

A risk approach to government perceptions of irregular migrants and asylum seekers in the legal and policy frameworks of Australia and the United Kingdom

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Declaration

I hereby declare that this thesis is my own work and effort and that it has not been submitted anywhere for any award. Where other sources of information have been used, they have been duly acknowledged.

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Abstract

People with an irregular migration status and asylum seekers have become issues of substantial public policy concern for the governments of Australia and the United Kingdom. This research seeks to understand how this concern has been expressed by these governments through the concept of “risk”. It explores the multiple ways risk is constructed and is used by government to frame irregular migration and asylum seeking and influence applicable legal and policy frameworks. The current public and political debates about irregular migration and asylum seeking is within this research, recast as debate about risk and risk acceptability within Australian and British societies. Crucially, it has been the influence and effect of the outcomes from these risk debates that has significantly altered the applicable frameworks and rights position of irregular migrants and asylum seekers.

This thesis presents new observations about these consequences and the reorientation of applicable frameworks in the wake of these risk debates. In some instances, the frameworks have been altered to transfer risk from the state to the individual resident or irregular migrant and asylum seeker to negotiate and manage. In other cases, governments have transferred risk responsibility for managing or resolving irregular migration and asylum seeking to outside their jurisdiction. In either circumstance such practices have created new levels of irresponsibility regarding irregular migration and asylum seeking where risks are deflected to other times and places. Perhaps the most concerning consequence found here, has been the transformation of government from risk manager to harmful risk producer. For irregular migrants and asylum seekers particularly, subjected to measures purported to manage the risk they are perceived to manifest, in-fact legitimise the production of physical and legal harms for them.

Using Australia and the United Kingdom as its case study jurisdictions, this thesis explores how their governments have served as central actors in this predicament. The central question of the thesis asks:

How do government risk perceptions of irregular migration, asylum seeking and people with an irregular migration status and asylum seekers affect relevant legal and policy frameworks in Australia and the United Kingdom?

The examination of the relevant laws and policies implemented from 2001 to 2022 by these governments is conducted through a new theoretical framework that is drawn from approaches to risk developed by Ulrich Beck and Mary Douglas. Using risk theory in the examination of government perceptions of irregular migrants and asylum seekers makes a new contribution to existing literature by critically engaging with how these risk perceptions influence applicable law and policies and the consequential physical and legal outcomes for society and irregular migrants and asylum seeker alike.

The analysis is given deeper insight through a series of elite interviews conducted with civil servants that have developed and implemented these laws and policies. Lawyers from both jurisdictions that have advocated for people with an irregular migration or asylum status as they navigated their way through the migration frameworks were also interviewed.

The thesis is structured around three thematic perceived risks that have become prevalent concerns for government when addressing irregular migration and asylum seeking: security risk, economic risk, and social risk. They are followed by a chapter that examines the consequences of the steps taken to mitigate these three risk types that irregular migrants or asylum seekers are said to pose to Australia and the United Kingdom. Publicly, governments had hoped reassert control while allowing and promoting desired cross-border movements. It is argued in the thesis that because of these steps to mitigate risk, security, economic, and social controls have turned applicable frameworks into risk filtering regimes designed to separate the “risky” from “non-risky”. Meanwhile, the very attempt to control the “risky” migrant or asylum seeker has created a new set of problems reinforcing perceptions that migration and

asylum is out-of-control and challenges the previous purported claims of governmental adherence to human rights and liberal standards.

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Abbreviations, Acronyms and Figures

| Abbreviation & Acronym | Meaning |
|-----------------------------------|---|
| AI Act | Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (UK) |
| ALO | Airline Liaison Officer |
| ATCS Act | Anti-terrorism, Crime and Security Act 2001 (UK) |
| Code | Asylum Seeker Code of Behaviour |
| Committee | House of Lords Select Committee on the Sweating System |
| Cth | Commonwealth (of Australia) |
| DHA | Department of Home Affairs |
| EU | European Union |
| FoI | Freedom of Information |
| IAN Act | Immigration, Asylum and Nationality Act 2006 (UK) |
| IDC | Immigration Detention Centre |
| MoU | Memorandum of Understanding |
| NHS | National Health Service |
| ODA | Official Development Assistance |
| OCG | Organised Criminal Gangs |
| OPC | Offshore Processing Centre |
| PIL Act | Pacific Islanders Labourers Act 1901 (Cth) |
| PNG | Papua New Guinea |
| RLON | Risk and Liaison Overseas Network |
| RPAT | Risk Potential Assessment Tool |
| RPC | Regional Processing Centre |
| SRSS | Status Resolution Support Scheme |
| UK | United Kingdom of Great Britain and Northern Ireland |
| UKBA | UK Border Agency |
| WAP | White Australia Policy |

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Chapter One – Introduction

Introduction

This thesis will consider the laws and policies that relate to irregular migrants and asylum seekers in Australia and the United Kingdom (UK) through the lens of risk theory. The analysis of relevant law and policy in both jurisdictions is organised into three thematic risk perceptions that governments have towards irregular migrants and asylum seekers: security, economic, and social risk. The thesis will approach these three themes using a new risk framework constituted from two approaches to risk from within sociological risk theory. It is argued here that irregular migrants and asylum seekers are perceived by government as a challenge to their competence to deliver upon state guarantees of physical and social security in a globally insecure environment. In response, legal and policy frameworks have been altered to introduce forward leaning risk filtering rather than entirely defensive policies, but now also deliver an overall loss-of-control, unaccountability, and harm.

The concept of “risk” is addressed more fully in Chapter Two. For now, risk may be thought of as a “conceptual umbrella” covering all sorts of events that individuals, institutions, and societies could experience with minor to catastrophic outcomes. As a modern approach to an event and as a conceptual tool, risk is used by societies to reflect upon issues of concern.¹ As shown later in this thesis, governments have employed risk as a tool to frame irregular migration and asylum seeking, their responses, and to justify new policy and legislative measures. Therefore, this thesis focuses on the multiple ways that irregular migration and asylum seeking is perceived to constitute a risk by government mitigated by new policy, legislation, and operational solutions.

¹ François Ewald, ‘Risk in Contemporary Society’ (1999) 6 Connecticut Insurance Law Journal 365, 366.

This thesis contributes to academic knowledge regarding irregular migration and asylum seeking in two important ways. It brings together two related theoretical approaches to risk to create a new framework that evaluates governmental risk perceptions of irregular migrants and asylum seekers. Second, it adds to the existing literature in the migration and asylum studies field by including “risk” and “risk perception” as a new lens through which to view irregular migration and asylum frameworks.

1.1 Context of this research

The initial conception of this research topic began in Australia in 2012 and 2013. In that period, some 17,000 and 20,000 people each year, respectively, attempted to cross the Indian Ocean and reach the furthest parts of Australia’s north-west territory. Their arrivals represented a large increase in irregular maritime arrivals over previous years which had numbered in the tens.² Despite these arrivals representing only a fraction of the approximately 72 million people forcibly displaced around the globe,³ the domestic political reaction was fierce with significant ramifications for future governments and irregular migrants and asylum seekers alike. Yet the approximately 62,000 people who were present in the country despite overstaying their visas and the 20,000 of those working illegally received barely a mention.⁴

Then, in the northern hemisphere summers of 2015 and 2016, millions of people moved from areas of conflict and deprivation in North Africa and the Middle East into Europe. The world looked on in horror as authorities, seemingly overwhelmed, scrambled to respond. In 2015, 1.32 million and in 2016, 1.26 million people sought asylum in Europe. This represented a 119 per cent and a 101 per cent

² Janet Phillips, ‘Boat Arrivals and Boat “Turnbacks” in Australia since 1976: A Quick Guide to the Statistics’ (Parliament of Australia, Parliamentary Library 2017) 2.

³ United Nations High Commissioner for Refugees, ‘Global Trends Forced Displacement in 2018’ (United Nations 2019) 2.

⁴ Commonwealth, *Legal and Constitutional Affairs Legislation Committee - Senate Estimates*, Senate, 23 May 2017, 29-30.

increase, respectively, in the number of asylum applications on 2014 levels.⁵ Even in 2021 as this thesis was drafted, amid a large increase in people attempting to reach the UK by small boats,⁶ more people died attempting to cross the English Channel.⁷ The parallels between the situations in Australia and the UK regarding the method of arrivals, deaths at sea, and government proposed or actual operational solutions of “push-backs” and offshore processing are stark.⁸

By far the largest number of people making their way to Australia in 2012-13, Europe in 2015-16 and the UK in 2021 were from conflict zones in South Asia, the Middle East, and Africa.⁹ People arriving from these conflict zones by unconventional maritime and land means appeared to manifest concerns that irregular migrants and asylum seekers were a danger to Australian and European security, if not social and economic well-being. To address these perceived risks, governments embarked on seemingly ad-hoc and unconnected legislative and policy changes that created harmful consequences for migrants, asylum seekers, government, and associated policy.

Outside these visually and politically dramatic maritime and land arrivals, thousands more people arrived as passengers by air.¹⁰ More again were found to be

⁵ Eurostat, ‘Number of Asylum Applicants’ (*Asylum statistics*, 20 March 2018) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Source_data_for_tables_and_figures_.28MS_Excel.29> accessed 3 April 2018.

⁶ ‘Number of Migrants Crossing Channel to UK Tops 1,000 in New Daily Record’ *BBC News* (12 November 2021) <<https://www.bbc.com/news/uk-59257107>> accessed 4 December 2021.

⁷ ‘Channel Deaths: More Boats Arrive after 27 People Drown’ *BBC News* (25 November 2021) <<https://www.bbc.com/news/uk-59412329>> accessed 4 December 2021.

⁸ Liberal-National Coalition, ‘The Coalition’s Operation Sovereign Borders Policy’ (2013) Election manifesto; Home Office, ‘New Plan for Immigration: Policy Statement’ (UK Government 2021) CM 412.

⁹ Australian Government Department of Immigration and Border Protection, ‘Asylum Trends - Australia: 2012-13 Annual Publication’ (2013) 24 <<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-2012-13.pdf>> accessed 4 April 2018; Eurostat, ‘Countries of Origin of (Non-EU) Asylum Seekers in the EU-28 Member States’ (*Asylum statistics*, 15 March 2017) <[http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Countries_of_origin_of_\(non-EU\)_asylum_seekers_in_the_EU-28_Member_States,_2015_and_2016_\(thousands_of_first_time_applicants\)_YB17.png&oldid=330749#ilelinks](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Countries_of_origin_of_(non-EU)_asylum_seekers_in_the_EU-28_Member_States,_2015_and_2016_(thousands_of_first_time_applicants)_YB17.png&oldid=330749#ilelinks)> accessed 3 April 2018; Georgina Sturge, ‘Asylum Statistics’ (House of Commons Library 2021) Briefing Paper SN01403 15.

¹⁰ Department of Home Affairs, ‘Onshore Humanitarian Program 2018–19’ <<https://www.homeaffairs.gov.au/research-and-stats/files/ohp-june-19.pdf>> accessed 21 December

working outside their leave to enter or visa conditions.¹¹ However, it does not appear that a person's migration status alone determines how their risk is perceived. Instead, their method of arrival by air or by sea and whether that person decided to move east towards Australia or west towards Europe and the UK has dictated the perception of their risk and the response to it by the receiving state. As will be explored in this thesis, the perception and response have resulted in differentiations between migrant and asylum seeker cohorts and widely varying material and legal outcomes.

The research question in this thesis limits the object of analysis to irregular migration, asylum seeking, and people seeking protection or with an irregular migration status. The term "irregular migrant" refers to a person's migration status as defined by the legal framework of the jurisdiction in which that person is located. This migration status is likely to include one of, or a combination of, the eight principal ways a person may acquire that status as defined by the Migration Policy Institute. These are:

Illegal entry (illegal border crossing); entry using false documents; entry using legal documents, but providing false information in those documents; overstaying a visa-free travel period or temporary residence permit; loss of status because of non-renewal of permit for failing to meet residence requirements or breaching conditions of residence; being born into irregularity; absconding during the asylum procedure or failing to leave a host state after a negative decision and; a state's failure to enforce a return decision for legal or practical reasons (toleration).¹²

The term "irregular migration" is similarly used throughout this thesis. It is sometimes referred to within literature, governmental rhetoric, and media as "clandestine migration" or "illegal migration". It refers to a person's physical movement outside regular migration channels or procedures. More specifically the

2019; Bastian Vollmer, 'Irregular Migration in the UK: Definitions, Pathways and Scale' (Migration Observatory 2011) 3.

¹¹ Department of Home Affairs, 'Annual Report 2018-19' (2019) Annual Report 209; 'Employers: Illegal Working Penalties' (GOV.UK) <<https://www.gov.uk/government/collections/employers-illegal-working-penalties>> accessed 21 March 2020.

¹² Christal Morehouse and Michael Blomfield, 'Irregular Migration in Europe' (Migration Policy Institute 2001) 4.

meaning applied in this thesis is drawn from the International Organization for Migration's definition: 'Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination.'¹³

Using "migrant" to label people in any of the contexts described above is subject to contested practice. In the varying public policy and public debates, usage of the term is variable and loose according to Anderson and Blinder because of all the possible permutations of inclusions and exclusions.¹⁴ In the media,¹⁵ and academia,¹⁶ debate exists as to whether using "migrant" in any association with a person forced, directly or indirectly, to move is appropriate. It has been suggested that in such a context it alludes to a free choice in their movement and obscures the harm and suffering the person is experiencing. In this thesis using "migrant" is not meant as a value judgement of the person's reasons or need to move nor minimise harms they are suffering. Instead, it is used broadly to describe the multiple ways and reasons a person may move across border/s or be resident within them.

It is also important to be clear that irregular migrants must be distinguished from asylum seekers and refugees. Each of the three terms are often used interchangeably with the other, particularly within governmental rhetoric in news media settings and within policy and practices. In this thesis the term "asylum seeker" is defined in alignment with the United Nations High Commissioner for Refugees' (UNHCR) definition: 'an individual who is seeking asylum, but whose claim has not yet been finally decided on.'¹⁷ However, asylum seekers are persons that are seeking

¹³ 'International Migration Law - Glossary on Migration' (International Organization for Migration 2019) 34 114.

¹⁴ Bridget Anderson and Scott Blinder, 'Who Counts as a Migrant? Definitions and Their Consequences' (Migration Observatory 2019) Briefing 5.

¹⁵ Adam Taylor, 'Is It Time to Ditch the Word "Migrant"?' *Washington Post* (24 August 2015) <<https://www.washingtonpost.com/news/worldviews/wp/2015/08/24/is-it-time-to-ditch-the-word-migrant/>> accessed 6 March 2022.

¹⁶ Roger Zetter, 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization' (2007) 20 *Journal of Refugee Studies* 172.

¹⁷ UN High Commissioner for Refugees, 'The 10-Point Plan in Action, 2016 - Glossary', *The 10-Point Plan in Action, 2016 Update* (UNHCR 2016) 279.

international protection and are presumptive refugees. Also, from Art 31 of the 1951 Refugee Convention,¹⁸ refugees should not be penalised for an irregular entry to a host state. Therefore, asylum seekers should not be considered irregular migrants even though their mode of entry to the host state may not be considered regular.

A “refugee”, by contrast, is a person who has met the criteria of a refugee as defined by the applicable international,¹⁹ or regional refugee instrument,²⁰ or in national law and is recognised as such by the host state. This is likely to be a person who cannot return to their country of origin owing to a well-founded fear of persecution or serious and indiscriminate threats to life, physical integrity, or freedom.²¹

1.1.1 Scope and demarcation of this research

As comparative case studies, this research will use the risk perceptions of the Australian and UK governments and their responses to irregular migrants and asylum seekers via applicable legal, policy and operational measures.²² For a comparative case study to be valid, Macfarlane suggests that there should be ‘simultaneously a good deal of overlap and similarity, but also considerable differences ... we need examples of countries which have some deep similarities ... but also very deep differences.’²³

Australia and the UK were chosen for comparative analysis because of their similar political architecture and traditions and historically similar legislative and law-making processes. Largely similar judicial systems further complement these similarities and the role played by the judicial branch of government within their

¹⁸ Convention Relating to the Status of Refugees 1951 (United Nations, Treaty Series, vol 189, p 137).

¹⁹ Convention relating to the Status of Refugees 1951 (United Nations, Treaty Series, vol 189, p 137).

²⁰ Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons 1989 (89/13/Rev1).

²¹ UN High Commissioner for Refugees (n 17) 283.

²² The perceptions of the state and territory governments in Australia and the devolved administrations in the UK are not considered.

²³ Alan Macfarlane, ‘To Contrast and Compare’ in Vinay Kumar Srivastava (ed), *Methodology and fieldwork* (Oxford University Press 2004) 102 & 109.

respective constitutional arrangements. However, they also possess sufficiently differentiated characteristics to meet Macfarlane's conditions, thus validating Australia and the UK as case studies.

The differences extend to social histories, the settler and settled, and their geographies both in terms of land mass size, geographic locations, and geo-political orientations. More recent divergences in migration policies can be observed in Australia's turn toward Asia and the UK's turn away from the Empire. The legacy of the UK's European Union (EU) membership on its laws and policies also differentiates it from Australia. However, the comparison in this study demonstrates that, despite each jurisdiction starting from different policy, legislative, and operational positions, and taking different paths over the years, governmental framing of irregular migration and asylum seeking as risk has driven them towards policy and political alignment.

Both countries were also selected because of the personal insights that I bring. I have the practical experience and knowledge gained through working in both countries' legal and migration policy-making sectors while in private and civil service positions. This gave me greater understanding of governmental and administrative policy making, implementation, enforcement practices, theories, and methodology.

The relevant analysis period for this research covers the years 2001 to mid-2022 inclusive. The year 2001 was selected as a starting point because it represented an inflection in the political, legal, and policy nature of irregular migration and asylum seeking. The terror attacks that occurred on the 11th of September 2001 set the course for risk to "colonise" migration and asylum policy and confront political leaders and bureaucrats alike.²⁴ Terrorism especially has been distinguished from other earlier risk by its unpredictability, its resistance to deterrence, and potential to occur in any place, at any time and, to any society.²⁵ Governments also began to understand that modern

²⁴ Will Jennings, 'At No Serious Risk? Border Control and Asylum Policy in Britain, 1994-2004' (Centre for Analysis of Risk and Regulation, London School of Economics and Political Science 2007) Discussion Paper No. 39 2.

²⁵ Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009) 38–39.

risks more broadly are qualitatively different from earlier periods as they are generated from new technologies and policies that brought about modern society.²⁶ This thesis argues that the 2001 terror attacks and the recognition of the modern characteristics of risk by government, resulted in a marked change in governmental risk perceptions regarding irregular migration and asylum seeking dramatically affecting relevant frameworks. Not least of which has been the securitisation of physical and social borders across the Global North, in response to the characteristics of terror, having significant effects on those navigating them. In 2001 Australia and the UK held general elections providing the governments with new opportunities to review policies in the wake of the terror attacks.

The timeframe extends past the end of 2020, which marked the final transition of the UK out of the EU. The EU plays a role on behalf of member states in regulating and managing irregular migration and asylum. By analysing the UK's irregular migration and asylum policy development and implementation while an EU member, places it within the overall EU migration policy framework. By extending the analysis into 2022 and the immediate aftermath of the UK's departure from the EU, it will provide an interesting period to study as the British government pursues the development and implementation of a new migration and asylum regime outside EU strictures.

1.2 Research aims, objectives and questions

The aims of this research are to:

- analyse and evaluate the role of risk in Australian and UK governments' perceptions of irregular migration, asylum seeking and people with an irregular migration status and;

²⁶ Filip Gelev, "Risk Society" and the Precautionary Approach in Recent Australian, Canadian and UK Judicial Decision Making' (York University 2009) Research Paper 5/2009 6.

- add to existing literature regarding Australian and UK laws and policies regarding irregular migration, asylum seeking and people with an irregular migration status through the lens of sociological theories of risk.

These research aims will be achieved through the following objectives:

- identify the factors that create and constitute Australian and UK government risk perceptions and;
- assess the impact that government risk perceptions may have on law and policies applicable to irregular migration, asylum seeking and people with an irregular migration status or asylum seekers.

With these aims and objectives in mind, the main research question addressed in this thesis is:

How do government risk perceptions of irregular migration, asylum seeking and people with an irregular migration status and asylum seekers affect relevant legal and policy frameworks in Australia and the United Kingdom?

To answer this main research question, the following sub-questions as set out in the chapters of this thesis need to be addressed as follows:

Chapter Two examines sociological risk theory from risk society and socio-cultural perspectives. This area of research will ask:

- What might each selected risk theory say about government risk perceptions and irregular migration and asylum seeking?
- How might an integrated or synthesised risk theoretical framework be applied to studying irregular migration and asylum seeking?

Chapters Three, Four, and Five apply the risk theory framework to the risk themes that identified in this research namely: security, economic, and social risk. Each

of these risk themes is analysed in the respective chapters and raises the following questions:

- How has that risk been comparatively constituted by Australian and UK governments?
- Why have the Australian and UK governments constructed irregular migrants and asylum seekers as either a security, economic, or social risk?

Chapter Six will examine what the effects of risk have been on both the legal and policy frameworks of irregular migration and asylum in Australia and the UK as well as the physical and rights position of irregular migrants and asylum seekers in each jurisdiction by discussing:

- What effect does risk have on migration frameworks and the legal position of irregular migrants and asylum seekers in Australia and the UK?

By answering the main research question and its sub-questions, this research will make original contributions to the field of sociological studies of risk by applying a cross-disciplinary integrated risk framework from Ulrich Beck's risk society and Mary Douglas's sociocultural risk. This framework both answers the call of risk authors to develop such approaches and demonstrates the value in pursuing complementary approaches to risk theory than the siloed methods of current literature.²⁷ This thesis will also extend existing literature that analyses irregular migration and asylum seeking by adding risk as a new type of lens to examine these global issues.

1.3 Discussion on terminology

This section will discuss the key phrases and concepts used in answering the research questions posed by this thesis. The following discussion is in addition to the central

²⁷ Peter Taylor-Gooby and Jens O Zinn, 'Current Directions in Risk Research: New Developments in Psychology and Sociology' (2006) 26 Risk Analysis 397, 408.

terms of irregular migrant, asylum seeker, and refugee that were defined earlier in section 1.1. This thesis explores risk and its perception by the Australian and UK governments. The concept of “risk” is expanded on in Chapter Two however, to restate Ewald’s view of risk, risk is now used as a conceptual umbrella that covers all sorts of events that may affect individuals or groups in small or significant ways. Risk has become a single point upon which society today question, analyse themselves while identifying their values and limits.²⁸

This research also brings the issue of “perception” to the analysis. Rather than performing a quantitative risk analysis, this thesis takes a qualitative approach by examining why the government perceives irregular migrants and asylum seekers as issues of concern. Perception is about how we recognise and interpret information received both directly and inferred from our environment. Perceptions are important to understand because they can influence how we respond to the sense we have made of the information we have received.²⁹ This thesis argues that by understanding how governments perceive risk, or make sense of information about irregular migrants and asylum seekers, we will better understand why the relevant legal and policy frameworks are put in place and predict future government responses.

Another term to clarify is “government”. Both Australia and the UK follow the Westminster system of responsible government characterised by the separation of its three constituent branches: the executive, the legislature, and the judiciary. The “government” in this thesis refers to the executive branch of government constituted by the secretaries and ministers of state. It also refers to the departments of state and their agencies which advise ministers, develop, and implement government policy. It is the perceptions that the executive branch of government forms of irregular migrants and asylum seekers that are the subject of analysis in this thesis. The views of individual legislatures and judicial opinions delivered in the context of certain issues

²⁸ Ewald (n 1) 366.

²⁹ Walter J Freeman, ‘The Physiology of Perception’ (1991) 264 *Scientific American* 78.

are discussed where relevant to highlight the contestable nature of risk perceptions and risk knowledge regarding irregular migrants and asylum seekers.

1.4 Risk and literature review

This thesis engages with the existing literature and debate on risk and risk perceptions by analysing select sociological approaches to risk. It then suggests a framework that applies risk as a lens through which governmental policy and actions towards irregular migration and asylum seeking can be considered. Finally, it makes an original contribution to existing academic discourse by bringing together debates on risk with those regarding motivations for government actions towards irregular migration and asylum seeking. As such, it offers a new perspective on the development and implementation of irregular migration and asylum policy and legislation in Australia and the UK.

The first section discusses the lead aspects to risk as it relates to irregular migration and asylum seeking identified during this research and is followed by sections that review relevant risk literature. It will also provide the rationale for selecting risk as an appropriate theoretical lens through which to analyse government perceptions of irregular migration and asylum seeking. It will then present a purposive review of existing literature considering governmental policies towards irregular migrants and asylum seeking. Finally, the section will examine the literature that considers how risk has become a feature of government policy and policy-making today.

1.4.1 Aspects of risk within this thesis

In this thesis, the multiple aspects to risk as they manifest regarding irregular migration and asylum seeking are analysed for their influence on applicable laws and policies. It is suggested here that this research sheds new light on the depth and prevalence of risk in the formulating and advocacy for policy change regarding irregular migration

and asylum seeking. Within each of the overall themes and consequences discussed later in this thesis, several prominent aspects of risk were identified in the politics of irregular migration, asylum seeking, and the communication and language used about them. Risk was also identified as an important element of how irregular migration and asylum seeking are controlled in both Australia and the UK, as well as in the day-to-day implementation of relevant policies. It will also be demonstrated how leaders and officials, have structured relevant frameworks so that perceived risks from irregular migration and asylum seeking are redistributed away from their governments, and towards other states, individuals within the community, and irregular migrants and asylum seekers themselves.

Risk has become an organising principle that guides the framing and conduct of irregular migration and asylum seeking politics and the public debate around them. The content of actual or potential harms, or risks, that irregular migration or asylum seeking could manifest are constructed in these debates, as is their likelihood to occur. These debates also adjudicate whether the risk, sometimes of government's own making, has been adequately mitigated by new policies. This is a standard that must be met for a government to be publicly deemed competent. The language of risk in the politics of irregular migration and asylum seeking also enables governments to transfer responsibility for harms produced by earlier policy onto irregular migrants and asylum seekers. Blame is one method used to transfer such responsibility from governments onto irregular migrants and asylum seekers. Viewed from the perspective of risk, blame can reassert or affirm governments' preference for order and adherence to established migration and asylum procedures.

This research also identified the use of alternative risk perspectives to counter the predominant government risk narratives. Demonstrating risk as a social construction, groups outside government were active, and occasionally successfully, in producing alternative risk knowledge that shifted political debates. That is, information and perspectives about risks in the context of asylum seeking that differed from that produced by government. The alternative risk knowledge was generated to oppose

government produced information and perspectives so that political debates on asylum would shift away from government framing. These groups operating inside and outside the parliamentary process, were able to emphasise other harms such as health, financial, and reputational risks as greater than those potentially posed by asylum seekers.

It has also become clear through this research that risk is a fundamental aspect of the design and execution of irregular migration and asylum seeking policy developed during the period of analysis of this thesis. Generally, both civil services were found to have developed policies around the concepts of risk and risk management. Practices and procedures have also been implemented to ensure ministers are appropriately advised of risks associated with new policy proposals. Overall, the existence of the risk policies and procedures point towards a conscious effort to bureaucratise risk and its management. By codifying statements of risk, governments set out their view of the world, its future state, and what constitutes potential harms to that future state.

This thesis considers risk as expressing a government worldview, one which runs through a variety of strategy, position, and policy statements. Risk, as used in these documents is done for two purposes. First, risk is used to construct the perceived harms irregular migration and asylum seeking could pose to each jurisdiction. Placed within the thematic chapters of this thesis, perceived security, economic, and social harms caused by irregular migration and asylum seeking to Australian and British society are articulated and given substance. But secondly, articulating these risks and attributing them to irregular migration and asylum seeking has a performative purpose. Risk as a performative act serves as justification for imposing new forms of regulations that mitigate future potential harms set out in the various policy documents. Imposing new mitigating regulations would be impossible without establishing the risk in the first place.

Policy papers are not the only way that perceived irregular migration and asylum seeking risks were communicated by government to the wider Australian and British audience. Indeed, political leaders regularly use the language of risk when talking in public about irregular migration and asylum seeking. As shown in the extracts provided in the thematic chapters, when parliament debates new legislation, politicians have invoked the language of risks from irregular migration and asylum to help establish their case for new restrictive measures. Also shown in these chapters, is governmental risk language in news media that communicates the alleged dangers of irregular migration and asylum seeking to the Australian and British communities. This risk language is also used in news media reports on damage allegedly caused by irregular migrants or asylum seekers to places of detention, or about their journeys to Australia and the UK by transport methods that were dangerous to themselves and/or their potential rescuers.

A final aspect of risk presented within this thesis is in allocating risk responsibilities by applicable law and policies. The current construction and management of irregular migration and asylum seeking risk, has seen governments of both jurisdictions amend their applicable frameworks to absent themselves from risk responsibility. But like a commodity, the burden of risk has been traded with other states, forced upon individuals within the community, and irregular migrants and asylum seekers. Some states entered negotiations with Australia and the UK and were compensated for accepting risk responsibility for irregular migrants and asylum seekers. This may have involved taking responsibility for migration enforcement or hosting irregular migrants and asylum seekers for Australia and the UK. But no such bargain has been reached with individuals, irregular migrants or asylum seekers who similarly had risk responsibilities transferred to them. This transference aspect to risk has forced community members to take-on additional risks when renting premises or employing a person. Similarly, irregular migrants and asylum seekers have become increasingly responsible for managing their health and welfare risks. These aspects of risk that were uncovered during the analysis of the data gathered throughout this research suggests that risk has touched multiple points within applicable law and

policy frameworks. The following sections present a review of existing literature regarding irregular migration and asylum seeking and how applying a risk lens adds new original perspectives to the existing academic debates.

1.4.2 Risk as a unit of analysis

This research is about the risk perceptions Australian and UK governments have towards irregular migrants and asylum seekers and the actions they take in response to these perceptions. As an examination of people, their relationships, and the institutions in which they function, it is argued here that a sociological approach to risk best fits this research. The distinctive contribution of this approach comes from its emphasis on the role of shared ideas, the normative frameworks derived from cultural and social factors to the understanding and prioritisation of risk and responses to them.³⁰ This thesis seeks to place irregular migration and asylum seeking among the issues considered in the literature when applying a sociological risk analysis.³¹

The alternative economic approach takes risk as a measurable object that can be counted and predicted. As this research is not a technical exercise that seeks to quantify or measure irregular migration or asylum seeking, using an economics-based approach is not appropriate. While the significant body of literature regarding economic theories of risk is acknowledged,³² in keeping with the social-scientific nature of this research, this literature review will confine itself to the debates within the sociological approaches to risk.

Traditional sociological analysis seeks to understand the effects of modernity and industrialisation on human society.³³ That analysis has not been confined to large-

³⁰ Taylor-Gooby and Zinn (n 27) 401.

³¹ Other social issues include environmental concerns, health issues and technology impacts. Deborah Lupton, 'Sociology and Risk' in Gabe Mythen and Sandra Walklate (eds), *Beyond the risk society: critical reflections on risk and human security* (Open University Press 2006) 15.

³² Taylor-Gooby and Zinn (n 27) 401.

³³ Anthony Giddens and Simon Griffiths, *Sociology* (5th edn, Polity 2006) 4.

scale issues but includes studying changes to more personal and intimate relations.³⁴ Focusing on the effects of industrial development on macro and micro levels of society has tended to result in families, class, gender, and ethnicity being the units for this analysis.³⁵ However theorists including Mary Douglas and Ulrich Beck have developed an additional unit or lens of analysis within the sociological tradition, that of risk.

Although working separately, Douglas and Beck developed this new sociological perspective after identifying risk as a pervasive concern in today's social and political life.³⁶ Risk definition, calculation, and management had been a technical matter primarily of experts and outside lay-social concern. However, the Chernobyl disaster, mad cow disease, and climate change have revealed the inherent shortcomings of a technical-only risk approach to complex issues.³⁷ By drawing-in sociological analysis, new dimensions are added to risk debate. Freudenberg and Pastor concluded as much after their review of risk debates from individual, political, and communication perspectives.³⁸ They concluded that adding sociological perspectives to risk research and vice versa, is worthwhile precisely because it allows for considering social structural factors in mediating risk.³⁹

This existing literature on risk as an analytical lens firmly establishes it as a tool in sociological analysis following recent broad social and economic developments. Applying risk as a lens will extend current scholarship by shifting focus towards those factors that create government perceptions of irregular migration and asylum seeking as a risk and its consequences. The following section will consider how risk has been applied to social issues and will place irregular migration and asylum seeking within this general debate regarding risk in society today.

³⁴ *ibid* 25–26.

³⁵ Gabe Mythen, 'Sociology and the Art of Risk' (2008) 2 *Sociology Compass* 299, 299.

³⁶ Peter Taylor-Gooby and Jens O Zinn, 'The Current Significance of Risk' in Peter Taylor-Gooby and Jens O Zinn (eds), *Risk in social science* (Oxford University Press 2006) 8.

³⁷ Eugene A Rosa, Ortwin Renn and Aaron M McCright, *The Risk Society Revisited* (Temple University Press 2014) 33.

³⁸ William R Freudenberg and Susan K Pastor, 'Public Responses to Technological Risks: Toward a Sociological Perspective' (1992) 33 *The Sociological Quarterly* 389.

³⁹ *ibid* 405.

1.4.3 Applying the risk lens

Sociological risk research has focused on health and environmental risks, and the risks associated with technology and scientific advancement.⁴⁰ Risk theory has more recently been applied to examine modern personal relations,⁴¹ from criminology to terrorism.⁴² The following is a review of some existing literature that considers these social issues through the two risk approaches applied here and relates their key findings to this research.

Risk society

The risk society thesis has a defining place within risk literature. The theoretical development led by Ulrich Beck and contemporaries such as Anthony Giddens (whose contributions to the theory is discussed in section 2.2.1) advanced the proposition that the world today 'is increasingly occupied with debating, preventing and managing risks that it itself has produced.'⁴³ Giddens referred to the risks as 'manufactured risk...risk created by the very progression of human development.'⁴⁴ Given risk society's focus on how human-induced risk is identified and managed, research has tended to focus on the various changes risk brings about at a social and individual level.

Beck's risk society theory suggests that modern industrial societies are characterised by an increased awareness of and concern for various risk types, such as environmental, technological, social and most recently, terror risks.⁴⁵ Beck argues that the shift in focus from traditional industrial society, which is concerned with economic production and distribution, to a society where the main concern is risk management

⁴⁰ Lupton (n 31) 15.

⁴¹ Jane Lewis, 'Perceptions of Risk in Intimate Relationships: The Implications for Social Provision' (2006) 35 *Journal of Social Policy* 39.

⁴² Gabe Mythen and Sandra Walklate, 'CRIMINOLOGY AND TERRORISM: Which Thesis? Risk Society or Governmentality?' (2006) 46 *The British Journal of Criminology* 379.

⁴³ Ulrich Beck, 'Living in the World Risk Society' (2006) 35 *Economy and Society* 329, 332.

⁴⁴ Anthony Giddens, 'Risk and Responsibility' (1999) 62 *Modern Law Review* 1, 4.

⁴⁵ Beck, *World at Risk* (n 25) 34–46.

and mitigation, represents a fundamental transformation in the way we think about and organise society.⁴⁶

A key feature of risk society is the debate regarding the distribution of risk across society. Beck appears to suggest that modern risks potentially affect all equally.⁴⁷ But later notes that risk burdens are disproportionately borne by marginalised and vulnerable groups.⁴⁸ This distribution is said to be a result of modern risks being created by powerful actors such as corporations and governments. These actors are often able to externalise the costs of these risks onto the marginalised and vulnerable groups who in-turn lack the power and resources to protect themselves.

This leads to a second feature of Beck's thesis. Traditional institutions of society such as the state, free market or family, are said to be ill-equipped to deal with risks associated with modern industrial society.⁴⁹ Beck argues that these institutions are focused on a "calculative rationality" that focuses on maximising economic efficiency and growth, rather than on addressing the complex and interrelated risks that threaten society today.⁵⁰ This leads to situations where risks are ignored or downplayed, rather than being addressed in a comprehensive and proactive way and forces people to deal with risk individually.⁵¹

Beck goes on to argue that the transition towards risk society had led to a "cultural change" in which people are becoming more aware of and concerned with risk causes and consequences.⁵² The growth of risk awareness Beck labels as "reflexivity". Because of this awareness, people are said to be starting to demand that risks be addressed in a more comprehensive and proactive way. This cultural change is manifesting itself in the form of new social, environmental, and anti-globalisation

⁴⁶ Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992) 20.

⁴⁷ *ibid* 36.

⁴⁸ *ibid* 35–36.

⁴⁹ *ibid* 22.

⁵⁰ *ibid* 29–30.

⁵¹ *ibid* 127.

⁵² *ibid* 56–59.

movements called sub-politics.⁵³ Their aim is to advocate for more sustainable environment and equitable distribution of risk across society.

There has been some criticism of Beck's thesis for not providing sufficient empirical investigation during the development of risk society.⁵⁴ However, over time it could be argued that criticism to be waning. Now, a wide range of social issues have been explored through a risk society framework such as labour, international relations, crime and terrorism, and environmentalism and climate change.⁵⁵ Some of the literature that explores these social issues through a risk society lens are discussed below.

The global consequences of technological developments in environmental matters have been the subject of sustained academic consideration.⁵⁶ Bulkeley examined the role risk politics played in formulating and debating Australian climate change policy. It was argued that risk society could usefully explain climate change as a newly emergent novel risk because of the way it challenges existing social structures. However, caution is expressed regarding the development of sub-political movements as a new phenomenon that Beck suggests is a characteristic of modern society. There is evidence, according to Bulkeley, that such movements have been a feature of politics and public policy for some time and are not unique to the current period.⁵⁷ Here sub-political movements specific to asylum seeking were found to play an important role in political debates within Australia and the UK. Their contribution towards developing alternative risk knowledge and narratives to that provided by the respective governments is discussed in Section 6.5 of this thesis.

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⁵⁴ Iain Wilkinson, 'Social Theories of Risk Perception: At Once Indispensable and Insufficient' (2001) 49 *Current Sociology* 1, 15.

⁵⁵ Mads Peter Sørensen and Allan Christiansen, *Ulrich Beck: An Introduction to the Theory of Second Modernity and the Risk Society* (1st ed., Routledge 2013) 124; Ulrich Beck, 'Foreword: Risk Society as a Political Category' in Eugene A Rosa, Ortwin Renn and Aaron M McCright (eds), *The Risk Society Revisited* (Temple University Press 2014) xiii–xiv.

⁵⁶ Mike Hulme, 'Cosmopolitan Climates' (2010) 27 *Theory, Culture & Society* 267; John Urry, *Climate Change and Society* (Polity Press 2011).

⁵⁷ Harriet Bulkeley, 'Governing Climate Change: The Politics of Risk Society?' (2001) 26 *Transactions of the Institute of British Geographers* 430, 442–43.

Brian Wynne also provides a useful study of the social impacts produced from the intersection between global risk and society's perception of and response to risk. Wynne examined Cumbrian sheep farmers' lay knowledge of Chernobyl radioactive fallout on their farms and their response to government scientific claims about its impact. Shortcomings in scientific work, an understating of uncertainty and, discounting local knowledge propelled the farmers to contest the monopoly scientists claimed to have over relevant risk knowledge regarding the fallout on their farms. From this study, Wynne argued that the public's response to scientific risk knowledge is built on the level of trust in and credibility of scientific institutions. This trust and credibility are contingent upon social relationships, networks, and identities that are not themselves free of social interest.⁵⁸

As the above research shows, there are relevant lines of inquiry when examining society's perception and management of the consequential risks generated by technological progress. This is pertinent to examining the role that technology and other social developments play in creating and enabling irregular migration and asylum seeking. Some authors have already examined the role of climate change in major forced displacements,⁵⁹ or the role of innovations in transport in these issues.⁶⁰ However, there remains a gap in the literature to be explored in the thematic chapters of this thesis relating to government perception of risk when role of technological progress in irregular migration and asylum seeking is considered⁶¹

⁵⁸ Brian Wynne, 'Misunderstood Misunderstanding: Social Identities and Public Uptake of Science' (1992) 1 *Public Understanding of Science* 281, 282.

⁵⁹ Etienne Piguet, 'Climate Change and Forced Migration' (United Nations High Commission for Refugees 2008) Working Paper 153 8; Stephen Castles, 'Environmental Change and Forced Migration: Making Sense of the Debate' (United Nations High Commission for Refugees 2002) Working Paper 70; Douglas K Bardsley and Graeme J Hugo, 'Migration and Climate Change: Examining Thresholds of Change to Guide Effective Adaptation Decision-Making' (2010) 32 *Population and Environment* 238; K Warner and others, 'Climate Change, Environmental Degradation and Migration' (2010) 55 *Natural Hazards* 689.

⁶⁰ Allan M Williams and Vladimir Baláž, 'Low-Cost Carriers, Economies of Flows and Regional Externalities' (2009) 43 *Regional Studies* 677.

⁶¹ Wynne (n 58) 282.

