects how we perceive the world and act upon those perceptions” (Lakoff and Johnston, 1980, p. 146). Thus, “since most of our reality is experienced in metaphorical terms... metaphor plays a very significant role in determining what is real for us” (Lakoff and Johnston, 1980, p. 146). In fact, as Lakoff and Johnston (1980, p. 157) argue, metaphors have the power
to define reality. By highlighting certain aspects, and hiding others, the acceptance of a particular metaphor “which forces us to focus only on those aspects of our experience that it highlights, leads us to view the entailments of the metaphor as being true” (Lakoff & Johnston, 1980, p. 157).

Since metaphors have the potential to dictate how we understand or make sense of particular issues, they play a very important role in the way issues are problematized, that is, how something is represented as a problem (Bacchi, 2009, p. 25). In this respect Bacchi (2009) has made a major contribution to policy analysis. Rather than treating the policy-making process as the “rational” action of a government responding “objectively” to determinate and “real” problems, Bacchi suggests that problems are in fact constituted by the various actors in the policy community.

Governments, as organisations charged with the arrangement of the common good do not simply formulate policy as a reaction to already existing problems, but construct them through language, and particularly metaphor. Policy is based on a government’s understanding of a perceived problem, and how it perceives a problem has profound implications for how it is represented, how it is defined, how we think about it, how we name it, and whose interests are involved. Thus, the policy process is endogenous and what is produced (representations in word) is the outcome of what we think about (define a problem). My research project examines the extent to which actors in the policy community employed metaphors to problematise the “asylum seeker problem”, drawing on frames of reference that can be easily understood in order to represent the issue in a certain way.

A Note on Research Methods

My thesis offers a qualitative content analysis that will involve analysis and critical interpretation of documents drawing on the analytic framework of the “What’s the problem represented to be” approach. However I will put emphasis on question one of Bacchi’s work in this research.

The use of documentary sources in social research is also known as documentary research analysis, this technique has been employed to study, categorise, interpret
and identify problem representations of asylum seekers in the Australian government.

I employ a systematic analysis of key asylum seekers policy documents generated by successive Australian governments for the period under study (2010-2015) as primary documents. Combining Bacchi’s WTP interpretative approach and Lakoff and Johnston’s metaphors that we live by, I treat the Australian asylum seeker policies from 2010-2015 as the sum of the words, language and talk selectively describing circumstances in ideologically informed ways. My assumption in this interpretative framework is that social actors in the policy process have their own assumptions, knowledge and understandings of policy issues. This mix of value-based interpretations means that the policy process can be described as a struggle over ideas. It is these ideas (metaphors) that are interpreted and analysed in this study on Australia’s asylum seeker policy 2007-2015.

**Sampling Techniques**

This research takes a critical incident sampling, a one form theoretical sampling (Glaser and Strauss 1970) that is here given its own name as the “turning point sampling”. This is to say that the sample takes the key turning points which show significant shifts in Australian government policy on asylum seekers from 2007-2015. Although there were many legislations and policies made by the government in the period under study, the key policies for analysis have been purposively selected based on the major “turning points” that occurred. How controversial a shift was in legislative discourse, media commentary or ordinary public debate determined the selection and quality of documents in light of the purpose they were to be for - analysis of the Australian government asylum seeker policy. The choice to employ a combination of turning point selection and purposive sampling criteria was taken for a number of reasons. Firstly to broaden the sampling space/frame so the analytical perspective is not limited or skewed to a limited number of documents (cases) to be used for the generalisability of results from the study; and secondly, the combination of sampling techniques would result in the acquisition of broad and in depth
information that would assist the researcher to get the surface of what is being investigated.

In employing the “turning point sampling” technique, I used the cases/documents that have the requisite kind of information with respect to the objectives of this study. My “turning point sampling” technique almost shares the same characteristics as purposive sampling, that is to say, a form of non-probability sampling in which the choice and decision of objects used in the study have been purposively selected. The only simple but important aspect to consider is that the documents used in this study have been purposely chosen based on how events critically unfolded.

The events covering the period of study were purposively selected, based on the turning point that their introduction brought to the asylum seeker policy and legislative framework. Also specifically considered for attention under the purposive sampling criteria was the stakeholder sampling in which the Australian Federal Parliament (or the business thereof of making national laws) on asylum seekers have been purposely selected. This distinction for the choice of critical points in the asylum seeker policy environment in Australia for example, can be traced back to 2007 when the Rudd Labor Government abolished offshore asylum seeker processing policy, only for the successive governments, even the Prime Minister Kevin Rudd himself later back slipping by 2013 upon his second return as Prime Minister. It is the changes from what was lauded as a positive policy shift in 2007/2008 to the present deterrence approach that are treated as turning points in the context of the research which is the policy situation in relation to asylum seekers in Australia.
Some Chronological Turning Points in the asylum seeker legislative/policy framework 2007-2015

<table>
<thead>
<tr>
<th>Date</th>
<th>Turning point</th>
<th>Major Policy/Legislation introduced</th>
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<tbody>
<tr>
<td>December 2007</td>
<td>Pacific Solution disbanded</td>
<td>Offshore detention facilities in Nauru and PNG’s Manus Island are closed.</td>
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<td></td>
<td>The newly elected Rudd Labor government fulfilled their election promise to</td>
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<td></td>
<td>disband the stringent policies of the previous Coalition government.</td>
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<tr>
<td>May 13, 2008</td>
<td>Temporary Protection Visas are also abolished.</td>
<td>Migration Amendment (Immigration Detention Reform) Bill 2009.</td>
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<td>Sept 8, 2009</td>
<td>Immigration detention fees also abolished.</td>
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<tr>
<td>July 6, 2010</td>
<td>Towards a Regional Protection Framework - The Gillard government announces</td>
<td>The East Timor Solution</td>
</tr>
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<td></td>
<td>the establishment of the regional processing centre for asylum seekers in</td>
<td>Deterring People Smuggling Bill 2011</td>
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<td></td>
<td>Timor-Leste.</td>
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<td></td>
<td>Australia had also on April 9 2010 temporarily suspended processing of</td>
<td></td>
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<tr>
<td></td>
<td>asylum seeker applications from persons from Sri Lanka and Afghanistan</td>
<td></td>
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<tr>
<td>11 October, 2010</td>
<td>An announcement that Children or Unaccompanied Minors (UAMs) and vulnerable</td>
<td>Community Detention Program</td>
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<td>families will be moved out of detention facilities to Community based</td>
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<td></td>
<td>accommodation</td>
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<tr>
<td>April 2011</td>
<td>Protests and Hunger strikes in Immigration Detention Centres.</td>
<td>Migration Amendment (Strengthening Character Test and Other Provisions) Bill 2011 is later introduced.</td>
</tr>
<tr>
<td>Date</td>
<td>Turning point</td>
<td>Major Policy/Legislation introduced</td>
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<tr>
<td>May 7, 2011</td>
<td>An arrangement with Malaysia in which Australia would swap 800 asylum seeker boat arrivals with 4000 UNHCR assessed refugees out of Malaysia in the four year period.</td>
<td>The Malaysian Solution is born&lt;br&gt;This was however overturned by the High Court ruling of 31/08/2011</td>
</tr>
<tr>
<td>August 19, 2011</td>
<td>A memorandum is signed with PNG&lt;br&gt;The Australian government signed a memorandum of understanding with Papua New Guinea to re-establish an assessment centre for asylum seekers on Manus Island</td>
<td>This was a start of the return to Offshore Processing</td>
</tr>
<tr>
<td>12 September, 2011</td>
<td>Owing to the August 31/08/2011 High Court ruling against the Malaysia Solution, the government introduces new laws to allow for offshore processing</td>
<td>Migration Legislation Amendment (Offshore Processing and Other Measures Bill) 2011</td>
</tr>
<tr>
<td>September 19, 2011</td>
<td>Complementary Protection Bill introduced. The new law is aimed at offering and improving the protection for people who do not fit the 1951 United Nations Conventions Relating to the status of Refugees but are still found to be at risk of grave persecution, torture or death if returned to their countries</td>
<td>Migration Amendment (Complementary Protection) Bill 2011.&lt;br&gt;This was a positive move.</td>
</tr>
<tr>
<td>28 June, 2012</td>
<td>As a result of many asylum seekers drowning at sea&lt;br&gt;The Prime Minister Julia Gillard appointed an Expert panel to provide a report on the best way forward for Australia to prevent asylum seekers from risking their lives on dangerous boat journeys to Australia”</td>
<td>The Expert Panel on asylum seekers</td>
</tr>
<tr>
<td>13 August, 2012</td>
<td>Expert panel report released.&lt;br&gt;The report contained 22 recommendations which included:</td>
<td>Only one of the 18 recommendations of the Expert Panel (Offshore Processing)</td>
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<td>Date</td>
<td>Turning point</td>
<td>Major Policy/Legislation introduced</td>
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<tr>
<td>August 14, 2012</td>
<td>working towards the development a Pacific regional cooperative framework for improving protections; increasing Australia’s Refugee and Humanitarian Program from 13750 to 20,000 places annually; the reintroduction of off-shore processing of asylum seekers in Nauru and the Papua New Guinean Manus Island; the changing of the Australian family reunion program to make it stiffer for asylum seeker boat arrivals to reunite with or sponsor their families in Australia.</td>
<td>were swiftly implemented by the government “No Advantage test” also introduced - a requirement or policy stipulating that no asylum seeker arriving by boat in Australia will have no advantage to receive speedy assessment of their asylum seeker claim over the refugees or asylum seekers awaiting resettlement in from their country of origin or lodged in transit countries like Indonesia or Malaysia.</td>
</tr>
<tr>
<td>16 May, 2013</td>
<td>Legislation to allow for offshore processing of asylum seekers in Nauru and Manus Island. Asylum seekers that would have arrived on or after August 13, 2012 would now be processed off shore. The same category would also be ineligible to sponsor their family members to reunite in Australia.</td>
<td>Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012.</td>
</tr>
<tr>
<td>19 July, 2013</td>
<td>A few days after Kevin Rudd returned to be Prime Minister Regional PNG Solution</td>
<td>Asylum seekers arriving in mainland Australia can now be transferred Offshore for Processing</td>
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<td>Date</td>
<td>Turning point</td>
<td>Major Policy/Legislation introduced</td>
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<td></td>
<td>Resettlement Agreement (RRA) also referred to as the “PNG Solution” is introduced. Another such memorandum, similar to the PNG Solution was signed with the government of Nauru where asylum seekers would be transferred from Australia to Nauru on August 3, 2013</td>
<td>All those arriving by boat in Australia would never be assessed or resettled in Australia but would be quickly moved, processed and resettled in Papua New Guinea.</td>
</tr>
<tr>
<td>18 September, 2013</td>
<td>Liberal Coalition Government in power. Operation Sovereign Borders, the hallmark of the Liberal-National government’s stop the boats policy was birthed a few days after securing a Federal government election victory in September 2013.</td>
<td>Operation Sovereign Borders commences. It is now government policy to turn away asylum seeker boats at sea in a military-style operation focused on “border security”</td>
</tr>
<tr>
<td>October 18, 2013</td>
<td>Temporary Protection Visas reintroduced. In a return to the Prime Minister Howard era when Temporary Protection policy existed between 1999 and 2007, the Liberal Coalition government under Prime Minister Abbott introduced legislation to grant Temporary Protection Visas. These had previously been abolished by the Rudd Labor government in 2008. Under the proposals, TPV holders will not be allowed to sponsor their family members to Australia and cannot return to Australia if they travelled overseas. However, the Australian senate disallowed to pass this bill on December 2, 2013. This resulted in the then Immigration Minister Scott Morrison in response to the Senate’s disallowance of TPVs immediately put a freeze on granting of permanent protection visas leaving thousands of asylum seekers to languish in the community.</td>
<td>Immigration Amendment (Temporary Protection Visas) Regulation 2013 to reintroduce the system of Temporary protection. TPV holders unlike in the previous Howard arrangement will need to reapply for another TPV at the expiry of their TPV and are totally barred from applying for any other visa in Australia.</td>
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<tr>
<td>Date</td>
<td>Turning point</td>
<td>Major Policy/Legislation introduced</td>
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<tr>
<td>December 12, 2013</td>
<td>Permanent protection is removed. Legislation is introduced to remove permanent protection for people who arrive in Australia by boat and seek asylum. This was a move to deny any boat arrival any opportunity of being granted a protection visa</td>
<td>Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill and later Act 2013 were passed.</td>
</tr>
<tr>
<td>December 4, 2013</td>
<td>A bill to abolish complementary protection is proposed. It is now at the discretion of the Immigration minister whether to grant protection in circumstances where a person is at significant risk of torture, persecution or death. This was a move away from the Migration Amendment (Complementary Protection) Act 2011 which aimed to offer protection for people who do not fit the 1951 United Nations Conventions Relating to the status of Refugees but are still found to be at risk of grave persecution, torture or death if returned to their countries.</td>
<td>Migration Amendment (Regaining Control Over Australia’s Protection Obligations) Bill 2013.</td>
</tr>
<tr>
<td>March 25, 2014</td>
<td>New Legislation introduced. Asylum seekers without valid documents and cannot provide reasonable explanations will have their applications for asylum rejected. There is also a requirement for early disclosure, as later in the application process, any information initially left out in the application will be disallowable for seeking protection.</td>
<td>Migration Amendment (Protection and other measures) Bill 2014</td>
</tr>
<tr>
<td>December 5, 2014</td>
<td>New Legislation is introduced that removes most references to the Refugee Convention in the Migration Act 1958. The government has ultimately defined what they will consider as a refugee. The minister has powers to return boats accorded to him. The minister is allowed to place a cap on the number of protection visa grants</td>
<td>The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Seeker Caseload) Bill 2014. The minister has now earned unchecked,</td>
</tr>
<tr>
<td>Date</td>
<td>Turning point</td>
<td>Major Policy/Legislation introduced</td>
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<tr>
<td>March 25, 2015</td>
<td>Migration Amendment (Protection and other Measures) Regulations 2015 is passed</td>
<td>Although this was later repealed, it was passed rather to “operationalise” the Migration Amendment (Protection and other Measures) Act 2015 which resulted from the (Protection and other Measures) Bill 2014</td>
</tr>
<tr>
<td>May 14, 2015</td>
<td>Australian Border Force Bill 2015</td>
<td>This was to cement the Operations Sovereign Borders structurally and administratively.</td>
</tr>
<tr>
<td>June 25, 2015</td>
<td>Migration Amendment (Regional Processing Arrangements) Bill 2015</td>
<td>The laws confer express powers to the minister to take asylum seekers to any country he or she may designate.</td>
</tr>
</tbody>
</table>

More on Sampling

Maximum variation sampling in which cases or individuals who cover the spectrum of positions and perspectives in relation to the subject under study (asylum seeker rhetoric and discourse) is what has been applied in the selection of sections of the media commentary by politicians (Prime Ministers and Ministers for Immigration) on asylum seekers.

Intensity sampling technique was also employed. I have selected documents that offered in-depth information and were also deemed less extreme. Only those documents that manifest the phenomenon of interest intensively were selected with prior information and exploratory work.

Primary sources consisted materials produced first hand regarding asylum seekers by successive Australian governments between 2007 and 2015. These consist of parliamentary records, speeches by government leaders, reports, policy statements, government action plans and policies on asylum seekers at both federal and state level. Policy statements and strategies on asylum seekers by the DIAC (now DIBP or border27) during the period of study were considered for analysis as primary sources.

