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REFUGEES IN THE 2001 AUSTRALIAN FEDERAL ELECTION: AN ANALYSIS USING THE BACKFIRE MODEL

**A thesis submitted in fulfilment of the
requirements for the award of the degree**

Master of Arts

from

University of Wollongong

by

Andrew Herd, BAppEc (UC)

**School of History and Politics
Faculty of Arts**

2006

Thesis Certification

I, Andrew Herd, declare that this thesis, submitted in fulfilment of the requirements for the award of Master of Arts, in the School of History and Politics, Faculty of Arts, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Andrew Herd

October 2006

Abstract

The issue of asylum seekers was central to the 2001 Australian federal election campaign. Of several incidents involving asylum seekers during the campaign, two have become essential to the election narrative: the so-called children overboard and SIEV X incidents. Although both incidents involved asylum seekers, they were also quite different. During children overboard, the Government was very quick to inform the public of what occurred, although this was later proven wrong, whereas the Government did not wish to publicise the deaths of 353 asylum seekers onboard SIEV X. Most Australians are now well aware of the truth behind children overboard, but the controversy surrounding SIEV X is still relatively unknown.

Both cases illustrate that the Australian Government was able to minimise public outrage over its actions — actions which, according to a number of people, should have caused mass outrage. The central aim of this thesis is therefore to analyse how the Government managed to prevent outrage over its actions.

One method for analysing how those in power, such as governments, inhibit outrage is the backfire model. The backfire model builds on the concept of ‘political jiu-jitsu’ and classifies Government actions into five methods: cover-up; devaluation of the target; reinterpretation of the event; using official channels; and intimidation and bribery. Extensive evidence is presented showing that in both cases, children overboard and SIEV X, the Government implemented all five methods.

Recognising when a government attempts to implement one of the methods allows activists to execute their own counter-strategies, and in doing so challenge the government’s authority and bring about positive social change.

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List of Abbreviations

AEST	Australian Eastern Standard Time
ADF	Australian Defence Force
AFP	Australian Federal Police
ALP	Australian Labor Party
APS	Australian Public Service
ASIO	Australian Security and Intelligence Organisation
AWB	Australian Wheat Board
CIA	Central Intelligence Agency (US)
CO	Commanding Officer
DIMA	Department of Immigration and Multicultural Affairs
GST	Goods and Services Tax
HREOC	Human Rights and Equal Opportunity Commission
IDC	Interdepartmental Committee
IDSRR	Indonesian Maritime Search and Rescue Area of Responsibility
IOM	International Organisation for Migration
LAPD	Los Angeles Police Department
ONA	Office of National Assessments
PII	Potential Illegal Immigrant
PM&C	Department of Prime Minister and Cabinet
PPV	Permanent Protection Visa
PST	People Smuggling Taskforce
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
RHIB	Rigid Hull Inflatable Boat
SIEV	Suspected Illegal Entry Vessel
SUNC	Suspected Unauthorised Non-Citizen
TPV	Temporary Protection Visa
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

List of Main Characters

Commander Norman Banks: Commander of HMAS *Adelaide*

Admiral Chris Barrie: Chief of Defence Force

Mr Tim Bloomfield: Director of Media Liaison, Department of Defence

Rear Admiral Marcus Bonser: Director General of Coastwatch

Brigadier Gary Bornholt: Military Adviser, Public Affairs and Corporate Communication, Department of Defence

Captain Belinda Byrne: Brigadier Bornholt's Staff Officer

Commander Piers Chatterton: Director of Operations, Royal Australian Navy

Mr Clive Davidson: Chief Executive Officer, Australian Maritime Safety Authority

Mr Bill Farmer: Secretary, DIMA

Ms Jane Halton: Chair of PST, PM & C

Dr Brendan Hammer: Branch Head, Defence Branch, PM & C

Mr Ross Hampton: Media Adviser, Minister for Defence, Peter Reith

Dr Allan Hawke: Secretary, Department of Defence

Mr Peter Hendy: Chief Staff, Minister for Defence, Peter Reith

Mr John Howard: Prime Minister

Mr Brian Humphreys: Director General, Communications Strategies, Department of Defence

Air Marshal Angus Houston: Acting Chief of the Defence Force

Mr Kim Jones: Director-General, Office of National Assessments

Mr Miles Jordana: International Adviser, Prime Minister, John Howard

Commander Stefan King: Defence Force Liaison Officer, PM&C

Ms Jenny McKenry – Head of Public Affairs and Corporate Communication, Department of Defence

Abu Quassey: People Smuggler

Mr Peter Reith: Minister for Defence

Rear Admiral Chris Ritchie: Commander Australian Theatre

Mr Philip Ruddock: Minister for Immigration and Multicultural Affairs

Mr Mike Scafton: Military Advisory, Minister for Defence, Peter Reith

Vice Admiral David Shackleton: Chief of the Navy

Ms Harinder Sidhu: Defence Branch, International Division

Brigadier Mike Silverstone: Commander, Northern Command

Rear Admiral Geoff Smith: Naval Component Commander

Air Vice Marshal Titheridge: Head, Strategic Command Division

Group Captain Steven Walker: Director, Joint Operations

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Publications in Support of this Thesis

The following articles have been published during the writing of this thesis:

Andrew Herd, 'Amplifying Outrage over Children Overboard', *Social Alternatives*, Vol. 25, No. 2, 2006, pp. 59-63.

Andrew Herd, 'Official Channels or Public Action: Refugees in Australia', *Flinders Journal of History and Politics*, Vol. 23, 2006, pp. 117-134.

Introduction

The treatment of asylum seekers has been one of the most contentious issues in recent Australian political history. Controversy over the treatment of asylum seekers by Australian governments reached a peak during the 2001 Federal Election. Although the issue of asylum seekers had long been on the political landscape, the decision by the Australian Government to prevent the *MV Tampa* disembarking 433 rescued asylum seekers on Christmas Island proved central to the Government's re-election campaign. The Government's campaign against asylum seekers, along with the terrorist attacks on the United States on 11 September 2001, contributed to what has been described as "fear of the other".¹ This has led many commentators to refer to the election as the "race election".²

Whether the Government's stance on asylum seekers was the reason it won the election is still hotly debated. As many commentators have been recognised, the major opposition party, the Australian Labor Party (ALP), supported the majority of the Government's actions concerning asylum seekers, and yet still lost the election. However, what is not in dispute is that border protection (as the Government dubbed its policies regarding asylum seekers) formed a central component of the election campaign. The Liberal Party catchphrase "we will decide who comes to this country and the circumstances in which they come"³, has become synonymous with the election, and Prime Minister John Howard's border protection policies in general.

During the election, outrage over the Government's treatment of asylum seekers seemed to be restricted to those who believed the Australian Government had a moral and legal responsibility to provide refuge for those fleeing repressive regimes in Iraq, Afghanistan and other countries. The political consequence of this outrage appears to have been restricted to what has been called a protest vote for either the Australian Democrats or Australian Greens. But, revelations towards the end of the campaign

¹ Carmen Lawrence, 'Fear of the 'Other' and Public Policy', in *Seeking Refuge: Asylum Seekers and Politics in a Globalising World*, ed. Jo Coghlan, John Minns, and Andrew Wells, University of Wollongong Press, Wollongong 2005.

² See Roger Maynard, 'War of words hots up in Aussie 'race polls'', *Straits Times*, 7 November 2001; David Reed, 'It's a race poll - commentator', *The West Australian*, 8 November 2001.

³ John Howard, *Transcript of Address at the Federal Liberal Party Campaign Launch*, Sydney, (28 October 2001 (cited 2 June 2005)); available from <http://www.pm.gov.au/news/speeches/2001/speech1311.htm>.

that there were inconsistencies in many of the Government's claims regarding asylum seekers should have led to a widening of this outrage. The Government's victory in the election suggests this outrage did not form.

There is now little doubt the Government manipulated a number of facts about asylum seekers that contributed to its victory in the 2001 election. In the lead up to the next Federal Election in 2004, a poll showed that 51 per cent of respondents believed John Howard had “‘generally been dishonest’ in his statements about the children overboard incident.”⁴ Nevertheless, the Howard Government won the 2004 election and gained an increased majority in the House of Representatives and a majority in the Senate for the first time. The question is: how did the Howard Government manage to inhibit outrage over its treatment of asylum seekers, although it was seen by many people as mistreating vulnerable asylum seekers and over half the Australian population believed Howard was dishonest?

One argument is that Australians know John Howard lies, but “‘deliberately and knowingly grant him absolution’”.⁵ The reason put forward for this is that most Australians like or at least approve of Howard, and are therefore happy to forgive some of his lies. Although this argument may be true, it does not provide a reason for why Howard is so well liked. A list of controversial actions by Howard over his tenure would include such things as introducing the GST after saying he never, ever would, invading Iraq on false pretences, the AWB scandal and the introduction of the new workplace relations laws. On the face of it, these actions would not lead to a majority of Australians liking, or even approving of, a politician. One plausible reason that Australians like John Howard is his success in inhibiting the outrage people feel over his actions. If people are not outraged by particular actions, they are more likely to ‘like’ a person.

The treatment of asylum seekers during the 2001 election is another action by the Government that could be expected to reduce how much Australians like Howard and his Government. There is now a substantial body of work on the 2001 election and

⁴ Michael Gordon, 'PM lied over children: poll', *The Age*, 8 September 2004.

⁵ Peter Hartcher, 'Up to his bum in it, but still sitting pretty', *The Sydney Morning Herald*, 3 March 2006.

the issue of asylum seekers.⁶ Many of these recount the events of the 2001 election, and reveal many of the Government's lies and deceptions, while others used theories to analyse the Government's actions. However, none attempted to look at how the Government inhibited outrage and how refugee activists could have increased this outrage.⁷ The aim of this thesis is therefore to investigate how the Government managed to inhibit the growth of outrage over its actions, and to use the lessons learnt from this to formulate counter strategies activists may wish to use in the future.

Methodology

An analysis of the Government's treatment of asylum seekers is too large for this thesis. Case studies allow a more in depth analysis of issues. The choice of relevant case studies is very important to a conclusive study of an issue. The 2001 Federal Election is seen as the peak of the controversy over asylum seekers, so it makes sense to choose case studies from this time. This therefore narrows the choice of case studies to three or four major incidents. It is important that the final choice of case studies does not allow opponents to point to their choice as the reason for the success of the model. As Noam Chomsky has noted, regarding his choice of case studies to examine using the Propaganda Model,

you let the opponents select their own ground: you take the cases that people on the other side of the spectrum point to show that the media go too far in their undermining of authority, you take the examples *they* select to prove *their* position...so there would be no question of taking the wrong sample or anything like that.⁸

This is particularly important when analysing controversial cases, such as those involving asylum seekers. The children overboard incident arose because Government ministers claimed asylum seekers had thrown children overboard when intercepted by

⁶ For example, see Richard Devetak, 'In Fear of Refugees: The Politics of Border Protection in Australia', *International Journal of Human Rights*, Vol. 8, no. 1, 2004; Tony Kevin, *A Certain Maritime Incident*, Scribe, Melbourne, 2004; David Marr and Marian Wilkinson, *Dark Victory*, Second, Allen and Unwin, Crows Nest, 2004; Kate Slattery, 'Drowning not waving: the children overboard event and Australia's fear of the other', *Media International incorporating Culture and Policy*, Vol. 2003, no. 109, 2003.

⁷ An exception to this is Sharon Callaghan and Brian Martin, 'Igniting concern about refugee injustice', in *Education and Social Action Conference, 6-8 December 2004*, ed. Rick Flowers, Centre for Popular Education, University of Technology, Sydney 2004, which provided a preliminary analysis of the refugee situation in Australia. Although a short paper, it did demonstrate the usefulness of the backfire model when analysing the Government's response to asylum seekers, but said little about the cases of children overboard or SIEV X.

⁸ Noam Chomsky, Peter R. Mitchell and John Schoeffel, eds., *Understanding Power: The Indispensable Chomsky*, The New Press, New York 2002., p. 18.

the Royal Australian Navy, and then continued to maintain this when informed by senior officers in the Australian Public Service and Australian Defence Force that the incident did not occur. When questioned over his role in the children overboard incident, John Howard replied,

two nights out from the election I was fretting over whether or not to release a video as I didn't want it to be alleged I was sitting on that and when the video went out it was completely inconclusive. Now I thought that represented full disclosure rather than suppression.⁹

It could therefore be assumed that supporters of the Government would use the case of children overboard to prove that it did not attempt to inhibit outrage, and was actually as transparent as possible.

When analysing two cases, it can be useful to choose another that appears quite different. While the children overboard incident is one of the most discussed in Australian politics, SIEV X is rarely talked about. Tony Kevin's book, *A Certain Maritime Incident* is a conclusive outline of the incident, describing how 353 asylum seekers drowned on a voyage from Indonesia to Australia. The reaction to the book is reflective of the reaction to the incident, as Kevin himself has noted, "as far as Australia's national security and governance establishment is concerned, it is as if my SIEV X book does not exist".¹⁰

The two cases are therefore quite different. The facts of the children overboard incident are quite well known throughout Australia, with most Australians aware the Government was dishonest in its statements about the incident. On the other hand, the facts of SIEV X are not well known, with the incident rarely discussed in the mainstream media, and outrage restricted to those conservative commentator Piers Akerman has described as "whackers of the fringe media on various websites".¹¹ It would therefore appear the Government has been unsuccessful in inhibiting outrage over the children overboard incident, but quite successful in the case of SIEV X.

⁹ 'No lies about children overboard: PM', *AAP Bulletins*, 1 March 2006.

¹⁰ Tony Kevin, 'SIEV X: An Author's Postscript', *Overland*, Vol. 181, 2005, p. 108.

¹¹ Piers Akerman, 'Sinking ships and dirty Labor tricks', *Daily Telegraph*, 24 October 2002.

After choosing the two case studies, it is then important to decide on a theoretical model with which to analyse them. With the aim of this thesis being to analyse how the Government inhibited outrage and then to develop potential counter-strategies, it was decided that the backfire model is most suited.¹² The backfire model builds on the concept of political jiu-jitsu, and includes the following five strategies: cover-up; devaluation of the target; reinterpretation of the event; official channels; and intimidation and bribery. Previous research has shown governments often implement at least one of these methods, and often all, when attempting to inhibit outrage. Another important aim of this thesis is therefore to ascertain the suitability and effectiveness of the backfire model as a tool for analysing the inhibition of outrage.

Thesis Structure

Chapters Two and Three provide the background for this thesis. Chapter Two provides an outline of the history of asylum seekers in Australia, from the arrival of the first 'boat people' 40,000 years ago to the *Tampa*. This chapter also outlines some of the major pieces of national and international law governing Australia's treatment of asylum seekers. Chapter Three looks at the various theories available to analyse the two case studies, showing why the backfire model is useful.

Chapters Four and Five are the core of this thesis, with each being composed of a case study. Chapter Four looks at the case of children overboard, and is divided into sections on the five methods outlined in the backfire model: cover-up, devaluation of the target, reinterpretation of the event, official channels and intimidation and bribery. Chapter Five does the same with the case of SIEV X.

Chapter Six takes the lessons learnt from Chapters Four and Five to develop potential counter-strategies for activists. The strategies listed here are not exhaustive, but show the potential uses of the backfire model in developing effective strategies.

The Conclusion brings together the major lessons from both case studies, and the advantages and disadvantages of the backfire model, while also providing some ideas for future study.

¹² A more detailed analysis of the different models available and the reasons for using the backfire model is provided in Chapter Three.

Chapter Two: Backfire Background

In modern democracies, a government faces opposition both from other political parties and from interest groups within society. The aim of every government is to maintain power and promote its agenda, and to do this it is sometimes important for it to inhibit the outrage the public feels over its actions and policies. By inhibiting this outrage, the goal of the government is to implement its policies and ensure its electoral success.

A number of theories could be used to analyse how the Australian Government inhibited potential outrage over its treatment of asylum seekers. These theories include discourse analysis, hegemony, Lukes' three dimensions of power, agenda management and backfire.

Possible Theories

French philosopher Michel Foucault wrote about the use of discourse analysis in interpreting events. As McHoul and Grace note, to Foucault, "the term 'discourse' refers not to language or social interaction but to relatively well-bounded areas of social knowledge".¹³ A number of authors have analysed the discourse surrounding the Australian Government's treatment of asylum seekers,¹⁴ although most have restricted their analysis to the media. As Saxton has noted, "as the general public has limited contact with asylum seekers, the media play a powerful role in mediating public discourse concerning asylum seekers".¹⁵

But discourse analysis is not the only possible method for analysing how the Australian Government maintains public support for its treatment of asylum seekers. Antonio Gramsci's concept of 'hegemony' describes how bourgeois social and

¹³ Alec McHoul and Wendy Grace, *A Foucault Primer: Discourse, power and the subject*, Melbourne University Press, Carlton, 1993, p. 31.

¹⁴ Giorel Curran, 'Mainstreaming populist discourse: the race-conscious legacy of neo-populist parties in Australia and Italy', *Patterns of Prejudice*, Vol. 38, no. 1, 2004; M. Macken-Horarik, 'Working the Borders in Racist Discourse: The Challenge of the 'Children Overboard Affair' in News Media Texts', *Social Semiotics*, Vol. 13, no. 3, 2003; Sharon Pickering, 'Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia', *Journal of Refugee Studies*, Vol. 14, no. 2, 2001; Alison Saxton, 'I certainly don't want people like that here': The Discursive Construction of 'Asylum Seekers', *Media International incorporating Culture and Policy*, Vol. 2003, no. 109, 2003; Slattery, 'Drowning not waving'.

¹⁵ Saxton, 'I certainly don't want people like that here', p. 10.

political values “are promulgated through the educational system, the mass media, popular novels and the cinema, so that the great majority of citizens come to accept them as natural”.¹⁶ It would therefore be possible to use hegemony to analyse how the Australian Government has used the media and other institutions to maintain the support of a majority of Australians.

In his book, *Power: A Radical View*, Lukes outlines ‘three dimensions of power’. First is a “view of power [that] includes a focus on *behaviour* in the making of *decisions* on *issues* over which there is an observable *conflict* of (subjective) *interests*”.¹⁷ The second dimension of power identified by Lukes is that examined by Bachrach and Baratz, who acknowledged that power exists when “a person or group – consciously or unconsciously – creates or reinforces barriers to the public airing of policy conflicts”.¹⁸

Finally, Lukes develops what he regards as the third dimension of power that “allows for consideration of the many ways in which *potential issues* are kept out of politics, whether through the operation of social forces and institutional practices or through individuals’ decisions”.¹⁹ This final dimension of power shows how the powerful can control what is discussed in the public forum, ensuring that possibly damaging issues are not raised.

Gramsci’s concept of hegemony and Lukes’ three dimensions of power provide frameworks that could be used to analyse the issue of refugees in Australia. However, neither of them analyse the tactics and strategies used to inhibit outrage, meaning that by using them it is difficult to demonstrate to activists how a government may attempt to inhibit outrage.

One approach which does analyse tactics is ‘agenda management’. As with Lukes’ three dimensions of power, this framework builds on the work of Bachrach and Baratz, and in particular the idea of nondecision-making, the process “by which

¹⁶ Anthony H. Birch, *The Concepts and Theories of Modern Democracy*, Routledge, London, 1993, p. 37.

¹⁷ Steven Lukes, *Power: A Radical View*, Palgrave Macmillan, Basingstoke, 2005, p. 19. Emphasis in original

¹⁸ Bachrach and Baratz in *Ibid.*, p. 20.

¹⁹ *Ibid.*, p. 28.

demands for change in the existing allocation of benefits and privileges in a community can be suffocated before they are even voiced; or kept covert; or killed before they gain access to the relevant decisionmaking arena”.²⁰ Harding asserted that governments are engaging in agenda management when they “endeavour to prevent issues from emerging, to influence the definition of problems and issues, or to displace, shape or delete issues on the public or governmental agendas”.²¹

The advantage of agenda management, however, is that it lists a number of techniques a government may use. Harding lists possible techniques as symbolism, tokenism, new organisations, co-option, discredit leaders, discredit group, redefinition, displacement, deny legitimacy, retaliation, recognition, exchange and adjustment of social indicators.²² By using the agenda management framework, activists are able to predict potential actions by a government which wishes to ensure that an issue stays off the public agenda.

Another framework that shows the techniques used by a government to inhibit outrage is the ‘backfire’ model. This model has been developed to analyse how governments, and those in power generally, attempt to inhibit outrage, and hence reduce the backfire that may result from their actions. By understanding these methods it is possible for activists to recognise how governments may inhibit outrage, and therefore how to counter a government's actions.

Backfire is a “clear violation of a widely accepted social norm can potentially rebound against the violator”.²³ Rather than simply showing that backfire in fact occurs, the backfire model identifies five strategies a government²⁴ may use: cover-

²⁰ Bachrach and Baratz in Roger W. Cobb and Charles D. Elder, *Participation in American Politics: The Dynamics of Agenda-Building*, John Hopkins University Press, Baltimore, 1983, p. 12.

²¹ Ann Harding, 'Unemployment Policy: A Case Study in Agenda Management', *Australian Journal of Public Administration*, Vol. 44, no. 3, 1985, p. 224.

²² *Ibid.*, p. 225.

²³ Sue Curry Jansen and Brian Martin, 'Exposing and opposing censorship: backfire dynamics in freedom-of-speech struggles', *Pacific Journalism Review*, Vol. 10, no. April, 2004.

²⁴ The term government is used throughout this chapter, but any powerful group in society can attempt to inhibit outrage using the strategies outlined in the backfire model. Early research in the development of the backfire model showed how large businesses may attempt to suppress employee dissent, see Brian Martin and Will Rifkin, 'The dynamics of employee dissent: whistleblowers and organizational jiu-jitsu', *Public Organisation Review*, no. 4, 2005.

up; devaluing the target; reinterpretation of events; official channels; and intimidation and bribery.

Governments may not always use all of these strategies, as outrage may be suppressed sufficiently by merely implementing one or two. Nevertheless, previous research has shown that in a number of cases, all strategies have been used.²⁵ Importantly, this research also provides those interested in fomenting outrage with information on which to base the development of their own strategies. By understanding how governments may attempt to inhibit outrage, activists can develop strategies to counter this.

Which Model?

As shown above, there are a number of different models that could be used to analyse the Australian Government's treatment of refugees during the 2001 Federal Election. Although they all provide insights into a government's actions, many do not have the potential to demonstrate the techniques used by a government to inhibit outrage. Two that do have this potential are agenda management and backfire.

The backfire model, however has a major advantage over agenda management. Most of the agenda management techniques outlined above correspond with one of the five strategies outlined in the backfire model, for example, discrediting leaders is a form of devaluation, while retaliation is a form of intimidation. However, in the case of refugees, the Government did not attempt to implement some of the techniques outlined in agenda management, such as co-option, whereas all five backfire strategies were used. The backfire model, being a generalisation of agenda management, is therefore more suitable for an examination of refugees.

²⁵ Callaghan and Martin, 'Igniting concern about refugee injustice'; Jansen and Martin, 'Exposing and opposing censorship'; Sue Curry Jansen and Brian Martin, 'Making censorship backfire', *Counterpoise*, Vol. 7, no. 3, 2003; Brian Martin, 'The Beating of Rodney King: The Dynamics of Backfire', *Critical Criminology*, Vol. 13, no. 3, 2005; Brian Martin, 'Boomerangs of Academic Freedom', *Workplace: A Journal for Academic Labor*, Vol. 6, no. 2, 2005; Brian Martin, 'Iraq Attack Backfire', *Economic and Political Weekly*, Vol. 39, no. 17-23 April, 2004; Brian Martin and Iain Murray, 'The Parkin backfire', *Social Alternatives*, Vol. 24, no. 3, 2005; Brian Martin and Steve Wright, 'Countershock: Mobilising Resistance to Electroshock Weapons', *Medicine, Conflict and Survival*, Vol. 19, no. June - September, 2003.

Another important advantage of the backfire model is its focus on the reaction of opponents of the government. Although it does focus on the actions of the government, the backfire model has been developed in such a way as to assist opponents develop strategies to counter government actions. Whether it be revealing the truth behind a cover-up, improving the image of victims, offering another interpretation of what happened, establishing your own official channels, or supporting those being intimidated, it is possible for activists to challenge the government's actions, and increase outrage.

Agenda management lists possible techniques for a government: it does not analyse possible responses by the opponents. As an important element of this thesis is the development of possible strategies for activists, the use of the backfire model is again advantageous.

Backfire

The backfire model itself builds on a number of other theories, including 'blowback' and 'political jiu-jitsu'. Before discussing the backfire model, it is important to examine these two theories.

Blowback

The idea that an action by a government may have unintended negative repercussions is not new. One popular concept is 'blowback.' The term blowback is reported to have been invented by the US Central Intelligence Agency (CIA) in the 1950s, and refers to "the unintended consequences of policies that were kept secret from the American people".²⁶

Discussion of blowback, particularly in relation to US foreign relations, has become very popular in recent years. A number of commentators have seen the terrorist attacks on New York and Washington on 11 September 2001 as an example of blowback against US foreign policy in the Middle East.²⁷ In fact, many acts of

²⁶ Chalmers Johnson, *Blowback: the costs and consequences of American empire*, Henry Holt and Company, New York, 2000, p. 8.

²⁷ Noam Chomsky, *September 11*, Allen & Unwin, Crows Nest, 2001, p. 61; Chalmers Johnson, 'American Militarism and Blowback: The Costs of Letting the Pentagon Dominate Foreign Policy', *New Political Science*, Vol. 24, no. 1, 2002.

terrorism are examples of blowback. Carlos Marighella, a Brazilian guerrilla leader whose writings influenced many political terrorists of the 1960s and 1970s, wrote that the rationale behind terrorism was:

It is necessary to turn political crisis into armed conflict by performing violent actions that will force those in power to transform the political situation of the country into a military situation. That will alienate the masses, who, from then on, will revolt against the army and the police and blame them for this state of things.²⁸

Johnson goes on to compare terrorism with judo, “it depends on unbalancing the enemy and using his strengths against him”.²⁹ However, terrorism does not have a monopoly on this belief of using the enemy’s strengths against them. Nonviolent action is also effective because of this, and in fact, the nonviolent nature of action may actually amplify its effectiveness. The concept that nonviolent action can work like judo has formed the basis of much work on nonviolent action.

Political Jiu-jitsu

Gene Sharp’s *The Politics of Nonviolent Action*³⁰ outlines the long history of nonviolent action as a method for bringing about social change. In analysing nonviolent action, Sharp introduces the idea of political jiu-jitsu. Sharp describes the process of political jiu-jitsu as,

by combining nonviolent discipline with solidarity and persistence in struggle, the nonviolent actionists cause the violence of the opponent’s repression to be exposed in the worst possible light. This, in turn, may lead to shifts in opinion and then to shifts in power relationships favourable to the nonviolent group. These shifts result from withdrawal of support for the opponent and the grant of support to the nonviolent actionists.³¹

Sharp goes on to show how political jiu-jitsu operates on three groups:

1. uncommitted third parties, whether on the local scene or the world scene;
2. the opponent’s usual supporters; and
3. the general grievance group.³²

²⁸ Quoted in Johnson, 'American Militarism and Blowback: The Costs of Letting the Pentagon Dominate Foreign Policy', p. 22.

²⁹ Ibid.

³⁰ Gene Sharp, *The Politics of Nonviolent Action*, Porter Sargent Publishers, Boston, 1973.

³¹ Ibid., p. 657.

³² Ibid., p. 658.

It is important that nonviolent action groups attempt to persuade members of the first two of these groups, as they typically represent the majority of society. In particular, by increasing support amongst the opponent's usual supporters, they will not only increase their own support, but also reduce their opponent's.

Sharp believes that when the opponent violently attacks some of the action group, other members of the group will feel aggrieved and become more strident in their actions.

Sharp demonstrates how political jiu-jitsu has operated in a number of cases, including Bloody Sunday in St Petersburg in 1905, the repression of Buddhists in South Vietnam during the 1960s, and the Sharpeville massacre in South Africa in 1960.³³

Although political jiu-jitsu was developed to analyse how government attacks on nonviolent protestors can rebound against the government, the backfire model extends this concept beyond nonviolent action, to include any unjustified abuse of power. Research has shown that governments often implement each of the five strategies outlined in the backfire model.

Cover-up

A cover-up is one of the most obvious methods by which a government may attempt to inhibit outrage. After committing an act that many may believe is an unjustified use of power, a government will often attempt to cover up its actions. By doing so, the intention is to prevent the public becoming aware of the act. If people are unaware of the action, they will not become outraged.

Torture and massacres are often covered up by governments because, as Martin and Wright have acknowledged, "if done openly, it [torture] would generate widespread revulsion".³⁴ Martin and Wright continued to describe how Indonesian authorities attempted to cover up a massacre of hundreds of East Timorese in Dili in 1991. Understanding the revulsion that would arise if knowledge of this massacre became

³³ Ibid., pp. 659-662.

³⁴ Martin and Wright, 'Countershock'.

public, the Indonesian Government ensured tight censorship occurred surrounding the events. However, British filmmaker Max Stahl recorded the massacre and ensured the tape made it out of Indonesia and into the hands of the western media. Images of this massacre “triggered a huge increase in international support for the East Timorese liberation struggle”.³⁵

The importance of covering up the existence of torture can also be seen in relation to recent revelations of the extraordinary rendition of terrorist suspects by the United States Government. John Bellinger, Chief Legal Adviser to the US Secretary of State, has stated that he believes the popular definition of extraordinary rendition is, “the intentional transfer of an individual to a country, expecting or intending that they will be mistreated”.³⁶ In late 2005 stories of extraordinary rendition to countries in Eastern Europe began to surface, and a report under the auspices of the Council of Europe has reported that “the Washington Post subsequently admitted that it had been in possession of the names of the countries [to which the suspects were transported], but had refrained from naming them further to an agreement entered into with the authorities”. The report concludes, “it is thus established that considerable pressure was brought to bear to ensure that these countries were not named”.³⁷ Attempts to pressure media outlets not to publish details of this story demonstrate an attempt by the US Government to cover up as much of the truth as possible. Revelations that the US Government was using third-party countries to interrogate and torture terrorist suspects would have been extremely damaging to its international reputation as a defender of human rights.

Devaluation of the Target

In many circumstances, governments are unsuccessful in covering up the violation of a social norm. In these cases governments often implement other strategies, an important one being devaluing the target. If the details of a violation are revealed, the violator will attempt to reduce the support the victim receives. One important way of reducing this support is by devaluing the target.

³⁵ Ibid.

³⁶ Dick Marty, 'Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states', 2006, p. 59.

³⁷ Ibid., p. 5.

The case of US peace activist Scott Parkin, who was deported from Australia in 2005, demonstrates how a government may attempt to devalue the target of an unjust act. Scott Parkin is a vocal opponent of the US invasion of Iraq and of US company Halliburton, while also being an advocate of nonviolent action. During his visit to Australia, Parkin participated in protests at the Forbes Global CEO conference in Sydney, and ran a number of workshops on nonviolent action. On 10 September 2005, Parkin was arrested by Australian Federal Police, detained and then deported as someone who may “incite discord in the Australian community ... or represent a danger to the Australian community”.³⁸

The detention and deportation of Scott Parkin became a major news story, as any Australian Government effort to cover it up failed. Martin and Murray outline a number of examples of how, in an attempt to reduce support for Parkin, the Government attempted to devalue him. In response to questions from journalists about the detention, Attorney-General Philip Ruddock said the Australian Security Intelligence Organisation had assessed Parkin as a security risk, and had the responsibility of protecting Australia from political violence. Although never explicitly accusing Parkin of inciting political violence, “Ruddock tarred Scott by association”.³⁹

The devaluation of Parkin continued after his deportation, with a report surfacing that Parkin had come to Australia to teach violent tactics against police.⁴⁰ However, the claims in this report were not confirmed, with Parkin issuing a press release refuting any such claims, with the story actually increasing backfire against the Government as people speculated as to who had given the story to the journalists.⁴¹

Reinterpretation of the Event

A complete cover-up of a violation is often very difficult to implement, as some details often become known to at least some people. When this happens, they may attempt to reinterpret the information people know. The difference between

³⁸ Andra Jackson, 'Visiting US peace activist arrested as security threat', *The Age*, 12 September 2005.

³⁹ Martin and Murray, 'The Parkin backfire'.

⁴⁰ 'Activist denies planning to teach violent protest tactics', *Australian Associated Press General News*, 22 September 2005.

⁴¹ Martin and Murray, 'The Parkin backfire'.

reinterpretation and cover-up is therefore dependent on the audience receiving the information. For those aware of the incident, the government reinterprets the information, while maintaining the cover-up for those who are unaware of the incident.

The invasion of Iraq in 2003 provided a number of examples of reinterpretation. Firstly, the US Government accused the Iraqi Government of being a threat to the world, in particular using weapons of mass destruction. To do this, the US Government used the discovery of missiles in Iraq that could travel 183 miles, further than the 150 mile limit placed on Iraq even though, as Martin has noted, this was “far short of what could reach Israel, much less the US”.⁴²

Secondly, the US Government mounted a campaign stating, “The regime ... has aided, trained, and harboured terrorists, including operatives of al Qaeda”.⁴³ The effect of this was to suggest that Saddam Hussein had been involved in the terrorist attacks on New York and Washington in September 2001. This campaign was so successful that by March 2003 almost half of the US population believed Hussein was involved in the terrorist attacks.⁴⁴ However, as Noam Chomsky has noted, “the alleged link between Saddam Hussein and Osama bin Laden, in fact, his bitter enemy, was based on no credible evidence and largely dismissed by competent observers”.⁴⁵

The US Government also argued it was important to remove Saddam Hussein from power and liberate Iraq.⁴⁶ As many critics of the war pointed out at the time, why should the US liberate Iraqis, rather than other repressed populations such as those in Pakistan and Uzbekistan? In Australia this claim has become the major justification

⁴² Martin, 'Iraq Attack Backfire'.

⁴³ George W. Bush, *President Says Saddam Hussein Must Leave Iraq Within 48 Hours*, (17 March 2003 (cited 29 June 2006)); available from <http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html>.

⁴⁴ See the results to question 38 of New York Times/CBS Poll, *Bush and Iraq*, (11 March 2003 (cited 30 June 2006)); available from http://www.nytimes.com/packages/html/politics/20030311_poll/20030311poll_results.html.

⁴⁵ Noam Chomsky, *Hegemony or Survival: America's quest for global dominance*, Second, Allen and Unwin, Sydney, 2004, p. 19.

⁴⁶ George W. Bush, *President Thanks Congress*, (21 March 2003 (cited 29 June 2006)); available from <http://www.whitehouse.gov/news/releases/2003/03/20030321-3.html>.

for the invasion, with the Australian Government continuing to defend its participation in the invasion by claiming it has liberated Iraq.⁴⁷

Official Channels

Official channels, such as the court system and independent inquiries, are often seen by activists as a method by which they can put forward their argument and foment outrage. This is true, but governments may also use official channels to inhibit outrage. If people believe that justice is being done they are less likely to join protest groups or take part in direct action. As Bob Brown, an Australian Greens senator, has noted, “if you lower the number of inquiries you could expect an increase in the number of street protests”.⁴⁸

The authority of a bureaucratic system was investigated by Max Weber, one of the pre-eminent sociological and political theorists of the nineteenth and twentieth centuries. Weber determined three types of authority, traditional, charismatic and bureaucratic.