The risk society's macro risk narrative has been criticised for failing to explain or capture risk as understood and experienced by a person at a micro level.⁶² However, the "individualization" concept in risk society may provide a more promising area of research which explores how a person experiences and manages risk today. Allen and Henry examined the change in the UK labour market to more "flexible" working practices, away from traditional permanent full-time employment and an associated increase in worker uncertainty.⁶³ The authors argued that many of these flexible arrangements were risks borne by the workforce through employment rights diminution and the concentration of workplaces. Also, rather than risk being borne equally, those in lower-skilled lower-paid industries faced greater uncertainties while those with higher skills were better placed to take advantage of the same uncertainty.⁶⁴ In the context of this research, the individualization of risk along neo-liberal lines was observed in the enactment of government perceptions regarding where risk responsibility for irregular migration and asylum policing should lie. Section 6.4 of this thesis discusses how responsibility for employment law enforcement has been transferred to employers and healthcare management onto irregular migrants and asylum seekers. Troublingly, such policies have forced the individualization of risk responsibility onto irregular migrants and asylum seekers who must accept the risk of being exposed to exploitive and precarious existence practices.

Tulloch and Lupton's study of regular migrants to Australia and the UK examined how they, as individuals, perceived and experienced risk.⁶⁵ The authors argued that rather than experiencing risk in the global risk society sense, people understood and experienced risk individually when engaging in acts of border-crossing (both physical and social).⁶⁶ Risk, experienced by individuals trying to write their own biographies, could apply to irregular migrants and asylum seekers attempting to

⁶² Patrick Brown, 'Social Theories of Risk' in Anthony Elliott (ed), *Routledge Handbook of Social and Cultural Theory* (1st edn, Routledge 2014) 164.

⁶³ John Allen and Nick Henry, 'Ulrich Beck's Risk Society at Work: Labour and Employment in the Contract Service Industries' (1997) 22 *Transactions of the Institute of British Geographers* 180.

⁶⁴ *ibid* 194.

⁶⁵ John Tulloch and Deborah Lupton, *Risk and Everyday Life* (Sage 2003).

⁶⁶ *ibid* 41.

control their futures. This thesis will seek to examine how government may be perceiving and responding to people engaging in acts of irregular migration and asylum seeking as an attempt to negotiate their own understanding and management of risk.

Also from the risk society thesis, authors have explored how risk is used to ‘colonise the future.’⁶⁷ Using risk as a management tool, as an “othering” strategy and, as justification for government action has been widespread in (neo)colonial history. It is argued by Amoore and de Goede that marginalised and racialised people are often the bearers of risk management as governments attempt to master borders and reallocate risk away from themselves.⁶⁸ As the Other becomes a risk to be contained and bordered, the citizen is “undeservedly” confronted by the risky Other. Shifting risk onto Other groups, perpetuates marginalisation and forces irregular migrants and asylum seekers into new risk situations.⁶⁹ The colonisation of irregular migration and asylum seeking frameworks by risk,⁷⁰ authorises new forms of colonisation in time, place, and behavioural norms. Borders have moved to new places to anticipate future potential irregular migrants and asylum seekers and processing centres have similarly taken-up new places offshore. Applied in this thesis, risk as a colonising force adds new perspectives to migration studies.

Sociocultural

The sociocultural perspective has emphasised that risk identification and prioritisation cannot be determined via statistical probabilities alone.⁷¹ Nor can our understanding of risk be divorced from the risk perceiver and their society or culture.⁷² The application of sociocultural risk perspectives is prevalent in studies regarding the

⁶⁷ Ulrich Beck, ‘The Terrorist Threat: World Risk Society Revisited’ (2002) 19 *Theory, Culture & Society* 39, 40.

⁶⁸ Louise Amoore and Marieke De Goede, ‘Governance, Risk and Dataveillance in the War on Terror’ (2005) 43 *Crime, Law and Social Change* 149, 163.

⁶⁹ Allan M Williams and Vladimir Baláž, ‘Migration, Risk, and Uncertainty: Theoretical Perspectives’ (2012) 18 *Population, Space and Place* 167.

⁷⁰ Jennings (n 24).

⁷¹ Judith A Bradbury, ‘The Policy Implications of Differing Concepts of Risk’ (1989) 14 *Science, Technology, & Human Values* 380, 390.

⁷² *ibid* 391.

establishment and membership of groups and the perceived transgression of metaphorical and physical group boundaries. Applying a sociocultural perspective in this thesis may illuminate how government as a group, form their perceived risk, management, and response to irregular migrants and asylum seekers as another group.

Anthropologist Mary Douglas led the development of cultural perspectives on risk. In extrapolating observations about community regulation of the body, contamination, and danger, Douglas argued that risk was the modern Western strategy for dealing with danger and otherness.⁷³ What is identified as a risk and how it is characterised reflects a particular society's organisation, its borders, and relationships with other societies. By defending itself against risks that are thought to threaten established norms, a society reveals the internal dialogue occurring within it about what is idealised and what might change. Aligning ourselves with a social group demonstrates values and beliefs and how social relations will be conducted.

Douglas studied the development of groups and group membership in the early stages of the HIV/Aids epidemic.⁷⁴ This study analysed how societies were organised into groups according to their attitudes towards risk-taking and risk-aversion behaviours. Douglas also argued that "blame" was a tool to enforce and maintain community or group discipline.⁷⁵ Using group typologies to identify risk perceptions and management has also been explored in outbreaks of ethnic-based tension and violence. Tulloch examined media coverage of an outbreak in Kosovar Albanian/Serb inter-group violence and was critical of its attempt to place the violence in a broader global context. Instead, Tulloch argued that more weight should have been given to the violence as a manifestation of people perceiving themselves as "at-risk" from another bordering group.⁷⁶

⁷³ Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (ARK Paperbacks 1984).

⁷⁴ Mary Douglas, *Risk and Blame: Essays in Cultural Theory* (Routledge 1992) 102–20.

⁷⁵ *ibid* 119.

⁷⁶ John Tulloch, 'Representing Risk and Security: Visual Imaging From Kosovo to Iraq', *Learning about Risk* (2005).

Close to this thesis is Matheson's use of sociocultural theory to identify and explain the presence of cultural types within government and its agencies.⁷⁷ The research suggests hierarchy and individualism are cultural types most strongly present within government agencies and will influence their biases.⁷⁸ Investigating the presence of these cultural groups within government may suggest the type of risk biases present within the institutions responsible for irregular migration and asylum seeking. Understanding these cultural group types and their risk biases will help explain how governments perceive irregular migrants and asylum seekers.

Using group and person typologies to theorise risk perception should be done with caution. As Taylor-Gooby and Zinn point out, ideal group typologies are too neat to deal with the complexities of life.⁷⁹ Groups should not be considered stagnant as their composition and organisation may change over time despite boundaries remaining in place.⁸⁰ Ochs and Capps have suggested that, inconsistencies, incoherent risk-taking, and risk-aversion rationales may arise because of these complex changes. Groups and individuals will attempt to manage or reconcile these changes by creating narratives to impose order and make understandable or legitimate connections between past, present, and possible future.⁸¹

In the context of this thesis, conceptualising government as a group that has coalesced around a particular view of risk and risk management may provide a new way of understanding applicable policies. Similarly investigating how "blame", an often prevalent and politically useful tool, is used by government in risk managing irregular migration and asylum seeking warrants closer examination. Further, an analysis of risk narratives from government regarding irregular migration and asylum seeking, may

⁷⁷ Craig Matheson, 'Four Organisational Cultures in the Australian Public Service: Assessing the Validity and Plausibility of Mary Douglas' Cultural Theory' (2018) 77 *Australian Journal of Public Administration* 644.

⁷⁸ *ibid* 654.

⁷⁹ Taylor-Gooby and Zinn (n 36) 39.

⁸⁰ Fredrik Barth, 'Introduction' in Fredrik Barth (ed), *Ethnic groups and boundaries: the social organization of culture difference* (Waveland Press 1998) 21.

⁸¹ Elinor Ochs and Lisa Capps, 'Narrating the Self' (1996) 25 *Annual Review of Anthropology* 19.

help explain the continuity and discontinuities in such policies over time which is explored further in the thematic chapters.

Other sociocultural risk literature has concentrated on the role and use of risk discourse in group formation and discipline. Green observed that young people used such discourse to negotiate acceptable levels of risk-taking and how risk would be managed as part of their individual identity and social relationships.⁸² In health risk communication, academia has observed the use of targeted messaging towards groups perceived as “at-risk” and those who “pose-risk”.⁸³ In analysing the use of blame in HIV/Aids risk discourse Burgess found that, within the UK context, it focused on educating those considered “risky” by virtue of their proximity to group boundaries.⁸⁴

However, risk appears to play a more direct role in government management of irregular migrants and asylum seekers. In Tulloch and Lupton’s study, they suggested that migrants, by crossing physical and symbolic boundaries, constituted a “polluting risk” to the host society.⁸⁵ Like the use of discourse that communicated risk in the HIV/Aids epidemic, Koutroulis found that government would rely on contagion and epidemic as an availability heuristic when speaking of asylum seekers. This heuristic consisted of: something to fear; a community exposed to danger and; a strategic threat to contain.⁸⁶

In addition to discourse, Khosravi explored how the Swedish government physically treated the “polluting” risk of asylum seekers via detention and deportation. Through an act of detention, the perceived risk is physically secured and through deportation the risk is expelled from the “at-risk” body to preserve political and social

⁸² Judith Green, ‘Risk and the Construction of Social Identity: Children’s Talk about Accidents’ (1997) 19 *Sociology of Health & Illness* 457, 475.

⁸³ Deborah Lupton, ‘Risk as Moral Danger: The Social and Political Functions of Risk Discourse in Public Health’ (1993) 23 *International Journal of Health Services* 425.

⁸⁴ Tulloch and Lupton (n 65) 38.

⁸⁵ *ibid* 42.

⁸⁶ Glenda Koutroulis, ‘Public Health Metaphors in Australian Policy on Asylum Seekers’ (2009) 33 *Australian and New Zealand Journal of Public Health* 47, 48.

purity.⁸⁷ Bashford and Strange reached a similar conclusion in their analysis of the detention of asylum seekers in Australia.⁸⁸ Dispersal of asylum seekers throughout more remote and regional parts of the UK has also been considered a method through which British society secures those considered “risky”.⁸⁹ This thesis continues this analysis of Australian and British frameworks that seek to identify and manage the “risky” irregular migrant and asylum seeker.

The above literature indicates that the sociocultural approach to risk provides a firm basis to explore the rationale behind governmental actions towards irregular migrants and asylum seekers in Australia and the UK. However, there is a limited detailed consideration of *how* governments deploy risk, once identified, or its consequences for “risky” populations and applicable frameworks. This thesis will seek to address that gap and will do so using an integrated approach to risk theory as set out in Chapter Two. It is argued here that doing so, will better explain the responses government has taken at a social level to exclude or manage irregular migrants or asylum seekers as a “risky” group at the borders of Australian and British society.

1.4.4 Constructing irregular migrants and asylum seekers

There is academic opinion that considers irregular migration to be a concept that is a political and legal construct. Rather than being an objective reality that exists independently of human perceptions and attitudes, irregular migration is created and defined by society. As a construct therefore, irregular migration is said to be made and unmade by government and its institutions in various ways to suit the prevailing political, economic, and social needs present at the time.⁹⁰

⁸⁷ Shahram Khosravi, ‘Sweden: Detention and Deportation of Asylum Seekers’ (2009) 50 *Race & Class* 38, 51–52.

⁸⁸ Alison Bashford and Carolyn Strange, ‘Asylum–Seekers and National Histories of Detention’ (2002) 48 *Australian Journal of Politics & History* 509, 515.

⁸⁹ Tania Burchardt, ‘Selective Inclusion: Asylum Seekers and Other Marginalised Groups’ in John Hills and Kitty Stewart (eds), *A more equal society? New Labour, poverty, inequality and exclusion* (Policy Press 2005) 224–26.

⁹⁰ Franck Düvell, ‘Paths into Irregularity: The Legal and Political Construction of Irregular Migration’ (2011) 13 *European Journal of Migration and Law* 275, 276.

Prior to the creation of today's modern nation-state, people could of course more freely migrate in response violence or social instability, economic, or climatic factors. These same reasons continue to compel people to move today. The nation-state today exercises sovereignty over the territory within its borders and its economy, they also exercise sovereignty over the entry of non-citizens to its territory by regulating which non-citizens can cross its borders, how they do so, and the conditions for remaining within its jurisdiction. Therefore, as Düvell has argued, only after states developed legislation that declared certain immigration illegal and punishable, as well as put in-place enforcement technologies and bureaucracies to enact the legislation, did previous migration become qualified as "irregular".⁹¹ Squire has added that irregularity is transient with people moving between states of regularity depending upon what movement or activity is targeted by government agencies for control.⁹²

With reference to asylum seekers, Joppke has charted the use of law and policy at international and domestic levels to demonstrate how the asylum seeker is similarly constructed. Specifically suggesting through a comparative study of western democratic nation-states, that the asylum seeker construction develops from a tension between states exercising sovereignty over entry to their jurisdictions while administering international obligations to consider asylum protection applications.⁹³ In practice, the construction according to Watson emerges from the protection and status determination systems. As these systems implement international obligations regarding asylum, through their establishment of rules and precedent, they construct and refine the ideal asylum seeker and refugee "types".⁹⁴

⁹¹ *ibid.*

⁹² Vicki Squire (ed), *The Contested Politics of Mobility: Borderzones and Irregularity* (Routledge 2011) 8.

⁹³ Christian Joppke, 'Asylum and State Sovereignty: A Comparison of the United States, Germany, and Great Britain' in Joppke (ed), *Challenge to the Nation-State: immigration in Western Europe and the United States* (Oxford University Press 1998) 110.

⁹⁴ Scott D Watson, 'Manufacturing Threats: Asylum Seekers as Threats or Refugees' (2007) 3 *Journal of International Law and International Relations* 95, 99–100.

Other authors have approached the issue of construction through an examination of discourse in domestic politics and debate. That is, the concepts of irregular migration and asylum seeking being given substance through the language and rhetoric of government, political leaders, and media. Vollmer's examination of the framing language in applicable UK policy constructs irregular migrants as those who are immoral for moving outside established procedures, who compel the state to act urgently and at speed, and who pose a threat that society must be secured against.⁹⁵ With respect to asylum seekers, Cohen's study of moral panics notes similar frames used to construct the concept of an asylum seeker. Here, refugees are distinguished from "bogus asylum seekers" which implies the immorality referred to above and disbelief a defining view of asylum seeking.⁹⁶ The assumed self-evident distinction between "bogus" and "genuine", which at its core is a question of integrity or lack thereof, is a key component to the social construction of what constitutes an asylum seeker and justification for their treatment with doubt and contempt.⁹⁷ But as Lynn and Lea add from their media discourse study, so too is constructing the resident and Other groups and the alleged unfairness and inequality that they suffer at the hands of asylum seekers.⁹⁸

Academic attention has also turned to how the movement of people across borders has itself becomes an issue of construction, particularly mass movements. Cohen identified the use of metaphors such as "waves", "criminal" and, "invasion" as part of the public rhetorical lexicon governments use when discussing asylum seekers.⁹⁹ Frequent use of water and flood metaphors to describe the migration of people in UK newspapers is used to establish as fact and symbolise a loss of border

⁹⁵ Bastian A Vollmer, 'The Continuing Shame of Europe: Discourses on Migration Policy in Germany and the UK' (2017) 5 *Migration Studies* 49.

⁹⁶ Stanley Cohen, *Folk Devils and Moral Panics* (3rd edn, Routledge 2002) xxii.

⁹⁷ Simon Goodman and Susan A Speer, 'Category Use in the Construction of Asylum Seekers' (2007) 4 *Critical Discourse Studies* 165, 179.

⁹⁸ Nick Lynn and Susan Lea, "'A Phantom Menace and the New Apartheid': The Social Construction of Asylum-Seekers in the United Kingdom' (2003) 14 *Discourse & Society* 425, 447.

⁹⁹ Cohen (n 96) xxiii.

control without any need for further critical analysis.¹⁰⁰ More recently is the use of “crisis” to describe the large movements of people across Europe since 2015. Research suggests that the evolving (re)categorisation of the events from “migrant” to “refugee” crisis and location of the crisis from Mediterranean to European to Calais played a role in determining the level of assistance people were said to be entitled to and how the “crisis” should be responded to.¹⁰¹

The above literature has discussed the differing ways that people moving have been variously categorised. Understanding that categorisations including irregular migrants and asylum seekers are social constructions made through discourse, practices, and institutions that create and reinforce perceptions is significant to understanding their subsequent treatments and justifications for that treatment. This thesis would suggest that considering risk perception, itself a construction as discussed in section 2.4, as part of the examination of the social construction of irregular migrants and asylum seekers, is a valuable new contribution to this existing literature. Doing so would add insight into what is considered to constitute an irregular migrant or asylum seeker and how that construction takes place.

1.4.5 Government responses to irregular migration and asylum seeking

The Australian and UK governments have employed several policies and practices in response to irregular migration and asylum seeking which have invited academic critique on various levels. These government response policies and practices can conflate in rhetorical and physical ways these two cohorts. For example, the Australian government published a “Report of the Expert Panel on Asylum Seekers” in 2012 which in-parts stated that ‘circuit breakers are needed to reduce the attractiveness of

¹⁰⁰ Costas Gabrielatos and Paul Baker, ‘Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996-2005’ (2008) 36 *Journal of English Linguistics* 5, 22.

¹⁰¹ Simon Goodman, Ala Sirriyeh and Simon McMahon, ‘The Evolving (Re)Categorisations of Refugees throughout the “Refugee/Migrant Crisis”.’ (2017) 27 *Journal of Community & Applied Social Psychology* 105, 111–12.

Australia as a destination point for irregular migration.¹⁰² This suggests a government policy view that the two were a single phenomenon to be addressed as such. These “circuit breakers” were needed to ensure that ‘state sovereignty and security in addition to risking the safety of irregular migrants’¹⁰³ was not undermined. Physical and perceptual conflation between irregular migrants, asylum seekers, and other cohorts of non-citizens are conflated through their compulsory detention at the same facilities across Australia.¹⁰⁴ Recently the UK government’s New Plan for Immigration (NPI) frequently discusses concepts of “illegal immigration” and “illegal entry” with claiming asylum and ‘illegal routes to asylum.’¹⁰⁵ The NPI proposes new policy that will penalise asylum seekers that use “illegal entry” to the UK.¹⁰⁶ With this policy and response conflation in mind, this sub-section presents a purposive review of extant literature regarding government actions and policies within the “cimmigration” phenomena, the deterrence paradigm, and the racialised implementation of migration policy. Collectively and individually, these policies seek to dissuade and punish, both rhetorically and practically, anyone from attempting to reach or stay within either case study jurisdiction outside sanctioned routes. When the objects of governments policy responses are conflated in this way, it makes analysis of the response to either individual cohort problematic. Language used by government in rhetoric or policy may be reflected in the analysis below but clarified where possible for accuracy. It is suggested here however, that examining these government responses through a risk lens may suggest that risk perceptions form a common thread through them rather than being isolated or disparate policy response measures.

Cimmigration

The criminalisation of migration or “cimmigration” and the pursuit of deterrence policies by governments across the globe, have come under substantial academic

¹⁰² Angus Houston, Paris Aristotle and Michael L’Estrange, ‘Report of the Expert Panel on Asylum Seekers’ (Australian Government 2012) 12.

¹⁰³ *ibid* 77.

¹⁰⁴ Bashford and Strange (n 88).

¹⁰⁵ Home Office (n 8) 3.

¹⁰⁶ *ibid* 4.

attention, some of which is explored here. The phrase “cimmigration” is described by Stumpf as the creation of ‘parallel systems in which immigration law and the criminal justice system are merely nominally separate.’¹⁰⁷ Cimmigration in the context of irregular migration and asylum seeking, has emphasised the criminalisation, prosecution and sentencing of unauthorised movement across borders.¹⁰⁸ It also includes migration policing within jurisdictions that has devolved to local levels. Previously “safe” places such as hospitals, schools, workplaces, and residences must now play a role in migration policing or suffer criminal penalties.¹⁰⁹ This suggests that immigration law has now acquired many of the attributes of criminal law making the lines between the two blurred.

As a much larger umbrella term, cimmigration may also describe the legal, sociological, and political analysis that intersects with criminal law, migration, ethnicity, and national security.¹¹⁰ Hernández argues that cimmigration came about following the civil rights movement.¹¹¹ As explicit racism became culturally and legally impermissible, changes to criminal law and policies that implicitly targeted People of Colour were the new vehicle used to target and manage perceived undesirables.¹¹²

However, De Giorgi has taken an economic approach to the criminalisation of migration. Economic deregulation and globalisation expanded the demand for a mobile labour force and easier cross-border flows of services and goods. The criminalisation of border crossing according to De Giorgi is a form of labour control, a valuable last tool of states to regulate the entry of those considered desirable workers following this period of neo-liberal deregulation and globalisation. .¹¹³

¹⁰⁷ Juliet Stumpf, ‘The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power’ (2006) 56 *American University Law Review* 367, 376.

¹⁰⁸ e

¹⁰⁹ Cecilia Menjívar, Andrea Gómez Cervantes and Daniel Alvord, ‘The Expansion of “Cimmigration,” Mass Detention, and Deportation’ (2018) 12 *Sociology Compass* 1, 9.

¹¹⁰ Juliet Stumpf, ‘Cimmigration: Encountering the Leviathan’ in Sharon Pickering and Julie Ham (eds), *The Routledge Handbook on Crime and International Migration* (Routledge 2015) 245.

¹¹¹ e

¹¹² Cesar Cuauhtemoc García Hernández, ‘Creating Cimmigration’ [2013] *Brigham Young University Law Review* 1457, 1459.

¹¹³ Alessandro De Giorgi, ‘Immigration Control, Post-Fordism, and Less Eligibility: A Materialist Critique of the Criminalization of Immigration across Europe’ (2010) 12 *Punishment & Society* 147, 151.

Neither the Australian nor UK governments have shied away from adopting crimmigration practices in their policy frameworks. Like many states of the Global North, both have ramped up crimmigration to meet national security demands in the wake of globalised terror.¹¹⁴ In the context of the UK, Bowling and Westenra have set out how the government's desire to control criminalised migrants created a bespoke control system that runs in parallel with the existing domestic criminal justice system. As a consequence, a morality vacuum developed enabling the pursuit of "hostile environment" policies which were a set of enforcement initiatives targeting perceived irregular migrants' (who were in-fact often lawful British residents and citizens), ability to access accommodation, employment, healthcare, and financial services.¹¹⁵ These policies are further explored in the remaining chapters of this thesis.

Weber and Bowling have further argued that the continuity and transference of policing practices and procedures from police to immigration enforcement officials demonstrate immigration enforcement no longer being administrative but policing in nature.¹¹⁶ The British public has also been co-opted into immigration control. Aliverti argues that the range of enforcement measures adopted has forced the public into a role of verification and reporting on suspect foreigners.¹¹⁷ The discussion in Section 6.4 of this thesis reframes these changes as part of the individualization and rearrangement of risk responsibilities occurring more generally throughout modern society.

The crimmigration of Australian migration policy has also been subject to academic critique. Pickering and Weber have observed that Australia engages in an

¹¹⁴ Juliet Stumpf, 'Social Control and Justice: Crimmigration in the Age of Fear' in Maria João Guia, Maartje Amalia Hermina van der Woude and Joanne van der Leun (eds), *Social control and justice: crimmigration in the age of fear* (Eleven International Publishing 2013) 8.

¹¹⁵ Ben Bowling and Sophie Westenra, "'A Really Hostile Environment": Adiaphorization, Global Policing and the Crimmigration Control System' (2018) 24 *Theoretical Criminology* 163, 178–79.

¹¹⁶ Leanne Weber and Benjamin Bowling, 'Policing Migration: A Framework for Investigating the Regulation of Global Mobility' (2004) 14 *Policing and Society* 195, 208.

¹¹⁷ Ana Aliverti, 'Enlisting the Public in the Policing of Immigration' (2014) 55 *The British Journal of Criminology* 215.

expansive policing of borders and immigration effort that includes a range of government agencies and commercial service providers.¹¹⁸ However, as Finnane points out, there is a more significant history of border and immigrant policing in the Australian context that recent literature has failed to observe.¹¹⁹

Crimmigration in Australia have also been critiqued by academics for its racial biases. The leading work of Jupp noted that there has been a repeated effort on behalf of government to ensure that racialised irregular migrants and asylum seekers are punished with compulsory detention and deported to their points of origin.¹²⁰ It is suggested by Jupp that policies have been implemented to reclaim the votes directed towards extreme right-wing minor parties.¹²¹ Boon-Kuo has observed that immigration enforcement practices are conducted in a racialised way. Immigration officers were observed to carry-out questioning of suspected irregular migrants based on the officer's subjective evaluation of what constitutes "Australian-ness". Namely, appearance, Anglo-Saxon names, English speaking ability and accent.¹²² Failure to meet these perceptions of "Australian-ness" has according to Boon-Kuo ensnared lawful residents in immigration enforcement.¹²³

This thesis seeks to add to the existing crimmigration literature by examining the abovementioned practices, while applying a risk lens. It places crimmigration practices within the context of risk identification and management in modern society. It approaches crimmigration as the government recognition that total control of a "risky" Other group, created from unintended consequences of modernity, is impossible. As such, the thematic chapters will explore how the governmental

¹¹⁸ Sharon Pickering and Leanne Weber, 'Policing Transversal Borders' in Katja Franko Aas and Mary Bosworth (eds), *The borders of punishment migration, citizenship, and social exclusion* (Oxford University Press 2013) 107.

¹¹⁹ Mark Finnane, 'Controlling the "Alien" in Mid-Twentieth Century Australia: The Origins and Fate of a Policing Role' (2009) 19 *Policing and Society* 442.

¹²⁰ James Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (2nd edn, Cambridge University Press 2007) 183.

¹²¹ *ibid* 194.

¹²² Louise Boon-Kuo, "'Race", Crimmigration and the Deportation of Aboriginal Non-Citizens' in Peter Billings (ed), *Crimmigration in Australia* (Springer 2019) 45.

¹²³ *ibid*.

deployment of crimmigration has contributed to an overall loss of migration and asylum control.

The Deterrence Paradigm

Like the drawing-in of criminal law into migration law, criminology's deterrence theory has also featured heavily in Australian and British policy.¹²⁴ In criminology terms, perceived criminal deterrence theory argues that a person is less likely to commit a criminal act the greater the certainty, severity, and celerity of subsequent punishment.¹²⁵ In the migration and asylum context, that can mean implementing measures that build up in an irregular migrant or asylum seeker's mind, the perception that attempting to come to a host state is not worth it or, encourages an irregular migrant or asylum seeker currently present in a host state to leave.¹²⁶

Governments across the Global North, including Australia and the UK, have employed numerous measures intended to deter an irregular migrant or asylum seeker from arriving or staying. That has been done by: retroactively changing the eligibility criteria and imposing time limits on protection applications; physically preventing irregular migrants and asylum seekers from reaching the country by imposing visa requirements, deploying Airport Liaison Officers or launching at-sea interdiction operations and; delegating irregular migrant and asylum seeker interdiction and management responsibilities to transit states and private companies.¹²⁷ Scholars such as Gammeltoft-Hansen and Tan have described these measures as now constituting the dominant paradigm for international refugee policy.¹²⁸

¹²⁴ Jonathan Kent, Kelsey P Norman and Katherine H Tennis, 'Changing Motivations or Capabilities? Migration Deterrence in the Global Context' [2019] *International Studies Review* 1, 2.

¹²⁵ Ray Paternoster and Ronet Bachman, 'Perceptual Deterrence Theory' in Francis T Cullen and Pamela Wilcox (eds), *The Oxford Handbook of Criminological Theory* (Oxford University Press 2012) 652.

¹²⁶ Lisa Hassan, 'Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States' (2000) 13 *Journal of Refugee Studies* 184, 185.

¹²⁷ Thomas Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies' (2014) 27 *Journal of Refugee Studies* 574, 576–77.

¹²⁸ Thomas Gammeltoft-Hansen and Nikolas Tan, 'The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy' (2017) 5 *Journal on Migration and Human Security* 28, 31.

Research has found notable levels of public support for governments adopting deterrence measures as part of applicable frameworks.¹²⁹ This evidence suggests such deterrence measures, while effective, are also limited, and effectiveness may be specific to the individual measure being deployed.¹³⁰ But, as FitzGerald notes, measuring the success of deterrence is difficult because the counterfactual, that is, who has not attempted an irregular migration or sought asylum because of deterrence, is hard to measure.¹³¹

Authors such as Pickering and Lambert have more directly questioned the effectiveness of the deterrence paradigm. They suggest that deterrence rationality in asylum is based on flawed assumptions. The two assumptions are that: it assumes a rational decision has been made to break the law and focuses exclusively on “pull” factors.¹³² These assumptions, the authors argue, are flawed because normal economic rationality rules don’t apply to an individual seeking protection, and it ignores the other factors that may create the need for asylum.¹³³ Others have argued that the paradigm is starting to fracture because of greater judicial and systemic challenges to its legitimacy and the public exposure of its general ineffectiveness.¹³⁴

Missing from current literature, however, is an analysis of the relationship between risk and deterrence broadly. Such an analysis would seek to explicate the reflexive role that deterrence plays in governmental attempts to govern the uncertainty that irregular migrants and asylum seekers represent. Furthermore, the current literature dismisses deterrence by adopting realist perspectives on the risk

¹²⁹ Hamutal Bernstein, ‘Transatlantic Trends: Immigration’ (The German Marshall Fund of the United States 2011) 4; Bobby Duffy and Tom Frere-Smith, ‘Perception and Reality’ (Social Research Institute 2014) 103.

¹³⁰ Jørgen Carling and María Hernández-Carretero, ‘Protecting Europe and Protecting Migrants? Strategies for Managing Unauthorised Migration from Africa’ (2011) 13 *The British Journal of Politics and International Relations* 42, 55–56.

¹³¹ David Scott FitzGerald, ‘Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence’ (2020) 46 *Journal of Ethnic and Migration Studies* 4, 14.

¹³² Sharon Pickering and Caroline Lambert, ‘Deterrence: Australia’s Refugee Policy’ (2002) 14 *Current Issues in Criminal Justice* 65, 66.

¹³³ *ibid* 83.

¹³⁴ Gammeltoft-Hansen and Tan (n 128) 40.

dangers that irregular migrants or asylum seekers pose. Such a position fails to account for risk as a social construction subject to cultural meaning, categorisation, and management. This thesis will consider these perspectives in answering the thematic chapters' sub-questions.

Deterrence: Detention

Detaining people with an irregular migration status or asylum seekers is a feature of Australian and British migration policy. However, it is not unique to these jurisdictions as detention is now common globally including in many liberal democratic states.¹³⁵ Despite its apparent prevalence, defining detention is subject to academic contention. Goodwin-Gill defines immigration detention by reference to confinement in a physical place.¹³⁶ Whereas Legomsky defines detention by its preventative purpose, that is, detention's role in preventing absconding from authorities, ensuring public safety, and preventing further migration violations.¹³⁷ It is further distinguished by its lack of punitive intent, in contrast to detention following a criminal conviction.¹³⁸ Guild defines it most broadly according to the various institutions, policies and procedures that enforce detention.¹³⁹

The approach taken by Silverman and Massa to defining detention is the one preferred in this thesis:

[T]he holding of foreign nationals, or non-citizens, for the purposes of realising an immigration-related goal. This definition is characterised by three central elements: first, detention

¹³⁵ Stephanie J Silverman and Amy Nethery, 'Understanding Immigration Detention and Its Human Impact' in Amy Nethery and Stephanie J Silverman (eds), *Immigration Detention: The migration of a policy and its human impact* (Routledge 2015) 1–2.

¹³⁶ Guy S Goodwin-Gill, 'International Law and the Detention of Refugees and Asylum Seekers' (1986) 20 *International Migration Review* 193, 194.

¹³⁷ Stephen H Legomsky, 'The Detention of Aliens: Theories, Rules, and Discretion Symposium: Immigration Reform' (1998) 30 *University of Miami Inter-American Law Review* 531, 541.

¹³⁸ *ibid* 534.

¹³⁹ Elspeth Guild, 'A Typology of Different Types of Centres for Third Country Nationals in Europe' (European Parliament 2006) 3.

represents a deprivation of liberty; second, it takes place in a designated facility; and third, it is being carried out in service of an immigration-related goal.¹⁴⁰

This definition is broad in its approach to detention, so it does not have legal specificity. However, in this thesis the definition allows for the exploration of immigration detention not only as a place (and what that means), but also for its influences on detention policy frameworks and intended policy outcomes, i.e., “an immigration related goal”. Influences on detention thinking it will be argued include risk, identification, and management.

Academics have also focused their critique on detention policy in addition to a definitional review. Wilsher and Lester have argued that the UK and Australia have justified the detention of irregular migrants and asylum seekers under common law and the doctrine of absolute sovereignty.¹⁴¹ As part of achieving that absolute sovereignty the physical exclusion of classes deemed unwelcome was legitimised.¹⁴² That exclusion of certain classes of non-citizens has been considered in the context of social identity. Authors such as Jupp¹⁴³ and McMaster¹⁴⁴ have given detailed race-based accounts of Australia’s exclusion policies that existed for much of the 20th century. However, Bashford and Strange have challenged this dominant race analysis by analogising detention in the context of health and quarantine histories.¹⁴⁵

The UK government has been able to detain a non-citizen since the Aliens Act 1905 (UK). However, immigration specific detention centres like Australia’s, were not established until the 1970s. But, at that time, the detention centres were a response to the newly arrived Commonwealth migrants that were denied entry at the border

¹⁴⁰ Stephanie J Silverman and Evelyne Massa, ‘Why Immigration Detention Is Unique’ (2012) 18 *Population, Space and Place* 677, 679.

¹⁴¹ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press 2012) 41; Eve Lester, *Making Migration Law: The Foreigner, Sovereignty, and the Case of Australia* (Cambridge University Press 2018).

¹⁴² Wilsher (n 141) 45; Lester (n 141) 163–230.

¹⁴³ Jupp (n 120).

¹⁴⁴ Don McMaster, *Asylum Seekers: Australia’s Response to Refugees* (Melbourne University Press 2001).

¹⁴⁵ Bashford and Strange (n 88).

rather than for asylum seekers.¹⁴⁶ Silverman has noted that the place and use of migrant detention within the UK's overall policy framework has been significantly contested over time,¹⁴⁷ which perhaps stands in contrast to the liberal use of detention within Australia's migration and asylum policy regime. According to Silverman, the government's attempts to normalise detention as "regrettable but necessary", has been met with hostility. Members of Parliament have questioned government's excessive powers over detention, lack of oversight and the deprivation of liberty. While judicially, courts have intervened when detention is longer reasonable or is disproportionate to the stated purpose, and civil society has played an active role in countering government narratives regarding the appropriateness of detention.¹⁴⁸

This thesis proposes that a risk perspective sheds alternative light on detention policy and practice. Detention may reflect an admission by government that modern borders are permeable and are crossed by a "risky" other. As a risk mitigation and management practice, detention isolates "risky" groups or individuals and keeps the risky border crosser towards the perimeters of society. These arguments are explored in the penultimate chapter of this thesis that suggests risk informs the construction and operation of irregular migration and asylum frameworks.

Deterrence: Deportation

The definition of "deportation", like other terms in migration studies, has a complex meaning. Its legal meaning derives from the government act of removing someone from the jurisdiction when it is deemed by a minister to be in the public good, and via expulsion following a term of imprisonment.¹⁴⁹ In a non-legal sense, deportation may form a type of government assurance for the public regarding border security through

¹⁴⁶ Mary Bosworth and Sarah Turnbull, 'Immigration, Detention, and the Expansion of Penal Power in the United Kingdom' in K Reiter and A Koenig (eds), *Extreme Punishment* (Palgrave Macmillan 2015) 53.

¹⁴⁷ Stephanie J Silverman, "'Regrettable but Necessary?' A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition' (2012) 40 *Politics & Policy* 1131, 1133.

¹⁴⁸ *ibid* 1140–45.

¹⁴⁹ Bridget Anderson, *Us and Them?: The Dangerous Politics of Immigration Control* (Oxford University Press 2013) 116.

the public spectacle it creates which is absent when a person is simply “removed” or “voluntarily departs”.¹⁵⁰

Academia has defined deportation in subtly different ways. Deportation has been defined as ‘the expulsion of noncitizens by a state through the (threatened or actual) use of force.’¹⁵¹ In this definition, Gibney notes the expulsion takes place once the state deems the non-citizen to be unsuitable to remain in the jurisdiction.¹⁵² An unsuitability that may be unclearly defined according to “the public good”.¹⁵³ Anderson et al have suggested that deportation forms the lawful manner that a state can exert its sovereignty by expelling non-citizens from its territory.¹⁵⁴

There is also significant recent literature on the effects of deportation. Some scholars have focused on the deportee and the effects that the ongoing threat of deportation has on their lives. De Genova referred to this state of being as “deportability”,¹⁵⁵ which the author suggests has perceived economic usefulness by lowering the price of an irregular migrant’s labour.¹⁵⁶ According to Bosworth et al., deportability can be experienced as a form of punishment by the migrant.¹⁵⁷ Any public consternation expressed at the uneven impact of such a punishment on grounds such as race, has been washed away by national security or community protection justifications.¹⁵⁸ Academia has also used race and religion as frameworks to analyse the affectual experience of deportation policies. Kanstroom has linked current

¹⁵⁰ Bridget Anderson, “‘Illegal Immigration’: Victim or Villain?” (University of Oxford 2008) Working Paper 64 3.

¹⁵¹ Matthew Gibney, ‘Deportation’ in Peter Cane and Joanne Conaghan (eds), *The New Oxford Companion to Law* (Oxford University Press 2008) 308.

¹⁵² Matthew Gibney, ‘Asylum and the Expansion of Deportation in the United Kingdom’ (2008) 43 *Government and Opposition* 146, 147.

¹⁵³ Peter William Walsh, ‘Deportation and Voluntary Departure from the UK’ (Migration Observatory 2020) 8 2.

¹⁵⁴ Bridget Anderson, Matthew Gibney and Emanuela Paoletti, ‘Citizenship, Deportation and the Boundaries of Belonging’ (2011) 15 *Citizenship Studies* 547, 549.

¹⁵⁵ Nicholas De Genova, ‘Migrant “Illegality” and Deportability in Everyday Life’ (2002) 31 *Annual Review of Anthropology* 419, 439.

¹⁵⁶ De Giorgi (n 113) 150–51.

¹⁵⁷ Mary Bosworth, Katja Franko and Sharon Pickering, ‘Punishment, Globalization and Migration Control: “Get Them the Hell out of Here”’ (2017) 20 *Punishment & Society* 34, 39.

¹⁵⁸ Mary Bosworth, ‘Deportation, Detention and Foreign-National Prisoners in England and Wales’ (2011) 15 *Citizenship Studies* 583.

deportation practices to countries' racialised pasts such as slavery.¹⁵⁹ In contrast, Weber and Bowling suggest the hostile treatment of non-citizens can be traced to the transference of racialised policing practices into migration administration.¹⁶⁰

In addition to effect, deportation practices have had significant academic attention. Legal theorists have focused their attention on the procedural barriers erected to limit avenues of redress for an irregular migrant in deportation proceedings.¹⁶¹ Schuster's review of the practice, once only used during a time of crisis, suggests that it is now an ordinary part of migration regimes.¹⁶² Of particular interest to academia has been the proliferation of third country agreements or extraterritorial policies which *inter alia* allow for the return of irregular migrants to transit countries. Betts has analysed the UK's pursuit of extraterritorial policies regarding the perceived economic, social, political, and international costs that asylum seekers present to the government.¹⁶³ While Grewcock suggests that Australia's engagement with and treatment of neighbouring countries has racial and class dimensions to how they are conceived and implemented.¹⁶⁴

Deportation presents an opportunity for examination through a risk lens that is currently under-theorised. As the above review has demonstrated elements of risk are present. Particularly the suggestion that deportation is an attempt to isolate and remove groups or individuals considered risky to the government in some way. Moreover, the usage of deportation as a risk management strategy has potentially created new risk as the perceived hazard is exported or externalised from the jurisdiction that may precipitate a loss-of-control and boomerang on government and society in the future.

¹⁵⁹ Dan Kanstroom, *Deportation Nation: Outsiders in American History* (Harvard University Press 2007).

¹⁶⁰ Weber and Bowling (n 116).

¹⁶¹ Kanstroom (n 159) 225.

¹⁶² Liza Schuster, 'A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe' (2005) 39 *Social Policy & Administration* 606, 609.

¹⁶³ Alexander Betts, 'The International Relations of the "New" Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR' (2004) 22 *Refuge* 58.

¹⁶⁴ Michael Grewcock, 'Australian Border Policing: Regional "Solutions" and Neocolonialism' (2014) 55 *Race & Class* 71.