Alongside the primary sources were a range of secondary sources. I draw on documents that provide commentaries and analysis on the original/primary sources as secondary sources. Secondary sources are further categorised into public or private documents. Public documents consist of media sources such as newspaper articles while private sources are commentaries made by individuals or organisations at the forefront of asylum seeker advocacy and service provision in Australia.

While the “accuracy” of the selected primary and secondary documents is not an important issue I will nonetheless evaluate this material using a checklist established

27 http://www.border.gov.au/- accessed 24/08/15
for use in history, anthropology and sociology as postulated by (Gottschalk 1945). This is intended to clear authenticity, selection, sampling and presentation issues.

i. Was the ultimate source of detail (primary witness) able to tell the truth?

ii. Was the primary witness willing to tell the truth?

iii. Is the primary witness accurately reported with regard to the detail under examination?

iv. Is there any external corroboration of the details under examination?

This research has relied on purposive sampling and intensity sampling techniques. These have determined the selection of documents obtained and analysed in this research. The choice to employ a combination of two sampling criteria has been taken for a number of reasons. The intention is to broaden the sampling space/frame so the analytical perspective is not limited or skewed a limited number of documents (cases) used in the generalizability of results from the study. The hope is that this combination of sampling techniques also results in the acquisition of broad and in depth information that will assist the researcher to get beyond the surface of what is being investigated.

In the purposive technique, the researcher will use the cases that have the required information with respect to the objectives of this study. Maximum variation sampling in which cases or individuals who cover the spectrum of positions and perspectives in relation to the subject under study (asylum seeker rhetoric and discourse) is what has been applied in the selection of sections of the media commentary on asylum seekers.

The sampling of documents for this study has been selectively confined to two categories:

Primary Documents
The relevant bills and laws passed by Australian federal parliament.

For the purpose of this study, government policy will be taken as a whole of government’s officially documented speeches and publications of the federal parliament in relation the asylum seekers. These documents will be classified into primary and secondary documents/sources. Primary sources will be materials produced first hand regarding asylum seekers by successive Australian governments. These may consist of parliamentary records, speeches by government leaders, reports, policy statements, government action plans and policies on asylum seekers at federal level. These may include first, second and third readings of parliamentary bills, specifically those by the designated Minister for Immigration as well as any speech by the designated Australian Prime Minister in this period together with bills and acts of parliament in relation to asylum seekers that have been passed in to law or amended. These documents will be obtained in soft copy from the federal parliamentary library in Canberra. As this is a qualitative content analysis, policy documents will be systematically analysed using the WTP approach.

Secondary Documents/Sources

Alongside the primary sources will be the secondary sources. Documents that provide commentaries and analysis on the original/primary sources will be considered as secondary sources. Secondary sources will further be categorised in to public or private documents. Public documents will consist of media sources such as newspaper articles while private sources will be commentaries made by individuals or organisations at the forefront of asylum seeker advocacy and service provision in Australia.

Selected Policies/Bills

In summary, below are the key government policies and proposed or passed legislation have been drawn for analysis in this research in addition to some the speeches of the Australian Prime Ministers and Immigration ministers for the period between 2007 and 2015. It is important to note that no one policy or legislation is singularly analysed. This is because of the overlapping nature between the asylum seeker policies and legislations (bills) as they were set in place. In some instances, the
policy followed the legislation or vice versa. Below is the list of selected government policies and bills on asylum seekers that informed the analysis:

**Labor Government Policy 2007-2013**

1. The East Timor Solution 2010
2. Community Detention - October 11, 2010
3. Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011
4. Migration Amendment (Complementary Protection) Bill 2011
5. Deterring People Smuggling Bill 2011
6. The Malaysian Solution 2011
7. Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2011
9. Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013
10. Rudd’s PNG “solution” 2013

**The Abbott government 2013**

11. Immigration Amendment (Temporary Protection Visas) Regulation 2013
12. Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2013
13. Migration Amendment (Regaining Control over Australia’s Protection Obligations) Bill 2013
14. Migration Amendment Bill 2013
15. Migration Legislation Amendment Bill (No. 1) 2014
16. Migration Amendment (Protection and other measures) Bill 2014
17. The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Seeker Caseload) Bill 2014
18. Migration Amendment (Protection and other Measures) Regulations 2015
19. Migration Amendment (Regional Processing Arrangements) Bill 2015

Process of Obtaining Parliamentary Documents

Primary documents used for analysis in this study were obtained from the Australian parliamentary library. With the guidance of a senior parliamentary library staff, the researcher was guided through browsing the parliamentary website in order to obtain the relevant policy documents for use in this study. The Policy Section of the parliamentary library has produced a number of publications on asylum seeker policies that were very helpful in guiding this study.

The relevant bills and laws passed by Australian federal parliament for the period 2010-2015. This study goes back only to 2010 because it was from this year that changes began to be made in the Australian government policy on asylum seekers that saw a shift what the 2007 Kevin Rudd Labor government had done by dismantling the mandatory detention and offshore processing policies. This was a key change with the coming in of the new Labor Government under Prime Minister Kevin Rudd. The new Labor Government in 2007 announced the decision to dismantle the asylum seeker offshore processing system. Chris Evans, Immigration Minister then, said it was a time for a change.

Another significant turning point is the changes to the asylum seeker policies that came with the changes in leadership of the Australian Labor Party. It is worth noting that there were subsequent changes that occurred after the change of policy in 2007 through to 2013 while the Australian Labor party was in government. One significant change was that Kevin Rudd was replaced by Julia Gillard as Prime Minister on 24th June 2010 while Kevin Rudd again returned as Prime Minister 27th June 2013.

The coming in of the new Liberal Coalition Government under the leadership of Prime Minister Tony Abbott on 18th September 2013 resulted in further drastic changes in

asylum seeker policy. It is these changes in the asylum seeker policies that will be assessed in the subsequent chapters.

I also used “ParlInfo” to search for relevant documents. Primary documents used for analysis in this study were obtained from the Australian parliamentary library. These usually provided links to relevant Bills as a starting point for the research (Phillips 2014; Karlsen and Phillips 2014).

There are different ways to find relevant Bills: each parliamentary chamber produces a Bills List for each calendar year, for example: Final Senate Bills List for 2013.

Another way was to search ParlInfo – with the link to Bills of the current Parliament. Here are the results when I use ParlInfo to search for Bills of the current Parliament using the search term “asylum seeker”. There were six bills before the Parliament at the point the search was conducted. Here are the results for the Bills of previous Parliaments. Once I knew the name of the Bill I wanted, I used ParlInfo to find the second reading speeches and debates in the House of Representatives Hansard collection.

**Conclusion**

This is a qualitative research which has relied on the analysis of selected documents that contain information under study. The purpose is to solve a specific and immediate problem in regard to the asylum seeker policy in Australia. In the subsequent chapters, the focus is on a) narration of the major asylum seeker policies in Australia, and b) the analysis of these policies within the prism of Bacchi’s “What’s the problem represented to be” approach and identification and analysis of metaphors guided by the work of Lakoff and Johnston (1980).
CHAPTER FOUR: AUSTRALIAN ASYLUM SEEKER POLICY, 2007-2015

In this chapter I provide a clear historical narrative outlining how successive Australian governments between 2007 and 2015 set about making asylum seeker policy. For this purpose, I have purposively selected the key legislation between 2007 and 2015 that touches directly on the subject of asylum seekers.31 These bills have resulted in many amendments in the Migration Act 1958, arguably the most amended piece of legislation in Australia’s recent history. In the next chapter, I will identify the problem representations relied on to justify the policies adopted to address the asylum seeker problem.

Plainly the time frame offered here is arbitrary. As with so many other important social and political processes, any decision to focus on one period in time necessarily ignores the historicity of human deliberation, choice and action. Historical time and the way we humans experience it, is inevitably caught up in an ineluctable web linking past, present and future (Herzfeld 2009: 108-11). Like all life choices, our decision to start and finish an inquiry like this one is almost always arbitrary and reliant on a mix of pragmatism and opportunism: in this case my choice of when to start is shaped by the happenstance that in December 2007 Kevin Rudd led the Australian Labor Party to a significant victory over the Howard Coalition government (1996-2007) with a 23-seat swing in its favour in the Federal elections. However far from heralding a new period of political stability, Rudd’s accession to the office of Prime Minister marked the start of one of the more tumultuous periods in Australia’s political history. After months of mounting internal criticism of Rudd, he was replaced in June 2010 by his deputy Julia Gillard in an internal Labor Party ballot for the leadership. Gillard was in turn replaced by Rudd in June 2013 after months of political tension. In September 2013 the voters plainly dissatisfied with this turbulence, elected an Abbott-led Coalition government.

From December 2007 on Australia’s asylum seeker policy was marked by ongoing and increasingly heated debate and controversy. The Rudd government came to office

31 For this study, I rely on a mixture of explanatory memoranda, and bills either in their first, second or last reading, irrespective of subsequent amendments before they were passed into law.
promising change. It was not surprising that this policy was also marked by a succession of major changes to Australia’s asylum seeker policy (Mares 2011). Many commentators have seen this turbulence as linked as much to the dramatic changes of leadership in the ALP government (2010-13) as it was shaped by persistent concern about the spate of arrivals of the “boat people manifesting in a populist “stop the boats” rhetoric (Billings 2013) (Douglas et al. 2013) (Fletcher 2013)(Bartlett 2012) (Douglas and Graham 2013).

**Australian Migration Policy**

The history of Australia’s immigration policy has been evolving since it originated with the *Immigration Restriction Act* of 1901, which is popularly referred to as the White Australia Policy adopted at Federation (when the different colonies agreed to form a single nation). This policy restricted the migration of people from non-white and non-European background to allow for the creation of an only White Australia. This was implemented through the administration of the English dictation tests as a direct exclusion of non-English speakers from China and the Pacific Islands. This was driven by a number of fears; that the migrants were taking over the jobs from other Australians by working cheaply (in the case of Chinese migrant gold diggers), to the fears that migrants would alter the white race identity and European culture.

However occurrence of key events through the years; for example, the economic depression of the 1930s, the first and second world wars interfaced with the Jewish holocaust, and other events in post-World war Europe result in the white Australia policy metamorphosing through the years. Even so, Australia continued to legislate and entrench a preference for admitting migrants of the white race, not until the passing of the Racial Discrimination Act in 1975 that saw the “end” of the White Australia Policy to the accept people from other races to what popularly became to be known as Multiculturalism. This subsequently saw a significant increase in the numbers of migrants to Australia from non-European background. The Vietnamese war saw the arrival of many Vietnamese fleeing instability as well as other migrants.

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from Laos and Cambodia. However, the increase of Vietnamese arrivals also lead to the creation of the sentiment from the public and some sections of politics, that Australia was being swamped with boat people, who represented a threat. These “outbursts” soon saw a change in the Australian general migration policy. And whereas the White Australia Policy “ended” in the 1970s, traces or elements of this policy would soon continue to linger in some sections of the overall Australian migration policy, especially in relation to people who arrive into Australia or its island territories by boats and seeking asylum in Australia.

Asylum seeker policy, 1990-2007

It will be recalled that the Hawke Labor government developed the policy of mandatory detention of all asylum seekers arriving in Australia from 1990/1992. This occurred initially in response to the arrival of Vietnamese, Chinese and Cambodian asylum seekers while their claim for asylum was assessed. While the commencement of this policy passed almost without notice this did not last. In 1990, a number of asylum seekers also arrived from Somalia without documentation. They were detained at Villawood Immigration Detention centre for eighteen months. In response to this failure to progress their application the Somalis began a hunger strike. Through the 1990s Chinese and Sino-Vietnamese refugees who arrived were subjected to mandatory detention. In the late 1990s refugees from Afghanistan, Iran and Iraq began arriving.

People arriving to Australia by boat are generally subjected to mandatory detention or confinement in the various Immigration detention centres across the country. And because Mandatory detention was popular with sections of the Australian electorate, John Howard Liberal Government in 2001 radically changed the policy as he placed asylum seekers as top priority in his campaign.

In 2001 Australia changed its asylum seeker policy in response to what the Howard government claimed was a crisis in its ability to determine who came to Australia. That crisis centred on what became known as the “Tampa Affair”. In August 2001, a

33 See-
Norwegian tanker, the MV *Tampa*, picked up 438 Afghan asylum seekers whose vessel was sinking off the coast of Indonesia. According to the captain of the *Tampa*, he tried to return the Afghan refugees to Indonesia, but they threatened to throw themselves overboard if he did this. Consequently, he agreed to take them to Christmas Island. Howard’s government refused to allow MV *Tampa* to land, saying it was a matter for Norway and Indonesia to work out amongst themselves. Neither Norway nor Indonesia agreed to fix the problem, creating a three way diplomatic stand-off (Beeson 2002, Billings 2011).

The Howard government was determined to stop the *Tampa* from entering Australian waters when it became an international issue (Beeson 2002). Australia seized control of the *Tampa* drawing international criticism but strong support from Australian electors. After ten days, Australia struck a deal with New Zealand and Nauru to have those nations temporarily host the refugees while Australia processed their asylum claims. At the time Howard made his position clear:

> This campaign more than any other that I have involved in, is very much about the future of Australia we love so much. It is also about having the uncompromising view about the fundamental right of the country to protect its borders. It’s about a nation saying to the world we are a generous open-hearted people taking refugees on a per capita basis than any country except Canada. We have a proud record of welcoming people from 140 different nations. But we will decide who comes in this country and the circumstances in which they come.\(^{34}\)

The *Tampa* affair radically transformed Australian asylum seeker politics. It introduced an unprecedented hard-line policy approach, which continues to have profound implications for those asylum seekers reaching Australia’s shores by boat even in 2015. Some writers insist the *Tampa* affair set in motion a period of “policy making on the run” (Taylor, 2005, p. 5), which took the shape of the “Pacific Solution” a series of Coalition Government and Labor government policies.

The Howard government’s “Pacific Solution” legislation comprised three key elements introduced in six pieces of legislation (Betts, 2003, p. 186). The collective effect of this policy was to make it virtually impossible for asylum seekers to lodge a claim for asylum claim. Thousands of Australian islands were excised from the migration zone, creating “excised offshore places” for the purpose of rendering Australian asylum claims invalid (Migration Act 1958 (Cth), s 5(1)). The Howard government also created a new class of “offshore entry person” established so as to define a person without a valid visa who had entered Australia at an excised offshore place (Migration Act, s 5(1)). Finally the “Pacific Solution” enabled asylum seekers entering Australia to be taken to a declared third country (Migration Act, s 198A). Instead, they were to be redirected to Papua New Guinea or Nauru. In these places, asylum seekers had to undergo a lengthy asylum claims processing before they could be allowed into Australia (Mathew 2002). Essentially, the Pacific solution enabled “the deflection of asylum seekers before they reach[ed] Australian soil. It also allow[ed] Australia to expel asylum seekers even when they... [had] reached Australian territory and would ordinarily be subject to Australian law ((Penovic and Dastyari 2007), 2007, p. 36).

The Opposition Australian Labor Party signalled its disapproval of the policy. In 2003, its spokesperson Julia Gillard promised that Labor would end the “Pacific Solution because “it is costly, unsustainable and wrong as a matter of principle” (Wright, 2010).

**Labor Government Policy 2007-2013**

The newly elected Rudd Labor government moved quickly to give effect to its principled opposition to the “Pacific Solution”. In a move that was welcomed loudly by human rights activists, the Labor Government discontinued the policy and practice of temporary protection and closed the offshore processing centres of Nauru and Manus island (Essex 2013). As Chris Evans, the then Immigration Minister said it was a time for a change:

... In our view the critical and harsh aspect of the Howard government’s mandatory detention policy was not the initial detention phase but the
continued and indefinite detention that occurred while lengthy immigration processes and appeals were completed”.