Bureaucratic, or legal-rational authority, is “based on properly enacted rules and is given to office holders rather than specific persons. Bureaucrats and government ministers have authority of this type”.⁴⁹ Powerful groups use this authority to employ official channels as a method to reduce outrage, as people believe that the result of the use of official channels is the correct one.

Previous research on the beating of Rodney King by members of the Los Angeles Police Department (LAPD) has shown how official channels have been used to inhibit outrage. Firstly, a grand jury was formed to investigate the beating, followed by an FBI investigation. Both of these investigations focussed on the actual beating. Reflecting the calls for an inquiry into systematic problems within the LAPD, the Christopher Commission was formed. The report from this commission “was seen by many as a largely sound and far-sighted document which, if its recommendations

⁴⁷ Alexander Downer and Jalal Talabani, *Joint Media Conference*, (22 August 2003 (cited 29 June 2006)); available from http://www.dfat.gov.au/media/transcripts/2003/030822_talabani.html.

⁴⁸ Selina Mitchell, 'Inquiry overkill risks 'ruining' the system', *The Australian*, 28 June 2003.

⁴⁹ Keiran Allen, *Max Weber: A Critical Introduction*, Pluto Press, London, 2004, p. 100.

were implemented, would transform the police ... [and therefore] was quite different from some official reports that essentially whitewash the problems”.⁵⁰

However, the trial of the officers involved in the beating returned a not guilty verdict. News of this led to major riots throughout Los Angeles that lasted a number of days. In response, the US Government began a federal trial, but according to Cannon, the Government’s goal was preventing “far-reaching investigations into police conduct” and “defusing the concerns of civil rights activists”.⁵¹ As Martin has previously noted, “the net effect was to personalise the provision of justice and divert attention away from system reform”.⁵²

Intimidation and Bribery

Sometimes a government will decide the best way to silence its critics is to intimidate them. This can be done in conjunction with the other strategies, as a government may find it easier to cover up an incident if those who know about the incident are scared of the repercussions of revealing the truth. A government may decide to bribe critics to hide the truth by offering rewards for remaining silent. When it is a government, or any other powerful organisation intimidating or bribing people, it may be difficult for people to resist, and thus fall into line with the government’s story.

Previous research has shown how governments have intimidated and bribed people in an attempt to maintain censorship.⁵³ The US Patriot Act, introduced in the aftermath of the terrorist attacks on New York and Washington, is one example of how a government may intimidate its critics, by threatening legal penalties for exposing information-gathering exercises by the US Government. As Jansen and Martin noted, “raw fear is perhaps the greatest silencer of them all”.⁵⁴

Bribery has also been used by authorities to prevent whistleblowers exposing the truth. Many whistleblowers are offered settlements including confidentiality clauses, and if they do not remain silent, they will not receive the money. As noted by Jansen

⁵⁰ Martin, 'The Beating of Rodney King'.

⁵¹ Cited in Ibid.

⁵² Ibid.

⁵³ Jansen and Martin, 'Exposing and opposing censorship'.

⁵⁴ Ibid.

and Martin, few whistleblowers are in a financial position that would allow them to reject these bribes.⁵⁵

Two incidents in the 2001 Australian Federal Election provide case studies of how the Government attempted, and was successful, in inhibiting outrage to win the election. A backfire analysis of these two case studies, children overboard and SIEV X, can show refugee activists how the Government was so successful in its action, but also how they may challenge Government actions in the future. But first, it is important to examine the history of the treatment of refugees in Australia. Understanding this history helps explain how the 2001 Federal Election was a continuation of a number of Government actions.

⁵⁵ Ibid.

Chapter Three: The History of Refugees in Australia

Australia has a long history of accepting people from other countries, looking for a better life. It has been noted that the aborigines who arrived 40,000 years ago were the first 'boat people' to arrive in Australia.⁵⁶ Just over two hundred years ago the first European settlers arrived in Australia and established a British Colony.

There are a number of reports of early asylum seekers arriving in Australia in the nineteenth century. When asylum seekers first arrived in Australia is debated. McMaster reports that the first group of refugees reported to arrive in Australia were Germans escaping religious persecution by King Frederick William of Prussia in 1838.⁵⁷ MacCallum claims that the first group of people that could be defined as asylum seekers were Italians who arrived in Australia in 1881.⁵⁸ This debate may be related to difference between definitions of refugees and asylum seekers.

Political upheaval throughout Europe in the first decades of the twentieth century provided the impetus for a large number of refugees wishing to come to Australia. Many were Jews facing persecution in their homelands, supporters of the Tsar from the Soviet Union and anti-fascists from Italy.⁵⁹ By the late 1930s the Australian Government was starting to become concerned with the "potentially high level of Jewish immigration, [and] agreed on an annual ceiling of 5100 Jewish immigrants per year".⁶⁰ Newmann also points out that by implementing this quota the Australian Government refused to distinguish between immigrants and refugees, and "decided that refugees would be admitted on the basis of their usefulness for Australia and suitability as settlers rather than personal need".⁶¹

⁵⁶ Mungo MacCallum, 'Girt by Sea: Australia, the Refugees and the Politics of Fear', *Quarterly Essay*, Vol. 5, 2002, p. 1.

⁵⁷ Don McMaster, *Asylum Seekers: Australia's Response to Refugees*, Melbourne University Press, Melbourne, 2002.

⁵⁸ MacCallum, 'Girt by Sea', pp. 2-4.

⁵⁹ Klaus Newmann, *Refuge Australia: Australia's Humanitarian Record*, University of New South Wales Press, Sydney, 2004, p. 15.

⁶⁰ *Ibid.*, p. 17.

⁶¹ *Ibid.*, p. 20.

United Nations Convention and Protocol Relating to the Status of Refugees

The conclusion of World War II and the beginning of the Cold War led to an increase in the number of displaced people throughout the world. To deal with this the *United Nations Convention and Protocol Relating to the Status of Refugees* was adopted on 28 July 1951, and entered into force on 22 April 1954.⁶²

There are a number of important elements in the convention. Firstly, a refugee is defined as any person who,

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 the country of his nationality and is unable 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 unwilling to return to it.⁶³

Determination of a person's application for refuge is based on this definition. A refugee is therefore someone who has been determined to meet this definition and whose application has been approved. An asylum seeker, on the other hand, is a person who has yet to be accepted as a refugee, but is seeking refuge (or asylum) in a country. Refugees are therefore a subsection of asylum seekers.

If it is determined that a person is a refugee, a signatory to the convention must provide refuge. As of 1 October 2004, the majority of countries in Asia are not signatories to the convention. The countries which are signatories include China, Cambodia, Papua New Guinea, the Philippines, Australia and New Zealand. This means that other countries in the region, including Indonesia, Malaysia, India and Pakistan, do not have the legal responsibility, under the United Nations Convention, to accept refugees.

The convention notes that a refugee does not need to enter a country legally to be considered legitimate, and the country,

shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was

⁶² United Nations High Commissioner for Refugees, 'United Nations Convention and Protocol Relating to the Status of Refugees [1967]', 1996, p. 5.

⁶³ Ibid., Article 1, p. 16.

threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.⁶⁴

It is also noted that a country should not impose restrictions on the movements of refugees, other than those necessary until the status of the refugee is confirmed.

Another important component of the convention is the concept of 'refoulement'. In Article 33 it is noted, "no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".⁶⁵ The only time a signatory to the convention can do this is when the refugee has been convicted of a serious crime, and is a danger to that country.

As a signatory to the convention, Australia must continue to ensure that its legislation and policies are consistent with the convention. It is with the convention in mind that Australia's policies regarding refugees have been developed.

Migration Act 1958

The major piece of legislation concerning asylum seekers in Australia is the *Migration Act 1958*. The stated object of this Act is to "regulate, in the national interest, the coming into, and presence in, Australia of non-citizens".⁶⁶ Although passed by Government in 1958, all governments have amended the Act to reflect changing community standards and government aims.

A number of major changes to the Act have effected those attempting to claim asylum in Australia. Firstly, in 1994 the then Labor Government introduced the *Migration Reform Act 1992*, which amended the *Migration Act 1958* and "categorised those arriving in Australia as either lawful or unlawful non-citizens and introduced mandatory detention for unauthorised non-citizens".⁶⁷ This was the beginning of mandatory detention, a policy that has maintained the support of both major political

⁶⁴ Ibid., Article 31, p. 31.

⁶⁵ Ibid., Article 33, p. 32.

⁶⁶ *Migration Act (Cwlth)*, (1958), 4(1), p. 3.

⁶⁷ Sharon Pickering, *Refugees and State Crime*, The Federation Press, Sydney, 2005, p. 94.

parties in Australia. The operation of mandatory detention has changed over time, with the provision of detention services at immigration facilities outsourced to private organisations since November 1997.⁶⁸ Adjustments have been made to mandatory detention, particularly in the aftermath of damaging revelations about the treatment of Ms Cornelia Rau, an Australian permanent resident, who was detained for approximately 10 months.⁶⁹

Another major change to the Migration Act occurred in September 2001, when the Government removed Christmas Island, Cocos Island, Ashmore Reef and Cartier Island from the Australian Migration Zone. The effect of this move was to create what Bailliet has described as a legal fiction, “that a migrant has not entered the Australian territory by landing on these islands”.⁷⁰

The ‘Boat People’

The 1970s and 1980s saw a large influx of refugees arriving on Australia’s north coast from South East Asia, firstly from Vietnam. Crock and Saul describe this as the first phase of ‘boat people’ coming to Australia, noting that as “a combatant in the Vietnam War, Australia felt obliged to help protect Vietnamese at risk of persecution as a result of their assistance to western armed forces”.⁷¹

The second phase was in the late 1980s when, as a result of the Vietnamese invasion of Cambodia, many Cambodian asylum seekers began heading to Australia. As the number of asylum seekers reaching Australia’s northern coast increased, senior members of the Government, including Prime Minister Bob Hawke “labelled them ‘economic migrants’ on the basis that the troubles in Cambodia were under control”.⁷²

The Cambodian asylum seekers were confined in detention centres, and refugee advocates went to court to seek the release of the asylum seekers. In response to this

⁶⁸ Rebecca Collareda, Steven Lack and Greg Watson, *Management of the Detention Centre Contracts - Part B*, Audit Report No 1. 2005-06, Australian National Audit Office, Canberra, 2005.

⁶⁹ For an outline of this see Mick Palmer, 'Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau', 2005.

⁷⁰ Cecilia Bailliet, 'The Tampa Case and its Impact on Burden Sharing at Sea', *Human Rights Quarterly*, Vol. 25, no. 3, 2003, p. 746 (fn).

⁷¹ Mary Crock and Ben Saul, *Future Seekers: Refugees and the Law in Australia*, The Federation Press, Sydney, 2002, p. 31.

⁷² Ibid.

court case, the Keating Government introduced and passed the *Migration Amendment Act* 1992, which “retrospectively required any person who arrived by boat in Australia after November 1989 to be kept in custody until he or she was given a visa or left Australia”.⁷³

The latest phase began in the late 1990s when asylum seekers from the Middle East, in particular Afghanistan and Iraq, began arriving in Australia. Most of these asylum seekers had to travel through a number of other countries before reaching Australia, with the last stop in their journey being Indonesia.

The late 1990s also saw the rise of Pauline Hanson and One Nation, a “far-right neo-populist”⁷⁴ party, which “opposed high levels of Asian immigration on the grounds that Australia’s national identity was under threat of being ‘swamped’ by Asians who ‘form ghettos and do not assimilate’,” while also viewing “illegal immigrants and asylum-seekers as representing a similar threat to the integrity of the Australian nation”.⁷⁵

Hanson’s solution to the perceived threat from asylum seekers was to change the law so that “refugees who came by boat would be kept on probation for a few years in case they could be sent away again once things settled down back home”.⁷⁶ In 1998, Minister for Health, Dr Michael Wooldridge, “warned that the policies of One Nation would ‘continue the suffering of refugees who have been tortured and could well complete the insidious work that torturers began’,” although, as noted by Marr and Wilkinson, “One Nation’s ‘deeply flawed and dangerous’ proposition was approved as official policy for all refugees who arrive in Australia without a valid visa”.⁷⁷

The ‘Tampa Affair’

The importance of refugees in federal politics increased significantly in 2001. Early in 2001 there was a common belief that the federal election would take place in November, but predictions for the result were not consistent. This soon changed as a

⁷³ Pickering, *Refugees and State Crime*, p. 16.

⁷⁴ Curran, ‘Mainstreaming populist discourse’, p. 37.

⁷⁵ Ibid., p. 40.

⁷⁶ Marr and Wilkinson, *Dark Victory*, p. 120.

⁷⁷ Peter Mares, *Borderline: Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa*, 2nd, University of New South Wales Press, Sydney, 2002, p. 26.

number of State elections and by-elections pointed towards a victory for the Australian Labor Party (ALP). This confidence in the ALP reduced in July when the Liberals won a by-election, but increased again in August when the ALP won the Northern Territory election (for the first time since 1978).⁷⁸

The major political incident of the year however, was the rescue of 433 asylum seekers from a sinking boat, the *Palapa*, by the Norwegian container ship, MV *Tampa*.

On 26 August 2001, Australian Search and Rescue broadcast a call for ships in the vicinity to render assistance, and, once receiving a response from the *Tampa*, guided it to the location of the *Palapa*.⁷⁹ After rescuing the asylum seekers, Arne Rinnan, the captain of the *Tampa*, asked where he should take the asylum seekers, Coast Watch answered “don’t know”.⁸⁰ In response to this the *Tampa* headed toward Indonesia, but changed course toward Christmas Island after a number of asylum seekers threatened to commit suicide.

As the *Tampa* approached Australian waters it was ordered by Australian authorities to turn around and take the rescued asylum seekers back to Indonesia. This, and what followed, became known as the ‘Tampa affair’, and became a worldwide news story.⁸¹

The health of the asylum seekers aboard the *Tampa* began to deteriorate, and Captain Rinnan requested medical assistance from Australia, with the Royal Flying Doctor Service assessing from the information it had received that there was a “mass

⁷⁸ Malcolm Mackerras, 'Australia', *European Journal of Political Research*, Vol. 41, 2002, pp. 897-900.

⁷⁹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, (2002 (cited 8 February 2005)); available from http://www.aph.gov.au/Senate/committee/maritime_incident_ctte/report/index.htm, p. 1.

⁸⁰ Prem Kumar Rajaram, "'Making Place": The "Pacific Solution" and Australian Emplacement in the Pacific and on Refugee Bodies', *Singapore Journal of Tropical Geography*, Vol. 24, no. 3, 2003, p. 297.

⁸¹ For example of international news coverage see Miriam Donohoe, 'Three countries shun stranded asylum-seekers', *Irish Times*, 29 August 2001; Marcus Gee, 'None is too many. Don't give us your tired, your poor, your huddled masses, rich nations like Australia are telling refugees', *The Globe and Mail*, 30 August 2001; Alex Neve, 'Australia must change its course', *The Toronto Star*, 31 August 2001; Cameron Simpson, 'Australia under siege over plight of refugees', *The Herald*, 30 August 2001.

situation medical crisis and that medical attention was urgently required”.⁸² Even after this assessment was received the government did not act, and Captain Rinnan informed the Rescue Coordinate Centre at 11.26am on 29 August 2001 that the situation was deteriorating rapidly and his intention was to proceed to the nearest shore immediately, entering Australian waters at 11.39am. At 12.35pm the *Tampa* was boarded by 45 Australian Special Air Services members.⁸³

The asylum seekers remained onboard the *Tampa* while the Australian Government attempted to find a solution to the predicament. On 1 September 2001, the Government announced it had reached agreement with New Zealand, Nauru and Papua New Guinea to house the asylum seekers and assess their claims for refuge. This became known as the Pacific Solution.

In relation to the reason behind the stand the Australian Government took, John Howard noted, “I believe that it is in Australia’s national interest that we draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country”.⁸⁴

Along with the implementation of the Pacific Solution, the Government changed the role of the Australian Defence Force (ADF) in relation to asylum seekers. In the past the ADF had supported Coastwatch and the Department of Immigration and Multicultural and Indigenous Affairs in ‘national surveillance’. From 3 September 2001 however, the ADF became the lead agency, with its activity designated Operation Relex. The strategic aim of Operation Relex was, “to *prevent*, in the first instance, the incursion of unauthorised vessels into Australian waters such that, ultimately, people smugglers and asylum seekers would be *deterred* from attempting to use Australia as a destination”⁸⁵ (italics in original). The role of the ADF, and Operation Relex in particular, would be pivotal to the controversy surrounding asylum seekers in the coming months.

⁸² Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 2.

⁸³ Ibid.

⁸⁴ John Howard, *Transcript of Interview on 3AW*, (31 August 2001 (cited 31 August 2005)); available from <http://www.pm.gov.au/news/interviews/2001/interview1201.htm>.

⁸⁵ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, pp. 13-14.

Soon after John Howard visited the United States, where he was questioned about the Government's response to the *Tampa*, saying that the reason was,

because they were illegal immigrants. We're very happy to take refugees and on a per capita basis we take more refugees than any country except Canada, but if you allow illegal immigration of that type to interrupt the refugee flow, you really are allowing those people to go ahead of others who may be assessed by the UNHCR [United Nations High Commissioner for Refugees] as being more in need of refugee acceptance into Australia.⁸⁶

The use of statistics showing Australia received the second highest number of refugees worldwide was a popular method used by the Prime Minister to demonstrate the humanity of Australia's policy. A discussion of the fallacies of such statements is examined in discussions of reinterpreting of the event.

Significantly, a day after the above interview, terrorists crashed airplanes into the World Trade Centre in New York and the Pentagon. As Charlton notes, in Australia, there was already a, "deep-seated suspicion of foreigners, particularly Muslims, exacerbated in New South Wales by the ramped up issue of ethnic – read Lebanese – gangs and violent crime...in New South Wales, Labor Premier Bob Carr did much of the ramping".⁸⁷ The link between the terrorist attacks in the United States and the asylum seekers was made explicitly by the members of the Australian Government, including Howard who said, "there is a possibility some people having links with organisations that we don't want in this country might use the path of an asylum seeker in order to get here".⁸⁸

By suggesting that some asylum seekers may be terrorists, along with the use of the military to prevent asylum seekers reaching Australia, the Government was able to link the upcoming 'War on Terror' with asylum seekers.

⁸⁶ John Howard, *Transcript - Interview on Newshour with Jim Lehrer*, (10 September 2001 (cited 25 August 2005)); available from http://www.pbs.org/newshour/bb/international/july-dec01/howard_9-10.html.

⁸⁷ Peter Charlton, 'Tampa: The Triumph of Politics', in *Howard's Race: Winning the Unwinnable Election*, ed. David Solomon, HarperCollins, Sydney 2002, pp.91-92.

⁸⁸ Tom Allard and Andrew Clennell, 'Howard Links Terrorism To Boat People', *Sydney Morning Herald*, 8 November 2001. Also see Minister for Defence, Peter Reith's comments to Derryn Hinch, Peter Reith, *Transcript of Interview with Derryn Hinch*, (13 September 2001 (cited 2 June 2005)); available from <http://www.minister.defence.gov.au/ReithSpeechtpl.cfm?CurrentId=999>.

John Howard announced the election on 5 October 2001, to be held on 10 November 2001. And so began Australia's "race election".⁸⁹

⁸⁹ Maynard, 'War of words hots up in Aussie 'race polls'; Reed, 'It's a race poll - commentator'.

Chapter Four: Children Overboard

It did not take long for the issue of asylum seekers to become headline news after John Howard called the election. On 7 October 2001, Immigration Minister Philip Ruddock announced that the Royal Australian Navy (RAN) had intercepted an asylum seekers' vessel, and during the HMAS *Adelaide*'s attempts to return the vessel to Indonesia, asylum seekers had thrown children overboard. Ruddock announced that he regarded it, "as one of the most disturbing practices I've come across,"⁹⁰ while John Howard announced, "I don't want people like that in Australia".⁹¹

However on 7 November 2001, reports published in *The Australian* stated, "Christmas Islanders allege that naval officers told them claims that asylum-seekers had thrown their children overboard during a confrontation last month with HMAS *Adelaide* were untrue".⁹²

After the Liberal/National Coalition was returned to power in the federal election, opposition parties established the Senate Select Committee into a Certain Maritime Incident to investigate the "alleged incident and the government's knowledge and presentation of the events".⁹³ The report prepared by this committee provides most of the official information below.

The actual events that led to the claims by the Australian Government that asylum seekers threw children overboard are outlined below, followed by an analysis of the incident using the backfire model.

'One of the most disturbing practices'

A Royal Australian Air Force (RAAF) Orion first sighted the vessel on 6 October 2001. As was standard practice, the vessel was dubbed Suspected Illegal Entry Vessel (SIEV) 4. Soon after, HMAS *Adelaide* intercepted the vessel, and issued warnings to the vessel in spoken and written forms, in English, Arabic and Bahasa. The asylum

⁹⁰ Peter O'Connor, 'Asylum seekers throw children off boat after navy refuses entry to Australian waters', *Associated Press Newswires*, 7 October 2001.

⁹¹ Mark Ludlow and John Hamilton, 'Overboard: Shots turn away 187 but vessel heads in', *Herald-Sun*, 8 October 2001.

⁹² Natalie O'Brien, 'Overboard incident 'never happened'', *The Australian*, 7 November 2001.

⁹³ Mark Forbes and Kerry Taylor, 'Senate to Call Reith To Probe', *The Age*, 8 February 2002.

seekers ignored these warnings and at 0230,⁹⁴ SIEV 4 entered Australia's contiguous zone. Soon after Commander of Northern Command, Brigadier Mike Silverstone gave directions for a "positive and assertive boarding".⁹⁵ By 0750, the boarding party had taken control of SIEV 4 and redirected the vessel towards Indonesia.

There is debate over what occurred next. According to Brigadier Michael Silverstone, he called Commander Norman Banks, Commander of HMAS *Adelaide*, at 0750 in relation to the interception. Banks told Silverstone that a small group of sailors from the *Adelaide* had just boarded SIEV 4, and there were a number of people in the water. Silverstone also reported that during the conversation Banks told him that a child, approximately aged six, had been thrown in the water, but to the best of his knowledge, all people had been recovered from the water.

However, according to Commander Banks, this telephone conversation took place at 0900, and at no stage did he mention that a child or children had been thrown overboard, only that a child had been held over the side.

The Senate Select Committee was unable to determine which of these two recollections was correct noting there was evidence to support each account. Silverstone recorded notes while speaking with Banks, although he admitted he inserted the time on his notes two to three days afterwards. Silverstone had also organised to discuss the incident with his superior, Air Vice Marshall Titheridge, at 0800 – a conversation that took place at the planned time. Finally, telephone logs indicated that the HMAS *Adelaide* made a telephone call to Northern Command at 0751, which may have been the call to Silverstone.⁹⁶

However, this last piece of evidence is of dubious use to substantiate Silverstone's recollection. In his evidence to the committee, Silverstone noted,

I think that, from my perspective, if it had not been for the requirement to provide this information to Air Vice Marshal Titheridge for the IDC [Interdepartmental Committee], or whoever was going to use that information, *I would not have called* Commander Banks or spoken to Commander Banks at 7.20 [0750 AEST] on that day. It is my pronounced practice, pronounced in

⁹⁴ All times noted are Australian Eastern Standard Time [AEST].

⁹⁵ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 33.

⁹⁶ *Ibid.*, pp. 43-44.

terms of my policy, that I do not ring my staff and the various COs [Commanding Officers] working for me—indeed, it is my actual practice—when they are in the middle of boarding operations.⁹⁷ [emphasis added]

This suggests Silverstone called Banks, rather than vice versa, meaning the log recording a telephone call from the *Adelaide* to Northern Command cannot be evidence of the conversation between Silverstone and Banks.

Evidence to support Banks' recollection includes:

- the *Adelaide* boarding log does not show entry at 0750 of persons in water, whereas it does at 0900, including a child being held over the side;
- Banks' statement on 11 October 2001, concerning his conversation with Silverstone uses present tense, suggesting the conversation was occurring at the same time as the incident;
- Banks can only remember one conversation involving a child, and this was while the incident was occurring;
- Banks' recollection is supported by other officers who were present on the *Adelaide* when the conversation took place; and
- at 0750, the sun was yet to rise, which would have made it very difficult for those on the *Adelaide* to see asylum seekers throwing children overboard from SIEV 4.⁹⁸

Although it is not possible to determine when this conversation took place, it is clear Silverstone now believed asylum seekers had thrown children overboard. Believing this Silverstone informed his superiors, Smith and Titheridge. Smith subsequently informed Admiral Ritchie, Commander Australian Theatre, while Titheridge informed the Chief of the Defence Force, Admiral Chris Barrie, Peter Hendy, Peter Reith's Chief of Staff, and Jane Halton, Chair of the interdepartmental People Smuggling Taskforce (PST). Silverstone's telephone records indicate he called Jane Halton at 0805, 0917 and 0921. According to the Senate committee, "Titheridge's view, inferred from the pattern of calls on his telephone record, was that the relevant call

⁹⁷ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 4 April 2002, p. 347.

⁹⁸ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, pp. 42-43.

from Brigadier Silverstone had occurred at about 9.00am,”⁹⁹ a view supported by Halton, who believed she was informed of the children overboard incident at approximately 0915.

Soon after receiving this information, Halton entered a meeting of the PST, passing on the information to those present. One of those was Bill Farmer, Secretary of the Department of Immigration and Multicultural Affairs. During the meeting, Farmer received a call from the Minister for Immigration, Philip Ruddock, and told him of the report of asylum seekers throwing children overboard. At approximately 1115, Ruddock told the media of the incident.

During this time, the boarding party returned SIEV4 to international waters, before disembarking by early afternoon. SIEV 4 was now heading back to Indonesia. Banks, however, still had concerns over the safety of the vessel, and the *Adelaide* continued to monitor SIEV 4 from a distance. By late afternoon, the *Adelaide* observed SIEV 4 dead in the water, and soon after, distress signals. In response, Banks sent a boarding party to investigate, which found, “the mechanical equipment had been deliberately destroyed ‘in [a] bid to be taken to Australia and is ... most likely unrepairable.’”¹⁰⁰ The *Adelaide* now proceeded to tow SIEV 4 toward Christmas Island.

Problems arose during the night concerning the level of water in SIEV 4, with the pumps unusable because of damage. The crew of the *Adelaide* thought they had solved this problem, but by late afternoon on 8 October, SIEV 4 began sinking rapidly. All asylum seekers were rescued. During this rescue, HMAS *Adelaide* crewmembers took a number of photographs of the events unfolding in the water.

These photographs were provided to the Department of Defence. On 9 October 2001, the Defence Department informed Ross Hampton, the Minister for Defence’s media adviser, that they were of asylum seekers in the water, “but not ‘very good shots’.”¹⁰¹ Hampton requested the photographs. There were, however, technical problems with

⁹⁹ Ibid., p. 45.

¹⁰⁰ Ibid., p. 35.

¹⁰¹ Ibid., p. 69.

the Department of Defence email system, which meant the photographs were sent without their captions, which clearly noted the date.

Due to miscommunication between Defence and the Minister for Defence, Peter Reith's office, the fact these photographs had captions, noting they were of incidents on 8 October, was never passed on. On 10 October 2001, Reith released these photographs as evidence of the children overboard incident.

Soon after the release of these photographs, Brigadier Gary Bornholt, Military Adviser in Public Affairs and Corporate Communication, called Ross Hampton. Bornholt left a message on Hampton's mobile telephone informing him the photographs were of the 8 October, not 7 October as Reith had said. Hampton claims to have never received this message.

On 9 October 2001, it became obvious to Banks, Silverstone and Smith that there were discrepancies between Banks and Silverstone's recollections of the event. Silverstone and Smith ordered Banks to provide information corroborating that asylum seekers had thrown children overboard. In response to this request, Banks asked witnesses on the *Adelaide* to provide statements and by 10 October had informed Silverstone that no one could confirm the incident.

In evidence to the Senate Select Committee, Rear Admiral Chris Barrie testified that on 11 October 2001 he, "told him [Reith] that I had been advised that the photographs he had put out did not describe the events as he portrayed on the *7.30 Report*".¹⁰²

Barrie discussed the incident with Reith again on 17 October 2001. In evidence to the committee Barrie said,

I said to him the doubts seemed to be based on what the photographs showed - or did not show - and an inconclusive video. I said that I had indicated to them my position was that, until evidence was produced to show the initial report to me was wrong, I would stand by it. As at that date, no further evidence had been provided to me.¹⁰³

¹⁰² Ibid., p. 132.

¹⁰³ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 12 April 2002, pp. 742-743.

Public interest in the story declined until 7 November 2001 when *The Australian* published reports stating, “the asylum-seekers did not throw their children overboard”.¹⁰⁴ In response, a spokesman for Peter Reith said, “I don't put any credence in unnamed sources, and the Minister has no reason not to believe the reports he's received from senior officers in the navy,”¹⁰⁵ which does not seem to be true considering the conversation Reith had with Barrie three weeks earlier.

With the election only three days away, suggestions the children overboard incident never happened were a major concern for the Government. This was magnified on 8 November 2001 when Vice Admiral David Shackleton, Chief of the Navy, commented to the media that, “our advice was that there were people being threatened to be thrown in the water and I don't know what happened to the message after that”.¹⁰⁶ After Peter Hendy contacted him, Shackleton issued a clarifying statement, “my comments in no way contradict the minister. I confirm the minister was advised that Defence believed children had been thrown overboard”.¹⁰⁷ However, it was now public knowledge that according to the Navy the children overboard incident never occurred.

People continued to call for the Government to release the video of the incident. Reith admitted that although he had not seen the video he had been “told it's very grainy and very imprecise”.¹⁰⁸ Nonetheless, the Government released the video to the media just in time for the midday bulletins. Although the video did not conclusively prove asylum seekers had not thrown children overboard, it also did not prove they had.

One of the final set-piece speeches of the election campaign was Howard's address to the National Press Club, given shortly after the release of the video. In his address Howard continued to press home one of the central tenets of his campaign,

Protecting Australia's borders against illegal immigration is an important national responsibility. Every nation has the right as an exercise of its

¹⁰⁴ O'Brien, 'Overboard incident 'never happened'.

¹⁰⁵ Ibid.

¹⁰⁶ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 89.

¹⁰⁷ Ibid., p. 90.

¹⁰⁸ Allard and Clennell, 'Howard Links Terrorism To Boat People'.

fundamental sovereignty, to decide who comes to this country and the circumstances in which they will come.¹⁰⁹

Howard did not raise the children overboard incident in his address, but journalists raised it in their questions to him afterwards. One journalist said she heard from Defence sources that the photographs released were not of the incident. Howard responded,

I don't know what defence sources you're referring to but let me just take you through the sequence on this very quickly. The claims that were made by Mr Ruddock and Mr Reith on the Sunday, I think it would have been Sunday the 7th of October, it was just after the election was called, they were based on advice from defence sources. My own comments were based on my discussions with Mr Ruddock and Mr Reith. On the 9th of October I received an ONA [Office of National Assessments] report that read in part as follows: Asylum seekers wearing life-jackets jumped into the sea and children were thrown in with them.¹¹⁰

Although it is true the ONA reported the incident had occurred, John Howard's International Adviser, Miles Jordana, had been informed by the ONA, "the only basis for the 'children overboard' reference in the ONA report was indeed ministers' statements and that ONA did 'not have independent information on the incident'".¹¹¹

Following the Coalition's election win on 10 November 2001, a number of inquiries were established to determine the actual events that surrounded the claims asylum seekers threw children overboard. Defence undertook the Powell Report, while the Prime Minister instructed an official in his department to undertake an inquiry, resulting in the Bryant Report. In March 2002, the Senate established the Select Committee into a Certain Maritime Incident, which released its report in October 2002.

Cover-up

At the centre of the Howard Government's efforts to inhibit outrage over the children overboard incident was an attempt to cover up its role. What is interesting, however, is how the Government's actions before and after the announcement that children had

¹⁰⁹ John Howard, *Transcript of National Press Club Address, Canberra*, (8 November 2001 (cited 2 June 2005)); available from <http://www.pm.gov.au/news/speeches/speech1324.htm>.

¹¹⁰ John Howard, *Transcript of Questions & Answers at the National Press Club*, (8 November 2001 (cited 2 June 2005)); available from <http://www.pm.gov.au/news/speeches/speech1325.htm>.

¹¹¹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 123.

been thrown overboard differ. In the first case, the information moved quickly through the bureaucracy, to a minister and into the public domain. Afterwards information moved slower, and less was made available to the public. This ensured the Government was able to maintain the cover-up.

Informing the Minister

As noted above, the HMAS *Adelaide* intercepted the SIEV 4 early in the afternoon of 6 October 2001 and proceeded to warn the vessel not to enter Australian waters. Early the next morning SIEV 4 crossed into Australia's contiguous zone, and a party of sailors from the *Adelaide* boarded it.

The exact time of the incident is difficult to ascertain, as Banks and Silverstone do not agree on this. What is known, however, is that at either 0750 or 0900 on 7 October Banks briefed Silverstone on the situation, and Silverstone came away from this briefing believing "there were men in the water and a child thrown over the side, 5, 6 or 7 years of age".¹¹²

Halton became aware of the report at approximately 0915, as she was about to enter the PST meeting. In this meeting, she informed all present of the reported incident. Just before 1000 Bill Farmer received a call from his minister, Philip Ruddock. During this telephone call, Farmer informed Ruddock of the reported incident.

Approximately one hour later Ruddock informed the media of the incident, and the media frenzy over the report began. At most, it took three and a half hours (depending on the timing of the first phone call) for the alleged incident to be reported to the media.

Correcting the Record

It should not have taken very long for people to start questioning the report. After learning of the report at the PST, Group Captain Steven Walker went back to his headquarters and could not find any evidence of it. When he returned to the PST (which he was attending on behalf of Titheridge) at 1730 that evening he informed

¹¹² Ibid., p. 41.

those present he could not find evidence of the report. In his evidence to the Senate Select Committee, Walker said,

I pointed out that I had no written confirmation that children had gone into the water. That was not to say that it did not happen, but what I was trying to stress was that I had no auditable evidence that children had gone into the water.¹¹³

As Walker points out, having no evidence of the report did not mean that the incident did not happen. Nevertheless, it should have led to a more thorough investigation. If someone had launched such an investigation, it may have revealed the truth much earlier.

Rather than launch an investigation, the PST prepared a brief for the Prime Minister, which included information on the incident, noting the *Adelaide* was “met with attempts to disable the vessel, passengers jumping into the sea and passengers throwing their children into the sea”.¹¹⁴ This was the first written briefing produced on the incident, but the information was still based on the verbal reports from earlier in the day.

Hampton had also contacted the Strategic Command asking for evidence. In response to this request, Hampton received four faxes by late on 7 October. None of these faxes contained any mention of the children overboard.¹¹⁵

Therefore, by the night of 7 October, no evidence had surfaced confirming the incident had occurred. Members of the PST and Hampton both knew this, yet they were not asking questions in an effort to confirm the first reports.