Race

Although not currently an explicit part of frameworks in either Australia or the UK, race continues as a theme in migration and asylum debates in either jurisdiction. As an analytical tool, race is well used by academia to examine all migration legislative and policy frameworks.¹⁶⁵ For Sivanandan, race and migration are symbiotic and suggests that debates on immigration are in-fact debates on race.¹⁶⁶ However, associating race and migration maybe ‘hardly a startling new insight’,¹⁶⁷ approaching the analysis of migration policy and operational activities through a race perspective aligns with general developments in the field. According to Pisarevskaya et al’s review of migration research the developments are observed in the shift from questions of “who” and “what” and toward those questions of “how” and “why” that explore more nuanced understandings of migration.¹⁶⁸

This thesis will consider nuanced understandings of migration by, in part, exploring the relationship between government risk perceptions of irregular migrants, asylum seekers and race. As there is an absence of literature that explores this relationship, it will contribute to the development of migration scholarship observed by Pisarevskaya et al regarding the questions of “how” and “why”. Specifically, this thesis will suggest that the racialised structure and effect of irregular migration and asylum frameworks, are the manifestation of governmental risk perceptions and risk management.

Within the Australian and British contexts, specific policies such as the White Australia Policy (WAP) or hostile environment and their associated legislation have

¹⁶⁵ Umut Erel, Karim Murji and Zaki Nahaboo, ‘Understanding the Contemporary Race–Migration Nexus’ (2016) 39 *Ethnic and Racial Studies* 1339, 1341.

¹⁶⁶ A Sivanandan, *A Different Hunger: Writings on Black Resistance* (Pluto Press 1982).

¹⁶⁷ Ed Mynott, ‘Nationalism, Racism and Immigration Control: From Anti-Racism to Anti-Capitalism’ in Steve Cohen, Beth Humphries and Ed Mynott (eds), *From Immigration Controls to Welfare Controls* (Routledge 2002) 12.

¹⁶⁸ Asya Pisarevskaya and others, ‘Mapping Migration Studies: An Empirical Analysis of the Coming of Age of a Research Field’ (2020) 8 *Migration Studies* 455, 478.

been critiqued through a race lens.¹⁶⁹ So too have the operational responses to events like *Tampa*,¹⁷⁰ and the recent increase in Channel crossings by irregular migrants and asylum seekers.¹⁷¹ These authors trace the discrimination evident in recent policies and enforcement measures above to earlier race-based migration frameworks.

It has been suggested that 'at a government level, Australian society practised racial discrimination in two vital areas, Aboriginal affairs and immigration policy.'¹⁷² The WAP provides the case-in-point that Willard, writing at the time of the WAP, argued was a manifestation of racial discrimination to protect socio-economic concerns.¹⁷³ Despite the enabling legislation being race-neutral, Palfreeman observed that discrimination was covertly practised by implementing measures such as the dictation test.¹⁷⁴ Its demise, according to Tavan, was brought about by the internationalising effects of the Second World War that shifted Australian social perceptions on issues such as race.¹⁷⁵

Tavan's connection between globalisation and post-War policy changes is relevant and explored further within this thesis. The connection suggests that the new global socio-political order created after the War presented the Australian government with a new risk dynamic. By adopting a calculative attitude towards the positive risks that more liberal migration provides, concomitant steps were taken to mitigate perceived detriments. Tavan's connection between migration framework changes and wider social change is relevant to this thesis. It demonstrates the government's

¹⁶⁹ Laksiri Jayasuriya, David Robert Walker and Jan Gothard, *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003); Luke de Noronha, 'Deportation, Racism and Multi-Status Britain: Immigration Control and the Production of Race in the Present' (2019) 42 *Ethnic and Racial Studies* 2413.

¹⁷⁰ David Marr and Marian Wilkinson, *Dark Victory* (Allen & Unwin 2003).

¹⁷¹ Joel Platt, 'Is the Criminalisation of Migration Racist?' (*LSE Human Rights*, 28 January 2021) <<https://blogs.lse.ac.uk/humanrights/2021/01/28/is-the-criminalisation-of-migration-racist/>> accessed 25 April 2021.

¹⁷² Alexander Yarwood and Mike Knowling, *Race Relations in Australia: A History* (Methuen Australia 1982) 257.

¹⁷³ Myra Willard, *History of the White Australia Policy to 1920* (Melbourne University Press 1923).

¹⁷⁴ Anthony Palfreeman, *The Administration of the White Australia Policy* (Melbourne University Press 1967).

¹⁷⁵ Gwenda Tavan, *The Long, Slow Death of White Australia* (Scribe Publications 2005).

willingness to respond to changing risk dynamics brought about by new uncertainties which are explored in later chapters.

Despite the WAP's abolition several decades ago, academia continues to link it with current social thinking and policy regarding irregular migration and asylum. Ang has suggested that the "racist core" of the WAP is still present and persuasive in explaining the rise of Hansonism and the *Tampa* incident.¹⁷⁶ In contrast, other scholars have suggested that the WAP's creation of two categories of migrants ("acceptable" and "prohibited") established an imaginary of "two Australias" co-existing simultaneously. One supports policies of multiculturalism, while the other supports exclusion.¹⁷⁷

The modern exclusion of irregular migrants and asylum seekers and its connection to the WAP described above is a theme pursued by leading Australian academic James Jupp. The connection is even made clear in the title of his book *From White Australia to Woomera*.¹⁷⁸ Although Jupp eschews centring race as the rationale for excluding irregular migrants or asylum seekers, it is acknowledged as a contributory factor to the rise of One Nation and Hanson.¹⁷⁹ Jupp suggests that for the traditional governing parties to win-back votes from One Nation, the political imperative drove the draconian exclusionary measures such as offshore detention rather than race alone.¹⁸⁰

Others have suggested that political leaders emphasise "cultural incompatibility" as a covert exclusion measure to complement overt ones. Dunn et al

¹⁷⁶ Ien Ang, 'From White Australia to Fortress Australia: The Anxious Nation in the New Century' in Laksiri Jayasuriya, David Robert Walker and Jan Gothard (eds), *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003).

¹⁷⁷ Ann Curthoys, 'Liberalism and Exclusionism: A Prehistory of the White Australia Policy'; Sean Brawley, 'Legacies, the White Australia Policy and Foreign Relations since 1973'; Gavin Jones, 'White Australia, National Identity and Population Change' in Laksiri Jayasuriya, David Robert Walker and Jan Gothard (eds), *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003).

¹⁷⁸ Jupp (n 120). Woomera is a small town in an isolated part of South Australia with an Immigration Detention Centre.

¹⁷⁹ *ibid* 120.

¹⁸⁰ *ibid* 200.

cited this “cultural racism” as directed towards Muslim migrants for their alleged failure to ‘assimilate to “Australian ways”’.¹⁸¹ A similar conclusion was reached by Stratton, who argued that certain contemporary Australian leaders share a belief that particular cultures are irreconcilable with others.¹⁸² A viewpoint that Stratton also traces back to historical WAP exclusions of those perceived as ineligible for community membership.¹⁸³

An additional covert exclusion method has been identified in the redirection of rhetorical blame toward people smugglers.¹⁸⁴ Researchers have found that Australian public opinion of asylum seekers was negatively affected by the political labelling of people smugglers as evil.¹⁸⁵ Suhnan et al suggest that the labelling is a “dog whistle” intended to associate asylum seekers with criminality to justify a covert race-based exclusion.¹⁸⁶ However Hoffman’s application of risk to labelling activities demonstrates how risky behaviours are targeted (i.e. engaging people smugglers using unsafe transport) which increases uncertainty for asylum seekers as their chosen method of entry into Australia was closed down.¹⁸⁷

The above overt and covert exclusion literature coalesces around the proposition that race drives the construction and effect of applicable regimes. While the literature is clear on effect, adopting a risk-based approach in this thesis as Hoffman does, explores antecedent or pre-requisite questions regarding the formulation of migration or asylum regimes. For example, the above literature cannot

¹⁸¹ Kevin M Dunn, Natascha Klocker and Tanya Salabay, ‘Contemporary Racism and Islamophobia in Australia: Racializing Religion’ (2007) 7 *Ethnicities* 564, 570.

¹⁸² Jon Stratton, *Race Daze: Australia in Identity Crisis* (Pluto Press 1998) 14.

¹⁸³ *ibid* 81.

¹⁸⁴ Katherine Valentine, ‘“People Smuggling” or Refugee Hysteria.’ (2000) February/March *Arena Magazine* 5; Andreas Schloenhardt and Elizabeth Philipson, ‘“No to People Smuggling”: A Review of Australia’s Anti-Migrant Smuggling Awareness Campaigns’ (University of Queensland 2013) Research Paper.

¹⁸⁵ Aries Suhnan, Anne Pedersen and Lisa Hartley, ‘Re-Examining Prejudice against Asylum Seekers in Australia: The Role of People Smugglers, the Perception of Threat, and Acceptance of False Beliefs’ (2012) 24 *The Australian Community Psychologist* 79, 92.

¹⁸⁶ *ibid* 91.

¹⁸⁷ Sue Hoffman, ‘Fear, Insecurity and Risk: Refugee Journeys from Iraq to Australia’ (PhD Thesis, Murdoch University 2010) 227–236.

explain the exclusion of migrants deemed to be irregular because of their actual or potential physical or mental health issues or a migrant's or asylum seeker's political affiliation. Risk also opens new avenues to explore the unintended policy consequences, and how risk provides a more foundational explanation of how frameworks are a dynamic response to what and how government perceives as a risk to itself and its constituencies.

Scholarship regarding race and migration in the UK has followed a similar path Australia's in connecting today's applicable frameworks with historical racism. According to authors, the Aliens Act 1905 (UK) has served as a basis for the modern immigration control frameworks.¹⁸⁸ However, as Bashford and McAdams noted, the Act may also be viewed as an antecedent to the mid-century migration frameworks that more effectively regulated people's entry into the UK along racial lines.¹⁸⁹

These mid-century frameworks have come under sustained academic critique for their effect on excluding or severely restricting Black and Asian migrants from entering the UK. Solomos has written extensively on the state of race and racism within British society since 1945. According to Solomos, blame for social disorder within the UK was directed at Black and Asian people, thereby entangling migration policy as the source of the "problem".¹⁹⁰ In further developing Solomos's argument regarding blame, this thesis examines its role and usage stemming from government's hierarchical worldviews of risk. Also, how the government directs blame at irregular migrants or asylum seekers in public debate by attributing responsibility for their physical and legal outcomes to the migrants.

Examinations of contemporary irregular migrant, asylum and race issues within the UK have similarly been placed within historical contexts. Shah highlights how the

¹⁸⁸ Jill Pellew, 'The Home Office and the Aliens Act, 1905' (1989) 32 *The Historical Journal* 369; Helena Wray, 'The Aliens Act 1905 and the Immigration Dilemma' (2006) 33 *Journal of Law and Society* 302.

¹⁸⁹ Alison Bashford and Jane McAdam, 'The Right to Asylum: Britain's 1905 Aliens Act and the Evolution of Refugee Law' (2014) 32 *Law and History Review* 309.

¹⁹⁰ John Solomos, *Race and Racism in Britain* (3rd edn, Macmillan Press 2003) 65.

UK's claimed heritage as a haven for persecuted Europeans contrasts with the more recent treatment of East African Asians.¹⁹¹ The manipulation of the law to exclude those who do not accord to notions of "Britishness" (centred on race) is central to Shah's work. Shah also argues that international law is used to balance state's rights and its duty to protect citizens against common law rights to asylum. In effect this turns questions of asylum into questions of states' rights.¹⁹² This proposition poses interesting questions examined in this thesis, particularly the recasting of irregular migrants or asylum seekers as risk objects that threaten the state and its sovereignty.

Shah also encouraged examining other contributory factors that intersect with race when analysing state desires to control asylum.¹⁹³ While this thesis will examine the intersection between risk and race, Mynott has investigated the interrelationship between capitalism, migration, and race in the UK.¹⁹⁴ According to Mynott, the development of modern capitalist nation-states and their concomitant national identities were matched with the imposition of immigration controls, purportedly imposed to protect finite economic resources.¹⁹⁵ Mynott identifies the economic downturn that followed the immediate post-War years as a trigger for the Commonwealth Immigrants Act (UK) 1962 and subsequent Acts that introduced controls that encouraged the populace to identify themselves along nationalistic/racial lines rather than in terms of class.¹⁹⁶ So, rather than the policy objective being to create a racist migration framework, race is something of a Trojan horse, used as a vehicle to perpetuate global capitalism.

The UK's political and administrative governance arrangements have also been studied as an actor in race and migration intersections. Hansen had observed power struggles between the colonial and labour departments over migration policy,¹⁹⁷ while

¹⁹¹ Prakash Shah, *Refugees, Race and the Legal Concept of Asylum in Britain* (Cavendish Publishing 2000).

¹⁹² *ibid* 9–10.

¹⁹³ *ibid* 5.

¹⁹⁴ Mynott (n 167).

¹⁹⁵ *ibid* 17–18.

¹⁹⁶ *ibid* 21.

¹⁹⁷ Randall Hansen, *Citizenship and Immigration in Postwar Britain* (Oxford University Press 2000).

a lack of institutional oversight mechanisms subsequently allowed for unimpeded introduction of exclusionary measures.¹⁹⁸ This insight may help explain Britain's continuous unease regarding European oversight of migration and asylum policy and the central role that played in the UK's departure from the EU.

Hansen called for greater recognition of the mitigating anti-discrimination and anti-racism legislation enacted alongside restrictive migration laws,¹⁹⁹ but identified the paradox that afflicts public policy in the UK as a result. Namely, good race relations within the UK relies on preventing "unwanted" migration necessitating ever restrictive migration policy towards irregular migrants, resulting in an illiberal path to a liberal policy objective.²⁰⁰ A paradox observed by O'Brien and examined further in this thesis relates to the risk that successful policies of modernity have become a source of risk.²⁰¹

From critical legal and post-colonial perspectives El-Enany has argued that British migration frameworks were constructed to advance and protect its colonial enterprise.²⁰² Consistent with previous authors, El-Enany uses a chronological/historical review of migration law to demonstrate bordering as a method that encloses the riches of colonialism to the exclusion of the colonised.²⁰³ Of relevance to this thesis is the argument that the creation and act of categorisation (citizen, migrant, refugee etc) perpetuates colonisation and legalises harms as witnessed in Windrush.²⁰⁴ El-Enany also suggests we instead consider migration as an act of fleeing colonisation and irregular migration as anti-colonial resistance.²⁰⁵

Some questions remain regarding El-Enany's constitutional conceptualisation of the UK. Consistent references to Britain rather than the UK omit Northern Ireland from the imaginary that El-Enany seeks to construct of a walled-off island nation, otherwise

¹⁹⁸ *ibid* 27–28.

¹⁹⁹ *ibid* 140.

²⁰⁰ *ibid* 264.

²⁰¹ Peter O'Brien, 'Migration and Its Risks' [1996] *The International Migration Review* 1067.

²⁰² Nadine El-Enany, *(B)ordering Britain: Law, Race and Empire* (Manchester University Press 2020).

²⁰³ *ibid* 116.

²⁰⁴ *ibid* 19.

²⁰⁵ *ibid* 225.

an accounting for Northern Ireland and its borderless relationship with the Republic of Ireland would be required. The broad-brush approach similarly assumes the equal distribution of plundered wealth behind walled-off Britain rather than the actual unequal wealth concentration in London and the south-east. Yeo also questions the wider applicability of the protection of plundered wealth thesis, noting that other and colonised states have migration laws too.²⁰⁶ This thesis will show that risk more consistently explains government policy decisions as responses to threat perceptions. Furthermore, that allegedly harmful migration regimes are not unique to coloniser states and fit within a broader phenomenon of modern law and legal frameworks perpetuating harm and non-liability. Accordingly, this thesis sits within the broader trends in migration literature described by Pisarevskaya et al that examined the nuanced questions of why and how.

1.4.5 Risk and policy in government

This final sub-section of the literature review examines risk as a subject in public policy development. The role of risk in policy-making and implementation became a subject of interest for the UK government in the early 2000s. This interest was borne out of the “Third Way” politics developed between Giddens (now a Labour peer) and Tony Blair’s Labour government.²⁰⁷ The Third Way was an attempt at implementing a form of government that Giddens argued was necessary to address the consequences of modernisation which were beyond the capabilities of traditional industrial right/left politics.²⁰⁸

The UK bureaucracy set about adopting much of Giddens’s approach to risk in public policy development. It acknowledged that new risks were being manufactured, that government was expected to do more to manage risk against a background of

²⁰⁶ Colin Yeo, ‘Book Review: (B)Ordering Britain by Nadine El-Enany’ (*Free Movement*, 18 February 2020) <<https://www.freemovement.org.uk/book-review-bordering-britain-by-nadine-el-enany/>> accessed 1 November 2021.

²⁰⁷ Niall Dickson, ‘What Is the Third Way?’ (*BBC News*, 27 September 1999) <<http://news.bbc.co.uk/1/hi/458626.stm>> accessed 21 July 2020.

²⁰⁸ Anthony Giddens, *The Third Way: The Renewal of Social Democracy* (Polity Press 1998) 64.

reduced public trust in institutions, and that good risk management practices involved transparency and public engagement.²⁰⁹ While less philosophical about the nature of risk, the Australian Government similarly claimed the application of risk management practices grounded in transparency and public consultation.²¹⁰ Blair would go on to suggest though the risk was putting pressure on policy officials ‘to act to eliminate risk in a way that is out of all proportion to the potential damage.’²¹¹ So rather than following the government’s guidance to “manage risk”, the civil services have attempted to do away with risk altogether.

What Blair alludes to is the relevance of risk perception and management within the civil service as an organisation. While governments may have their views and perceptions of risk, so too do their supporting organs, which may clash. Some have argued that risk was meant to assist those engaged in policy development in anticipating and evaluating the consequences of various policy options.²¹² Yet as Laughlin has written, modern social and governmental demands for risk management now prompt organisations to further bureaucratise themselves or, to reorientate themselves away from service delivery as blame avoidance strategies for when expectations are not met.²¹³

Part of risk management within government and their bureaucracies involves developing and deploying policies that mitigate perceived risks.²¹⁴ A risk mitigation is the physical operationalisation of policies designed to reduce the likelihood of a harm occurring or, lessening the harm’s impact if it were to occur. Related to this study, Jennings argues that significant policy interventions at the border, are premised on risk

²⁰⁹ Cabinet Office, ‘Risk: Improving Government’s Capability to Handle Risk and Uncertainty’ (UK Government 2002) 3.

²¹⁰ Department of Finance, ‘Commonwealth Risk Management Policy’ (Australian Government 2014) 16.

²¹¹ Tony Blair, ‘Compensation Culture’ (Institute of Public Policy Research, 26 May 2005) <<https://www.theguardian.com/politics/2005/may/26/speeches.media>>.

²¹² Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* (Harvard University Press 1993); Cass R Sunstein, *Risk and Reason: Safety, Law, and the Environment* (Cambridge University Press 2002).

²¹³ Richard C Laughlin, ‘Environmental Disturbances and Organizational Transitions and Transformations: Some Alternative Models’ (1991) 12 *Organization Studies* 209.

²¹⁴ Cabinet Office (n 209) 39; Department of Finance, ‘Risk Potential Assessment Tool’ (Australian Government 2016) Resource Management Guide No. 107 3.

and directed towards its mitigation.²¹⁵ It has been claimed by Sjöberg that for a more rounded or complete understanding of perceived risk, a researcher should examine risk mitigation. Doing so will lead to uncovering what is truly perceived as risk, i.e., mitigations wouldn't be taken if a risk was not perceived.²¹⁶ Accordingly this thesis examines policies that intend to reduce the likelihood or severity of a risk event. Referred to as "mitigations" reflecting risk management policy and practice, the examination will assist understanding the risk that is perceived from irregular migrants and asylum seekers and how that risk and its affect may be lessened through government action.

Risk perceptions of a policy development agency will, despite claims of "objectivity", be informed by pre-existing social, political, and institutional understandings.²¹⁷ Just as public perceptions of risk may be affected by psychological and social factors,²¹⁸ so too are perceptions of policy makers who can be affected by issues like "dread" of their errors making front-page news or facing a public inquiry.²¹⁹ Interestingly, Radaelli and de Francesco have suggested that managing perceived risk by an organisation may be more about exerting bureaucratic control and establishing political legitimacy within the organisation than policy.²²⁰

Lee Clarke's "fantasy documents" thesis expands on this idea of control and legitimacy visible in the conduct of departments producing policy, which are studied in this research.²²¹ Clarke argues that organisations charged with managing large-scale modern disasters, especially those created by modern technologies, develop unrealistic management plans that translate uncertainty into acceptable risk. These

²¹⁵ Jennings (n 24) 23.

²¹⁶ Lennart Sjöberg, 'Policy Implications of Risk Perception Research: A Case of the Emperor's New Clothes?' (2002) 4 Risk Management 11, 12.

²¹⁷ Sheila Jasanoff, *The Fifth Branch: Science Advisers as Policymakers* (Harvard University Press 1994).

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²¹⁹ Henry Rothstein, 'Neglected Risk Regulation: The Institutional Attenuation Phenomenon' (2003) 5 Health, Risk & Society 85.

²²⁰ Claudio Radaelli and Fabrizio de Francesco, 'Regulatory Impact Assessment' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010).

²²¹ Lee Clarke, *Mission Improbable: Using Fantasy Documents to Tame Disaster* (University of Chicago Press 1999).

“fantasy documents” become rhetorical devices used to assure audiences of risk control, despite the task’s impossibility.²²² Many such documents are produced by departments (and reviewed in the thematic chapters) that claim to manage irregular migration or asylum seeking. However, the multitude and continued occurrence of irregular migration and asylum seeking suggest their inadequacy. As discussed later, the fantasy documents may not only be incapable of addressing their intended purpose but can exacerbate or create new dangers.

Finally, it has been suggested that risk and its management have “colonised” the way that government administrators think about and frame issues. That is, risk the ability to reconcile internal conflict within organisations as it pulls together to avoid failures.²²³ Power notes that a need for such cohesion has only increased due to rising expectations for responsive and agile risk management that meets the demands for transparency and accountability in risk success and failure.²²⁴ So, even though fantasy might be being produced, it at least unites the organisation in a common purpose.

Within the context of this thesis, the literature provides valuable insights into how to approach risk analysis both as an agent in the policy-making process and in organisational functions. This thesis will add to these existing studies by presenting a new analysis of risk perception and its effects within the UK’s Home Office and the Australian Department of Home Affairs as they design and implement irregular migration and asylum policy for the government.

1.5 Methodology and methods

The methodology and methods and how they relate to the stated objectives of this thesis are discussed here. Following the placement of this research in the broad

²²² *ibid* 16.

²²³ Henry Rothstein, Michael Huber and George Gaskell, ‘A Theory of Risk Colonization: The Spiralling Regulatory Logics of Societal and Institutional Risk’ (2006) 35 *Economy and Society* 91.

²²⁴ Michael Power, *Organized Uncertainty: Designing a World of Risk Management* (Oxford University Press 2007).

methodological field, the methods used to gather and analyse data are explained and justified. The research process adopted in this thesis is a social process one. This means that this thesis considers, the social, ethical, and political context in which this research is carried out, as well as issues relating to research design, theory, data collection and analysis.²²⁵ It is also argued here that using a case-study approach is a valuable way to contribute to understanding irregular migration and asylum seeking as major contemporary social issues.²²⁶

1.5.1 Methodology

The ontological and epistemological approaches that underpin this thesis are discussed in detail in this section. It will then set out why the qualitative techniques adopted in the research and analysis phases were the most appropriate given the nature of this thesis's subject (government risk perceptions) and object (irregular migration/migrants/asylum seekers).

Constructivist approaches to analysis support the ontological and epistemological stance of this thesis. In that, individuals are regarded as taking an active role in constructing social reality. Furthermore, the world can be viewed through a subjective rather than an objective lens.²²⁷ In this thesis, adopting such a philosophical stance towards risk accords with that of the risk theories used in the theoretical framework as presented in Chapter Two.²²⁸ Adopting the constructivist stance assists in capturing and emphasising the diversity of risk perceptions and interpretations. It also highlights the meanings of risk perceptions towards irregular migrants that develop due to the competition and debate within the Australian and British communities.

²²⁵ FJ Hunt, 'Research as a Social Process' (1978) 13 *The Australian Journal of Social Issues* 327.

²²⁶ Gideon Sjoberg and others, 'The Case Study Approach in Social Research' in Joe R Feagin, Anthony M Orum and Gideon Sjoberg (eds), *A case for the case study* (University of North Carolina Press 1991) 28.

²²⁷ John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th ed., Sage 2014) 8–9.

²²⁸ Ortwin Renn, *Risk Governance: Coping with Uncertainty in a Complex World* (Earthscan 2008) 23–24.

Information was gathered from an analysis of journals, published government documents, such as policy and discussion papers, and transcripts of parliamentary debates, speeches, and news media that carried government or political leader statements. It is believed that analysing these materials would best reveal how government risk perceptions were informed and created. Using these qualitative techniques would enable this researcher to see better how the government, as the subject of this research, interpreted irregular migration and asylum issues and the context in which that interpretation occurred.²²⁹ Castle has argued that:

researchers should always site their research in the context of broader processes of social transformation, which, for the contemporary epoch, means examining the way neo-liberal globalization and reactions against it have reshaped societies, communities and cultures.²³⁰

As set out throughout this thesis risk and its perception is a socially complex and varied transformative force in contemporary society that is best captured using qualitative approaches.

There were 15 semi-structured in-depth interviews carried out with migration and asylum law and policy experts from in and outside the Australian and UK governments (further details and discussion of this fieldwork are below). These interviews were necessary for three reasons: interviewees were able to provide their first-hand accounts of the factors that were taken into consideration when developing certain policies; they could reflect upon the degree to which these factors contributed to or influenced the development of certain policies and; provide information on the events that were taking place within government outside of public view. When using interviews with experts in this research, critical awareness needed to be exercised in interpreting their responses. This is a contentious area, in which respondents may take away and transform facts and data.²³¹

²²⁹ Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016) 393.

²³⁰ Stephen Castles, 'Understanding the Relationship between Methodology and Method' in Carlos Vargas-Silva (ed), *Handbook of research methods in migration* (Edward Elgar Publishing 2012) 17.

²³¹ James A Holstein and Jaber F Gubrium, *The Active Interview* (Sage 1995) 8–9.

1.5.2 Using case studies

A case study approach was chosen as the most appropriate way to carry out this research. That was because of its ability to take an instance and use multiple methods and data sources to explore and interrogate the issue, achieving a “thick description”.²³² In this research, a “thick description” of Australian and UK government risk perceptions towards irregular migration and asylum seeking is achieved by placing the results of the analysis of government documents, speeches, and interviews performed within the context of the time that they were produced or occurred. The description is enhanced by adding a comparative analysis of risk perception between the two jurisdictions and, the varying effects these differences may have on the rights position of irregular migrants and asylum seekers in each country.

Two possible limitations to the case study approach are the generalisable nature of the presented accounts and the effect of boundaries being drawn.²³³ Having only two case studies in this research may limit the applicability of findings to a broader context because of their limited overall significance. However, it is argued here that the purpose of the case studies is to illuminate risk as a lens of analysis in irregular migration and asylum studies and prompt wider study in other settings. Case studies also necessarily draw boundaries around what is and is not included. In this research, boundaries have been drawn around time (the period of the analysis is 2001 – 2022) and subject (government perceptions only, and not society or migrant / asylum seeker perceptions). While a more historical timeframe and alternative perceivers of risk are valid avenues of inquiry, the limits imposed by a thesis necessarily draw boundaries around these issues so that the research could be completed within timeframe and resourcing constraints.

²³² Sheila Stark and Harry Torrance, ‘Case Study’ in Bridget Somekh and Cathy Lewin (eds), *Research methods in the social sciences* (Sage 2005) 33.

²³³ *ibid* 33–34.

1.5.3 Role of the researcher

The following establishes elements of the researcher's biography that may affect this thesis's data gathering and analysis process. Being an Australian solicitor and barrister, and civil servant in the Australian and UK government civil services may afford a degree of special access to interviewees (that are legal practitioners and/or civil servants themselves) who may have been more willing to share their experiences. Additional caution is exercised here regarding world view. As a part of the bureaucracy in both case study jurisdictions and who assisted with formulating and implementing the legislative and policy frameworks under review, lies a potential lens through which gathered data may be filtered. However, while ongoing monitoring was exercised to enhance research rigour, these experiences provide additional insight into the issues of government risk perception and irregular migration and asylum seeking that may prove beneficial.

Reflecting upon one's personal biography in this way acknowledges its potential to act as a lens or filter through which data selection and analysis occurs. That makes the researcher also a participant in the investigation.²³⁴ Therefore, Creswell has suggested that the researcher must be sensitive to their biographies.²³⁵ This sensitivity can be reached through reflexivity by the researcher via a clear statement, such as the one above, of their proximity to the research.²³⁶ The goal is to monitor the potential effects the researcher's biography will have on: their access to the field; the nature of the researcher-researched relationship and; their worldview, expression, and lens for filtering information.²³⁷

²³⁴ Daniel Sciarra, 'The Role of the Qualitative Researcher' in Mary Kopala and Lisa A Suzuki (eds), *Using qualitative methods in psychology* (Sage 1999) 41.

²³⁵ Creswell (n 227) 186.

²³⁶ Jane Meyrick, 'What Is Good Qualitative Research?: A First Step towards a Comprehensive Approach to Judging Rigour/Quality' (2006) 11 *Journal of Health Psychology* 799, 804.

²³⁷ Roni Berger, 'Now I See It, Now I Don't: Researcher's Position and Reflexivity in Qualitative Research' (2013) 15 *Qualitative Research* 219, 220–21.

1.5.4 Methods – Deskwork

Having set out the methodological basis for this research, the following sections detail the methods used to collect and analyse data. In addition, it will describe how and why any exceptions to the methods were made to ensure reasonableness in the approach used.²³⁸ Using desk-based research assisted in achieving this thesis's first objective, identifying factors that go into government risk perceptions. From the various documents gathered and analysed themes and commonalities were identified that suggested what constituted government risk perceptions of irregular migration and asylum seeking.

The search method as set out by Fink was used when searching for empirical literature. These steps included: 1) selecting research questions; 2) selecting bibliographic or article databases; 3) choosing search terms; 4) applying practical screening; 5) applying methodological screening criteria; 6) doing the review; and 7) synthesising the results.²³⁹ The application of each step in this research is further explained below.

The research question and sub-questions were set-out above and went through a process of refinement. This included removing a third case study jurisdiction which upon further consideration was necessary so that the research would remain manageable and provide the right balance between the breadth and depth of analysis. The question was also refined to make explicit that risk perceptions would be confined to those of the government rather than the general communities. The government's perceptions were considered a better avenue to pursue because of the researcher's professional experience and sufficiently narrow to allow for a more targeted thesis.

The databases provided by the University of London were used to search for both books and journal material. The initial search was performed using "risk theory"

²³⁸ Meyrick (n 236) 805.

²³⁹ Arlene Fink, *Conducting Research Literature Reviews: From the Internet to Paper* (4th edn, Sage 2014) 3–5.

and “risk perception” as the search terms. After reviewing the general literature on risk theory, the two theories that were the most relevant to this thesis were selected for further investigation. The primary theoretical works for each risk approach were identified by repeating the steps described above. The English translations were selected for Beck’s works which are primarily published in German.

At this stage separate searches of the databases available at the University of London Senate House Library, for texts, journal articles, and research reports using “risk” and the theorist’s name were performed. No publication time limit was set in the searches, though references to techno-scientific approaches to risk were excluded. So too were non-peer-reviewed journal articles and those not in English. The same process was followed using the search terms: “risk and (irregular/illegal) migration” and “risk and asylum seekers” to find relevant texts, journal articles, and reports et cetera.

From early 2020 to April 2021 the Covid-19 pandemic forced the curtailment of physical access to campuses and libraries across the University of London network. This restricted the material available for research to what was found online publicly and via the much smaller online offering of the Senate House Library. The Sconul scheme was also suspended and not reinstated, prohibiting physical and electronic access to campuses other than Senate House Library.

Chapters Three, Four and Five in this thesis examine different dimensions of government risk perceptions of irregular migration and asylum seeking and the related law and policy. While Chapter Six analyses the consequences of these risk perceptions. Database searches were performed using the search terms “risk and (irregular/illegal) migration” and the theme for the chapter was either “social or society”, “economy or economic”, or “security”. Where the research turned to identify relevant law, a more doctrinal approach was as set out by Dobinson and Johns.²⁴⁰ The legal encyclopaedia

²⁴⁰ Ian Dobinson and Francis Johns, ‘Legal Research as Qualitative Research’ in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007) 25–32.

Halsbury for both case study jurisdictions was reviewed as a starting point. Where a case required further examination, the case digests Digest and The Australian Digest were searched. To ensure currency and validity of a cited case, the case citators CaseSearch for the UK and CaseBase for Australia were consulted. Doing this ensured the validity of the law was supported by preceding cases that either followed, applied, or distinguished the case. To ensure that the statute law referred to in this thesis was the most up-to-date, subscriptions for the awareness services *Current Law* for the UK and *Australian Current Law* for Australia were taken out. For further understanding of applicable law, the databases LexisNexis, Westlaw and Heinonline were searched using legislation titles and case names.

Hansard was consulted for records of parliamentary speeches and parliamentary committee hearings or inquiries where necessary to assist in interpretation and understanding. The Australian and UK Hansards were sourced from their respective websites.²⁴¹ Hansard searches were conducted in the context of a relevant bill debate following the second reading or committee hearings on a bill. Analysing these speeches or statements made in debates and hearings proved useful as they articulated the government's rationale for a policy decision and the perspectives of independent witnesses regarding these decisions.

The news media content was sourced from the ProQuest international news stream database in Senate House. Searches were performed on keywords and phrases such as "risk" and "irregular/illegal and immigration/migration" for selected Australian and UK daily broadsheet newspapers published from 2001 to 2021 inclusive. Including news media reports of government risk perceptions not only added context to government action but are also suggestive of how these actions were reified for public consumption.²⁴²

²⁴¹ Australia: https://www.aph.gov.au/Parliamentary_Business/Hansard UK: <https://hansard.parliament.uk/>

²⁴² Christopher Hart, *Critical Discourse Analysis and Cognitive Science: New Perspectives on Immigration Discourse* (Palgrave Macmillan 2010) 17.

The analysis of government risk perception communications via news media and Hansard is integrated throughout the chapters of this thesis. To analyse media reporting on these perceptions and parliamentary proceedings, a critical discourse analysis was performed.²⁴³ The gathered material was first reviewed on a textual level to identify words used to describe irregular migrants and asylum seekers and the types of risk the speaker believed were posed. These words were assembled to determine if any patterns emerged and if so, what might be sought to be achieved through these words and to identify the social relationships at work. It was noted during this process that speakers may intentionally or otherwise, conflate or co-mingle migrant / irregular migrant / asylum seeker terminology when discussing risk perceptions or the policy issues surrounding these cohorts of people more generally. Accordingly, the terms of irregular migrant and asylum seeker were selected to ensure coverage of the relevant issues regarding people moving outside regular migration patterns.

Second, an interpretation of the words in the context in which they were produced was performed. This sought to interpret the intent behind the words used and identify the values or attitudes the speaker or author attempted to convey. Finally, these words were analysed to reveal what norms or traditions regarding risk and irregular migrants and asylum seekers the authors were attempting to convey. At each step, the results were compared between Australia and the UK to identify commonalities or differences influencing legislative and policy decisions regarding irregular migrants and asylum seekers.

Van Dijk defines this type of analytical research as a study of ‘the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context.’²⁴⁴ Critical discourse analysis does that by focusing on social problems and recognising that discourse is both situated in a historical context and that text goes through a mediation process before its

²⁴³ Teun A van Dijk, ‘Critical Discourse Analysis’ in Deborah Schiffrin, Deborah Tannen and Heidi E Hamilton (eds), *The Handbook of Discourse Analysis* (Blackwell Publishing 2001).

²⁴⁴ *ibid* 352.

consumption by society.²⁴⁵ Critical discourse analysis has been conducted through such lenses as “class”, “gender”, and “race”,²⁴⁶ in this thesis, risk is applied adding a new perspective to this field.

1.5.5 Methods – Fieldwork

Fieldwork for this research involved selecting and interviewing legal practitioners, bureaucrats, and other professionals who have engaged in policy making and the irregular migration and asylum regimes of Australia or the UK. Given the qualitative nature of this research, a nonprobability approach was adopted to participant sampling. This is a suitable approach because the data collected does not relate to attributes of individuals within a defined population. Instead, it is data that seeks experts’ views and opinions, making the nonprobability sampling approach the most appropriate.²⁴⁷ Using interviews helped achieve the first and second objective of this thesis, identifying risk perception factors and assessing these factors’ impact. These interviews from first-hand accounts revealed factors that contribute to risk perception and those not identified by desk-based research. They were also more directly able to attribute the level of influence these factors had on the ultimate policy decisions taken by governments.

Two methods of participant sampling were adopted simultaneously: purposive/judgement and snowball. In a purposive sampling exercise, informants or participants with the requisite knowledge and expertise suitable for the study are chosen based on the researcher’s opinion.²⁴⁸ In this research, key participants were identified by their activity in the migration field indicated by their participation in policy development, in matters before court, publishing, and advocacy activities. Further sampling was made using the snowball approach. In this method, the

²⁴⁵ Norman Fairclough and Ruth Wodak, ‘Critical Discourse Analysis’ in Teun A van Dijk (ed), *Discourse as Social Interaction* (Sage 1997) 271.

²⁴⁶ van Dijk (n 243) 354.

²⁴⁷ H Russell Bernard, *Social Research Methods: Qualitative and Quantitative Approaches* (2nd ed., Sage 2013) 168.

²⁴⁸ Sotirios Sarantakos, *Social Research* (4th edn, Red Globe 2013) 475.

researcher asks already selected respondents to recommend others meeting the research criteria who might be willing to participate.²⁴⁹ This method enables contacts with elites and other hard to reach groups until saturation levels are attained.

Semi-structured interviews were conducted with participants identified using the methods described above. These types of interviews are characterised by their open-ended nature but follow a general script and cover a list of topics. This type of approach to interviewing works best for bureaucrats and elite community members who are accustomed to efficient use of their time.²⁵⁰ It demonstrates control of the interview while respecting the possibility of following new leads.

Appendix One contains a list of those interviewed for this research and their biography. Both the legal practitioners and policy professionals were selected because of their length of experience working within migration or asylum law and policy, and from recommendations of other interviewees. Those with greater lengths of services were preferred so that views regarding the developments or evolutions in migration law and policy could be discussed. A conscious effort was also made to ensure the breadth of perspectives were captured, that is governmental, non-governmental, administrative, prosecutorial, and defence practitioners. The interviews were initially conducted at a location of the interviewee's choosing, usually in a meeting room or their office at work. Each interview lasted between 45 – 60 minutes.

The Covid-19 pandemic forced the adoption of online fieldwork to conduct interviews from February 2020 onwards. The interviews scheduled to occur at the time of the initial UK country-wide lockdown in Spring 2020 were cancelled. After a pause to give space so that the researcher and interviewee participants could adjust and manage the social and health uncertainties of the pandemic, interviews were conducted by telephone or via online platforms such as Zoom and Skype. Many of Howlett's experiences in conducting online fieldwork were also factors in this

²⁴⁹ *ibid* 179.

²⁵⁰ Bernard (n 247) 182–83.

research.²⁵¹ Participants were able to choose their own “safe space” to be interviewed, such as at their home or outside work hours, which gave them more reassurance to provide more in-depth and sensitive information. However local level distractions, such as message notifications or other interruptions could affect chains of thought.²⁵² Adopting this “technologically mediated approach” to fieldwork although forced, proved to be an equally valuable method of fieldwork data collection.²⁵³

1.5.6 Data analysis

Having covered how the data for this research was collected, this section will discuss how the data analysis was performed. The material collected from the deskwork activity, was read, and placed within one of the thematic areas that became Chapters Three, Four and Five in this thesis. For the security risk theme which developed into chapter three, topics such as terror/ism, organised / crime, threat, smuggling, and national / security were identified and noted from the source data during the analysis. The notes were then organised and grouped which built the sub-themes of terror and criminal risks. The fourth chapter regarding the economic risk theme developed after examining the source material from which the often-recurring topic of work / ing was identified. The phrase “illegal” was added to the sub-theme of work because of its frequent co-location with the topic of work in the speech and policy material gathered. The social welfare sub-theme developed by identifying within policy and speeches, the negative narratives of irregular migrants and asylum seekers as “scroungers”, “bogus”, and the concept of a “failed asylum seeker”. Particularly as these phrases occurred when reforms that limited or excluded access to social welfare provisions were the subject of the discourse or policy under analysis. The final thematic chapter of social risk was constructed from the topics of “invasion” and the frequent reference in policy and discourse to concepts of “fairness” and allusions to either Australian or British

²⁵¹ Marnie Howlett, ‘Looking at the “Field” through a Zoom Lens: Methodological Reflections on Conducting Online Research during a Global Pandemic’ (2021) [Online First] *Qualitative Research* 1.

²⁵² *ibid* 6–7.

²⁵³ *ibid* 12.

social norms and values when justifying new policy restrictions on irregular migrants or asylum seekers.

From the material within each of the common themes, trends or patterns in relation to irregular migration and asylum seeking and its relationship to government risk perceptions were identified. Using this material, I searched for historical context, and identified the social structures that may have been contributing to the risk perceptions and the events that were taking place.²⁵⁴

The analysis was performed from a socio-legal perspective for the legislative and case law elements of this research. According to Chynoweth, socio-legal analysis is characterised by a search to find the meaning of law through reference to external factors interpreted in their proper historical social context, to determine how the law operates or with an eye towards reform.²⁵⁵ In this thesis Australian and UK legal measures both legislative and judicial regarding irregular migration and asylum seeking, were considered through a risk lens and within their social and political contexts. In that the measures were considered in the context of current events and circumstances as well as the political debates that were occurring at the time. Where relevant these events and debates are referenced in the legal analysis.