On another instance he was quoted as saying:

....I believe these reforms will fundamentally change the premise underlying detention policy. Currently persons who are unlawful may be detained even though the departmental assessment is that they pose no risk to the community. That detention may be prolonged. Currently detention is too often the first option not the last”

However as many writers have noted, while the Rudd Government formally ended the “Pacific Solution” in 2007, some of its key elements remained intact (Kneebone 2014) (Kneebone, 2011, p. 433). Most importantly the 4,891 excised islands remain separate from the migration zone. So it is that all asylum seeker applications for boat entry arrivals, now carried out on Christmas Island, are still undertaken outside Australia’s borders.

Since no single policy strategy seems to have worked over the years, the observation that I simply state here is that there has been vivid policy experimentation, with the difference approaches yielding almost no good outcomes, resulting oftentimes to a return to the past. This experimentation has been largely a result of debate in the wider Australia. This debate on asylum seekers is brought about by the confluence of contentious public perception and political debate provoked by the media. The result has been that opinion is sharply divided. There are vivid two camps: those pro and against asylum seekers or boat people. And when this divide stepped into the corridors of power at federal government levels, it resulted in the introduction of the different policy approaches to asylum seekers.

Here is a chronological presentation of the different asylum seeker legislation and government policy to back up my assertion on asylum seeker policy experimentalism:

The East Timor Solution 2010

When the cost of managing asylum seekers coming to Australia began to take a chunk of the Federal Government budget in 2010, Labor government was forced to ask parliament for an extra budget allocation\textsuperscript{36}. This evoked opposition from the Liberal party which proposed a return to the John Howard “Pacific Solution” and this should have pushed the Gillard government to propose a new “East Timor solution”.

The East Timor solution, involved the Australian government entering into an agreement with the then new Timor Leste government to accept a number of asylum seekers in exchange for the much needed development aid.

**Community Detention Policy - October 11, 2010**

The Australian Labor government at the end of 2010 made some changes to Australia’s mandatory detention policy. It made an announcement that children and vulnerable family groups would be released from the high security prison-like detention facilities to community-based detention in the care of community agencies\textsuperscript{37} - a move that had been welcomed by many refugee agencies, advocates and activists\textsuperscript{38}. Although initially seen by pundits (Evans 2008) as a project that rebuilt confidence and restored some integrity to Australia’s immigration system. The Labor government however reverted to offshore processing introducing what were referred to as the “Malaysia Solution” and the “Pacific Solution” (Brennan, 2011), (see page 65 for details on the Malaysian Solution).

I turn therefore to the relevant bills and laws passed by Australia’s federal parliament for the period 2010-2013 in the last three years of Labor government.

**Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011**


\textsuperscript{37} http://www.chrisbowen.net/media-centre/media-releases.do?newsId=3793, accessed 9/05/2015

This legislation was introduced to strengthen the consequences of criminal behaviour by persons in immigration detention as a disincentive for participation in criminal behaviour or disruptive behaviour. This bill ultimately gave powers to the Immigration minister to either refuse, cancel a visa on character grounds. Those who demonstrated (for their rights) in detention facilities would now be charged in the courts.

Migration Amendment (Complementary Protection) Bill 2011

This was legislation introduced as “...an amendment to the Migration Act to better enhance Australia’s arrangements in meeting non-refoulement obligations and reflect Australia’s longstanding commitment to protecting those at risk of the most serious forms of human rights abuses”. This bill was purposed at introducing greater efficiency, transparency and accountability in to Australia’s arrangements for adhering to its non-refoulement obligations under the International Conventions. This was protection from return in situations that engaged Australia’s non-refoulement obligations under such international treaties as: the Covenant on Civil and Political Rights (The Covenant), the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the Death Penalty, the Convention on the Rights of the Child and the Covenant against Torture and other cruel, inhumane and degrading treatment or punishment (the CAT). Complementary protection was protection to be granted to persons who would be defined under the categories of international treaties aforementioned in addition to the protections granted to refugees under the 1951 UN Refugee Convention and its 1967 Protocol with the purposes of bringing together a single protection visa application process.

Deterring People Smuggling Bill 2011

This legislation introduced serious crimes for people smuggling and aggravated people smuggling has its roots in the Border Protection Legislation Amendment Act

of 1999 - implying deterrence as a continuous hallmark of Australia’s asylum seeker policy even pre 2010. The established people smuggling offences are against any person who organises or facilitates to bring or proposes to bring to Australia, a non-citizen who has no lawful right to come to Australia.

Simply put, families would be forever separated as this law outlawed anyone who tries to reunite with family when family reunions were put on hold. It would now become impossible for anyone who came by boat and resettled in Australia to arrange to bring members of their families left in their country of origin as this was now deemed criminal.

Alongside these criminal acts, there were amendments to clarify the meaning of certain words in the Migration Act 1958 such as “No lawful right to come to Australia”. The meaning was that “a non-citizen of Australia has at no particular time, no lawful right to come to Australia if that time, the person does not meet the requirements for lawfully coming to Australia under domestic law”. This was aimed at “avoiding doubt and ensuring that the original intent of parliament was affirmed as the clarification for the meaning of these words was retrospectively applied to December 16, 1999. This as expounded in the explanatory memorandum would “address the doubts and contentions that would be raised for periods prior to the enactment the Deterring People Smuggling Act 2011. This is little no wonder that those who come to Australia without seeking asylum and often without valid visas end up being detained far away from Australia’s mainland or sent in to another country to be processed compared to plane arrivals.

**The Malaysian Solution 2011**

However, there was a significant rise in the number of asylum seekers arriving by boat to Australia after 2008. This placed increasing pressure on the successive governments and opposition to adopt policy directions that were either seen to address border security concerns, combat perceived people smuggling or advocate for more humane approach to asylum seekers. With the Australian Greens Party preferring the former, the two major parties (Labor and the Liberal Coalition) tended to trend on the former with slight differences.
In a policy that looked a lot like the “Pacific Solution”, the Labor government under Prime Minister Julia Gillard mooted a number of policy strategies for asylum seekers arriving by boat. It proposed the Malaysia Solution in which case Australia was to send 800 asylum seekers arriving to its territory by boat in exchange for 4000 UNCHR assessed refugees living in Malaysia who would be resettled in Australia. This “deal” was highly criticised by many refugee advocates and human rights groups/organisations who were very concerned with Malaysia’s record and treatment of refugees/asylum seekers. It was argued that refugees returned back to Malaysia would “face lengthy status determination times, inhumane detention and torture”.

This arrangement with Malaysia was soon to be challenged at the Australian High Court that eventually struck it down on the grounds that Malaysia was not a signatory of the Refugee Convention and would thus not be relied upon to grant safety to people seeking asylum (Foster 2012; Wood and McAdam 2012). And although the government was determined to pass new laws through parliament to revive the Malaysia arrangement, it failed to get the new laws passed by parliament (Pastore 2013).

**Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2011**

This legislation was a classic case of Australian government fighting to maintain its deterrence policy in the situation where the Australian High Court had pronounced otherwise. The Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011 which was introduced sometime after the Australian High Court delivered a judgement in the case of Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011) HCA 32 in which the High Court annulled the decision of the minister to transfer detainees to Malaysia under the government’s Malaysia Solution.

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This Bill amended the Migration Act 1958 and the Immigration (Guardianship of Child) Act 1946 (the IGOC Act) for the purpose of replacing the asylum seeker processing framework that existed in the Migration Act to pave way for the taking of offshore entrants to another country for the assessment of their asylum seeker claims. This bill particularly reinforced the making or the implementation of any decision to remove or deport a non-citizen child from Australia—ultimately granting government the power to implement offshore processing.


The Labor government under Julia Gillard in June 2012 appointed and constituted an expert panel to advise it on the best way to stop people (asylum seekers) from risking their lives at sea. The panel made 22 recommendations, all of which the government pledged to adopt, including increasing the annual humanitarian intake to twenty thousand refugees/asylum seekers from the current 13,750 people annually to 20,000 in the coming years under the Humanitarian Program.

Many pundits and scholars saw this as seemingly aimed at settling the “political storm” (Briskman 2013; Davies 2013) even from the point of view of discourse analysis as the Gillard (Labor) government in June 2012 established an Expert Panel on Asylum Seekers whose major term of reference was to “advice the Australian Government with the “best way forward” for Australia to prevent asylum seekers from risking their lives on dangerous boat journeys to Australia. Indeed the panel, after generating views far and wide, noted that there were no quick or simple solutions (Houston 2012).

In their final report the Expert Panel Report the panel made 22 recommendations in the form of short-term and long-term proposals. The short-term recommendations included what was perceived as both disincentives and incentives in the asylum seeker programs. Incentives included increasing the numbers of people Australia would take up annually in its Humanitarian Program while disincentives included the re-introduction and indeed what later turned to be the expansion of the offshore processing regime. Long-term proposals included the recommendations for the Australian government to create better migration pathways and protections
opportunities for refugees coordinated within an “enhanced regional cooperation framework”, like the existing regional cooperative arrangements such as the Bali Process on People Smuggling, Trafficking in Persons and Transnational Crime\(^{45}\) as established in 2002. Only one of the 22 recommendations of the Expert Panel (Offshore Processing) were swiftly implemented by the government.

The Gillard Labor Government was only swift to amend the Migration Act 1958 to implement recommendation 14 of the Expert Panel Report on Asylum seekers and the implementation of other measures to strengthen the regional processing framework by introducing the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 which became an Act of Parliament in 2013.

Also later introduced was the “No Advantage test” - a requirement or policy stipulating that no asylum seeker arriving by boat in Australia will have no advantage to receive speedy assessment of their asylum seeker claim over the refugees or asylum seekers awaiting resettlement in from their country of origin or lodged in transit countries like Indonesia or Malaysia.

**Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013**

As previously stated in the discussion on Expert Panel on asylum seekers, the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012\(^{46}\) which became an Act of Parliament in 2013\(^{47}\) was an amendment to the Migration Act 1958 to implement recommendation 14 of the Expert Panel Report on Asylum seekers and the implementation of other measures to strengthen the regional processing framework (Offshore processing). The bill also redefined an off shore entry person and Unauthorised Maritime Arrival. While long-term proposals included the recommendations for the Australian government to create better migration pathways and protections opportunities for refugees coordinated within an “enhanced regional cooperation framework”, like the existing regional cooperative

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arrangements like the Bali Process on People Smuggling, Trafficking in Persons and Transnational Crime as established in 2002.

**The Regional Resettlement Agreement/Rudd’s PNG “Solution” 2013**

In a few days after Kevin Rudd returned as Prime Minister in June 2013, he quickly announced his Regional Resettlement Agreement (RRA) also referred to as the "PNG Solution", implying all those arriving by boat in Australia would never be assessed or resettled in Australia but would be quickly moved, processed and resettled in Papua New Guinea. This he (Prime Minister Rudd) "hoped would break the back of people smugglers and bring an end to their trade”. However in a move openly seen as a political deal, the Kevin Rudd Refugee Resettlement Agreement with Papua New Guinea suggested that PNG would take the steps to withdraw those UN reservations in regard to any asylum seekers sent to PNG from Australia, in a move that many a spectators and pundits interpreted as “putting politics over principle” (Murphy 2013; Westmore 2013). Under this “carrot and stick” arrangement, Papua New Guinea had some things to gain. Australia promised to facilitate Papua New Guinea with money to upgrade its road infrastructure as well as its naval bases and universities (Welch 2014; Westmore 2013). As Prime Minister Rudd declared on 19 July 2013:

> ...our responsibility as a government is to ensure that we have a robust system of border security and orderly migration, on the other hand, as well as fulfilling our legal and compassionate obligations under the refugee's convention on the other". 48

**The Abbott Government’s “Turn back the Boats” Policy, 2013**

It was clear that in the months prior to the September 2013 Federal election the Coalition Opposition parties in 2013 were putting intense pressure on the Labor government when arguing that “its policies to combat people smuggling have failed”, and pressed with their policy of “just stop the boats” sold to the Australian electorate

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as a solution to the spate of boat arrivals. This seemed to elicit support from the electorate and became one of the factors that handed victory to the Abbott-led Coalition Parties in the September 2013 general elections.

*Operation Sovereign Borders*, the hallmark of the Liberal-National government’s asylum seeker policy was the fulfilment of election promises spearheaded by the Department of Immigration and Border Protection and its Minister Scott Morrison. The government adopted a military style approach in the structure, methodology and language in which the policy and operations of the Operation Sovereign Borders was constituted and undertaken\(^{49}\). This policy was birthed under the premise that: a) the previous Labor government had failed to stop “an influx” of boats - people arriving in Australia by boat and, b) the “people-smuggling” rackets were profiting or successful in their ventures of smuggling and needed to be stopped. “What the people smugglers and anyone they are trying to get on a boat need to understand is that this Australian government will take the actions necessary to protect Australian sovereignty and stop the boats” - Minister Scott Morrison.

A very senior Australian defence official, Lieutenant General Angus Campbell, was drafted to lead the operations of the border security operation in conjunction with multiple other government agencies and entities\(^{50}\). With this military style composition, it was now difficult to monitor and audit the activities of the border protection task force as it was operating in secrecy - in true military classified definition - as there was an imposed information blankness purposely created and defended by the minister which many refugee advocates and activists slammed. This information vacuum by General Campbell was designed "so as not to give tactical advantage to people smugglers and to “protect” his people (the defence force) in the conduct of their duties - military duties.

The new Abbott government moved quickly to introduce legislation to amend the Migration Act 1958 largely with a view to implementing its Operation Sovereign


Borders policy. Below are a suite of bills that were subsequently introduced and or passed following some political manoeuvrings with the support of the minority Palmer United Party.\(^{51}\)

**Migration Amendment Bill 2013**

The Migration Amendment Bill 2013 was initiated to clarify a statutory bar on making a further protection visa after the first protection visa application has been rejected, cancelled or revoked irrespective of the grounds for which the initial visa application was refused or visa grant was cancelled.\(^{52}\)

**Migration Legislation Amendment Bill (No. 1) 2014**

This change of law\(^{53}\) that later became Act (No. 1) 2014 was enacted to clarify limitations under Sections 48, 48B and 501E of the Migration Act designed to bar non-citizens who had previously been refused a visa from re-applying for another visa.

This bill also specifies that the grant of an Australian bridging visa to an asylum seeker does not stop their removal at any time from Australia.

**Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014**

Migration and Maritime Powers Legislation Amendment (Resolving the asylum legacy caseload) Bill 2014, which passed as an Act in the December of the same year, is arguably the single most important indication of the commitment to Australia’s deterrence measures.\(^{54}\) It was an amendment to the Migration Act 1958, the Migrations Regulations Act 1994, the Maritime Regulations Act 2013, the Immigration (Guardianship of Children Act) 1946 (IGOC Act) and the Administrative Decisions (Judicial Review) Act 1977, to support “the whole of government’s key strategies for combating people smuggling and managing asylum seekers both on shore and off

\(^{51}\) A “new kid in the block” of the Australian Parliamentary politics led by businessman cum politician Clive Palmer.


shore”. The bill fundamentally changed Australia’s approach to managing asylum seekers as snippets from the explanatory memorandum explain thus:

This legislation grants the government powers to stop people smuggling ventures by providing for greater clarity to the ongoing conduct of border security and maritime enforcement operations\(^{55}\).