Silverstone and Smith both realised on 9 October that they were yet to receive written reports on the incident. Learning Banks himself did not believe the incident had occurred, Silverstone and Smith ordered him to gather statements from his crew to

¹¹³ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 22 May 2002, p. 1684.

¹¹⁴ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 93.

¹¹⁵ *Ibid.*, p. 110.

confirm the report. Smith then contacted Ritchie, telling him he had “serious concerns as to our ability to prove that this incident had in fact occurred”.¹¹⁶

Early on 10 October Banks informed Silverstone there was no evidence that asylum seekers had thrown children overboard, but he was still to interview a couple of crewmembers who were on the other side of the SIEV at the time of the alleged incident. Strategic Command passed this information on to Ritchie, who in turn forwarded it to Reith’s Military Advisor, Mike Scrafton.

Later in the day, Banks confirmed to Smith and Silverstone that no asylum seekers had thrown children into the water. Smith then conveyed this information to Barrie.¹¹⁷

On 9 October, the RAN emailed two photographs of the rescue the previous day. Commander Piers Chatterton, Director Operations at Naval Headquarters, received these photographs, who assessed they were a good news story for the military. This led Chatterton to put the photographs on to the ‘restricted’ email system. This system was used for unclassified material, as opposed to the ‘secret’ system that was used for classified information. Being on the ‘restricted’ system, these photographs were accessible by any defence official.

Hampton became curious of the exact details of the incident and contacted Captain Belinda Byrne, a staff officer in the Public Affairs and Corporate Communication unit, to ask how many children had been thrown overboard. When Byrne informed Hampton there were no reports of such an incident, he was “agitated and told her that there were photos of children in the water”.¹¹⁸

Curious about Hampton’s request and agitation, Byrne asked Bornholt if he knew anything about photographs of children in the water after being thrown overboard. Aware there was no evidence of the children overboard incident, Bornholt obtained the photographs with captions, noting they were clearly marked as from 8 October.

¹¹⁶ Ibid., p. 59.

¹¹⁷ For a chronology see Ibid., pp. 63-66.

¹¹⁸ Ibid., p. 72.

Concerned with the apparent confusion over the photographs, Bornholt contacted Hampton informing him,

My advice to you is that the photographs could not be of 7 October because Strategic Command have informed us that, of the 14 people that they understand were in the water, there were no women or children.¹¹⁹

Hampton was reportedly concerned with this advice, telling Bornholt that Barrie had approved the release of the photographs, and women and children had been in the water. Still concerned, Bornholt went back to check the details, and upon realising he was correct, left a message on Hampton's mobile telephone confirming his previous advice. It is this message Hampton denies ever receiving.

In the time between these two conversations, Peter Reith released the photographs. In a media conference immediately after releasing the photographs, journalists asked Reith why there were no captions, and "couldn't these people be in the water after the boat actually sank?" Reith replied,

I have this sequence of events from the navy personnel on board. They have film of the incident. They have photos of the incident, and for those who are questioning the report that I'm giving you, you are saying the ADF people are not telling the truth.¹²⁰

The only reported sequence of events produced by Navy personnel on board was the chronology produced by Banks. According to the Senate Committee report, Smith received this chronology on the morning of 11 October, the day after Reith's media conference. Reith could therefore not have seen this chronology, but even if he had, this chronology could not have mentioned any asylum seekers throwing children overboard, as at this stage Banks had confirmed there was no evidence of such an incident occurring. That Reith would claim to have seen this sequence of events was clearly an effort to use the prestige of the ADF to cover-up that the incident had not occurred.

These photographs became the major media story of the day, with television news programs showing them during their evening broadcasts. It was the screening of these photographs on ABC-TV's *7:30 Report* that led both Ritchie and Shackleton to realise

¹¹⁹ Ibid., p. 82.

¹²⁰ Marr and Wilkinson, *Dark Victory*, p. 270.

they were not connected to the children overboard incident. Both men informed Barrie of this error. With this knowledge, Barrie called Reith on 11 October to tell him the photographs did not portray the events he claimed they did. In his evidence to the Senate committee, Barrie could not recall Reith's exact response, but did describe the conversation as "testy".¹²¹

Later on 11 October, Ritchie further briefed Barrie on the children overboard incident. Ritchie's recollection of the conversation was that he informed Barrie there was no evidence to support the allegation asylum seekers threw children overboard. Barrie's recollection is that Ritchie only mentioned there were doubts over the original reports. Either way, Barrie should have been aware there were grave doubts over the veracity of the children overboard claims. However, he does not seem to have informed Reith of this, telling Ritchie "until he could produce evidence to show that what had been originally reported to me was wrong, I would not change my advice to the minister".¹²² To prove an incident never happened is extremely difficult.

Also that day, Dr Allan Hawke, Secretary of the Department of Defence, had been informed by the department's public affairs area of the misrepresentation of the photographs, and the efforts to inform Peter Reith's office, and in particular Ross Hampton, of this.

On 11 October, Mike Scafton talked to Jenny McKenry of the Department of Defence's Public Affairs Unit. During this conversation, McKenry mentioned to Scafton that the photographs were currently on the restricted email system. In response to this, Scafton indicated to McKenry she should get them off that system.¹²³ As the Government had already released the photographs, and that in themselves the photographs were not a matter of national security, it is strange Scafton would be so eager to ensure they were not accessible to all defence officials. One possible explanation for this was Scafton knew the photographs had the captions attached identifying the time of the incident, and the release of such information would reveal the Government's cover-up.

¹²¹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 83.

¹²² *Ibid.*, p. 85.

¹²³ *Ibid.*, p. 84.

Therefore, the Chief of the Defence Force was aware by 11 October that there was no evidence the incident occurred and the photographs were not of the incident. The head of the defence department knew the photographs were of a different incident, while the Defence Minister and members of his office had been informed that the photographs were not of the alleged event and there were extreme doubts over the veracity of the claim. Yet, no one told the public of the misrepresentation of the photographs or the extreme doubts that now existed over whether the incident occurred.

Maintaining the Cover-up

Rather than publicly announcing the mistake made with the photographs and the doubts the ADF had over the original reports, the Government continued to maintain the incident occurred and the photographs were evidence. On 14 October Peter Reith appeared on *Sunday Sunrise*. On questioning over why he had released the photographs and not yet the video, Reith replied, “I was happy to have the Department release a couple of photos, because there was a claim we were not telling the truth about what happened”.¹²⁴

This was three days after the Chief of the Defence Force had told Reith that the photographs were not of the alleged incident, yet Reith still claimed they were evidence. This was clearly a move to cover-up that the incident did not occur.

Over the next few weeks, the incident attracted less media coverage. During this same period, the ADF continued to produce briefings noting the error with the photographs and the doubts over whether the incident did occur. On 31 October Reith visited Silverstone’s office, where he was told the video did not show asylum seekers throwing children overboard, and of the stronger doubts over the incident. In response to this Reith said, “Well, we had better not see the video then”.¹²⁵ It is clear Reith’s intention was to remain unaware that the incident did not occur.

¹²⁴ Ibid., p. 117.

¹²⁵ Ibid., p. 86.

Eight days later *The Australian* revealed allegations the incident never happened. Their investigation found Christmas Islanders had been told by officers from the *Adelaide*, “Whatever you hear - the asylum-seekers did not throw their children overboard”.¹²⁶ This led to further intense media speculation over the Government reports.

This media speculation caused Reith to call Air Marshall Angus Houston, who at the time was acting Chief of the Defence Force, for further briefing on the incident. In his briefing Houston informed Reith, “there was nothing to suggest that women and children had been thrown into the water,” the photographs were not of the alleged incident and the video was inconclusive.¹²⁷ A senior officer in the ADF had again informed Reith of the errors, but he continued to state publicly that the incident occurred.

In an attempt to shore up the Government’s position on the children overboard incident, Reith asked Mike Scafton to view the Navy’s video of the incident. After viewing the video, Scafton told both Reith and Howard, who also contacted him, that although the video was inconclusive, “neither did it provide conclusive evidence that the incident didn’t happen”.¹²⁸ As the video did not conclude whether the incident did in fact occur, the Government released it the next day

John Howard was scheduled to speak to the National Press Club on 8 November. In preparation for this, Jordana contacted the Department of Prime Minister and Cabinet (PM&C) and the Office of National Assessment (ONA) for information and evidence. In response, Jennifer Bryant (who was later to undertake an inquiry into PM&C’s handling of the incident) informed Jordana she could not locate any such information. Meanwhile, Kim Jones, Director-General of ONA provided a report from 9 October, but advised Jordana, “the ONA report could not have been a source of the information used in their [the minister’s] statements”.¹²⁹

¹²⁶ O'Brien, 'Overboard incident 'never happened'".

¹²⁷ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 117.

¹²⁸ *Ibid.*, p. 118.

¹²⁹ *Ibid.*, p. 123.

In his speech to the National Press Club Howard never mentioned the children overboard incident, but it formed the basis of a number of questions from journalists after his presentation. Asked a question concerning whether the incident occurred, and the subsequent misrepresentation of the photographs, Howard replied,

On the 9th of October I received an ONA report that read in part as follows: Asylum seekers wearing life-jackets jumped into the sea and children were thrown in with them.¹³⁰

At no stage did Howard inform the journalists that the basis of the report was ministers' statements, and it was not in itself evidence the incident occurred. To continue to produce evidence to back the Government's claims, while knowing the evidence itself does not actually confirm these claims is a clear attempt at a cover-up.

On the same day, Vice Admiral David Shackleton told the media, "our advice was that there were people being threatened to be thrown in the water and I don't know what happened to the message after that".¹³¹ In doing so, Shackleton had revealed to the public the military's belief that the incident did not occur. On becoming aware of Shackleton's comments Hendy contacted Shackleton and told him he should issue a clarifying statement to correct the apparent contradiction. Shackleton did so, acknowledging the Minister was first told children were thrown overboard.

Shackleton's comments and the revelations published in *The Australian* began to show cracks in the Government's cover-up of what actually happened when the *Adelaide* intercepted SIEV 4. Only days out from the election, the Government was able to ensure its lies and deception did not become public knowledge.

It was now approximately one month since senior officers in the ADF and Australian Public Service (APS) became aware of the misrepresentation of the photographs and the non-existence of evidence of the incident. Nevertheless, ministers say they were unaware of either of these facts. Although it took only three and a half hours for the Government to reveal to the public that the incident occurred, the Government did not reveal the truth for the next month, even though it is documented that they were informed of this on a number of times.

¹³⁰ Howard, *Transcript of Questions & Answers at the National Press Club*.

¹³¹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 89.

The Government's cover-up, however, continued for months after the election. To ensure the Senate Select Committee was unable to investigate the incident properly, the Government ordered that none of the ministers and ministerial staff involved would give evidence. Further investigation of this is provided below in the section on 'Official Channels', but the lack of testimony by these important witnesses furthered the cover-up the Government had initiated only days after the incident.

Operation Relex

As noted in Chapter Three, the Government implemented Operation Relex on 3 September 2001, with the ADF becoming the lead agency in 'border protection'. Not only did Operation Relex contain the standard operating procedures for the ADF when intercepting boats, but also a public affairs plan that contributed to the cover-up of the incident.

The primary feature of this public affairs plan was, "all information about Operation Relex, whether strategic or operational, was to be released by the Minister's media adviser".¹³² By implementing this plan, Reith was able to ensure nobody made public information that could be harmful to the Government. The consequences of this plan are clear to see in the children overboard incident. Defence officials were aware of the misrepresentation of the photographs and that the incident did not occur, but never made it known publicly.

Not only did the public affairs plan ensure information about the actions of Operation Relex remained secret, Marr and Wilkinson report, "the government was taking extraordinary steps to keep information about Operation Relex from the public".¹³³ Therefore, not only did the Government ensure it controlled the information, it also ensured people were unaware of the rules that allowed this to occur.

One instance during the incident demonstrates the importance of the Operation Relex public affairs rules. On 9 October Elizabeth Bowdler, a reporter from Channel Ten, found Banks' satellite phone number and called him. In his interview with her, Banks

¹³² Ibid., p. 23.

¹³³ Marr and Wilkinson, *Dark Victory*, p. 178.

described the rescue and talked about the children onboard, but at no stage mentioned asylum seekers throwing children overboard. During this interview, he also mentioned the photographs he had already sent to the department.¹³⁴ This conversation led to the discovery by the media of the photographs, and the misrepresentation of them.

In response to this interview, Silverstone and Smith both contacted Banks and informed him he was, “not to communicate outside the military chain of command on this operation or on any related issues”.¹³⁵ This briefing ensured Banks did not again talk to the media, even when he was aware of the false reports and misrepresentation of the photographs.

Banks continued to be concerned with the erroneous information in the public domain about the children overboard incident, and asked his superior officers whether he should do anything about this. In response, he was told officers higher up the defence hierarchy were dealing with this. Banks concluded, “by the time I got back to Perth on 14 October I had no uncertainty I was not to discuss it”.¹³⁶ The defence hierarchy was therefore aware of Reith’s wish to control all information.

The Operation Relex public affairs plan caused journalists a number of problems in their attempts to report the truth. In his testimony to the Senate Committee Ian McPhedran, a senior journalist with News Ltd reported a near farcical use of the rules. When asked about the photographs, Ross Hampton claimed they were ‘operational matters’, and he could therefore not comment on them. To claim the photographs were ‘operational matters’ is clearly incorrect. Hampton would have been well aware that no one within Defence would talk to the media as briefing the media on operational matters was the responsibility of the minister. Therefore, he used the rules to ensure the real story of the photographs was covered up.

Restricting Media Access

The public affairs plan of Operation Relex brings into question the Government’s denial of media access. The Federal Parliamentary Press Gallery Committee began its

¹³⁴ Ibid., p. 258.

¹³⁵ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 25 March 2002, p. 166.

¹³⁶ Banks in Patrick Weller, *Don't Tell the Prime Minister*, Scribe Publications, Melbourne, 2002, p. 52.

submission by stating, “a Government campaign of censorship and misinformation, which peaked during the Tampa incident and through the HMAS Adelaide ‘children overboard’ affair, is unprecedented in recent times”.¹³⁷ Without access to the truth, the media was unable to report it to the Australian public.

There have been a number of reports, apart from the instructions to the defence force not to talk to the media, of the Government denying the media access to asylum seekers. Marr and Wilkinson report that when the PST were discussing where the *Adelaide* should tow SIEV 4, Halton stated,

‘holding them on the high seas would be highly visible to the media’, while taking them to Christmas Island ‘could have disastrous consequences’. Not only would this send a ‘strong signal to people smugglers’ but once again, the media would be a problem. ‘There is a very real prospect that the media would have access to the group.’¹³⁸

Halton’s main concern at this stage does not seem to be the safety of the asylum seekers, nor that of the sailors onboard the *Adelaide*, but rather maintaining the Government’s media blackout. As a public servant, Halton was expected to be apolitical, and as Howard had called the election on 5 October, the APS were operating under the caretaker conventions. According to these conventions, there are established practices “directed at protecting the apolitical nature of the public service and avoiding the use of Commonwealth resources in a manner to advantage a particular party”.¹³⁹ Halton’s actions are a clear contravention of these conventions, as she was advantaging the Government by maintaining its cover-up.

In summary, there are a number of examples of the Government covering up its actions in the children overboard incident. Firstly, it did not inform the Australian public that the photographs were not of the incident, and there were severe doubts within the APS and ADF over whether the incident actually occurred. Secondly, the Government used Operation Relix, particularly the media plan developed by Ross

¹³⁷ Federal Parliamentary Press Gallery Committee, *Submission to Select Committee into a Certain Maritime Incident*, (2002 (cited 8 February 2005)); available from www.aph.gov.au/senate/committee/maritime_incident_ctte/submissions/.

¹³⁸ Marr and Wilkinson, *Dark Victory*, p. 250.

¹³⁹ Department of the Prime Minister and Cabinet, *Guidance on Caretaker Conventions*, (2004 (cited 29 September 2005)), p. 2. Although these conventions are from 2004, it is noted, “This document is essentially the same as the Guidance that was issued in September 2001. It has been updated to take account of changes in agency names, website addresses and publications to which references are made in the Guidance”.

Hampton. This plan ensured all information made available to the public was by the Defence Minister or his media adviser. Journalists had difficulty accessing information about the incident, with senior public servants also acknowledging the importance of preventing the media's access to the asylum seekers.

The control of information to the media was therefore extremely important to the Government's attempt to cover-up its role in the children overboard incident. The media was also very important in the second method of inhibiting outrage, devaluing the target.

Devaluation of the Target

Devaluation of asylum seekers was a central component of the Government's efforts to curtail outrage over this role in the children overboard incident. One statement by John Howard demonstrated many of the techniques used by the Government to devalue those onboard SIEV 4, along with all asylum seekers. When questioned on the children overboard incident, his response was:

What sort of people would throw their children into the water ... I don't want people like that in Australia ... Genuine refugees don't do that ... Refugees are doing what they do for their children. They hang on to their children ... People say they are desperate; well, you don't get desperate with the lives of your own children ... I tell you, there really is no place in Australia for people who would do that.¹⁴⁰

But who exactly were these people the Government purported had thrown their children overboard? No one knew. The Government ensured no contact with asylum seekers was possible, so the only information available to the public was that provided by the Government. This presented the Government with an easy way to ensure support for asylum seekers was kept to a minimum.

'What sort of people would throw their children into the water?'

The above statement includes a number of clues as to how the Howard Government went about devaluing asylum seekers in the eyes of the Australian public. Firstly, the Government suggested asylum seekers did not care for the welfare of their children. This was a continual refrain from senior Government ministers. Alexander Downer,

¹⁴⁰ Ludlow and Hamilton, 'Overboard: Shots turn away 187 but vessel heads in'.

Minister for Foreign Affairs noted, “any civilised people would never dream of treating their own children that way,”¹⁴¹ while Liberal Senator, George Brandis (who was the Government’s senior representative on the Senate Select Committee) made claims that “boatpeople attempted to strangle a child,” although it was later revealed no evidence existed to support this claim.¹⁴²

Threatening the life of children is a reprehensible action by any adult – but the incident did not occur. Understanding the public’s abhorrence of such action meant the Government was able to use it to diminish support for asylum seekers. The incident was the topic of many letters to newspaper editors and telephone calls to talkback radio, many expressing their horror that anybody could throw a child into the ocean.

By not correcting the public record about what happened with SIEV 4, Howard and his senior ministers ensured the Australian public had the impression that the asylum seekers on board SIEV 4, and in fact all asylum seekers, were not interested in the welfare of their children.

At the time, nobody claimed the Government was lying, but some people were not as quick to judge the asylum seekers. Greens Senator Bob Brown condemned the Government’s policies noting, “nobody throws their children overboard unless they are desperate”.¹⁴³

This desperation was evident in the reason many of these asylum seekers have given for wanting to leave their home; to ensure their children had a better life. Crock and Saul reported that asylum seekers have paid between \$3,800 and \$40,000 each, for themselves and their children to make their way to Australia.¹⁴⁴ If asylum seekers did not care for the welfare of their children, they would not have paid these extremely large sums of money, especially for persecuted people from developing countries.

¹⁴¹ 'Demonising The Boat People', *The Age*, 12 October 2001.

¹⁴² Matt Price, 'Navy admits no 'strangle' witnesses', *The Australian*, 6 April 2002.

¹⁴³ Ian Henderson et al., 'Boat children overboard - Howard hard line becomes poll focus', *The Australian*, 8 October 2001.

¹⁴⁴ Crock and Saul, *Future Seekers*, p. 43.

Philip Ruddock went as far as to claim, “people wouldn't have come wearing life jackets unless they intended some action of this sort”.¹⁴⁵ As noted below under ‘Reinterpreting the Events’, considering the quality of the boat these people were travelling on, it would have been more irresponsible for them to board without life jackets, especially for their children. Rather than demonstrating a callous disregard for the welfare of the children onboard, the use of life jackets showed that the health and welfare of the children were foremost in the minds of the asylum seekers.

The concern the asylum seekers had for the children onboard SIEV 4 became evident during Commander Banks’ testimony to the Select Committee on a Certain Maritime Incident. When describing some of the photographs taken of the sinking of SIEV 4, Banks noted,

people on board the SIEV were concerned. They passed the baby to our RHIB and we took it away as one of the first people off the SIEV.¹⁴⁶

If the asylum seekers had as little concern for the welfare of the children onboard as the Government claimed, they would not have been as eager to ensure the baby was one of the first evacuated. Unfortunately, Banks recounted this on 25 March 2002, over four months after the election. Although individuals had raised doubts and allegations over the incident prior to the election, the feeling in the Australian public was that asylum seekers had endangered the lives of children.

‘Genuine Refugees’

The Government also questioned the genuineness of those asylum seekers attempting to get to Australia via boats. Central to understanding whether a person is a ‘genuine refugee’ is the *United Nations Convention and Protocol Relating to the Status of Refugees* (the Convention). Article 1 of the Convention defines a refugee as a person who,

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 the country of his nationality and is unable 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

¹⁴⁵ Sophie Douez and Mark Forbes, ‘Boat People ‘threw Children Overboard’’, *The Age*, 8 October 2001.

¹⁴⁶ Senate Select Committee on a Certain Maritime Incident, p. 163.

a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁴⁷

To become a refugee under international law, a person must be outside their own country and be assessed as meeting the criteria set out above. 'Refugee' is therefore a legal term that applies to those people assessed as meeting the criteria, whereas in everyday language a refugee is anybody who flees their home seeking protection.

On the other hand, the Australian Human Rights and Equal Opportunity Commission (HREOC) defines an asylum seeker as, "a person who requests asylum from persecution and recognition of his or her status as a refugee".¹⁴⁸

Describing a refugee as an asylum seeker, or vice versa, is not usually an attempt to devalue the person, as both terms are often used interchangeably. An understanding of the difference, however, is essential in determining whether a person is a 'genuine refugee' or not. Howard's claim that those onboard SIEV 4 were not 'genuine refugees' was possibly correct, as those onboard may not have been assessed as refugees under international law. However, Howard did not make this claim with the legal definition in mind. Howard was insinuating that they did not have a legitimate claim to refugee status. Results of assessments undertaken to determine the refugee status of asylum seekers suggested that many of those onboard SIEV 4 were in fact refugees under international law.¹⁴⁹

Slurs against the genuineness of asylum seekers by the Howard Government were a continuation of a long running campaign by a succession of Australian governments.

¹⁴⁷ Article 1 of United Nations High Commissioner for Refugees, 'United Nations Convention and Protocol Relating to the Status of Refugees [1967]'.
¹⁴⁸ Human Rights and Equal Opportunity Commission, *Face the Facts: Questions and Answers about Refugees, Migrants and Indigenous People*, (2003 (cited 18 October 2004)); available from http://www.humanrights.gov.au/racial_discrimination/face_facts, p. 3.

¹⁴⁹ Table 11.1 of Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*. shows the results, as of 16 September 2002, of assessments of asylum seekers intercepted by Operation Relex. The majority of asylum seekers were Iraqi and Afghan, with their success rates 67 per cent and 7 per cent respectively. The low rate of success for Afghan asylum seekers can be explained by the fall of the Taliban the previous year, after these asylum seekers would have set out for Australia. It is highly probable that had the Afghans been assessed before the fall of the Taliban, when they first set out and when SIEV 4 was intercepted, the success rate would have been much higher.

In the late 1980s Bob Hawke, then Labor Prime Minister, condemned “boat people, as he had done in 1977, as queue jumpers and economic refugees”.¹⁵⁰

The Howard Government continued to use both of these terms, queue jumpers and economic refugees. The use of the term ‘queue jumper’ is discussed in Chapter Five, but as shown, it is an inaccurate term that questions the genuineness of asylum seekers in the mind of the public.

Only months before the incident Philip Ruddock noted in an opinion piece in *The Daily Telegraph*,

it is naive to assume all unauthorised arrivals are fleeing persecution. While many people might be fleeing persecution, millions are also moving for economic or environmental reasons.¹⁵¹

Ruddock’s suggestion that ‘millions’ of asylum seekers were potentially coming to Australia for economic reasons was an attempting to discredit the asylum seekers’ right to claim asylum. Such broad, generalised comments cast a negative light on all asylum seekers.

By casting asylum seekers as economic migrants, Ruddock attempted to appeal to a sense of a fair go. It assumed these asylum seekers had bought their way to Australia, while other, possibly more needy people, remained in refugee camps because they did not have the money to pay people smugglers. Mungo MacCallum has noted two major problems with describing asylum seekers as economic migrants. Firstly, the major basis for eligibility for asylum is a well-founded fear of persecution; nothing in the Convention mentions the wealth of the applicant as a basis for acceptance or rejection. Secondly, use of the term “seems to contradict wider Government policy; after all, our whole Business Immigration Program is based on luring as many wealthy go-getters as possible to our shores”.¹⁵² The continual description of asylum seekers as economic migrants or economic refugees by the Government submerged these viewpoints.

¹⁵⁰ McMaster, *Asylum Seekers*, p. 57.

¹⁵¹ Phillip Ruddock, 'When refugees jump the queue', *Daily Telegraph*, 13 June 2001.

¹⁵² MacCallum, 'Girt by Sea', p. 43.

It is also difficult to determine whether a person is a genuine refugee when no one knows their story. Understanding this, the Government attempted to ensure the public was unaware of the personal suffering and persecution the asylum seekers had suffered.

In the development of Operation Relex, the communication area of the Department of Defence drafted a public affairs plan whereby the Minister for Defence or the Prime Minister would make strategic level announcements, while the military would release operational details. Reith's office rejected this plan, in preference for one developed by Hampton, where "all information about Operation Relex, whether strategic or operational, was to be released by the Minister's media adviser [Hampton]".¹⁵³

This public affairs plan had two effects. Firstly, it assisted the Government in its attempted cover-up of the truth, as discussed above. Secondly, it meant that personal stories of asylum seekers would not make it into the media, as Hampton was acting on behalf of Reith, and therefore extremely unlikely to release stories that would negatively affect the Government's election chances.

Commander Banks broke these rules when he spoke to the reporter from Channel Ten. As Marr and Wilkinson have noted, in agreeing to this interview, Banks was in breach of Operation Relex rules, both for actually speaking to the media, but also for humanising the asylum seekers.¹⁵⁴

Silverstone and Smith's briefing of Banks after this interview showed the military hierarchy was obviously aware of the need to communicate to Banks the new rules surrounding communication with the media. It has been reported that, "the investigation of Banks' flouting of the media rules would consume the Defence hierarchy for hours,"¹⁵⁵ a sign of the seriousness placed on Banks' actions.

Further than just keeping secret the personal stories of asylum seekers, the Government went further by ensuring asylum seekers were not photographed in a

¹⁵³ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 23.

¹⁵⁴ Marr and Wilkinson, *Dark Victory*, p. 258.

¹⁵⁵ *Ibid.*, p. 259.

manner that might harvest public support. The Director General of Communications Strategies for the Defence Department, Mr Brian Humphreys, informed the Senate Select Committee that Hampton ordered them,

to concentrate on the ADF activities at the time — so the work of ADF personnel in relation to Operation Relex, first of all, as targets of opportunity for photographers. We were then given instructions in regard to photographing SUNCs [suspected unauthorised non-citizen] — or whatever the latest term is. We were certainly aware that Immigration had concerns about identifying potential asylum seekers, so we got some guidance on ensuring that there were no personalising or humanising images taken of SUNCs.¹⁵⁶

When pushed on this statement, Humphrey agreed with Senator Faulkner's proposition, "what we have is the Minister for Defence saying in the immediate post-*Tampa* environment, 'Don't humanise the refugees'".¹⁵⁷

Evidence the Government was consciously attempting not to humanise the asylum seekers reveals how the Government understood the impact that the personal stories of these people, and the demonstration of their humanity, would have on public support for their policies. The Senate Select Committee acknowledged this in their report when they noted that by not allowing 'humanising' images, the Government ensured "no imagery that could conceivably garner sympathy or cause misgivings about the aggressive new border protection regime would find its way into the public domain".¹⁵⁸

Reith and his office therefore closely guarded the facts around Operation Relex. As noted, this had two effects: firstly, the Government was able to cover up any incidents which may have negatively affected them; and secondly, as noted by an editorial in *The Age*, "the Australian public has no way of knowing what kind of people the asylum-seekers are, because the Government is making sure there is no media access to them".¹⁵⁹ It was therefore not possible for the public to prove or disprove Howard's claim that those onboard SIEV 4 were not 'genuine refugees'. The doubts over their status lingered, and the Government was able to use this to continue to devalue asylum seekers.

¹⁵⁶ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 17 April 2002, p. 1151.

¹⁵⁷ *Ibid.*, p. 1152.

¹⁵⁸ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 25.

¹⁵⁹ 'Demonising The Boat People'.

‘No place in Australia for people like that’

The general message the Australian Government wished to portray of asylum seekers was that they did not deserve to live in Australia, that certain elements of their character made them unsuitable. As shown above, one of the ways in which the Government did this was to portray the asylum seekers as not caring for the welfare of their children. However the Government also called asylum seekers ‘illegals’ and potential terrorists.

The Howard Government has often called asylum seekers arriving by boat ‘illegal immigrants’, ‘illegal arrivals’, or the truncated version, ‘illegals’. In a radio interview during the Tampa standoff Howard outlined his belief,

it is in Australia’s national interest that we draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country... What we are saying though is that we are not willing unconditionally to take people who arrive here illegally.¹⁶⁰

The media followed Howard’s lead in describing the actions of asylum seekers as illegal, with the many of the first reports of the children overboard incident referring to them as illegal refugees and illegal immigrants.¹⁶¹

However it is incorrect to describe asylum seekers as illegals. The reason put forward by the Government and its supporters for the description of ‘illegals’ is that when asylum seekers arrive in Australia they are doing so illegally. However, as former Justice of the Federal Court Marcus Einfeld has noted on national television,

People do not arrive illegally. That is a mistake. A person is entitled under Australian and international law to make an application for refugee asylum in a country when they allege that they are escaping from persecution...That is simply the law.¹⁶²

Even the Immigration Department have acknowledged that even though under normal situations, people should not enter countries without the necessary documentation, “the Convention’s founders clearly realised that the circumstances of refugees can be

¹⁶⁰ Howard, *Transcript of Interview on 3AW*.

¹⁶¹ Henderson et al., ‘Boat children overboard - Howard hard line becomes poll focus’; Mark Ludlow and John Hamilton, ‘Overboard’, *Herald Sun*, 8 October 2001; Ludlow and Hamilton, ‘Overboard: Shots turn away 187 but vessel heads in’.

¹⁶² Crock and Saul, *Future Seekers*, p. 4.

unique, in that in fleeing persecution they may not be able to conform to normal entry requirements”.¹⁶³ This is confirmed in Article 31 of the Convention, where it states that asylum seekers may “enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.¹⁶⁴

Ruddock however continued to refer to asylum seekers as ‘illegals’, even when his department acknowledged that this was not the case. The term however, did have a political impact. As MacCallum has noted, “labelling them ‘unlawful’ instantly equated them with criminals (stealing our jobs, raping our women, terrorising our neighbourhoods) and removed their individuality and humanity in the process”.¹⁶⁵

This played well in many of the electorates important to the Liberal Party’s chances of re-election, particularly those on the fringes of major cities. Once staunch Labor supporters, Howard had managed to win over many of these voters, often termed ‘aspirational’. The western suburbs of Sydney are indicative of the growth in the importance of aspirational voters, but as Brian Toohey has noted,

Many Muslim immigrants are concentrated in Sydney's western suburbs, where they, too, aspire to a better life. The competition posed by their aspirations often adds to the insecurity of existing residents, whose jobs are precarious and whose debt levels are onerous. These concerns are only exacerbated by reports about ethnic crime gangs or terrorists who espouse extremist versions of Islam.¹⁶⁶

The description of asylum seekers, the majority of whom were Muslims, as ‘illegals’, therefore had strong resonance in these important electorates. A number of high profile gang rapes in Sydney had already led many people living in these suburbs to question the law-abiding nature of Muslims. The Government’s description of asylum seekers as illegal further increased concerns over the desirability of allowing them into Australia. Liberal Party workers exacerbated this concern by murmuring “if you

¹⁶³ Department of Immigration and Multicultural and Indigenous Affairs, 'Interpreting the Refugees Convention: an Australian contribution', 2002.

¹⁶⁴ Article 31(1) of United Nations High Commissioner for Refugees, 'United Nations Convention and Protocol Relating to the Status of Refugees [1967]'.

¹⁶⁵ MacCallum, 'Girt by Sea', p. 43.

¹⁶⁶ Brian Toohey, 'Beer Budget Won't Be Enough For The Aspirational Class', *Australian Financial Review*, 24 November 2001.

want a Taliban for a neighbour, vote Labor” to voters as they entered polling stations.¹⁶⁷

The Government had been successful in increasing support for its position on asylum seekers by describing them as illegals, but as noted in Chapter Three, it went further. The terrorist attacks on New York and Washington on 11 September 2001 gave the Government further ammunition in its effort to increase public support for its policies on asylum seekers.

Marr and Wilkinson report that on 13 September 2001, “talkback radio was alive with the idea that the terrorists of New York were linked to the Muslim asylum seekers forcing their way into Australia”.¹⁶⁸ A major reason for this belief was the distrust of Muslims that had already found a foothold in Australia. Defence Minister Peter Reith was an authoritative voice on the terrorist threat. He lent his support to the theory that terrorists may try to infiltrate Australia as asylum seekers, stating “you’ve got to be able to manage people coming into your country, you’ve got to be able to control that otherwise it can be a pipeline for terrorists to come in and use your country as a staging post for terrorist activities”.¹⁶⁹

John Howard had not attempted to link asylum seekers to terrorists, instead leaving this to Reith and other Government members. However on 7 November, in an interview with Dennis Atkins of the *Courier Mail*, Howard joined those linking asylum seekers and terrorists, saying, “Australia had no way to be certain terrorists, or people with terrorist links, were not among the asylum seekers trying to enter the country by boat from Indonesia”.¹⁷⁰ This was a politically calculated entry into the debate. As Marr and Wilkinson report:

late on the night of November 6, Atkins had his laptop open to show his press colleagues how the *Courier-Mail* would be splashing his scoop the next morning. Howard appeared in the aisle and Atkins showed him, too. ‘Good’, said the Prime Minister. ‘Excellent’.¹⁷¹

¹⁶⁷ MacCallum, ‘Girt by Sea’, p. 60.

¹⁶⁸ Marr and Wilkinson, *Dark Victory*, p. 194.

¹⁶⁹ Reith, *Transcript of Interview with Derryn Hinch*.

¹⁷⁰ Dennis Atkins, ‘PM links terror to asylum seekers’, *Courier Mail*, 7 November 2001, p 1

¹⁷¹ Marr and Wilkinson, *Dark Victory*, p 370

Howard was therefore well aware of the impact that his claims would make, but it is the timing of Howard's introduction into the debate that is important. That morning *The Australian* broke its story, "Overboard incident 'never happened'". Reports that the children overboard incident never happened had the potential to be a devastating blow to the Government's re-election chances, especially only days out from the election. *The Australian* believed that in recognition of this, "John Howard had moved to 'restore the boatpeople issue to the centre of the election campaign amid Liberal fear that there was a late drift of voters back to the ALP after yesterday's Children Overboard claim'".¹⁷²

Although it was illogical to claim that those asylum seekers who had escaped from the regimes the Government was claiming were supporters of terrorism, were themselves terrorists, the climate of fear evident in Australia meant that many people accepted the claim. Even Dennis Richardson, head of the Australian Security and Intelligence Organisation (ASIO), whose advice the Government should have been receiving, thought it was extremely unlikely that terrorists would arrive disguised as asylum seekers, stating

they do not know how long they will be detained and they don't know if they will be allowed entry and they may be thrown out. I can't exclude it but I've not seen evidence of it.¹⁷³

Intelligence experts and opposition politicians made logical arguments against these claims, but the Australian public was "already accustomed to thinking of asylum seekers as vandals, arsonists, child-molesters and war criminals, [so] the suggestion seemed entirely logical".¹⁷⁴ Even the fact that those responsible for the atrocities in New York and Washington had entered the US on valid visas did not sway the belief that asylum seekers might be terrorists.