The interviews were first transcribed and then uploaded into Nvivo for coding. Categories were made for interviewee's jurisdiction and occupation type, and the question asked. From these fields, data was sorted and segmented to identify trends or themes. It was a process repeated throughout the research as new trends or themes emerged so that they could be cross-referenced against each other. The smaller number and length of policy documents plus the notes taken from them, better lent themselves to categorisation within the identified themes and placed into corresponding computer files. Then the information within the analysis notes were

²⁵⁴ Kathy Charmaz and Antony Bryant, 'Constructing Grounded Theory Analyses' in David Silverman (ed), *Qualitative Research* (4th edn, Sage 2016) 350.

²⁵⁵ Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing 2008) 30–31.

compared and contrasted against the coding from the interviews. The interpretations from this data were applied to each of the three thematic and consequence chapters to provide context to otherwise static documents and to reveal processes that created policies and the thinking behind them.

1.5.7 Ethical issues and consideration

The ethical issues in this research and the procedures undertaken to address or mitigate them are set out here. For the interviewee-participants the key ethical concerns of informed consent, confidentiality, anonymity, and pre-publication access were all considered prior to undertaking this research and managed.²⁵⁶ A Research Ethics Review form was submitted to the University's Research Ethics Committee and approval granted. As the Covid-19 pandemic forced a change in approach to fieldwork, an amendment was made to the Review form and approved by the Committee (SASREC_1718-250-PhD – the approved Research Ethics Review form is at Appendix Two). Prior to collecting data or conducting an interview, the research was explained as were the confidentiality and anonymity arrangements. Voluntary consent was obtained and recorded. The recordings and transcripts were kept securely behind a passcode enabled firewall.

Further consideration was given to the central place people with an irregular migration or asylum seeker status have within this research. Even though they are not active participant, they could, potentially, be affected its conclusions or recommendations. This research primarily meant reviewing the conclusions drawn and recommendations made for policy changes and issues for future research so that they could not, via reasonable interpretation, be used to justify worsening existing rights positions.

²⁵⁶ Heather Piper and Helen Simons, 'Ethical Responsibility in Social Science' in Bridget Somekh and Cathy Lewin (eds), *Research methods in the social sciences* (Sage 2005) 56.

It is acknowledged here that the central research question was derived from common policy concerns the researcher recognised while working on migration/asylum and legal policy in both Australia and the UK. This would accord with van Liempt and Bilger's view that research regarding irregular migration is initiated because it is a policy priority or concern.²⁵⁷ As such, the research questions privilege government rather than irregular migrant or asylum seeker perspectives. That has encouraged researchers to take on policymakers' categories, concepts, and priorities that privilege their worldview through the research questions asked and the methodologies adopted.²⁵⁸ This research question does place government perceptions as its subject rather than irregular migrants or asylum seekers. However, the thesis adopts van Liempt and Bilger's caution in placing additional assurance that accuracy and sensitivity are exercised regarding portrayals of irregular migrants and asylum seekers and account for any recommendations' effect on them.²⁵⁹

1.6 Thesis structure and summary of findings

Chapter One – Introduction describes the research and context behind this study in detail. The aims and objectives were stated, and each thematic chapters' main research question and sub-questions were presented. A review of the current academic literature and debates regarding risk, risk perception and existing government irregular migration and asylum seeker policies has been expounded. This review of the literature suggests that there is an underappreciation of the role that risk perception from government plays in the development and implementation of irregular migration and asylum policy and law. Furthermore, that applying a sociological risk lens to the examination and analysis of relevant frameworks since 2001, provides a fresh perspective on how the current frameworks have come to pass and their place within the wider academic and public debate on the issue of irregular

²⁵⁷ Ilse van Liempt and Veronika Bilger, 'Ethical Challenges in Research with Vulnerable Migrants' in Carlos Vargas-Silva (ed), *Handbook of research methods in migration* (Edward Elgar Publishing 2012) 454.

²⁵⁸ *ibid.*

²⁵⁹ *ibid* 463.

migration and asylum seeking. The research methods and the reasoning for selecting these approaches were discussed.

In *Chapter Two – Theoretical framework*, the sub-question asks whether it is possible to construct a theoretical framework through which the risk perceptions of the Australian and UK governments can be viewed. The chapter considers the two sociological approaches to risk selected for this framework, Ulrich Beck's risk society thesis and Mary Douglas's sociocultural approach. The authors' key texts and pieces written by those who follow in their traditions or approach to risk theorisation, form the base material upon which the analysis is conducted. The key conceptual elements of each approach to risk are also examined and applied to the irregular migration and asylum context. By bringing these approaches together, a new theoretical framework for analysing government risk perceptions regarding irregular migration and asylum seeking is developed and applied in the analysis carried out in the subsequent chapters.

Drawing together two significant sociological risk approaches has proved beneficial to the analysis of both broad social trends and the detailed mechanics of risk construction within government. The risk society thesis provides a helpful approach to understanding the large-scale trends or broad narratives in irregular migration and asylum seeking as a type of global risk that governments have come to view and respond to in policy-making strategies. Although it perhaps fails to account for the micro or detailed mechanics of risk creation and implementation. This is where components of Douglas's sociocultural approach step in to assist. Understanding the government and its supportive bureaucracies as a type of social structure with its own risk world views and perceptions provides a critical perspective on how and why irregular migrants and asylum seekers have been perceived as a threat and their subsequent treatment. From the data provided in interviews with current and former civil servants, lawyers and others, new knowledge is gained about how risk is created from within the bureaucracies and how this influences governments as ultimate decision makers of what risks irregular migrants or asylum seekers are said to pose.

Chapters Three, Four, and Five each examine a different dimension of the risk perception and irregular migration and asylum seeking relationship in, security, economic, and social themes respectively. The sub-questions applicable to each of these chapters asks how and why risk has been perceived, constructed, and responded to with respect to each theme, in each jurisdiction. To suggest an answer to these questions, the analysis delves into the key policies, legislation, and judicial decisions relevant to irregular migration or asylum seeking. So too are the administrative guidance documents, speeches, news media reporting of governmental positions, and data gathered from fieldwork interviews. An analysis of the discourse used by government figures demonstrates how the language of risk has been used to justify policy decisions and legislative responses towards irregular migration and asylum seeking.

In each of these chapters, it is argued that irregular migrants and asylum seekers have been made-up as a new type of person that embodies a risk type. As a security risk, irregular migrants and asylum seekers are either tied to terrorism or acts of criminality. At the same time, as economically risky objects irregular migrants are said to take the jobs of residents or that asylum seekers unfairly draw-down social welfare provided by government. As social risk objects, both are considered to pose future potential harm to extant Australian and British social norms and values, while asylum seekers in particular, are said by government to be harmful to the principle of “fairness” said to underpin the protection regimes within these jurisdictions. By bringing into the present these future not-yet-events of security or economic risk, they serve as an impetus for present action. The foreboding generated by these risk constructions are given greater salience when extant social problems are attached to them to generate a social risk of community discord with the resident population. This potential for discord is used to reinforce the perceptions of irregular migrants and asylum seekers as economic and security risks. Once constructed as potentially harmful, the irregular migrant or asylum seeker as a new risk object, can then be

subjected to novel forms of risk management that in liberal democracies would otherwise be unjustifiable.

The second section within these thematic chapters examines why governments have constructed irregular migrants and asylum seekers as a new risk type. The data gathered during this research suggests, that governments have come to understand the predominant factors influencing risk construction as qualitatively different today. Governments have come to view irregular migrants and asylum seekers as a security risk because of their hypermobility, unknown origins, and greater difficulties in effective mitigation. The perceived economic risk posed by irregular migrants and asylum seekers appears to be influenced by their characterisation as an additional uncertainty within insecure labour markets and social welfare regimes adjusting to neo-liberal rationalities. Each of these perceived risks may be given greater salience by the extant social concerns within each jurisdiction regarding the precarity of their society and distinctions between themselves and the outside world. Each perceived risk type also confronts the values that hierarchical institutions such as governments and their bureaucracies hold at a fundamental level. When adherence to norms and structured orders is paramount, government worldviews dictate that the irregular migrant and asylum seekers who challenge these norms and structures are risky and should be mitigated.

The penultimate *Chapter Six – Consequences* provides an analytical discussion of the consequences that have occurred due to the influence that risk has had on the legislative and policy frameworks of the case study jurisdictions. It also importantly, reflects on the physical and rights position of irregular migrants and asylum seekers that stem from the risk treatments applied to them. This analysis adds the concept of risk as a new avenue of academic inquiry when examining their treatment physically and legally within these jurisdictions. This chapter answers the sub-question: what effect does risk have on migration frameworks and the legal position of irregular migrants and asylum seekers in Australia and the UK?

This chapter is divided into five sections each reflecting a key consequence finding from the data gathered via documentary analysis and fieldwork interviews. From this analysis, it is argued that there are now, present within the frameworks of each jurisdiction, greater levels of pre-emption and precautionary risk mitigations. These risk management approaches attempt to shift the irregular migrants' and asylum seekers' perceived risk to other times and places, even though evidentiary chains of causation between risk and effect are limited. These methods point to the greater reflexivity within applicable frameworks where previous attempts to gain security over risk have generated new problems. This has led to an overall loss-of-control. Perhaps most troublingly, is the conclusion that the retreat of government from areas of risk management has led to a state of "organized irresponsibility". This has created a situation where social institutions previously charged with allocating risk responsibility and punishing failures now operate to legitimise risk production and responsibility avoidance. The vacuum of responsibility for the harms caused by irregular migration and asylum seeking mitigation is now a key feature of these frameworks. It has turned the Australian and British state into a risk generator for irregular migrants, asylum seekers, and their residents. The final consequences identified in this research reflect upon the creation of alternative forms of risk knowledge within public and political debate. Consistent with theorists' position that risk identification and construction are fundamentally political, the irregular migration and asylum seeking risk debates feature sub-political resistance to predominant risk narratives. But sustaining narrative change is difficult against the ingrained cultural worldviews of government hierarchy and bureaucracies.

The final *Chapter Seven – Conclusion* presents an overview of this thesis and the new knowledge and understanding that this research brings to current debates about irregular migration and asylum seeking and government public policy responses to the phenomena. The discussion also reflects on the use of sociological risk perspectives to examine irregular migration and asylum seeking and applicable legislative and policy frameworks. The research findings are assembled with a series of recommendations developed for possible approaches to the broader field of irregular

migration, asylum seeking, and risk studies. In addition, various questions for further research are also proposed.

Chapter Two – Risk theory and irregular migration and asylum seeking as risk

Introduction

This thesis develops a new approach to the study of irregular migration and asylum seeking law and policy frameworks designed and implemented in Australia and the UK. In taking a new risk-based approach the aim is to present original insights that may explain how irregular migration and asylum seeking are perceived by government as a risk and how these perceptions inform legislation and policy. This study also examines how risk affects the outcomes and legal position for government and irregular migrants and asylum seekers alike. The research is presented according to the thematic risks that were identified during the analysis of government risk perceptions. However, this thesis does not seek to make any claims as to whether irregular migrants or asylum seekers do or do not pose such risks to Australia or the UK. Nor does the approach seek to determine a “proper” way that the risks of irregular migration or asylum seeking might be managed. Rather the focus is on how and why governments construct irregular migrants and asylum seekers as risks, to who or what irregular migrants or asylum seekers pose an alleged risk, and the risk management irregular migrants or asylum seekers are subjected to via policy and legislative frameworks.

The analysis of irregular migration and asylum policy and law conducted here proceeds using sociological risk theory. The benefit of using this approach to risk is seen in its attention to the unique social and cultural influences that may affect risk perceptions and how risk may be used politically. Under the umbrella of sociological risk theory, different approaches include financial, psychological, and socio-cultural.¹ As a socio-legal research exercise, the range of possible socio-cultural disciplines to theorising risk were considered. These include risk society, cultural, governmentality,

¹ Peter Taylor-Gooby and Jens O Zinn, ‘The Current Significance of Risk’ in Peter Taylor-Gooby and Jens O Zinn (eds), *Risk in social science* (Oxford University Press 2006) 8–11.

technical/insurance, edgework, and systems theory.² It is not proposed that this thesis will examine every sociological approach to risk. To do so would limit the depth of analysis possible and be unlikely to make a valid contribution to the field of research.

At its centre, this thesis concerns two innately human activities – migration and government. Therefore, socio-cultural risk disciplines, which includes Beck’s risk society and Douglas’s cultural approaches to risk, are appropriate to examine these activities. This research will therefore contribute to the body of risk scholarship,³ and the literature concerned with how risk may be used to identify and manage migration and asylum.⁴ This is also research that explores the embedded nature of risk within social processes,⁵ and by using the risk approaches of Douglas and Beck addresses the calls to adopt cross-disciplinary risk perspectives.⁶ By adopting two approaches to risk, this thesis takes a “complementary approach” to the theoretical framework. Cairney describes a complementary approach as one that uses multiple concepts or theories to produce a series of perspectives with which to explain empirical outcomes.⁷ The multiple concepts or theories can be used to produce different lenses through which policy may be examined allowing the researcher to become more aware of the

² Jens O Zinn, ‘Introduction: The Contribution of Sociology to the Discourse on Risk and Uncertainty’ in Jens O Zinn (ed), *Social theories of risk and uncertainty: an introduction* (Blackwell Publishing 2008) 15–16.

³ John Tulloch and Deborah Lupton, *Risk and Everyday Life* (Sage 2003); Deborah Lupton, ‘Sociology and Risk’ in Gabe Mythen and Sandra Walklate (eds), *Beyond the risk society: critical reflections on risk and human security* (Open University Press 2006); Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (2nd edn, Sage 2010).

⁴ Peter O’Brien, ‘Migration and Its Risks’ [1996] *The International Migration Review* 1067; Tania Burchardt, ‘Selective Inclusion: Asylum Seekers and Other Marginalised Groups’ in John Hills and Kitty Stewart (eds), *A more equal society? New Labour, poverty, inequality and exclusion* (Policy Press 2005); Hilary Evans Cameron, ‘Risk Theory and “Subjective Fear”: The Role of Risk Perception, Assessment, and Management in Refugee Status Determinations’ (2008) 20 *International Journal of Refugee Law* 567; Allan M Williams and Vladimir Baláž, ‘Migration, Risk, and Uncertainty: Theoretical Perspectives’ (2012) 18 *Population, Space and Place* 167.

⁵ Rolf Lidskog and Goran Sundqvist, ‘Sociology of Risk’ in Sabine Roeser and others (eds), *Handbook of Risk Theory Epistemology, Decision Theory, Ethics, and Social Implications of Risk* (Springer 2012) 1024.

⁶ Peter Taylor-Gooby and Jens O Zinn, ‘Current Directions in Risk Research: New Developments in Psychology and Sociology’ (2006) 26 *Risk Analysis* 397, 405; Adam Burgess, ‘The Making of the Risk-Centred Society and the Limits of Social Risk Research’ (2006) 8 *Health, Risk & Society* 329; Lupton, ‘Sociology and Risk’ (n 3) 21.

⁷ Paul Cairney, ‘Standing on the Shoulders of Giants: How Do We Combine the Insights of Multiple Theories in Public Policy Studies?’ (2013) 41 *Policy Studies Journal* 1, 3.

assumptions that underpin the policy. Cairney analogises the complementary approach to a “toolkit” from which researcher can draw when conducting analysis.⁸

The chapter will next set out what is meant by “risk” and how it may differ from “uncertainty” in conceptual terms. That will lead into the central section of this chapter which introduces Beck’s risk society and Douglas’s sociocultural approaches to risk used in this thesis. The sections that follow broadly mirror those of the thematic chapters by examining: how risk is constructed; what influences risk perception and; the presence and effect of risk in migration frameworks. Although presented in a slightly linear fashion, risk perception and management of irregular migration and asylum seeking is a dynamic process with the overall intent to organise an inherently uncertain and risky phenomenon. The final section will conclude the chapter by placing this thesis within the relevant literature on risk in policy development and risk in government.

2.1 Defining risk in modern society

Within modern English literature the concept of risk has found a significant amount of popular and academic interest. We can see from a Ngram Viewer search of modern English literature just when risk became a prominent subject matter.⁹ Looking at Figure 1 below there is a significant inflection point from 1960 where the appearance of risk in literature increased exponentially.

⁸ *ibid* 9.

⁹ Google Books Ngram Viewer is an online search engine that charts word frequency among a corpus of books. In this instance, the word ‘risk’ was searched in the English 2019 corpus. Results are expressed as a percentage of words published in that year. For a detailed explanation of Google Books Ngram Viewer see: Nadja Younes and Ulf-Dietrich Reips, ‘Guideline for Improving the Reliability of Google Ngram Studies: Evidence from Religious Terms’ (2019) 14 PLoS ONE 1.

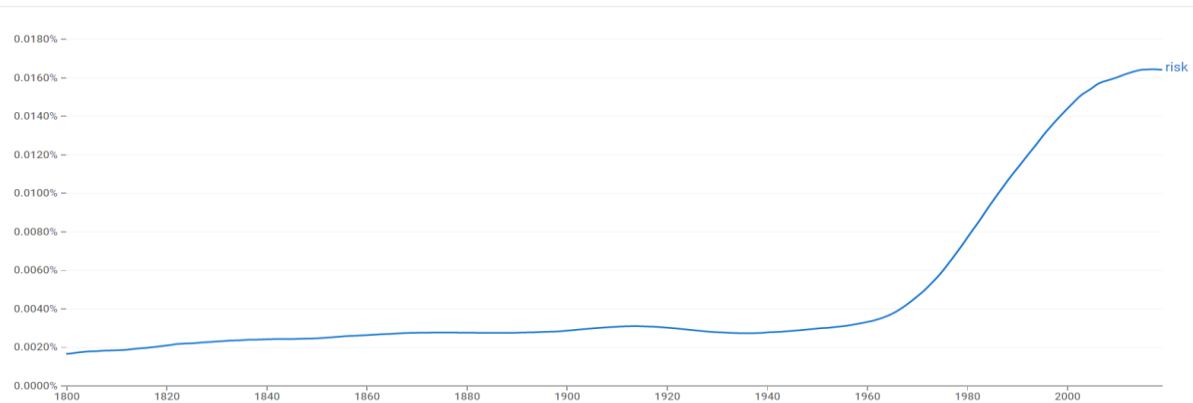


Figure 1: Appearance of the word “risk” expressed as a percentage of words published in the English 2019 corpus from 1800 – 2019.

The above graph demonstrates a rapid rise in the occurrence of risk in literature from the 1960’s onwards after decades of stability. The clear turning point that brought risk to the attention of writers was a period of significant geo-political crises which may have contributed to a sense of instability. There were Cold War tensions over Cuba, wars in Vietnam and Afghanistan as well as political assassinations of leaders in the United States of America and Europe. A second period of exponential growth in risk references occurred from the 1980’s. Significant ecological and human disasters caused by techno-scientific failures in Bhopal, Chernobyl and Three Mile Island all brought great awareness of the potential dangers from technological developments into popular consciousness.

Despite the literary popularity of risk, defining it has been something of an industry itself. Knight explored the meaning of risk and its conceptual difference with uncertainty in his seminal work *Risk, Uncertainty, and Profit*. In it, Knight argues that:

- a risk occurs when an event may happen, but the odds of that occurrence are known whereas,
- an uncertainty occurs when even the odds are unknown.¹⁰

¹⁰ Frank H Knight, *Risk, Uncertainty and Profit* (Forgotten Books 2015) 19–20.

The argument that risks requires a calculation of odds or chances lends itself to “objective” risk perspectives. The numbers to calculate the odds or chances can be determined through observing events, their frequency, and by making reasonable assessments of the event’s severity and consequential impact.¹¹ By taking these measures and making observations we can, according to Knight, hope to make plans and act upon them.¹² O’Malley described that as an attempt to govern the future,¹³ whereas as discussed in Chapter One, Beck and Giddens more creatively suggest risk is an attempt to “colonise the future”.¹⁴ An uncertainty as suggested by Knight relies on not on observable events and assessment but rather subjective judgements.¹⁵ In contrast to the objective calculations, subjective judgements could be made through experience, rules of thumb, foresight, and estimation.¹⁶ Recently however, the difference between the risk and uncertainty has become blurred in non-technical literature which has meant that they are frequently used interchangeably.¹⁷

Ewald has claimed that ‘there is scarcely a social problem that is not dealt with in terms of risk.’¹⁸ The increased prevalence of risk in popular and academic literature, as shown above in Figure 1, may hint at the broad reconceptualisation of problems within society in risk terms as claimed by Ewald. Risk may also have an increasing presence in popular and academic literature due to growing demands for explanations of progressively complex social organisations that are required to control the future.¹⁹ There may also be a suggestion that risk, now being associated with harm, has fuelled its popular rise. In its earliest meanings risk referred to a challenge, or chance of an

¹¹ Darryl SL Jarvis, ‘Theorising Risk and Uncertainty in International Relations: The Contributions of Frank Knight’ (2011) 25 *International Relations* 296, 299.

¹² Knight (n 10) 199.

¹³ Pat O’Malley, *Risk, Uncertainty, and Government* (GlassHouse Press 2004) 13.

¹⁴ Anthony Giddens, ‘Fate, Risk and Security’ in James F Cosgrave (ed), *The Sociology of Risk and Gambling Reader* (Routledge 2006) 31.

¹⁵ John Adams, *Risk* (UCL Press 1995) 26.

¹⁶ O’Malley (n 13) 1.

¹⁷ Adams (n 15) 25.

¹⁸ François Ewald, ‘Norms, Discipline and the Law’ in Robert Post (ed), *Law and the order of culture* (University of California Press 1991) 152–53.

¹⁹ Arwen P Mohun, ‘Constructing the History of Risk. Foundations, Tools, and Reasons Why’ (2016) 41 *Historical Social Research* 30, 32.

event occurring.²⁰ Whereas the modern meaning associates risk with the possibility of experiencing a harm or some form of loss.²¹ Douglas noted this etymological evolution from the odds of an event to the possibility of harm and observed that the association with negative outcomes is now the predominant meaning.²²

Proceeding without maintaining a strict delineation between risk and uncertainty allows for a more inclusive examination of the purpose of risk today.²³ It also acknowledges that our understanding of risk will change over time and be influenced by factors such as politics, technology, and geography.²⁴ Further, the understanding can be contested between societies and between members of a society as they each construct, interpret, and experience risk differently. As such, risk can have multiple configurations, the most significant of which that relate to irregular migration and asylum seeking are examined in each of the thematic chapters of this thesis. Ewald suggests that the broader approach to risk makes it a:

kind of conceptual umbrella used to cover all sorts of events, be they individual or collective, minor or catastrophic. Risk presents itself as the modern approach to an event and the way in which, in our societies, we reflect upon issues that concern us. Risk is the single point upon which contemporary societies question themselves, analyse themselves, seek their values and, perhaps, recognise their limits.²⁵

The advantage of using this broad approach here is to acknowledge that risk can take on multiple meanings and is best approached in an inclusive fashion and not disentangled from the issues under consideration.²⁶ This position is further strengthened by recognising risk knowledge is in-part socially constructed and not entirely objectively measurable. By adopting such a position in this thesis, the

²⁰ Frank Wharton, 'Risk Management: Basic Concepts and General Principles', *Risk: Analysis, Assessment and Management* (Wiley 1992) 4.

²¹ 'Risk, n.' <<http://0-www.oed.com/view/Entry/166306>> accessed 1 December 2017; 'Risk, v.' <<http://0-www.oed.com/view/Entry/166307>> accessed 1 December 2017.

²² Mary Douglas, 'Risk as a Forensic Resource' (1990) 119 *Daedalus* 1, 4.

²³ Gabe Mythen, *Ulrich Beck: A Critical Introduction to the Risk Society* (Pluto Press 2004) 15.

²⁴ Scott Lash and Brian Wynne, 'Introduction' in Mark Ritter (tr), Ulrich Beck, *Risk Society: Towards a New Modernity* (Sage 1992) 4–7.

²⁵ François Ewald, 'Risk in Contemporary Society' (1999) 6 *Connecticut Insurance Law Journal* 365, 366.

²⁶ Mythen (n 23) 15.

analytical attention is drawn away from strict measurements. It instead directs attention towards the practices of political leaders and administrators engaged in naming irregular migration and asylum seekers as risk and a potential source of danger that requires regulatory attention.²⁷

This approach to risk does not intend to exclude the possibility that certain events do have an objective reality to them. But it acknowledges that this reality is dependent on the circumstances and context of its occurrence. Jasanoff has argued that:

What we claim to know about risk, how we acquire more information, and how we interpret the facts in our possession are all contingent on contextual factors, ranging from individual or organizational experience to national political culture.²⁸

By placing risk knowledge within the social world as Jasanoff has, focuses the analysis on the social and political events in which risk discourse occurs. It considers risk knowledge as part socially constructed and not entirely independent of the humans that examine and experience the risk. As such, risk knowledge and the process of risk identification and estimation 'can never be value free.'²⁹

As the preceding discussion has underlined, risk is highly prevalent in discourse today and suggests that it has been used as a tool to analyse many aspects of modern society. Using the broader conceptualisation of risk as a possible event leading to an outcome, the quality of which will vary according to a person's or institution's perspective, enables this thesis to examine the often-contested ways that Australian and British governments construct perceptions of irregular migration and asylum seeking events taking place and associated alleged harms caused to their societies because of these events taking place. Examining the content and knowledge risk

²⁷ Stephen Hilgartner, 'The Social Construction of Risk Objects: Or, How to Pry Open Networks of Risk' in Ben Clarke and James Short, *Organizations, uncertainties, and risk* (Westview 1992).

²⁸ Sheila Jasanoff, 'Bridging the Two Cultures of Risk Analysis' (1993) 13 *Risk Analysis* 123, 127.

²⁹ Judith A Bradbury, 'The Policy Implications of Differing Concepts of Risk' (1989) 14 *Science, Technology, & Human Values* 380, 381.

produces as suggested by Jasanoff, should be seen through the contemporary social and political events of the day which may inform why irregular migrants and asylum seekers have been perceived as potentially harmful.³⁰

2.2 Theoretical approaches to risk

The following section sets out the key theoretical concepts developed in the sociocultural and risk society approaches to risk. Applying their conceptual tools to the examination of government perceptions of risk regarding irregular migration and asylum seeking will test whether risk is a useful explanatory lens for the current frameworks in both case study jurisdictions and the policies deployed to mitigate the perceived risks.

2.2.1 Risk society

Ulrich Beck developed the risk society thesis in the context of increased public attention to risk (see Figure 1 above) caused by the increasingly perceptible damage done to the environment, human health, and social structures by human action. In this socio-political climate, Beck published his influential thesis in *Risk Society: Towards a New Modernity*,³¹ the original German text was published just months before the Chernobyl disaster. This work was developed further in 1999 to emphasise the global nature of risk today.³² Beck later expanded the list of modern risks to include global suicidal terrorism in 2009.³³ Anthony Giddens,³⁴ a contemporary of Beck made similar significant contributions to the field of modernization and the effects of technological and ecological risks on society today.³⁵ While Beck's thesis provides the lead

³⁰ Ewald, 'Risk in Contemporary Society' (n 25) 366.

³¹ Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992).

³² Ulrich Beck, *World Risk Society* (Polity Press 1999).

³³ Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009).

³⁴ Anthony Giddens, *The Consequences of Modernity* (Polity 1990).

³⁵ Eugene A Rosa, Ortwin Renn and Aaron M McCright, *The Risk Society Revisited* (Temple University Press 2014) 71.

contributory elements to the theoretical framework here, Giddens work is drawn-in where appropriate.

According to Beck the industrialisation and modernisation of Western societies has led to the creation of new and complex risks that span the globe disregarding nation-state borders, such as pollution, nuclear accidents, and most recently, global capital flows and suicidal terrorism.³⁶ These risks are said by Beck to be different from pre-modern risks, such as those associated with natural disasters, in that they are the result of human activity and were therefore largely avoidable. Consequently, societies have changed the way they think about risk and safety.

That change in thinking has developed into a culture of risk management and control. The culture is characterised by the proliferation of risk experts and specialist risk knowledge.³⁷ New institutions and regulations to manage risk have grown within the risk management culture. Beck argues that this has led to a shift in power from traditional political and economic actors making public policy decision to risk experts and institutions whose responsibilities are to manage the risk.³⁸

Beck also argues that modern risk has reversed our traditional understanding of the connection between past, present and future.³⁹ Risk according to Rasmussen, is the possible consequence of an action that has yet to materialise. By attempting to avoid risk, present problems are defined by their perceived future consequences.⁴⁰ As Beck puts it, 'future events that have not yet occurred become the object of current action.'⁴¹ Governments are therefore not taking present actions intending to produce a future result, but that the anticipation of perceived future are driving present actions. This is problematic because the nature of modern risk is incalculable but inspires pre-

³⁶ Beck, *World at Risk* (n 33) 13.

³⁷ *ibid* 11–12.

³⁸ *ibid* 54.

³⁹ Beck, *World Risk Society* (n 32) 137.

⁴⁰ Mikkel Vedby Rasmussen, 'Reflexive Security: NATO and International Risk Society' (2001) 30 *Millennium* 285, 293.

⁴¹ Beck, *World Risk Society* (n 32) 52.

emptive policies not based on calculations from past experience but hypothetical futures.

The politics of risk society are dominated by those who claim to be risk experts and holders of specialist risk knowledge who set about shaping public policy according to this expertise and knowledge.⁴² This excludes the public and lay-members of society without the required knowledge from decision-making and participation in modern politics or holding experts to account. Beck contends that this political culture has led to a new form of politics called “sub-politics”.⁴³ This is defined as the politics of those who are not represented in the new risk society by generating alternative perspectives and knowledge of risk to counter the risk narratives of experts.

The risk society thesis has been described as a “master frame” that is an amalgam of three related elements: i) modern risk; ii) reflexive modernization and; iii) individualization.⁴⁴ These elements will inform the analysis and interpretation of government perceptions of irregular migrants and asylum seekers in the thematic chapters. The first element, modern risk, are the unintended consequences of technological progress such as nuclear technologies, global finance, and suicidal terrorism that reshape our society. For Giddens, the change from pre-modern risks of floods and plagues to modern risks took place when ‘we stopped worrying so much about what nature could do to us, and we started worrying much more about what we have done to nature.’⁴⁵

Some of the factors that compel irregular migrants and asylum seekers towards Australia and the UK might reasonably be attributed to the unintended consequences of globalisation, international intervention in local disputes, and colonisation. It is

⁴² Beck, *World at Risk* (n 33) 33.

⁴³ Beck, *World Risk Society* (n 32) 91.

⁴⁴ Rosa, Renn and McCright (n 35) 72. Note in this thesis the spelling of ‘individualization’ and ‘reflexive modernization’ are maintained to keep in accordance with Beck’s original writing and to denote them as terms of art. Where to denote otherwise, British English is used.

⁴⁵ Anthony Giddens, ‘Risk Society: The Context of British Politics’ in Jane Franklin (ed), *The Politics of Risk Society* (Policy Press 1998) 26.

unlikely that decision-makers at the time these global and interventionist policies were implemented foresaw mass people movements across borders as a consequence of them that future generations would deal with. Only through time has the relationship between these policies and mass migration manifested. In applying Giddens statement above, it is perhaps possible to say that we as society have only become worried about irregular migration and asylum seeking when it became apparent that they no longer were solely a cause of nature, but more a result of what we have done.

Despite the change in risk typology from natural to human-made, Beck argues that pre-modern and industrial risk assessment and management techniques remain in-place.⁴⁶ Insurance and social welfare for example, which ameliorated the consequences of pre-modern and industrial risk remain in-place but have been overrun by globalisation. He further argues that as nation-states are proving unable to manage the consequences of the now global ecological, financial, and terror risks, society begins to question ‘the *idea* of the controllability’⁴⁷ of risk.

The inability of national governments to control or compensate for the impact of risk that travels across borders and time, is relevant to the issue of irregular migration and asylum seeking. The existence of international bodies such as the United Nations High Commissioner for Refugees is indicative of the issue being beyond the capacity of one nation-state to manage. However, irregular migration and asylum seeking remains “uninsurable” much like the Wynne’s Cumbrian sheep farmers found-out, there is no local remedy available for a causal disaster thousands of miles away. But as discussed in the thematic chapters, while Beck presents the uninsurability of modern risk as an end to earlier forms of risk management, we can observe Australian and British governments taking innovative approaches to develop insurance-like policies that manage irregular migration and asylum seeking risks. These insurance-like policies may in-turn however be generating new risks, an issue discussed next.

⁴⁶ Beck, *World at Risk* (n 33) 109–10.

⁴⁷ *ibid* 15. Original emphasis.

The second element to the risk society master frame is the concept of reflexive modernization. This is described by Beck as the 'self-confrontation with the effects of risk society that cannot be dealt with and assimilated in the system of industrial society.'⁴⁸ That is to say, as society becomes reflexive, or aware, of and confronts the negative consequences of modernization, an automatic process of transitioning into a risk society takes place.⁴⁹ For Beck, risk takes on an agency of its own and undermines the very foundations of modernity forcing society to reevaluate and adjust beliefs, values and behaviours in response to the new information and insights regarding the negative consequences and their origins.⁵⁰

The reordering of society in response to the awareness that modernity produces negative risk consequences is as rebounding. Previously, the manufacture and distribution of "goods" was of primary concern. In the risk society however, the distribution of "bads" from modernization take over and come back to haunt us in a "boomerang effect" without regard to class or national boundary.⁵¹ Beck sums this up succinctly: 'reduced to a formula: poverty is hierarchic, smog is democratic.'⁵² This new reality dismantles class structures and mobilises new social actors to produce or challenge existing knowledge that defined, assessed, and managed risks.⁵³

The issue of nation-states redistributing the "bad" of irregular migration and asylum seeking is relevant here. As the literature explored in the Crimmigration and Detention and Deportation sections of Chapter One, Australian and British governments have been active in implementing policies designed to limit irregular migrant and asylum seeker access to their territories or services if already onshore. Applying the risk lens not only reveals the logic of redistributing the "bad" within these

⁴⁸ Ulrich Beck, 'The Reinvention of Politics: Towards a Theory of Reflexive Modernization' in Ulrich Beck, Anthony Giddens and Scott Lash (eds), *Reflexive Modernization: Politics, tradition and aesthetics in the modern social order* (Polity Press 1994) 6.

⁴⁹ Rosa, Renn and McCright (n 35) 74.

⁵⁰ Ulrich Beck, Wolfgang Bonss and Christoph Lau, 'The Theory of Reflexive Modernization: Problematic, Hypotheses and Research Programme' (2003) 20 *Theory, Culture & Society* 1, 8.

⁵¹ Beck, *Risk Society: Towards a New Modernity* (n 31) 37.

⁵² *ibid* 32.

⁵³ Rosa, Renn and McCright (n 35) 76.

policies but also the increasingly risky behaviours that irregular migrants and asylum seekers are forced into because of them. As the thematic and consequences chapters of this thesis discuss, these policies have remained in place justified by the principles of precaution and pre-emption, despite non-government organisations and others identifying the new risks they introduce. The principles operate by enabling government to redistribute the risk generated by the exclusionary policies onto irregular migrants, asylum seekers and others away from the government. Consequently, the price (financial and political) of maintaining precautionary and pre-emptory policies becomes less than the cost of the overreaction inherent within them.

The third element to risk society frame is the breakdown of industrial society's traditional social practices and structures leading to a state of individualization.⁵⁴ The lack of traditional support structures which have broken down as society reorganises to manage modern risk consequences, forces people to write their own biographies rather than accept pre-ordained destinies determined by such things as their gender or social class.⁵⁵ Set free of old constraints and with more knowledge about risk sourced from the media and education, the individual must make their own decisions about risk and who or what to trust to identify and manage it. This for Beck sets the scene for a new battle over the social construction of risk or the "relations of definition".⁵⁶

The possibility that irregular migrants and asylum seekers could be participating in some form of individualization and biography writing is explored in this thesis. As Tulloch and Lupton discussed earlier show, migrants do undertake a process of risk assessment, using their risk knowledge they choose to disembody themselves from their current lives and migrate to a new place and life.⁵⁷ El-Enany's suggestion the act of border crossing was an attempt by migrants to break-free of colonial dictates could also be reinterpreted as an act of individualization.⁵⁸ We can well see irregular

⁵⁴ Elisabeth Beck-Gernsheim and Ulrich Beck, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (Sage 2002).

⁵⁵ Deborah Lupton, *Risk* (Routledge 1999) 70.

⁵⁶ Mythen (n 23) 54.

⁵⁷ Tulloch and Lupton (n 3).

⁵⁸ Nadine El-Enany, *(B)Ordering Britain: Law, Race and Empire* (Manchester University Press 2020).

migrants and asylum seekers pursuing similar objectives by weighing risk information, and making a decision to move across borders. However, Giddens notes biography-writing in the modern era isn't without consequence.⁵⁹ Much like Douglas's identification of blame as a tool for maintaining social order, the individual is also blamed for the consequences of their decisions in acting out their individualization. This research will add to existing literature by examining how government may perceive irregular migrants and asylum seekers carrying out their biography writing and the use of blame as a tool to punish irregular migrants and asylum seekers as they negotiate their individualization.

A final related result of individualization to this thesis is situation of "organized irresponsibility". When the breakdown of tradition and structure combines with individualization, Beck describes a resultant environment where individuals, organisations, and institutions can deny responsibility for the suffering they cause, despite the existence of responsibility assigning regulation.⁶⁰ Here Veitch argues that law, which should be promoting responsible behaviours and sanction breaches, may be operating to enable irresponsible behaviours.⁶¹ That occurs because the traditional methods of organising responsible behaviour are derived from their creation in industrial and pre-modern times which makes law impotent to manage threats of today.⁶²

This thesis pursues the suggestion that Australian and British irregular migration and asylum frameworks may be structured in such a way as to deny responsibility as set out by Beck and Veitch. The current literature, discussed in Chapter One, has tended to focus on the effect on deportees,⁶³ or as a governmental

⁵⁹ Anthony Giddens, 'Risk and Responsibility' (1999) 62 *Modern Law Review* 1.

⁶⁰ Ulrich Beck, *Ecological Politics in an Age of Risk* (Amos Weisz tr, Polity Press 1995) 63–65.

⁶¹ Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (Routledge-Cavendish 2007) 116.

⁶² *ibid.*

⁶³ Nicholas De Genova, 'Migrant "Illegality" and Deportability in Everyday Life' (2002) 31 *Annual Review of Anthropology* 419.

act of race discrimination or colonisation.⁶⁴ This research will examine whether modern law, which ought to bring structure and order, in-fact obfuscates responsibility. Legal frameworks both domestic and international, should bring about order in the chaos but as suggested in the following chapters, they may rather be more about governments avoiding responsibility.

Like the sociocultural approach to risk, Beck's risk society thesis has faced academic critique on several fronts relevant to this thesis. An initial focus of criticisms resides in risk society's attempt to make a clear delineation risk according to epochs. Dean has argued that the 'genealogy of risk is much more complex' and 'cannot be exhausted by a narrative shift.'⁶⁵ Boudia and Jas have suggested that Beck's risk eras rather coincide with what he would have experienced and 'corresponds to the individual and collective perception of a past which seems both familiar and sufficiently distant to invite consideration.'⁶⁶ Second, that even radical changes in society are products of history marked by long-term trends.⁶⁷ In isolation the periodisation of risk would be a fair criticism and one this thesis seeks to avoid by placing current irregular migration and asylum frameworks within their historical context. However, as Mohun points out, what makes risk for Beck and Giddens different today is in its politicisation and usage as a tool to control the future which this thesis also attends to.⁶⁸

The risk society thesis has also been criticised for being too focused on cataclysmic and catastrophic type events such as Chernobyl said to equalise patterns of risk distribution.⁶⁹ These critiques could well be valid reviews when an objectivist

⁶⁴ Michael Grewcock, 'Australian Border Policing: Regional "Solutions" and Neocolonialism' (2014) 55 *Race & Class* 71.

⁶⁵ Mitchell Dean, 'Risk, Calculable and Incalculable' in Deborah Lupton (ed), *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge University Press 1999) 145.

⁶⁶ Soraya Boudia and Nathalie Jas, 'Introduction: Risk and "Risk Society" in Historical Perspective.' (2007) 23 *History & Technology* 317, 318.

⁶⁷ *ibid* 319.

⁶⁸ Mohun (n 19) 43.

⁶⁹ Alan Scott, 'Risk Society or Angst Society: Two Views of Risk, Consciousness and Community' in Barbara Adam, Ulrich Beck and Joost Van Loon (eds), *The Risk Society and Beyond: Critical Issues for Social Theory* (Sage 2000); Tulloch and Lupton (n 3).

position towards risk is adopted and applied to migration. But themselves would fall short of an understanding of how such events displace and force people to move globally. Further, even though it is a well-researched fact that lower socio-economic states host most the world's displaced people, receiving states may well perceive the same irregular migrant or asylum seeker very differently.⁷⁰ Therefore, as this thesis attends to government perceptions and how they understand the nature of risks posed by irregular migration and asylum seeking, which may or may not bear any resemblance to objective fact, drawing-in the sociocultural concepts group worldviews of risk, discussed in the next section, remains appropriate.