Further, the bill stated that the exercise of the range of the ministerial powers cannot be invalidated by an Australian court even when the court considers that there had been failure to consider or comply with Australia’s international obligations or domestic law. It also introduced temporary protection only for those who engage Australia’s non-refoulement obligations.

Ultimately, the Immigration minister was granted sweeping powers to detain people at sea and transfer them to another country. Also included in this bill is a provision that children born to asylum seekers in Australia are deemed “unauthorised maritime arrivals” and subject to the same conditions as their asylum seeker parents. The minister also has the powers to remove persons or vessels out of Australia and his decision will be independent of assessments of Australia’s non-refoulement obligations.

Another component introduced in the assessment of asylum seekers was a new concept of rapid or streamlined processing - a new assessment system of fast tracking asylum seeker claims with a limited merits review which is largely aimed at deterring the making of unmeritorious protection claims as a means to delay an applicant’s departure from Australia, so as to allow for the quick removal of those applicants who do not engage protection obligations.

The other even more controversial proposal in this legislation is that it sought to clarify Australia’s own code of interpretation of the 1951 Refugee Convention and its 1967 Protocol by establishing Australia’s own interpretation of obligations outside of the Refugee Convention with the removal from the Migration Act 1958 of most references to the Refugee Convention and a replacement with a statutory framework which articulates Australia’s interpretation of its protection obligations under the

Refugee Convention. The new law has subsequently codified the meaning of a Refugee as stated in Article 1A, Subsection 2, of the Refugee Convention which states

...a refugee as any person “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside their country of nationality and is able or owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unable to return to it.....

The new law in Australia, with the passing of the Migration Legislation Amendment (Resolving the asylum caseload) Bill 2014, has ultimately removed most references to the Refugee Convention from the Migration Act and replaced them with a new statutory framework which represents Australia’s interpretation of its protection obligations under the Refugee Convention. The new codification now sets out circumstances that must be satisfied for a person to have a well-founded fear of persecution, of which the onus of proof is rested on the applicant. Under this new code, the person does not have a well-founded fear of persecution in cases where they could seek protection from another part of their country or transit country where there is no persecution or modify their behaviour to avoid any chance of persecution in their home country.

Introduction of Temporary Protection Visas and not Permanent protection visas for any asylum seeker found to engage Australia’s protection obligations but did not have a valid visa at the time of entry into Australia while there will be capping of protection visas to be granted by the minister and at the Minister’s discretion even those asylum seekers who have previously held certain visa types such as the temporary human concern or temporary safe haven visas.

Ultimately all valid and successful permanent protection visas lodged prior to this bill are to automatically convert to Temporary Protection Visas (TPVs). However, any asylum seekers affected by the onset of the July 2013 Regional Resettlement Agreement with PNG and are subject to regional transfer and processing will have no change of gaining any kind of visa in Australia but will be detained and processed in
offshore country and resettled there or any other country as determined by the minister like Cambodia in accordance with the powers vested by the minister by the passing of this bill.

**Migration Amendment (Protection and Other Measures) Bill 2014**

This piece of legislation\(^{56}\) which passed an Act in 2015 was generally an overhaul of the complementary protection arrangements that were granted in the passing of the Migration Amendment (Complementary Protection) Bill 2011. It ultimately defined Australia’s risk threshold for assessing protection obligations under the International Covenant for Civil and Political Rights (ICCPR) and the Covenant against Torture and other cruel, inhuman and degrading treatment (CAT). The bill was sought and worded as containing...“amendments which contribute to the integrity and improve on the efficiency of the onshore status determination process”... yet in detail, the bill had the following implications:

While it not only introduced stiffer measures for protection visa applications, it also made requirements that asylum seekers have the responsibility to ensure that complete information and documentation for asylum seeking is provided upfront regardless of their mode of arrival with the onus of proof solely to rest on the asylum seeker. If the applicant proceeded to challenge the primary decision of the department at the RRT, they had to be assessed according to the initial claims and documentation provided only and not make any amendments or addendums to their case.

There would be no visa grants where the applicant has provided “bogus documents”. The grant of protection visas would be refused where the applicant failed to provide evidence of identity, nationality or citizenship when requested by the department to do so or if they cause their evidence of citizenship to be destroyed or disposed of. Additionally, Unauthorised Maritime Arrivals (UMAs) on either bridging or temporary visas were barred from making a valid application for a visa unless the minister determined it was in the public interest to allow them to do so.

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Processing pathways for asylum seekers 2007-2015

Australia has generally had two different processing pathways for asylum seekers seeking Australia’s protection obligations under international law (Refugee Convention). There is a different pathway depending on whether an individual arrived in Australia either by boat or aeroplane. It is fair to say that the different processing pathways either shape the asylum seeker policy or are shaped by the policy and the general perceptions of those seeking asylum as will be later discussed and analysed in the subsequent chapter. It is however important to emphasise that these pathways are not “set in stone” and have been subject to variations depending on the policy (or government) of the day.

Unauthorised Boat Arrivals or Irregular Maritime Arrivals or Illegal Maritime Arrivals- Often used to refer to people who arrived illegally by boat are referred to as illegal maritime arrivals (IMAs)\(^\text{57}\). While the 1951 UN convention does not conceive of the possibility of illegal entry as a problem (UNHCR 2007). Australia, like many other countries, detains individuals suspected of illegal entry to its territory. Those mostly enter by sea by boarding boats in often very risky and dangerous situations. They are classified as Irregular Maritime Arrivals (IMA). These categories are subjected to mandatory administrative detention in an immigration facilities or alternative places of detention while all relevant checks and asylum seeking claims alongside security checks are conducted by DIAC or its agents.

Plane arrivals - refers to people who arrived in Australia by plane and may seek asylum in Australia. Many asylum seekers in this category enter Australia by plane with valid entry documentation such as student or tourist visas and apply for protection once within Australia. While their application for protection is being considered by the department of Immigration, They are allowed to reside in the general community on bridging visas. Once found to be genuinely refugees, they are accorded Refugee protection visa (866)\(^\text{58}\) which accords them permanent residence in Australia with associated rights and benefits.

Summary of the processing pathways for asylum seekers 2007-2015

Note: This only serves as a guide. However there were different pathways and these kept changing based on how the policies changed in different years/governments.

Asylum seekers

Arrival by plane ("legal entrants")
- Onshore processing
  - Temporary or permanent protection
  - Return to country of origin

Arrival by boat ("illegal entrants")
- Offshore processing
  - Resettlement in Nauru, PNG or Cambodia
  - Return to country of origin or transfer elsewhere
  - Temporary or permanent protection

Return at sea
- Return to country of origin
Conclusion

What I have shown here is an extremely complex and changeful process of policy making. It might on a charitable interpretation be treated as a bold process of policy experimentation. On a less charitable interpretation it might be treated as a sign of deep division both in the Australian community and the policy community showing a lack of moral clarity. It is therefore evident that both the Labor and Liberal parties which have governed Australia in the recent past seem to take a purely political approach to asylum seekers debate and policy. Each side claims to have the solution and a better approach to asylum seekers-and then later, there’s little or no difference at all. This was aided and abetted by a process involving a good deal of provocative mischief making by sections of the Australian media. Australian asylum seeker policy in the last two decades has been changing with each successive government.

In the next chapter, I will be making sense of selected aspects of recent government asylum seeker policies that primarily engage with the first question in Bacchi’s “What’s the problem represented to be” approach and Lakoff’s work on metaphors.
CHAPTER FIVE: THE CASE OF ASYLUM SEEKERS—“WHAT’S THE PROBLEM REPRESENTED TO BE?”

In the previous chapter, I provided a narrative overview of Australia’s asylum seeker policy between 2007 and early 2015. Nothing much has changed at the submission of this thesis in November 2015. As I showed, the development of off-shore processing and later of an increasingly determined effort to deter asylum-seekers altogether from coming to Australia, has had one major effect: Australia continues in 2015 to avoid its responsibility under international law to provide protection to asylum seekers (Magner 2004). In this respect both the Labor governments of Rudd, Gillard and Rudd (2007-2013) and the Abbott government were able to continue to represent the policy problem as either a problem of border security. This basic representation was supplemented by the idea that the death toll of asylum seekers mainly during 2012 warranted tougher measures by Australia designed to deter asylum seekers from contemplating making attempts to reach Australia by sea, a representation that sponsored a policy of naval intervention to turn the boats back or offshore processing and subsequent resettlement.

In this chapter I want to investigate the way the problem of asylum-seekers has been discursively constituted and represented in the succession of policies adopted by Australian governments after 2007. In doing this I am drawing on question one of Bacchi’s (2009) “What’s the Problem” analytic. What is the perceived problem posed by people arriving by boat and seeking asylum in Australia? How is this problem represented to be in specific policy/legislative documents and policy pronouncements? These are the questions to be addressed here through critical analysis of Australian government policy responses to asylum seekers in successive governments from 2007 to early 2015.

The problem representations presented in this work is a result of identification and analysis of the overt or implied problem representations in specific asylum seeker policies or policy proposals over the years in question. In particular I ask what role was played by the use of a range of metaphors in the development and justification of the successive policies.
As I also want to show, the use of particular metaphors in Australia’s political discourse have played an indispensable role in helping to constitute the problem for which the policies are the solution. As Bacchi (2009, p. 262) argues, policies are problematisations by their very nature since they make proposals for change based on what a government holds to be the problem. A metaphor therefore plays a key constitutive role in shaping policy.

On another note, I explain how the old centuries “Castle Doctrine”, and generally the western understanding of a home and privacy, has formed the politicians’ (legislators) understanding and use of some of the metaphors in dealing with the issue of asylum seekers in Australia. This ties in with the problem representation of asylum seekers and will give an insight in understanding deterrence as the hallmark of Australia’s asylum seeker policy not only in recent times but in the past as well.

Let me start by again asking why have successive governments represented the problem as a problem of border security? I will then turn in the last part of this chapter to some of the consequences of this policy problem representation.

**The role of discourse in policy making**

As writers like Bostock (2002), Magner (2004) and Cooke (2015) have noted, from the start of the twenty first century, Australian asylum seeker policy has both ignored international law and violated certain fundamental human rights which the frame of the Refugee Convention accorded asylum seekers. Critics of Australia’s policies also pointed to evidence of considerable harm done to the asylum seekers themselves, especially children (for example, UN 2015). That this policy has to a great extent become part of a bi-partisan conventional wisdom on both sides of Australian politics, even if punctuated by periods of intense controversy, has doubtless helped to cover up this uncomfortable knowledge.

Why then was such a policy approach adopted? One answer put up by successive Australian governments is that they are simply facing and responding to a “real problem” such that these kinds of policy responses are both appropriate and rational. That is there is a long standing tendency on the part of policy studies to treat modern
state policy interventions as involving a “discovery” process which uncovers/ed “real” social problems as a prelude to policy interventions. This presumption underpins those familiar policy making diagrams which talk about the discovery and agenda setting process often based on data about a given policy problem (like the representation below).

![Policy Making Diagram]

[Source: www.creatingfutures.org.nz]

The privileging of a presumption of a broadly defined “empiricism” leads to an inability to conceive the possibility that what governments do when they make policy may not either be all that rational at all or possess any firm grounding in what is conventionally referred to as reality.

At the start of the twentieth century for example, social scientific theorists like Pareto argued for a sociology able to deal with the actual role played by what he called “residues” and “derivations” in social and political life (Pareto 1935: Vol. 2: 118-78; McLure 1997: 34). “Residues” involve basic feelings and instincts involved in the defence for example, of a social hierarchy or of a community deemed under attack and evident in feelings like patriotism, vengeance, generosity and pity. “Derivations”
are the more formal though still pseudo-logical rationalizations derived from those residues grounded in feelings and instinct and expressed in explicit scientific, moral or philosophical propositions and systems of thought. Pareto argued political ideas are seldom successful because of their empirical or scientific character - although, of course, every party, politician and policy maker claims those qualities and more because of their enormous power to mobilise popular sentiment. Pareto insisted that that the people who make up governments try to preserve both the institutional framework of state power and the legitimacy of the state by a posteriori justification of their behaviour and policies - a procedure that stands in sharp contrast to the original objectives of government. This means as Sunic (1988) puts it, that that governments must “sanitise” violent and sometimes criminal behaviour by adopting self-rationalising rubrics centred on ideas like “security” “democracy” “pragmatic necessity”, or the “struggle for peace.” As Pareto puts it both politicians and ordinary people perceive the social world “as if it were reflected in a convex mirror”.

In an important essay on this theme Rose (1996) likewise put fantasy at the centre of modern western politics and especially in foreign policy making. Rose argues persuasively that fantasy plays a central and constitutive role in modern states and in fields of political interaction like international relations. In this respect fantasy “is not therefore antagonistic to social reality; it is its precondition or psychic glue” fuelling its “collective will” (Rose 1996: 3). By bringing fantasy into the political and material realm, Rose attempts to show how fantasy becomes collectively appropriated to form collectivities and sites of belonging central to a politics better understood in psychoanalytic terms for example, of loss, yearning, resistance, in terms of “identities” and other “protective fictions”. Rather than being antagonistic to the state, fantasy “plays a centre, constitutive role in the modern world of states and nations” (Rose 1996: 4).

With the reluctance to treat this possibility seriously has come an equivalent reluctance to inquire into the ways policy making is carried out as a discursive practice where metaphors play crucial role. This idea is hardly a new idea. Back in the 1980s Schon was arguing that policies are discursively constituted. He recommended paying attention to the use of metaphor when explaining policy as discursive activity. For example, Schon noted:

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When we examine the problem-setting stories told by the analysts and practitioners of social policy, it becomes apparent that the framing of the problems often depends upon metaphors ... One of the most pervasive stories about social services for example diagnoses the problem as “fragmentation” and prescribes “co-ordination” as the remedy ... [where under the spell of metaphor, it appears obvious that fragmentation is bad and co-ordination [is] good (Schon (1980: 255).

Connolly (1993:1) too has argued that state interventions begin with the naming of certain human experiences or relationships as issues or problems embraced by the state’s jurisdictional or administrative gaze.

Here I make the case that state policy-making is a discursive performative process reliant on the production of constructive schemas - or discourses – that have the power to constitute reality by naming it and making it mean (Chilton 2004). Kress has usefully identified the things discourses do when he writes:

...they define, describe and delimit what it is possible to say and not to say (and by extension — what it is possible to do and not to do), with regard to the area of concern of that institution, whether marginally or centrally (Kress 1986: 6)

Further, as Kress notes, a discourse “works to generate a set of possible statements about a given area, and gives structure to the manner in which a particular topic, object, or process is to be talked about”. Most importantly, a discourse is not just about words or some formal arrangement of them. It bears on behaviour, social action and the conduct of social relations in that it provides “descriptions, rules, permissions, and prohibitions of social and individual action”.

Constructive schemes are those interpretative schemas, as well as the underlying rules required to produce the research and policy analysis, which confer credibility on some knowledge claims and deny it to others. They achieve a taken-for-granted status amongst the diverse members of a policy community and are found at their most heightened form amongst agents working in and around the state (Jorgensen and Phillips, 2002).
Bourdieu too has pointed to the importance of the constitutive practices the state is involved in when it makes “authorized, public, official speech which is spoken in the name of and to everyone”: this is the power to name.

This constitutive process is closely tied to the performative power of discourse itself where the practice of naming, categorising or judging someone brings about real actions and changes. The linguistic devices are numerous and include gossip, slander, lies, insults, commendations, criticisms, arguments and praises. They have the magical property of bringing about the things they name and so play a vital part in constructing the social world.