In a 2005 television show discussing the mandatory detention of asylum seekers, a member of the audience commented, "if we have one person in amongst those people who are here illegally, who is a prospective terrorist, who is going to do what they did in New York, I agree they should all be incarcerated until they are proven to be able

¹⁷² Ian Henderson and Michelle Gilchrist, 'PM plays last boat fear card', *The Australian*, 8 November 2001.

¹⁷³ Marr and Wilkinson, *Dark Victory*, p. 370.

¹⁷⁴ MacCallum, 'Girt by Sea', p. 56.

to be let free”.¹⁷⁵ This suggests that some people still believed asylum seekers had come to Australia illegally, and were possible terrorists. Howard’s claims that ‘people like that’ should not be allowed into Australia clearly resonated with many Australians.

John Howard’s statement on hearing of reports of the incident demonstrated a number of the techniques the Government used to devalue asylum seekers. Firstly, the Government questioned the asylum seekers’ fitness to be parents, while neglecting evidence that suggested the concern they had for their children. Secondly, the Government claimed the asylum seekers were not genuine refugees, although the majority of asylum seekers intercepted by Operation Relex were later assessed as refugees under international law. The Government also attempted to cast asylum seekers as economic migrants, while also preventing the Australian public from hearing the stories of the asylum seekers. The final technique was to describe asylum seekers as illegals and terrorists, although the facts showed neither of these descriptions were correct.

The Government clearly attempted to devalue asylum seekers in the eyes of the Australian public, using false representations. To ensure the perceived validity of these representations, it was important the Government reinterpreted many of the events involving asylum seekers.

Reinterpretation of Events

An important component of the Government’s attempts to firstly keep the truth out of the public domain, and then to secondly reduce outrage over its actions concerning the children overboard incident was to reinterpret the event. In the first case, the Government reinterpreted much of the ‘evidence’, including the photographs and video of the incident and the Navy’s support of this evidence, and the actions of the asylum seekers. Once the public knew that the asylum seekers onboard SIEV 4 had not thrown children overboard, the Government continued to reinterpret the actions of

¹⁷⁵ *Behind Closed Doors*, Insight, SBS, 26 April 2005. Transcript from <http://news.sbs.com.au/insight/trans.php?transid=941>, (cited 6 June 2005)

the asylum seekers in an attempt to devalue them, while also reinterpreting the aims and objectives of the official channels established to investigate the incident.

The Events of 7 October 2001

As noted above, in the early morning of 7 October 2001 a party from the HMAS *Adelaide* boarded SIEV 4. This action led to a number of asylum seekers jumping overboard and Ruddock receiving a report stating that asylum seekers had thrown children overboard. Ruddock and other senior ministers ignored ensuing briefings that this incident did not happen, and this in itself is a reinterpretation of what occurred.

One specific incident of reinterpretation was when an adult male asylum seeker carried a small girl, aged about five to the wheelhouse of the vessel and put her in a life jacket. Marr and Wilkinson report that once he had done this he “took the child to the guard rail on the upper deck and held her over the side, gesturing to the sailors in the RHIB below to take her”.¹⁷⁶

Banks’ reaction was to assume the man was threatening to drop the child into the water, and is thus possibly the origin of the children overboard report. However it is quite possible Banks’ interpretation of the event was wrong, and as Marr and Wilkinson have noted, the asylum seeker may have been gesturing for the sailors to take the small girl. The asylum seeker’s intention, far from being one of harming the child, may have been to ensure her safety by giving her to the sailors to return to the *Adelaide*.

The Government has branded the actions of the asylum seekers as a form of intimidation and blackmail. Condemning the incident, Howard stated, “we are not going to be intimidated out of our policy by this kind of behaviour”.¹⁷⁷ A further investigation of intimidation and bribery during the children overboard incident is provided below, but the Government’s declaration that asylum seekers were intimidating Australia is preposterous. Following the orders of the Australian Government, the *Adelaide* was the intimidator during the interception of the SIEV 4. To suggest otherwise is to reinterpret the event.

¹⁷⁶ Marr and Wilkinson, *Dark Victory*, p. 244.

¹⁷⁷ Douez and Forbes, 'Boat People 'threw Children Overboard'.

The Government's Evidence

To convince the Australian people that asylum seekers onboard the SIEV 4 threw children overboard when intercepted by the *Adelaide*, the Government had to produce evidence. As this incident never actually occurred, the Government had to reinterpret a number of photographs and reports as evidence.

The photographs of sailors rescuing asylum seekers from the water became the most important, and most controversial, of the evidence released by the Government. As is now widely known, the photographs were of sailors from the *Adelaide* in the water rescuing asylum seekers who had evacuated their boat when it sank on 8 October. The Government, however, released the photographs as evidence of children in the water after asylum seekers had thrown them on 7 October. The original statements from Reith and other senior ministers over these photographs could have been an honest mistake, but their continued use as evidence is a misrepresentation of them.

Tim Bloomfield, Director of Media Liaisons within the Department of Defence, had some concerns with the photographs. In particular, “concerns related to the quality of the pictures ... the fact that ‘they could have been taken anywhere’, and whether it would be permissible to show the faces of naval personnel and/or of the persons being rescued”.¹⁷⁸

It is the second of these concerns that is most important when analysing the Government's use of these photographs as evidence of the children overboard incident. That the photographs could have been taken anywhere meant the Government could state they were evidence of the incident, without it being possible to prove they were not.

When the photographs were released as evidence, it was evident they were inconclusive. Peter Reith released the photographs during an interview with Virginia Trioli on ABC Radio. When she first saw the photographs, Trioli noted, “there's

¹⁷⁸ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, pp. 68-69.

nothing in this photo that indicates these people either jumped or were thrown”.

Reith’s response was,

No, well you are now questioning the veracity of what has been said. Those photos are produced as evidence of the fact that there were people in the water. You're questioning whether it even happened, that's the first point and I just want to answer that by saying these photos show absolutely without question whatsoever that there were children in the water ... we have a number of people, obviously RAN people who were there who reported the children were thrown into the water. Now, you may want to question the veracity of reports of the Royal Australian Navy. I don't and I didn't either.¹⁷⁹

In his response, Reith not only reinterpreted the photographs, but also reports from the Royal Australian Navy (RAN). By the time of Reith's interview with Trioli, Ritchie had informed Scafton that there was no evidence of asylum seekers throwing children overboard. As part of Scafton’s position as Military Adviser to Reith it is hard to believe he would not have passed on such important and controversial information to Reith.¹⁸⁰ Validating his story by saying a number of RAN people reported the incident, Reith is clearly misrepresenting the information provided to him from the military.

If, however, the Government did mistakenly believe the photographs were of the children overboard incident when they were first released, Defence informed them otherwise on a number of other instances in the future.

The most obvious instance was Barrie’s conversation with Reith on 11 October. During this conversation, Barrie told the minister “the photographs were being connected to the wrong events in the media”.¹⁸¹ This is unambiguous evidence of the Chief of Defence informing Reith of his misrepresentation of the photographs. Nevertheless, Reith appeared on *Sunday Sunrise* three days later saying, “I was happy to have the Department release a couple of photos, because there was a claim we were not telling the truth about what happened”.¹⁸² Even if one believes Reith was not

¹⁷⁹ Peter Reith, *Transcript of Interview with Virginia Trioli, ABC Radio*, (10 October 2001 (cited 24 April 2006)); available from <http://www.crikey.com.au/articles/2002/02/17-triolireith.html>.

¹⁸⁰ However, it is impossible to be certain whether or not Scafton passed this information on as neither he nor Reith testified at the Senate Select Committee on a Certain Maritime Incident. See the next section on Official Channels for more information on this.

¹⁸¹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 83.

¹⁸² *Ibid.*, p. 117.

intentionally reinterpreting the meaning of the photographs in the interview with Trioli, it is obvious he was in this instance.

However, it was not only the photographs the Government reinterpreted to provide evidence of the incident. John Howard's use of the Office of National Assessments (ONA) report during his address to the National Press Club is another example.

When preparing Howard's speech, Miles Jordana, was informed by the Director-General of the ONA that, "the statements made by several ministers about this incident had been made on 7 and 8 October, and therefore the ONA report could not have been a source of the information used in their statements".¹⁸³ Again, Howard's office, and presumably himself,¹⁸⁴ had been told the ONA report was not evidence of the incident as it was itself based on the statements by ministers. Instead of acknowledging this Howard used it as evidence saying, "on the 9th of October I received an ONA report that read in part as follows: Asylum seekers wearing life-jackets jumped into the sea and children were thrown in with them".¹⁸⁵

Life Jackets

It was not only important for the Government to reinterpret the evidence of the alleged incident, but also in their campaign to devalue asylum seekers. Commenting on the incident, Philip Ruddock said,

(It was) clearly planned and premeditated. People wouldn't have come wearing life jackets unless they intended some action of this sort".¹⁸⁶

Again, as with Banks' assumption that the adult asylum seeker was intending to throw the child into the water, Ruddock is assuming he knows the intention of the asylum seekers.

SIEV 4 was grossly overcrowded and making a risky voyage across the Indian Ocean. It would have been negligent for them to make the trip without life jackets.¹⁸⁷ Rather than evidence of a premeditated attempt to blackmail the sailors, the use of life jackets

¹⁸³ Ibid., p. 123.

¹⁸⁴ As neither Jordana nor Howard testified in front of the Senate Select Committee, it is again impossible to know whether this caveat was passed on to Howard.

¹⁸⁵ Howard, *Transcript of Questions & Answers at the National Press Club*.

¹⁸⁶ Douez and Forbes, 'Boat People 'threw Children Overboard'.

¹⁸⁷ The tragedy of SIEV-X, as examined in the next chapter, shows the risks evident in the journey.

may have been an acknowledgement of the danger evident in the voyage they were about to embark upon.

The absurdity of the statement “people wouldn’t have come wearing life jackets unless they intended some action of this sort” is evident when put into perspective. If Ruddock had made this declaration in relation to those sailing in the Sydney to Hobart race, recreational sailors or those serving in the RAN, he would have faced ridicule. In fact, it is illegal not to have life jackets onboard any boat. In this case, Ruddock suggests it is because those onboard SIEV 4 intended to jump overboard, a clear reinterpretation of the asylum seekers’ intention to suit the Government’s political needs.

The Fault of the Asylum Seekers

Rather than just assuming what the asylum seekers’ intentions were, John Howard went further. Answering questions from journalists after his address to the National Press Club, he stated, “everyone knows and I have myself said on many occasions that if people didn’t endeavour to come to Australia in the first place there wouldn’t be a challenge”.¹⁸⁸

In this statement, Howard managed to reinterpret the entire concept of seeking refugee status. As most asylum seekers intercepted during Operation Relex were later assessed to be refugees, they must have had a “well-founded fear of being persecuted”.¹⁸⁹ These people are not at fault for being persecuted and needing refuge.

In addition, as noted previously, the asylum seekers are well within their legal rights to enter Australia before applying for refugee status. In fact, if the Australian Government accepted more asylum seekers fewer persecuted people would seek to come to Australia by boat, and rather wait in another country.¹⁹⁰

If the Australian Government adjusted its policy on asylum seekers there would be no need for the military to intercept asylum seekers’ boats. To state the asylum seekers

¹⁸⁸ Howard, *Transcript of Questions & Answers at the National Press Club*.

¹⁸⁹ United Nations High Commissioner for Refugees, 'United Nations Convention and Protocol Relating to the Status of Refugees [1967]', Article 1, p. 16.

¹⁹⁰ See the next chapter for an outline of the number of asylum seekers Australia accepts.

are at fault when the military intercept them is to reinterpret the situation. The Government used this reinterpretation to demonise and devalue the asylum seekers.

Not only did Howard reinterpret who was responsible for the children overboard incident soon after it occurred, he continued to do so four-and-a-half years later. During the tenth anniversary of his Government's election victory, many journalists asked Howard about his role in the incident. One journalist asked whether Howard believed that the asylum seekers deserved an apology. He said they did not as, "they irresponsibly sank the damn boat, which put their children in the water".¹⁹¹

However, experts believe it is impossible to be certain the asylum seekers were responsible for sinking the boat, as it was already in a dilapidated state.¹⁹² SIEV 4 was in such a terrible state that after towing the vessel out of Australia's jurisdiction, Banks ensured the *Adelaide* remained nearby because of his concerns over the seaworthiness of the vessel. Following the instructions established for Operation Relex, Banks refused to move any of the asylum seekers to the *Adelaide* while SIEV 4 was still "marginally seaworthy", as the instructions "require[d] that naval commanders do all in their power to avoid having to embark unauthorised boat arrivals on RAN vessels".¹⁹³ Therefore, the reason the asylum seekers were still onboard SIEV 4 when it sank was the rules established by the Government to intercept asylum seekers. Responsibility for the sinking must therefore partly fall on those within the Government that developed and approved the rules for Operation Relex.

To those who knew the true story of SIEV 4, it was obvious Howard was "rewriting the record some five years later with a version that still appears to conflate different events on separate days and present desperate people as monsters ready to put their children at risk of drowning".¹⁹⁴ However, for those who were unaware of the actual events, Howard's line would have reinforced their belief that the children overboard

¹⁹¹ George Megalogenis, 'Refugees 'sank the damn boat', says PM', *The Australian*, 27 February 2006.

¹⁹² Patrick Walters, 'Mystery of how vessel was lost', *The Australian*, 28 February 2006.

¹⁹³ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 38.

¹⁹⁴ 'A Self-Serving Story - The Government is still shamed by children overboard', *The Australian*, 28 February 2006.

incident had actually happened and it was important for the Government to keep asylum seekers out of Australia.

Reinterpreting Official Channels

The Senate Select Committee on a Certain Maritime Incident, established by opposition parties in the Senate after the election, was also used by the Government to reinterpret the events surrounding the children overboard incident.

In an attempt to establish a 'pattern of conduct' the Government senators on the committee investigated the instances of each interception under Operation Relex.¹⁹⁵ In doing so, the senators showed that during the interception of SIEV 7 on 22-29 October 2001 by HMAS *Bunbury*, HMAS *Arunta* and HMAS *Bendigo*, "a small child (approximately three years old) was also dropped into the water by one of the PII [potential illegal immigrants] on board the SIEV".¹⁹⁶

Importantly, in his evidence to the Senate Select Committee, Rear Admiral Smith stressed,

the child was suspended and dropped. There does not appear to be any evidence to suggest that there was a physical throw.¹⁹⁷

Therefore, during the interception of 12 SIEVs, with 1788 asylum seekers onboard, only one child ended up in the water (not including the sinking of boats). Nevertheless, this one instance led the Government senators to declare that, although the Government had been mistaken in its declaration that asylum seekers threw children overboard during the interception of SIEV 4, it was correct to say the incident happened, and should not be blamed for doing so because the 'pattern of conduct' showed asylum seekers did such things. This is another example of the Government conflating the events of two separate days, in this case 16 days apart.

By undertaking this investigation during the Senate Select Committee, the Government senators reinterpreted the aim of the inquiry. The terms of reference

¹⁹⁵ For an overview of each interception, see 'Calendar of SIEV Events' in Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*.

¹⁹⁶ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 5 April 2002, p. 547.

¹⁹⁷ *Ibid.*, p. 510.

instructed the committee to inquire into, amongst other things, “the so-called ‘children overboard’ incident, where an Indonesian vessel was intercepted by HMAS *Adelaide* within Australian waters reportedly 120 nautical miles off Christmas Island, on or about 6 October 2001”.¹⁹⁸ Although the committee was also to investigate Operation Relex, the use of the investigation into all of the SIEVs was clearly an attempt by the Government members to reinterpret the aims and intentions of the Senate Select Committee.

Weller has also reported that “[according to Brandis] the reports from the *Adelaide* did not prove a child was *not* thrown overboard; most of them did not say anything about it at all, so they were not conclusive”.¹⁹⁹ This is similar to Barrie’s instruction to Ritchie that he needed to prove the incident did not occur before he would change his advice to the minister. By reinterpreting the burden of proof and placing it on to the opposition senators, Brandis made it even harder to prove the Government purposely misled the Australian public, as in fact the possibility that asylum seekers did not throw children overboard could not conclusively be ruled out.

To assist in implementing the other methods described in the backfire model, it was important the Government reinterpreted a number of events during the children overboard incident. The major instance of reinterpretation was the reporting that asylum seekers had thrown children overboard from SIEV 4, whereas in fact this had not happened. To support this, the Government reinterpreted what the photographs they released showed. Rather than revealing the photographs were of children in the water after the sinking of the SIEV 4, the Government continued to maintain that they were of children in the water after adult asylum seekers had thrown them overboard. Even in 2006 John Howard has continued to conflate the instances of these two days. The Government also reinterpreted other evidence, including the ONA report used by John Howard in his address to the National Press Club. The Government also attempted to reinterpret the actions of the asylum seekers, saying it was a premeditated action because the asylum seekers brought life jackets, and that it was in fact the asylum seekers’ fault that the incident occurred. Lastly, the Government

¹⁹⁸ Select Committee on a Certain Maritime Incident, 'Report into a Certain Maritime Incident: Terms of Reference', 2002.

¹⁹⁹ Weller, *Don't Tell the Prime Minister*, p. 49.

attempted to reinterpret the aims of the Senate Select Committee, as well as evidence presented to the committee. Rather than just reinterpreting this official channel, the Government also used official channels themselves to inhibit outrage over their role in the incident.

Official Channels

As noted in the previous chapter, although activists often see official channels as an effective method for bringing about change, often the opposite is true. Governments and corporations are often happy to establish official channels themselves and allow activists to use official channels, so that the outrage over an incident dissipates.

In the case of children overboard, the Government also attempted to defend their actions by demonstrating the use of official channels during the incident.

Rational Authority of a Bureaucracy

Max Weber developed the concept of rational-legal, or bureaucratic authority, and defined it as:

endowed with legitimacy by a belief that rules, regulations, statutes, and laws have been properly *enacted*; that is, through “objective” modes of procedure. It rests, in other words, on a belief in the legality of such enacted rules and the right of those elevated to authority positions under such rules to issue directives.²⁰⁰

It was this concept to which the Howard Government attempted to appeal in defence of its actions involving the children overboard incident.

Weber defined a bureaucracy as an organisational structure with the following six characteristics:

1. Fixed and official jurisdictional areas ordered by rules.
2. Office hierarchy and graded authority.
3. Based on files which are preserved in their original form.
4. Thorough and expert training.
5. Official activity demands the full working capacity of the official.

²⁰⁰ Stephen Kalberg, ed., *Max Weber: Readings and Commentary on Modernity*, Blackwell, Oxford 2005, p. 175.

6. Management of the office follows general rules which can be learned as part of the specialist training of the official.²⁰¹

As Weber predicted, bureaucracies now exist in the majority of organisations in modern society. Large corporations can generally be characterised as bureaucracies, but two of the best examples in Australia are the Australian Public Service (APS) and the Australian Defence Force (ADF). Organisations best characterised as bureaucracies were thus important in the implementation of the Australian Government policy on asylum seekers. The Royal Australian Navy (RAN) was the lead agency in border protection, while various departments (for example Department of Immigration and Multicultural and Indigenous Affairs, Department of Defence and Department of the Prime Minister and Cabinet) were important in the development of the policies that led to the children overboard incident and the false information propagated by Howard and other senior ministers.

The Australian Government often referred to the role of various bureaucracies in defending its position, and questioned its opponents' lack of obedience to the authority of these bureaucracies. In response to questioning over the veracity of the Government's claims asylum seekers threw children overboard, Peter Reith replied,

Now you may want to question the veracity of reports of the Royal Australian Navy. I don't and I didn't either but I have subsequently been told that they have also got film. That film is apparently on HMAS *Adelaide*...I am told that someone has looked at it and it is an absolute fact, children were thrown into the water. So do you still question it?²⁰²

Here Reith is using the rational authority possessed by the RAN to confirm the veracity of a claim, even though it is false. If it were not for the rational authority of the RAN, such a claim would lack clout.

The Government also attempted to use official channels to restrict information regarding what had actually happened during the incident. On the day of the purported incident, Banks spoke to his superior Brigadier Michael Silverstone. After this

²⁰¹ Max Weber, 'Bureaucracy', in *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills, Routledge and Kegan Paul Ltd., London 1948, pp. 196-198.

²⁰² Reith, *Transcript of Interview with Virginia Trioli, ABC Radio*.

conversation, the information was passed through the ADF hierarchy, finally being received by the People Smuggling Taskforce (PST). Up until this point, the information had been passed along bureaucratic lines, but when Philip Ruddock called Bill Farmer, the information was passed on. Ruddock then revealed the report to the public. The usual line of communication would have been a departmental brief to the minister, not an aside in a conversation.

The circumventing of bureaucratic rules allowed the Government to quickly receive the information, and then use it as it saw fit. However, as shown above, once those within the APS and ADF realised the inaccuracy of public statements by ministers, they found it difficult to promptly inform the ministers of these errors.

Internal Inquiries

John Howard quickly realised after the 2001 election that to ensure continued support for his Government's policies on asylum seekers, it was important to initiate a number of formal investigations. By establishing an investigation into an incident, a government is able to reduce outrage by saying justice is being delivered through the inquiry. The first two of these were the Bryant and Powell Reports.

The Bryant Report (officially known as *Investigation into Advice Provided to Ministers on "SIEV 4"*) was undertaken by Jennifer Bryant, a senior bureaucrat in the Department of Prime Minister and Cabinet. What has become known as the Powell Report (officially known as *The Report of the Routine Inquiry into Operation Relex: The Interception and Boarding of SIEV IV by HMAS Adelaide*) was by Major General R.A. Powell. In both of these cases, the organisation under examination (the APS and ADF respectively) undertook the investigation into its own conduct.

As noted below, under 'Intimidation and Bribery', investigators who are members of bureaucracies are often intimidated into obeying the instructions of their superiors. Further, in the case of Jennifer Bryant, she was actually involved in the children overboard incident. As one of the people who might have been incriminated by a thorough investigation, Bryant may have wished to gloss over particular evidence. The independence of both of these reports therefore has to be questioned.

Although the Government tabled both of these reports in the House of Representatives on 13 February 2002, they have remained confidential. Leaked photocopies of these documents are now available on the website <http://www.truthoverboard.com>. Without access to the results of these inquiries, the public was still unaware of the ‘truth’ around the children overboard incident.

The Senate Select Committee on a Certain Maritime Incident

After both of these reports were completed, the opposition parties in the Senate were not satisfied, possibly because of the confidential nature of both reports. The Senate Select Committee into a Certain Maritime Incident was formed to further investigate the circumstances surrounding the children overboard incident.

Both the Australian Greens and Australian Democrats were hoping for a broad, wide ranging inquiry that would take “a much wider look at the boat people issue”,²⁰³ but, to ensure the investigation took place, agreed to an inquiry with a much narrower focus. In its Terms of Reference, the committee was charged with investigating the following matters:

- (a) the so-called ‘children overboard’ incident, where an Indonesian vessel was intercepted by HMAS *Adelaide* within Australian waters reportedly 120 nautical miles off Christmas Island, on or about 6 October 2001;
- (b) issues directly associated with that incident, including:
 - (i) the role of Commonwealth agencies and personnel in the incident, including the Australian Defence Force, Customs, Coastwatch and the Australian Maritime Safety Authority,
 - (ii) the flow of information about the incident to the Federal Government, both at the time of the incident and subsequently,
 - (iii) Federal Government control of, and use of, information about the incident, including written and oral reports, photographs, videotapes and other images, and
 - (iv) the role of Federal Government departments and agencies in reporting on the incident, including the Navy, the Defence Organisation, the Department of Immigration and Multicultural Affairs, the Department of the Prime Minister and Cabinet, and the Office of National Assessments.²⁰⁴

²⁰³ Bob Brown in Forbes and Taylor, ‘Senate to Call Reith To Probe’.

²⁰⁴ Select Committee on a Certain Maritime Incident, ‘Report into a Certain Maritime Incident: Terms of Reference’. These were later extended to include an analysis of the events surrounding SIEV X (as discussed in the next chapter) and the ‘Pacific Solution’.

With the terms of reference set by opposition parties in the Senate, the Government was unable to control the information investigated by the inquiry. For the Government to dissipate public outrage, it would have been much more effective if it could have set the terms of reference. As Tony Kevin has noted, “there is an old adage, familiar to senior public servants - governments don't like to set up public inquiries unless they know what result the inquiry will produce.”²⁰⁵ In other words, when a government's primary aim is to reduce outrage, it is better for them to set an inquiry's terms of reference.

The terms of reference are extremely important to the effectiveness of an inquiry. An inquiry is only permitted to investigate and report on issues outlined in its Terms of Reference. If a government is able to set them it therefore means it can control what the inquiry investigates. The *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (the Palmer Inquiry)²⁰⁶ demonstrates how a government can control an inquiry. In 2005 the Australian Government established the inquiry to investigate how an Australian permanent citizen was incarcerated in immigration detention, but as Palmer notes in the report, “the Inquiry's comments in this report are not intended to call the policy [or immigration detention] into question”.²⁰⁷ The reason the inquiry could not investigate the policy of detaining ‘illegal immigrants’ was that the Terms of Reference constrained the inquiry into investigating the case of Cornelia Rau, but did not leave open the possibility of questioning the policy that led to her detention. Many refugee advocates, and Rau's family, were disappointed with this, stating before the inquiry began that they hoped it would, “be an opportunity to shed some light both on the circumstances of Cornelia's detention and on ways to rectify flaws in the mental health and detention systems in the four jurisdictions concerned”.²⁰⁸

With the Government unable to determine the Terms of Reference, it was not supportive of the Senate Select Committee, with the Government senators on the

²⁰⁵ Tony Kevin, 'Only one path to the truth', *Canberra Times*, 1 June 2005.

²⁰⁶ Palmer, 'Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau'.

²⁰⁷ *Ibid.*, p. i.

²⁰⁸ 'Inquiry chance to fix the system-sister', *Australian Associated Press General News*, 8 February 2005.

committee believing it was “an undignified sideshow in Australian politics”.²⁰⁹ Government support for an inquiry impacts on its effectiveness and thus the inhibition of outrage. In the case of an inquiry the government does not support, the government can make it difficult for the committee to obtain evidence.

One reason why the Senate Select Committee, as with many official channels, can serve to reduce outrage is the bias they have towards those in authority. This is especially evident in the Senate Select Committee, where none of the refugees involved in the incident presented evidence. The evidence to the Senate Select Committee was thus one-sided because, “asylum seekers as key players in the event could not have their evidence heard and tested by the inquiry”.²¹⁰ This is true of many official channels: it is difficult for ‘lay-persons’ to participate. Of the witnesses to the Senate committee, almost three quarters were members of the APS and ADF, while the other quarter were representatives of non-governmental organisations, academics and retired members of the APS and ADF. The views of activists and other members of the public are therefore also lacking from reports prepared by such inquiries.

Peter Reith was one of the central players in the children overboard incident. Unfortunately, as he had retired after the election, he was no longer a member of parliament and was therefore not required to testify in the Senate inquiry. As the terms of reference were drawn up, opposition parties were asked whether Reith would be asked to give evidence, with a senior Labor figure saying it was “‘100 per cent certain’ that Mr Reith would be requested to appear, although it was uncertain that the inquiry would subpoena Mr Reith to appear if he refused”. Meanwhile, Andrew Bartlett of the Australian Democrats said, “we would certainly have the capacity to call (Mr) Reith now he is out of parliament”.²¹¹

Although the ALP publicly announced its plans to compel Reith to appear in front of the committee, ultimately this did not happen. The Government Members Report notes that although Reith’s attendance was requested four times, and after receiving advice that the committee could summons Reith, the ALP members of the committee

²⁰⁹ ‘Government says boat inquiry a farce’, Australian Associated Press Financial News Wire, 24 October 2002.

²¹⁰ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. xvi.

²¹¹ Forbes and Taylor, ‘Senate to Call Reith To Probe’.

voted against a motion put forward by the Democrats member to do so (with Government members abstaining). The reason for this seems to be, “Labor knows that if the Senate forces Coalition ministerial advisers to reveal information the Government wants kept quiet, then the Senate might well do to the same thing when Labor is in office”.²¹²

In the end, some of the most important participants in the events surrounding the children overboard incident did not appear as witnesses in front of the Senate Select Committee. Senior public servants, such as Bill Farmer, Jane Halton, and Admiral Christopher Barrie, Chief of the Defence Force, appeared in front of the committee. But John Howard, Philip Ruddock, Peter Reith, Ross Hampton, Peter Hendy, Mike Scrafton and Miles Jordana did not appear. In response to this the Chair of the Senate Committee hearings noted, “Cabinet decided to fence off ministerial and prime ministerial conduct from the reach of the inquiry by refusing access to ministerial and prime ministerial staff and to public servants serving in ministerial offices at the time”.²¹³

With many of the most important witnesses not appearing, it was therefore very difficult for the Senate Select Committee to investigate what had happened. The findings of the Senate Select Committee focused predominantly on the relationship between the APS and ministers (and their staffers). The lack of co-operation from the Government, specifically the availability of ministers and their staffers, meant it was difficult for the committee to discover who knew what. The major recommendations from the committee concerned the lack of accountability for ministerial advisers.

Upon tabling the report in Parliament, the Government was able to describe the report as “a document corrupted by intellectual dishonesty.... based on findings, or what are described as findings, which are unsupported by the evidence”.²¹⁴ By ensuring that key figures did not appear in front of the Senate Select Committee, the Government (and the ALP in the case of Peter Reith) ensured the inquiry was unable to produce

²¹² Paul Gray, 'When words are weapons', *Herald-Sun*, 26 March 2002.

²¹³ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. xiv.

²¹⁴ Senate, *Official Hansard*, 23 October 2002, p. 5755.

authoritative findings, also providing the Government and its supporters with a means to discredit the report.

Piers Akerman, a politically conservative commentator in a major daily newspaper, described the Senate Select Committee as,

nothing more than a political picnic staged by a disgruntled Opposition with the assistance of a handful of conspiratorial malcontents of dubious intellectual credentials... The committee abjectly failed to prove [that the Government concocted the children overboard affair for electoral gain] and could do no more than air the nonsensical conspiracy theories propounded by the whackers of the fringe media on various websites.²¹⁵

The Government also pre-empted the release of the report on 23 October 2002 with the new Minister for Defence, Robert Hill, announcing he had made improvements to communication within the Defence Department. During this announcement Reith commented,

I don't think this is a serious Senate inquiry... I am, to be quite frank, not particularly interested in the outcome of the report because I don't think it's an objective assessment of the facts. It's a political hatchet job.²¹⁶

Another reason the Senate Select Committee served to reduce public outrage over Government actions concerning the children overboard incident was the lengthy time taken for the Senate Select Committee to be held and then to produce the report. The committee tabled the report on 23 October 2002, more than a year after the incident. The terrorist attacks in Bali that killed 88 Australian citizens occurred on 12 October 2002. These were thus the focus of much public attention, so much so that Senator Cook, one of the ALP senators on the committee, began his speech, "Today as I present this report, Australia is grieving the senseless loss of life in Bali".²¹⁷ The tabling of the report was also the afternoon prior to a prayer service for those who died in Bali, attended by all members of Parliament. Parliament did not sit again until 11 November 2002, two-and-a-half weeks after the Select Committee had tabled the

²¹⁵ Akerman, 'Sinking ships and dirty Labor tricks'.

²¹⁶ 'I'm not interested in children overboard report - Hill', *Australian Associated Press General News*, 23 October 2002.

²¹⁷ Senator Cook in Senate, p. 5751.

report. By the time the committee released its report, the Australian public's interest in the results had waned, and much of the outrage had already petered out.

Although *The Australian* said, in an editorial after the release of the report, “while the Bali bombings and the terrorism threat are at the forefront of our minds now, the children overboard affair is no historical footnote,”²¹⁸ the incident had little negative impact on the political fortunes of the Government. The next Australian Federal Election was still two years away, and by this time very few voters would have made their decision based on the report. The Government's deception worked. They won the 2001 election, and then went on to win the next election as well.

Evidence shows that official channels implemented to deal with the children overboard incident helped to inhibit outrage. The confidential nature of the Bryant and Powell reports meant these inquiries were helpful for the Government. Many refugee advocates believed the establishment of the Senate Select Committee would provide a forum to prove the Government's deceit during the children overboard incident. The setting of the Terms of Reference by the opposition parties in the Senate meant the Select Committee could investigate the incident properly. However, refugee advocates believe the committee failed to do this. Reasons for this include: the besmirching of the Senate Select Committee by the Government; the bias official channels have in favour of authority; the failure to compel important witnesses to appear before the Senate Select Committee; and the time taken for the Senate Select Committee to release its findings.

Another use of official channels during the children overboard incident was the use of the rational authority possessed by the ADF and APS to support their claims that asylum seekers threw children overboard. However, to ensure the APS continued to assist the Government, intimidation and bribery became important.

Intimidation

The issue of intimidation was central to the Government's campaign against asylum seekers during the 2001 election. However, as noted above, there was conjecture as to

²¹⁸ 'Overboard affair still sinks trust', *The Australian*, 25 October 2002.

who was doing the intimidation, with the Government claiming the asylum seekers were intimidating the military, and therefore Australia.

Intimidation, particularly of members of the Australian Public Service (APS) and Australian Defence Force (ADF), continued after the interception, aiding in the Government's cover-up of its deception.

Intimidation During the Interception

As noted above, the Australian Government implemented Operation Relex on 3 September 2001, and gave the lead role in border protection to the ADF. In doing so, one of the Government's main aims was to intimidate any asylum seekers approaching Australia in boats.

In the case of the interception of SIEV 4 by the *Adelaide*, it is worth considering the size and seaworthiness of the two vessels. SIEV 4 was a 20 to 25 metre Indonesian shipping vessel with 223 asylum seekers onboard. The boat was therefore extremely overcrowded, and Banks was concerned about the seaworthiness of the vessel. In comparison, the HMAS *Adelaide* is a 138-metre guided-missile frigate, with approximately 210 crew.²¹⁹ The sheer size of the *Adelaide* compared to SIEV 4 would have been intimidating for the asylum seekers.

As SIEV 4 was the first boat intercepted in Operation Relex, it was important for the Government that the *Adelaide* did everything in its power to stop the asylum seekers reaching Australia. To fail in this would have cast doubts over the Government's claim that, "we will decide who comes to this country and the circumstances in which they come".²²⁰ Banks and his superiors within the ADF would have been aware of the need for this interception to be successful.