It has also been suggested by Mythen that risk society presupposes that there is a uniform public perception of danger because of its focus on cataclysmic events.⁷¹ Tulloch and Lupton have argued public attitudes towards risk are in fact multifaceted and stem from the diverse range of life experiences and structural factors of individuals.⁷² But these reviews do tend to overlook Beck's emphasis on the very public debates and politicisation of risk definition that takes place in forums such as media.⁷³ In that contest, Beck and Douglas observe that the risk perceptions which prevail are those of whom hold sway in society. These construction debates can be witnessed in the context of irregular migration and asylum seeking and government efforts to create them as risk and is examined in later chapters.

2.2.2 Sociocultural risk

Sociocultural approach to risk developed by Mary Douglas explains how people perceive the world around them and act upon that perception. The approach claims that these perceptions and actions are dictated by dominant social and culture

⁷⁰ UN High Commissioner for Refugees, 'Global Trends: Forced Displacement in 2019' (United Nations 2020) 2.

⁷¹ Mythen (n 23) 181.

⁷² Tulloch and Lupton (n 3).

⁷³ Beck, *World at Risk* (n 33) 189.

arrangements.⁷⁴ For Douglas, the perception of risk is not decided by personality or the risk object but is constructed with these arrangements. Objects that are perceived as dangerous and tolerance towards them are a product of cultural adherence and social learning.⁷⁵ The following will set out the relevant components of cultural theory to this thesis and their application to government risk perceptions of irregular migration and asylum seeking.

The basis of sociocultural approach is Douglas’s construction of the grid-group which categorises four types of cultural filters through which risk is viewed and debated.⁷⁶ The four cultural filters created from the dissection of the “grid” and “group” dimensions explains the types of barriers that are created by people and put in -place between themselves and the world (see Figure 2 below).⁷⁷ The “grid” dimension describes the level to which rules constrain or permit individual behaviour while the “group” dimension refers to the amount of control or solidarity that exists within a culture.⁷⁸

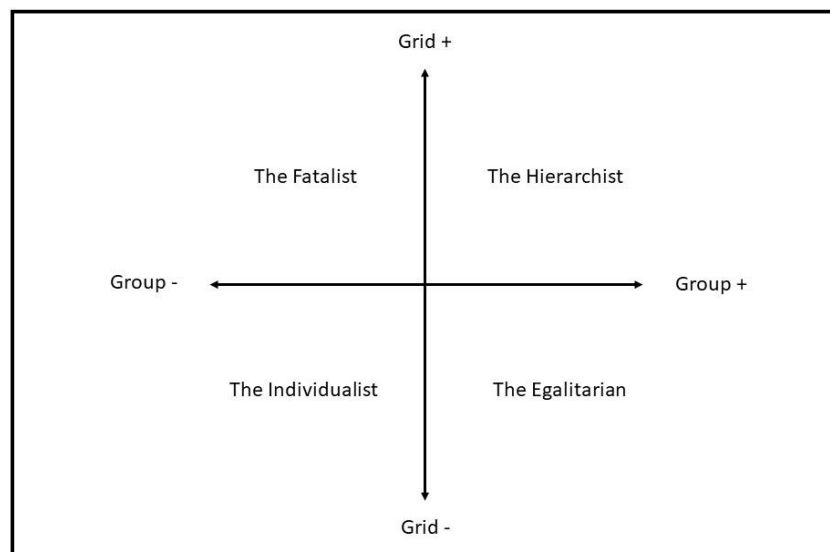


Figure 2: Douglas’s grid-group diagram.⁷⁹

⁷⁴ Sigve Oltedal and others, ‘Explaining Risk Perception. An Evaluation of Cultural Theory’ (Norwegian University of Science and Technology 2004) 85 17.

⁷⁵ *ibid* 16.

⁷⁶ John Adams, ‘Risk and Culture’ in Adam Burgess, Alberto Alemanno and Jens Zinn (eds), *Routledge Handbook of Risk Studies* (Routledge 2016) 88.

⁷⁷ David Denney, *Risk and Society* (Sage 2005) 23.

⁷⁸ Adams (n 76) 88.

⁷⁹ Virginie Mamadouh, ‘Grid-Group Cultural Theory: An Introduction’ (1999) 47 *GeoJournal* 395, 401.

The “weak group” suggests that people will tend towards individualistic worldviews and are competitive by nature, that is they will expect people to look after themselves and not receive assistance from other members of the society.⁸⁰ By contrast the “strong group” will be highly social and engage with fellow members on numerous activities for mutual support to achieve collective ends. This social organising promotes solidarity rather than the weak group’s competitiveness.⁸¹ The “high grid” society organises itself according to extensive and rigid social structures that determine the distribution of goods and opportunities. The opposing “low grid” encourages the participation of all society members in all aspects of society without regard to personal attributes.⁸²

These two dimensions were said to be fundamental to all cultures and imply the existence of four different cultural types: hierarchical, individualistic, egalitarian, and fatalistic (see Figure 2 above).⁸³ Michaud et al have defined them as: hierarchical - community members interact with each frequently but take on defined roles according to their status or other characteristics; individualistic - community members negotiate their social relations and are self-reliant; egalitarian - interact frequently and are affected by community opinion but not status and; fatalistic - low community interactions but strictly enforced behavioural constraints who see the world as hostile.⁸⁴

For each of the cultural types, Thompson et al have offered a hypothesis of their risk perceptions.⁸⁵ For individualists, risk is an entrepreneurial opportunity, unforeseen consequences will be dealt with by future technology and innovations. In

⁸⁰ Steve Rayner, ‘Cultural Theory and Risk Analysis’ in Sheldon Krinsky and Dominic Golding (eds), *Social Theories of Risk* (Praeger 1992) 87.

⁸¹ *ibid.*

⁸² Dan M Kahan, ‘Cultural Cognition as a Conception of the Cultural Theory of Risk’ in Sabine Roeser and others (eds), *Handbook of Risk Theory Epistemology, Decision Theory, Ethics, and Social Implications of Risk* (Springer 2012) 727.

⁸³ Lidskog and Sundqvist (n 5) 1011.

⁸⁴ Kristy Michaud, Juliet Carlisle and Eric Smith, ‘The Relationship between Cultural Values and Political Ideology, and the Role of Political Knowledge’ (2009) 30 *Political Psychology* 27, 29.

⁸⁵ Michael Thompson, Richard Ellis and Aaron Wildavsky, *Cultural Theory* (Routledge 2018) 55–68.

hierarchical organisations risk is acceptable if decisions regarding risk are made by experts and authorities. Debates regarding risk are frowned upon should they call into question the decision-maker or the system that produced the decision. Egalitarians oppose risk that will encumber future generations. Negative consequences of modern technology help reaffirm this belief and way of life inside the group to the discredit of others. Finally, fatalists do not knowingly take risks and refuse to worry about those they can do nothing about.⁸⁶

Sociocultural risk has two claims regarding the relationship between the cultural types and risk perception. The first is that each cultural type has self-serving risk perceptions in that individuals perceive things that endanger their way of life as risky.⁸⁷ Conduct that may inflict harm to that way of life will subject the perpetrator to various forms of blame and punishment.⁸⁸ So doing will ensure members of that society will see the deviant from group norms as a risk and affirm 'the belief that the innocent are in danger helps to brand the delinquent and to rouse moral fervor against him.'⁸⁹

To understand how government in Australia and the UK perceive risks associated with irregular migration and asylum seeking, applying Douglas's cultural typology may assist. According to Douglas, cultural types have predictable perceptions of what constitutes risk and how to mitigate risk or remedy behaviour that creates risk to the group.⁹⁰ As reviewed in Chapter One, Matheson has demonstrated that applying the cultural typologies to civil service agencies suggests why the agencies adopt the risk perceptions that they do.⁹¹ Applying the cultural typologies in this research will assist this thesis in several important ways. First, it will shed light on the cultural

⁸⁶ *ibid* 62.

⁸⁷ Olstedal and others (n 74) 18.

⁸⁸ Mary Douglas, *Risk and Blame: Essays in Cultural Theory* (Routledge 1992).

⁸⁹ Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (ARK Paperbacks 1984) 134.

⁹⁰ Mary Douglas, *Natural Symbols: Explorations in Cosmology* (Routledge 2004) 57.

⁹¹ Craig Matheson, 'Four Organisational Cultures in the Australian Public Service: Assessing the Validity and Plausibility of Mary Douglas' Cultural Theory' (2018) 77 *Australian Journal of Public Administration* 644.

structural arrangements within the predominant state agencies that are responsible for the development and implementation of irregular migration and asylum policies. Second, it will expose for critique the hierarchical cultural arrangements predominant within these agencies and the associated worldviews of risk that these arrangements hold and exercise. Such critique holds explanatory value, in that it will explain why certain events or people will be perceived to be a risk or potentially harmful. Third, applying a sociocultural approach to risk will suggest how hierarchies will respond to risk and what will be done by these institutions to mitigate risk and preserve and maintain order. By including this risk approach in this research new perspectives and understandings in the debate regarding why current policies towards irregular migrants and asylum seekers have been adopted as they have will be added.

The cultural types which inform perceptions of risk also provide explanatory models and moral guidelines for what is good or bad.⁹² In contrast to Beck's epochal view of risk, Douglas sees risk as present in societies throughout history. What used to be called a "sin" – something that could unleash dangers on the community or an individual and their family, has been replaced by "risk".⁹³ However, while risk is now associated with the calculative certainties of science, it still functions as a blame-allocating mechanism following the performance of a sin:

Being 'at risk' in modern parlance is not the equivalent but the reciprocal of being 'in sin' or 'under taboo'. To be 'at risk' is equivalent to being sinned against, being vulnerable to the events caused by others, whereas being 'in sin' means being the cause of harm. The sin/taboo rhetoric is more often used to uphold the community, vulnerable to the misbehaviour of the individual, while risk rhetoric upholds the individual, vulnerable to the misbehaviour of the community.⁹⁴

The concepts of "taboo" and "blame" form critical tools of analysis in the sociocultural approach to risk. Once a taboo has been committed, blame needs to be allocated for

⁹² Åsa Boholm, 'The Cultural Nature of Risk: Can There Be an Anthropology of Uncertainty?' (2003) 68 *Ethnos: Journal of Anthropology* 159, 161.

⁹³ Douglas, *Risk and Blame* (n 88) 25.

⁹⁴ *ibid* 28.

the potential harm created. Blame can take on three forms: blame the victim; blame those around the perpetrator; or blame an external party.⁹⁵ What constitutes a taboo and how blame is allocated, depends on the society under examination. Blame is widely used in the risk debates surrounding irregular migration and asylum seeking. Government policies are blamed for causing harm to irregular migrants and asylum seekers, who in-turn are blamed for attempting to find a better life (see individualization discussed in Section 6.4) or for undertaking a risky journey. Accordingly, using the conceptual tools of “blame” as provided for by the sociocultural approach to risk will be shown to be a useful way of understanding how irregular migrants and asylum seekers are characterised as a potential threat to the cultural type within government and deviant from the “norms” within government.

Sociocultural theory’s second claim is that people will move towards the perceptions of risk that they believe will most advantage their chosen way of life. According to Douglas ‘moral concern guides not just response to the risk but the basic faculty of [risk] perception.’⁹⁶ Each cultural type and its worldview have ‘its own typical risk portfolio,’ which ‘shuts out perception of some dangers and highlights others,’⁹⁷ in ways that centre blame and punishment on behaviour that undermines its norms and diverts it from activities necessary to perpetuate its norms. As such Douglas and Wildavsky argue that each cultural type exposes its members to risk according to its norms and worldviews and disputes regarding risk are really part of an ‘ongoing debate about the ideal society.’⁹⁸ That according to Lupton makes risk and its management not only a moral and ethical concern but a political one too.⁹⁹

The claim that Douglas’s cultural approach to analysing risk perceptions within social groups and organisations has come under critical review. It has been claimed by Boholm that cultural theory is deterministic suggesting that an individual is incapable

⁹⁵ Mary Douglas, *Risk Acceptability According to the Social Sciences* (Routledge & Kegan Paul 1986) 59.

⁹⁶ *ibid* 60.

⁹⁷ Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press 1982) 8, 85.

⁹⁸ *ibid* 36.

⁹⁹ Lupton, ‘Sociology and Risk’ (n 3) 13.

of exercising their free will.¹⁰⁰ However both Rayner and Tansey clarify that while the theory does assume that cultural biases exist, they do not bind a person to specific arrangements and that while behaviour from the social structure may be predicted, it does not anticipate every individual's behaviour in every circumstance.¹⁰¹ Indeed Douglas describes culture as dynamic: 'an ongoing, never resolved argument about the rightness of choices'.¹⁰²

Allowing for the possibility that people may move between groups may explain the presence of multiple perspectives and the political debates on the risks associated with irregular migrants and asylum seekers. If they were fixed, we should not expect policies towards irregular migrants and asylum seekers to change, ever. Beck phrases this as sub-politics, groups that challenge the status-quo risk knowledge and management.¹⁰³ Yet as discussed in the thematic chapters, irregular migration and asylum policies are fiercely debated and alter over time as different groups advocate for their "ideal society" and challenge predominate risk knowledge regarding irregular migration and asylum seeking by implementing the risk perceptions of their group's worldview.

Cultural theory has also been criticised failing to explain the complexities of an individual life.¹⁰⁴ Similarly that as a pre-globalisation thesis, it could only explain behaviours and perceptions developed in cultures that were limited by time and place.¹⁰⁵ As noted by Hendry, a person operates within a multitude of settings (for e.g., workplaces, religious, political) and therefore adopts a personality according to the setting they are in.¹⁰⁶ So rather than a single group membership as Douglas proposed,

¹⁰⁰ Åsa Boholm, 'Risk Perception and Social Anthropology: Critique of Cultural Theory' (1996) 61 *Ethnos* 64, 68.

¹⁰¹ Rayner (n 80); James Tansey, 'Risk as Politics, Culture as Power' (2004) 7 *Journal of Risk Research* 17, 9.

¹⁰² Douglas, *Risk and Blame* (n 88) 260.

¹⁰³ Beck, *World at Risk* (n 33) 93–95.

¹⁰⁴ Boholm (n 100).

¹⁰⁵ YH Poortinga, 'Presidential Address: Towards a Conceptualization of Culture for Psychology' in Saburo Iwawaki, Yoshihisa Kashima and Kwok Leung (eds), *Innovations in cross-cultural psychology* (Swets & Zeitlinger Inc 1992) 10.

¹⁰⁶ John Hendry, 'Cultural Theory and Contemporary Management Organization' (1999) 52 *Human Relations* 557.

a person is mobile across groups and participates in groups only to the extent necessary to achieve benefit and maintain membership.¹⁰⁷

Boholm similarly criticises the theory for being unable to explain complex structures that people operate within.¹⁰⁸ However, as Ostrander emphasises the typologies should be confined to social institutions rather than attempting to distinguish whole social systems. Research adopting Ostrander's approach has demonstrated how multiple typologies in corporate structures operate.¹⁰⁹ More specific to this research, Matheson has shown that the civil service, including border protection agencies, also operate with multiple typologies. Hierarchy where 'staff obey commands, follow rules, value tradition, know their place, and defer to their superiors'¹¹⁰ is particularly endemic in such organisations yet their leadership are marked out as individualists concerned with competition and political conflict.¹¹¹ This thesis will apply Douglas's group typology to government as Matheson has done to understand how it would perceive risk generally and towards irregular migration and asylum seeking specially.

The sociocultural approach to risk set out above provides a framework in which we can examine how the presence of hierarchy within government apparatuses, may perceive irregular migrants or asylum seekers as hazards to their worldviews.¹¹² Particularly as irregular migrants and asylum seekers challenge their strict adherence to rules-based ordering and achievement of policy-political objectives which reflect on their administrative management. From this perspective we might better understand what characteristics of irregular migration and asylum seeking are thought to be "taboo" to this cultural type and how it uses "blame" in risk management.

¹⁰⁷ Rayner (n 80); James Tansey and Tim O'riordan, 'Cultural Theory and Risk: A Review' (1999) 1 *Health, Risk & Society* 71, 82.

¹⁰⁸ Boholm (n 100).

¹⁰⁹ David Ostrander, 'One- and Two- Dimensional Models of the Distribution of Beliefs' in Mary Douglas (ed), *Essays in the Sociology of Perception* (Routledge 2003) 15.

¹¹⁰ Matheson (n 91) 649.

¹¹¹ *ibid* 650.

¹¹² Douglas and Wildavsky (n 97) 196–98.

Using the above approach provides this research with several beneficial concepts to use in the analysis of how at an institutional level, government perceives and manages the risks associated with irregular migration and asylum seeking. It is acknowledged here however that irregular migration and asylum seeking happens in a global context. Irregular migrants and asylum seekers travel across the globe in response to numerous casual factors. To better understand the macro context in which this occurs, using the analytical concepts developed in the risk society thesis will assist in developing this wider understanding of how governments may perceive irregular migrants and asylum seekers as another globalised form of potential hazard.

This section has introduced the key theories and their concepts that are drawn on throughout this thesis to provide a theoretical framework. The chapter will now go on to provide a conceptual framework for the sections contained in the thematic chapters which present the analysis and discussion of the data collected during this research project. Again, as said earlier, although presented in an apparent linear fashion regarding of construction – influence – consequence, the risk identification and management of irregular migrants and asylum seekers is a more dynamic process.

2.3 Irregular migrants and asylum seekers as risk for government

The preceding sections defined risk and its usage in this thesis and set-out the theoretical approaches to risk adopted in this thesis. Having settled on approaching risk as an event leading to an outcome, the harmfulness of which will vary according to perspective, this section considers to what government perceives irregular migrants and asylum seekers pose a risk of harm to. It will also consider how irregular migrants and asylum seekers are framed by government as potentially harmful in various ways to lawfully resident community members. It will also discuss how, as a political issue, the risk of potential harm has been constructed for use in electoral matters in both case study jurisdictions.

The current international political order is founded on the existence and mutual recognition of territorially bounded nation-states. What constitutes a nation and the political expression given to that nationalism in the form of the state, is the subject of extensive literature.^{113,114} Ideally each state should foster and represent the collective interests of its constituent nation or people, but as Keely notes that ‘does not accurately describe the real world.’¹¹⁵ Indeed, the very creation of irregular migrants and asylum seekers through conflict with nation-state norms, ideological disagreements, or state failure points to an instability within the nation-state system.¹¹⁶

This inherent instability is acknowledged by the existence of the various international and regional treaties that attempt to govern asylum seekers and refugees.¹¹⁷ Dauvergne suggests that their existence is essentially an attempt to cure or remedy the potential instability and threat that asylum seekers and refugees pose to the nation-state and the exercise of its sovereignty.¹¹⁸ Because as the author goes on to argue, when sovereignty is the objective of the nation-state, any challenge to it is met with resistance.¹¹⁹ At this macro-level threat to sovereignty can be reframed as perceived risk to sovereignty that government is obliged to address. Currently discussed as an exercise of sovereignty, structuring exclusionary migration regimes has been an essential “risk-to-sovereignty” mitigation tool.

¹¹³ See: Montserrat Guibernau, *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Polity Press 1996) 46.

¹¹⁴ Such is the entrenched and systemic influence of this social organisation principle that it equally influences the very methods of social-scientific research creating “methodological nationalism”. In migration studies it has led to authors to declare that: ‘Describing immigrants as political security risks, as culturally others, as socially marginal and as an exception to the rule of territorial confinement, migration studies have faithfully mirrored the nationalist image of normal life.’ Andreas Wimmer and Nina Glick Schiller, ‘Methodological Nationalism and beyond: Nation–State Building, Migration and the Social Sciences’ (2002) 2 *Global Networks* 301, 325.

¹¹⁵ Charles B Keely, ‘How Nation-States Create and Respond to Refugee Flows’ (1996) 30 *The International Migration Review* 1046, 1052.

¹¹⁶ *ibid.*

¹¹⁷ Convention relating to the Status of Refugees 1951 (United Nations, Treaty Series, vol 189, p 137); Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons 1989 (89/13/Rev1).

¹¹⁸ Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press 2008) 170.

¹¹⁹ *ibid* 173.

Implicit within the creation of international regulatory frameworks is the recognition that unregulated movement of people across borders creates risks for the receiving state's ability to meet the numerous demands of their citizenry. Movements of irregular migrants and asylum seekers into a receiving state will require organised provision and consumption of resources. Food, some form of shelter, medical services and education facilities for minors may all be necessary.¹²⁰ Having frameworks in place that regulate these provision responsibilities are also useful in mitigating domestic concerns regarding strains on local infrastructure. So even as we move down from the grand concept of sovereignty towards examining the micro practices of government, the extensive reach of risk within irregular migration and asylum frameworks continues to manifest.

In long-term situations, a threatening "Other" presence may manifest if there are differences in culture or language between resident and irregular migrant or asylum seeker. But as Frank and Reinisch note, that manifestation only developed in the post-Cold War period once irregular migrants and asylum seekers were no longer escapees from ideological oppression in European states.¹²¹ The discourse has changed from political dissident deserving sympathy towards deviance and criminality and a risk of importing the dysfunction of their homeland.¹²² Providing security to the resident population is a fundamental task of government, any perceived risk to that provision must therefore be addressed.

So too has perception changed in Australia and the UK towards irregular migrants and asylum seekers as simply opportunistic economic migrants seeking a better lifestyle. Despite being framed as such and their presence constituting a harmful risk to the domestic worker, research indicates that an increasing number of irregular

¹²⁰ Social Care Institute for Excellence, 'Good Practice in Social Care for Refugees and Asylum Seekers' (May 2015) <<https://www.scie.org.uk/publications/guides/guide37-Good-practice-in-social-care-with-refugees-and-asylum-seekers/about.asp>> accessed 29 October 2021.

¹²¹ Matthew Frank and Jessica Reinisch, 'Refugees and the Nation-State in Europe, 1919–59' (2014) 49 *Journal of Contemporary History* 477, 484.

¹²² Philip Marfleet, *Refugees in a Global Era* (Palgrave Macmillan 2006) 3–4.

migrants or asylum seekers are given some form of protection.¹²³ As with providing security and resources to incumbent residents, providing economic opportunity is a criterion for effective government, and perceived threats to that is a risk that must be mitigated.

The preceding paragraphs have outlined how governments are exposed to negative risk potential if they are thought by the electorate to fail to implement policies that mitigate any of the above perceived detriments to the lawfully resident population attributed to irregular migration or asylum seeking. However, there are positive aspects to risk and risk taking to be explored when performing research within the sociology of risk.¹²⁴ In Tulloch and Lupton's study of people engaging in physical activities including regular migration, participants reported positive aspects to the activity. Risk taking was a chance to engage in self-actualisation or chance to improve the self; to experience emotional pleasure through successfully meeting a challenge; or to push boundaries and conquer vulnerability.¹²⁵ At institutional levels Rothstein identifies positive aspects to risk in the way that decision-makers and managers seek opportunities that improve governance arrangements so that potential problems are identified and managed.¹²⁶ Risk policy from the UK government's Cabinet Office demonstrates the awareness of potential risk positivity. It includes in its definition of risk the "positive opportunity" that uncertain outcomes contain and the governance improvements that are available when risk is proactively managed.¹²⁷ With demonstrable clarity, irregular migrants and asylum seekers present a positive political risk potential for governments. If government is perceived to successfully manage the perceived negative risk of irregular migration and asylum seeking, recent electoral results suggest that voters will reward them with ongoing support.

¹²³ Janet Phillips, 'Asylum Seekers and Refugees: What Are the Facts?' (Parliament of Australia, Parliamentary Library 2015) Research Paper 9; Georgina Sturge, 'Asylum Statistics' (House of Commons Library 2021) SN01403 12–14.

¹²⁴ Lupton, 'Sociology and Risk' (n 3) 20.

¹²⁵ Deborah Lupton and John Tulloch, "'Life Would Be Pretty Dull without Risk": Voluntary Risk-Taking and Its Pleasures' (2002) 4 *Health, Risk & Society* 113, 117–121; Tulloch and Lupton (n 3).

¹²⁶ Henry Rothstein, 'The Institutional Origins of Risk: A New Agenda for Risk Research' (2006) 8 *Health, Risk & Society* 215, 219.

¹²⁷ Cabinet Office, 'Risk: Improving Government's Capability to Handle Risk and Uncertainty' (UK Government 2002) 7, 31.

The political benefits of taking a “tough on illegal migrants” policy and operational approach for governments has clearly developed within the period of analysis for this thesis. In the Australian context, the *Tampa* incident provided the then government with an opportunity to adopt such a policy. Authors have demonstrated how governments can use nationalistic rhetoric to justify and mobilise popular domestic support for previously extreme responses.¹²⁸ Subsequently, that support has been leveraged into support from the electorate as the government demonstrates its competence in management of irregular migrant and asylum seeker risks.¹²⁹

The above has outlined how risks are framed in confronting government and the demands made of government to implement policies that contain measures that act as risk mitigation. Taking the form of exclusionary migration frameworks, risk mitigation policy has been demonstrated to be electorally popular for governments revealing a positive risk potential, a perspective currently lacking academic consideration. The specific risks alluded to above, security, economic, and social form the subjects of the thematic chapters of this thesis.

2.4 Constructing risk

As discussed in section 1.4.1, this thesis adopts a sociological approach to risk which considers risk to derive its meaning and resonance from the social, cultural, and historical contexts in which it is produced.¹³⁰ In this regard, risk is a construction of society’s, ‘the products of a process of collective definition,’¹³¹ and not an objective fact of the world. Therefore, according to Otway and Thomas, a social constructionist approach to risk is a sound theoretical foundation for an analysis of risk in policy.¹³² As

¹²⁸ Kieran O’Doherty and Martha Augoustinos, ‘Protecting the Nation: Nationalist Rhetoric on Asylum Seekers and the Tampa.’ (2008) 18 *Journal of Community & Applied Social Psychology* 576.

¹²⁹ David Marr and Marian Wilkinson, *Dark Victory* (Allen & Unwin 2003).

¹³⁰ Deborah Lupton (ed), *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge University Press 1999) 1.

¹³¹ Herbert Blumer, ‘Social Problems as Collective Behavior’ (1971) 18 *Social Problems* 298, 298.

¹³² Harry Otway and Kerry Thomas, ‘Reflections on Risk Perception and Policy’ (1982) 2 *Risk Analysis* 69, 70.

this thesis concerns itself with policy and legal frameworks, it makes adopting this social constructionist approach to risk most suitable.

The benefit of adopting a constructionist approach to risk in this thesis lies in its shift of analytical attention. The shift moves attention away from artifacts and towards the discourses and practices used by government in constructing irregular migration as a risk. Particularly as social construction engages in what Hilgartner describes as a process that identifies and names new “risk objects” (i.e., things, activities, or situations) that are ‘deemed to be sources of danger’¹³³ for regulatory attention. As such this thesis is not a “first-order observation” of perceived irregular migration and asylum seeking risks but observes the ways in which the risks are constituted by government and the administrators who develop policies that attempt to address these concerns.¹³⁴

Conceiving of risk as a social construction does not mean to suggest that there are events that cannot or do not have an objective nature.¹³⁵ Rather as Jasanoff suggests it acknowledges that this reality is dependent on the context in which it occurs:

What we claim to know about risk, how we acquire more information, and how we interpret the facts in our possession are all contingent on contextual factors, ranging from individual or organizational experience to national political culture.¹³⁶

This position puts the examination of risk directly into the social world and permits an analysis that closely follows the social and political setting in which the risk discourse occurs. There is wider literature regarding the social construction of social problems,¹³⁷ however the discussion here aims to conceptualise risk construction and risk

¹³³ Hilgartner (n 27) 40.

¹³⁴ Niklas Luhmann, *Risk: A Sociological Theory* (Rhodes Barrett tr, Transaction Publishers 2002).

¹³⁵ Beck, *World at Risk* (n 33) 13.

¹³⁶ Jasanoff (n 28) 127.

¹³⁷ John Clarke and Allan Cochrane, ‘The Social Construction of Social Problems’ in Esther Saraga (ed), *Embodying the Social: Constructions of Difference* (Routledge 1998).

identification as a social process. Specifically, that risk can be regarded not just as a technical activity, but as one where risk claims are constitutive of a reality upon their naming which opens them up to new thought and action and, risks are present in everyday life because ‘the perception of risk constitutes a defining experience for contemporary society.’¹³⁸

This thesis is concerned with how government perceives irregular migration and asylum seeking as a risk and how it implements that risk perception in practice. We therefore need to move from the theoretical approaches of risk perception as set out above to include an approach that assists in analysing how government constructs and manages the perceived risk of irregular migration and asylum seeking. This is done here by developing Hilgartner’s framework to include Hacking’s approach to “making-up people” as “risk objects” that are brought into being for the purpose of regulation.

2.4.1 Making-up people and risks

Developed further here is application in this thesis of Hacking’s method of analysis regarding novel or newly emergent risks.¹³⁹ Particularly, the concept of “making-up people” which is described as a type of “dynamic nominalism” that regards risk as a way to classify and describe processes where risks are produced and subjected to social and political attention.¹⁴⁰ This approach to the construction of people is preferred to the more general literature on the construction of irregular migrants and asylum seekers for several reasons. This approach recognises that risk is constructed in conjunction with the person. Also, it appreciates the simultaneous building of the administrative mechanisms that manage the new persons. It goes further by examining the dynamic interaction the newly identified irregular migrant and asylum seeker has with these mechanisms. Rather than being static entities, as each changes and shapes the other in response to the other making changes and adjustments in behaviours or responses. These elements are developed further in this section. Hacking’s thesis

¹³⁸ Ewald, ‘Risk in Contemporary Society’ (n 25) 379.

¹³⁹ Ian Hacking, *Historical Ontology* (Harvard University Press 2002).

¹⁴⁰ Ian Hacking, ‘Making Up People’ (2006) 28 *London Review of Books* 23.

emphasises that risks are made via social processes that are not unique but central to life today. Using a historical review of statistics, Hacking argues that new categories of people or “problems” and “risks” were brought into being via their naming and classification.¹⁴¹

Labelling and classification were traced by Hacking to the early 19th century when numbers and statistics were first used to develop “deviant” people. At that time suggests Hacking, the population was reconceived as a distribution of people who showed predictable regularity which enabled them to be observed, assessed, and managed.¹⁴² It has been said by Wilkinson that:

the identification of particular groups and individuals as “risks to society” contributed to the emergence of social institutions, legal frameworks and expertise designed to protect and promote the nation’s health, wealth and social well-being.¹⁴³

As these categories of people solidified overtime and became assumed, their existence was put beyond dispute. More especially as data on them accumulated and were made subjects of specialised institutions, frameworks, and professions. That meant their existence could no longer be physically or politically ignored.

Developing these concepts further, Hacking proposed a new process of “making-up people” to describe how new categories of people are created by being named as a particular type. Though not suggesting new groups of people are uncovered via better information regarding their existence, Hacking explains:

not that there was a kind of person who came increasingly to be recognized by bureaucrats or by students of human nature, but rather that a kind of person came into being at the same time as the kind itself was being invented.¹⁴⁴

¹⁴¹ María Laura Martínez Rodríguez, *Texture in the Work of Ian Hacking* (Springer Nature 2021) 6.

¹⁴² Hacking, ‘Making Up People’ (n 140) 23.

¹⁴³ Iain Wilkinson, *Risk, Vulnerability and Everyday Life* (Routledge 2010) 19.

¹⁴⁴ Hacking, *Historical Ontology* (n 139) 106.

Other things such as objects and procedures are also created in this way, but Hacking distinguishes them from people, noting that people are autonomous and in a “looping-effect” that respond to and are changed by their naming.¹⁴⁵ It was suggested that “making-up people” ‘changes the space of possibilities for personhood’¹⁴⁶ in contrast to objects which cannot interact with their naming.

Placing Hacking’s view of risk and the idea of “making-up people” together, we may be able to conceive of a notion developed in this thesis of “making-up risks”. Because the person or thing once named a risk reveals new areas for thought and actions which could not exist prior to their naming. Therefore, once new concerns about issues like irregular migration and asylum seeking or any number of other ‘non-existent yet possible events’¹⁴⁷ are articulated, there is a concurrent appearance of risks which demand action from institutions such as law enforcement. It was observed by Wilkinson that: ‘once labelled as “risk”, problems are framed with a sense of urgency that issues a demand for political attention and moral response.’¹⁴⁸ Consequently Beck argues that ‘people or groups who are (or are made into) “risk persons” or “risk groups” count as nonpersons whose basic rights are threatened.’¹⁴⁹

The process of “making-up risks” has been remarkably prevalent in relation to irregular migrants and asylum seekers during the period of analysis for this thesis. Particularly after the September 2001 terror attacks, irregular migrants and asylum seekers were named as a new type of risk which later enabled them to be more severely regulated than what had been possible before the naming or labelling. It further created the sense of urgency for a political and moral response to protect the lawfully resident population in Australia and the UK from the “risk persons” with concomitant effects on their basic rights.

¹⁴⁵ Ian Hacking, ‘The Looping Effects of Human Kinds’ in Dan Sperber, David Premack and Ann James Premack (eds), *Causal Cognition: A Multidisciplinary Debate* (Oxford University Press 1995).

¹⁴⁶ Hacking, *Historical Ontology* (n 139) 107.

¹⁴⁷ Michael Power, ‘The Apparatus of Fraud Risk’ (2013) 38 *Accounting, Organizations and Society* 525, 530.

¹⁴⁸ Wilkinson (n 143) 25.

¹⁴⁹ Beck, *World at Risk* (n 33) 16.

Finally, Hacking's making-up thesis accords with the wider sociological risk literature regarding risk in modern society. Risk was described by Hacking as 'philosophical success story of the twentieth century',¹⁵⁰ a position that is shared with writers from a range of sociological risk approaches. Ewald and Beck consider risk to be a corollary to modern society,¹⁵¹ while others consider it almost impossible to consider the future through anything but a risk lens.¹⁵² Some authors such as Dean have been critical of Beck's ontological view of risk,¹⁵³ though there is consensus regarding risk as a pervasive feature of modernity. Ewald for example suggests that 'there is scarcely a social problem that is not dealt with in terms of risk'¹⁵⁴ while risk also enters all parts of individual and social life. With respect to regulation, we can see that evident in the number of areas now considered "problematic" such as 'financial well being, human health, safety, environmental quality [and] national security.'¹⁵⁵ A list to which this thesis adds irregular migration and asylum seeking.

2.4.2 Risk construction within government as an organisation

As this thesis is primarily concerned with government perceptions of risk, it must set-out an approach to the examination of risk construction within government. For an organisation and the individuals that operate within them, to understand and determine risk has become more difficult.¹⁵⁶ That may be because as Beck and others have suggested, risk has become global and harder to identify and manage.¹⁵⁷ The

¹⁵⁰ Ian Hacking, *The Taming of Chance* (Cambridge University Press 1990) 4.

¹⁵¹ François Ewald, 'Insurance and Risk' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault effect: studies in governmentality* (University of Chicago Press 1991); Beck, *Risk Society: Towards a New Modernity* (n 31).

¹⁵² Robert Castel, 'From Dangerousness to Risk' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault effect: studies in governmentality* (University of Chicago Press 1991); Luhmann (n 134).

¹⁵³ Dean (n 3) 227.

¹⁵⁴ Ewald, 'Insurance and Risk' (n 151) 152–53.

¹⁵⁵ D John Graham, 'Why Governments Need Guidelines for Risk Assessment and Risk Management' in OECD (ed), *Risk and Regulatory Policy Improving the Governance of Risk* (OECD Publishing 2010) 238.

¹⁵⁶ Giddens, 'Risk and Responsibility' (n 59).

¹⁵⁷ Beck, *Risk Society: Towards a New Modernity* (n 31); Ulrich Beck and Boris Holzer, 'Organizations in World Risk Society' in Christine M Pearson, Christophe Roux-Dufort and Judith A Clair (eds), *International Handbook of Organizational Crisis Management* (SAGE Publications 2007).

recognisable problems of global environmental damage and religiously based terrorism have all shown how global risk control has decreased thereby increasing risk for today's society. As recent events have revealed, local catastrophes such as environmental disaster or civil conflict can instigate mass movements of people with global consequences.

There has been some academic interest regarding how organisations identify, construct, and manage risk within the above context.¹⁵⁸ As it has been increasingly incumbent on organisations to manage risks that they are faced with.¹⁵⁹ According to Hutter and Power organisations are 'the critical agents of risk society' and 'centres for processing and handling risk.'¹⁶⁰ Especially when a hazard or risk object is made into a responsibility of an organisation to manage.¹⁶¹ Interestingly, that position appears to create a tension between those like Power and Wilkinson that see "making-up risks" as creating a responsibility or moral imperative to respond, with Veitch who sees irresponsibility in institutional risk response. Though as the thematic chapters of this thesis suggest, the two can co-exist. Government has created a positive obligation or imperative to respond to the perceived risk of irregular migration and asylum seeking that it constructs but only so far as its jurisdiction can be said to extend.¹⁶²

Given that society and organisations are intertwined and as risk complexity grows thanks to globalisation and social reorganisation, the challenges of risk management for organisations similarly grow.¹⁶³ Therefore, organisations will find it more difficult to control and manage risks, but society continues to expect that they

¹⁵⁸ Robert P Gephart, John Van Maanen and Thomas Oberlechner, 'Organizations and Risk in Late Modernity' (2009) 30 *Organization Studies* 141.

¹⁵⁹ Michael Power, *Organized Uncertainty: Designing a World of Risk Management* (Oxford University Press 2007).

¹⁶⁰ Bridget Hutter and Michael Power, 'Organizational Encounters with Risk: An Introduction' in Bridget Hutter and Michael Power (eds), *Organizational Encounters with Risk* (Cambridge University Press 2005) 1.

¹⁶¹ Michael Power and others, 'Reputational Risk as a Logic of Organizing in Late Modernity' (2009) 30 *Organization Studies* 301, 304; Hilgartner (n 27).

¹⁶² Power and others (n 161) 304; Hilgartner (n 27).

¹⁶³ Kent D Miller, 'Organizational Risk after Modernism' (2009) 30 *Organization Studies* 157.

do.¹⁶⁴ A reality recognised by the UK Cabinet Office in its risk management report.¹⁶⁵ The organisational management of risk is central to Hilgartner's framework,¹⁶⁶ who suggests that an organisation will try to minimise risk unpredictability and irregularity by displacing it from the organisation. That is, to weaken the link between the risk object and the extent danger or hazard.¹⁶⁷

Researchers argue that there is still a vagueness to risk construction and response within organisational structures.¹⁶⁸ As a consequence, more research has been called for regarding organisations' construction and management of risk in this complex reality, because there has been little research to date.¹⁶⁹ This thesis attends to the gap within the existing literature by examining how institutions within the Australian and British governments have gone about constructing and managing irregular migrants and asylum seekers as risk objects within the increasingly complex environment.¹⁷⁰ Also, the thematic chapters examine the role civil servants and ministers play within government to construct irregular migrants and asylum seekers as a risk and subsequently manage it through forms of displacement.

If risk construction is an 'inherently ambiguous and subjective process mediated through argument',¹⁷¹ then risk management is also complex and subject to interpretation. Some researchers have suggested that the very idea of risk management is also a social construction. It was argued by Holt that risk management could only be performed in an awareness of its limitations rather than on an

¹⁶⁴ Steve Maguire and Cynthia Hardy, 'Organizing Processes and the Construction of Risk: A Discursive Approach' (2013) 56 *Academy of Management Journal* 231.

¹⁶⁵ Cabinet Office, 'Risk: Improving Government's Capability to Handle Risk and Uncertainty' (n 127) 6.

¹⁶⁶ Hilgartner (n 27).

¹⁶⁷ *ibid* 49.

¹⁶⁸ Lee Clarke and James F Short, 'Social Organization and Risk: Some Current Controversies' (1993) 19 *Annual Review of Sociology* 375.

¹⁶⁹ Maguire and Hardy (n 164); Gephart, Van Maanen and Oberlechner (n 158).

¹⁷⁰ Gephart, Van Maanen and Oberlechner (n 158).

¹⁷¹ Haridimos Tsoukas, 'David and Goliath in the Risk Society: Making Sense of the Conflict between Shell and Greenpeace in the North Sea' (1999) 6 *Organization* 499, 523.

assumption that risk could be controlled.¹⁷² Others observe organisations can display differing assumptions about controllability.¹⁷³

It has also been suggested in literature that risk construction and risk management are an integrated process. Maguire and Hardy examined the “micro practices” in risk object construction and management including the discourse people used in changing the meaning of a risk object. The researchers pay attention to how discursive practices used past decisions and experiences to “normalise” risk, but other knowledge was drawn on to “problematise” a risk object.¹⁷⁴

Another approach sees risk objects and their management systems as social and technical. Some authors have tended to adopt risk quantification as the lens to view organisational attempts to manage risk.¹⁷⁵ However, for organisations that information drawn on to carry out the quantification is almost always incomplete.¹⁷⁶ Despite the shortcoming it has been shown that people within organisations will almost always use incomplete information or ignore information that does not align with their own understanding of the incomplete data.¹⁷⁷

Managing the perceived risk of irregular migration and asylum seeking has been a key marker of government success in both the Australia and the UK. Social demands have appeared to require governments commit to guaranteeing the exclusion of irregular migrants and asylum seeking despite the complexities or near impossibility of the task. An issue that Beck sees as a key marker of modernity. While there are strong discourses established by government about managing irregular migration and asylum seeking and its risks, management systems are often established in the context of incomplete information or predictable data about irregular migration

¹⁷² Robin Holt, ‘Risk Management: The Talking Cure’ (2004) 11 *Organization* 251.