The authority that underlies the performative efficacy of discourse is a *percipi*, a being-known, which allows a *percipere* to be imposed, or, more precisely, which allows the consensus concerning the meaning of the social world which grounds common sense to be imposed officially, i.e. in front of everyone and in the name of everyone (Bourdieu 1991 p. 106)

This means the social sciences need to be able to develop “a theory of the theory effect” that is, the consequences of categorising and naming people, actions and relationships. Few organizations or institutions possess this capacity to the same extent as the state.

On the power of language to become, as Austin put it “performative” (i.e., to “execute an action”), Bourdieu is quite clear this power is not contained *within language* so much as it is an expression of social and symbolic power:

The naive question of the power of words is logically implicated in the initial suppression of the question of the uses of language, and therefore of the social conditions in which words are employed. As soon as one treats language as an autonomous object, accepting the radical separation which Saussure made between internal and external linguistics, between the science of language and the science of the social uses of language, one is condemned to looking within words for the power of words, that is, looking for it where it is not to be found (Bourdieu 1991: 107).
Bourdieu insists that if we want to understand the performative or magical nature of the use of categories we must find this “magic power” not in the language itself but rather in the ways people engaged in the work of entities like “the state” exercise symbolic power. One of the ways this is done, and it is by no means the only means, is the repeated use of metaphors to construct or represent a policy problem.

**Metaphors and the Asylum Seeker “Problem”**

As I have previously stated, metaphors are often used widely and unconsciously in language, action and thought in every day communication. The use of metaphors is much more than a figure of speech we employ in everyday conversation, or read in poetry and novels. Metaphors help us make sense of the world. Cognitive scientists like Lakoff have alluded to the fact that “....Words don’t have meanings in isolation. Words are defined relative to a conceptual system...” (Lakoff 2002), Page 29.

In the case of Australian asylum seeker policy, I have identified five key metaphors that explicate what successive Australian governments have treated as the key problems and the course of action it took based on its problematisations (For a tabular overview presentation see pages 99 et seq.). Before I briefly introduce the five key metaphors, it is important to note that these metaphors are not isolated but are clustered, imbricated and held in place rather like the tiles on a roof. That is, they are overlapping. Each metaphor relies on the existence of the other metaphors for support and reinforcement for representing what the problem is and what action is required. This also characterises the cognitive, emotional, ethical and rhetorical appeals they are expected to make to ordinary Australians.

1. The “country as home” metaphor. This metaphor represents the problem of “illegal” boat arrivals by constructing Australia as a “house” or “home” under threat from asylum seekers attempting to break in through the country’s “side windows” or “front and back doors”. This metaphor encourages us to associate the normal behaviour of entering a home with how people coming to Australia ought also to enter a country. This includes considering the good and acceptable non-citizens as “guests” who as guests normally enter through the “front door” because
they have been invited to do so. This metaphor aligns well with the “queue” metaphor.

2. The “queue” metaphor. This metaphor relies on the country being thought of as a “home”, because the asylum seeker system is depicted as if it were a queue, which has formed out the front of the “Australian home”. The queue consists of people who in reality are in refugee camps, waiting patiently for an invitation to enter Australia. On the other hand, another group of people jump or bypass the “queue”, but in reality arrive in Australia by boat. This group of people disrupt the asylum seeker process by violating the key principles associated with queuing viz impartiality and fairness. Accordingly, the “queue” jumpers are framed as though they are “illegitimate” and “undeserving”. They are also uninvited and they prevent “genuine” refugees from receiving an invitation into the home.

3. The third metaphor constitutes the arrival of asylum seeker boats as a “natural disaster”. The “asylum seeker as natural disaster” metaphor dehumanises asylum seekers and at the same time leads us to believe that like any disaster, they pose a serious threat, but in the form of job insecurity, resources such as housing and transport, and also issues of identity. The first three metaphors serve to represent how and why the Australian “home” is under threat and what it is under threat from.

4. The fourth metaphor justifies the government's chosen course of action. The “state as a person” metaphor, in conjunction with the “country as home” metaphor locates the government as Australia’s “homeowner” that has rights to take action to protect the home and its inhabitants from the “problems” constructed through the first three metaphors. Like a person, a state is conceived in terms of having inherent dispositions. In this case, the politicians espouse the state’s “generous” and “humanitarian” qualities and in doing so argue that the course of action it chooses to take in relation to boat arrivals or deaths of asylum seekers at sea is justified. Further, the discourse highlights that the state is determined to pursue its chosen course of action.
5. The fifth and final metaphor is the “war” metaphor. Underlying the previous four metaphors, the “war” metaphor comes in two manifestations: the depiction of boat arrivals as an “invading army” and “politics as war” by other means. Likening the arrival of asylum seeker boats to an invading army was made easy by the use of metaphors of war. It also provided the grounds for the government to adopt a war-like response without taking into consideration the humanitarian concerns of those people the policy affects. The metaphor also helps to increase the supposed severity of the problem and increases the entertainment value to retain public interest. The latter point was particularly pertinent months preceding September 2013, given an election was imminent, no little wonder that the rhetoric, especially from the opposition Liberal Coalition parties that won the 2013 election focussed on “stopping the boats”.

These five metaphors present a particular representation of the asylum seeker problem in policy both before and after 2007. This unfortunately continues to date, and there is no sign or hope of abating in the foreseeable future.

While much of the discourse overtly refers to asylum seekers arriving by boat as “unlawful”, ”criminal”, “illegitimate” and so forth, this is not my key concern. Rather, my focus is to highlight the sometimes subtle and sometimes not so subtle use of metaphors that problematises the boat arrivals issue in a certain way, giving rise to a particular course of action (the Malaysian Solution) over another. The function that metaphors play is to represent the “way things are” as well as simultaneously evoke feelings and mobilise moral sentiment of a political kind and so serve to factually, emotionally and practically justify certain kinds of political action. This helps to clarify the kinds of cognitive, emotional, and ethical appeals they make to us. Let me now show how these metaphors work.

**The state as a person metaphor**

Metaphors that conceive of the state in terms of a person are not at all unique to the development of asylum seeker policy. Chilton and Ilyin (1995: 37) for example, claim the metaphor is so embedded within the field of international relations that states are mostly conceived as “people” in international relations discourse, and that this metaphor prevents us from thinking about the state in terms outside of the categories
that it engages. To offer some insight into this, the term “international relations” itself assumes that states can engage in relations with each other in the same way human beings do. States are also assigned human attributes such as rationality, interests, beliefs and even identities (Wendt, 2004, p. 289). Within the realm of world affairs, states, in their relationships with each other are seen to have inherent dispositions, or identities, and as such can be regarded as being peaceful, aggressive, secretive, industrious, and irresponsible and so on. In this sense when as a new Prime Minister Abbott was merely rehearsing a well-used metaphor when he declared that:

...the test of a sovereign country and a sovereign government is its ability to control its borders and we will never again tolerate a situation where an important part of our immigration programme has been subcontracted out to people smugglers (Abbott 2013).

In conjunction with the “country as home” metaphor, the land-mass that a state occupies is its home; it lives in a neighbourhood and has neighbours (Lakoff, 1999, p. 3). In conjunction with the “war” metaphor, which I will examine, a state can also have friends and enemies, and form allies and coalitions.

Indeed the “state as a person” metaphor is not just ubiquitous in international relations discourse, but also in our thinking about the state more locally as citizens, in the media and as I have shown, by politicians in the formation of policy. Wendt (2004, p. 289) argues since the eighteenth century, Western international and intra-state discourse has primarily presented the state as a person. In my analysis, the discourse presents the state as a homeowner who possesses three distinct types of personhood: psychological, legal and moral. The homeowner’s psychological attributes are supposedly those of generosity and humanitarianism displayed through its refugee resettlement program. The homeowner is a legal person in the sense that it has rights and obligations under national and international law, including the right to protect its sovereignty and promote its interests and that it had no legal obligation to accept the uninvited guests aboard a boat travelling to Australia. Morally, the state was eager to show strong determination in its handling of the “threat” posed by asylum seekers.
Country as a home metaphor

There has been persistent recourse to the country as home metaphor. Prime Minister Rudd invoked this metaphor in 2009 when he said:

We have been stuck too often with people turning up on our doorstep. They have been coming in as uninvited guests ... Unless you can come through the front door in the way that we want you to, you’re not coming through the window. Only thieves and people who want to abuse families living inside come through the window... line up and come through the front door, as you should.

This statement not only invites the reader to visualise a country in the same way one visualises a home, but also represents the asylum seeker as a “robber”, or “thief” who presents a genuine threat to the Australian country/home. Statements that framed boat arrivals as though they were robbers, thieves and criminals attempting to “break in” were relatively widespread. Prime Minister Gillard likewise emphasised the representation of the problem as the problem of “border protection”. In her first major speech as Prime Minister she said:

Today I am announcing steps to strengthen Australia’s border protection arrangements. I am setting out the long-term approach we will take to dealing with the pressure of unauthorized arrivals. (Gillard 2010)

Opposition spokespeople reinforced this metaphor. Opposition spokespeople who were drawing a long bow when comparing asylum seekers to paedophiles did so by relying on the country is a home metaphor. Scott Morrison for example, suggested that “police and communities should be alerted when asylum seekers move into their neighbourhood” (Mehrebin 2013). Senator Eric Abetz for example, said that:

… if we are to have a cohesive society I would have thought it would be a good idea to say that somebody’s moving next door to you that might not be able to have all the English language skills that you might normally expect” (Cited Mehrebin 2013)
Opposition Leader Abbott likewise relied on the country as home metaphor when he argued that "I don't think it's a very Christian thing to come in by the back door rather than the front door" (Nicholson 2012).

When in government the Abbott Coalition government drew on the “country as a home” metaphor. Prime Minister Abbott made his views plain in 2015 when he said, "Nope, nope, nope," to any suggestion he might allow resettlement in Australia of Rohingyan asylum seekers tossed at sea59. He said the prospect of resettlement in Western countries would encourage more people to risk their lives on leaky boats. "If you want to start a new life, you come through the front door, not through the back door," he said (SBS 2015)

The Coalition Government in introducing the Migration Amendment (Regaining Control of Australia’s Protection Obligations) Bill 2013, reasoned that “it is not appropriate for complementary protection to be considered as part of a protection visa application and that non-refoulement obligations are a matter for the government to attend to in other ways”. This was the classic example of the home owner changing the rules of entry to the house. The government now sought to have the migration minister exercise his or her non-compellable intervention powers to grant protection visas in situations where complementary protection applied in the previous legislative arrangements.

As Immigration Minister, Scott Morrison used the “country as home” metaphor when announcing tough new measures to remove resettlement eligibility in Australia by likening the option of resettlement to sugar on the table attracting vermin to break and enter Australia: "This is designed to stop people flowing into Indonesia and to support Indonesia and for them not to become a destination country. It’s taking the sugar off the table" (Woodley 2014).

What is clear here was that with the new policy in place the government was now acting out the home owner metaphor, in considering asylum seekers as guests who should only gain entry through the front door (approved channels), it changed rules

in effect to ensure that any one entering through the window (coming by boat) would ultimately be processed offshore and not even the ruling of the High Court would stop this homeowner. This also cemented the representation of asylum seekers arriving by boat as “intruders” in to the home. And whereas many had hailed the High Court ruling as having failed the “Malaysian Solution” (Foster 2012), the government went ahead to prove that “the government has sufficient power to implement offshore processing arrangements” and it explicitly expressed that “...the government of the day can determine the border protection policy that it believes is in the national interest”60.

And to further exemplify the “state as a person” metaphor already referred to, the government went ahead to qualify and define what it meant by “national interest” This was to be understood as broadly referring to Australia’s standing, security and interests and went further by giving examples that included “governmental concerns that relate to such matters as public safety, border protection, national security, defence, Australia’s economic interests et cetera”. It thus not only located and reinforced Australia in the “home owner metaphor” but also introduced the “war metaphor” when matters of defence and national security were added into the policy mix.

We also see the powerful use of the “Australia as home” metaphor in the advertising of the Operation Sovereign Orders policy. Central to that policy frame has been the message: “You will not be resettled in Australia if you come by boat”.

Under the Regional Resettlement Arrangement with PNG, any unauthorised IMA is to be transferred to Manus Island for processing and resettlement for those found to be genuine refugees. And detention or deportation for those found not to be refugees as determined by PNG. Initial security and health checks were to be undertaken by
Australian authorities. The clear message of Operation Sovereign Orders is that you are never welcome, and can never make Australia “home” if you come by boat.

The “queue” metaphor

Governments have persistently used the “queue” metaphor by contrasting refugees in UN camps claiming they are:

...genuine refugees who fear for their lives and are persecuted, have no money to pay people smugglers and have no other options. Their only option is to wait and wait and wait, while others who do have the money... can pay people smugglers. People who have access to such funds are not those who are destitute and without resources. They jump ahead of genuine refugees who wait patiently for their opportunity to come”.

The political discourse represents the asylum seeker system metaphorically as though it is a queue and draws on this metaphor to position asylum seekers arriving in boats as “illegitimate”, “impatient”, “unfair” and “dishonest”. In contrast, those people waiting “in the queue” in refugee camps are “honest”, “fair”, “legitimate” and “patient”. Furthermore the illegitimate group disadvantages the genuine group by jumping the asylum seeker queue and effectively extending the period of time before the genuine group can receive an invitation into the Australian home. In her first major speech as Prime Minister Gillard insisted for example, that among the principles that mattered was the idea of an orderly queue:

The rule of law in a just society is part of what attracts so many people to Australia. It must be applied properly to those who seek asylum, just as it must be applied to all of us; no one should have an unfair advantage and be able to subvert orderly migration programs;

Opposition leader Abbott could not have agreed more strongly:

I think the people we accept should be coming the right way and not the wrong way. If you pay a people-smuggler, if you jump the queue, if you take yourself and your family on a leaky boat, that’s doing the wrong thing, not the right thing, and we shouldn’t encourage it.” (Nicholson 2012)
Asylum seekers as a “natural disaster” metaphor

There has been an urge to treat the arrival of asylum seekers as akin to a natural disaster. Since 2007, media outlets have continued to routinely refer to the idea of a “flood”, a “tidal wave” or a “tsunami” when characterising the arrivals: The Australian in particular has repeatedly talked for example, about the need for an “Asylum tide swamping solution”(Australian 2013). This seems to continue to feature to some extent and in spite of some research showing a decrease in the use of these kinds of metaphors in media outlets. Romano for example, has argued that by the late 2000’s that journalists were no longer employing metaphors like “national emergency”, “invasion”, “attack”, “assaults on our shores”, “contagious disease”, “floods” or “tidal waves” to describe asylum seeker and refugee arrivals. As she notes even metaphors like “queue jumpers” used to describe boatpeople is usually used put in inverted commas or with the words “so-called” in front of it, to indicate the contentious nature of the term (Romano 2007, pp.2007:2-3).

Both the Labor and Coalition governments have used the undoubted fact that there were deaths at sea due to drowning of people on ill-fated boats making the journey to Australia, especially between 2011-2013, to embellish and augment the “asylum seeker as natural disaster metaphor”. This possibly leads many Australians to think that like any disaster, the drownings could be avoided simply if asylum seekers took the “right routes” to enter Australia. While this does not only reinforce the “queue metaphor” that portrays asylum seekers as illegitimate, it is also responsible for a number of other policy focuses of government such as the excisions of Australia’s territories and offshore processing.