Thus Banks ensured he followed the instructions set out in Operation Relex accurately. On first contact with SIEV 4, the *Adelaide* informed passengers they did not have the authority to enter Australia, and to do so may lead to lengthy gaol sentences and large fines.

²¹⁹ Specifications of HMAS *Adelaide* available at <http://www.navy.gov.au/ships/adelaide/default.html>

²²⁰ Howard, *Transcript of Address at the Federal Liberal Party Campaign Launch*, Sydney.

This warning was a form of threat from the Australian Government. As noted above, the asylum seekers were within their rights to first enter Australia and then seek refugee status. Under international law, the Australian Government would not have been able to punish these asylum seekers. Therefore, the threat of punitive detention²²¹ and large fines was unfounded. The only people onboard who could have been punished for their actions were the crew of the Indonesian vessel, who were not attempting to claim asylum. This was a threat and an attempt to induce the passengers of SIEVs to return to Indonesia.

However SIEV 4 did not heed these warnings and continued toward Australia. The next step for Banks and his crew was to fire shots into the water ahead of the vessel. These shots were at 0359, before sunrise. Although, as Banks was keen to note, “a searchlight was used to illuminate both the weapon firer and the area in the water ahead of the vessel where the rounds were to land,”²²² the aim of such an action was clearly to intimidate those onboard SIEV 4. Firing shots in front of the vessel was, according to a spokesperson for Reith, “standard operating procedure,”²²³ but Banks noted, “this ad hoc process was introduced by me to clearly show my intent”.²²⁴ Banks was presumably talking about illuminating the firer and target, so the standard operating procedures must not have required this step, demonstrating the Government’s wish to intimidate asylum seekers into not continuing toward Australia.

Even before doubts over the incident and the photographs became public, some journalists began to question why the asylum seekers were in the water. In an editorial after the photographs were released *The Age* asked rhetorically why the asylum seekers were in the water, with one possible answer being, “perhaps out of fear (the Navy had fired shots across the front of the boat some time before)”.²²⁵ The media

²²¹ Mandatory detention is not considered ‘punitive,’ in that those detained under this policy are not being punished for any crime. Although the conditions of their detention are at best consistent with gaol.

²²² Senate Select Committee on a Certain Maritime Incident, p. 159.

²²³ Patrick Barkham, 'Australia ships boat people to Papua New Guinea', *The Guardian*, 11 October 2001.

²²⁴ Senate Select Committee on a Certain Maritime Incident, p. 159.

²²⁵ 'Demonising The Boat People'.

had therefore recognised, soon after the incident, the intimidation involved in using the military in the interception of vessels containing asylum seekers.

Even the boarding of SIEV 4 would have been an intimidating experience for the asylum seekers. In his evidence to the committee, Commander Banks noted, “the boarding party was armed with holstered 9mm Browning pistols and ASP batons, which are batons held in a pouch”.²²⁶ In comparison, none of the asylum seekers onboard SIEV 4 were reported to have had any weapons. These asylum seekers, many of whom had been persecuted by military forces in their own countries, would have been fearful of what the boarding party might do to them. Again, the result of this boarding would have been to scare the asylum seekers.

Government Role

On revealing the purported incident, Ruddock said, “disturbingly a number of children have been thrown overboard, again with the intention of putting us under duress”. Howard continued in this vein stating, “we are not going to be intimidated out of our policy by this kind of behaviour”.²²⁷ In doing so, Ruddock and Howard were casting the asylum seekers as the instigators of intimidation.

As Mike Seccombe said, to describe the actions of asylum seekers as intimidation was “an extraordinary word choice, which casts a desperate act of love as one of aggression”.²²⁸ However, the Government continued to describe the actions of the asylum seekers as intimidation, and as discussed above, this was a reinterpretation of the events.

In her analysis of the children overboard incident, Kate Slattery argued that seeing the action of the asylum seekers as intimidation was a construct of the Government. By constructing this threat, the Australian Government was misleading the public, and in doing so attempting to show the Australian public that they needed the Government to protect them from the asylum seekers.²²⁹ In this case, the Government’s intimidation

²²⁶ Senate Select Committee on a Certain Maritime Incident, p. 288.

²²⁷ Douez and Forbes, 'Boat People 'threw Children Overboard'.

²²⁸ Mike Seccombe, 'Watch Your Pleas And Queues: This Is A War Of Words', *Sydney Morning Herald*, 9 October 2001.

²²⁹ Slattery, 'Drowning not waving'.

of the public was not a direct threat, but rather a threat that if the Government was not to be returned to office, asylum seekers would begin to ‘flood’ into Australia. After the Government’s concerted campaign to paint asylum seekers as criminals and terrorists, the result of this ‘flood’ would have been an increase in the threat of a terrorist attack in Australia.

The fear-mongering continued during the election. Sam Pietsh reported that Mal Brough, now Minister for Family and Community Services, informed voters in Brisbane, “Labor was giving illegal immigrants ‘greater rights than those available to you or I as Australian citizens’”. Meanwhile people living in caravans on the north coast of New South Wales were told the ALP was planning to house asylum seekers in caravan parks.²³⁰

This scaring of the Australian public continued on the day of the election. As previously noted, Liberal Party workers were reported to have murmured, “If you want a Taliban for [a] neighbour, vote Labor,” while a “group of youths who announced loudly that they were voting for Johnny Howard because they liked the way he was bashing the ragheads received applause and encouragement from the Liberal Party workers”.²³¹

There is little doubt the Australian Government realised the fear there was in Australia of asylum seekers.²³² To assist in their campaign for re-election, the Coalition played on this fear, using stories such as the children overboard incident.

Intimidation of Officials

As discussed above, the Government needed to cover up and reinterpret the events. To ensure it was able to do this, the Government had to ensure no officials from the Australian Public Service (APS) or Australian Defence Force (ADF) revealed the truth to the public. In a review of the incident, political journalist Michelle Grattan

²³⁰ Sam Pietsch, 'Racism from Above or Below? Official Reactions to Jewish Refugees in the 1930s and the Tampa Affair', in *Seeking Refuge: Asylum Seekers and Politics in a Globalising World*, ed. Jo Coghlan, John Minns, and Andrew Wells, University of Wollongong Press, Wollongong 2005, p. 109.

²³¹ MacCallum, 'Girt by Sea', pp. 60-61.

²³² See the section on 'Devaluation of the Target' for an analysis of how the government fomented this fear.

commented, “the Government and ministerial advisers stood over public servants and the military and various officials were intimidated or compromised”.²³³

The Senate Select Committee provided evidence of this. In her testimony, McKenry recalled that on, “the 10th [of October] there was an exchange between Mr Hampton and Captain Belinda Byrne that was not cordial”. This does not seem to have been a one off, with McKenry continuing, “junior staff did relate from time to time that the exchanges were not always cordial”.²³⁴ This treatment of junior staff would have meant those who knew the errors with the children overboard incident would have been wary of coming forward, in fear of repercussions.

It was not only during the incident that intimidation of junior staff occurred. Prior to the beginning of the Senate Select Committee, Dr Brendan Hammer, head of the Defence Branch within the Department of Prime Minister and Cabinet, set up a meeting with Commander Stefan King, who had been on secondment to his branch during the incident, and Harinder Sidhu, a Senior Adviser in his branch. According to Commander King, one of the reasons for this meeting was to go through their recollections of the incident, and for Dr Hammer, “to put a position to me that you [members of the committee] might ask and I could have the benefit of answering that as I might answer it to you”.²³⁵

Asked how he felt during the meeting, King responded, “I was not comfortable to give a detailed answer that might be construed as one that I would give before this committee”.²³⁶ Although the Senate Committee of Privileges cleared Dr Hammer of attempting to influence Commander King,²³⁷ it does seem King felt intimidated by Hammer during this meeting. This is one example of how intimidation occurred in the lead up to the committee hearings.

²³³ Michelle Grattan, 'Yes, minister. Your will is my command', *The Age*, 6 July 2005.

²³⁴ Senate Select Committee on a Certain Maritime Incident, p. 1125.

²³⁵ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 2 May 2002, p. 1510.

²³⁶ *Ibid.*, p. 1512.

²³⁷ Senate Committee of Privileges, *Possible Improper Interference with a Witness Before the Senate Select Committee on a Certain Maritime Incident*, (August 2002 (cited 4 May 2006)); available from http://www.aph.gov.au/senate/committee/priv_ctte/completed_inquiries/2002-04/report_106/report.pdf.

Intimidation in government departments should not be a surprise; sociologist Max Weber predicted it in the early twentieth century. One of Weber's greatest interests was the growing influence of bureaucracy. Both the APS and ADF are modern versions of the bureaucracy Weber talked of. Weber also predicted how bureaucracies would be used by groups in society to enforce their will, noting, "bureaucracy can serve the interests of social and economic elites, the general needs of a community or some combination of the two [but it has] usually served the interests of elites who use the organisation to control people and resources".²³⁸ In the case of the children overboard incident, there is little doubt the Government used its control of these two large bureaucracies to serve its interests, predominantly through the intimidation of junior officers who were aware of the authority of senior officers.

The atmosphere that exists within a public service grows from what Weber called 'official secrets'. Weber noted the following aspect of official secrets:

Individual officials can be penalised for divulging these official secrets to the public. Normally, however, it does not come to this because 'bureaucratic administration always tends to exclude the public, to hide its knowledge and action from criticism as well as it can.'²³⁹

That the children overboard incident did not occur and the photographs were of a different incident was an extremely large official secret; its revelation may have cost the Coalition Government.

The penalties for divulging official secrets to the public were so strong that no whistleblowers came forward to reveal these. The case of whistleblower Lieutenant Colonel Lance Collins who revealed the existence of a 'Jakarta Lobby' showed the penalties for divulging official secrets.²⁴⁰

However the rewards for maintaining official secrets are also obvious. Jane Halton was rewarded with a promotion to Secretary of the Department of Health and Ageing after the election.

²³⁸ Robert J. Antonio, 'Weber Vs. Parsons: Domination or Technocratic Models of Social Organisation', in *Max Weber's Political Sociology: A Pessimistic Vision of a Rationalised World*, ed. Ronald M. Glassman and Vatro Murvar, Greenwood Press, Westport 1984, p. 158.

²³⁹ Allen, *Max Weber*, p. 113.

²⁴⁰ *Burnt By The Sun*, Australian Story, ABC-TV, 25 July 2005. Transcript from <http://www.abc.net.au/austory/content/2005/s1422640.htm>, (cited 29 July 2005)

In summary, the Government intimidated a number of groups during the children overboard incident. The interception, including the firing of warning shots, of SIEV 4 by the HMAS *Adelaide* was an attempt to intimidate the asylum seekers. Ironically, the Government actually claimed asylum seekers were intimidating Australia, while it was actually the Australian Government intimidating the asylum seekers and the Australian public by inducing fear over the possibility of terrorists onboard SIEVs. Officials within the APS were also intimidated during the children overboard incident, evident in the lack of whistleblowers, and in the lead up to the Senate Select Committee.

Conclusion

It is clear officials in the ADF and APS informed senior members of the Government of the misrepresentation of the photographs and the lack of evidence supporting the Government's claims. The attack instigated on the asylum seekers, claiming they were guilty of throwing children overboard, was an event that could have backfired against the Government. The evidence outlined in this chapter clearly demonstrates that the Howard Government used all five methods (cover-up, devaluation of the target, reinterpretation of the events, official channels and intimidation) to inhibit outrage over its role in the children overboard incident. The success of the Government in winning the Federal Election was compatible with an assessment that the methods implemented were successful.

Important uses of each method included: covering-up knowledge that the ADF and APS had doubts over whether the incident did actually occur; devaluing the asylum seekers as illegals, terrorists and unfit parents; reinterpreting what the photographs represented; using official channels such as the Senate Select Committee; and intimidating the asylum seekers during the interception by the *Adelaide*.

What the case study of the children overboard incident also shows is that all the methods outlined in the backfire model are interrelated. The cover-up would never have been successful if the Government had been unsuccessful in reinterpreting the photographs or intimidating the bureaucracy. At the same time, the devaluation of the

asylum seekers would not have been as successful if the Government had not reinterpreted the asylum seekers' intentions. Meanwhile, the devaluation of the asylum seekers in the past meant the Australian public was more susceptible to believing the Government's claims about the incident and photographs.

Therefore, each of the methods in the backfire model was as important as any other; if the Government had unsuccessfully implemented any of these methods, the other methods would have had less impact. The role of activists in amplifying outrage is important in ensuring backfire occurs. Chapter Six outlines lessons activists can learn from the children overboard incident, and how they can use these lessons to bring about positive social change.

Chapter Five: SIEV X

In a bid to defend the Government's actions regarding the children overboard incident, Government senators on the Select Committee proposed an extension of the inquiry's terms of reference, to include an analysis of all of the interceptions undertaken during Operation Relex. The intention of this was to demonstrate a pattern of conduct, that a report of asylum seekers throwing children overboard could have been expected and such actions were common when asylum seekers' vessels were intercepted. However, this extension meant the committee could now investigate the facts surrounding the tragedy of SIEV X, where 353 men, women and children drowned.

This tragedy was the third major event of the 2001 election involving asylum seekers. It occurred on 19 October 2001. It became the subject of the Senate Select Committee into a Certain Maritime Incident and also an investigation by Tony Kevin, a former Australian diplomat, in his book, *A Certain Maritime Incident*.²⁴¹

'I repeat, it sunk in Indonesian waters, not in Australian waters'

The actual name of the vessel involved in the tragedy has never been publicly released. Tony Kevin christened the boat 'SIEV X' in an article in the *Canberra Times* on 25 March 2002,

because it was short and convenient, and because it would usefully link my questions about this boat to the 12 suspected illegal entry vessels that had been tracked and intercepted by Operation Relex. The signifier 'X' indicated that this was the unknown thirteenth SIEV. The name caught on, and has been in general currency since.²⁴²

The vessel set out from Canti Bay in Indonesia with 421 asylum seekers onboard. The passengers were predominantly Iraqis, but also Iranians, Afghans, Palestinians and Algerians, who had reached Indonesia, with the final leg of the journey being to Australia. Many of the passengers already had family members in Australia, such as

²⁴¹ Kevin, *A Certain Maritime Incident*.

²⁴² *Ibid.*, p. 130.

Sondos Ismail, whose husband was in Australia, and who was travelling on SIEV X with her three daughters.²⁴³

The people smugglers who organised the voyage transported the asylum seekers from Bogor to Canti Bay in the early hours of 18 October 2001, and then to an awaiting boat. Ten of the potential passengers refused to board, doubting the seaworthiness of the vessel, which was described in newspaper reports as, “a 19-metre, rotting and leaking Indonesian fishing boat without a name”.²⁴⁴ Many of the asylum seekers also reported that they were, “forced onto this vessel at gunpoint by Indonesian security forces, including police”.²⁴⁵

A couple of hours into the voyage, the vessel stopped at the Karakatau group of islands, and 24 passengers disembarked. From here the vessel, with 397 passengers still aboard, continued on its way towards Christmas Island. At approximately midnight on 18 October, SIEV X exited the Sunda Strait, entering the Indian Ocean. Speaking about the tragedy, International Organisation for Migration (IOM) spokesperson, Jean-Philippe Chauzy, told ABC radio, “in the early hours of Friday morning, I think it was four o'clock local time, the captain reported that the boat was having major engine problem (sic) and the boat was taking water”.²⁴⁶

Twelve hours later the engines on SIEV X stalled, and the boat was dead in the water, and within two hours had begun to take on water. A couple of hours later SIEV X had sunk.²⁴⁷ A number of people survived, and spent the night in the water, although some who survived the initial sinking perished during the night.

During the night, a number of survivors reported, “seeing two or three police-type boats, which shone searchlights on the disaster scene but did not rescue survivors

²⁴³ Don Greenlees, ‘I have lost everything’ - Mother grieves for three girls - 353 ASYLUM-SEEKERS DROWN’, *The Australian*, 24 October 2001.

²⁴⁴ Lindsay Murdoch, ‘Survivors Tell Of Horror’, *The Age*, 24 October 2001.

²⁴⁵ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 11 July 2002, p. 1983.

²⁴⁶ Rebecca Carmody, *Boat tragedy emphasizes people smuggling risks*, AM, ABC Radio, 23 October 2001. Transcript from <http://sievx.com/articles/disaster/20011023AM.html>, (cited 6 June 2005)

²⁴⁷ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 195.

despite their appeals for help”.²⁴⁸ The identity of these boats is still unknown, as is their motivation for not rescuing the survivors.

At some stage between 0700 and 1200 on 20 October the 44 survivors (41 adults and three children) were rescued by the Indah Jaya Makmur, and later transferred to another boat, the Arta Kencana 38.²⁴⁹

The final death count was 353 people (146 children, 142 women, and 65 men). To put this number into perspective, it is over three times the number of Australians who died in the Bali bombings almost a year later.

News of the tragedy first broke on CNN on 22 October, with the news that, “a boat carrying 400 migrants sank in the Java Sea Friday night, and all but 44 of the passengers are believed to have drowned”.²⁵⁰ On 24 October, *The Australian* reported the tragedy on its front page, with a map accompanying the report showing where the boat sank.²⁵¹

Following on from the controversy generated by the *Tampa* and children overboard incidents, this tragedy was again the subject of much news coverage. Occurring in the middle of an election campaign it soon became an issue. Kim Beazley, Leader of the Opposition Australian Labor Party, attempted to blame the Howard Government for the disaster, saying: “what it [the tragedy] points to is a failure of policy”.²⁵² In response to this accusation John Howard went on the offensive,

We had nothing to do with it, it sank, I repeat, it sunk in Indonesian waters, not in Australian waters. It sunk in Indonesian waters and apparently that is our fault.²⁵³

At the time, most Australians believed that it was just a terrible tragedy, an accident. As Tony Kevin noted, “Howard and his ministers quickly turned the tragedy to

²⁴⁸ Kevin, *A Certain Maritime Incident*, p. 53.

²⁴⁹ Ibid., p. 80.

²⁵⁰ *Migrant ship sinks; most of those aboard killed*, (October 22 2001 (cited 6 June 2005)); available from <http://archives.cnn.com/2001/WORLD/asiapcf/southeast/10/22/migrant.ships.sinking/>.

²⁵¹ Greenlees, ‘I have lost everything’ - Mother grieves for three girls - 353 ASYLUM-SEEKERS DROWN’.

²⁵² Michael McKenna, Michael Madigan and Rosemary Odgers., ‘Political war erupts in the face of tragedy’, *Courier Mail*, 24 October 2001.

²⁵³ Marr and Wilkinson, *Dark Victory*, p. 316.

political advantage, saying it proved the need for robust border-protection policies to prevent such unsafe boats from setting out”.²⁵⁴

The tragedy also gave the Howard Government the ability to pressure the Indonesian Government into accepting a number of new measures the Australian Government had long hoped for. First, the Indonesian Government agreed to allow the Royal Australian Navy to return intercepted asylum-seeker boats to the edge of Indonesian territorial waters. Secondly, the Indonesian Government also agreed to a diplomatic conference on the issue of people smuggling, a long-term objective of the Australian Government.²⁵⁵

As with the children overboard incident, the sinking of SIEV X did not negatively impact upon John Howard’s chance of re-election and actually provided further impetus to his campaign. The catchphrase of the Liberal Party campaign was ‘We decide who comes to this country and the circumstances in which they come’. The SIEV X tragedy demonstrated to the Australian public that John Howard was prepared to do this, even in the face of the loss of 353 lives.

John Howard's Liberal/National Party Coalition won the election soon after the tragedy. However, as with children overboard, the issue of SIEV X did not disappear. A small number of concerned citizens, most notably Tony Kevin, began to look closely at the incident and the Australian Government’s response.

The *Select Committee on a Certain Maritime Incident* inquiry provided the opportunity for these activists to propose an investigation into the incident. Tony Kevin presented a submission to the inquiry that noted,

Information on the public record suggests a possible causative link between the course of events in HMAS Adelaide’s interception within Australian waters of an Indonesian vessel (hereinafter referred to by the RAN term of identification as SIEV 4) on 6-8 October, and the subsequent sinking on 19 October with the reported loss of 353 lives of another Indonesian vessel bound for Christmas Island.... did any Australian agency or agent act in such a way as to bring about or make more probable the sinking of the boat on 19 October? If so, was the motive to send a strong deterrent signal against further

²⁵⁴ Kevin, *A Certain Maritime Incident*, p. 4.

²⁵⁵ *Ibid.*, p. 5.

attempted asylum-seeker boat voyages to Australia in the pre-election period, after Adelaide's forceful interception of SIEV 4 on 6-8 October had failed to achieve the objective of turning back that vessel?²⁵⁶

This submission was partly responsible for the widening of the committee's terms of reference, to include "operational procedures observed by the Royal Australian Navy and by relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering or attempting to enter Australian waters".²⁵⁷

On the presentation of the report to Parliament on 23 October 2002, Senator John Faulkner, one of the ALP members of the committee, called the agreement by coalition members of the committee,

one of the greatest own goals in Australian politics. Without this extension we could not have explored the knowledge that Australian authorities had about the vessel SIEVX and we could not have explored the government's people-smuggling disruption program.²⁵⁸

According to Tony Kevin, when he reads the chapters on SIEV X in the final committee report, his

head reels at the heroic sophistry of the arguments offered and assumptions made, as the authors try to convince readers (or perhaps themselves) that, despite all the questions left unanswered in the CMI committee, a plausible and honourable explanatory pathway may be found through this morass of refused and misleading witness testimony and blacked-out documents.²⁵⁹

The SIEV X issue has continued to simmer, with the campaign led by Tony Kevin and Marg Hutton. The release of Kevin's book, *A Certain Maritime Incident*, provided an opportunity for further media coverage of the incident, as did the court case of Khaleed Daoed, who was "found guilty of assisting in the proposed illegal entry of people into Australia".²⁶⁰

Although there has been a continued call for a Royal Commission into the incident, the Government has repeatedly rejected them.

²⁵⁶ Anthony Kevin, *Submission to Select Committee into a Certain Maritime Incident*, (2002 (cited 2 February 2005)); available from www.aph.gov.au/senate/committee/maritime_incident_ctte/submissions/sub02.pdf.

²⁵⁷ Select Committee on a Certain Maritime Incident, 'Report into a Certain Maritime Incident: Terms of Reference'.

²⁵⁸ Senate, p. 5759.

²⁵⁹ Kevin, *A Certain Maritime Incident*, p. 243.

²⁶⁰ Leanne Edmestone, 'People smuggler guilty but questions remain', *The Courier-Mail*, 9 June 2005.

Cover-up

Although it is still unknown whether the Australian Government had any role or responsibility for the SIEV X tragedy, evidence exists that it attempted to cover up a number of pieces of information that may have been used to question its role. There are three major examples of cover-up by the Australian Government: its knowledge of the pending voyage; a cable from the Australian Embassy in Indonesia informing the Government of the tragedy; and the location of the SIEV X when it sank.

Knowledge of Pending Voyage

Evidence to the Senate Select Committee points to a large amount of intelligence on operations run by people smuggler Abu Quassey in Indonesia. The first intelligence on the possible departure of vessels organised by Quassey from Indonesia, was in July 2001. In August it was reported that Quassey was mentioned nine times in DIMA Intelligence notes, with five of these noting the vessel had departed or was about to do so. Mentions of Quassey's operations increased in September, with intelligence notes mentioning it on 21 days.²⁶¹ The Government was therefore well aware of Quassey's operations and the imminent departure of one of his vessels.

In the week of the actual departure of SIEV X, intelligence on Quassey's operation intensified. On 17 October, two Government agencies, the Department of Immigration and Coastwatch, reported on Quassey's operations. The Department of Immigration noted Quassey's boat was moving from port to port within Indonesia. Coastwatch reported that the vessel had left, and noted the probable arrival of the vessel at Christmas Island on 18 October.²⁶² Although the details in this report were incorrect, as SIEV X had yet to depart, Operation Relux was aware of the pending arrival of the vessel.

²⁶¹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 201.

²⁶² *Ibid.*, pp. 202-203.

The Australian Government apparently received no new major pieces of intelligence on SIEV X until early on 20 October, when the AFP passed on to Coastwatch information from a new source saying the vessel had left West Java, and was small and overcrowded. As the Senate Select Committee noted, “while neither the date nor place of departure was correct, the rest of the message was consistent with the later testimony of SIEV X survivors”.²⁶³ With this advice, the AFP passed on a risk assessment to Coastwatch and noted, “the vessel may be subject to increased risk due to the numbers reportedly on board”.²⁶⁴ There was therefore a great amount of intelligence within various areas of the Government surrounding the voyage of SIEV X. Although a lot of this information was not entirely correct, it did mean that many important people within Coastwatch and Operation Relex were aware the vessel was most probably in transit, and were thus expecting its arrival.

Who this new AFP source was has not been made public. However, two AFP officers were present when officials from the IOM interviewed the survivors upon their return to Jakarta. As part of this interview, the AFP officers showed the survivors photographs of the Indonesian coastline. In a later interview with a radio journalist, one of the survivors, Ali Hamid, described these photographs as showing the vessel they had sailed on:

It was still anchored on the Indonesian shore. The photo was taken by satellite. It was from above, by satellite. It looked somehow dark or so. I cannot describe it properly. Before it had sailed. It was still anchored on the Indonesian shore. They had taken photos before we boarded and before we moved.²⁶⁵

Ghasan Nakhoul, who had interviewed Hamid, later noted he believed spy planes produced similar types of photographs, and he had, “wondered since if refugee boats have always been under constant surveillance”.²⁶⁶ The presence of AFP officers with these photographs suggested the AFP had Quassey and his operations under close surveillance, and were well aware SIEV X had embarked on its voyage. It is therefore possible the new AFP source who had provided the intelligence on 20 October had

²⁶³ Ibid., p. 208.

²⁶⁴ Ibid., p. 209.

²⁶⁵ Ghasan Nakhoul, *The Five Mysteries of SIEV X*, SBS Arabic language radio, 28 August 2002. Transcript from <http://sievx.com/articles/challenging/5mysteries.pdf>, (cited 19 May 2006), p. 10

²⁶⁶ Ghasan Nakhoul, *The Human Tide*, (Walkley Magazine, Summer 2003 (cited 22 May 2006 2006)); available from <http://sievx.com/articles/challenging/2003SummerWalkleyMagazine.html>.

also provided them with these photographs, or the knowledge to have these photographs taken.

However, the AFP denies its officers showed any photographs to the survivors, although it admits officers were present at the interview. Other questions asked of the AFP about these photographs, such as which agency supplied the photographs, how they were taken and what they depicted, were not answered as they were deemed not applicable. In relation to these photographs, Kevin notes that,

reading the convincing weight of detail in the Nakhoul account, I find it impossible to believe that these two survivors made it all up. I do not have the same confidence in the AFP's written denials.²⁶⁷

As noted below under 'Intimidation and Bribery', some people have queried the AFP's relationship with people smugglers, and its involvement in what has been called a disruption program. The AFP has admitted to links with one people smuggler, Kevin John Enniss, who admitted to an Australian journalist that he worked as a people smuggler. Enniss also admitted to the journalist Ross Coulthart, "he had paid Indonesian locals on four or five occasions to scuttle people-smuggling boats with passengers on them...the boats were sunk close to land so everyone got off safely".²⁶⁸ Such operations were unknown to the Australia public prior to the revelations by Ross Coulthart in February 2002, although it had been occurring since September 2000.²⁶⁹

If the AFP had a close relationship with one people smuggler, it is possible they had links with other people smugglers, including Abu Quassey. This may be why the Australian Government knew of the embarkation of the vessel, and thus how the AFP officers received the photographs of the Indonesian coastline.

The accuracy of much of the information released soon after the tragedy also suggests the Government and media outlets were well aware of the vessel's voyage. Kevin notes how the early reporting contained extremely specific information about the size of the vessel (19.5 metres). He goes on to question:

²⁶⁷ Kevin, *A Certain Maritime Incident*, p. 78.

²⁶⁸ Ross Coulthart, *The Federal Police and People Smugglers*, Sunday, 1 September 2002. Transcript from http://sunday.ninemsn.com.au/sunday/cover_stories/transcript_1138.asp, (cited 16 May 2006)

²⁶⁹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 9.

When and how had survivor Almjib measured the boat? He was taken out by launch to a boat moored in the bay in darkness. With more than 400 fellow passengers crammed like sardines on board with him, he could have had no opportunity to measure its length.²⁷⁰

Not only were early reports on the size of the boat extremely specific, but also the number of passengers onboard. The first report on the incident is from CNN quoting the IOM media spokesperson in Geneva, who said there were 421 passengers onboard.²⁷¹ The question is where did Chauzy get this information? The survivors had only just returned to Jakarta. Even if it was claimed survivors were the source of this information, how was it possible for them to know the number of passengers? As with the possibility of survivors knowing the exact size of the vessel, it is extremely difficult to believe a passenger had the opportunity or inclination to count the number onboard.

The most logical answer as to how this specific information became known is that the people smugglers who organised the voyage, and were therefore aware of its details, gave officials and reporters the information. Although this is the logical conclusion, Australian Government officials, when questioned by the Senate on the source of the information in 2003, continued to claim the information came from survivors.²⁷²

Australian Embassy Cable

Not only did Government officials attempt to cover-up where they received the information, they also attempted to cover up a major piece of evidence: a cable from the Australian Embassy in Indonesia, sent as reports of the tragedy were first becoming public.

The cable was sent on 23 October 2001, at 1049 (1349 AEST), yet the contents were covered up until February 2003. In the cable the Australian Embassy outlined the number of asylum seekers onboard SIEV X, the size of the vessel, events during the voyage, the location of the sinking and the number of people killed. All of this

²⁷⁰ Kevin, *A Certain Maritime Incident*, p. 49.

²⁷¹ *Migrant ship sinks; most of those aboard killed.*

²⁷² Kevin, *A Certain Maritime Incident*, p. 52.

information was important in informing the Australian public of the events surrounding the tragedy, but it was kept secret.

The embassy sent this cable to a number of senior people within the Government, including the Secretaries of the Departments of Foreign Affairs and Trade, Defence, Immigration and Multicultural Affairs and Prime Minister and Cabinet, along with the relevant ministers. Nevertheless, it was not until 30 July, the last day of testimony, that the committee actually became aware of the cable. Marg Hutton wrote a research paper, *SIEV X & the DFAT cable: the Conspiracy of Silence*, which outlined how the Government covered up the existence of this cable. Hutton noted the first time the cable was mentioned by any witness at the Senate Select Committee was when Senator Faulkner asked Halton “how she first became aware of the sinking of SIEV X”. Halton replied:

I received a phone call from Shane Castles [an AFP representative on the PST] at 2 a.m. It woke me up. I missed the call, went out and looked to see who it was and returned his call. He told me the barest bones – that he understood there was a report but that a cable would be coming later in the day that a vessel had sunk. That was it.²⁷³

Questions must be asked as to why no APS officer had mentioned the existence of this extremely important piece of evidence to the Senate Select Committee. The cable was the first formal information the Government received on SIEV X and was therefore central to the Senate Select Committee’s purview. In her research paper, Hutton listed a number of instances when witnesses testifying at the Senate Select Committee could have revealed the existence of the cable, but did not.²⁷⁴ Such a pattern suggested a concerted effort to conceal the existence of the cable from the Senate Select Committee, and thus the Australian people.

Importantly, this cable showed what the Government knew soon after the tragedy. Another question raised by the existence and content of the cable is who else was aware of it?

²⁷³ Marg Hutton, *SIEV X & The DFAT Cable: The Conspiracy of Silence*, (May 2003 (cited 15 May 2006)); available from <http://sievx.com/articles/challenging/2003/COS.pdf>, p. 5. In footnote 38 of her research paper, Hutton notes “Halton made an earlier passing reference to it in her testimony on 30 July, but this was not picked up by the Committee”.

²⁷⁴ *Ibid.*, pp. 9-21.

One of the first reports on the tragedy was on an Indonesian business website, www.ibonweb.com. When compared with the embassy cable, the majority of this report seemed to be directly from the cable. A number of statements appeared in both, including, “one hour after departure, 420 PIIs [Potential Illegal Immigrants] apparently became apprehensive about the ability of the vessel to remain afloat with the numbers onboard” and “the vessel sunk completely after momentarily remaining neutrally buoyant”.²⁷⁵ That much of the newspaper report is word-for-word identical to the cable suggested the journalist who wrote the article used the cable as a basis for the report. Nevertheless, the Government undertook a concerted effort to cover up its existence.

Upon learning of the cable, the Senate Select Committee asked for a copy. Halton replied that she would take the question on notice, to check if any content of the cable was classified.²⁷⁶ This was 30 July. By 23 October, when the Committee tabled the report in Parliament, it was still to receive the cable. In November 2002, Senator Faulkner asked the Senate Committee on Finance and Public Administration to follow up on the question asked in July. It was not until 4 February 2003 that the APS provided the cable to Senator Cook, who had been the Chairperson of the Select Committee. Speaking in the Senate the next day, Cook noted,

we may now be in a situation in which this cable, which was before all of those officers who appeared before our inquiry before they fronted to give evidence—and they gave evidence to our inquiry after swearing an oath before the inquiry to tell the truth, the whole truth and nothing else but the truth—reveals information which is not entirely consistent with the evidence that was given by some public servants and with the evidence that was adduced by the inquiry.²⁷⁷

Cook’s anger at not receiving a cable prior to the tabling of the report was understandable. The embassy sent the cable from Indonesia a year to the day before the tabling of the report and the APS took over six months, after being asked, to provide a copy to the committee. There was one piece of information in the cable that

²⁷⁵ Compare *Disaster for 300 Potential Illegal Immigrants*, (23 October 2001 (cited 15 May 2006)); available from <http://articles.ibonweb.com/webarticle.asp?num=1048>. and Australian Embassy, *Indonesia: Sinking of Illegal Immigrant Vessel*, (23 October 2001 (cited 15 May 2006)); available from <http://sievx.com/documents/20011023DFATCable.pdf>.

²⁷⁶ Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 30 July 2002, p. 2131.

²⁷⁷ Senate, *Official Hansard*, 5 February 2003, p. 8587.

was extremely important to the investigation into the tragedy, and that witnesses at the inquiry had obscured: the location of SIEV X when it sank.

Location of the Sinking

When reports of the tragedy first became public, John Howard was very quick to stress that the vessel had sunk in “Indonesian waters”.²⁷⁸ The location of the tragedy is very important. If the vessel had sunk in an area under surveillance by Operation Relex, questions would have been asked about the Australian response and culpability. Later I give an explanation of how the Government reinterpreted the information to make it seem as if SIEV X sank in Indonesian waters. To maintain this it was also important to cover up information the Australian Government had regarding the location of the vessel when it sank.

The embassy cable was one of the first briefings the Government received on the tragedy. Although the cable noted the exact location of the sinking was unknown, it did go on to note, “it is judged as no further south than 8 degrees south latitude on a direct line from Sunda St[rait] to Christmas Is[land]”.²⁷⁹ The cable also noted the vessel sank in Indonesian Maritime Search and Rescue Area, but as explained below, this area encompasses ocean to the south of Christmas Island, including all of the Operation Relex surveillance area, and as such does not rule out Australian surveillance.