¹⁷³ Maguire and Hardy (n 164).

¹⁷⁴ *ibid.*

¹⁷⁵ Donald MacKenzie, ‘Knowledge Production in Financial Markets’ (2012) 41 *Economy and Society* 335.

¹⁷⁶ Gephart, Van Maanen and Oberlechner (n 158) 150.

¹⁷⁷ Bridgette Sullivan-Taylor and David C Wilson, ‘Managing the Threat of Terrorism in British Travel and Leisure Organizations’ (2009) 30 *Organization Studies* 251.

and asylum seeking movements. This raises legitimate questions about the viability or appropriateness of the management systems. These issues of risk construction and management within government are investigated further in this thesis.

To summarise, the available literature has demonstrated that organisational structures, practices, and quantitative data only provides some insight into risk construction and management. That allows for further investigation into what social risk construction in organisations such as government means and how it interacts with their attempts to control it. This research will therefore build upon Hilgartner's risk objects approach via the first sub-question of the thematic chapters: what comprises of risk according to the Australian and British governments, and second sub-question, how is the risk comparatively constituted?

2.4.3 Communicating the constructed risk

Communicating risk messages about irregular migration and asylum seeking aides the risk construction process and eases the path for taking new regulatory measures. The performative act of risk labelling has assisted governments to communicate their perceptions that irregular migrants should be susceptible to new forms of risk management and regulation. As a tool however, risk communication has also been used in opposition to government perceptions and so serves as an important site of analysis in this thesis when examining how irregular migrants and asylum seekers have been constructed as risk and managed as risk objects.

Talking about risk and communicating knowledge of how to avoid hazards has been an essential societal practice for centuries.¹⁷⁸ Today, the act of communicating risk knowledge is aided by traditional and social media channels which not only create and disseminate this knowledge but provide a site for risk debate too.¹⁷⁹ Unlike pre-

¹⁷⁸ Alonzo Plough and Sheldon Krinsky, 'The Emergence of Risk Communication Studies: Social and Political Context' (1987) 12 *Science, Technology, & Human Values* 4, 5.

¹⁷⁹ Anders af Wåhlberg and Lennart Sjöberg, 'Risk Perception and the Media' (2000) 3 *Journal of Risk Research* 31.

modern communication that was a social act with a confined audience, media today can transmit risk messages and dramatic imagery directly into the homes of thousands about any number of issues including irregular migration and asylum seeking.¹⁸⁰

The risk society thesis does consider media to be a critical actor in modern society given its role in the social discourse and dissemination of risk knowledge:

the risk society can be grasped theoretically, empirically and politically only if one starts from the premise that it is always also a knowledge, media and information society at the same time.¹⁸¹

For Beck, the ability of media set and define social problems then formulate the communication of that knowledge is fundamental to society's engagement with risk. Because risks are constructions of possible future events, media provides a site where experts can dramatise, minimise, or deny the knowledge of these future events.¹⁸² These risk debate and construction processes can be similarly observed in Cohen's study of "moral panic".¹⁸³ In that study, the production of coded imagery, exaggeration and distortion plus prediction were all carried out by media actors in the name of identifying a threat to societal values, safety, and interests.¹⁸⁴ Later Cohen also drew attention to how this process was repeated in relation to media and government communicating a hostile position on irregular migration and asylum seeking.¹⁸⁵

Traffic is not however one-way regarding the communication of risk knowledge as counter-definition or resistance to dominant risk constructions can also be found.¹⁸⁶

¹⁸⁰ Allen William, Scott Blinder and Robert McNeil, 'Media Reporting of Migrants and Migration', *World Migration Report 2018* (International Organization for Migration 2018).

¹⁸¹ Ulrich Beck, 'Foreword' in Stuart Allan, Barbara Adam and Cynthia Carter (eds), Kathleen Cross (tr), *Environmental risks and the media* (Routledge 2000).

¹⁸² Beck, *World at Risk* (n 33) 30.

¹⁸³ Stanley Cohen, *Folk Devils and Moral Panics* (1st edn, MacGibbon and Kee 1972).

¹⁸⁴ *ibid* 9.

¹⁸⁵ Stanley Cohen, *Folk Devils and Moral Panics* (3rd edn, Routledge 2002) xxii.

¹⁸⁶ For a quantitative analysis of counter-narrative presence in British media see: Mike Berry, Inaki Garcia-Blaco and Kerry Moore, 'Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries' (Cardiff School of Journalism, Media and Cultural Studies 2015) 38–43.

Media can provide society with an opportunity to reflexively monitor risk by carrying contrary risk knowledge positions.¹⁸⁷ In providing this function, prevailing risk production, identification, and management knowledge can be challenged.¹⁸⁸ As investigators, it can expose the “organized irresponsibility” that is said to be present because of modern risks escaping the traditional forms of control and remedy.¹⁸⁹

Following a review of empirical evidence, af Wåhlberg and Sjöberg were equivocal in their view of whether risk communication could significantly affect public risk perceptions.¹⁹⁰ Indeed Statham and Geddes’ study of the influence that British civil society has over migration policy found that policy elites were relatively unrestrained by media campaigns and even the judiciary.¹⁹¹ However, Consterdine and Hampshire found in their interviews with UK Government Special Advisors that they made a conscious effort to ensure that government narratives regarding irregular migrants and asylum seekers were media attentive.¹⁹² An effort that Martin also observed in the Australian context.¹⁹³ Caviedes did note that reports of migration scandals and maladministration by the UK’s Home Office only forced begrudging shifts in policy and chiefly served to maintain political pressure on the government.¹⁹⁴ Findings from this research suggests that outside or sub-political groups employing media can successfully put-forward alternative risk definitions supported by the general public and forcing changes to irregular migration frameworks (see Section 6.5).

Despite the apparent prevalence of risk communication in society today, Cottle has been critical of the lack of consideration regarding the role that culture plays in the

¹⁸⁷ Beck, *Risk Society: Towards a New Modernity* (n 31) 193.

¹⁸⁸ Beck, *Ecological Politics in an Age of Risk* (n 60) 140.

¹⁸⁹ *ibid* 1.

¹⁹⁰ af Wåhlberg and Sjöberg (n 179) 44.

¹⁹¹ Paul Statham and Andrew Geddes, ‘Elites and the “Organised Public”: Who Drives British Immigration Politics and in Which Direction?’ (2006) 29 *West European Politics* 248, 266.

¹⁹² Erica Consterdine and James Hampshire, ‘Immigration Policy under New Labour: Exploring a Critical Juncture’ (2014) 9 *British Politics* 275, 290.

¹⁹³ Greg Martin, ‘Stop the Boats! Moral Panic in Australia over Asylum Seekers’ (2015) 29 *Continuum* 304.

¹⁹⁴ Alexander Caviedes, ‘The Influence of the Media upon Immigration Politics in the UK’ (2011).

practice.¹⁹⁵ Here again this thesis takes-up Taylor-Gooby and Zinn's call for a more integrated consideration of sociocultural and risk society approaches to risk.¹⁹⁶ Continuing to apply the social constructionist approach of this thesis, calls for examining an actor's selection of what to report, who to interview and quote, how to structure a story, and when to distribute it.¹⁹⁷ In that regard we can see that as a contribution to Hacking's process of "making-up people" and the notion of "making-up risks" as developed earlier.

The application of the grid-group analysis to risk communication regarding irregular migrants by government could be considered a type of "second-order observation".¹⁹⁸ By observing the observer in their cultural worldview we can begin to understand why relationships may form between government and risk communicators that share worldviews and participate together in worldview reinforcing behaviours.¹⁹⁹ It was suggested earlier that as hierarchical organisations, governments would preference those communicators and media which favour those hierarchical worldviews views. Kitzinger proposed that could manifest in ways that give lower scrutiny to "official sources" and place government officials over outside experts.²⁰⁰ Once the risk has been "made-up" it can be deployed in justification towards those channels which have audiences that share similar worldviews.²⁰¹

This section has set out the constructivist framework in this thesis to the analysis of government risk perceptions of irregular migrants and asylum seekers. By expanding Hacking's concept into "making-up risks" the analytical attention here shifts from away from artifacts and towards the social and political processes that turn irregular migrants and asylum seekers into risk objects. Once framed as risk objects it is

¹⁹⁵ Simon Cottle, 'Ulrich Beck, 'Risk Society' and the Media: A Catastrophic View?' (1998) 13 *European Journal of Communication* 5.

¹⁹⁶ Taylor-Gooby and Zinn (n 6) 405.

¹⁹⁷ Robert A Stallings, 'Media Discourse and the Social Construction of Risk Special Section: Moral Problems in Reproduction' (1990) 37 *Social Problems* 80.

¹⁹⁸ Luhmann (n 134) 219.

¹⁹⁹ Michaud, Carlisle and Smith (n 84) 29.

²⁰⁰ Jenny Kitzinger, 'Researching Risk and the Media' (1999) 1 *Health, Risk & Society* 55, 65–66.

²⁰¹ Bobby Duffy and Laura Rowden, 'You Are What You Read? How Newspaper Readership Is Related to Views' (MORI Social Research Institute 2005) 12–13.

argued that risk communication then forms an integral part of the social process which conveys the sense of urgency that necessitates political attention and response. This framework will be applied to assist answering the second sub-question of the thematic chapters - how is the risk comparatively constituted.

2.5 Risk in politics and policy

The preceding discussion of government risk perception and construction serves as a starting point for critical engagement with government positioning irregular migration and asylum seeking as a risk. However, for a more complete understanding of how government perceptions of risk are formed, we must examine how risk informs, and is informed by the politics of today as well as how the bureaucracy identifies, negotiates, and manages risk with and for the elected executive.²⁰²

2.5.1 The politics of risk

It has been observed by Sapolsky that risk becomes intensely political when interested actors engage in a competition for public support by enhancing certain potential harms and diminishing others.²⁰³ For careers can be as much at-risk in risk controversies if the support of the public, media, or other institutions is not successfully rallied to their cause.²⁰⁴ We can observe how this competition for risk attention has played-out in Australian and British irregular migration and asylum politics. Particularly as political leaders engage in policy inflation that centres on who can claim to have most adequately addressed the perceived risk posed by irregular migration and asylum seeking.

The politics of risk could perhaps be described as the politics of doing something. For a political leader not to-do-something, once a risk had been made-up

²⁰² Jasanoff (n 28) 129.

²⁰³ Harvey M Sapolsky, 'The Politics of Risk' (1990) 119 *Daedalus* 83, 83.

²⁰⁴ *ibid* 94.

would be impossible in today's risk adverse society.²⁰⁵ Some authors have argued that a defining part of modern life is to act through a logic of risk,²⁰⁶ but Wright has demonstrated that invoking risk as justification for policies can be just as much 'an insurance policy for political reputations,'²⁰⁷ as much as protection for the nation. Acting in a precautionary way has been a feature of irregular migration and asylum policy in each case study jurisdiction studied here. While the objective risks posed by irregular migration and asylum seeking is nominally at the centre of the political debate, the political risk of not doing "something" may be of greater concern.

For risk society theorists, politics is now defined by risk and managing the unintended consequences of human decision-making. Phrased by Beck as global "bads", these consequences are said to be political because their management and distribution form the very subject of what it means to govern today.²⁰⁸ When viewed through this prism, irregular migration and asylum seeking as risk generated by an unintended consequence of human activity adds new perspectives to El-Enany's discussion of irregular migration and asylum seeking as a consequence of colonialism and the Global North's attempt to redistribute irregular migrants and asylum seekers away from themselves.²⁰⁹ Hoffman's identification of irregular migrants and asylum seekers using modern communication, transport, and money transfers to assist their journeys and government interventions to prohibit usages for this purpose, can similarly be explained through Beck's concept.²¹⁰

The concept of sub-politics provides a useful tool through which we can consider the activities of groups formed to counter government perceptions of

²⁰⁵ Wilkinson (n 143).

²⁰⁶ Michael Power, *The Risk Management of Everything: Rethinking the Politics of Uncertainty* (Demos 2004) 60; Dean (n 3) 110.

²⁰⁷ Susan Wright, 'Terrorists and Biological Weapons: Forging the Linkage in the Clinton Administration' (2006) 25 *Politics and the Life Sciences* 56, 103.

²⁰⁸ Beck, 'The Reinvention of Politics: Towards a Theory of Reflexive Modernization' (n 48) 7.

²⁰⁹ El-Enany (n 58).

²¹⁰ Sue Hoffman, 'Fear, Insecurity and Risk: Refugee Journeys from Iraq to Australia' (PhD Thesis, Murdoch University 2010) 50.

irregular migrants and asylum seekers.²¹¹ For Beck, these sub-political groups form as a reflexive action to concerns that current institutions are unable to manage modern risk.²¹² The groups are said to breakdown traditional political groupings around ideology, class, or ethnicity and reform around shared concerns regarding the distribution and management of risk.²¹³ Examined in the consequences chapter, sub-political groups have formed in response to perceived government mishandling of irregular migration and asylum seeking and distrust in government risk narratives. Their presence may account for outlier policy shifts on irregular migrants and asylum seekers, contrary to predominant government positions.

Arguing that risk has totally redefined traditional political allegiances has however been criticised as excessive and dismissive of risk as a political tool with social and cultural functions.²¹⁴ Academics have suggested that risk is used politically within a society to help maintain and order worldviews and relationships. Tansey has argued that risk is employed to protect the “at-risk” individual, their way of life and worldview from the outsider.²¹⁵ The reciprocal of being “at-risk” is to commit a taboo which combined with blame as discussed in Section 2.2.2, are used in the political sphere to uphold the community against the perceived misdeeds of harmful perpetrator.²¹⁶

Political debates in a society about risk therefore centre on what defines being “at-risk”, and who has committed a taboo and is blame-worthy. But to push past these first level debates reveals what the institutions and power relationships are, as well as the moral boundaries that define them within a society.²¹⁷ For Douglas, this makes risk to be a modern and highly politicised vocabulary of a forensic accountability.²¹⁸ Both

²¹¹ Eugenia Siapera, ‘Asylum Politics, The Internet, And The Public Sphere: The Case of UK Refugee Support Groups Online’ (2004) 11 *Javnost - The Public* 79; Anne Pedersen, Farida Fozdar and Mary Anne Kenny, ‘Battling Boatloads of Prejudice: An Interdisciplinary Approach to Activism with Asylum Seekers and Refugees in Australia’ in Diane Bretherton and Nikola Balvin (eds), *Peace Psychology in Australia* (Springer US 2012) 129–31.

²¹² Beck, *World Risk Society* (n 32) 39.

²¹³ Mythen (n 23) 161.

²¹⁴ Anthony Elliott, ‘Beck’s Sociology of Risk: A Critical Assessment’ (2002) 36 *Sociology* 293, 312.

²¹⁵ Tansey (n 101) 29.

²¹⁶ Douglas, ‘Risk as a Forensic Resource’ (n 22) 7.

²¹⁷ Tansey (n 101) 29.

²¹⁸ Douglas, ‘Risk as a Forensic Resource’ (n 22) 3.

Australian and British governments have demonstrated the political advantages of framing various aspects of their societies to be “at-risk” from irregular migrant and asylum seeker outsiders. They also pair “at-risk” framing with blaming activities directed towards irregular migrants and asylum seekers for the consequences of their means and methods of border crossing from death to incarceration and deportation. Tending to absolve governments and by extension the resident community, of any liability for their part in the consequences.

The politicisation of risk and irregular migrants and asylum seekers as risk has formed a substantial part of the public and political debate on this issue throughout the period of analysis for this thesis. Using these theoretical approaches to politics and risk in the later thematic chapters will assist in the development of our understanding of how the current legislative and policy frameworks are formed and the rationale for their formation.

2.5.2 Risk making by the bureaucracy

Concurrent to the place of risk within politics and as a subject of political debates, risk perception is given meaning, form, and acted upon by public policy. Within the Australian and British governance arrangements, public policy is developed primarily by the bureaucracies that support each executive government of the case study jurisdictions. This sub-section will first briefly discuss the concept of public policy and its meaning within the context of this research. It will then go on to examine how risk can be constructed and brought into the present by bureaucracy and Cabinet government which sets the background to how risk perceptions enter frameworks examined throughout this thesis.

As a concept, “public policy” has been defined by Cairney as ‘the sum total of government action.’²¹⁹ Others have similarly viewed public policy as a positive assertion of ruling will and control and an instrument that carries-out these

²¹⁹ Paul Cairney, *Understanding Public Policy: Theories and Issues* (2nd edn, Red Globe Press 2020) 15.

ambitions.²²⁰ Public policies will contain stated aims, outcomes, and details of what government has decided to-do and not to-do which are made and influenced by actors with and without formal authority.²²¹ In both case study jurisdictions, irregular migration and asylum seeking is the subject of extensive public policy in the authors' sense of "government action" and "assertion of ruling will" to "control" since 2001. The UK's New Plan for Immigration²²² and Australia's Operation Sovereign Borders²²³ are demonstrations of Cairney's conceptualisation of public policy, but it is argued here that they also reveal government risk perspectives and knowledge by identifying perceived harmful objects that ought to be regulated. Using public policy to assess risk perspectives and knowledge reveals greater insights into why certain risk mitigations are placed within frameworks as control measures that ultimately affect the rights positions of irregular migrants and asylum seekers.

For public policy to be created it must go through a design process. Sabatier describes this process as the conceptualisation of problems that have been brought to government for solution. Governmental institutions go on to develop alternative solutions with the preferred option implemented, evaluated, and revised.²²⁴ The design process requires knowledge of the policy goals, perceptions of multiple actors each with their own agenda, and involves using specialist knowledge over long periods of time.²²⁵ It is argued here that risk and all its components are also developed and articulated in this design stage of public policy. Not only are risks established as "problem" statements that the intended policy may address, so too are the risks to the policy successfully achieving its stated aims and objects.

²²⁰ Michael Moran, Martin Rein and Robert E Goodin, *The Oxford Handbook of Public Policy* (Oxford University Press 2006) 3.

²²¹ Cairney (n 219) 18–19.

²²² Home Office, 'New Plan for Immigration: Policy Statement' (UK Government 2021) CM 412.

²²³ Liberal-National Coalition, 'The Coalition's Operation Sovereign Borders Policy' (2013) Election manifesto.

²²⁴ Paul A Sabatier, 'The Need for Better Theories' in Paul A Sabatier (ed), *Theories of the Policy Process* (2nd edn, Westview Press 2007) 3.

²²⁵ *ibid* 4.

An underappreciated aspect of policy design in Australia and the UK are the multiple points at which risk is developed and considered by government and its bureaucracy in the design process. At the broadest level, it was suggested that ministers and Cabinet are responsible for setting the risk appetite for government policy (the possibility and impact levels of an event occurring).²²⁶ Factors that contributed to the setting of this appetite level were “broader contexts” such as the current macro-economic or geo-political situation. Risk appetite could also be set on a policy case-by-case basis, but either way, could only be done with “eyes wide-open”.²²⁷

In practice, the collective eye-opening is achieved via Cabinet consideration of policy submissions. The Australian Cabinet Handbook and UK Cabinet Manual, set-out the mechanics of constitutional governance practices which both indicate that a Cabinet submission should articulate for ministers the policy issue under consideration, present in-summary supporting evidence and options for a course of action.²²⁸ In a submission proper, a bureaucrat will develop the risk properties of the primary policy dilemma under consideration (for example, the perceived security, economic, or social risks of irregular migration and asylum seeking). Although these primary risk concerns form the substantive themes examined in this thesis, the consequential strategic, financial, operational, regulatory and legal risks derived from government-initiated mitigation to the primary policy dilemma are drawn into the overall analysis.²²⁹

As suggested earlier, identifying, assessing, and measuring risk is enmeshed within initial policy design. However, each bureaucracy takes divergent approaches to the task. These risk tasks performed by Australian civil servants are done within a risk governance framework that Howlett et al describe as the “most developed” of

²²⁶ Interview with AU-CS-03.

²²⁷ *ibid.*

²²⁸ Cabinet Office, ‘The Cabinet Manual’ (UK Government 2011) para 4.30; Department of the Prime Minister and Cabinet, ‘Cabinet Handbook’ (Australian Government 2020) 14th edition 19.

²²⁹ Cabinet Office, ‘The Cabinet Manual’ (n 228) para 4.30; Department of the Prime Minister and Cabinet (n 228) paras 93–99.

compared Organisation for Economic Cooperation and Development countries.²³⁰ There is legislative footing for the risk framework,²³¹ and it is also highly bureaucratised with templates, tools, and processes in-place that civil servants must use. One such template is the Risk Potential Assessment Tool (RPAT – see Appendix One) that must be completed by a civil servant and attached to the Cabinet submission that it supports. Due to this research being carried-out within the 20-year Cabinet secrecy rule of both jurisdictions, relevant completed Cabinet submissions and their RPATs were not available for analysis. However, the RPAT template material was available and is discussed further here.

An RPAT (and its associated guidance) presents 21 questions intended to elicit raw data and analysis from the authoring civil servant. The accompanying guidance to the RPAT states that it is ‘the first step in the assessment of risk when developing a [policy], and provides a standard set of high-level criteria for assessing the degree of strategic importance and implementation complexity.’²³² The RPAT consolidates risk information regarding the primary policy issue as a government priority (for example, security risks of irregular migration and asylum seeking), then goes on to consider the wider consequential risk aspects such as the financial and legal risks generated by the proposed mitigation to the primary issue.²³³ A completed RPAT along with its primary policy are circulated for review among departments and ministerial offices. After revisions and approval from the sponsoring minister, the submission and its attached RPAT are considered by the Cabinet which may be agreed, not agreed, or sent back to the bureaucrats for further development.

In contrast, the UK government’s approach to risk is de-centralised and relies on guidelines that departments and agencies are expected to follow in their own

²³⁰ Michael Howlett, Ching Leong and Sonam Sahu, ‘Managing Internal Policy Risk: Australia, the UK and the US Compared’ (2022) 5 *Policy Design and Practice* 152, 160.

²³¹ Public Governance, Performance and Accountability Act 2013 (Cth).

²³² Department of Finance, ‘Risk Potential Assessment Tool’ (Australian Government 2016) Resource Management Guide No. 107 4.

²³³ *ibid* 8–19.

way.²³⁴ HM Treasury publishes the “The Orange Book” for the UK civil servants ‘involved in the design, operation and delivery of efficient, trusted public services.’²³⁵ Unlike the Australian framework, the Orange Book does not provide the “how” of risk but rather directs civil servants to contemplate categories of risk (for example, strategic, legal, financial) when developing risk assumptions that form part of the policy design.²³⁶ Although a Risk Potential Assessment Form (nearly identical in substance and structure to Australia’s RPAT) is available for major projects,²³⁷ risk is largely left to the Senior Responsible Officer in charge of the policy development and policy implementation department to manage. Therefore, Cabinet or ministerial colleagues may see and understand the primary perceived risks under consideration (for example, the perceived security risks of irregular migration and asylum seeking) but not necessarily the consequential risks under their control that are generated by mitigation activities (i.e., legal, financial, operational). Completed Cabinet material including risk assessment forms were searched for as part of this research. However due to the operation of Cabinet 20-year secrecy rules such documents were not yet available for review.

There are consequences from this distinction in approach to risk integration within public policy by these two jurisdictions. The UK’s decentralised and less formulaic approach to risk while designing policy may encourage creative thinking. The Cabinet Office has published guidance for civil servants that encourages risk thinking beyond metrics and refocuses risk assessments in a qualitative Beckian manner that emphasises the evolving and omnipresent place and nature of risk in society today.²³⁸ In some training that is available for civil servants, the manner is reflected in the emphasis on how to “scan the horizon” and identify risk in qualitative ways for

²³⁴ Howlett, Leong and Sahu (n 230) 157.

²³⁵ HM Treasury, ‘The Orange Book: Management of Risk - Principles and Concepts’ (UK Government 2020) 3.

²³⁶ *ibid* 38.

²³⁷ UK Government, ‘Risk Potential Assessment Form’ (*GOV.UK*, 5 November 2021) <<https://www.gov.uk/government/publications/risk-potential-assessment-form>> accessed 25 March 2022.

²³⁸ Cabinet Office, ‘Risk: Improving Government’s Capability to Handle Risk and Uncertainty’ (n 127).

government attention via a policy response.²³⁹ Some Home Office interviewees alluded to these qualitative approaches when they discussed horizon events such as the Arab Spring,²⁴⁰ or Balkan conflict,²⁴¹ that create various risks of irregular migration and asylum seeking to the UK.

But largely leaving it to individuals or even departments alone, can as another interviewee suggested, lead to a “group-think” or risk perspectives dominated by a single theoretical position within policy.²⁴² Although outside the policy drafting process, a British lawyer appeared to confirm this “group-think” mentality towards risk when seemingly low-level issues with documentation accuracy were across the board, considered a criminal risk rather than innocent omissions.²⁴³ Further, horizon focus may help explain why seemingly isolated issues such as illegal deportations or foreign national offender failures were treated as “whack-a-mole” issues,²⁴⁴ rather than being joined-up and identified as systemic risks for the UK government. Another perspective on groupthink from a civil servant presented an interesting perspective on how practical matters influenced risk perceptions in policy development. They recounted a civil service mentality that is ‘used to, or familiar with bureaucracy, record keeping, and filling-in forms’,²⁴⁵ which is almost the antithesis of an irregular migrant’s engagement with government. Accordingly, such anti-bureaucracy is immediately singled-out as a highly risky proposition.

The Australian concerted effort however to apply a formulaic process approach to risk while designing policy has left officials with a “deficit of judgement and initiative”.²⁴⁶ That is, a structure over behaviour approach to developing risk assumptions in public policy has meant that at an individual level, officials’ qualitative risk skills have deteriorated. It was suggested that it often left teams to manage risk

²³⁹ Cabinet Office, ‘Management of Risk in Government: Framework’ (UK Government 2017) 25–26.

²⁴⁰ Interview with UK-CS-01.

²⁴¹ Interview with UK-CS-02.

²⁴² Interview with UK-CS-04.

²⁴³ Interview with UK-LA-01.

²⁴⁴ Interview with UK-CS-01.

²⁴⁵ *ibid.*

²⁴⁶ Interview with AU-CS-03.

and no one identifiably responsible person for a risk judgement that forms an assumption within a policy. Consequently, it was said to result in greater managing of issues (something that has occurred) rather than risk (something that may occur).

The former official also suggested that departments could address these perceived deficiencies in including risk in policy design by in-graining risk culture in civil servants. Also, by ensuring recruitment was “opened-up” to more diverse intakes so that problems emerging “far away from Canberra” would be more readily identified and included when drafting policy.²⁴⁷ A former parliamentarian similarly argued that greater gender diversity in parliament brought with it alternative risk perspectives that assisted with inserting divergent perspectives into public policy at the parliamentary stage of policy design.²⁴⁸

It was suggested that there are a range of actors who could at any point identify or inform government of risk factors and the broader operating environment when developing policy. As Cairney argues, each actor will have varying degrees of authority or influence,²⁴⁹ but in this context, an Australian interviewee identified influential actors as lobbyists and advocates, political party employees as well as ministerial advisers.²⁵⁰ The detailed and sustained risk identification and informing will however occur between officials and their minister which a former Home Office official described as “two-way conversations”.²⁵¹ These conversations according to the official are supported by presentations of raw and analysed intelligence, observations of trends by “on-the-ground” officials and directions from ministers of what they view as potentially harmful.²⁵² Despite the presence of actors outside the minister-civil servant relationship influencing risk perceptions, an interviewee was critical of the civil service for failing to draw-on external risk views and expertise.²⁵³ But secrecy in policy

²⁴⁷ *ibid.*

²⁴⁸ Interview with AU-LA-03.

²⁴⁹ Cairney (n 219) 18–19.

²⁵⁰ Interview with AU-CS-03.

²⁵¹ Interview with UK-CS-01.

²⁵² *ibid.*

²⁵³ Interview with AU-CS-03.

development and as external actors are naturally outside the rigid hierarchal reporting structures of the bureaucracy, may be explanatory factors for this alleged failure.

The preceding discussion sought to explain how risk construction is embedded within policymaking. Of note is the differing emphasis to creating and documenting risk. The Australian approach appears to favour an almost quantitative demand for risk articulation and grading, with an apparent equal emphasis placed on the consequential risks generated for government by its policy mitigations to the primary risk concern. The British approach however encourages civil servants to adopt some broader thinking of potential future hazards but with reduced clarity on identification and management of consequential risks from mitigations. While the primary risk issues identified by government are the focus of the thematic chapters of this thesis, discussed particularly in Chapter Six are the differing approaches to consequential risks from perceiving irregular migrant and asylum seeker risks has regardless turned government into hazardous risk makers.

In each instance the extensive bureaucratisation of risk through legislation, procedures, guidance, and documentation points towards the influence of hierarchical structures and its demand for norm adherence. Yet to complete the requirements and create risk certainty and mitigate today, what is thought may happen in the future, the relies entirely upon risk assessment by humans using their imperfect risk knowledge. The evidence of such attempts to identify and understand risk challenges Beck's assertion that we are collectively moving into a society where risk is incalculable.²⁵⁴ Attempting to crystallise risk has yet to be given-up upon, at least by government and its supporting bureaucracies. This evidence of risk making, justifies taking constructive approaches to risk in this thesis, as it allows for consideration of civil servant and ministerial interpretations and experiences of irregular migration and asylum seeking risk, and how these are bound to the institutional and social structures that will guide their perceptions and actions.²⁵⁵

²⁵⁴ Beck, *World at Risk* (n 33) 52–53.

²⁵⁵ Sheila Jasanoff, 'The Political Science of Risk Perception' (1998) 59 *Risk Perception Versus Risk Analysis* 91, 95; Lidskog and Sundqvist (n 5) 1021.

In sum, the politics of risk and risk in policy design present opportunities to consider how risk perceptions are given form and enter the irregular migration and asylum seeking frameworks of Australia and the UK. It is clear that the extensive bureaucratic processes in-place that identify and mitigate risk, warrant an extension of Cairney and Sabatier's descriptions of public policy to include risk as key features of policy design.²⁵⁶ But when analysing the construction of risk for policy purposes, Jasanoff argues that governmental risk knowledge is "contingent" and "context-dependent" which is critical to understanding that 'what people claim to know about risk is ... constructed in different ways in different political and cultural settings.'²⁵⁷ These risk processes examined above, reveal that although ministers and Cabinet are the ultimate setters of risk perception in policy, perceptions are contingent on the conversations with officials regarding their extensive analysis and knowledge. Therefore, recognising the bureaucratic production of risk knowledge and their biases in the construction of government risk perceptions of irregular migration and asylum seeking provides a more complete understanding of applicable migration policy and legal frameworks.

Conclusion

The preceding discussion has sought to highlight the ever-increasing use of risk as a means through which many of today's social challenges and uncertain future events are seen. It has also set out in detail the two theoretical approaches to risk that have guided the construction of the framework for this thesis. While both the risk society and sociocultural theories have each provided valuable concepts, it is argued here that taking a more integrated approach better serves the analysis of government risk perceptions towards irregular migrants and asylum seekers. Although risk society attends to the macro level perceptions of risk in society today, drawing in the social

²⁵⁶ Cairney (n 219); Sabatier (n 224).

²⁵⁷ Jasanoff (n 28) 127.

and cultural contexts in which risk knowledge is produced provides a more complete understanding of government positions.

Understanding how risk perceptions are formed by government should not be considered the complete picture of what is happening to irregular migrants and asylum seekers in Australia and the UK. Therefore, this thesis goes further and sets-out an approach to examine how these perceptions are informing public policy process. Ultimately it is public policy that drives legislation formation and operationalises the regulation and management of irregular migrants and asylum seekers as risk objects and builds reflexive rationality into relevant frameworks.

Chapter Three – Security risks, irregular migration and asylum seeking

Introduction

The governments of both Australia and the UK have held the view that irregular migrants and asylum seekers pose a security or safety risk to their resident communities. These views have been expressed by associating irregular migrants and asylum seekers with criminal activity and terrorism. In this first thematic chapter these perceived security risks are examined through the application of the risk framework established in Chapter Two. It will also analyse how these perceptions have informed the legislation and policies that affect irregular migrants and asylum seekers in each of the two case study jurisdictions.

The period of analysis for this thesis commences in 2001 when the terror attacks in the United States of America precipitated a wave of government action across the globe which in-part targeted irregular migrants and asylum seekers. Authors have labelled this the “securitisation” of migration which has greatly influenced academic perspectives on the irregular migrant and asylum seeker/government relationship to-date.¹ By applying the risk-based approach developed in Chapter Two, a new alternative perspective to securitisation is added to the migration and asylum debates. It does that by suggesting that there has not only been an increase in attempts at migration and asylum control but a reorientation of migration and asylum frameworks around risk management.

The following sections of this chapter will demonstrate how the security risks irregular migrants and asylum seekers have been said to pose towards Australia and

¹ See: Jef Huysmans, ‘The European Union and the Securitization of Migration’ (2000) 38 *JCMS: Journal of Common Market Studies* 751; Cecilia Menjivar, ‘Immigration Law Beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization’ (2014) 10 *Annual Review of Law and Social Science* 353.

the UK have been constructed. The first section will commence with a discussion of what has constituted the most substantial elements of security risk for each case study government. The section will then move on to present an analysis of how irregular migrants and asylum seekers are “made-up” as risk objects for the purposes of newly created regulations that act as a form of risk management. In Australia and the UK similar processes that use the presence of the future to make-up irregular migrants and asylum seekers as either terrorists or criminals who pose a potential hazard to each society have been employed. That has then enabled risk management policies such as offshoring, excision, and behaviour management models, previously unheard of, to be passed-off as suitable risk mitigation approaches.

Attention will then turn to an analysis of the factors that have influenced government constructions of irregular migrants and asylum seekers as a security risk since 2001. It is argued that the construction of irregular migrant and asylum seeker security risks is influenced by their manifestation of the qualities of globality, future threat, and uninsurability. These qualities have been responded to by government in various ways, and in doing so have been responsible for altering the rights and legal position of irregular migrants and asylum seekers within applicable legal and policy frameworks.

3.1 Making-up security risks

There is considerable academic debate regarding the concept of security and its effect on public policy.² This debate as it concerns this thesis centres on the “securitisation” of migration or asylum policy and its various consequences for irregular migrants and asylum seekers. Indeed, Boswell notes that ‘the received wisdom is that 9/11 provided an opportunity for the securitization of migration.’³ Securitisation was developed by

² See: Thierry Balzacq, ‘A Theory of Securitization: Origins, Core Assumptions, and Variants’ in Thierry Balzacq (ed), *Securitization Theory: How Security Problems Emerge and Dissolve* (Routledge 2011); Marvin Astrada, ‘Fear & Loathing in the Present Political Context: The Incubus of Securitizing Immigration’ (2018) 32 *Georgetown Immigration Law Journal* 169.

³ Christina Boswell, ‘Migration Control in Europe After 9/11: Explaining the Absence of Securitization*’ (2007) 45 *JCMS: Journal of Common Market Studies* 589, 589.

the Copenhagen School,⁴ which takes a constructive approach to establishing security problems. Through speech acts that are designed to influence an audience into sensing a vulnerability in an object, a threat and the threatening actor are said to possess such unprecedented qualities that customised policies are required immediately to block the threat and threatening actor.⁵ More recently Balzacq et al have suggested that securitization theory has advanced to consider practices in technology or law, to complement the initial speech act emphasis of securitization.⁶

Securitisation has found popular use among researchers within migration and asylum contexts. This research centres on the actions taken by governments to construct these cohorts as “threats” likely to cause damage or pose a danger to a person or thing. Huysmans and Ceyhan and Tsoukala for example, have concluded that migration (in all forms including asylum) has been constructed through discourse as a cultural, socio-economic, and security threat by government, the security services and in media.⁷ Though Bigo is critical of the focus on discourse as the sole means to construct these cohorts as threat. Instead Bigo argues that account should be had of the administrative practices that construct migrant and asylum security threat, along with the creation of security professionals and their methods of meeting the constructed threat.⁸

The concept of a constructed “threat” that mobilises public opinion to legitimise action against a threat in the form of an irregular migrant or asylum seeker, shares some initial parallels with that of a constructed risk. Particularly the use of rhetoric to build the perceived harm caused, or to be caused, and justification for new policies that mitigate these perceived harms. However, as Neal’s analysis of the risk

⁴ Ole Wæver, ‘Securitization and Desecuritization’, *On Security* (Columbia University Press 1995); Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998).

⁵ Balzacq (n 2) 3.

⁶ Thierry Balzacq, Sarah Léonard and Jan Ruzicka, ‘“Securitization” Revisited: Theory and Cases’ (2016) 30 *International Relations* 494, 507.

⁷ Huysmans (n 1); Ayse Ceyhan and Anastassia Tsoukala, ‘The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies’ (2002) 27 *Alternatives: Global, Local, Political* 21.

⁸ Didier Bigo, ‘Migration and Security’ in Virginie Guiraudon and Christian Joppke (eds), *Controlling a New Migration World* (Routledge 2001) 142.

logic underpinning Frontex operations demonstrates, risk goes further than securitisation and threat allow. Risk and its analysis by government is directed at understanding the movement of people and the causes of displacement generated by earlier socio-technological advancement. Risk analysis of people moving opens-up for investigation, their location, direction of travel, and numbers including cohort demographics. These analyses are directed towards anticipating and managing people movements before a threat could materialise. Bigo has described this approach as ‘a proactive logic which anticipates the risks and the threats, locating the potential adversaries even before they have any consciousness of being a threat to others.’⁹ So rather than intercepting a “threat” at the border, risk is about assessment and predicting dangers of the future.¹⁰ Threat also does not speak to the administering of irregular migration and asylum policies. Risk management practices within departmental agencies have sought to expose their future operational capacities to effectively manage future “crises” of irregular migration and asylum seeking and compel improvements.

Having distinguished threat from risk, the following presents an analysis of how the Australian and British government have engaged in the type of dynamic nominalism as discussed earlier in this thesis,¹¹ that constructs irregular migrants and asylum seekers as a type of security risk. In Section 2.4.1 an argument was put-forward that governments have engaged in Hacking’s process of making-up irregular migrants and asylum seekers as a new kind of people and new risk object. Once subjected to a process of risk labelling,¹² Wilkinson argues that a new political urgency and attention is brought about to ensure the newly made-up risk is appropriately regulated, which was impossible before the labelling.¹³ By taking this approach, the attention of this thesis shifts to concentrate on the practices of government adopted in the risk-making

⁹ Didier Bigo, ‘Frontier Controls in the European Union: Who Is in Control?’ in Didier Bigo and Elspeth Guild (eds), *Controlling Frontiers: Free Movement Into and Within Europe* (Ashgate Publishing, Ltd 2005) 86.

¹⁰ Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992) 34.

¹¹ Ian Hacking, *Historical Ontology* (Harvard University Press 2002) 106.

¹² Ian Hacking, ‘Making Up People’ (2006) 28 *London Review of Books* 23.

¹³ Iain Wilkinson, *Risk, Vulnerability and Everyday Life* (Routledge 2010) 25.

process. This section will in-part answer the first sub-question of the thematic chapters: how the security risk has been constituted by government in Australia and the UK. The following two sub-sections specifically examine how the new security risks of terrorism and crime and applied to irregular migrants or asylum seekers are made-up by government and used to justify new policies as risk mitigations.

3.1.1 Making-up terror risk

The security risk that irregular migrants and asylum seekers are perceived by government to pose in recent times, has been defined by their alleged potential to be terrorists or have a terrorist hiding among them. As a Home Office official stated in their interview, terror and asylum narratives 'are never far away'¹⁴ from each other. A circumstance that a former Australian parliamentarian suggested was derived from the 'coincidence of events around Tampa and September 11 ... it was easy to portray individuals as a security risk.'¹⁵ The following will discuss what constitutes the perceived terror risk and how governments have constructed the asylum seeker-terrorist risk and expanded the risk to include irregular migrants.

This perception of irregular migrants and asylum seekers as a terror risk has developed and remains present within government discourse despite no explanation being provided as to why irregular migrants and asylum seekers are more liable than others to be involved in terror activities.¹⁶ Knox has even been able to demonstrate that irregular migrants and asylum seekers are themselves the subjects of violence from state and non-state actors rather than perpetrators of violence.¹⁷ Even where a violent act is carried-out by an irregular migrant or asylum seeker, Nowrasteh found a

¹⁴ Interview with UK-CS-04.

¹⁵ Interview with AU-LA-03.

¹⁶ Anastassia Tsoukala, 'Democracy in the Light of Security: British and French Political Discourses on Domestic Counter-Terrorism Policies' (2006) 54 *Political Studies* 607, 612.

¹⁷ Vickie Knox, 'Factors Influencing Decision Making by People Fleeing Central America' [2017] *Forced Migration Review* 18; Vickie Knox, 'Gang Violence, GBV and Hate Crime in Central America: State Response versus State Responsibility' [2019] *Forced Migration Review* 79.

vanishingly small chance of someone experiencing such an act.¹⁸ Despite such qualitative and quantitative evidence, the government perception remains that an irregular migrant or asylum seeker could be a terrorist, or that there are terrorists among their number.