As Briskman (2013) has argued “… compassion for asylum seekers can be used opportunistically to portray the tragedy of death at sea as a justification for stricter policies against people trying hard to seek sanctuary in Australia”. She argues that increases in the number of arrivals of people by boat to Australia after 2010, and the losses of lives at sea due to boat capsizes resulted in heightened attention politically which assisted in building a foundation for harsher policies (Briskman 2013).

This was evident when Prime Minister Julia Gillard appointed an Expert Panel on Asylum Seekers in June 2012 to “provide advice on policy options to prevent asylum
seekers from risking their lives on dangerous boat journey's to Australia”. It was framed to provide advice on policy options to prevent asylum seekers from “risking their lives on dangerous boat journeys to Australia”. In essence, the language and discourse focused more on people risking their lives on ill-fated and dangerous and less on those that would later detain or deport those who survived through the “dangerous boat journeys” at sea.

In their final report the Expert Panel Report the panel made 22 recommendations in the form of short-term and long-term proposals. Indeed the panel, after generating views far and wide, noted that there were no quick or simple solutions (Anonymous 2012). However, what followed as a consequence was that Government was quick to introduce legislation such as the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 to reinstate offshore processing that passed in parliament with the support of the federal opposition. By August 13th, 2012, legislation had approved the processing of asylum seekers in both Nauru and Manus Island where asylum seekers would be held in detention for unspecified period of time. Those already onshore were held on the new “no advantage test” which meant that no onshore “boat arrival” (asylum seeker) would be processed in less time than those waiting for processing in third countries.

Policy as “war” metaphor

As Prime Minister, Abbott has persistently used the policy as war metaphor in justifying the turn back the boats policy: "If we were at war, we would not be giving out information that is of use to the enemy." Australia was engaged in a "fierce contest" with the people smugglers and Australia had to stop the boats because it to do so central to the maintenance of national sovereignty (McCallum 2014).

This stance was justified on all sorts of grounds. Sometimes it simply rested on the premise that Australia was being challenged by illegal activities threatening our security because asylum seekers were just like “drug runners” as Opposition Leader Abbott had promised for example, that:

Within a week of taking office, I would go to Indonesia to renew our cooperation against people smuggling. I would, of course, politely explain to the Indonesian
government that we take as dim a view of Indonesian boats disgorging illegal arrivals in Australia as they take of Australians importing drugs into Bali. (Abbott 2012)

Once in government the Coalition moved to implement its Operation Sovereign Borders. In August 2013 it has indicated what that policy entailed:

To stop the boats coming to Australia, it’s necessary to work upstream to stop the planes coming into the region and disrupt people’s movements through the region. If you can stop the planes, you can stop the boats. Once the smugglers place their passengers on the boat to Australia, all of Australia’s available deterrence measures become more dangerous and more expensive. That is why the Coalition’s Operation Sovereign Borders prioritises deterrence to entering the region from source countries and the disruption of movement throughout the region as well as action on our northern seas.

As we have seen asylum seekers arriving in Australia by boat have been persistently represented as a serious threat to Australia’s security and borders. Numerous policies are peppered metaphors reiterating the threat to Australia’s security brought about by “the waves of boat arrivals”. This framing proved critical to the formation and constitution of the “Operation Sovereign Borders” (OSB). This policy was initiated on the premise that previous Labor governments had failed to stop “an influx” of boats - people arriving in Australia by boat. So a military style led operation aimed at stopping, repulsing and stopping any boat at sea, trying to enter Australian territory was needed. At the announcement and formation of the OSB, -Lieutenant General Angus Campbell was drafted to lead the operations of the border security operation in conjunction with other government agencies and entities.61

With this military style operation in place it has proved increasingly difficult to monitor and audit the activities of the border protection task force as it was operating in secrecy - in true military classified definition as there was an imposed information blankness purposely created and defended by the minister to which many refugee

advocates and activists slammed. This information vacuum ordered by the government and by General Campbell was designed “so as not to give tactical advantage to people smugglers and to “protect” his people (the defence force) in the conduct of their military duties.

The representation of that policy involved repeated use of military and war metaphors. The new Immigration Minister Scott Morrison insisted for example, in October 2013 that “I wish to stress that the full arsenal of measures represented in the Coalition’s policies to stop the boats remain available to be deployed by the government” (Morrison 2013). Prime Minister Tony Abbott himself declared elsewhere that

...we are in a fierce contest with people smugglers. And if we were at war, we wouldn’t be giving out information that is of use to the enemy just because we have an idle curiosity about it ourselves”.

The “enemy” here is now the “people smugglers” and the “asylum seekers” linked together in a syndicated arrangement to enter Australia. Therefore they are seen as a problem-people, simply able to pay themselves on to the boats to Australia and thereby fanning the illicit people smuggling syndicates in the South East Asia region. The classified information about Operation Sovereign Borders operations and the curious people referred to here are the media, refugee advocates, lawyers, activists and the general public. Operation Sovereign Borders is a thoroughly military-style operation, facilitated by an all-style military capabilities in structure, composition and nature with hardware and equipment reminiscent of one employed in country-to-country border wars. Australia it seems is now engaged in a full-scale war - against the asylum seeker (the boat arrival) and people smugglers. As Minister Scott Morrison insisted:

The people smuggling rackets were profiting or successful in their ventures of smuggling and needed to be stopped. “What the people smugglers and anyone

---

they are trying to get on a boat need to understand is that this Australian government will take the actions necessary to protect Australian sovereignty and stop the boats (Barlow 2013).

The very metaphors used seem to have encouraged the government to establish Operation Sovereign Borders as a military style operation to turn back asylum seeker boats. By October 2013 Australia’s military officials were reinforcing the message. Acting Commander of Operation Sovereign Borders, Air Marshall Mark Binskin, for example, said:

    We are not going to give our posture or talk about our tactics or what is happening on the water ... That gives away key intelligence to the people smugglers ... and we don’t want to give those criminals this sort of information (Barlow 2013)

In February 2104, Minister Morrison for example, justified his refusal to supply information to the Senate on military security grounds:

    [It] includes but is not limited to on water tactics, training procedures, operational instructions, specific incident reports, intelligence, posturing and deployment of assets, timing and occurrence of operations, and the identification of attempted individual voyages, passenger information, including nationalities.” (Morrison 2014)

**The "Castle Doctrine" unconsciously invoked.**

We need to go deeper to search out the possible origins of these metaphors. While there are limitations, and for the purposes of staying on course to the objectives set out in this research, I will not delve too deeply in trying to trace the origins of these metaphors. Nonetheless I will go ahead and state the possibility that these metaphors are formed out of the unconscious interpretation and application of certain principles. It is very possible, and it can indeed be argued that these metaphors originate from an unconscious interpretation and application of the major tenet of the “Castle Doctrine”.

97
The Castle doctrine emanates from the 17th Century English common law dictum that “a man's house is his castle” (Vickery 2008). It is the concept of the inviolability of the home that has been known in much of the western civilisation. It was/is the interpretation that allowed a person to have certain protections and immunities that permit(ed) them to use force (in certain circumstances) to defend themselves against an intruder and yet remain free from legal responsibility. These set of principles became so entrenched in the western civilisation and resulted in the English Common law dictum that an “English man's home is his castle”. These legal or illegal interpretations have since been carried forward to mean refer to a person’s absolute right to exclude anyone from his home. Indeed “…the notion that our homes are our sanctuaries and that we can defend an intruder within them is hardly new.” (Jansen and Nugent-Borakove 2007), page 3.

There is no doubt that the ground and the application of laws to defend oneself from an intruder has been built in many components and concepts of law in the modern world (Carpenter 2008; Drake 2008) with scholars tracing the history and development of certain laws such as the USA’s Fourth Amendment to the to this doctrine (Lasson 1970). This doctrine has allowed individuals to use reasonable force, including deadly force to protect themselves or others against an intruder in the homes (Jansen and Nugent-Borakove 2007).

If taken from the personal application into the arena of political discourse on Australia as a home, this doctrine, it can be argued, has effects on how asylum seekers can been represented as the intruders. Whereas the Castle Doctrine is not principally defined by law in Australia, it none the less gets expressed in the asylum seeker debate and subsequently influences asylum seeker policy, albeit quietly. As has already been discussed earlier under metaphors, I will again make reference to the statement below from the Prime Minister Tony Abbott commentary on Australian sovereignty and asylum seekers.

...the test of a sovereign country and a sovereign government is its ability to control its borders and we will never again tolerate a situation where an important part of our immigration programme has been subcontracted out to people smugglers (Abbott 2013).
## Some evidences of Metaphors as applied in the Australian asylum seeker legislative/policy framework 2007-2015

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<th>Turning Point</th>
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<tr>
<td>Pacific Solution disbanded</td>
<td>Offshore detention facilities in Nauru and PNG’s Manus Island are closed. Migration Amendment (Immigration Detention Reform) Bill 2009</td>
<td>This is Country as a home metaphor being applied. The reforms under the Rudd government were hailed as a good gesture of a compassionate home owner. It put Australia as a more “generous and welcoming” home owner who is willing to accommodate “strangers” as opposed to previous Howard government “hostile” policy</td>
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<td>Towards a Regional Protection Framework - The Gillard government announces the establishment of the regional processing centre for asylum seekers in Timor-Leste. Australia had also on April 9 2010 temporarily suspended processing of asylum seeker applications from persons from Sri Lanka and Afghanistan</td>
<td>The East Timor Solution Deterring People Smuggling Bill 2011</td>
<td>Country as a home metaphor (However this was heralding a shift from the Rudd government policy) The state as a person metaphor The queue metaphor- everyone coming (home) to Australia must follow this “imaginary queue”</td>
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<td>An announcement that Children or Unaccompanied Minors (UAMs) and vulnerable families will be moved out of detention facilities to Community based accommodation</td>
<td>Community Detention Program</td>
<td>Country as a home metaphor</td>
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<td><strong>Turning Point</strong></td>
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| Protests and Hunger strikes in Immigration Detention Centres. Immigration Minister introduces new legislative changes in which detainees found to have damaged Commonwealth property during riots are denied permanent protection on grounds of failure of character test. | Migration Amendment (Strengthening Character Test and Other Provisions) Bill 2011 is later introduced. The Bill amended sections 501 and 500A of the Migration Act to provide additional grounds upon which the Minister or his delegate may decide to refuse to grant, or to cancel, a visa on character grounds upon conviction of an offence by a court. “......these changes are, in part, in response to the criminal behaviour during the recent disturbances at the Christmas Island and Villawood Immigration Detention Centres, which caused substantial damage to Commonwealth property. It is intended that these strengthened powers will also provide a more significant disincentive for people in immigration detention from engaging in violent and disruptive behaviour, and will deal appropriately with those who, by engaging in criminal activity in immigration detention, demonstrate a fundamental disrespect for Australian laws, standards and authorities”64 ...... | State as a person metaphor Country as a home metaphor The wording in the explanatory memorandum was that “......the Government is sending a strong and clear message that the kind of unacceptable behaviour seen recently in immigration detention centres will not be tolerated now or in the future”......

“......these changes are, in part, in response to the criminal behaviour during the recent disturbances at the Christmas Island and Villawood Immigration Detention Centres, which caused substantial damage to Commonwealth property. It is intended that these strengthened powers will also provide a more significant disincentive for people in immigration detention from engaging in violent and disruptive behaviour, and will deal appropriately with those who, by engaging in criminal activity in immigration detention, demonstrate a fundamental disrespect for Australian laws, standards and authorities”......
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<tr>
<td>An arrangement with Malaysia in which Australia would swap 800 asylum seeker</td>
<td>The Malaysian Solution is born</td>
<td>The queue metaphor</td>
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<td>boat arrivals with 4000 UNHCR assessed refugees out of Malaysia in the four</td>
<td>This was however overturned by the High Court ruling of 31/08/2011</td>
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<td>year period.</td>
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<td>A memorandum is signed with PNG</td>
<td>This was a start of the return to Offshore Processing</td>
<td>The queue metaphor</td>
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<td>The Australian government signed a memorandum of understanding with Papua</td>
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<td>Country as home metaphor</td>
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<td>New Guinea to re-establish an assessment centre for asylum seekers on Manus</td>
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<td>Island.</td>
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<td>Owing to the August 31, 2011 High Court ruling against the Malaysia Solution,</td>
<td>Migration Legislation Amendment (Offshore Processing and Other Measures Bill) 2011.</td>
<td>State as a person metaphor</td>
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<td>the government introduces new laws to allow for offshore processing</td>
<td>When the High Court of Australia in August 31 2011 ruled that it was illegal to send</td>
<td>And to further exemplify the “state as a</td>
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<td>asylum seekers to Malaysia in the Plaintiff M70/2011 v Minister of Immigration and</td>
<td>person” metaphor, the government went</td>
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<td>Citizenship (2011) HCA 32 the government quickly rushed to introduce new legislation</td>
<td>ahead to qualify and define what it meant</td>
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<td>Migration Legislation Amendment (Offshore Processing and other Measures) Bill 2011</td>
<td>by “national interest” as broadly referring</td>
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<td>to Australia's standing, security and</td>
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<td>interests and went further by giving</td>
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<td>examples that included ‘governmental</td>
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<td>concerns that relate to such matters as</td>
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<td>public safety, border protection, national</td>
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<td>security, defence, Australia's economic</td>
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<td>interests et cetera” 66. It thus not only</td>
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### Turning Point

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<td>to “replace the existing framework in the Migration Act for taking offshore entry persons to another country for assessment of their claims to be refugees as defined by the Refugee Convention (Wood and McAdam 2012) This also cemented the representation of asylum seekers arriving by boat as “intruders” in to the home. And whereas many had hailed the High Court ruling as having failed the ‘Malaysian Solution’ (Foster 2012), the government went ahead to prove that .....’the government has sufficient power to implement offshore processing arrangements’ and it explicitly expressed that ‘....the government of the day can determine the border protection policy that it believes is in the national interest’65.</td>
<td>located and reinforced Australia in the ‘home owner metaphor’ but also introduced the ‘war metaphor’ when matters defence and national security and brought into asylum seeker legislation. It is no secret that asylum seekers arriving in Australia by boat are represented as a serious threat. What is however clear here was that the new legislation was that the government was now acting out the home owner metaphor, in considering asylum seekers as guests who should only gain entry through the front door (approved channels), it changed rules in effect to ensure that any one entering through the window (coming by boat) would ultimately be processed offshore and not even the ruling of the High Court would stop this home owner.</td>
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### Complementary Protection Bill introduced. The new law is aimed at offering and improving the protection for people who do not fit the 1951 United Nations Conventions Relating to the

| Migration Amendment (Complementary Protection) Bill 2011. This was a positive move. | Country as a home metaphor |