Interestingly, in her testimony to the Senate Select Committee, Halton believed the cable explicitly said “vessel likely to have been in international waters south of Java”.²⁸⁰ The cable did not state this, but as Hutton acknowledged, “two of the participants at this meeting had access to expert nautical knowledge due to their positions – Commodore Warwick Gately (Navy Strategic Policy and Futures) and Ian Errington from Coastwatch – so the conclusion was based on informed opinion”.²⁸¹ It was therefore likely Gately and Errington informed the People Smuggling Taskforce

²⁷⁸ David Humphries and Michelle Grattan, 'PM And Beazley Squabble Over 350 Dead', *Sydney Morning Herald*, 24 October 2001.

²⁷⁹ Australian Embassy, *Indonesia: Sinking of Illegal Immigrant Vessel*, para 6, p. 2.

²⁸⁰ Senate Select Committee on a Certain Maritime Incident, p. 2126.

²⁸¹ Hutton, *SIEVX & The DFAT Cable: The Conspiracy of Silence*, p. 6.

that the location noted in the cable would have placed the vessel in international waters, and thus Halton's belief that the cable noted this.

Although the PST believed the vessel sunk in international waters, it did not pass this information on to John Howard. In a brief to the Prime Minister, the PST noted the, "boat capsized and sank quickly south of the western end of Java", but placed this information under the heading "boat sunk in Indonesian waters".²⁸² The reason given by Halton for this was confusion over the meaning of 'Indonesian waters'.²⁸³

The first statements by the Government regarding the tragedy were to say it occurred in Indonesian waters, but by June 2002, this had changed. In an interview at this time, Philip Ruddock said, "We don't know precisely where it sank... we never did".²⁸⁴ That the location of the vessel when it sank was unknown became the common explanation, with the Senate Select Committee also noting, "the exact location where the boat sank remains in doubt, with speculation that it might have gone down in the Sunda Strait within Indonesian waters".²⁸⁵ If the information in the cable had been available, there is little doubt the committee would have been more certain of the location of the tragedy, and would definitely not have acknowledged any speculation of the vessel sinking in Indonesian waters.

While the Senate Select Committee was sitting, a journalist from *Dateline*, Geoff Parish, investigated the tragedy of SIEV X. While in Jakarta, he went to the Harbour Master, and found the co-ordinates of where the fishing boats had rescued the survivors. Expert advice informed *Dateline* that according to these co-ordinates, the survivors were rescued 51.5 miles from the Indonesian coastline.²⁸⁶ This would have placed the rescue in international waters.

²⁸² Senate Select Committee on a Certain Maritime Incident, p. 2127.

²⁸³ See 'Reinterpretation of the Events' for a full explanation of this.

²⁸⁴ *Interview with Minister for Immigration - Philip Ruddock*, Meet the Press, Channel Ten, 23 June 2002. Transcript from www.ten.com.au/library/documents/mtp23_063.doc, (cited 25 May 2006)

²⁸⁵ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 196.

²⁸⁶ Geoff Parish, *Boat People - Cover-up or Stuff-up*, *Dateline*, SBS, 22 May 2002. Transcript from <http://news.sbs.com.au/dateline/index.php?page=archive&artmon=05&fyear=2002#>, (cited 26 May 2006)

Aware the survivors would have drifted with the current after SIEV X sank, Tony Kevin took the co-ordinates to Matthias Tomczak, Professor of Oceanography at Flinders University in Adelaide. Kevin asked Tomczak where the vessel was most likely to have sunk, considering where the survivors were rescued and assuming the survivors had been in the water for 22 hours when they were rescued. Later, Kevin adjusted these figures for the survivors having been in the water for 19 hours, which he assumed to now be a more accurate estimate, and mapped a box showing the probable location of the tragedy. This location was very close to that reported by Greenlees and on www.ibonweb.com.²⁸⁷ In retrospect, it is also similar to the location noted in the embassy cable.

There now seems little doubt SIEV X sank in international waters. Yet the Government continued to say it did not know the exact position of the tragedy. It may not have known the *exact* location, but it was disingenuous to continue to imply it was in Indonesian waters, or that it was unaware SIEV X sank in international waters. The question must be, why would the Government maintain its position in the face of such overwhelming evidence? Some research by Marg Hutton has potentially shown why.

Hutton mapped the location of the rescue as reported by *Dateline* with Royal Australian Air Force (RAAF) maps of P3 Orion (the planes used to search for vessels) flight paths. Kevin reported Hutton's findings as, "the Orion had flown directly over those coordinates during the five hours of survivor rescue... yet it reported no boat detections within a measured 24 nautical miles of the rescue coordinates".²⁸⁸ This finding led Kevin to conclude, "RAAF observations of the fishing boats rescuing survivors in the area on the morning of 20 October had been removed or relocated, in preparation of the Defence review map".²⁸⁹

Investigating these flight paths and times, Kevin and Hutton noted a number of discrepancies with the data, including that the Orion had taken two hours to fly a distance that should have taken one hour. Kevin's hypothesis is: "Could it have been looping around the rescue boats, perhaps outside visual range, monitoring by radar the

²⁸⁷ Kevin, *A Certain Maritime Incident*, p. 99. For a map of the various estimates, see p. 101.

²⁸⁸ *Ibid.*, p. 195.

²⁸⁹ *Ibid.*, p. 196.

rescue of survivors?”²⁹⁰ This is possibly one reason why the Government was so intent on covering up the location of the tragedy: the actual location brought into question Australia’s responsibility.

The primary reason, however, for the Government not wanting the public to know that SIEV X sank in international waters, within the surveillance area of Operation Relex, was that it placed into question the effectiveness of the Government’s ‘border protection’ policies.

As Kevin noted, in Australia the topic of SIEV X has been met by a “cone of silence”.²⁹¹ This began as soon as the vessel sank, with the Government undertaking a concerted effort to cover-up its knowledge, particularly of the pending voyage and the location of the tragedy. Central to this tactic was covering up the existence of the embassy cable. However, an important question is why only a few people questioned the Government’s statements. One major reason for this was the Government’s efforts to devalue asylum seekers, and therefore to reduce support for them in Australia.

Devaluation of the Target

As with the pattern of devaluation evident during the children overboard affair, devaluation of those onboard SIEV X continued many tactics already introduced by the government to devalue asylum seekers, while also prompting a number of new strategies.

Queue jumpers

As noted in the previous chapter, a popular description of asylum seekers attempting to get to Australia by boat was queue jumpers. However, the Howard government did not invent this term. Former Labor Prime Minister Bob Hawke (while president of the Australian Council of Trade Unions) had described the Vietnamese asylum seekers attempting to get to Australia in 1977 and Cambodian asylum seekers in the late

²⁹⁰ Ibid., p.196.

²⁹¹ Louise Turk, 'Author's claims ignored by Govt', *Illawarra Mercury*, 21 May 2005.

1980s as queue jumpers.²⁹² However, the Howard government has continued and amplified the use this derisory term.

Philip Ruddock provided an explanation of this queue in an opinion piece in the *Daily Telegraph* on 13 June 2001: “once they [the asylum seekers] reach a country of first asylum, they ... form queues for resettlement places and other services, including those offered by people smugglers”.²⁹³ The argument put forward by Ruddock, and other government ministers, was that asylum seekers should wait in this queue until it was their ‘turn’ to be resettled. However, those arriving by boat (classified as onshore applicants²⁹⁴) had not awaited their turn, and were therefore jumping the queue.

As part of this queue, the government also expected that once the asylum seekers left their country they would apply for refugee status in the first country they entered, and remain there until they were granted this status. As the majority of those wishing to seek asylum in Australia were from Iraq and Afghanistan, the Howard government believed the “country of first asylum” would not be Australia, as to get to Australia from these countries, the asylum seekers needed to pass through at least one other country.

There were, however, a number of issues with the ‘queue’. Firstly, not all countries were signatories to the 1951 UN Convention, and secondly, the queue requires governments to accept asylum seekers waiting in the queue.

As noted above, many of the asylum seekers arriving in Australia were from Iraq and Afghanistan. These were two countries that the Australian Government would surely admit were at the time ruled by tyrannical regimes (Saddam Hussein and the Taliban), as the Australian Government would later join the US in invading them to achieve regime change. Considering the regimes these asylum seekers were attempting to flee, it is highly likely they would be granted refugee status under international law.

²⁹² McMaster, *Asylum Seekers*, p. 57.

²⁹³ Ruddock, 'When refugees jump the queue'.

²⁹⁴ See the following section on 'Reinterpretation of the Event' for an explanation of the Howard government's division of applicants as either 'offshore' or 'onshore.'

Many of the countries enroute to Australia from Iraq and Afghanistan were not parties to the Convention or the 1967 Protocol relating to the Status of Refugees.²⁹⁵ For those asylum seekers coming from Iraq, only Iran was a signatory to either the UN Convention or Protocol, while those from Afghanistan would not pass through any signatories.²⁹⁶ Iran had a number of well-publicised human rights issues and could not be seen as providing a safe haven for asylum seekers.²⁹⁷ Australia was therefore the first country that many of these asylum seekers entered that was a signatory to either of the international laws governing the treatment of refugees, and the first country they entered that they could believe they were safe from persecution. In this sense asylum seekers from either of these countries, and many other countries in the region, were not jumping the queue, as they had not yet had an opportunity to join the queue.²⁹⁸

Although the countries these asylum seekers passed through were not signatories to the UN Convention or Protocol, the Australian Government did have a presence in these countries, and those wishing to apply for refugee status could apply through its embassies. But as Mares noted,

until July 2001, no Australian immigration staff were stationed in Iran to process visa applications. In Iraq there is not even an Australian embassy. The Australian embassy in Damascus closed in August 1999, and visa applications from people living in Syria must be processed in Beirut. There were no DIMIA officials in Afghanistan under the Taliban.²⁹⁹

It was therefore difficult for asylum seekers to apply directly to the Australian Government for refugee status. Again, accusing people of jumping the queue when it was very difficult to join the queue was an unfair allegation.

²⁹⁵ <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3ddcb8a34>

²⁹⁶ It is possible that asylum seekers could pass through Cambodia or East Timor, both of which are party, but it is more likely they will pass through Myanmar and Malaysia, and set sail for Australia from Indonesia. Even if asylum seekers were to go through Cambodia or East Timor, the capability of these two nations to provide secure refuge for asylum seekers must be questioned.

²⁹⁷ For an outline of current human rights violations in Iraq see United States State Department, *2005 Country Reports on Human Rights Practices*, (2006 (cited 9 March 2006)); available from <http://www.state.gov/g/drl/rls/hrrpt/2005/index.htm>.

²⁹⁸ William Maley, 'Security, People-Smuggling, and Australia's New Afghan Refugees', *Australian Journal of International Affairs*, Vol. 55, no. 3, 2001, p. 357.

²⁹⁹ Mares, *Borderline*, p. 23.

The sinking of SIEV X provided a good case study of the fallacious concept of a queue and also how the Government used it to justify its actions. Shortly after the media reported the sinking, an argument developed between John Howard and Kim Beazley over who was responsible for the sinking. Howard accused “Mr Beazley of encouraging the perception that it was ‘better to get into rickety boats, risk your life travelling to Australia unlawfully, than to wait and have your claims properly assessed’”.³⁰⁰ By saying this Howard insinuated that the asylum seekers had not waited to have their claims assessed: they had jumped the queue.

However, a number of facts brought into question the existence of, or at the very least the effectiveness of, the queue. In an interview on 23 October on ABC-TV’s *Lateline*, Raymond Hall, United Nations High Commissioner for Refugees (UNHCR) regional representative, replied to a question about the number of recognised refugees onboard SIEV X, “an approximate figure that we’ve got so far, which does need corroborating, is that 30 people, it’s been mentioned so far, may have been recognised as refugees”.

In response to further questions about why genuine refugees would risk their lives undertaking such a trip, he responded,

I think probably that relates to some of the mounting frustrations that recognised refugees in Indonesia have been feeling ... They don’t want to stay here and countries are not queuing up to take these people ... The Australian Government so far has not agreed to accept any people from this case load.³⁰¹

The Australian Government’s claims that the asylum seekers were queue jumpers was therefore disingenuous. A number of the people onboard SIEV X had actually gone through the proper channels, and been granted refugee status but had not been accepted by any government, including Australia. The Australian Government was therefore partly responsible for not giving refuge to these people, leading to them to embark on the fateful trip.³⁰²

³⁰⁰ Michael Gordon and Annabel Crabb, ‘350 Lost Lives Fuel Angry Exchanges’, *The Age*, 24 October 2001.

³⁰¹ *Genuine refugees killed in drowning tragedy: UNHCR*, *Lateline*, ABC, 23 October 2001. Transcript from <http://www.abc.net.au/lateline/content/2001/s398802.htm>, (cited 6 June 2005)

³⁰² See the following section on ‘Reinterpretation of the Event’ for a description of the Australian government’s erroneous announcements that Australia accepted the second highest number of asylum seekers worldwide.

Not only were a number of asylum seekers onboard SIEV X already assessed refugees, it was highly probable that if they had all been assessed, a very high percentage would be found to be refugees. Jessica Howard reported that 90 per cent of unauthorised boat arrivals between 1998 and 2001 were found to be genuine refugees.³⁰³ Given reports noted passengers “included Iraqis, Iranians, Afghans, Palestinians and Algerians,”³⁰⁴ it was highly likely a similar percentage of those onboard SIEV X would also have been found to be refugees.

Therefore, although the sinking of SIEV X “challenged a central myth of the Howard Government's response to boat people that they were all ‘queue jumpers’”,³⁰⁵ the term was extremely effective in reducing support for asylum seekers. One reason for this was that it appealed to a sense of a fair go; by jumping the alleged queue, asylum seekers were taking refugee places from more deserving people.

Political Point-Scoring

As noted above, the aftermath of the tragedy involved a political argument between the Labor and Liberal parties. The wish to score points against your political opposition was common in the middle of an election, but in this case, it was based on the death of 353 people.

The argument began when Kim Beazley said,

it’s a major human tragedy if that has occurred, and that is a very sad thing indeed. What it points to is the failure of policy.

Such a comment clearly linked the Australian Government’s policies with the tragedy. As noted below, a number of Government policies meant many of the asylum seekers had to try to get to Australia by boat. Being in the middle of the election, it was important Howard distorted this point. He responded,

It is a human tragedy and it is a desperately despicable thing for the Leader of the Opposition to try and score a political point against me in relation to the

³⁰³ Jessica Howard, 'To Deter and Deny: Australia and the Interdiction of Asylum Seekers', *Refuge*, Vol. 21, no. 4, 2003, p. 36.

³⁰⁴ Steve Gee, '350 DROWN - Asylum seekers die on crowded vessel - AUSTRALIA'S BOAT PEOPLE DEBATE', *Daily Telegraph*, 23 October 2001.

³⁰⁵ Mike Seccombe, 'Kim, Ticker Please, You Were Right First Time', *Sydney Morning Herald*, 25 October 2001.

sinking of a vessel in Indonesian waters ... If there is a responsibility for this human tragedy the responsibility lies with the people smugglers.³⁰⁶

For the first few days after the tragedy was first reported, the argument between the Liberal and Labor parties consumed much of the media coverage of the tragedy.³⁰⁷ Whilst this meant SIEV X remained in the media, the reporting centred on the argument, not the loss of 353 lives.

The lives of those who perished on SIEV X were now only valued to the extent that they could be used to make political mileage.

A few articles were published that focused on the tragedy itself, and the impact of these showed how effective publicity of the victims' stories could be. Don Greenlees was one of the first Australian journalists to report on the tragedy and his story was vital in exposing the personal tragedy of Sondos Ismail. Ismail had been attempting to reach her husband, Achmed, who was in Australia on a Temporary Protection Visa (TPV). As part of his visa conditions Achmed's family was unable to join him in Australia, and so decided to risk the journey by boat. Unfortunately, although Sondos survived the sinking, her three daughters, aged eight, six and five drowned.³⁰⁸ This story struck at the hearts of Australians, with many recognising the human tragedy that had occurred.

In response to the tragedy, many Australians began calling for Philip Ruddock, to grant Achmed an exception to the visa ruling him unable to leave Australia, so he could comfort his wife, while also maintaining the right to return to Australia. Nevertheless, these calls went unheeded by Ruddock.³⁰⁹ However, the movement that developed calling for this exemption demonstrated the powerful impact of stories that revealed the human characteristics of asylum seekers could have. Sondos was reunited

³⁰⁶ Gordon and Crabb, '350 Lost Lives Fuel Angry Exchanges'.

³⁰⁷ For further examples see John Aglionby and Christopher Zinn, 'A wave smashed into us. I lost her' - Australian PM in asylum row as refugees mourn 350 lost at sea', *The Guardian*, 24 October 2001; Simon Hughes, 'What Beazley Really Said Lost Under A Barrage Of Umbrage', *The Age*, 24 October 2001; McKenna, Madigan and Odgers., 'Political war erupts in the face of tragedy'; Andrew Probyn and Rick Wallace, 'Boat tragedy sparks 'slur'', *Herald-Sun*, 24 October 2001.

³⁰⁸ Greenlees, 'I have lost everything' - Mother grieves for three girls - 353 ASYLUM-SEEKERS DROWN'.

³⁰⁹ Mares, *Borderline*, p. 202.

with her husband in March 2002 – five months later – possibly a reflection of the public calls for a compassionate outcome from the whole incident.

Efforts to reduce public support for the victims of the SIEV X, their families and other asylum seekers continued. On 27 February 2003, Senator Brown asked whether the AFP knew the names of the victims who died in the sinking of SIEV X. Almost six months later Senator Ellison, Minister for Justice and Customs replied:

A list was provided to the AFP from a confidential source after the vessel sank. Provision of any details of that list would compromise that source. It may also compromise a current ongoing investigation in Indonesia. The list purports to contain some details of passengers, but its veracity has not been tested. The AFP believes it is unlikely that a full and comprehensive list of those who boarded SIEV X or those who subsequently drowned will ever be available.³¹⁰

The Government therefore continued to conceal as much as possible about the victims, including their names. Although it was difficult to provide a full and comprehensive list of those onboard SIEV X, Marg Hutton managed to piece together a list of some of those believed to be onboard when the vessel sank.³¹¹ The fact that a private citizen, with help from other private citizens, could provide a partial passenger list, while the Australian Government was unable to do the same was concerning. One highly possible reason for this was that the Government was aware of the names of those onboard, but wished to conceal them to reduce support for the victims. If the names of the victims were released, the public would begin to see that they were real people, with families who may also have perished or who were living with the loss. The uproar over the treatment of Sondos Ismail and her family was probably ringing loudly in their ears.

The devaluing of asylum seekers was a very important component of the Australian Government's actions against asylum seekers.³¹² The Government continually tried to devalue the asylum seekers onboard SIEV X by attempting to cover-up their identities and using their deaths as a basis for political point scoring. The term queue jumper has long been used by Australian Governments to devalue asylum seekers, although

³¹⁰ Senate, *Official Hansard*, 11 August 2003, p. 13093.

³¹¹ See <http://sievx.com/dbs/SIEVX/>

³¹² As noted below, under 'Intimidation and Bribery', the Government also attempted to devalue refugee activists, and in particular Tony Kevin. These acts were undertaken to devalue Kevin and his message, while also intimidating other activists.

the evidence emanating from the SIEV X tragedy showed that ‘queue jumper’ was not an accurate description of the actions of an asylum seeker. However, one of the major reasons the Government was able to construct the concept of queue jumpers was by introducing new laws, and then using these laws to reinterpret the asylum seekers’ actions.

Reinterpretation of the Events

As noted in the previous section, the Government referred to asylum seekers as queue jumpers. To manage this, the Government had to reinterpret the actions of the asylum seekers. In its effort to inhibit outrage, the Government also revised a number of laws and put its spin on the number of refugees that Australia accepted, the location of the sinking of SIEV X and the knowledge it had of the incident.

Changing Laws

An important tool for the Government in its attempts to prevent asylum seekers from reaching Australia was to change the laws that regulate their arrival and the conditions of their remaining if they successfully reach Australia. As Moran noted, “it [the Howard Government] hid its repressive actions behind legality, changing legislation in order to give the appearance that it was behaving in a legal-rational manner”.³¹³ Max Weber’s definition of legal-rational authority is provided in the section on ‘Official Channels’ in the previous chapter. A government assumes this authority when it follows the laws and rules set out, even if the government itself has formulated these rules. By appearing to act in a legal-rational manner, the Australian Government was able to demonstrate to the Australian public that it was only implementing the rule of law. However, when it was the Government which introduced the laws, it was a reinterpretation to say it was not its responsibility when people questioned the laws.

However, the laws the Australian Government claimed to be following in its actions to prevent asylum seekers reaching Australia were important when analysing the

³¹³ Anthony Moran, *Australia: Nation, Belonging and Globalisation*, Routledge, New York, 2005, p. 203.

sinking of SIEV X. An important development was the introduction and subsequent changes to TPVs.

Pauline Hanson's One Nation Party introduced the concept of temporary protection in 1998. At the time, Philip Ruddock rejected the idea, describing it as "highly unconscionable", "totally unacceptable", and "quite extreme".³¹⁴ Nevertheless, a year later the Australian Government introduced TPVs. These visas provided protection to asylum seekers assessed as refugees, but TPVs were only for three years. After three years, the refugee could apply for another TPV or a Permanent Protection Visa (PPV), which would allow them to remain in Australia.

The Government granted TPVs to those asylum seekers who entered Australia 'unlawfully' (see the previous chapter for information on this claim). Thus the Government made a distinction between 'onshore' and 'offshore' applicants. Onshore applicants were those asylum seekers who came to Australia first, and then applied for a visa. Offshore applicants were those who applied from another country. The Government first introduced this distinction in 1996, and Crock and Saul noted, "the change has allowed the government to build new constructs of "good" (offshore) and "bad" (onshore) refugees, playing off the protection needs of one group against the other".³¹⁵ By distinguishing between onshore and offshore refugees, the Government was able to introduce the concept of the queue. Onshore refugees were seen as jumping the queue and taking away places from offshore refugees.

Having only a three year visa meant TPV holders faced an uncertain future. Further to this they were also not eligible for much of the support available to PPV holders. Government assistance to PPV holders included "social security payments through Centrelink, health benefits through Medicare and a range of other government assistance programs which provide financial support to eligible people".³¹⁶ None of these benefits were available to TPV holders.

³¹⁴ Michael Leach, "'Disturbing Practices': Dehumanizing Asylum Seekers in the Refugee "Crisis" in Australia, 2001-2002', *Refuge*, Vol. 21, no. 3, 2003, p. 31.

³¹⁵ Crock and Saul, *Future Seekers*, p. 114.

³¹⁶ Department of Immigration and Multicultural and Indigenous Affairs, *TPV Holders, Applications for Further Protection Visas: Frequently Asked Questions (FAQs)*, (July 2003 (cited 12 May 2006)); available from http://www.immi.gov.au/legislation/refugee/tpv_faq.pdf, p. 19.

Another disadvantage of TPVs was the inability of holders to sponsor family members to also come to Australia. The intention of this clause was to make Australia a less attractive destination for asylum seekers. Prior to this, adult males had made the dangerous voyage, and once they had been assessed as refugees, sponsored the rest of their families to come to Australia. The new clause meant that this was no longer possible, and wives and children began to join men on the dangerous voyage.³¹⁷

The other major difference between TPVs and PPVs was the ability of those who possessed PPVs to travel overseas. Those on PPVs had the same rights as any other Australian permanent resident to leave and re-enter Australia. However, those refugees who possessed a TPV were free to depart Australia at any time, but “if they do so they have no automatic right to lawfully re-enter Australia should they subsequently wish to return”.³¹⁸

As Leach noted, by introducing this class of visa, the Government “overturned an erstwhile principle of refugee protection: that genuine refugees should not be penalised for their method of entry”.³¹⁹ Those refugees who received TPVs were obviously penalised, and faced a much tougher life once in Australia than those holding PPVs.

Not satisfied with the existing provisions for asylum seekers with TPVs, the Government introduced a major change in September 2001, just prior to the sinking of SIEV X. This change meant that to apply for a PPV after having been on a TPV for three years, a refugee must not have,

lived for a continuous period of seven days or more in a country where they could have sought and obtained effective protection either from the government of that country; or through an office of the UNHCR in that country, before arriving in Australia.³²⁰

Most asylum seekers would have spent seven days or more in at least one other country prior to arrival in Australia. This new requirement meant nearly all asylum

³¹⁷ Mares, *Borderline*, p. 199.

³¹⁸ Department of Immigration and Multicultural and Indigenous Affairs, *TPV Holders: FAQs*, p. 20.

³¹⁹ Leach, "'Disturbing Practices': Dehumanizing Asylum Seekers in the Refugee 'Crisis' in Australia, 2001-2002", p. 31.

³²⁰ Department of Immigration and Multicultural and Indigenous Affairs, *TPV Holders: FAQs*, p. 4.

seekers arriving by boat would never be granted permanent protection, and would therefore enter a cycle of three year visas, meaning they could never be confident they could remain in Australia.

The provisions placed on TPV holders affected the composition of passengers onboard SIEV X. Over 80 per cent of the asylum seekers onboard SIEV X were women and children. This was reflective of the increase in the number of women and children attempting to make the trip to Australia because of the restrictions on people sponsoring the rest of their families to come to Australia. Sondos Ismail was one such passenger. As her husband, who was in Australia on a TPV, was unable to sponsor his family to come to Australia, they had to risk the voyage.

Both the Government and the ALP placed the blame for the tragedy on the people smugglers,³²¹ saying they were the people who forced the asylum seekers on to an unseaworthy vessel. However, neither the Government nor the ALP noted how the provisions under the TPV forced Sondos Ismail and her three daughters to attempt to use the services of a people smuggler to get to Australia by boat. If the provisions of Alzalimi's visa had allowed him to sponsor his family there was little doubt they would not have attempted the trip, and rather come to Australia under his sponsorship.

For the Government to say it was entirely the people smugglers' fault is to reinterpret the events. The changes to the law they had implemented in the years leading up to the tragedy surely played a role in the event.

Refugee Numbers

Senior members of the Australian Government continually made the claim, "this country [Australia] is the second most generous in the world after Canada in taking refugees".³²² This claim was made to demonstrate that Australia already accepted more refugees than almost any other country in the world, and to claim it should take more was unfair, when other countries should be doing more to help.

³²¹ Gee, '350 DROWN - Asylum seekers die on crowded vessel - AUSTRALIA'S BOAT PEOPLE DEBATE'; Hughes, 'What Beazley Really Said Lost Under A Barrage Of Umbrage'.

³²² Howard, *Transcript of Interview on 3AW*.

Mungo MacCallum demonstrated how, in one sense this claim was true, it was a self-serving interpretation of the data.³²³ The claim that Australia accepted the second most refugees behind Canada was based on the number of refugee places each country reserved each year. In the case of Australia, there was an annual quota of 12,000 places. In 2000/01, 13,722 people entered Australia under the Humanitarian program, with 3,987 of these assessed as refugees under the UN Convention.³²⁴ The problem with this data was that only eight countries worldwide actually established a quota for refugees. If the data for the number of refugees who actually entered the country was used, the United Nations High Commissioner for Refugees ranked Australia 38th out of 71, behind countries such as Guinea, Djibouti, Syria and Kazakhstan. If, to make the comparison fairer, developing countries were removed from these data, Australia ranked 14th out of 29, accepting only 9 asylum seekers for every 10,000 people. Switzerland, which accepted more per capita than any other country, accepted 87 per 10,000.

The Government's claim that it accepted the second highest number of refugees per capita in the world was based on a peculiar interpretation of the data. If the Government had revealed the actual data it was using, the Australian public would have had a better idea of Australia's generosity compared to other countries. Instead, the Government used this data to inflate its performance and claim other countries should do more to assist. Further, as a developed country with a booming economy, one of the highest per capita incomes and lowest population densities in the world, Australia's potential capacity for providing asylum for those fleeing persecution was higher than most other countries in the world. Analysing the data demonstrated that far from showing Australia's generosity, the relatively low number of asylum seekers accepted was a stain on Australia's international reputation.

Even when experts revealed that many of the asylum seekers onboard SIEV X when it sank had already been assessed as refugees, the Australian Government continued to claim it was one of the most generous countries in the world. Raymond Hall from the UNHCR noted, "Australia has been very reluctant to accept people from

³²³ MacCallum, 'Girt by Sea', pp. 44-46. Unless otherwise noted, the data in below is from this source.

³²⁴ Statistics from http://www.immi.gov.au/statistics/stat_info/visa_grants/refugee.htm (cited 29 May 2006)

Indonesia”.³²⁵ Even the revelation that Australia had not accepted asylum seekers granted refugee status in Indonesia did not stop the Australian Government from proclaiming itself as the second most generous country in the world. Only five days after the tragedy was first reported, Howard declared, “we are a generous open hearted people taking more refugees on a per capita basis than any nation except Canada”.³²⁶ Nobody questioned the truthfulness of this statement.

John Howard also dismissed international criticism of Australia’s generosity towards those in need. In the days after the sinking, Pakistan observed that, while it had 2.5 million people fleeing from Afghanistan, Australia was unable to accept a further 200. Howard’s response was:

‘A few hundred is not going to make a difference.’ The answer, he said, was to deal with the problem at its source, by giving more aid.³²⁷

Although Howard was correct to note the importance of dealing with issues in the world that created refugees, this sidestepped Pakistan’s criticism. The intent of Pakistan’s criticism was to demonstrate the fallacy of Australia’s claim to be one of the most generous countries in the world when it came to accepting refugees. However, the evidence did not confirm Howard’s intent to deal with the problem at the source. In the years between 1996, when Howard came to office, and 2001, foreign aid as a percentage of Gross National Product actually fell from 0.28 to 0.25 per cent.³²⁸ Again the fallacy of Howard’s claim was rarely challenged.

The Government’s claim it was the second most generous nation in the world was clearly a creative use of the data. The Government’s lack of response to the hundreds of refugees waiting in Indonesia for resettlement showed its generosity deficiency. The Government’s unwillingness to accept assessed refugees from Indonesia also demonstrated that the queue, so often referred to, did not exist.³²⁹

³²⁵ *Genuine refugees killed in drowning tragedy: UNHCR*,

³²⁶ Howard, *Transcript of Address at the Federal Liberal Party Campaign Launch, Sydney*.

³²⁷ Seccombe, ‘Kim, Ticker Please, You Were Right First Time’.

³²⁸ *Australia's Overseas Aid Program 2000-01: Statement by the Honourable Alexander Downer MP, Minister for Foreign Affairs*, Department of Foreign Affairs and Trade, AusInfo, 9 May 2000, p. xvii.

³²⁹ The construction of a queue for asylum seekers is also a reinterpretation of the truth. As shown in the previous section, a queue does not exist for asylum seekers to join.

Location of the Sinking

As previously noted, one of the major controversies associated with the tragedy of SIEV X was the location of the boat when it sank. Howard and his senior ministers continued to state that the tragedy occurred in Indonesian waters, and more specifically in the Sunda Strait, between the Indonesian islands of Sumatra and Java. It was extremely important for the Australian Government that it was believed SIEV X had not sunk in waters under its surveillance. Revelations otherwise would call into question the success of Operation Relex; if a vessel had sailed into and then sunk in its surveillance area, how many other vessels had also managed to sail undetected toward, and possibly reach, Australia?

The first reports of the tragedy did not, however, refer to the boat sinking in Indonesian waters. On 24 October Don Greenlees reported, “about 80 kilometres from land at 2pm on Friday, the fishing vessel began to take heavy water, listed violently to the side, capsized and sank within an hour”.³³⁰ *The Australian* was so confident of the location of the tragedy, it also published a map of it. If the location reported in *The Australian* was correct, SIEV X would have sunk well outside Indonesian territorial waters.

As noted in the section on ‘Cover-up’, future research has shown Greenlees was probably very close in his estimation of the location of the tragedy. However, if Greenlees was aware of where the vessel sank, why was Howard so adamant it had occurred in Indonesian waters? As with the children overboard incident, it is important to look at the briefing Howard received on the tragedy.

As Chairperson of the PST, Jane Halton was one of the first informed of the tragedy. Halton was informed that the, “vessel [was] likely to have been in international waters south of Java”.³³¹ Halton was then part of the PST that prepared a ‘state of play brief’ for Howard on 24 October that stated, “boat capsized and sank quickly south of the western end of Java”. However, this information was placed under the heading “Indonesian Waters”. Commenting on why this may have happened, Halton told the Senate Select Committee:

³³⁰ Don Greenlees, 'Overload kills on voyage of doom', *The Australian*, 24 October 2001.

³³¹ Marr and Wilkinson, *Dark Victory*, p. 314.

our [the PST's] experience of the description of Indonesian waters right throughout this period was, to say the very least, confused. We have the Indonesian search and rescue zone, we have what would have been their contiguous zone if they declared it and then we have their territorial waters. Right throughout this period there was a lack of precision about what the legal definition was.³³²

The Indonesian Maritime Search and Rescue Area of Responsibility (IDSRR) actually covered an area that included waters south of Christmas Island. Thus, the area of surveillance specified for Operation Relex was completely within the IDSRR. All vessels intercepted by the ADF were therefore within the IDSRR.

As the taskforce established by the Government to monitor and implement its 'border protection' policies, the PST would have been expected to have a clear understanding of what constituted Indonesian waters. To imply in a brief to the Prime Minister that the vessel sank in Indonesian waters, while being informed the vessel likely sunk in international waters, the PST was attempting to redefine the information received on the sinking. The excuse that the PST was referring to the IDSRR by stating 'Indonesian waters', was not valid, as it was doubtful the PST would have briefed the Prime Minister on any interception under Operation Relex as occurring in Indonesian waters, although this would have been equally as valid.

Another important piece of information available to the Government on the location of the SIEV X when it sank was the cable from the Australian Embassy in Indonesia. As noted above, this cable did not become public until 17 months after the tragedy, but the embassy had sent it to Howard, Reith, Ruddock, Hawke and Farmer at 1349 on 23 October 2001. This was one of the earliest pieces of information on the tragedy. The cable firstly noted, "the SIEV is believed to have foundered in rough seas to the south of Sunda St[rait] within the Indonesian Maritime Search and Rescue Area of Responsibility", but later became more specific, noting, "the exact position of vessel at the time of the sinking is unknown, but it is judged as no further south than 8 degrees south latitude on a direct line from Sunda St[rait] to Christmas Is[land]".³³³ Senior members of the Government had therefore been informed that SIEV X sunk

³³² Senate Select Committee on a Certain Maritime Incident, p. 2132.

³³³ A copy of the Embassy Cable is available from <http://sievx.com/documents/20011023DFATCable.pdf>

after it had passed through the Sunda Strait, and most probably within the surveillance area of Operation Relex.

All information now available suggests SIEV X did not sink in the Sunda Strait or in Indonesian territorial waters, but the Australian Government has continued to state it did not sink in an area under Australian surveillance. It was a clear reinterpretation of the information about where SIEV X sank.

To assist with the cover-up of its knowledge and role in the SIEV X tragedy, the Government clearly tried to reinterpret certain information, including the location of the tragedy and the number of refugees Australia accepted. The claim to the laws it implemented was also part of the Government's use of 'Official Channels'.