The securitisation prism used by authors focuses on how this connection between irregular migrants and asylum seekers and terrorism is made via rhetoric from political elites. After examining UK parliamentary debate, Huysmans and Buonfino argue that irregular migrants and asylum seekers are rhetorically embedded within security debates by drawing together general societal “unease” about potential violations and abuses by irregular migrants and asylum seekers with the exceptional nature of terror attacks.¹⁹ In the Australian context, de Castella et al observed that then Prime Minister John Howard rhetorically tied both irregular migration and asylum seeking and terrorism together by articulating the shared uncertainties regarding their presence within borders and the uncertainty of state’s ability to prevent both their arrival.²⁰ These authors by focusing on speech acts alone, miss the more bureaucratic methods used in establishing such connections. But perhaps more substantially, miss that in making-up a new type of person, an irregular migrant/asylum seeker-terrorist, political elites are simultaneously bringing into being a new risk, a ‘non-existent yet possible event.’²¹

Governments in both jurisdictions have, long before the period of analysis for this thesis, excluded a variety of migrant cohorts based on their perceived potential for engaging in politically motivated violence. Nationals of wartime belligerents have been detained or removed from the jurisdiction,²² and non-nationals holding perceived

¹⁸ Alex Nowrasteh, ‘Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975–2017’ (Cato Institute 2019) 866 22–24.

¹⁹ Jef Huysmans and Alessandra Buonfino, ‘Politics of Exception and Unease: Immigration, Asylum and Terrorism in Parliamentary Debates in the UK’ (2008) 56 *Political Studies* 766.

²⁰ Krista De Castella, Craig McGarty and Luke Musgrove, ‘Fear Appeals in Political Rhetoric about Terrorism: An Analysis of Speeches by Australian Prime Minister Howard’ (2009) 30 *Political Psychology* 1, 13.

²¹ Michael Power, ‘The Apparatus of Fraud Risk’ (2013) 38 *Accounting, Organizations and Society* 525, 530.

²² Alien Restriction Act 1914 (UK).

extreme political ideologies have been too.²³ What marks today's migration and asylum frameworks as different however, is the "presence of the future" that has been built into them. The spatial and temporal dimensions of risk are used to create an imagined future of non-existent yet possible events which simultaneously make-up a new person and risk. Once a model irregular migrant / asylum seeker – terrorist risk-type has been made-up, it serves the basis for new policies to be implemented today that mitigate the risk.²⁴

The UK government's general policy towards risk recognises that risk may emerge from a melange of human decisions, globalisation, and complex modern interdependencies.²⁵ By using language of association in specialist policy documents and in public arenas,²⁶ the irregular migrant and asylum seeker (collectively referenced as mass migration) terrorist risk is made-up as a new type of risk object that could emerge from this mixture of risk production. The UK Ministry of Defence (MoD) has observed that European states are 'increasingly vulnerable to globalized challenges, such as economic competition, mass migration, terrorism, international crime and climate change.'²⁷ Later, "uncontrolled migration" and terrorism were identified together as two threats that states would need to secure against.²⁸ Aware that interdependencies also drive risk, intervention and stabilisation force in foreign states might be needed to address 'disease, migration and terrorism.'²⁹

The Australian Department of Defence also engages in a similar process of joint naming irregular migrants and asylum seekers with terrorism. In policy documents from the department, global interdependency issues are given greater prominence to

²³ Peter Monteath, 'The Kisch Visit Revisited' (1992) 16 *Journal of Australian Studies* 69.

²⁴ Mikkel Vedby Rasmussen, 'Reflexive Security: NATO and International Risk Society' (2001) 30 *Millennium* 285, 293.

²⁵ Cabinet Office, 'Risk: Improving Government's Capability to Handle Risk and Uncertainty' (UK Government 2002) 5.

²⁶ Stephen Hilgartner, 'The Social Construction of Risk Objects: Or, How to Pry Open Networks of Risk' in Ben Clarke and James Short, *Organizations, uncertainties, and risk* (Westview 1992) 46.

²⁷ Ministry of Defence, 'Global Strategic Trends - 2007-2036' (UK Government 2006) 3rd 51.

²⁸ Ministry of Defence, 'Global Strategic Trends - Out to 2040' (UK Government 2010) 4th 86.

²⁹ HM Government, 'National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom' (2015) Cm 9161 48; Cabinet Office, 'National Security Capability Review' (UK Government 2018) 41.

the production of new risk objects. In 2005 for example, the department stated that it 'attached high priority to working with Indonesia on common security issues particularly terrorism and border security.'³⁰ The department engages with the spatial elements of risk here when it recognised that going beyond Australia's borders to work with neighbouring states, would prevent an 'increase threats to Australia's domestic security including through irregular maritime arrivals.'³¹ In the Australian policy context as Koser and McAuliffe have discussed that "irregular maritime arrivals" is a reference to irregular migrants and asylum seekers.³² Australia's "border security" could then, according to policy, be at-risk from an act of terror or irregular migration and asylum seeking travelling across borders.³³

In these strategy documents, the bureaucracies are engaging with the spatial and temporal aspects of risk to assist with making a new irregular migrant or asylum seeker-terror risk that will require mitigating measures today. The UK puts-forward a range of global extant security risks such as terrorism and crime and replaces the broad category of "mass migration" within them. But in recognising that just as interdependencies may create risk, they also offer a path towards risk mitigation by suggesting that forward intervention in states will prevent the risk from occurring. The Australian department's specific identification of Indonesia, its geographical neighbour, indicates that risk source and interventions need not be "global" and as spatially distant as indicated by the MoD. Yet allusions towards states working-together as a key to addressing the perceived security risk, hints at the cosmopolitanism that Beck suggested would be required to effectively manage the risks of today.³⁴

³⁰ Department of Defence, 'Australia's National Security: A Defence Update 2005' (Australian Government 2005) 14.

³¹ Department of Defence, '2020 Defence Strategic Update' (Australian Government 2020) 16.

³² Khalid Koser and Marie McAuliffe, 'Establishing an Evidence-Base for Future Policy Development on Irregular Migration to Australia' (Department of Immigration and Citizenship 2013) Irregular Migration Research Program Occasional Paper Series 01/2013.

³³ Department of Defence, 'Australia's National Security: A Defence Update 2005' (n 30) 3–5.

³⁴ Ulrich Beck, *World Risk Society* (Polity Press 1999) 19–47.

The more widely consumed political party election manifestos more narrowly focused on creating an asylum seeker-terrorist risk object by constructing future scenarios which make up the risk that prompt current action.³⁵ The UK Labour Party linked “modernising our asylum system” with ‘measures to protect our country from terrorism,’³⁶ the party later repeated the global and interdependency conditions from which the risk is produced along the lines previously articulated by the Cabinet Office.³⁷ The ‘interwoven security and development challenges’ such as ‘ongoing wars across the Middle East, unprecedented numbers of refugees, global terrorism [and] climate change,’³⁸ draw an association between the proliferation of global threats that may in-time produce the feared asylum seeker-terrorist.

In the Australian context, political parties also used the presence of the future to make-up a risk of an irregular migrant-terrorist arriving or being present in the jurisdiction. In November 2001, not long after the terror attacks of that year, a general election was held. The opposition Labor Party claimed that ‘the possible increase in cross-border terrorist operations using false immigration papers, along with the problem of illegal immigration and people smuggling activities in the future,’³⁹ required new compliance and enforcement measures. Likewise, the governing Liberal-National coalition sought to create irregular migrant-terrorists by suggesting that people smuggling provided opportunities ‘for the spread of terrorism.’⁴⁰

The Australian and British political leadership and their supporting bureaucracies each use the spatial and temporal dimensions of risk to make either the irregular migrant or asylum seeker-terrorist risk object. The Australian political approach to constructing the security risk was entirely more explicit in asserting a connection between irregular migration and terrorism. In contrast, to the British

³⁵ Rasmussen (n 24) 293.

³⁶ Labour Party, ‘Britain Forward Not Back’ (2005) Election manifesto 43.

³⁷ Cabinet Office (n 25).

³⁸ Labour Party, ‘For the Many Not the Few’ (2017) Election manifesto 116.

³⁹ Kim Beazley, ‘Strengthening Australia’s National Security’
<<https://www.alp.org.au//media/1001/kbmsnsec061001.html>> accessed 23 April 2019.

⁴⁰ Liberal-National Coalition, ‘Our Future Action Plan - Protecting Our Borders’ (2001) Election manifesto 3.

approach remained at the level of emplacement with other established security risks. But each similarly use events beyond their borders as a potential source of new risk that could in the future produce a harm that, thanks to the complexities of global interconnectedness, travel to Australia and the UK. The process of making-up of this new people and risk is according to Hilgartner, aided by establishing a connection to a likewise potential future harm.⁴¹ The performative impact of this association between risk and harm creates new paths to regulation and management today that could not exist previously.⁴²

In the immediate wake of the 2001 terror attacks in the USA, the Anti-terrorism, Crime and Security Act 2001 (UK) (ATCS Act) was passed by parliament to give the government wide-ranging powers to label and categorise certain people as “suspected international terrorists”⁴³ and removed non-refoulement provisions.⁴⁴ In debate the then Home Secretary David Blunkett argued:

This is our home—it is our country. We have a right to say that if people seek to abuse rights of asylum to be able to hide in this country and organise terrorist acts, we must take steps to deal with them.⁴⁵

Blunkett would also go on to say in the same debate that:

we must also face up to things and be prepared to understand that people out there really want us to get a grip on any danger that threatens their or our lives, or the operation of this country—its economy, working and lifeblood.⁴⁶

Rather than merely defining in this instance, asylum seekers as risk objects, Blunkett links them to a series of potential future harms. Normatively valued notions of “our home” and “our country” are identified and an emotive link forged between them and

⁴¹ Hilgartner (n 26) 42.

⁴² Hacking (n 11) 99.

⁴³ Anti-Terrorism, Crime and Security Act 2001 (UK) s 21.

⁴⁴ *ibid* 33(1).

⁴⁵ HC Deb 19 September 2001, vol 375, cols 29-30.

⁴⁶ HC Deb 19 September 2001, vol 375, col 30.

newly identified a harmful risk object. If danger to home and country was not enough, Blunkett further invites the public to appreciate the potential co-option of the revered asylum system by terrorists. Blunkett finally justifies the new ATCS Act laws by invoking the public's implicit support "to get a grip on any danger". This time using the temporal aspect of risk to establish a potential and unknown future harm and that general rather than specific powers in the ATCS Act provide the appropriate risk mitigation. At the time Stevens described that as a "radical measure",⁴⁷ and left Fenwick perplexed as to how this could occur in a democracy.⁴⁸

In the Australian context, the political leaders repeated Blunkett's connections between terrorism and asylum seeking by actively leveraging the September 11 and Tampa into a new singular risk. The then Minister for Defence Peter Reith suggested that asylum seekers arriving by boat were a 'pipeline for terrorists to come-in and use your country as a staging post for terrorist activities.'⁴⁹ From Reith's clear assertion that there are terrorists hiding among asylum seekers, a link is forged between the risk and an objectively, but future, harmful act being carried out by the terrorist.

During the election that followed shortly thereafter, Prime Minister John Howard reaffirmed and broadened the terror connection to include irregular migrants as terror risk objects through association and linked to a putative harm:

national security is therefore about a proper response to terrorism. It is also about having an uncompromising view about the fundamental right of this country to protect its borders.⁵⁰

In Howard's deductive approach, mitigation to potential risks takes a singular form in the shape of border protection (which as indicated above includes stopping the arrival of irregular migrants and asylum seekers), and therefore suggests that terrorism and

⁴⁷ Dallal Stevens, *UK Asylum Law and Policy: Historical and Contemporary Perspectives* (Sweet & Maxwell 2004) 218.

⁴⁸ Helen Fenwick, 'The Anti-Terrorism, Crime and Security Act 2001: A Proportionate Response to 11 September?' (2002) 65 *The Modern Law Review* 724.

⁴⁹ Transcript of the Hon Peter Reith MP – Radio interview with Derryn Hinch – 3AK, 13 September 2001.

⁵⁰ John Howard, 'Transcript of the Prime Minister the Hon John Howard MP Address at the Federal Liberal Party Campaign Launch', 28 October 2001.

irregular migration and asylum seeking may perceptively take an amalgamation into a singular risk form. Following Howard's election victory, new legislation was passed that permitted the government to take both irregular migrants and asylum seekers (further affirming their singular risk form) to a declared country for offshore detention or processing of an asylum seeker's claim for protection.⁵¹

Whether the rhetorical association was done publicly or in party political or bureaucratic documents, the intent and result has been to make-up a singular irregular migrant/asylum seeker-terrorist risk that came to be understood as a security matter first and a humanitarian issue second. As such it enabled new forms of risk management and risk mitigation that otherwise would not have been available, and in-fact had not been done before, such as offshore detention and protection claims processing. To be discussed more fully later in this thesis, the consequences of moves such as this, were as Beck suggested to make the "risk person" a non-person whose basic rights are threatened,⁵² while exporting globally new risks and hazards.⁵³

3.1.2 Making-up criminal risk

The second component to modern security risk perception is that of irregular migrant or asylum seeker crime and criminality. A Home Office interviewee believed that the relationship between the two has been defined by a narrative that 'is reflected in government insistence in linking irregular migrants with Organised Criminal Gangs (OCG).'⁵⁴ Unhelpfully aided, according to an Australian case worker interviewed for this research, by government detention practices which co-mingle asylum seekers and criminal deportees resulting in a 'blurring between the two [that] refugees and asylum seekers get caught-up in.'⁵⁵

⁵¹ Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001 (Cth) Sch 1.

⁵² Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009) 16.

⁵³ *ibid* 141.

⁵⁴ Interview with UK-CS-04.

⁵⁵ Interview with AU-NG-02.

The criminality that irregular migrants or asylum seekers are said to manifest has been conceived of by academia in two ways. Chouhy and Madero-Hernandez have identified irregular migrants and asylum seekers being described as criminal because of their positive acts in illegal border crossing or, breaching visa conditions.⁵⁶ Not only does border crossing “illegally” cast a person as a criminal (despite border-crossing for the purposes of claiming asylum not being an illegal act), it also suggests that they are therefore comfortable in committing other non-migration related crimes.⁵⁷ Torpey though suggests the act of border crossing without state authorisation is seen as an egregious offence because of the intrinsic role that borders play in forming the modern nation-state.⁵⁸ Demographic homogeneity, another tenant of the modern nation-state, is also challenged by the racialised “Other” border-crosser which Bhatia argues is the rationale for criminalisation.⁵⁹ Further supporting the Australian case worker’s observation regarding “blurring” of border between asylum seeker and criminal, Philo et al’s review of British news media observed an emphasis in reports of violent destruction of detention centres and conflating asylum seekers with foreign national offenders.⁶⁰ This blurring, according to the authors, is used to convey a sense of public threat to the reader from the positive actions of the asylum seekers in question.⁶¹

The second way, as indicated above by the Home Office official, that irregular migrants or asylum seekers have been defined with criminality is in their engagement (willing or not) with people smugglers and other OCG to facilitate border crossing. While people smuggling and trafficking is not a new phenomenon, what is new according to Adamson is OCG globalised operations and their ability to organise themselves into cooperative alliances.⁶² The author also observes that in addition to

⁵⁶ Cecilia Chouhy and Arelys Madero-Hernandez, “Murderers, Rapists, and Bad Hombres”: Deconstructing the Immigration-Crime Myths’ (2019) 14 *Victims & Offenders* 1010, 1012.

⁵⁷ Margaret Malloch and Elizabeth Stanley, ‘The Detention of Asylum Seekers in the UK: Representing Risk, Managing the Dangerous’ (2005) 7 *Punishment & Society* 53, 57.

⁵⁸ John Torpey, ‘Coming and Going: On the State Monopolization of the Legitimate “Means of Movement”’ (1998) 16 *Sociological Theory* 239, 240.

⁵⁹ Monish Bhatia, ‘Crimmigration, Imprisonment and Racist Violence: Narratives of People Seeking Asylum in Great Britain’ (2020) 56 *Journal of Sociology* 36, 37.

⁶⁰ Greg Philo, Emma Briant and Pauline Donald, *Bad News for Refugees* (Pluto Press 2013) 77.

⁶¹ *ibid* 112.

⁶² Fiona Adamson, ‘Crossing Borders: International Migration and National Security’ (2006) 31 *International Security* 165, 194.

destabilising national security, these OCG destabilise at a global level by using the features of globalisation (for e.g., international shipping, finance) to conduct their business.⁶³

From further interviews conducted with UK government civil servants for this thesis, it was clear that the irregular migration and asylum seeking/organised crime nexus is of special concern within government as each interviewee raised the matter. The nexus was discussed in the context of wider organised crime, of which people smuggling was one element, and the widely reported deaths of many smuggled or trafficked migrants.⁶⁴ No such connection was made by Australian interviewees however, perhaps reflecting the lower viability of such criminal enterprises given Australia's geography leading to such tragedies rarely occurring and therefore a lower public cognisance of them.

A governmental concern with migration and criminality has been a feature of regulatory frameworks in each case study jurisdiction for some time. Beginning with the Australian WAP in 1901, a criminal history was a reason to designate a person a "prohibited immigrant" if they had been sentenced to a term of imprisonment for one year or longer.⁶⁵ Even today, a 12-month term of imprisonment remains the threshold limit on a non-citizen's ability to pass the "character test" and qualify for an Australian visa grant.⁶⁶

A concern with migrant criminality in the UK also made an appearance in the earliest forms of migration regulation. In debate for what became the Aliens Act 1905 (UK), Lord Belper's rhetorical reference to 'criminals of the alien class'⁶⁷ served as

⁶³ *ibid.*

⁶⁴ Dan Sabbagh, 'May Vows to Use Overseas Aid to Curb Illegal Migration and Organised Crime' *The Guardian* (28 August 2018) <<https://www.theguardian.com/politics/2018/aug/28/may-vows-to-use-overseas-aid-to-curb-illegal-migration-and-organised>> accessed 28 August 2018; 'Essex Lorry Deaths: Men Jailed for Killing 39 Migrants in Trailer' *BBC News* (22 January 2021) <<https://www.bbc.com/news/uk-england-essex-55765213>> accessed 1 October 2021.

⁶⁵ Immigration Restriction Act 1901 (Cth) s 3(d).

⁶⁶ Migration Act 1958 (Cth) s 501.

⁶⁷ HL Deb 28 July 1905, vol 150, col 751.

justification for defining an “undesirable immigrant” to include those with a criminal conviction.⁶⁸ These histories indicate a government willingness identify migrants with at least a judicially proven criminal history as a risk that ought to be managed by exclusion from the jurisdiction.

The extant perception of migrant criminality has now been distinguished from irregular migrants and asylum seekers as a special category of globally deviant migrant.⁶⁹ The distinguishment derives from a realisation that the latent side-effects of modernity and globalisation have enabled irregular migrants and asylum seekers (sometimes with OCG assistance) to engage in illegal border crossing or to breach visa conditions creating a new risk form.⁷⁰ The spatial risk of border crossing is associated with the temporal elements of future criminal threat that anticipates a manifestation of dangerous disorder amongst an ordered migration or asylum framework and society in contrast to exclusion based on proven criminal histories.

The making-up of the perceived criminal risk posed by irregular migrants has been carried-out by bureaucracies emplacing them within the networks of existing criminal activities that particularly move across borders. The Australian Department of Defence included irregular migrants within the range of law enforcement activities it suggested the military would be required support. These activities included ‘people smuggling and illegal fishing’⁷¹ and was later extended to include piracy and international drug smuggling.⁷² The UK’s National Crime Agency likewise includes organised immigration crime as part of its annual threat assessment. The Agency argues that entry into the UK “illegally” is not a standalone offence but rather, part of an overall larger web of criminal activity.⁷³

⁶⁸ Aliens Act 1905 (UK) s 1(3)(c).

⁶⁹ Monish Bhatia, ‘Turning Asylum Seekers into “Dangerous Criminals”: Experiences of the Criminal Justice System of Those Seeking Sanctuary’ (2015) 4 *International Journal for Crime, Justice and Social Democracy* 97, 98.

⁷⁰ Chouhy and Madero-Hernandez (n 56) 1012.

⁷¹ Department of Defence, ‘Australia’s National Security: A Defence Update 2003’ (Australian Government 2003) 19.

⁷² Department of Defence, ‘Australia’s National Security: A Defence Update 2005’ (n 30) 26.

⁷³ National Crime Agency, ‘National Strategic Assessment of Serious and Organised Crime’ (UK Government 2020) 26–29.

While the bureaucratic agencies confined themselves to placing irregular migration within organised criminal activity, party political documents took a more direct approach to criminal risk and included asylum seekers. Prior to the Australian general election in 2001, both major parties linked irregular migration and asylum seeking with people smuggling and other transnational crimes.⁷⁴ However, the conservative Liberal-National coalition parties described the migrants themselves as “illegal” and committed to work ‘with other countries to disrupt people smugglers and intercept illegal migrants en route to Australia.’⁷⁵ The word “illegal” was also applied to the method of arrival in Operation Sovereign Borders which conflated irregular migrants and asylum seekers as “illegal boat arrivals”.⁷⁶ By predetermining or prejudging irregular migrants and asylum seekers to be “illegal”, a status traditionally determined by the judiciary, it brings forward in time the not-yet-event of criminality and assists bringing forward to the present risk mitigating policy actions.⁷⁷

The British party-political approach to making irregular migrants and asylum seekers as a criminal risk had been less assertive than that observed in the Australian context. The Conservative Party did conflate irregular migrants and asylum seekers by emplacing them both into the context of criminality when discussing the creation of a “Border Police Force” that would ‘enhance national security, improve immigration controls, and crack down on the trafficking of people.’⁷⁸ The Labour Party likewise has under the subject “Crime and security: Safe communities, secure borders” set-out that the externalised British border had stopped ‘1,000 people a day from improperly entering the UK.’⁷⁹ Externalisation not only moves the border space and time away from the UK, but the profiling activities of border officers also demonstrates how the

⁷⁴ Kim Beazley, ‘Combating People Smugglers and Strengthening Australia’s Border Protection’ 3.

⁷⁵ Liberal-National Coalition (n 40) 13.

⁷⁶ Liberal-National Coalition, ‘The Coalition’s Operation Sovereign Borders Policy’ (2013) Election manifesto 3. Operation Sovereign Borders is a military led multi-agency operation that is intended to intercept and turn-back boats carrying asylum seekers all conducted within a highly secretive environment.

⁷⁷ Beck, *Risk Society: Towards a New Modernity* (n 10) 33–34.

⁷⁸ Conservative Party, ‘Invitation to Join the Government of Britain’ (2010) 57.

⁷⁹ Labour Party (n 36) 51.

presence of the future is used. Past occurrences, templated characteristics (for e.g., criminal intent) are projected on to the suspected irregular migrant or asylum seeker that results in present mitigation actions being undertaken.⁸⁰

Demonstrating that risk making is both a continuous and an iterative activity, risk making methods can also be as globalised as the perceived risk itself. There had been a distinct approach in the methods used by the case study government, but as time has progressed in the period of analysis, the UK government has slowly adopted a more direct Australian approach to the task. The UK-France joint declaration on small boats in the English Channel demonstrates this rhetorical change. In the declaration, border crossing in small boats is framed as ‘exceptionally risky undertaking’ that ‘gives rise to serious criminal behaviour’ and ‘threatens the integrity of the border’ which is ‘vital in the fight against crime and terrorism.’⁸¹ Most recently, the UK’s New Plan for Immigration also dedicates an entire chapter to discussing the relationship between and emplacement of “illegal immigration” within criminal networks.⁸²

The making of criminality risks is aided by a connection or causal linkage with a putative harm that may deflect attention away from other risk or to shift causal, moral, and political responsibility onto other actors.⁸³ As Home Secretary, David Blunkett employed the use of an anecdote to make the linkage between asylum seeker criminal risk and harm:

I do not think that it is acceptable for an old lady of 78 to be mugged for £60, as happened in my city, and for the three people who mugged her to continue to claim that they require asylum in this country.⁸⁴

⁸⁰ Beck, *Risk Society: Towards a New Modernity* (n 10) 33–35.

⁸¹ UK Government and French Government, ‘Joint Action Plan by the UK and France on Combating Illegal Migration Involving Small Boats in the English Channel’ (24 January 2019) 1 <<https://www.gov.uk/government/publications/uk-france-joint-action-plan-on-illegal-migration-across-the-channel>> accessed 4 December 2019.

⁸² Home Office, ‘New Plan for Immigration: Policy Statement’ (UK Government 2021) CM 412 Chapter 4.

⁸³ Hilgartner (n 26) 42–43.

⁸⁴ HC Deb 24 April 2002, vol 384, col 356.

The imagery used by Blunkett of marauding asylum seekers committing objectively harmful acts against a vulnerable member of the British community is a simple yet effective picture of danger. The performative impact of using such imagery in connection with harm was to create the urgency and moral case for new forms of risk regulation and mitigation. The Nationality, Immigration and Asylum Act 2002 (UK) gave the government new powers to remove those who commit a “particularly serious crime” and is therefore a danger to the British community.⁸⁵ The effect was to define in British law those offences which would remove prohibition of non-refoulement allowed for under the 1951 Refugee Convention.⁸⁶ More recently the joint declaration cited above, uses the language of “exceptionally risky undertaking” to shift harm attention towards the conflated irregular migrant or asylum seeker and away from the government and its policies that leave migrants with no other “safe” alternative.

The Australian government asserted a link between asylum seekers as criminal risk objects and harm while pursuing the implementation of a novel tool in risk management. Certain asylum seekers must sign the Asylum Seeker Code of Behaviour (Code) before they can be considered for a release into the community on a bridging visa.⁸⁷ The Code covers expectations regarding obeying the law through to spitting or swearing in public. If an asylum seeker is found to have breached the Code a range of penalties can be applied from counselling on expected behaviour through to visa cancellation on character grounds.

The Code was criticised for vilifying asylum seekers and setting out separate requirements for people not required of citizens.⁸⁸ In response, the government conflated irregular migrants and asylum seekers by arguing that the Code addressed ‘community concerns about the behaviour of illegal maritime arrivals’⁸⁹ and used the

⁸⁵ Nationality, Immigration and Asylum Act 2002 (UK) s 72(2) & (3).

⁸⁶ Art 33(2) Convention relating to the Status of Refugees.

⁸⁷ Department of Home Affairs, ‘Code of Behaviour for Subclass 050 Bridging (General) Visa Holders - Supporting Information’ <<https://immi.homeaffairs.gov.au/form-listing/forms/1444i.pdf>> accessed 4 May 2020; Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 (Cth).

⁸⁸ Commonwealth, *Parliamentary Debates*, Senate, 14 July 2014, 4860 (Sarah Hanson-Young).

⁸⁹ Commonwealth, *Parliamentary Debates*, Senate, 14 July 2014, 4863 (Michaelia Cash, Assistant Minister for Immigration and Border Protection).

‘total of 68 illegal maritime arrivals on bridging visa Es have had their bridging visas cancelled on the basis of criminal charges,’⁹⁰ as evidence of a link between the migrants / asylum seekers and actual harms. In both the Australian and British contexts, the creation and linking of a new risk object to a harm enabled these new forms of risk management that would otherwise not have been possible to implement. Deflection also features in this passage, where “community concerns” are used as justification for the mitigation rather than government integration or management failures. It further demonstrates how risk has operated to threaten and remove rights while potentially creating new harms, a subject returned to later in this thesis.

3.1.3 Conclusion

The governments of both Australia and the UK have each engaged in processes that have named irregular migrants and asylum seekers as a new class of security risk and subjected them to extensive political and social attention. It was discussed in Section 2.4 of this thesis how according to Hilgartner, risk objects are brought into being when they are deemed to be a source of danger for the purposes of regulatory attention.⁹¹ Examining the administrative documentation and speech acts by political leaders reveals how irregular migrants and asylum seekers have been labelled risk objects through rhetorical association with existing objective forms of harm such as terrorism and criminal activity. It is argued here that their labelling as harmful objects is strengthened as governments through the policy documents cited above, have come to frame irregular migrant and asylum seeker risk in a Beckian or modernised form.⁹² That is, as globalised with complex interconnected relationships and possibly the consequence of other human-made decisions.

The labelling engaged in by government does appear to be a type of dynamic nominalism that Hacking set-out in their approach to the construction of people and risk (discussed in Section 2.4.1). As the documents and speech acts reviewed in the

⁹⁰ *ibid* 4864.

⁹¹ Hilgartner (n 26).

⁹² Beck, *World at Risk* (n 52).

above sections reveal, there was a systematic attempt to make-up a new-type of irregular migrant or asylum seeker, the terrorist-criminal irregular migrant/asylum seeker. In making-up this new type of risky object, Wilkinson suggested new forms of institutions, legal frameworks, and expertise would simultaneously be created to protect the nation's well-being.⁹³ It is argued here that in creating irregular migrants and asylum seekers as new security risk objects and the associated social and political attention that brought, eased the introduction of refoulement, offshore detention, and behavioural codes as regulatory forms that otherwise would have been impossible.

These outcomes are not too dissimilar from those produced by authors cited earlier who applied securitisation theory to irregular migration and asylum seeking.⁹⁴ Nor could the outcomes be considered a radical departure from the consequences of border-crossing criminalisation that Torpey and Bhatia cite as intrinsic to the experience of an irregular migrant or asylum seeker today.⁹⁵ However, situated in the context of "making-up risks" the outcomes are the result of general risk-orientated and bureaucratic practices of government that build over-time and are not exceptional or singular acts that securitisation would suggest. But perhaps most revealing is how the presence of the future, and its manifold possibilities, is made-up and brought to bear on irregular migration and asylum seeking frameworks as it used as contributory justification for new risk mitigation measures today.

3.2 Influences affecting security risk perceptions

Having considered the construction of irregular migrants and asylum seekers as security risk objects, this chapter moves on to identify and analyse the influences that affect government perceptions of irregular migrants and asylum seekers as a security risk. The evidence discussed earlier highlighted that terrorists have not infiltrated irregular migration and asylum seeking processes nor were irregular migrants or

⁹³ Wilkinson (n 13).

⁹⁴ Malloch and Stanley (n 57); Huysmans and Buonfino (n 19).

⁹⁵ Torpey (n 58); Bhatia (n 59).

asylum seekers more likely to be engaged in criminal activities. Yet the contrary perception remains. By examining the factors that influence security risk perceptions today, we may better understand why irregular migrants and asylum seekers have come to be considered a terror or crime risk and why the perception remains. This examination will in-part answer the second sub-question of these thematic chapters: why have governments constructed irregular migrants and asylum seekers as a security risk?

In 2011 Tony Blair argued that since 11 September 2001, ‘the calculus of risk changed.’⁹⁶ No longer could risk be managed by traditional techniques such as monitoring and containment but rather risk was to be calculated and managed based on what is unknown.⁹⁷ There are many basic unknowns regarding terrorism and organised crime such as who, when, and where might a terror or crime event take place. These unknowns have been used to decide what “could happen” and have led to new security measures that seek to mitigate the unknown threat to government and manage its credibility in governing in a modern world.

For irregular migrants and asylum seekers, when viewed from a government perspective, share many of these unknown traits of who, when, and where. A post-2001 security rationale structured according to the unknown has therefore identified irregular migrants and asylum seekers as a security risk. The situation is unhelpfully aided by the structure of government as a hierarchical social organisation which as Douglas and Khan have suggested, will inform perceptions of what constitutes risk.⁹⁸ Their adherence to customs, institutions, and traditions are challenged by unknowns and therefore categorised irregular migrants and asylum seekers as a risky “other” that ought to be blamed for their unknowns and threat to its structured existence.⁹⁹ The

⁹⁶ Tony Blair, ‘Transcript from the Chilcott Inquiry’ 34

<<http://www.iraqinquiry.org.uk/transcripts/oralevidence-bydate/110121.aspx>>.

⁹⁷ Louise Amoore, *The Politics of Possibility: Risk and Security Beyond Probability* (Duke University Press 2013) 57.

⁹⁸ Aaron Wildavsky and Karl Dake, ‘Theories of Risk Perception: Who Fears What and Why?’ (1990) 119 *Daedalus* 41.

⁹⁹ Karl Dake, ‘Myths of Nature: Culture and the Social Construction of Risk’ (1992) 48 *Journal of Social Issues* 21.

following sub-sections analyse the predominate unknowns that are influencing government security risk perceptions of irregular migrants and asylum seekers.

3.2.1 Globality

Perhaps one of the defining propositions of Beck's risk society thesis is that 'poverty is hierarchic, smog is democratic.'¹⁰⁰ The argument being that modern risks have an "equalizing effect" within society because of their ability to connect all individuals through 'an inherent tendency towards globalization [and] dip under borders.'¹⁰¹ Authors have criticised the position though suggesting that socio-economic imbalances will result in variable experiences of risk and personal abilities to manage it.¹⁰² Irregular migration and the reception of asylum seeker are two such issues that are experienced differently by governments globally because of their management capabilities and the unequal distribution of irregular migrants and asylum seekers worldwide.¹⁰³

But of more direct relevance than experience of globalised "smog", has been the growth in realisation by government that it brings new unpredictabilities which challenges the security protections of borders. According to Beck 'money, technologies, commodities, information and toxins "cross" borders as if they did not exist. Even things, people and ideas that governments would like to keep out find their way into new territories.'¹⁰⁴ In a post-2001 environment, mitigating the ability of the unknown to travel from afar via global trading infrastructure to cross and dip under borders formed a security imperative. In a broad sweep of addressing unknowns generated by irregular migrant and asylum seeker globality,¹⁰⁵ new ways were

¹⁰⁰ Beck, *Risk Society: Towards a New Modernity* (n 10) 36.

¹⁰¹ *ibid.*

¹⁰² Dean Curran, 'Environmental Justice Meets Risk-Class: The Relational Distribution of Environmental Bads' (2018) 50 *Antipode* 298, 303; Gabe Mythen, 'From "Goods" to "Bads"? Revisiting the Political Economy of Risk' (2005) 10 *Sociological Research Online* 191.

¹⁰³ The unequal distribution of irregular migrants and asylum seekers across the globe is discussed in Section 1.1.

¹⁰⁴ Ulrich Beck, *What Is Globalization?* (Patrick Camiller tr, Polity Press 2000) 20.

¹⁰⁵ *ibid* 10. Beck uses "globality" to suggest that closed-off spaces are now an illusion meaning no country or group can shut itself off from others.

developed to reassert borders and their potential to provide physical, if not social and political, security.

From the policy documents published by the Australian and British bureaucracies, their construction of risk that is perceived to be global in nature has become evident. The UK Cabinet Office in its risk policy report considered that risk today was not only a “direct threat” but one that made the UK ‘potentially more vulnerable to distant events.’¹⁰⁶ While the Australian Department of Home Affairs has recently been more specific in its association of “strategic risk events” which could occur anywhere across the globe having the potential to directly threaten borders and sovereignty alike.¹⁰⁷ These documents in their own way recognise that the spatial and temporal elements of risk have become delocalised in origin and effect. This perception of risk as global and disconnected from cause and effect challenging the security assurances of national borders, has found its way into irregular migration and asylum frameworks since 2001.

The Australian Prime Minister Kevin Rudd used the country’s first National Security Statement in 2008 to state that asylum seeking is no longer a limited local event constrained in time or space. Rudd observed that ‘intrastate conflict in our region and beyond’ would require Australia’s “practical contributions” otherwise there would be ‘the risk of refugee outflows to neighbouring states, including Australia.’¹⁰⁸ Later, in the Operation Sovereign Borders (OSB) policy documents which considered irregular migrants and asylum seekers as a single entity, maps were provided (Appendix Four) for a graphic depiction of how far-off conflicts and events would propel people to move across multiple state borders towards Australia.¹⁰⁹

¹⁰⁶ Cabinet Office (n 25) 5.

¹⁰⁷ Department of Home Affairs, ‘Corporate Plan 2019-20’ (Australian Government 2019) 21.

¹⁰⁸ Kevin Rudd, ‘The First National Security Statement to the Australian Parliament’ (Canberra, 4 December 2008) 20.

¹⁰⁹ Liberal-National Coalition (n 76) 17.

Most recently the UK Government's New Plan for Immigration (the NPI) introduced the government's proposed asylum framework reforms within a globalised risk narrative. The NPI states that 'the illegal migration we see is part of a larger global issue. This is not a challenge unique to the UK.'¹¹⁰ The policy goes on to claim that:

many asylum seekers come through Europe to the UK moving between safe countries in which they could and should be claiming asylum, before deciding to claim asylum in the UK.¹¹¹

Using phrases such as "including Australia" and "not a challenge unique to the UK" or graphic depictions of people moving across borders, articulates the perception irregular migration and asylum seeking are shared risks confronting states and their borders, much like Beck's smog analogy. Yet rather than seeing the demise of borders in the face of these threats, borders have been selectively reinforced and recreated in new ways.

A former Home Office official in an interview conducted for this research reflected on the how the emergent perceptions of risk as more mobile and indifferent to state borders shaped government views of irregular migrants and asylum seekers. Over their time in operational roles, they observed 'changing circumstances globally,¹¹² were affecting migration patterns throughout Europe and to the UK, particularly following the Arab Spring. They were of the view that the irregular migrants and asylum seekers fleeing that conflict were perceived as a local manifestation of the violence they were escaping.

Government policy has also conflated irregular migration with asylum seeking while recognising their globality being aided by international organised crime networks. The Australian Expert Panel on Asylum Seekers concluded in its report that there is a symbiotic relationship between the two: 'irregular migration and asylum seeking are facilitated by accessible travel, networked people smuggling operations

¹¹⁰ Home Office (n 82) 5.

¹¹¹ *ibid.*

¹¹² Interview with UK-CS-01.

and agents of collusion in many countries.’¹¹³ Likewise the Department of Home Affairs has maintained that perceived softening of border security arrangements ‘arguably incentivises people smuggling operations.’¹¹⁴ The UK Government’s NPI also made a direct connection between organised crime networks operating across the world and irregular migration and asylum seeking when suggesting that: ‘Illegal immigration is facilitated by serious organised criminals exploiting people and profiting from human misery.’¹¹⁵

A civil servant from the Home Office discussed in their interview how the UK Government held the perception that the small boats currently crossing the Channel was being exacerbated by the involvement of international organised crime.¹¹⁶ They went on to suggest that this perception explained the focus on the relationship between irregular migration and asylum seeking and organised crime in the NPI. A non-government interviewee also stated that the ‘many abuse relationships’ they encountered were between irregular migrants, asylum seekers and organised crime which the government was responding to.¹¹⁷

Governments too have engaged in a globality that employs pre-emptory or precautionary measures that keep potential irregular migrants and asylum seekers in-situ by leveraging their Official Development Assistance (ODA) spending. The intent has been to correct the socio-economic imbalances that negatively affect societal and individual abilities to manage risk locally and without resorting to mass outward migration events. In some cases, ODA has even been tied to recipient states actively assisting in stopping outward migration and accepting those who are being repatriated by donors.¹¹⁸

¹¹³ Angus Houston, Paris Aristotle and Michael L’Estrange, ‘Report of the Expert Panel on Asylum Seekers’ (Australian Government 2012) 10.

¹¹⁴ Department of Home Affairs, ‘Submission to the Inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019 [Provisions]’ (Australian Government 2019) Submission 55 para 58.

¹¹⁵ Home Office (n 82) 3.

¹¹⁶ Interview with UK-CS-04.

¹¹⁷ Interview with UK-NG-01.

¹¹⁸ Markus Feldenkirchen, ‘Refugee Crisis Leads to New Focus of German Foreign Policy’ *Der Spiegel* (11 November 2015) <<https://www.spiegel.de/international/germany/refugee-crisis-leads-to-new-focus-of-german-foreign-policy-a-1062116.html>> accessed 25 July 2021; Ivan Burrows Says, ‘Austria Seeks EU Aid

The UK spent £782 million in 2018,¹¹⁹ while Australia spent over \$713 million in 2020-21 on “building resilience” programmes in several irregular migrant or asylum seeker source states.¹²⁰ Despite the large ODA spends, Dreher et al have argued it only has affect over very long periods of time and in the short-term traps displaced people in areas where aid is spent rather than where it is best for them to go.¹²¹ But as a precautionary measure, the spend is intended to pre-empt a possible unknown future in which potential irregular migrants and asylum seekers become irregular migrants and asylum seekers. As Beck argues, precaution gives ‘free rein to the imagination of threats, and hence to base decisions on dubious hypotheses or mere suspicions.’¹²² Further, what Dreher et al observed as “trapping” displaced people is emblematic of prevention creating risk. Not only for the displaced people but also the donor states as camps become fruitful grounds for religious radicalisation,¹²³ and organised crime and corruption.¹²⁴

Irregular migrants and asylum seekers challenging the primacy of state boundaries through border crossing is not new. What the above policy developments and statements evidenced above suggest is a new attention to the relationship between instabilities in previously distant places and their effect in displacing people towards Australia and the UK. An understand that interviewees were able to confirm as influential in government perceptions of irregular migrants and asylum seekers as a risk that could now travel globally and manifest within their borders. However, while

Suspension for Countries Rejecting “failed” Refugees’ (www.euractiv.com, 5 February 2016) <<https://www.euractiv.com/section/development-policy/news/austria-seeks-eu-aid-suspension-for-countries-rejecting-failed-refugees/>> accessed 25 July 2021.