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<tr>
<td>status of Refugees but are still found to be at risk of grave persecution, torture or death if returned to their countries</td>
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<td>The natural disaster metaphor</td>
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<tr>
<td>As a result of many asylum seekers drowning at sea</td>
<td>The Expert Panel on asylum seekers</td>
<td>“… compassion for asylum seekers can be used opportunistically to portray the tragedy of death at sea as a justification for stricter policies against people trying hard to seek sanctuary in Australia” (Briskman 2013).</td>
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<tr>
<td>Expert panel report released</td>
<td>Only one of the 18 recommendations of the Expert Panel (Offshore Processing) were swiftly implemented by the government. “No Advantage test” also introduced - a requirement or policy stipulating that no asylum seeker arriving by boat in Australia will have no advantage to receive speedy assessment of their asylum seeker claim over the refugees or asylum seekers awaiting resettlement in from their country of origin or lodged in transit countries like Indonesia or Malaysia.</td>
<td>The natural disaster metaphor And all the other metaphors</td>
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<tr>
<td>Legislation to allow for offshore processing of asylum seekers in Nauru and Manus Island.</td>
<td>Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012.</td>
<td>The country as a home metaphor</td>
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<td>Asylum seekers that would have arrived on or after August 13, 2012 would now be processed off shore. The same category would also be ineligible to sponsor their family members to reunite in Australia.</td>
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<tr>
<td>Excision of Mainland Australia</td>
<td>Asylum seekers arriving in mainland Australia can now be transferred Offshore for Processing</td>
<td>The queue metaphor</td>
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<td>Legislation to extend excision policy into Australia’s mainland to ensure that no one arriving in Australia by boat can lodge any protection claim in Australia except at the discretion or invitation of the Immigration Minister</td>
<td></td>
<td>The country as a home metaphor</td>
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<tr>
<td>A few days after Kevin Rudd returned to be Prime Minister Regional Resettlement Agreement (RRA) also referred to as the “PNG Solution” is introduced. Another such memorandum, similar to the PNG Solution was signed with the government of Nauru where asylum seekers would be transferred from Australia to Nauru on August 3, 2013</td>
<td>PNG Solution All those arriving by boat in Australia would never be assessed or resettled in Australia but would be quickly moved, processed and resettled in Papua New Guinea.</td>
<td>The queue metaphor</td>
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<td>The country as a home metaphor</td>
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<td>The state as a person metaphor</td>
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<td>Liberal Coalition Government in power</td>
<td>Operation Sovereign Borders commences. It is now government policy to turn away asylum seeker boats at sea in a military-style operation focused on “border security”</td>
<td>The war metaphor</td>
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<td>Temporary Protection Visas reintroduced</td>
<td>Immigration Amendment (Temporary Protection Visas) Regulation 2013 to reintroduce the system of Temporary protection. TPV holders unlike in the previous Howard arrangement will need to reapply for another TPV at the expiry of their TPV and are totally barred from applying for any other visa in Australia.</td>
<td>The state as a person metaphor</td>
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March 20, 2013, the Minister for Immigration was found not to exercise his non-compellable public interest powers to grant visas to individuals that had appealed to the high courts and won against the negative decision previously handed down by the Immigration Department not to grant such individuals a visa. This was a discovery in the case of the Minister for Immigration and Citizenship v SZQRB. The court did not only find that the plaintiff in this case had been denied procedural fairness in the most fundamental way but even more significant was that the International Treaty Obligations Assessment process that had been used by the government to...

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<tr>
<td>Immigration Minister Scott Morrison in response to the Senate’s disallowance of TPVs immediately put a freeze on granting of permanent protection visas leaving thousands of asylum seekers to languish in the community.</td>
<td>access complementary protection needs had not been used in accordance with the law. The court thus issued an injunction preventing the deportation of the plaintiff until his claims had been assessed according to the law. An as a result, this case also prevented the deportation of several other asylum seekers in the same category.</td>
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<td>Permanent protection is removed. Legislation is introduced to remove permanent protection for people who arrive in Australia by boat and seek asylum. This was a move to deny any boat arrival any opportunity of being granted a protection visa</td>
<td>Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill and later Act 2013 were passed.</td>
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<td>A bill to abolish complementary protection is proposed. It is now at the discretion of the Immigration minister whether to grant protection in circumstances where a person is at significant risk of torture, persecution or death. This was a move away from the Migration Amendment (Complementary Protection) Act 2011 which aimed to offer protection for people who do not fit the 1951 United Nations Conventions</td>
<td>The country as a home metaphor</td>
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<td>The country as a home metaphor</td>
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<tr>
<td>Relating to the status of Refugees but are still found to be at risk of grave</td>
<td>Migration Amendment (Protection and other measures) Bill 2014</td>
<td>The queue metaphor</td>
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<td>persecution, torture or death if returned to their countries.</td>
<td>The bill was introduced “to implement a range of measures which increase efficiency and</td>
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<td>enhance integrity in the onshore protection determination process”. In order to maintain</td>
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<td>both queue metaphor and state as a person metaphor in which the government as the home</td>
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<td>owner of Australia, the government introduced provisions that it was the</td>
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<td>responsibility of the asylum seeker (read here as queue jumper) to supply subsequent</td>
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<td>evidence and specify the particulars of their claims to be a person Australia is obliged</td>
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<td>to protect.</td>
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<td>New Legislation is introduced that removes most references to the Refugee</td>
<td>The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Seeker</td>
<td>All of the five metaphors</td>
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<td>Convention in the Migration Act 1958. The government has ultimately defined</td>
<td>Caseload) Bill 2014</td>
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<td>what they will consider as a refugee. The</td>
<td>The minister has now earned unchecked, arbitrary powers to deny anyone seeking</td>
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<td>“the whole of government’s key strategies for combating people smuggling and</td>
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<td>minister has powers to return boats accorded to him. The minister is allowed to place a cap on the number of protection visa grants annually. Asylum seekers who have arrived by boat will never be able to apply for permanent protection visas. Also introduced are the Safe Haven Enterprise Visa (SHEV) which along with the TPVs will be the only visas issued.</td>
<td>asylum in Australia. Australia has now granted powers to the minister to remove non-citizens from its territory irrespective of whether Australia has non-refoulement obligations against that person or not in complete disregard of the protections accorded to such persons under the different international treaties such as the Refugee Convention, the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Australia’s interpretation of the Refugee Convention has also gone ahead to disallow courts and the due process of the law (appeals processes) to impede any decision by the minister to remove non-citizens (asylum seekers). Removal of non-citizens from Australia can be considered even with undue consideration of any assessments of non-refoulement obligations.</td>
<td>managing asylum seekers both on shore and off shore”. “The bill fundamentally changes Australia’s approach to managing asylum seekers by”...</td>
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<th>Turning Point</th>
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<td>Migration Amendment (Protection and other Measures) Regulations 2015 is passed</td>
<td>Although this was later repealed, it was passed rather to “operationalise” the Migration Amendment (Protection and other Measures) Act 2015 which resulted from the (Protection and other Measures) Bill 2014</td>
<td>Almost all the metaphors</td>
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<tr>
<td>Australian Border Force Bill 2015</td>
<td>The roles of Customs (border policing) and Immigration (facilitation and service delivery) now mixed. The Immigration Department is now more of a criminal law enforcer than a facilitator of Immigration Services.</td>
<td>The war metaphor- Australia on full-scale war with people smugglers. However this war is fought by the process of returning at sea, any vessel with asylum seekers destined to Australia.</td>
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<tr>
<td>Migration Amendment (Regional Processing Arrangements) Bill 2015</td>
<td>The laws confer express powers to the minister to take asylum seekers to any country he or she may designate.</td>
<td>All of the metaphors</td>
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Deterrence as a Hallmark of Australian Asylum Seeker Policy

It will be recalled that the title of my study is derived from an award-winning Australian Television documentary series “Go back to where you came from”, broadcast in 2011 (Season One), Season Two in 2012 (Douglas and Graham 2013) and Season Three in July 2015. This television series documents the experiences of some selected Australians brought with them a variety of views about refugees/asylum seekers who are then taken through the experience of life in a reverse journey through the path that people seeking asylum/refuge in Australia have taken. 71

This series certainly revealed the strength of anti-asylum seeker sentiment, views that resonated deeply with the core idea that has come to define Australia’s asylum seeker policy in recent years, the idea that they should be deterred from coming to Australia by any means. The question to be addressed here is why has this happened, and has it had anything to do with the way the problem of asylum seekers was represented?

What’s the problem of asylum seekers arriving in Australia by boat represented to be in specific policy/legislative documents and pronouncements? What is assumed? What is taken for granted? What is not questioned?

My goal as previously explained in the introductory chapter of this thesis, was to identify the effects of specific problem representations so that they can critically be assessed. The assessment of the problem representation was to be undertaken using the mix of Bacchi’s “What’s the problem represented to be” approach with Lakoff’s work on metaphors.

One of the attractions and the value of Bacchi’s “What’s the problem represented to be?” approach is that it has indeed enabled me to identify some of the important representations of the Australian asylum seeker policy problem. With the WTP approach, I have probed that the rationales for the whole of Australia’s asylum seeker policy (deterrence at sea, mandatory detention, offshore processing and protection on a temporary basis) as effects of the understanding of asylum seekers from the

prism of threat to security, which stand out as key elements of Australian asylum seeker policy.

In relation to the Australian asylum seeker policy and scrutiny, we are identifying effects that have resulted from the problem representations of asylum seekers as pointed out previously namely; asylum seekers as a security problem and their perceived threat to Australian sovereignty.

Further to the security mis(representation) is the presentation of Asylum seekers as a “Problem” that requires a solution- A number of policy approaches have been named or geared towards a solution to the problem of asylum seekers. The Malaysian Solution, East Timor Solution, PNG solution and others. “Solution” as an English word is defined according to the Merriam-Webster online dictionary is something that is used or done to deal with and end a problem- something thing that solves a problem or a puzzle. A correct answer to a puzzle. That is precisely how people arriving by boat in Australia have been viewed as by successive governments- a complex problem that needs to be dealt with through the policies as articulated above. A problem that needs solving. A complex problem at that.

It is no secret that asylum seekers arriving in Australia by boat are represented as a serious threat. Numerous policies are peppered with lots of reference and inference to the insecurity to the wider Australia as I will explain here below. This threat of insecurity is easily picked out from the critical analysis of some or whole of the Australian government’s response to asylum seekers.

Closely related to the asylum seeker security issue is the people smuggling issue which has been used as a justification for military like operations of combat and secrecy. The opening statement in the supplementary explanatory memorandum of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 relates to the amendment of the Migration Act 1958 “....to support the government’s key strategies for combating people smuggling and managing asylum seekers both onshore and offshore”. The bill, which later passed as Act of Parliament, was intended for the purposes of granting powers to the government to “stop people smuggling ventures at sea”. There is therefore no doubt that the mind of policy makers, and especially the Liberal National Coalition
Government from 2013, closely link and blanket every asylum seeker to be a result of people smuggling.

“.....The people smuggling rackets were profiting or successful in their ventures of smuggling and needed to be stopped. “What the people smugglers and anyone they are trying to get on a boat need to understand is that this Australian government will take the actions necessary to protect Australian sovereignty and stop the boats”

- Minister Scott Morrison.

Unfortunately, the blanketing of the asylum seekers and people smugglers has not only been the Liberal Coalition Government but also the position that the Australian Labor government has either given bi-partisan support or implemented themselves. In a few days after Kevin Rudd returned to be Prime Minister in June 2013, he quickly announced that People smuggling was now the target of his new government which quickly crafted a Regional Resentment Agreement with Papua New Guinea that resulted in the sending of all boat arrivals for processing and resettlement in that pacific nation. The Prime Minister Kevin Rudd had declared on 13 July 2013 that he hoped this arrangement would break the back of people smugglers and bring an end to their trade.

“our responsibility as a government is to ensure that we have a robust system of border security and orderly migration, on the other hand, as well as fulfilling our legal and compassionate obligations under the refugees convention on the other”.

People smuggling, itself has come to be treated and not just as a criminal issue but as a national security issue. Whereas people smuggling has led to loss of life at sea, there is virtually no evidence to indicate that they are per se a threat to Australia's national integrity or security. There has never been a boat intercepted with ammunition or drugs to Australia, except helping those “armless” people that seek asylum in Australia. There is therefore no justification for a complete military like response to

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the boat question, let alone linking people smuggling with lengthy jail terms equivalent to those meted on murders and terrorists.

“Protecting Australian Sovereignty”

Hard line asylum seeker policies have been shaped and defended to be in the interest of safeguarding the sovereignty of Australia. But what does this mean? What is not being questioned and what is being taken for granted? We might have to first check the dictionary meaning of the words *sovereignty* and *integrity* in the Merriam-Webster online dictionary means obsolete supreme excellence or an example of it: supreme power especially over a body politic; one that is sovereign; especially: an autonomous state. From the Merriam-Webster on line dictionary Integrity is defined as either meaning one of the following: firm adherence to a code of especially moral or artistic values (incorruptibility); an unimpaired condition (soundness) -the quality or state of being complete or undivided (completeness). In 2014, Schedule one of the explanatory memorandum in the Migration Amendment (Protection and other Measures) Bill 2014 was worded as containing “……amendments which contribute to the integrity and improve on the efficiency of the onshore (processing) status determination process ...

Effects from the problem representations

**Temporary Protection only** - The government has introduced various legislative measures to ensure that those who arrive in Australia by boat will not be given the opportunity to apply for permanent protection in Australia. Instead, asylum seekers are provided only with the option of applying for a temporary protection visa (TPV), which is explicitly the motive of (Unauthorised Maritime Arrivals and Other Measures) Act 2013. This Act restricts the period a TPV can be granted to 3 years but in some instances it can be shorter, as it is on a case by case basis and is at the discretion of the Minister. Those who are granted a TPV are only able to seek to have their TPV extended on expiry and are prohibited from applying for any other visa or for Australian citizenship. The consequence of this legislation is that asylum seekers are subject to much uncertainty concerning their future which is further exacerbated

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by the fact that they are indefinitely separated from their families who remain overseas. Under a TPV, asylum seekers cannot leave Australia and re-enter without it invalidating their claim for asylum nor can they apply for their spouses and children to come to Australia for the purpose of reunification. This policy is in direct contrast with the expectations and guidelines of the UN Refugee Convention as it has significant negative implications on the health and emotional wellbeing of those seeking asylum as they are unable to rebuild a meaningful life and face a considerably extensive and limitless future of uncertainty and separation. This has negative implications in regard to building of meaningful life and existence and goes against the expectations and guidelines envisaged in the UN Refugee Convention.

**Forced return at sea and off shore processing** - Australia can now return people seeking asylum with no regard to the guidelines to the state parties (UNHCR 2007) It is therefore now obvious the turn back at sea of asylum seeker boats or the repatriation of those who had previously reached the Australian mainland, and even those who have been processed or resettled off shore in third countries reached is as a result the perceived threat.

It is quite evident that Australian governments now do not want any asylum seeker arriving in the mainland or Australian territories. Subsequently, it has either continued or expanded the excision policies that existed in the Howard era in the early 2000s. On May 16, 2013, the government in passing legislation, Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 ultimately extended the excision policy to mainland Australia. This policy was only previously introduced for boat arrivals at excised territories like Christmas Island but it was now extended to mainland Australia. Although initially opposed by the Australian Labor Party in the Howard era in 2001, this policy of excising the Australian mainland, was passed with bi-partisan support of the two major parties⁷⁵. The implication is that any boat arrival and seeking asylum in Australia cannot lodge a valid protection in Australia except at the discretion of the Immigration minister and will be at the risk of being transferred off shore for processing.

The practice of transfer and processing of asylum seeker claimants in third party countries, whether it was attempted or it occurred in countries such as Papua New Guinea, Nauru, Malaysia, East Timor or Cambodia is what Australian governments since 2010 have done or attempted to do. Here are some vivid examples:

- July 6, 2010- towards a Regional Protection Framework- the Gillard government announces the establishment of the regional processing centre for asylum seekers in Timor-Leste.\(^76\)

- May 7, 2011, the Malaysian solution is born- An arrangement in which Australia would swap 800 asylum seeker boat arrivals with 4000 UNHCR assessed refugees out of Malaysia in the four year period.\(^77\).