Official Channels

In an attempt to reduce the outrage felt by some in the Australian public concerning its border protection policy, the Government moved to extend the terms of reference of the Senate Select Committee into a Certain Maritime Incident to include all interceptions undertaken as part of Operation Relex. This meant the Committee could now also investigate the events surrounding the sinking of SIEV X. The court trial of one of the people smugglers was another example of how official channels had been used to suppress outrage. However, the use of official channels began prior to the tragedy itself, with the Government appealing to asylum seekers to use official channels when they fled from persecution.

Official Channels for Asylum Seekers

One of the continual refrains from the Government during the 2001 election was branding the asylum seekers aboard the SIEVs as "queue jumpers".³³⁴ Although the Government knew there was no such queue, it continued to press this point (as noted earlier under 'Devaluation of the Target' and 'Reinterpretation of the Event').

³³⁴ 'Australia's Howard defends policy on immigrants', *Reuters News*, 28 October 2001.

In the days after the tragedy, Philip Ruddock said that the people who had been aboard SIEV X had the belief that it was “better to get into rickety boats, risk your life travelling to Australia unlawfully, than to wait and have your claims properly assessed”,³³⁵ and accused the ALP of encouraging this belief. Ruddock was therefore saying that those aboard SIEV X should have gone through the official channels in their attempts to find refuge. By saying that the passengers should have accessed the official channels, and thus joined the queue, Ruddock was appealing to the Australian public’s belief in the efficiency and fairness of these official channels.

However, as noted by a spokesperson for the UNHCR in Jakarta, 24 of the passengers aboard SIEV X had been granted refugee status, but no country had accepted them. These people had followed the official channels that Philip Ruddock recommended, but no country, including Australia, had been prepared to accept them. As the spokesperson then noted, “they decided on the risky trip because they were in depression and they had lost faith in the UNHCR”³³⁶ – the official channels.

Senate Select Committee into a Certain Maritime Incident

As previously noted, the Terms of Reference to the Senate Select Committee on a Certain Maritime Incident were extended to include an inquiry into Operation Relex. This meant the committee was also able to investigate the events leading up to and following the sinking of SIEV X.

Many of the public submissions to the inquiry were concerned with the children overboard component of the inquiry. Of the submissions available to the public³³⁷ only those prepared by Tony Kevin dealt directly with the sinking of SIEV X, with a couple of others noting concern with the operational procedures of the Royal Australian Navy when intercepting SIEVs. The inquiry therefore did not receive much information regarding SIEV X from public submissions.

As with the public submissions to the inquiry, the majority of testimony to the committee was not about SIEV X. Of the more than 50 witnesses that appeared in

³³⁵ Gordon and Crabb, '350 Lost Lives Fuel Angry Exchanges'.

³³⁶ Lindsay Murdoch et al., 'Despair Drove Us, Say Refugees', *Sydney Morning Herald*, 24 October 2001.

³³⁷ www.apf.gov.au/senate/committee/maritime_incident_ctte/submissions/sublist

front of the inquiry, only 12 testified in relation to the SIEV X incident, including Tony Kevin, Jane Halton, Clive Davidson, Chief Executive Officer of the Australian Maritime Safety Authority, and Rear Admiral Marcus Bonser, Director General of Coastwatch. None of the survivors appeared as witnesses before the inquiry, with the only input they had to the inquiry being an attachment to Tony Kevin's submission.³³⁸

This was an example of the bias official channels had towards those in authority. Military officials and bureaucrats presented evidence, but no one directly involved in the incident (i.e. the survivors or people smugglers) testified in front of the committee. Not only did this mean that the inquiry could not receive a fair and balanced account of the incident, it also meant that the committee did not received a lot of information about the tragedy. Without evidence from the survivors and those responsible for organising the voyage, it was always going to be extremely difficult for the inquiry to ascertain the truth.

Another important witness the committee did not call was Kevin John Ennis, the "undercover disruption agent of Australian nationality"³³⁹ working in Indonesia. Without Enniss testifying, it was not possible for the inquiry to fully investigate whether SIEV X was the target of a 'disruption' program, involving Enniss or others in Indonesia. Again, the lack of support from the Government, along with the type of inquiry, meant it was not possible for the committee to call the witnesses it needed and properly investigate the incident. This meant the committee was unable to provide findings based on clear evidence.

The committee carefully constructed its findings concerning SIEV X to ensure it was obvious that the ADF was defended from doing any wrong. As Associate Professor Hugh Smith of the Australian Defence Force Academy noted, "the ADF occupies a special position in Australian society, quite unlike that of any other institution".³⁴⁰

³³⁸ This is referred to by Tony Kevin in the Hansard of the committee proceedings, Senate Select Committee on a Certain Maritime Incident, *Official Committee Hansard*, 1 May 2002, pp. 1326-1327. However, these statements are not attached to the submission as provided at www.aph.gov.au/senate/committee/maritime_incident_ctte/submissions/sub02.pdf.

³³⁹ Kevin, *A Certain Maritime Incident*, p. 28.

³⁴⁰ Hugh Smith, *Submission to Select Committee into a Certain Maritime Incident*, (2002 (cited 8 February 2005)); available from.

Not only were the results of the inquiry concerning SIEV X carefully constructed, the majority of the committee's report was not about SIEV X, reflecting the lack of testimony about SIEV X. Of the eleven chapters in the report, only two were concerned with SIEV X.

The findings of the committee on SIEV X were uncontroversial. The Government members agreed with the majority report that, "on the basis of the above, the Committee cannot find grounds for believing that negligence or dereliction of duty was committed in relation to SIEV X".³⁴¹

After the committee released the report, a number of refugee advocates were disappointed in its findings. Tony Kevin noted that in his opinion, "the committee's report was seriously deficient in respect of SIEV X in terms of its methodology, findings, and recommendations".³⁴² Although refugee advocates did not believe the inquiry proved what they believed was the truth, public opinion did not appear to turn against the Government.

However, once the committee tabled the report in Parliament, some senators continued to ask questions about the disruption program operating in Indonesia. On the tabling of the report, Senator Faulkner, one of the ALP members of the committee, stated,

But there are broader concerns that go beyond just those issues, go to the whole heart of the people-smuggling disruption program in Indonesia. Who exactly was involved? What accountability was there? Who funded this? How much was provided? Who was responsible for ensuring that this program was operated within reasonable constraints? What sorts of activities were involved in stopping those particular vessels from departing?³⁴³

A few senators repeatedly asked these questions. Still, no further inquiry has been established to investigate the disruption program, even though it was the first recommendation of the Senate Select Committee.³⁴⁴

³⁴¹ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 482.

³⁴² Kevin, *A Certain Maritime Incident*, p. 239.

³⁴³ Senate, p. 5762.

³⁴⁴ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. xx.

The Trial of Khaleed Daoed

In May 2003, Chris Ellison, the Minister for Justice, announced that authorities in Sweden had arrested one of Abu Quassey's assistants, Khaleed Daoed, after a request from Australian authorities. The Australian Government's extradition request charged Daoed with people smuggling in relation to SIEV X and an earlier boat organised by Quassey.³⁴⁵ This meant the Australian Government had opened a new official channel for the analysis of SIEV X – the trial of Khaleed Daoed.

Daoed's trial finished in June 2005. He was found guilty of assisting in the proposed illegal entry of people into Australia. After this finding, an editorial in *The Australian* demonstrated how official channels could suppress outrage. Firstly, it noted,

those responsible for SIEV X have now been brought to justice. The principal smuggler, Abu Quassey, was sentenced to seven years' jail by a court in Cairo in 2003 and, on Wednesday, a Brisbane Supreme Court jury convicted his accomplice, Khaleed Shnayf Daoed, of people-smuggling.³⁴⁶

The Australian suggested that official channels had ensured that those responsible for the tragedy had paid for their actions but did not question whether seven years' gaol was a fair punishment for the death of 353 people.

The editorial continued,

it would be nice if the conviction put the stopper on the bizarre conspiracy theories that have swirled around SIEV X, but that would be too much to hope for: the conspiratorialists did not miss a beat and were calling for a royal commission within minutes of Daoed being sent down ... while it is true the Daoed trial did not address how SIEV X sank, a Senate inquiry in 2002 did, and cleared the ADF of any blame.³⁴⁷

While it is true that the Senate Select Committee did not apportion any blame on the ADF, its first recommendation was that a further investigation should take place into the disruption program.³⁴⁸ This editorial did not note this recommendation, and in doing so lessened the criticism of the Government in the report.

³⁴⁵ Kevin, *A Certain Maritime Incident*, p. 210.

³⁴⁶ 'Justice, at last, for the victims of SIEV-X', *The Australian*, 10 June 2005.

³⁴⁷ Ibid.

³⁴⁸ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. xx.

This quote also demonstrated how official channels could dampen outrage. Firstly, it was expected that the trial should stop any further investigation and discussion of SIEV X. Secondly, official channels (the Senate Select Committee) had revealed ‘the truth’, and therefore no further investigation was necessary, even if a new investigation may be more independent or new information may be available.

Although the trial ensured one of those responsible for the tragedy would spend time in gaol, many people believed that it was a missed opportunity to further investigate a number of facets of the tragedy that had not yet been fully explored. As Kevin noted,

The disruption program was never mentioned in the court. Perhaps it would not have helped Daoed if it had been; but to me, this further emphasised the wasted opportunity of the whole proceedings.³⁴⁹

Again, the use of official channels was a ‘wasted opportunity’, if your hope was to further investigate the incident. Nevertheless, from another perspective, official channels may have discouraged further investigation, but they were far from a wasted opportunity – the SIEV X tragedy was once again in the media. With increased media interest in the SIEV X incident, it meant refugee advocates could once again raise their concerns over the Government’s handling of the tragedy.

A Royal Commission

During and after both the Senate Select Committee and trial of Khaleed Daoed, opponents of the Government’s policies requested further inquiries take place, in particular Royal Commissions. John Howard continually rejected these calls.

Before the establishment of the Senate Select Committee, many people had called for the inquiry to be a Royal Commission, and these calls continued during and after the inquiry. Even George Brandis, one of the Government senators on the committee, noted the problems with a Senate Select Committee, in particular the lack of witness protection. In an opinion piece in *The Australian*, Brandis complained,

since senate committees can be places of political theatre too, there is a real problem - starkly exposed during the children overboard inquiry - of fairness to witnesses. Unlike witnesses in courts, witnesses before senate committees are not protected by rules of evidence.³⁵⁰

³⁴⁹ Kevin, 'SIEV X', p. 109.

³⁵⁰ George Brandis, 'Where rights are rolled by political theatrics', *The Australian*, 24 October 2002.

Ironically, the protection Brandis was seeking for witnesses in front of Senate Select Committees are those available in Royal Commissions. If Howard had allowed a Royal Commission to be set up to investigate the events surrounding the sinking of SIEV X, it would not have been hampered by the restrictions limiting the Senate Select Committee.

Tony Kevin has continually called for a Royal Commission into SIEV X, noting that, there have been several cases now where the Howard Government has refused or ignored strong public calls for judicial inquiries. The most notorious is the unresolved issue of the sinking of SIEV X in the surveillance zone of the Australian government's border protection operation Operation [sic] Relex, that cost 353 lives.³⁵¹

After the result of the Daoed trial, a number of people joined Tony Kevin in calling for a Royal Commission into the sinking of the SIEV X.³⁵²

As noted above, the Senate Select Committee report recommended a further investigation into disruption programs operating in Indonesia. On the tabling of the report, Senator Cook commented, "to do the job properly a full judicial inquiry is necessary".³⁵³

However, it is not likely the Government will ever establish an independent inquiry into the sinking of the SIEV X, the disruption program, or any of the controversial issues surrounding asylum seekers. An inquiry with an independent investigator, who can set its terms of reference, could potentially produce damaging findings.

That the Government has not acted on a recommendation made by the committee should not be a shock. In June 2005, the *Sydney Morning Herald* undertook an investigation of Senate inquiries, which found that the Government was yet to respond to 46 of the 137 inquiries completed since it came to power over nine years earlier. One of these was the Select Committee on a Certain Maritime Incident.³⁵⁴

³⁵¹ Kevin, 'Only one path to the truth'.

³⁵² See 'Justice, at last, for the victims of SIEV-X'.

³⁵³ Senate, p. 5753.

³⁵⁴ Gerard Ryle and Lisa Pryor, 'No action: inquiries that were ignored', *The Sydney Morning Herald*, 20 June 2005.

The Senate Select Committee on a Certain Maritime Incident was therefore not an anomaly, but rather an example of how the Australian Government had used official channels to reduce outrage. The Senate majority the Howard Government enjoyed since July 2005, thanks to its electoral victory in October 2004, meant official channels, such as Senate inquiries, would become a less effective tool for activists. No longer would Senate committees be established that may cause harm or embarrassment to the Government, as an inquiry could only be established with the support of the majority of the Senate.

The Government also intended to restrict the area of responsibility of Senate Estimates Committees to only deal with budgetary expenditure. The Clerk of the Senate noted that governments would suffer from such a change: “sooner or later they start to suffer from a lack of accountability, because they make bigger mistakes and people try to get away with bigger things”.³⁵⁵

As with children overboard, the Government used a variety of official channels to suppress outrage. Examples of these official channels included the Senate Select Committee and the trial of Khaleed Daoed, but the Government ensured a Royal Commission was never held to investigate the tragedy.

Intimidation and Bribery

To discourage potential asylum seekers from attempting to come to Australia by boat, the Australian Government implemented a number of campaigns. The idea of these campaigns was to demonstrate the dangers of the voyage – to intimidate the potential asylum seekers. This campaign continued as far as preventing vessels leaving Indonesia. In the end, the sinking of SIEV X contributed to this discouragement. Importantly, however, the Government also intimidated Australian refugee advocates, in an attempt to lessen their impact.

³⁵⁵ 'Clerk warns greater Senate efficiency unlikely Opposition senators are seeking to maintain the role of Senate committees. Opposition speaks out against Senate majority plans', *Australian Broadcasting Corporation (ABC) News*, 8 August 2005.

Deterrence

The Australian Government launched a number of propaganda campaigns to deter asylum seekers attempting to come to Australia by boat, and instead await their turn in the 'queue'. In 2000 the Government produced a video that "featured pictures of crocodiles, sharks and snakes infesting Australia ... a smuggling boat being burnt, a boat person drowning in the ocean, and other boat people being detained behind prison fences in the hot desert sun".³⁵⁶ The intention of this video was to discourage potential asylum seekers from attempting the voyage by showing the possibly terrible results of doing so. Whether this video was ever successful was questionable, as it was difficult to see how asylum seekers fleeing repressive regimes would ever have gained access to the video or the technology to view it.

This video was a clear attempt by the Government to intimidate potential asylum seekers into not attempting the voyage. Soon after releasing the video, the Government launched another campaign, informing potential asylum seekers that Australians were racist towards people who did not go through the official channels to gain asylum. However, this campaign ceased after complaints it contradicted the multicultural image of Australia used to encourage people to migrate to Australia and for business.³⁵⁷ What the Government failed to mention in any of its propaganda was the legality of asylum seekers arriving in Australia without authorisation and then seeking refuge.

During the Senate Select Committee, an Assistant Secretary from DIMA outlined how it had undertaken a campaign showing Indonesian nationals the penalties for sailing boats with asylum seekers onboard. Another part of this campaign continued the message to potential asylum seekers that it was an extremely dangerous voyage organised by criminals.³⁵⁸

The sinking of SIEV X contributed to this campaign to deter asylum seekers from attempting to come to Australia by boat. Now the Australian Government had an

³⁵⁶ Crock and Saul, *Future Seekers*, p. 45.

³⁵⁷ Ibid.

³⁵⁸ Senate Select Committee on a Certain Maritime Incident, p. 1999.

example of the enormous risks asylum seekers would be taking if they were to undertake the voyage.

Disruption Program

The Government, however, did not only undertake marketing campaigns to deter asylum seekers, it also began what was known as a disruption program. In his evidence to the Senate Select Committee, the Australian Federal Police Commissioner, Mick Keelty, defined the disruption program as,

the use of the Indonesian national police to divert potential passengers to the International Organisation for Migration or the interception by the Indonesian national police of passengers prior to boarding vessels... Often a disruption activity would be to prevent the passengers from getting to the point of embarkation or, if we knew who the people smuggler was, to have the Indonesian national police arrest the organiser, or in other ways to disrupt the gathering of the people prior to the vessel departing.³⁵⁹

The first snippets of information suggesting that such a program may have been operating were in an interview on the *Sunday* television program with Kevin John Enniss in February 2002. In this interview Enniss revealed he had “been working for the Australian Federal Police”, who knew he was involved in people smuggling operations.³⁶⁰ This television program led Tony Kevin to speculate in his submission to the Senate Select Committee that SIEV X may have been the victim of this disruption program, and as such, may have been sabotaged to ensure it sunk.³⁶¹

The Government did not deny a disruption program was operating in Indonesia. As noted above, the Government engaged the Indonesian National Police, Indonesian Immigration and Indonesian Defence Force to discourage asylum seekers in Indonesia from undertaking the voyage to Australia. During questioning in the Senate Select Committee, John Faulkner asked Mick Keelty about accountability in the disruption program, and whether the AFP was aware of what the Indonesians were doing. Keelty responded, “We don’t, but we know what we have requested of them and we know as a result of that request what the outcome of the request is”.³⁶²

³⁵⁹ Ibid., p. 1930.

³⁶⁰ Ross Coulthart, *The Australian People-Smuggler*, Sunday, Channel 9, 17 February 2002. Transcript from http://sunday.ninemsn.com.au/sunday/cover_stories/transcript_987.asp, (cited 16 May 2006)

³⁶¹ Kevin, *Submission to Select Committee into a Certain Maritime Incident*.

³⁶² Senate Select Committee on a Certain Maritime Incident, p. 1936.

It was therefore difficult to determine what the Indonesian forces were doing to deter asylum seekers. When asked about the possibility of boats being sabotaged, Alexander Downer asserted, “there has never been any Government policy to sabotage boats and endanger lives”.³⁶³ Whether the explicit policy of the Government was to sink boats, or whether the Indonesians sank boats to achieve the wishes of the Australian Government, were however, two different questions. It was quite possible boats were sunk in an attempt to deter asylum seekers from sailing to Australia.

The policy of sabotaging asylum seeker boats was one that had been implemented in the past. In September 2002, *Sunday* also revealed that in the 1970s the then Australian Government established a disruption program to prevent Vietnamese asylum seekers coming to Australia. Greg Humphries, a former Immigration Officer told *Sunday*,

we bored holes in the bottom of the ships and the boats and they sunk overnight. So they had to be landed. We were successful in stopping a lot of boats - by one way or another.³⁶⁴

Whether such tactics were undertaken in 2001 is unknown. The AFP was adamant it had never sanctioned such actions; but it also admitted it did not know exactly what the Indonesian police had been doing. During the report on *Sunday*, Ross Coulthart revealed that,

Last year Enniss boasted to myself and two other colleagues about how he had paid Indonesian locals on four or five occasions to scuttle people-smuggling boats with passengers on them. When we reacted with horror he was unrepentant, saying the boats were sunk close to land so everyone got off safely.³⁶⁵

Revelations such as these suggested the sabotaging of boats carrying asylum seekers was occurring, with the intention of scaring potential asylum seekers. Kevin asked the question: “Might this also have been the original disruption plan for SIEV X?”³⁶⁶ Kevin noted reports from survivors of the hull of the boat developing holes and of the captain switching off the engine, surely aware that doing such a thing would also stop

³⁶³ Ross Coulthart, *Refugee Boat Sabotage*, Sunday, Channel 9, 29 September 2002. Transcript from http://sunday.ninemsn.com.au/sunday/feature_stories/article_1169.asp, (cited 16 May 2006)

³⁶⁴ Coulthart, *The Federal Police and People Smugglers*,

³⁶⁵ Ibid.

³⁶⁶ Kevin, *A Certain Maritime Incident*, p. 62.

the pumps from removing water from the boat. Kevin's hypothesis was that the captain had realised the vessel was sailing too far from the Indonesian coast and the original intention was for the vessel to sink in the safer waters of the Sunda Strait.³⁶⁷

No one has been able to prove SIEV X was the victim of sabotage as part of the Australian policy of deterrence, but its sinking certainly demonstrated the danger of the voyage. Nevertheless, there was little doubt the tragedy was advantageous for the Australian Government. Firstly, it gave the Australian Government added leverage for pressuring the Indonesian Government into holding a conference of people smuggling and no longer opposing Australian navy vessels towing vessels back to Indonesian waters. Secondly, potential asylum seekers learned of the tragedy and the demand for people smuggling reduced dramatically.³⁶⁸

Intimidation on Return to Indonesia

There is little doubt the asylum seekers onboard SIEV X suffered intimidation at the hands of officials in a number of countries. As noted above, many of them had been granted refugee status, meaning many would have suffered persecution by officials in their home country. Many of the survivors also reported being "intimidated by Abu Quassey and the armed police and went on board despite their fears".³⁶⁹ Upon their return to Indonesia after being rescued, the survivors refused to disembark the vessel in the presence of Indonesian police, waiting for a United Nations official to escort them off the vessel and to UNHCR organised accommodation.³⁷⁰ All of this suggested a group of extremely traumatised people, who felt intimidated by the military and police forces.

This intimidation and bribery continued when the International Organisation for Migration interviewed the survivors upon their return. Talking about this interview, one of the survivors, Ali Hamid reported that,

Two Australians. They came to question us about the people smugglers. We gave them the names of all the smugglers. It was an investigation. When we

³⁶⁷ Ibid., pp. 62-63.

³⁶⁸ Ibid., pp. 90-91.

³⁶⁹ Marr and Wilkinson, *Dark Victory*, p. 299.

³⁷⁰ Kevin, *A Certain Maritime Incident*, p. 86.

finished, they pulled out photographs and said ‘which one was your boat?’ We pointed to our boat and said ‘this one.’³⁷¹

As noted above, these Australians were AFP officers, and the photographs were of the Indonesian coastline, including the doomed vessel. The existence of these photographs meant Nakhoul “wondered since if refugee boats have always been under constant surveillance”.³⁷²

The presence of the AFP officers and their possession of these photographs would have been intimidating for the survivors who, like Nakhoul, may have believed the photographs were evidence the Australian Government knew about the vessel before it embarked. Believing this, the asylum seekers would not have wanted to say anything that may negatively affect their chances of being allowed into Australia.

After his original interviews, Nakhoul learnt of the stories of the mysterious boats that shone searchlights on the survivors, but did not rescue them. He asked the survivors why they had not mentioned this. Their response was,

They were too scared to mention the boats before. They believed the story might hinder their resettlement, as it would implicate the Australian government.³⁷³

Intimidating Refugee Supporters

The Government not only intimidated the asylum seekers, it also intimidated their supporters within the Australian public. As mentioned in the previous chapter, the lack of whistleblowers from the APS and ADF possibly showed the intimidation and bribery of officials. As to why there were no whistleblowers, Kevin described the APS and national security system as “intimidated and subservient”.³⁷⁴ To further intimidate public servants, Mungo MacCallum has noted the “Government introduced new legislation to impose draconian penalties on whistle-blowers, publishers of leaks or people simply in possession of any material the government chose to define as

³⁷¹ Nakhoul, *The Five Mysteries of SIEV X*, p. 9

³⁷² Nakhoul, *The Human Tide*.

³⁷³ Ibid.

³⁷⁴ Kevin, *A Certain Maritime Incident*, pp. 253-254.

affecting national security – which, on recent performance, means anything that might be a political embarrassment”.³⁷⁵

In the case of the sinking of SIEV X, however, the Government went further than intimidating public servants. It also began a campaign of intimidating refugee supporters who questioned its version of events, in particular Tony Kevin.

Tony Kevin was a public servant for 30 years until 1998, and served as an Australian ambassador in Cambodia and Poland. After voicing his concerns regarding the sinking of SIEV X, however, his reputation was tarnished, with him saying, “I have, I believe, been quietly but effectively marginalised from the governance-centred society in Canberra to which I once comfortably belonged”.³⁷⁶ The assault on Kevin’s reputation would have demonstrated to public servants what might happen to them if they dared to speak out about what they knew.

The Prime Minister also attempted to use Tony Kevin as an example of how anyone who questioned the Government’s version of events may be treated. After Kevin signed a letter from a group of former senior Australian diplomats and military figures, Howard said:

the 43 people comprise a mixture of people who have over the years been, in some cases, regular critics of this government. They include one person who accused the Royal Australian Navy and the Australian Federal Police of complicity in the drowning of 353 refugees. To expect for a moment that I am going to treat that person with the sort of reverence that is asked of me by the Leader of Opposition – as far as I am concerned I have dealt with the merits of their arguments.³⁷⁷

As Kevin explained, this statement would have told people, “give any currency or credence to Tony Kevin’s questions about SIEV X and I will publicly denounce you along with him”.³⁷⁸

This intimidation continued in the media. Piers Akerman, a conservative commentator described as “being very close to the Prime Minister”,³⁷⁹ commented on the Senate

³⁷⁵ MacCallum, 'Girt by Sea', p. 69.

³⁷⁶ Kevin, *A Certain Maritime Incident*, p. 20.

³⁷⁷ House of Representatives, *Official Hansard*, 10 August 2004, p. 32552.

³⁷⁸ Kevin, 'SIEV X', p. 108.

Select Committee report when it was tabled in Parliament. Discussing the findings on SIEV X, Akerman described Kevin as a “conspiracist ... with a truly eyebrow-raising regard for Cambodian despot Hun Sen”.³⁸⁰ Akerman was referring to what Kevin described as his efforts, in final three months as Australian Ambassador to Cambodia, to “lobby vigorously for governments to negotiate with Hun Sen, as Cambodia’s best chance for peace and stability”.³⁸¹ Kevin’s efforts, as an ambassador to a country to encourage other governments to negotiate was not directly related to his work on SIEV X, but Akerman’s use of such inflammatory terms as ‘despot’ was a clear attempt to devalue Kevin’s arguments about the tragedy of SIEV X.

Much of this intimidation was also devaluation of the target, in this case Tony Kevin. By denigrating Kevin, the Government achieved two goals. Firstly, it reduced support for Kevin and his message. Secondly, it demonstrated to other potential activists or whistleblowers the level of intimidation they could expect if they were to become vocal in their opposition to the Government.

Marg Hutton also suffered intimidation by the Australian Government. The website she established, <http://sievx.com>, was under covert electronic surveillance by the AFP. Once she realised what was happening, Hutton revealed it to the public and the AFP stopped its surveillance. Although the AFP stopped monitoring the website, the Government demonstrated the power it had to monitor what individuals and groups did. This may have led many people to stop their actions as they became concerned about the repercussions.

The disruption program established by the Australian Government in conjunction with the Indonesian Government, demonstrated the Government’s wish to intimidate potential asylum seekers. The tragedy of SIEV X contributed to this fear, and may itself have been the result of a ‘disruption activity’. To reduce negative publicity over the tragedy, the Government also intimidated refugee advocates. The examples of Tony Kevin and Marg Hutton demonstrated how the Government used its power and authority to intimidate individuals. In the case of SIEV X, the Government continued

³⁷⁹ Glenn Milne and Brad Crouch, 'MPs seek bloodless handover', *The Sunday Mail*, 21 May 2006.

³⁸⁰ Akerman, 'Sinking ships and dirty Labor tricks'.

³⁸¹ Tony Kevin, *Sunken Diplomacy*, 'Eureka Street', (October 2003 (cited 8 June 2006)); available from <http://www.tonykevin.com/Eureka.html>.

to attempt to intimidate anyone who questioned the prevailing belief, but refugee advocates continued to investigate the tragedy, and tried to hold the Government accountable for its actions.

Conclusion

There has been no evidence the Australian Government was involved in the sinking of SIEV X, although revelations over its relations with Kevin John Enniss raised some questions. Again, although there was no evidence the Australian Government ignored a 'safety of life at sea situation', a number of facts raised questions as to how much was known about the vessel. The uncovering of these facts suggested the Government wished to keep certain information out of the public domain, as it feared it might be used to question its involvement. If the Government attempted to cover up this information, what else had it tried to keep secret?

Unlike the children overboard incident, the Government focused much of its energy on one of the five methods outlined in the backfire model, cover-up. When reports of the tragedy first surfaced, the Australian Government did not seem to bear any responsibility. With the election only weeks away, the tragedy did not have a major impact on its results, only providing evidence of the dangerous criminal activities of people smugglers. It was through the work of Tony Kevin that questions over the Australian Government's responsibility began to be asked. Information was later revealed to show the Government knew more about the tragedy than it publicly admitted including, importantly, that the Government was informed very early on that the vessel sank in international waters.

In an attempt to maintain the cover-up of its knowledge of where SIEV X sank, the Government reinterpreted the information it received. In particular, the PST obscured the location by using ambiguous terms to describe the waters in which the tragedy occurred. The release of the embassy cable proved the Government was aware SIEV X sank in international waters, most probably within the Operation Relex surveillance area, but continually stated that the vessel sank in Indonesian waters. This became the standard explanation of the tragedy in the proceeding days, with the *Australian Financial Review* stating, "no Australian politician should be blamed for the sinking

of a clapped-out boat off the coast of Indonesia”.³⁸² It was this belief the Government was attempting to disseminate.

Through officials from the APS and ADF, the Government continued to cover up information concerning the sinking of SIEV X during the Senate Select Committee into a Certain Maritime Incident. The extension of the terms of reference of the Senate Select Committee, to include an investigation of the procedures of the RAN and other Commonwealth agencies, meant the tragedy was investigated. It was not until the last day of testimony to the Senate Select Committee that the embassy cable was mentioned, while it was almost another seven months before the cable was given to the committee. By this time, the committee had tabled the report. As Hutton concluded, “it is apparent that the Committee was deliberately misled regarding the likely sinking position of SIEV X”.³⁸³

The Senate Select Committee also struggled to deliver conclusive findings on SIEV X because no survivors testified. This is a common problem for official channels: they have a bias towards those in authority.

To maintain the cover-up, the Government also devalued the asylum seekers as queue jumpers. As such, the Government apportioned part of the blame for the tragedy on the asylum seekers. To reduce support for asylum seekers, and more importantly in the case of SIEV X to discredit those who opposed the Government position, the Government also set about devaluing and intimidating opponents such as Tony Kevin. By doing this, the Government ensured that others who may have information about the tragedy, or were concerned about what happened, did not voice their opinion. Recalling his experience over the four years since SIEV X sank, Kevin observed that, “For leading commentators, to cite the words ‘SIEV X’ in any political commentary – even more so, to devote any serious analysis to it – might be seen as acts of defiance of the Howard Government, that would be remembered”.³⁸⁴

³⁸² 'Black Day For Refugee Debate', *Australian Financial Review*, 24 October 2001.

³⁸³ Hutton, *SIEV X & The DFAT Cable: The Conspiracy of Silence*, p. 21.

³⁸⁴ Kevin, 'SIEV X', p. 109.

There is little doubt the Australian Government has been very successful in reducing outrage about its role in the sinking of SIEV X. As noted above, concrete evidence of the extent of the Government's role has not been presented, but enough information has surfaced to raise questions over the morality and legality of the Government's actions. In particular, the covering up of the embassy cable and the involvement in a disruption program in Indonesia are both serious actions to which the Australian Government has never been held accountable. It is primarily through cover-up that the Government has managed this, but its actions in devaluing the targets, reinterpreting the events, using official channels and intimidation and bribery have all contributed to this.

In the end, the cover-up of information has made it difficult for critics of the Government to prove their allegations, and this has at times led to criticism of conspiracy theories. As one of the chief critics of the Government in respect to SIEV X, Tony Kevin has admitted this, but also notes, "if it looks like a duck and walks like a duck and quacks like a duck, it probably is a duck".³⁸⁵ In the case of SIEV X, revelations that the Government attempted to cover up a lot of information, suggests the Government wished to hide some of its actions. Over time, as more information is revealed, it is possible more revelations will show that the Government played a major part in the deaths of 353 people.

³⁸⁵ Kevin, *A Certain Maritime Incident*, p. xiii.

Chapter Six: Countering Government Actions

Understanding how the Australian Government has inhibited outrage over its treatment of asylum seekers during the 2001 federal election is very important. The analysis clearly shows an active attempt by the Government to minimise anger over its role in both children overboard and SIEV X. Overall, it seems the Government was successful; it went on to win two federal elections, which is a key measure of political success. Nevertheless, there have been circumstances where outrage over Government actions has increased. Using the backfire model, it is possible to analyse how refugee activists have managed to amplify outrage, and to consider possible strategies future activists may wish to use to achieve positive social change.

Cover-up

In both case studies, the Government attempted to cover up some of its actions. In the case of children overboard, the primary cover-up was to ensure no information contradicted the original (incorrect) report. This was extremely important, as the revelation that the Government's reports were incorrect would have been enormously damaging to its credibility and would have severely diminished its electoral chances. In general, the Government was successful in maintaining this cover-up until the election was held.

The actions of the Government in maintaining the cover-up of its erroneous reports is similar to its claims over the location of the sinking of the SIEV X. On being questioned about the tragedy, Government ministers were adamant the vessel had sunk in Indonesian waters. This cover-up was more successful than the one undertaken in relation to the children overboard report, as it was much more difficult to prove untrue. By the date of the election, there was little information suggesting the vessel had sunk in international waters.

However, these two examples do show how it is possible to counter government attempts to cover-up what it knows. In the case of children overboard, the report by Natalie O'Brien³⁸⁶ led to a number of questions over the Government's claims.

³⁸⁶ O'Brien, 'Overboard incident 'never happened'.

Questions to the Prime Minister at his address to the National Press Club days before the election showed that a number of journalists were now sceptical of the Government's allegations.³⁸⁷ To counter this Howard began to reinterpret such information as the ONA report, in an attempt to maintain the belief within the wider public that asylum seekers had thrown children overboard.

However, it is quite possible that had O'Brien's report surfaced further out from the election, outrage would have developed and threatened the Government's electoral chances. Discussing the results of the Bryant and Powell Reports in February 2002, Howard admitted, "the factual conclusions of those two reports is [sic] that there was no evidence produced that children had been thrown overboard".³⁸⁸ Occurring three months after the election, such admissions were not electorally damaging to the Government.

Tony Kevin's work in investigating the truth surrounding the location of SIEV X when it sank is another example of how detailed research can overcome a cover-up. Kevin's work shows there is now little doubt SIEV X sank in international waters, not in Sunda Strait as claimed by the Government.

An important lesson for those wishing to reveal cover-ups is therefore the role journalists and researchers. The best way to thwart a cover-up and amplify outrage is to produce evidence of the cover-up and the truth over the original incident. Journalists and researchers are often best placed to do this. Working with journalists and researchers, activists can reveal the truth to the public, and increase outrage, over not only the original incident, but also the existence of a cover-up.

Both of the case studies also demonstrate how the Australian Government covered up what it knew about the two incidents. In this sense, although in both instances the Government's original claims were later proved incorrect, the Government was able to claim ignorance and that it was acting in good faith when it made its original statements.

³⁸⁷ Howard, *Transcript of Questions & Answers at the National Press Club*.

³⁸⁸ John Howard, *Transcript of Press Conference, Canberra*, (19 February 2002 (cited 5 August 2005)); available from <http://www.pm.gov.au/news/interviews/2002/interview1519.htm>.

To counter this cover-up, it was important that refugee advocates managed to discover the briefings ministers received. The Senate Select Committee was invaluable in achieving this, especially in the case of the location of SIEV X. Although Tony Kevin had hypothesised that the vessel had sunk in international waters, the Government was able to counter his allegations by claiming the vessel sank in Indonesian waters. Later the Government adjusted its defence, by saying it was impossible to know where exactly the vessel had sunk. However, the disclosure of the cable from the embassy in Indonesia proved the Australian Government was aware of the general location of the vessel soon after the tragedy. This, in addition to the harbourmaster's report, proved the Government's original statement that the vessel sank in Indonesian waters, did not accurately reflect either the truth or what it was told. Unfortunately, as noted above, the cable was not made public until well after the release of the Senate Select Committee's report, and therefore did not influence the findings of the committee.

The most effective way of discovering what a government has been told about an event is to gain the support of a whistleblower. If a whistleblower comes forward with information, regarding briefs sent to the government, this would provide solid evidence of what knowledge the government had of the incident. Unfortunately, people are often reticent to come forward as whistleblowers, because of the potentially severe repercussions. As discussed below, it is therefore very important that the whistleblower receives support to counter this intimidation.

The Government was only partly successful in its attempt to cover up its role in both the children overboard and SIEV X incidents. As shown, it is now known that asylum seekers did not throw any children overboard, and SIEV X sank in international waters, well within the Operation Relex surveillance area. Unfortunately, neither of these revelations have been damaging to the Government. Firstly, a major aim of the Government would have been to win the 2001 election. At the time of the election, the public was unaware of the whole truth, and the Government's actions do not seem to have negatively affected the results of the election. Nevertheless, another election has now been held in Australia, and Howard was once again re-elected, with an increased number of Government members in both houses of parliament. Considering

the devious nature of the Government's electoral victory in 2001, especially lying to the public, a backlash against the Government could have been expected. To prevent this, the Government continued to implement the other strategies outlined in the backfire model.

Devaluation of the Target

One strategy the Government clearly used was to devalue asylum seekers. The result was that the public believed the Government when it reported asylum seekers had thrown children overboard. Had the Australian public valued asylum seekers, the chances of the Government's cover-up succeeding would have been vastly reduced.

The Government used various terms to describe asylum seekers: illegals, queue jumpers, terrorists, and economic refugees. Each term focused on either the threat asylum seekers posed to Australia or the fairness of the Government's actions. Although these terms became common currency in Government statements and many media reports, some journalists did attempt to explain why these terms were inaccurate. One such journalist was Mike Secombe, who noted that although the Government described the process for asylum seekers as a queue, "it would be more appropriate to refer to a lottery than to a queue".³⁸⁹ Reports such as this are useful in explaining to the public how many of the terms used by a government to describe a group of people they wish to devalue are incorrect. However, as this case also shows, it is important reports are part of a campaign by advocates to reveal the truth.

Another useful tactic for validating asylum seekers, or the target of any government campaign of devaluation, is to tell their personal stories. As shown above, reports about the tragedy of Sondos Ismail, who lost her three daughters when SIEV X sank, led to a mass outpouring of sympathy. This demonstrated the power of personalising victims of abuses. As the Australian public was made aware of the personal suffering of Ismail and others onboard SIEV X, many people understood the significance of 353 deaths, and began to re-examine their opinion of asylum seekers.

³⁸⁹ Secombe, 'Watch Your Pleas And Queues: This Is A War Of Words'.

Unfortunately, the upper echelons of the Government apparently do not feel this compassion for the conditions of asylum seekers.³⁹⁰ This has been exemplified by John Howard's continued denial of empathy for the asylum seekers onboard SIEV 4. March 2006 saw the tenth anniversary of his election victory, and much of the media discussion at the time was about the children overboard incident, which was seen as a major stain on his record. Asked whether he would apologise to the asylum seekers he had wrongly accused of throwing children overboard, he said he would not as, "they irresponsibly sank the damn boat, which put their children in the water".³⁹¹ As experts noted after Howard's claims, "it is impossible to be certain about the cause of the sinking of the vessel".³⁹² By persisting to claim the asylum seekers were irresponsible with the safety of the children onboard, Howard continued to question their fitness to be parents.

As with countering many Government actions to inhibit outrage, an important part of combating devaluation is to reveal the truth. The use of defence experts to refute Howard's claim of the asylum seekers sinking the vessel was important in demonstrating asylum seekers had not risked the lives of their children. As with reinterpretation of the event, as discussed below, it is important for activists to correct the record when a government uses a misrepresentation to devalue a target.

In the case of asylum seekers in 2001, one of the major slurs cast by the Government was to suggest they were possible terrorists. With September 11 having only recently occurred, the Australian public was concerned about future attacks on Australia, and saw the asylum seekers, coming from Iraq and Afghanistan, as potential terrorists. Rather than calming them down, members of the Australian Government, including Peter Reith and John Howard, further stoked their concerns. However, there was no proof, and all intelligence suggested the chance of asylum seekers being terrorists was remote. Even the head of ASIO said the chances were remote, commenting,

why would people use the asylum seeker stream when they know they will be subject to mandatory detention? ... They do not know how long they will be

³⁹⁰ Some Liberal Party backbenchers have expressed their dissatisfaction with Government immigration policies, particularly mandatory detention of children. The dissatisfaction of these members led to the removal of children from detention in mid-2005, and questions being asked about the Government's plans to process all asylum seekers arriving by boat in third-party countries.

³⁹¹ Megalogenis, 'Refugees 'sank the damn boat', says PM'.

³⁹² Walters, 'Mystery of how vessel was lost'.

detained and they don't know if they will be allowed entry and they may be thrown out. I can't exclude it but I've not seen evidence of it.³⁹³

Again, such statements by experts are useful in validating the target. In this case, it would have also been extremely useful if the stories of the asylum seekers could have been told. As with Sondos Ismail, and later with the Bakhtiari family,³⁹⁴ public opinion can be supportive of asylum seekers when their stories are well known. Unfortunately, in the case of asylum seekers arriving during the 2001 election, once intercepted by the RAN, they were transferred to a third country for processing. At no stage was it possible for refugee advocates to reveal their stories, and demonstrate they were actually attempting to escape from the regimes which the Australian Government was about to attack. Unfortunately, these stories have not been widely told. One result of this is that during a television chat show in 2005, discussing the Government's proposal to process all asylum seekers arriving by boat in a third country, members of the audience made comments such as, "they're illegal and they shouldn't have any rights" and "they're jumping the queue".³⁹⁵ It is therefore obvious the Government's smear campaign, typified by the 2001 election, has successfully devalued asylum seekers in the eyes of some people.

As a country of predominantly immigrants, it is unusual that Australians are not more accepting of asylum seekers. It has been stated many times that, except for Indigenous Australians, everyone is, or is a descendant of, an immigrant. This idea has formed the basis of much protest. In one example, two Indigenous men are shown looking at a British ship sailing into a harbour, and one says to the other, "You know what? In the long run I reckon we'd be better off with a more restrictive immigration policy".³⁹⁶

Protest groups also used the comparison of white settlement of Australia and asylum seekers. One group, boat-people.org projected images of tall ships, such as those used

³⁹³ Marr and Wilkinson, *Dark Victory*, p. 370.

³⁹⁴ The Bakhtiari family was deported in late 2004, after a four-year battle for asylum in Australia. Their case became public after two of the sons escaped from the Woomera Immigration Detention Centre in 2002 and attempted to claim asylum at the British consulate in Melbourne. Cynthia Banham and Penelope DeBelle, 'Bakhtiari family deported under cover of darkness', *The Sydney Morning Herald*, 31 December 2004, provides an outline of their case, deportation and the support they received.

³⁹⁵ *Border Security*, Insight, SBS, 6 June 2006. Transcript from <http://news.sbs.com.au/insight/topic.php?id=101#>, (cited 19 June 2005)

³⁹⁶ Rima Tamou, *Best Foot Forward*, Message Stick - Summer Series, ABC-TV, 14 January 2005. Transcript from <http://www.abc.net.au/message/tv/ms/s1276741.htm>, (cited 31 August 2005)

by the English when first settling Australia, on to the Sydney Opera House. Evans explains the impact of this protest as,

This spectral and evanescent ship image references not only colonial history, but two other recent ships and their “boat people” which haunt Australia’s own Bermuda Triangle, its aqua nullis [sic] or Excised Migration Zone: the Tampa and the ship code-named SIEV-X.³⁹⁷

Asylum seekers and those who arrived in the First Fleet have been juxtaposed. Such protests have a number of impacts, but one is to validate asylum seekers. These protests demonstrate the double standard of acclaiming the first settlers, while abusing asylum seekers.

Reinterpretation of the Events

As with the previous two strategies implemented by governments to inhibit outrage, countering the reinterpretation of events often requires exposing the truth. When a Government reinterprets what occurs, the most important task of activists is to show the public what actually occurred. This may involve directly challenging government statements or demonstrating how the government’s interpretation of the event is incorrect.

As noted, one of the major claims of the Australian Government during the 2001 election was that Australia was, “the second most generous country in the world in taking refugees after Canada”.³⁹⁸ This claim was used by the Government to demonstrate its generosity in dealing with asylum seekers. It was an effective tool, as it showed the Australian public it had no reason to feel guilty for the treatment of asylum seekers, as the country was accepting more than its fair share. Unfortunately, as shown above, this was misleading, as the data used by the Government was only of those countries that set a quota of refugee acceptances per year. Australia’s record was in fact much worse.

³⁹⁷ Christine Evans, 'Asylum Seekers and “Border Panic” in Australia', *Peace Review*, Vol. 15, no. 2, 2003, p. 168.

³⁹⁸ John Howard and Philip Ruddock, *Transcript of Press Conference, Sydney*, (1 September 2001 (cited 28 September 2005)); available from <http://www.pm.gov.au/news/interviews/2001/interview1206.htm>.

The first and most obvious way for activists to expose this reinterpretation is to inform the public of the actual data. Showing how the Government is using data in a deceitful manner is an effective means of demonstrating an attempt to suppress outrage. This could have been done by publicising the details of the data the Government used to demonstrate its ‘generosity’, while also reporting other, more detailed data, showing Australia’s performance compared to all other countries providing asylum.

A second tactic may be to use actual case studies to demonstrate how the Government’s claims actually affect people. The sinking of SIEV X was an opportunity to expose a few of the Government’s half-truths, including its generosity and claims of queue jumping by asylum seekers. In the aftermath of the tragedy, Raymond Hall, the UNHCR regional representative, claimed the UNHCR had recognised 500 refugees in Indonesia, but was still to find a country to accept them. Asked what the Australian Government’s position was, he replied, “the Australian Government so far has not agreed to accept any people from this case load.... Australia has been very reluctant to accept people from Indonesia”.³⁹⁹ Hall also revealed that approximately 30 of those onboard had already been recognised as refugees, but were some of the 500 awaiting a country to accept them. All of this information casts doubts over the Government’s generosity and support for asylum seekers who apply through the official channels. This information is also quite powerful as it comes from a credible source; the UNHCR is generally recognised as an authority on the condition of refugees.

Another important technique in exposing reinterpretation is to demonstrate how the events can be looked at from a number of different perspectives, including from the eyes of the victims. This also has the benefit of reinforcing the value of the victim in the eyes of the public. When the Government first reported asylum seekers had thrown children overboard, a number of other politicians and commentators encouraged the public to look at the event from the eyes of the asylum seekers – this was before anybody believed the Government could be deceitful enough to wrongly claim asylum seekers did something of this nature. Greens Senator Bob Brown was

³⁹⁹ *Genuine refugees killed in drowning tragedy: UNHCR,*

one of the first to encourage people to view the incident from a different perspective, noting, “nobody throws their children overboard unless they are desperate”.⁴⁰⁰ Brown’s comment may have led people to examine the incident from a different perspective, and to question why someone would do such a thing. While nobody would have condoned the reported actions of the asylum seekers, people may have begun to wonder what sort of position they would have to be in to even consider this action. This may have increased support for asylum seekers, as members of the Australian public begin to put themselves in asylum seekers’ shoes.

Demonstrating how events may be looked at from different perspectives is also important as it shows how the view of a government is only one of many. Realising this, people may begin to look at why a government wishes to view the event from this particular perspective. One of the most ludicrous claims regarding children overboard was Philip Ruddock’s, “(It was) clearly planned and premeditated. People wouldn’t have come wearing life jackets unless they intended some action of this sort”.⁴⁰¹ As noted above, to claim that because asylum seekers had lifejackets meant they planned to throw children overboard is absurd; to the contrary, making such a voyage without lifejackets would have been negligent. One possible strategy to demonstrate the absurdity of this claim would have been to ask Ruddock if he believed sailors in the Sydney to Hobart yacht race planned to throw people overboard. This would have revealed how the Government’s interpretation of the asylum seekers having lifejackets was questionable, and possibly led to people questioning more of the Government’s claims regarding asylum seekers.

Official Channels

Many activists rightly see official channels as an effective tool to hold governments accountable for their actions. However, as demonstrated above, governments can also use official channels to inhibit outrage. Therefore, activists should not expect that because a government establishes an inquiry, the complete truth will be revealed, although some new information may be disclosed.

⁴⁰⁰ Henderson et al., 'Boat children overboard - Howard hard line becomes poll focus'.

⁴⁰¹ Douez and Forbes, 'Boat People 'threw Children Overboard'.

The Senate Select Committee into a Certain Maritime Incident is a good example of how an inquiry, although revealing information not known beforehand, also inhibited outrage forming over the Government's actions regarding children overboard and SIEV X. Understanding how the Senate Select Committee inhibited outrage can help activists better deal with inquiries established by a government.

The first and most obvious method for countering official channels is to prevent their establishment, or not to participate in them. Although this is a possible tactic, there are a number of drawbacks in doing so. Firstly, as is obvious from the Senate Select Committee, many inquiries reveal information that may be useful to activists, for example, Barrie's briefing of Reith that "the photographs he had put out did not describe the events as he portrayed on the *7.30 Report*".⁴⁰² Secondly, by not participating in inquiries, activists not only allow governments to control the terms of reference and the person in charge of the inquiry, but also to be the only witnesses to testify at the inquiry. By participating in inquiries, activists can testify and put forward their position. However, while participating in an inquiry, it is important activists implement a number of other methods.

One of the primary reasons governments use official channels to inhibit outrage is that the public generally believes justice will be done. As can be shown from the Senate Select Committee, this is not always the case. It is therefore important for activists to reveal the problems with the inquiry. This may involve explaining why the terms of reference limit the capability of the inquiry to examine the incident, or how the bias and vested interests of the people undertaking the inquiry may affect the outcomes of the inquiry. This will ensure the public is aware of the reasons why the official channel may not deliver justice.

If activists decide to participate in inquiries, it is important they do so actively and effectively. Participation will often require a large commitment of both resources and time, which may have also been useful in undertaking other activities, so it is important the resources be put to the best use. Effective participation will involve a lot of preparation, to ensure the evidence presented is well researched and successfully

⁴⁰² Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. 132.

conveys the position of the activists or their group. To assist in this preparation, particularly when the inquiry is legally complicated, it may also be useful to gain assistance from sympathetic lawyers.

Most important when participating in official channels is to continue to undertake other actions. As noted above, one of the reasons official channels are effective in inhibiting outrage is the time they take to conclude. In the case of the Senate Select Committee, it was twelve months after the incident and six months after the inquiry began before the report was tabled in Parliament. By this time, other incidents had become bigger news stories, and interest in the results had waned. A continual campaign of action, concurrent with the inquiry, will assist in maintaining public interest.

Rather than, or in addition to, participating in official channels, activists may also establish their own. An example of this is the inquiry established by the heads of social work departments at universities to investigate “whether there are ‘any more Cornelia Raus’ hidden away in the system, and compile a dossier of cases of detention neglect.”⁴⁰³ This inquiry was established at the same time as the Government’s Palmer inquiry⁴⁰⁴, and accepted submissions from various groups, including current and former immigration detainees. This inquiry had two effects. Firstly, it provided another means for activists to publicise their concerns, but it also exposed the deficiencies in the Palmer inquiry. When the Government first announced the Palmer inquiry, there were demands for it to be a fully transparent and public inquiry.⁴⁰⁵ These demands were refused by the Government, which instead enlisted former AFP Commissioner Mick Palmer to undertake a private inquiry, with the results to be made public.⁴⁰⁶ By establishing an open and transparent inquiry, the heads of the social work departments demonstrated how the Government’s inquiry was deficient.

For an alternative inquiry to be successful, it is important those undertaking the inquiry are seen by the public to be an authoritative voice in that area. Whether they

⁴⁰³ Andra Jackson, 'Academics to hold alternative inquiry', *The Age*, 14 February 2005.

⁴⁰⁴ The results of the Palmer inquiry can be found at Palmer, 'Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau'.

⁴⁰⁵ 'Rau inquiry fails to satisfy critics', *The Cairns Post*, 9 February 2005.

⁴⁰⁶ Maria Hawthorne, 'Govt refuses call for Rau public inquiry', *AAP Bulletins*, 8 February 2005.

are academics, lawyers or other public figures, the public must respect those heading the inquiry and believe they will deliver a just finding. Without this belief, the inquiry will not be as effective.

Intimidation and Bribery

The intimidation and bribery of victims and their supporters is a common method for governments to inhibit outrage. The aim of a government implementing tactics to intimidate or bribe people is to stop the person speaking publicly, through either fear or reward. In the cases of children overboard and SIEV X, the Australian Government attempted to intimidate both the asylum seekers and their supporters.

When a government decides to intimidate people, the most important factor for activists in ensuring its tactics do not succeed is support and solidarity. In the face of a government, one person will struggle to stand up to the intimidation. But, if that person has a network of support, and others willing to act in solidarity, there is a better chance of countering a government's actions. If an activist group can provide this support, the target of the intimidation is more likely to continue their struggle for justice. If the target decides to continue this struggle, then other counter-tactics can be used to increase outrage, both over the original injustice and a government's efforts to intimidate.

In the cases examined above, much of the intimidation was of public servants. This intimidation was intended to prevent the emergence of whistleblowers. To encourage whistleblowers to come forward it is important for activist groups to publicise the support they are able to offer, and when a whistleblower does come forward, to assist them as much as possible.

The exposure of intimidation or bribery is an important counter-tactic in thwarting government attempts at either tactic. If the injustice perpetrated by the government includes the intimidation of a person or group of people, coverage of this is likely to lead to greater compassion from the general public. This is demonstrated by the increase in public outrage over the deportation of US peace activist Scott Parkin after it was revealed in the media that he had been arrested and held in solitary

confinement.⁴⁰⁷ This also shows the importance of validating the target; if the public does not feel compassion for the person being intimidated, it is less likely to be outraged over their treatment.

The public reaction to revelations that a government has attempted to intimidate or bribe someone endeavouring to expose an injustice will generally be negative, and may add to the building outrage over the government's initial actions. The building up of stories of injustice by the government will probably lead more people to question the legitimacy of the government's actions. Even if they were unsure of the original allegations against the government, evidence demonstrating government repression of those attempting to expose the original injustice may lead people to reconsider their position.

Although many people may feel outrage over the original violation or over the subsequent intimidation or bribery, it is important for the success of the campaign against the government actions that these people voice their outrage. Developing outrage is an important beginning for any movement, but it is of little use if this outrage does not develop into action. Activist groups should therefore develop strategies that encourage the participation of these people. Recognising some people will not feel comfortable undertaking major protest actions, groups should develop strategies such as displaying symbols/stickers, letter writing and petition signing so these people can become involved. There will also be people who decide to commit more of their resources to the campaign, and may be interested in taking part in demonstrations, being spokespeople and fundraising.⁴⁰⁸ It is therefore important that a range of actions appealing to a variety of people be developed, but all of these actions should always be guided by the overall goals of the movement.

If intimidation is a likely strategy of the government, potential targets should decide on a strategy to counter this. There are two general strategies available to a potential target. Firstly, they may decide to remain anonymous, so the government finds it difficult to know whom to target with its intimidation. The second option is the exact

⁴⁰⁷ Martin and Murray, 'The Parkin backfire'.

⁴⁰⁸ See Sharp, *The Politics of Nonviolent Action*, pp. 119-433, for a list of 198 varieties of nonviolent action.

opposite, to develop a high profile. The case of Tony Kevin demonstrates the advantages of a high profile. Any attacks by the Government had a higher risk of backfiring against it, as Tony Kevin was well known and respected within the wider community. The second strategy is also more desirable because an important factor in the success of a movement is recognition of it within the broader community, and high profile members will often assist this. Nevertheless, there are instances when anonymity is a more desirable strategy, particularly when the person is afraid of serious repercussions from participation in the movement.

Further to revealing the existence of a bribe, the target may decide to accept the money and then to recycle it back into the movement. Money is an important resource in any movement, and it is highly unlikely a government would accuse anyone of taking the bribe and not honouring their end of the deal. Doing so would publicise their offer of a bribe in the first place. The risk with such a tactic is it may antagonise the government and lead to further intimidation and repression. Such a response may be a positive to the movement, if it leads to further support, but it is important to consider the potential negative repercussions.

If a movement is large enough and has the resources to do so, it may also decide to engage in counter intimidation. An example of such counter intimidation would be the harassing of important government officials. The major difficulty with such a strategy is if the general public sees a movement employing intimidatory tactics, the government may be able to use this to cause backfire against the movement, nullifying the outrage over the government's actions.

Conclusion

An advantage of using the backfire model to analyse how a government attempts to inhibit outrage over its actions is that it demonstrates the strategies it uses to do so. Understanding the strategies implemented by a government allows activists to develop their own strategies to counter this.

Each of the five strategies outlined in the backfire model can be countered in a number of ways. Whether it is revealing the cover-up, telling the stories of victims, announcing other interpretations of the event, establishing alternative inquiries or

exposing intimidation, all of these tactics will counter government actions. Many of the tactics available to movements may also assist to counter more than one government strategy. For example, validating a victim of government repression may assist not only in countering government attempts to devalue them, but also increase support for the victim if the government attempts to intimidate them. Establishing an alternative inquiry may also assist in revealing a government cover-up or reinterpretation of events. It is therefore important all of the tactics implemented by a movement work towards a common goal.

Another important element of tactics for a movement is the use of proactive and reactive tactics. All tactics will be in reaction to the original government action, but it is possible for a movement to implement tactics that negate potential future government actions. For example, it is important to validate the victims of a government abuse. Movements should not wait for a government to actively devalue the victims: building up support for the victim before a government campaign of denigration will make it more difficult for the government to turn public opinion against the victim. As noted above, the high profile of members of the movement is an important factor of success, particularly in countering intimidation. High profiles, however, take time to develop, and it is therefore important they be developed prior to the intimidation or bribery. There is also no reason a movement should wait for the government to establish its own inquiry before establishing an 'alternative' inquiry: such an inquiry could be established prior to the government deciding to establish one of its own.

Of course, certain tactics such as deciding to take part in government official channels and revealing government cover-ups and reinterpretation of events have to be done in response to government actions, but their success will often depend on other tactics already being implemented.

The backfire model does not specify what tactics activists should use to counter government actions. Nevertheless, it does demonstrate how a government may attempt to inhibit outrage, and can therefore be used by activists to predict and recognise government strategies. Each case is different, and activists should use their

own and others' experience to develop suitable strategies, but understanding potential government actions is an important step in developing effective counter-strategies.

Conclusion

As stated in the Introduction, the primary aim of this thesis is to analyse the Australian Government's attempts to inhibit outrage over its treatment of asylum seekers during the 2001 Federal Election. The two major incidents of the election campaign involving asylum seekers, children overboard and SIEV X, were chosen as case studies. A number of methods of analysing the Government's actions in these cases were considered: the backfire model was chosen as it offered the possibility of also proposing possible counter-strategies for activists. The general conclusion is that the Government undertook a concerted campaign to inhibit outrage over its treatment of asylum seekers. The Government's efforts to inhibit outrage during the election were actually so successful that its callous disregard for the welfare of asylum seekers is often pointed to as one of the main reasons for its election victory. John Howard has noted, "people voted for our tough border protection policies".⁴⁰⁹ Importantly, the backfire model provided a method to break down the Government's actions into five strategies: cover-up; devaluation of the target; reinterpretation of the event; official channels; and intimidation and bribery. Looking at these strategies it is clear the Government implemented all five.

Reviewing these two cases, it is apparent there are some major differences. The children overboard incident is now one of the most controversial in Australian political history. Although a Senate Select Committee found, "no children were thrown overboard from SIEV 4"⁴¹⁰, and over half of the Australian population believed before the 2004 election that John Howard had been dishonest during the incident⁴¹¹; the Coalition won both the 2001 and 2004 elections. The Government has therefore been extremely successful in inhibiting outrage that could bring about its demise. The long-term success of the Government in inhibiting outrage over the children overboard incident has therefore not been attributable to a cover-up, though it effectively covered up the truth during the 2001 election.

⁴⁰⁹ Megalogenis, 'Refugees 'sank the damn boat', says PM'.

⁴¹⁰ Select Committee on a Certain Maritime Incident, *Report into a Certain Maritime Incident*, p. xxiii.

⁴¹¹ Gordon, 'PM lied over children: poll'.

Although more lives were lost than during the children overboard incident, the sinking of SIEV X appears to have been effectively erased from the public consciousness. There is now no doubt senior members of the Australian Government were informed soon after the tragedy that the vessel sank in international waters. Nevertheless, the Government continued to state the vessel sank in Indonesian waters. Once serious questions began to be asked of this account, the Government's line shifted to "no-one knows where it sank".⁴¹² Revelations of a disruption program operating in Indonesia and irregularities in flight paths led to further questions over the Government's role in the tragedy. But outrage over this tragedy has never permeated society, and it has only been a relatively small band of refugee activists that have kept this story occasionally in the media.⁴¹³ Tony Kevin has noted, "major print-media luminaries – people like Paul Kelly, Laurie Oakes, Michelle Grattan – did not refer to SIEV X, even as they continued to refer occasionally to *Tampa* [and] children overboard". Kevin's explanation is, "for leading commentators, to cite the words 'SIEV X' in any political commentary – even more so, to devote any serious analysis to it – might be seen as acts of defiance of the Howard Government, that would be remembered ... Most people who mattered played it safe: they conveniently forgot SIEV X."⁴¹⁴

The analysis presented in Chapters Four and Five demonstrates how the Government attempted to cover up a number of facts in both cases. Evidence has now been produced to show that, in both cases, the Government was informed of the truth, but continued to maintain its deception. These cover-ups were effectively maintained until the election. Suspicions over the children overboard incident only surfaced in the days before the election, and it was not until February 2003 that evidence of the Government's knowledge of the location of the SIEV X tragedy was made public.

One of the reasons these cover-ups were so successful was continued attempts by the Government to devalue asylum seekers as, amongst other things, criminals, queue jumpers, terrorists and unfit parents. The devaluation continued a long campaign by Australian governments to discredit and dehumanise asylum seekers. These efforts,

⁴¹² Verona Burgess, 'Defence didn't know about boat ', *Canberra Times*, 20 June 2002.

⁴¹³ For example, see Turk, 'Author's claims ignored by Govt'.

⁴¹⁴ Kevin, 'SIEV X', p. 109.

though successful as far as assisting the Government win the 2001 election, were not enough to suppress questions over its role in the incidents, but appear to have successfully inhibited outrage. The children overboard case, in particular, appears to demonstrate the effectiveness of the Government's campaign. As previously noted, the truth about the incident is now quite well known within Australia, with over half of the population believing Howard acted dishonestly. One explanation for this is, although people knew this, they were unconcerned about the Government's treatment of asylum seekers because the Government had been so successful in devaluing them.

Once the cover-up of the children overboard incident began to be questioned, the Government began to reinterpret advice it had been given, most memorably the Office of National Assessments' brief that was in fact only a summary of statements made by Government ministers. Once questions over the location of the sinking of SIEV X began to be asked, the Government attempted to reinterpret what 'international waters' meant.

In an attempt to further inhibit outrage, Howard established two internal inquiries to investigate the children overboard incident, which unsurprisingly failed to satisfy critics of the Government. In response to these, opposition parties in the Senate established the Select Committee on a Certain Maritime Incident, which was originally designed to investigate the circumstances surrounding the children overboard incident, and later SIEV X. To restrict the capability of this committee to investigate the incidents, the Government implemented a number of techniques, most memorably denying access to the majority of the key players.

There is also evidence that the Government attempted to intimidate public servants to ensure they did not reveal potentially damaging information to the committee or media. This intimidation was in addition to the intercepting of asylum seeker vessels by the Navy and the disruption program operating in Indonesia.

There now seems little doubt the Government lied to the Australian public about the children overboard incident, and then implemented each of the strategies outlined in the backfire model to inhibit any possible outrage. That the public are aware of the Government's lies suggests it was unsuccessful in its efforts, but in reality, this is only

proof the cover-up was not completely successful. The limited level of outrage over the Government's actions suggests the other backfire strategies were successful.

However, the case of SIEV X is different. Although Tony Kevin believes, "the strenuous efforts of Howard supporters to discredit and expunge from Australian memory the very name of SIEV X have ... failed"⁴¹⁵, evidence presented in this thesis suggests otherwise. Evidence has slowly come to light showing the Government covered up and reinterpreted much of the information it received about the tragedy. This cover-up has made it difficult for opponents to prove their claims, which has led to their claims being branded "conspiracy theories propounded by the whackers of fringe media on various websites".⁴¹⁶ That the Government appears to have made a concerted effort to cover up so much information suggests it had something to hide. However, its success in implementing a number of strategies, including cover-up and reinterpretation of events, has made it difficult to conclusively prove this. Unlike in the case of children overboard, SIEV X still has the potential to generate much outrage within the Australian public. As each piece of evidence has surfaced, a clearer picture of the Government's actions appears. If, in the future, evidence surfaces proving the Government's guilt, much greater outrage may develop, and the name of SIEV X will very much be in the Australian memory.

The backfire model has been a useful tool for analysing Government actions towards asylum seekers during the 2001 election. Firstly, the backfire model provides a useful framework for classifying each of the Government's actions. The actions outlined in Chapters Four and Five were already known, and many had been widely written about. However, the backfire model provides a means of bringing all of the Government's actions together into the five strategies.

Related to this benefit is the ability of the backfire model to demonstrate how what were often seen as innocuous actions by the Government were in fact part of a wider pattern of behaviour by the Government. For example, if not all Government actions were examined, the secrecy surrounding Operation Relex would not have been thought of as a major issue, but when this is considered in conjunction with the

⁴¹⁵ Ibid., p. 111.

⁴¹⁶ Akerman, 'Sinking ships and dirty Labor tricks'.

campaign to devalue asylum seekers, its importance is obvious. In the cases of children overboard and SIEV X, the backfire model shows the Government did not only implement one strategy, it implemented a number in each case that operated collectively to inhibit outrage.

As Chapter Six shows, one of the major benefits of the backfire model is the assistance it provides in the development of effective counter-strategies for activists. It is advantageous to activists to know the possible strategies a government may implement, and then be able to recognise them as they are executed. Recognising that a government's actions are an attempt to reinterpret the events surrounding an incident means activists can implement counter-strategies designed to expose how the government is doing this, and what the truth is. The backfire model also alerts activists to the importance of undertaking some proactive actions, which will negate strategies a government is likely to use.

Further, recognising that in many cases the government implements a number of interrelated strategies, activists can achieve success by targeting certain government actions. Validating victims not only makes it difficult for the government to devalue them, but it also ensures that attempts to intimidate victims are less likely to be successful.

The backfire model, however, does not give the answers to activists as to which strategies to implement. It is a framework by which to view a government's actions, and then develop counter-strategies. It is not possible for a theory to provide such answers. There are a number of factors activists should take into account when developing their response, including: the nature of the original injustice; the abilities and commitment of the activists; and the nature of the government. Each situation is therefore different, and activists need to develop strategies that best suit their circumstances.

One factor the backfire model does not appear to explicitly acknowledge in the inhibition of outrage is the impact of time. Time could affect outrage in two senses, both of which could explain the seemingly modest outrage that developed after the children overboard incident.

Firstly, in electoral democracies, the measure of outrage most important to governments is election results. In this sense, a government may not worry too much if outrage develops when an election is not due. Given that the children overboard incident occurred during an election campaign, the efforts by the Government to inhibit outrage were especially significant. Although it is impossible to prove, the reason for this appears to be that had conclusive evidence surfaced proving the Government's guilt during the election, the outrage over this may have been reflected in voting, and the Coalition may have lost government. It was therefore only necessary for the Government to maintain the cover-up until the election was held. By the time the Senate Select Committee report was tabled, stating that the Government had lied about the incident, the next election was still two years away, and the threat to the Government was therefore much less.

Secondly, there appears to be a natural atrophy of outrage over time. The results of the poll before the 2004 election over whether John Howard was generally dishonest in his statements about the children overboard incident also demonstrates the effect of time on outrage.⁴¹⁷ A majority of Australians believed he was dishonest, but his Government managed to again win the election, this time gaining a majority in both houses of Parliament. Although there are a number of possible explanations for this, one factor is that outrage within the public over its treatment of asylum seekers was not strong enough to cost the Howard Government victory. New priorities had entered the political landscape and the treatment of asylum seekers three years prior may not have been a major determinant of people's voting.

A comparison of the case studies also demonstrates how time is an important factor in outrage. As stated above, the Government's actions to inhibit outrage over children overboard appear to have been successful, and it does not seem likely that outrage over this incident will ever arise. The truth is well known, and the public appear to have accepted this. The case of the sinking of SIEV X appears to be different. Although the Government has so far been successful in inhibiting outrage over its role, new evidence may surface that threatens the Government. The actions of the

⁴¹⁷ Gordon, 'PM lied over children: poll'.

Government in covering up so much information regarding the tragedy seems to indicate a government concerned with the repercussions of the truth. An analysis of the SIEV X tragedy in five or ten years may come to different conclusions than this one, if new information becomes available. In this sense the analysis of SIEV X, more so than children overboard, seems to be a work in progress.

Although the backfire model was used to analyse the cases of children overboard and SIEV X, there are a number of other cases and methods that could have been used to analyse the Government's actions. Other obvious case studies are the interception of the *MV Tampa* and the implementation of the Pacific Solution (although both of these cases actually occurred prior to the election, they were both extremely important to the outcome of the election). Another possible method that could have been added to this thesis was interviews, with those involved in the incidents and refugee advocates.

However, overall the backfire model has provided an insight into the efforts by the Australian Government to inhibit outrage over its treatment of asylum seekers. Remembering that time must be taken into consideration when using the backfire model also strengthens the results produced. The results of this thesis, along with the previous articles and books produced analysing government actions using the backfire model, demonstrate its effectiveness. The backfire model therefore seems to be a useful tool for academics and activists wishing to analyse government inhibition of outrage, and appears suitable for consideration in the analysis of any case where the development of outrage could be expected. Future studies could look at other controversies involving asylum seekers, such as the Pacific Solution, Cornelia Rau and Vivan Alvarez Solon, or other issues, such as the invasions of Iraq and Afghanistan, treatment of suspected terrorists or the Australian Wheat Board bribery scandal.

Further to analysing government actions, the backfire model also provides the basis for developing counter-strategies. There has been little recent academic work on strategies and tactics for activist groups. In this sense, the backfire model is filling a gap in research. By providing this, the backfire model does not only contribute to knowledge, but also gives practical assistance to activists, thus achieving a rare

combination. With many academics joining activists in wishing to achieve positive change, the backfire model provides a tool for both groups to work towards this goal.

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