- August 19, 2011, The Australian government signed a memorandum of understanding with Papua New Guinea to re-establish an assessment centre for asylum seekers on Manus Island- This was definitely the Pacific Solution revisited.\(^78\).

- The Australian government also signed an agreement with Cambodia to resettle asylum seekers there. The agreement on May 19, 2014 would facilitate the resettlement of all those found to be refugees from Nauru to Cambodia.\(^79\).

This is literally to send away refugees as far away as possible from Australia!

The striking of other agreements with pacific countries like Papua New Guinea and Nauru for processing and resettlement of asylum seekers represents the externalisation of the asylum seeker problem. On July 19, 2013, Prime Minister Kevin Rudd announced the Regional Resettlement Arrangement with Papua New Guinea, 


which came to be referenced as the PNG Solution. Subsequently, any boat arrivals in Australia as of July 19, 2013 would end up being processed (Off shore) in Manus Island (Mandatory Detention) and would not be resettled in Australia even if found refugees. They would be permanently resettled in Papua New Guinea and those not found refugees will be returned back to their country. This Regional Resettlement Agreement (RRA) also referred to as the “PNG Solution” announced by the Kevin Rudd Labor government was a vivid example of this externalisation where the government blankly declared that all those arriving by boat in Australia would never be assessed or resettled in Australia but would be quickly transferred, processed and resettled in Papua New Guinea.

**Where is the silence?**

Of course sceptics would want us believe that there are very concrete explanations to the harsh immigration policy - as “blatantly clear” of terror threats and or bombings to Australians both on and offshore. This does not imply that there are may be no “wrong elements” in the asylum seeker chain. But the proverbial one egg spoils it all should not be applied as a blanket in dealing with the asylum seeker situation.

**Obligations to International Treaties** - Article 14 in the 1948 Universal Declaration of Human Rights to which Australia has covenanted to provides for the rights to seek asylum in another country and enjoy the protection from persecution\(^{80}\). Australia has now granted powers to the minister to remove non-citizens from its territory irrespective of whether Australia has non-refoulement obligations against that person or not in complete disregard of the protections accorded to such persons under the different international treaties such as the Refugee Convention, the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Australia’s interpretation of the Refugee Convention has also gone ahead to disallow coats and the due process of the law to impede any decision by the minister to remove non-citizens. Removal of non-citizens from Australia can be considered even with undue consideration of any assessments of non-refoulement obligations.

Addressing push factors - Many places such as Afghanistan are still unsafe (Taliban). There are reasons that force people into boats, those risky journeys that need to be addressed. Or at least Australia is positioned to address. Australia has an upper edge in the Pacific region. Australia is an aid provider to a host of countries in the region. Australia is best positioned to help advocate for other countries to improve the conditions for asylum seeking. Australia can lobby Indonesia and Malaysia to sign the 1951 Convention and its 1967 Protocol. Australia can indeed diplomatically convince its Pacific neighbours to improve human rights records. Australia is currently building the capacity of the Indonesian police, can it be willing to also build their capacity to take refugees? It undoubtedly has the ability to make some significant change or cause change. It is the question of will?

Asylum seekers are assumed to have valid documents from the time they set out to leave their countries and seek asylum. According to the new law, (bill) If asylum claims have been rejected on the basis that the applicant submitted a document that was deemed “bogus” by the department, they will have no access to be referred to the newly created Immigration Assessment Authority (IAA) that sits under the Refugee Review Tribunal (RRT).

Human Rights abuses in Pacific Countries - There are many countries in the Asia Pacific that are not signatories to the 1951 UN Convention and thus do not recognise or provide protection to people seeking asylum. Even PNG is a signatory with some reservations. With no access to education, no work rights, possible refoulement with almost no possibilities of permanent resettlement.

What is taken for granted? What is not questioned?

Boat Asylum seekers are genuine - A large number of those who have come to Australia in recent years by boat have been found to be genuine asylum seekers at the end of their assessment process. According to the Department's annual report81, between 90-95 percent of asylum seeker claims assessed in the onshore but remote Christmas Island resulted in the granting of protection visa. Similarly, commentators have argued that a large number of asylum seekers generally detained in the small

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island nation of Nauru under the Pacific Solution between 2001 and 2008 were found to be genuine refugees and later resettled in Australia and other countries like New Zealand.82

**Communication campaign to counter people smugglers** 83 - Although it is obviously an expensive undertaking, the government seems to be unbothered by how many millions of tax payers” dollars will be injected in this venture at the moment. The end, in the end, will justify the means-just to stop the boats coming in loaded with people claiming to seek asylum, and as a former Prime Minister Kevin Rudd once stated “to break the backbone of the people smuggling business-deterrence at its best! And as for those intercepted within the waters of Australia, they are either immediately sent back “to where they came from” or transferred to the offshore processing facilities in Manus Island of Papua New Guinea or Nauru, never to be resettled in Australia.

And what’s the message to those contemplating of coming to Australia- “You will never make Australia home”.

You will not be resettled in Australia if you come by boat. Under the Regional Resettlement Arrangement with PNG, any unauthorised IMA was subjected to be transferred to Manus Island for processing and resettlement for those found to be genuine refugees. And detention or deportation for those found not to be refugees as determined by PNG. Initial security and health checks were to be undertaken by Australian authorities.

**What is assumed?**

**Asylum seekers have no values** - The government has set higher and sticker standards for asylum seekers living in the community to live by. The standard is incomparable to those expected of other Australians. In January 30, 2014, the government introduced and implemented a Code of Behaviour84 for asylum seekers

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living in the Australian community in which they are subjected to and expected to abide by a different set of values compared to ordinary Australians. It is inferred that spitting, swearing or simply irritating other people in the wider Australian community can lead to deportation\textsuperscript{85}. This can be interpreted as nothing more but ‘setting a trap’ for the removal of asylum seekers from Australia hence evidencing the governments deterrence agenda.

**Conclusion**

What this brief overview of recent and current research suggests is that we need to understand better why contemporary asylum seeker policy is more about a policy aimed at deterring asylum seekers from coming to Australia rather than finding ways of discharging Australia’s obligations to asylum seekers under international law by protecting those seeking asylum. While there is a considerable body of research that focuses on the plight of people seeking asylum in Australia, there is little or limited specific focus on why Australia has adopted the increasingly punitive and deterrent framework that now characterises its asylum seeker policy. What I have shown is that there is a good deal of descriptive work pointing to the role of ideology the use of misrepresentations of asylum seeker problems. What I also suggested was that much of this work was strong in its capacity to describe certain phenomena but was not so strong when it came to generating satisfying explanations. That deficiency what I sought to rectify using the work of Bacchi (Bacchi 2009) and Lakoff (Lakoff and Johnson 1980).

CHAPTER SIX: CONCLUSION

In this research I have analysed the discursive practices of Australian politicians as they deliberated in public, made policies or introduced legislation to deal with the asylum seeker problem, from 2007 but especially in 2013 and thereafter. Rather than compliance with the legal and moral obligations operating in international refugee law successive governments have made the deterrence of asylum seekers the central plank in Australia’s asylum seeker policy platform. The representation of asylum seeker policy as a problem of border security now means that vulnerable asylum seekers who were seeking refuge by embarking on long and dangerous journeys across the sea, are now being turned back at sea and returned to refugee camps in the region. This policy approach of “stopping the boats” depended in part on constructing the “problem” in such a way as to justify this treatment.

The years since 2007 have seen a good deal of chopping and changing in asylum seeker policy. This has been largely a result of the confluence of contentious public discussion some of it provoked by media preoccupied with a framework stressing that “bad news is good news”. Public opinion has been and remains sharply divided. This has helped to impart some instability into the policy making process.

As I have shown, this policy assumed that the focus on deterrence was warranted because successive Australian governments had seemingly persuaded themselves that Australia had to protect itself from these people even if it meant breaching international law protecting the human rights of asylum seekers. As a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (UNHCR, 2003), Australia has been legally obligated under international law to provide protection for people claiming refugee status. Yet Australia’s asylum seeker policies have increasingly been at odds with the UN Refugee Convention.

I have also argued that the continued emphasis on deterrence, which is manifested in hard line policies perhaps hinges around the conscious or unconscious understanding and application of the “Castle Doctrine”- the ideology that “a man’s home is his castle”. (Please refer to the narrative in Chapter 5). And whereas the castle ideology is not
explicitly expressed in various asylum seeker policies, its tenets remain largely implied in policy responses.

I have also made a case about the role played by emotionally charged metaphors employed by politicians between 2007 and 2015. As Bessant et al (2006, p. 333) argue, if “we are to be very clear about the politics of policy-makers and politicians, then giving attention to the metaphors used is critical.” However this is no easy task. Metaphors are so ingrained in our patterns of thought, deliberation and speech that they are often difficult to recognise if we do not pay close attention to their use. Indeed we are often not aware of the majority of metaphors we use in everyday speech (Badstone, 2000, p. 242–243). There is good reason to suggest that these factors were also at work in the years after 1989 (See Bleasedale 2008; Burke 2002). Because of the way this political discourse was shaped, asylum seeker policies were profoundly affected by the way the problem was represented.

Metaphors are vital in terms of how we understand the world, and in this case, how particular issues come to be seen as problems. In my account I highlighted the power of metaphors in asylum seeker discourse about arrival of asylum seekers after 2007 and the role they play in constituting issues as problems. It seems clear “that “problems” do not exist outside of the ways in which they are thought about or conceptualised” (Bacchi, 2009, p. 262). When an issue is represented as a problem it has been given shape and boundaries and it often becomes impossible to think about it in any other shape, or outside of the boundaries that it has been prescribed. Thus, when something has been defined in a certain way, other interpretations about what it is, and what needs to be done to address it, are pushed out of sight.

As Reilly (2014) argued recently, there was probably never any doubt that a wealthy developed nation like Australia, “with an expensive and powerful navy, could stop a trickle of unseaworthy fishing boats from reaching Australia” if any Australian government wanted to do this. The Howard government had created a blueprint for doing this and this had been embellished by the Labor government between 2007 and 2013. And there was indeed a decline in the number of boats arriving in Australia especially from late 2013 on. Reilly however notes that “a proper assessment of the government’s policy must move beyond the simple metric of boat arrivals”.

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Such an accounting needs to account for the broader costs and benefits of stopping the boats especially “in light of the reasons Australia signed up to the UN Convention on Refugees back in 1951”. As Reilly (2014) puts it so far it seems, the Abbott government has been able to avoid devastating criticism because the costs of its policies are either borne by other countries, or by the asylum seekers themselves, or else the costs will only become apparent in the future. As Reilly notes firstly there is a cost to those asylum seekers to whom Australia has denied entry:

People are left with no resolution to their claim for protection. Those who have been intercepted and pushed back remain in limbo in Indonesia, a transit country, with no government assistance, no means to earn a living and no legal rights.

Worse however the condition is forced on other asylum seekers “intercepted under Operation Sovereign Borders who currently (as of August 2015) may be held in detention either on Christmas Island, Nauru or Manus Island” (Reilly 2014). As has become clear courtesy of investigations by the Australian Human Rights Commission, the UN High Commissioner for Refugees and Amnesty International, the conditions of detention are plainly and grossly inadequate.

Second, there is the cost to Australia’s international reputation:

Australia is uniquely hard line in its response to asylum seekers arriving by boat. No other country has employed as aggressive an interception and tow-back policy as Australia, using navy vessels to turn back boats in international waters, or transferring asylum seekers to disposable boats and teaching them to steer themselves. No other country has utilised connections with small developing nations to shoulder the burden of its asylum seeker issue.

Due to the limitations of both time and expectation, I have limited my inquiry to identifying, as Bacchi has recommended, the implied problem representations in specific asylum seeker policies or policy proposals over the years. Clearly a good deal more research could be conducted to address the asylum seeker policy issue by engaging with Bacchi’s other questions:
1. What presuppositions or assumptions underlie this representation of the asylum seeking people arriving by boat in Australia? What effects have been produced by this representation of the “boat people” problem?

This question requires that we refer to the background “knowledge” that is taken for granted. It is important for example, that we critically analyse the categorizations of people relied on in the policy proposals. We need to understand better the techniques associated with the creation of categories in techniques like censuses and surveys that form part of the non-discursive practices that allow certain problem representations to gain dominance and hence get policy representation. It is through the examination of these presuppositions that we are able to understand the conceptual logic that underpin some specific problem representations in the alcohol policy or proposal representations.

2. What effects are produced by this representation of the asylum seekers problem in Australia?

The goal is to identify the effects of specific problem representations so that they can critically be assessed. WPR approach generally starts with the presumption that some problem representations create difficulties and sometimes forms of harm for members of some social groups more than others. This is why we need to scrutinise the “problematisations” on offer in asylum seeker policies, laws and proposals on offer by the various Australian governments to see where and how they function to benefit some and harm others and what can be done about this. In order to perform this assessment, we will need to direct our attention to the effects that accompany specific problem representations. Again it is worth noting that this form of analysis will not necessarily refer to the conventional standard policy approach to evaluation with its focus on “outcomes” or “efficiency”. The WPR approach identifies three interconnected and often overlapping effects that need to be weighed up.

3. What’s left unproblematic in the Australian asylum seekers policy problem presentation? Where are the silences? Can the Australian asylum seekers problem be thought about differently?

The objective is to advance for our reflection and consideration, issues and perspectives silenced in identified problem representations. The purpose here is to problematize the “problematisations” on offer in specific policy proposals by
subjecting the problem representations they contain to critical scrutiny in the various policy proposals regarding people arriving by boat and seeking asylum in Australia. The key consideration here is to find out what has failed to be problematized. The objective here is to identify and discuss those issues and perspectives that have been silenced. This kind of analysis will draw our attention to tensions and contradictions in problem representations and helps to highlight the inadequacies and limitations in the way the problem is being represented. We also need to draw our attention to competing problem representations that were not considered in specific policy proposals as they assist us in identifying silences in those problem representations that gain institutional endorsement. Here we also might begin to draw cross cultural comparisons to assist us in realising that certain ways of thinking about problems reflect specific institutional and cultural contexts and hence that problem representations are contingent upon these contexts.

4. How and where has this representation of the asylum seekers arriving by boat problem been produced, disseminated and defended?
The purpose of this question in Bacchi’s approach is to highlight the conditions that allow a particular problem representation to take shape and become dominant. Here we will need to trace the history of the current problem representation. We need to follow the twists and turns in the evolution of the asylum seeker policy/problem in Australia. Scrutinizing the genealogy of asylum seekers policy problem representation over the years has a destabilising effect on problem representations that are often taken for granted. We will need to dig deep in to the power relations that have affected the success of some problem representations and the failure of others. An example is why Howards 2001 “Pacific Solution” was not taken up by the Labor Government in 2007 yet by 2012 they had adopted something looking a lot like it. Tracing the genealogy helps us to identify how a “problem” took on a particular shape, with specific emphasis on the process(es). We will also need to pay attention to the differential power relations where some groups have more influence than others in ensuring that a particular problem representation “sticks” and others get left out along the way. We will direct our attention to arrange of often unmentioned practices or politics, e.g. rules that give some groups institutional authority in some aspects.
5. How can the current asylum seekers arriving by boat problem representation be disrupted or replaced to bring about a practical solution to the boat people problem in Australia?

The goal here is to pay attention to both the means by which some problem representations become dominant, and the possibility of challenging problem representations that are judged to be harmful. We might for example, direct our attention to practices and processes that allow certain problem representations to dominate with an emphasis on the analysis of means through which particular problem representations reach their target audience and achieve legitimacy. In this respect we must also consider the role of media in disseminating and supporting some problem representations.
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