¹¹⁹ Department for International Development, ‘Statistics on International Development - Final UK Aid Spend 2018’ (UK Government 2019) 32.

¹²⁰ Department of Foreign Affairs and Trade, ‘Australia’s Official Development Assistance Statistical Summary, 2019-20’ (Australian Government 2021) 6.

¹²¹ Axel Dreher, Andreas Fuchs and Sarah Langlotz, ‘The Effects of Foreign Aid on Refugee Flows’ (2019) 112 *European Economic Review* 127.

¹²² Beck, *World at Risk* (n 52) 119.

¹²³ Alex P Schmid, ‘Links Between Terrorism and Migration: An Exploration’ (International Centre for Counter-Terrorism 2016) 33; Christian Vianna de Azevedo, ‘ISIS Resurgence in Al Hawl Camp and Human Smuggling Enterprises in Syria’ (2020) 14 *Perspectives on Terrorism* 43.

¹²⁴ Frederic Wehrey and Anouar Boukhars (eds), *Perilous Desert: Insecurity in the Sahara* (Brookings Institution Press 2013).

the “burden” of hosting displaced people does not fall equally as Beck’s thesis would suggest, their perceived global disbursement has generated multiple levels of unknowing of many basic facts such as who, where, and when. Consequently, precaution has been legitimised as a tool to reinforce borders and to reach-out across them to forestall their future arrival in Australia and the UK. The results of precaution however as suggested above have themselves been risk generative the consequences of which are discussed further in Chapter Six.

3.2.2 Future threat

Along with the growing awareness that globalisation brings home new unpredictabilities such as formerly far-off conflict, is an emphasis on the future threat of irregular migration and asylum seeking to the state. Many activities carried-out by government are now about anticipating the risk of irregular migration and asylum seeking occurring, which Beck points out are “not-yet-events” that drive current action.¹²⁵ Coupled with a new constant need to manage the latent side-effects of risk produced by human activities, the “boomerang effect”,¹²⁶ governments have drawn-in future threats and used them as a stimulus to reorient migration policies along with enforcement activities.¹²⁷

It is perhaps easy to see why “threat” has been so popular within academia to explain the various ways government has sought to securitise irregular migration and asylum seeking since 2001.¹²⁸ Authors have argued that the individual and state have been characterised as threatened by the violence that irregular migrants and asylum seekers are fleeing or by a terrorist hiding among them.¹²⁹ State sovereignty has also

¹²⁵ Beck, *Risk Society: Towards a New Modernity* (n 10) 33.

¹²⁶ *ibid* 37.

¹²⁷ Rasmussen (n 24) 293.

¹²⁸ Jef Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU* (Routledge 2006); Binoy Kampmark, ‘Securitization, Refugees, and Australia’s Turn Back the Boats Policy, 2013–2015’ (2017) 31 *Antipodes* 61; Harriet Gray and Anja K Franck, ‘Refugees as/at Risk: The Gendered and Racialized Underpinnings of Securitization in British Media Narratives’ (2019) 50 *Security Dialogue* 275.

¹²⁹ Richard Devetak, ‘In Fear of Refugees: The Politics of Border Protection in Australia’ (2004) 8 *The International Journal of Human Rights* 101, 104–05; Joshua Seidman-Zager, ‘The Securitization of Asylum: Protecting UK Residents’ (Refugee Studies Centre 2010) Working Paper 57 17–19.

been threatened by those crossing frontiers and whose presence challenges state authority within borders.¹³⁰ But as Adamson notes the monopoly on authority to cross borders or remain present within them is routinely challenged by irregular migrants, asylum seekers and their enablers.¹³¹ However and in contrast to securitisation's focus on present threat, recent Australian and British enforcement policies demonstrate a reorientation towards a pro-active process that applies future risk onto present migrants.

Irregular migrants and asylum seekers co-opting modern technologies to aid their journeys is a "boomerang effect" and new threat to government that Australian and British authorities have sought to mitigate. Developments in transportation technologies particularly have made access to Australia and the UK easier by collapsing spatial and temporal boundaries that once operated as barriers to entry. Aviation has been under scrutiny since 2001, but of special concern to UK authorities is the Channel Tunnel, trains and lorries which are all now considered risky sites from where threats to the state and population could emanate. They have each demonstrated their mixed-use potential by terrorist, criminal, and irregular migrant or asylum seeker alike that require new risk filters.

Reviewing where applications for protection have been made by asylum seekers reveals the reflexive use of such technologies. In Australia from 2001 to 2019 there were more applications for protection made by air arrivals than from those who arrived by other means. Air arrival applications reached a high of 99.5 per cent of all applications and only once dipped below 50 per cent in one year.¹³² The UK only recently started collecting data on those arriving by small boat, however do not

¹³⁰ Janice E Thomson, 'State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research' (1995) 39 *International Studies Quarterly* 213, 214.

¹³¹ Adamson (n 62) 193.

¹³² Janet Phillips, 'Asylum Seekers and Refugees: What Are the Facts?' (Parliament of Australia, Parliamentary Library 2015) Research Paper 6–7; Department of Home Affairs, 'Humanitarian Program Statistics' (*Visa statistics*) <<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>> accessed 17 November 2019.

distinguish between asylum seeker and irregular migrant within those statistics.¹³³ But in 2018 there were over 4,800 applications for protection at an official port of entry compared to the 297 made by boat arrivals.¹³⁴ The significance of aviation and the Channel Tunnel in facilitating irregular migrant and asylum seeker journeys was further demonstrated in the 2020 Covid-19 pandemic induced travel shutdowns.¹³⁵ Their suspension prompted a surge in arrivals by small boat that has led to significant tensions between the UK and France.

In response to the co-option of these technologies to aid irregular migration and asylum seeking, Australian and British governments have increased the presence of Airline Liaison Officers (ALOs) and Risk and Liaison Overseas Network (RLON) respectively. These immigration officers placed outside their state's jurisdictions are to intercept "improperly documented passengers"¹³⁶ and 'those that may pose a threat'¹³⁷ from boarding planes to either country and not distinguishing between irregular migrant or asylum seeker. A former Home Office official interviewed in this research confirmed that the policy was put in place as a preventative measure designed to ensure that potential asylum seekers did not reach the UK for the purposes of making a claim for protection.¹³⁸ Further information requested from the Home Office shows that by 2018 the UK's RLON has grown to 44 locations,¹³⁹ while the Australian ALOs now operate in 19 airports globally.¹⁴⁰ In 2001 juxtaposed migration

¹³³ 'How Many People Do We Grant Asylum or Protection To?' (*GOV.UK*, 24 May 2019) <<https://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2019/how-many-people-do-we-grant-asylum-or-protection-to>> accessed 17 November 2019.

¹³⁴ Sir Philip Rutnam, 'Response to Home Affairs Select Committee: Migrant Boat Arrivals in the Channel' (5 March 2019).

¹³⁵ Georgina Sturge, 'Asylum Statistics' (House of Commons Library 2021) Briefing Paper SN01403 26.

¹³⁶ David Bolt, 'An Inspection of the Intelligence Functions of Border Force and Immigration Enforcement: November 2015-May 2016' (Independent Chief Inspector of Borders and Immigration 2016) 8; Department of Home Affairs, 'Annual Report 2017-18' (Australian Government 2018) Annual Report 44.

¹³⁷ Australian Border Force, 'ABF 2020' (Australian Government 2016) 25.

¹³⁸ Interview with UK-CS-01.

¹³⁹ Immigration Enforcement Secretariat, 'Freedom of Information Request – 46475' (8 January 2018).

¹⁴⁰ Department of Home Affairs, 'Annual Report 2017-18' (n 136) 42.

controls were also introduced in France and Belgium to address similar issues regarding Eurostar services to the UK.¹⁴¹

Placing border officials outside their territorial jurisdictions has previously been considered through the border externalisation and remote-control logic.¹⁴² In many respects these policies are emblematic of the temporal (in addition to spatial) forward shift in migration enforcement to risk anticipation. Intercepting a person outside of Australian or British territory based on their future potential or “not-yet” irregular migrant or asylum seeker status adds a further layer of filtering for future threats. However, the filter is not applied evenly subjecting certain migrants to visa requirements, interview, financial checks, and pre-screening at some, but not all, points of embarkation. Using a migrant’s unknown future and applying it as a present justification for denying entry into either jurisdiction further calls into question Beck’s assertion that smog is democratic.

3.2.3 Risk transfer

A foundational element of industrial society was the co-operational development between risk and insurance. As new risks were created through technological and social progress, so too were insurance regimes designed to compensate for the consequential harms caused.¹⁴³ Risk transfer became a way of managing and mitigating some of the unknowns generated by social and technological development. Modern society however is said to be marked by not only an absence of insurance but an uninsurability.¹⁴⁴ Beck and others have pointed towards modern terrorism, typified by the September 11 attacks, as one such uninsurable and uncontrollable risk.¹⁴⁵

¹⁴¹ Home Office, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (Cm 5387, 2002) 93–94.

¹⁴² David Scott FitzGerald, ‘Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence’ (2020) 46 *Journal of Ethnic and Migration Studies* 4.

¹⁴³ François Ewald, ‘Risk in Contemporary Society’ (1999) 6 *Connecticut Insurance Law Journal* 365.

¹⁴⁴ Beck, *World Risk Society* (n 34) 77.

¹⁴⁵ Beck, *World at Risk* (n 52) 39–41; Gabe Mythen and Sandra Walklate, ‘Terrorism, Risk and International Security: The Perils of Asking “What If?”’ (2008) 39 *Security Dialogue* 221.

A study of the insurance market post-September 11 by Ericson and Doyle found that the market did adapt suggesting it can continue to operate in a risk society.¹⁴⁶ Though Beck distinguished their study in several important ways that are relevant here. The authors focused on a catastrophe limited to a specific time, space, and community in contrast to the anticipation of a terror attack that has no such limits and uncertain implications. Further, the study did not examine how to address protection against intentional acts versus those produced by way of accident or nature.¹⁴⁷

The government's perception of a shared and unknown time, space, or community impact of an irregular migration and asylum seeking or terror / criminal event has driven the transfer of risk with "insurance-like" agreements. The key feature in this logic is the replacement of action based on experience to one based on precaution and prevention of unproven risk.¹⁴⁸ Recalling Blair's statement that the 'calculus of risk has changed',¹⁴⁹ it is now an imperative for leaders to avoid all dangers and so precaution comes at a lower political cost than an act of omission does.¹⁵⁰ The precautionary principle within these agreements attempt to restore the certainty that hierarchies like governments desire, while appeasing the security demands of the electorate.

Since 2014, the UK and France have entered into four agreements regarding the movement of people along the Channel coastline which shift traditional risk and responsibilities alignments. The UK took responsibility for upgrades to security infrastructure in the Port of Calais area and to the Channel tunnel approaches – both on French territory.¹⁵¹ Indicative of the lower cost to precaution, funding of £12 million

¹⁴⁶ Richard Ericson and Aaron Doyle, 'Catastrophe Risk, Insurance and Terrorism' (2004) 33 *Economy and Society* 135.

¹⁴⁷ Beck, *World at Risk* (n 52) 134–35.

¹⁴⁸ Ewald (n 143) 373.

¹⁴⁹ Blair (n 96).

¹⁵⁰ Beck, *World at Risk* (n 52) 54.

¹⁵¹ 'Managing Migratory Flows in Calais: Joint Ministerial Declaration on UK/French Co-Operation (UK-France) (Adopted 20 September 2014, Entered into Force 20 September 2014)' para 1; 'Managing Migratory Flows in Calais: Joint Ministerial Declaration on UK/French Co-Operation (UK-France) (Adopted 20 August 2015, Entered into Force 20 August 2015)' paras 10–13.

was included in the 2014 for these upgrades,¹⁵² but later government statements note that approximately £77.7 million was spent on payments by the UK to France for security infrastructure.¹⁵³

The Sandhurst Treaty agreed in 2018 moved towards the formalisation of responsibilities regarding the EU's Dublin III regulations between the UK and France.¹⁵⁴ This enabled the UK to return certain asylum seekers to France rather than take responsibility for processing their claim for protection. The UK also committed to assisting France provide accommodation, health, and legal services to migrant cohorts on French territory.¹⁵⁵ Payments from the UK to France from these arrangements have now reached €50 million.¹⁵⁶

Even after these agreements there has been a noticeable increase in the number of people attempting to reach the UK from France by small boats. When the UK government declared a "crisis" in 2019 there had been approximately 1,800 people attempt the crossing later dwarfed by 8,400 arrivals who chose this route after the Covid-19 pandemic closed more traditional crossing methods.¹⁵⁷ In the following passage, the Home Secretary recognises the reflexive effect that increased security had on boat arrivals:

strengthened security at the French-UK border has meant that it has become increasingly difficult for stowaways illegally to enter the UK in trucks and cars, leading to more reckless attempts by boat.¹⁵⁸

¹⁵² 'Managing Migratory Flows in Calais: Joint Ministerial Declaration on UK/French Co-Operation (UK-France) (Adopted 20 September 2014, Entered into Force 20 September 2014)' (n 151) para 1.

¹⁵³ Caroline Nokes, 'Human Trafficking and Immigration: France' (*UK Parliament*, 6 February 2019) <<https://questions-statements.parliament.uk/written-questions/detail/2019-02-06/217556>> accessed 2 June 2021.

¹⁵⁴ 'Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic Concerning the Reinforcement of the Cooperation for the Coordinated Management of Their Shared Border (UK-France) (Adopted 18 January 2018, Entered into Force 1 February 2018) Treaty Series 001/2018: CM 9568' Art 2.

¹⁵⁵ *ibid* Art 4.

¹⁵⁶ Nokes (n 153).

¹⁵⁷ Sturge (n 135) 26.

¹⁵⁸ HC Deb 7 January 2019, vol 652, col 87.

However, using “reckless attempts” the Home Secretary is deploying “blame” rhetoric to transfer risk and responsibility onto both irregular migrants and asylum seekers for boundary crossing and negative outcomes.

Despite acknowledging the reflexivity problem (in that they generated higher numbers of irregular migrants and asylum seekers and a loss of border control) a new agreement was required. New arrivals according to the text ‘threatens the integrity of the border control systems of the UK and France, which are vital in the fight against crime and terrorism.’¹⁵⁹ Like its predecessor agreements further funds were provided for equipment and communications campaigns directed at people attempting to cross by small boat.

It could be suggested these UK-France agreements were preceded by the Australian government’s pioneering extreme forms of risk transfer and insurance that were initiated by perceived security concerns. At its most extreme Australia, led by the Howard Government, concluded agreements with Nauru and Papua New Guinea (PNG) so that asylum would have their claims for protection assessed by those governments on their territory. These Regional Processing Centres (RPCs) became a defining element of the “Pacific Solution”. Indicative of the overall merging of the Australian and UK asylum seeking frameworks, the UK has now concluded a similar such agreement with Rwanda.¹⁶⁰

The first agreements between Australia and Nauru and PNG in September and October 2001 respectively, were established to facilitate the processing of protection claims from the *Tampa* cohort of asylum seekers. By 2008 when a change in

¹⁵⁹ ‘Joint Action Plan by the UK and France on Combating Illegal Migration Involving Small Boats in the English Channel (UK-France) (Adopted 24 January 2019, Entered into Force 24 January 2019)’ para 6 <<https://www.gov.uk/government/publications/uk-france-joint-action-plan-on-illegal-migration-across-the-channel>>.

¹⁶⁰ UK Government, ‘Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement’ (GOV.UK, 13 April 2022) <<https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r>> accessed 3 June 2022.

government shifted policy and the RPCs were closed, some 1,637 people had been detained in Nauru or PNG.¹⁶¹ It was also estimated to have cost the Australian government more than \$1 billion over the 2001-08 period.¹⁶² However a surge in arrivals during 2013 led to the RPCs being re-established. Again, Australia would transfer the asylum seekers to either Nauru or PNG who would be responsible for processing their protection claims but all costs would be paid by Australia. While the Memorandum of Understanding (MoU) between the Australia and Nauru and PNG were similar in their terms and objectives, a further premium was paid to PNG in the form of additional ODA.¹⁶³

In a further innovate approach to risk transfer, Australia and Cambodia concluded an agreement in 2014 to resettle in Cambodia some of those granted protection by Nauru.¹⁶⁴ Like the other MoUs, Australia would bear the costs associated with the resettlement of the now refugees transferred to Cambodia.¹⁶⁵ This MoU according to Failla represents a shift in established global frameworks which resettle refugees and a shift in burden-sharing from developed to developing states.¹⁶⁶ The burden-sharing principle operates to ensure wealthier states take responsibility for resettlement of displaced people alleviating the pressure on developing states which

¹⁶¹ Janet Phillips, 'The "Pacific Solution" Revisited: A Statistical Guide to the Asylum Seeker Caseloads on Nauru and Manus Island' (Parliament of Australia, Parliamentary Library 2012) Background Note 3.

¹⁶² Kazimierz Bem and others, 'A Price Too High: The Cost of Australia's Approach to Asylum Seekers' (A Just Australia and Oxfam Australia 2007) 4.

¹⁶³ 'Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues (3 August 2013)'; 'Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, Relating to the Transfer to and Assessment of Persons in Papua New Guinea, and Related Issues (5-6 August 2013)'.

¹⁶⁴ 'Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia, Relating to the Settlement of Refugees in Cambodia (26 September 2014)'.

¹⁶⁵ *ibid* 12.

¹⁶⁶ Monique Failla, 'Outsourcing Obligations to Developing Nations: Australia's Refugee Resettlement Agreement with Cambodia' (2016) 42 *Monash University Law Review* 637, 643.

host the greatest numbers of displaced people.¹⁶⁷ However with only seven resettlements occurring, the agreement appears to have had limited success.¹⁶⁸

The actual or attempted transfer of risk responsibility has not gone uncontested in both case study jurisdictions. An attempt by the Australian government to remove asylum seekers to Malaysia for protection claim processing was denied by the High Court of Australia.¹⁶⁹ The majority found that Malaysia did not meet the then legislative criteria of a processing country.¹⁷⁰ The necessary procedures to process asylum seekers were absent, Malaysia was not a signatory to the 1951 Convention or 1967 Protocol,¹⁷¹ and Malaysia's commitments to Australia on protections were expressly non-binding and a "political commitment".¹⁷²

For a brief period, the government was also forced to accept risk responsibility for asylum seekers and now irregular migrants (which were those who had had their claims for protection denied) that had been transferred to Nauru or PNG. The (since overturned) legislation passed by parliament against government wishes, allowed for RPC detainees to be transferred to Australia for medical attention in certain circumstances.¹⁷³ Suggesting the law would be 'putting at risk our border protection regime'¹⁷⁴ the government invoked 'advice from our intelligence agencies'¹⁷⁵ to blame the transfers for an increased prospect of people smuggling and other crimes. However, as academics have pointed-out, the multiple and fast-paced changes to the

¹⁶⁷ United Nations High Commissioner for, 'UNHCR Statement on Australia-Cambodia Agreement on Refugee Relocation' (*UNHCR*, 26 September 2014) <<https://www.unhcr.org/news/press/2014/9/542526db9/unhcr-statement-australia-cambodia-agreement-refugee-relocation.html>> accessed 3 June 2021.

¹⁶⁸ Kaldor Centre for International Refugee Law, 'Australia-Cambodia Agreement for Refugees in Nauru' (1 October 2019) <<https://www.kaldorcentre.unsw.edu.au/publication/cambodia-and-refugee-protection>> accessed 17 February 2021.

¹⁶⁹ *Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2001] HCA 32 (High Court of Australia).

¹⁷⁰ Migration Act 1958 (Cth) s 198A(3) since repealed. ; *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (n 169) para 80.

¹⁷¹ *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (n 169) para 30.

¹⁷² *ibid* 103.

¹⁷³ Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 (Cth).

¹⁷⁴ Commonwealth, *Parliamentary Debates*, Senate, 6 December 2018, 9677 (Sen Concetta Fierravanti-Wells).

¹⁷⁵ *ibid*.

policy have since introduced new uncertainties for the irregular migrants and asylum seekers without feasible long-term solutions.¹⁷⁶ This issue of administrative uncertainty or chaos is returned to in Chapter Six.

In the UK, a range of actors have protested the plans to engage in offshore processing as carried out by the Australian government. The Law Society has questioned the plan's compatibility with existing human rights obligations.¹⁷⁷ Davies et al likened the process to colonial deportation by placing asylum seekers into a '*mare nullius* ("nobody's sea"), into which sovereign states can so easily avoid responsibility.¹⁷⁸ In debate on the enabling Bill, Members of Parliament in addition to responsibility avoidance identified a risk of reputational damage to the UK if offshore processing and resettlement was pursued.¹⁷⁹

Since the terror attacks in 2001 the externalisation or transference of risk to neighbouring states by Australia and the UK as set out above, fall into two different approaches. The Australian approach has been to relocate entirely the risk as manifested by irregular migrants and asylum seekers into nearby states using aid and construction spending as the insurance premium payment. Until recently the UK has mostly pursued a partnership model where the risk responsibility for enforcement is transferred to neighbouring states at the UK's financial expense. However, with the Rwanda agreement now in-place, indicates an addition of the Australian risk transfer approach to British frameworks. Either approach though indicates that Beck's proposition of modern society without insurance is perhaps undone by the innovative risk transfer policies being created and implemented by both governments.

¹⁷⁶ Claire Loughnan and Sara Dehm, 'Scores of Medevac Refugees Have Been Released from Detention. Their Freedom, Though, Remains Tenuous' (*The Conversation*) <<http://theconversation.com/scores-of-medevac-refugees-have-been-released-from-detention-their-freedom-though-remains-tenuous-156952>> accessed 8 June 2021.

¹⁷⁷ Sam Lamont, 'Nationality and Borders Bill Second Reading – House of Commons' (The Law Society 2021) Parliamentary Briefing 3–4.

¹⁷⁸ Thom Davies and others, 'Channel Crossings: Offshoring Asylum and the Afterlife of Empire in the Dover Strait' (2021) 44 *Ethnic and Racial Studies* 2307, 2320.

¹⁷⁹ HC Deb 19 July 2021, vol 699, col 736.

But as risk authors have suggested, such insurance measures are themselves risk-generating for a range of actors. Of course, for irregular migrants and asylum seekers the risks of being transferred offshore for processing and resettlement entails uncertainties for their future including social and health well-being. For government the risks generated by pursuing the precautionary risk-transfer entails open-ended financial risks and potentially damaging relationships with neighbouring states and wider reputational damage. The entire policy history as set out above also calls into question the inevitable march towards the securitisation of migration. The continued resistance in the form of human rights protections suggests that enacting these arrangements are themselves at-risk of being overturned. This it is suggested here, is emblematic of Beck's "relations of definition" struggle within society over what is and is not risk.¹⁸⁰

3.2.4 Conclusion

The now predominate government perception of irregular migrants and asylum seekers as a security risk is driven by a reorientation towards their unknowns which threatens the cultural logic of order and control demanded of migration frameworks. Thanks to modern technological advances, there is now an appreciation of the local effects that previously far-off conflicts can have by traveling across the globe debounded by time and space. The unknowns generated by these conflicts, which may include terrorist or irregular migrant and asylum seeker alike, can manifest at the borders of Australia and the UK causing great anxiety for government and population alike.

Fuelled by anxiety, anticipating potential future threat has propelled policies that themselves redefine the time and space logics within applicable frameworks. Governments have employed measures that go beyond their present physical borders to anticipate the "not-yet" irregular migrant or asylum seeker. These policies reveal the influence of risk that is the very anticipation of a harmful, potential, and not-yet

¹⁸⁰ Beck, *World at Risk* (n 52) 24.

event and the precautionary steps governments will take to prevent the potential from actualisation.

Not only have governments sought to employ forward-leaning risk filters, but the perception of uncontrollability has compelled the pursuit of agreements that transfer the security risk of a catastrophic border breach onto neighbouring states. It is argued here that these precautions are now recasting previous migration concepts such as Global North/South or developed/developing states into migration/asylum “risk donor states” and “risk recipient states”.¹⁸¹ The fragmentation of global responsibility for managing irregular migration or asylum seeking into a series of bilateral agreements between donor and recipient states has created a system “organized irresponsibility” between and within them (discussed further in Chapter Six). What might appear to be a series of policies designed to manage the perceived security risks may be responsible for frameworks facilitating greater unknowns and a loss of risk control.

Conclusion

The perception that irregular migrants and asylum seekers form a risk to a state’s physical security has become the dominant organising logic behind Australian and British migration policies since 2001. Concerns regarding migrants committing acts of violence and crime have been prevalent for some time. This reflects the culturally defined worldview of risk that governments have which values adherence to order and norms that Douglas and others identified in hierarchical organisations.¹⁸² But as suggested above, the nature of the perceived risk has now changed reflecting wider social developments and attitudes towards risk along the lines proposed by Beck.¹⁸³ Specifically the global yet unknown qualities shared between crime, terror and

¹⁸¹ *ibid* 30.

¹⁸² Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press 1982); Craig Matheson, ‘Four Organisational Cultures in the Australian Public Service: Assessing the Validity and Plausibility of Mary Douglas’ Cultural Theory’ (2018) 77 *Australian Journal of Public Administration* 644.

¹⁸³ Beck, *Risk Society: Towards a New Modernity* (n 10).

irregular migration and asylum seeking has forged a newly perceived risk object that has put at-risk government provided security guarantees. If those guarantees are challenged successfully through an irregular migration and asylum seeking event, it calls into question the legitimacy of the government-of-the-day, itself a risky proposition for the government.

This chapter also expanded upon the sociocultural and risk society literature by examining the methods by which governments have engaged-in to identify irregular migrants and asylum seekers as security risk objects. Doing so in-part addresses criticism of risk theory regarding the lack of empirical study.¹⁸⁴ Hilgartner's suggestion that such risk objects are brought into being for the purposes of regulatory attention is well demonstrated here.¹⁸⁵ From that, the application of the "making-up risks" concept opened-up a new view on government perceptions of irregular migrants and asylum seekers as security risks. By expanding upon Hacking's concept of making-up people, the governmental processes involved in turning irregular migrants and asylum seekers into risk objects that ought to be controlled becomes clear.¹⁸⁶ This is further aided by Wilkinson's suggestion that this process of risk-making and naming gives social permission for new frameworks, regulations, and institutions to develop and manage the newly made-up risk.¹⁸⁷

Looking at the new frameworks, regulations and institutions that were developed from 2001 reveals their risk orientations and consequent internal dilemmas. Their risk orientations reflect the governments' perception that irregular migration and asylum seeking and security issues like terror and crime share modern risk characteristics. The evidence points to government considering the global reach and local influence of disturbances that can create and expel both population movements and violence. A focus on potential future-threat is now evident in many post-2001

¹⁸⁴ Iain Wilkinson, 'Social Theories of Risk Perception: At Once Indispensable and Insufficient' (2001) 49 *Current Sociology* 1, 14.

¹⁸⁵ Hilgartner (n 26).

¹⁸⁶ Hacking (n 11).

¹⁸⁷ Wilkinson (n 13).

policies which represents a shift in border policies from their former reactive nature. Insuring against a risk by relocating risk offshore has also been a key element of the now forward-leaning irregular migration and asylum seeking policy orientations.

Chapter Four – Economic risks, irregular migration and asylum seeking

Introduction

The second thematic risk that Australian and British government perceive to be associated with irregular migrants and asylum seekers is an economic one. In both countries there has been an evolving perception that they pose an economic risk to the wellbeing of the state and its citizenry. Whether that is quantitatively accurate however has been subject to considerable academic contention,¹ but that debate does not form part of this thesis.

It will be discussed how irregular migrants are identified as potentially harmful because of their capability to work illegally and “take a job” that would otherwise be performed by a person with resident work rights. As post-war social welfare regimes in Australia and the UK appear to strain under the demands placed on them, asylum seekers have been specifically perceived as a “burden” on these regimes and have had their access to them slowly curtailed or removed. These two elements of economic risk, work and welfare, are developed further in this chapter.

The Australian and British governments, throughout the period of analysis for this thesis, have acted upon the above economic risk perceptions by introducing new amendments to law and policy that exclude irregular migrants from the labour market and asylum seekers from social welfare safety nets. Using a risk-based approach to the analysis of these changes carried out by each government is a useful addition to

¹ For literature on this debate see: Roger Zetter, ‘Are Refugees an Economic Burden or Benefit?’ (2012) 41 *Forced Migration Review* 50; Jean-Christophe Dumont and Nigel Pain, ‘How Will the Refugee Surge Affect the European Economy?’ (Organization for Economic Cooperation and Development 2015) No 8; Shekhar Aiyar and others, ‘The Refugee Surge in Europe: Economic Challenges’ (International Monetary Fund 2016) SDN/16/02 <<https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2016/12/31/The-Refugee-Surge-in-Europe-Economic-Challenges-43609>> accessed 27 October 2020.

existing literature because as Slovic et al have suggested, it may forecast how governments react to and manage perceived economic risks to the state and citizen.²

This chapter will demonstrate, this time from an economic perspective, the growing dilemma within migration and asylum frameworks being propelled by risk. As society reorganises itself according to modern economic imperatives, these frameworks are changing to accommodate new uncertain realities. However, in attempting to mitigate the uncertainty and provide control by searching for a “risky” and “non-risky” migrant or asylum seeker, a perceived loss-of-control is created while new risks and reflexivity are introduced into the frameworks. The first section examines the concepts of illegal working and social welfare in the context of irregular migration and asylum seeking. It also considers how governments have come to make-up both as economically risky and the recent legislative and policy measures that were made available and pursued because of their naming or labelling as risky.

After this examination of how the economic risk posed by irregular migrants and asylum seekers has been made-up in various ways, the second section goes on to analyse the factors that have influenced the development of economic risk perceptions. Applying the integrated approach to risk as suggested by authors,³ and developed in Chapter Two to the analysis of data gathered during this research suggests that irregular migrants and asylum seekers are conceptualised as a new additional layer of uncertainty that may affect work and welfare today. As two institutions of Australian and British society, already undergoing radical changes thanks to modernist policies, receive protection from further perceived harms by irregular migrants and asylum seekers. Therefore, they are both subjected to curtailments on their rights as a form of protection for work and welfare and the extant social values they have within Australian and British societies.

² Paul Slovic, Baruch Fischhoff and Sarah Lichtenstein, ‘Why Study Risk Perception?’ (1982) 2 Risk Analysis 83, 89.

³ Peter Taylor-Gooby and Jens O Zinn, ‘Current Directions in Risk Research: New Developments in Psychology and Sociology’ (2006) 26 Risk Analysis 397; Deborah Lupton (ed), *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge University Press 1999).

4.1 Irregular migrants and asylum seekers as an economic risk

The following introduces the concepts of illegal working and access to social welfare as the two elements that comprise the Australian and UK governments' perception of irregular migrants and asylum seekers as economic risks. It will demonstrate how governments have gone about engaging in a process of dynamic nominalism that is "making-up" the perceived economic risk and irregular migrants and asylum seekers as economic risk objects. These two discussions will together in-part address the first sub-question of the thematic chapters by engaging in an analysis of how governments have constituted economic risk perceptions of irregular migrants and asylum seekers.

The logic of today's policy controls in Australia and the UK that frame irregular migrants and asylum seekers as an economic risk to the state evolved from the centrality of work and social welfare as culturally important institutions.⁴ The perceived threat to the institution of work centres on the state's ability to protect a job being "taken" by an irregular migrant from a person with existing work rights or, to protect businesses from unfair cost competition by employers engaging irregular migrants and leveraging their vulnerabilities. The concept of illegal working here is limited to irregular migrants and not asylum seekers as they can, in some limited circumstances, be granted working rights.⁵ In accordance with other irregular migration and asylum seeker related policies though, access to work has become more restricted since 2001. This has been done on the premise that providing unlimited work rights for asylum seekers would act as a "pull-factor" drawing people to Australia

⁴ Herbert Kitschelt and Anthony McGrann, *The Radical Right in Western Europe: A Comparative Analysis* (University of Michigan Press 1997) 258; Liana Giorgi and Catherine Marsh, 'The Protestant Work Ethic as a Cultural Phenomenon' (1990) 20 *European Journal of Social Psychology* 499, 514; Shalom Schwartz, 'A Theory of Cultural Values and Some Implications for Work' (1999) 48 *Applied Psychology: An International Review* 23, 39.

⁵ Kaldor Centre for International Refugee Law, 'Bridging Visas' (23 November 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/bridging-visas>> accessed 5 February 2022; Melanie Gower, CJ McKinney and Lulu Meade, 'Asylum Seekers: The Permission to Work Policy' (House of Commons Library 2022).

and the UK.⁶ Though an asylum seeker, including those who have been refused asylum, could engage in work outside their leave to remain permissions and therefore fall into a category of “illegal work”, the references by government discussed further below are confined to people variously described as “illegal”. It is therefore suggested that this does not include asylum seekers but rather irregular migrants.

The second perceived economic risk frames asylum seekers as an unentitled “burden” on social welfare regimes forcing the state to protect the pool of finite resources. As irregular migrants are not entitled to access social welfare, the subsection is confined to people that are at various points in the asylum claim process. The following sub-sections discuss how irregular migrants, asylum seekers and their perceived risks have been made-up or constructed in further detail.

4.1.1 Making-up illegal working risk

Governments in both case study jurisdictions have in various ways come to view the work performed by irregular migrants as risky and therefore criminalised it. Enforcing the legislative prohibition on such work has also provided governments with visually dramatic opportunities to demonstrate their capacity to correct the issue of irregular migrants working if the risk eventuates.⁷ But what defines “illegal working” is subject to debate that takes issue with the rigid definition of the phenomena in legislation. The following will discuss what constitutes illegal working, its perceived riskiness and how that risk has been “made-up” by government in each case study jurisdiction.

It is possible to define the act of engaging in work contrary to a person’s migration status as “illegal” by a strict black-letter interpretation of statute and case law. The Australian Migration Act 1958 (Cth) defines it as allowing an unlawful non-

⁶ Gower, McKinney and Meade (n 5) 12.

⁷ Elisabeth Wynhausen, ‘Foreign Farm Workers Caught in Trap’ *The Australian* (Canberra, ACT, 1 September 2008); Jason Groves, ‘PM Vows: We’ll Seize Wages of Illegal Migrants: Workers Will Be Kicked out Appeal Abuses to Be Stopped “No Excuse” for Employers’ *Daily Mail* (London, 21 May 2015) 7.

citizen to work for reward or otherwise,⁸ and in the Immigration Act 1971 (UK) as working at a time when disqualified by reason of immigration status.⁹ Case law has added that for an activity to be illegal work, contextual factors such as the length of time, nature, and purpose of the activity should be considered or,¹⁰ if the work is of a domestic or social character.¹¹

Academia have however taken a variety of approaches to defining what constitutes illegal work. Anderson and Ruhs argue that it is the enforcement of black-letter approaches to migration law and compliance activities that place irregular migrants into illegality and creates vulnerabilities for them.¹² Taking a migrant-centred perspective, Ahmad characterises illegal work by the high psychological and financial costs that irregular migrants incur because of their constant need to avoid authorities and the limited upward social mobility opportunities it provides.¹³ Conversely, Schneider and Enste take a strict economic approach arguing that illegal work is part of the hidden or underground economy that includes illegal activities and unreported income.¹⁴

It has however been suggested that the issue of illegal work is much more of a grey area than the black-letter, migrant centred, or economic approaches have considered. Indeed, the wider socio-political and contextual factors should be considered to develop a more nuanced understanding of how illegal work can occur. Menjivar uses the concept of “liminal legality” to capture the sometimes-complex

⁸ Migration Act 1958 (Cth) ss 245AB&AG.

⁹ Immigration Act 1971 (UK) s 24B.

¹⁰ *Minister for Immigration, Local Government and Ethnic Affairs v Montero* 1991 31 FCR 50 (Federal Court of Australia).

¹¹ *Braun v Minister for Immigration* 1991 33 FCR 152 (Federal Court of Australia).

¹² Bridget Anderson, ‘Migration, Immigration Controls and the Fashioning of Precarious Workers’ (2010) 24 *Work, Employment and Society* 300; Martin Ruhs and Bridget Anderson, ‘Semi-Compliance and Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK’ (2010) 16 *Population, Space and Place* 195.

¹³ Ali Nobil Ahmad, ‘Dead Men Working: Time and Space in London’s (‘illegal’) Migrant Economy’ (2008) 22 *Work, Employment and Society* 301.

¹⁴ Friedrich Schneider and Dominik H Enste, *The Shadow Economy: An International Survey* (2nd edn, Cambridge University Press 2013).

physical and administrative movement of migrants between states of legality.¹⁵ This movement according to Menjívar, is aided by the government's ability, through its various organs, to differently define or determine what constitutes illegal work and the harm illegal work is perceived to cause.¹⁶

Drawing on Menjívar's concept of liminal legality is useful in the context of this thesis. It captures the reality of migrants' migration status moving between states of legality depending upon whether, and what type of work they engage in. But it recognises that there is an active role played by government in constructing this status through frameworks that reflect policy positions. While Menjívar describes the movement between states as aided by government, it was discussed in Section 2.5.2 that policy makers could perform the movement as they construct target populations for the purposes of distributing benefits and burdens.¹⁷ It is argued here that there is further scope to explore how irregular migrants are "made-up" as a risk group that is subjected to policy movements and how risk is used in the construction of illegal work.

Governments in both case study jurisdictions have for some time gone about constructing irregular migrants as a risky group within their labour markets and sought to exclude them from it. We can observe in these constructions Hilgartner's argument that risk and its perception starts with the identification of an object, and then associating that object with a potential harm or danger.¹⁸ It is also possible to identify in these constructions how irregular migrants as a type of "made-up people" and risk within domestic labour markets permits "making-up risks" regarding their working that did not exist prior to their naming.¹⁹ Once labelled as risk, irregular migrants and their working was subjected to further political attention and regulation.²⁰

¹⁵ Cecilia Menjívar, 'Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States' (2006) 111 *American Journal of Sociology* 999, 1000.

¹⁶ *ibid* 1002.

¹⁷ Helen Ingram, Anne L Schneider and Peter deLeon, 'Social Construction and Policy Design' in Paul A Sabatier (ed), *Theories of policy design* (2nd edn, Westview Press 2007).

¹⁸ Stephen Hilgartner, 'The Social Construction of Risk Objects: Or, How to Pry Open Networks of Risk' in Ben Clarke and James Short, *Organizations, uncertainties, and risk* (Westview 1992).

¹⁹ Ian Hacking, *Historical Ontology* (Harvard University Press 2002) See further section 2.4.1.

²⁰ Iain Wilkinson, *Risk, Vulnerability and Everyday Life* (Routledge 2010) 25.

The process of making-up irregular migrants as risks within domestic labour markets and subsequent regulation is orientated towards the 'non-existent yet possible event.'²¹ Governments in Australia and the UK have pursued changes to these frameworks predicated on the assumption that there will be future economic harm caused to the resident population by irregular migrants having free access to jobs and employment. The changes brought by the Immigration Act 2016 (UK) and the Employer Sanctions Acts 2007 and 2013 (Cth) intended to prevent this harm by preserving the labour market for citizens and residents by excluding the risk object. Interviewees for this research discussed this risk making in today's frameworks as influenced by the historical racialised policies directed at Pacific Island people in Australia and Jewish people in the UK.²² It is a critique that other authors have also pursued,²³ but in the following is pursued through a risk lens.

The racialised basis could be reflected in what others have described as boundary drawing. Sassen has suggested that boundaries have been consciously drawn in current legislative frameworks to protect resident populations and situate migrants into different regulatory regimes.²⁴ The boundaries may create migrant types based on economic characteristics such as skill-sets and wage-earning potential,²⁵ or act as a "filter" for desirable labour while keeping out those considered undesirable.²⁶ The latter view is shared by Segrave, who from their research on illegal working in Australia, argued that filters have assisted in regulating both labour and capital flows

²¹ Michael Power, 'The Apparatus of Fraud Risk' (2013) 38 *Accounting, Organizations and Society* 525, 530.

²² Interviews with AU-CS-01, UK-CS-02.

²³ Lyndon Megarrity, "'White Queensland": The Queensland Government's Ideological Position on the Use of Pacific Island Labourers in the Sugar Sector 1880–1901' (2006) 52 *Australian Journal of Politics & History* 1; Seth Koven, 'The Social Question and the Jewish Question in Late Victorian London' in Ilja van den Broek, Christianne Smit and Dirk Jan Wolffram (eds), *Imagination and commitment: representations of the social question* (Peeters 2010).

²⁴ Saskia Sassen, *Losing Control?: Sovereignty in the Age of Globalization* (Columbia University Press 2015) 69.

²⁵ Franck Düvell, 'Irregular Migration: A Global, Historical and Economic Perspective' in Franck Düvell (ed), *Illegal Immigration in Europe: Beyond control?* (Palgrave Macmillan 2006) 29–30; Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press 2008) 16.

²⁶ Anderson (n 12) 307.

across borders.²⁷ Adopting a risk perspective suggests that the boundary drawing identified by these authors is part of the making-up process that identifies certain migrants (with the labour and skills that they possess) as potentially hazardous to the resident workforce and others as not.

The Immigration Act 2016 (UK) demonstrates the process of risk making and association with hazard by, *inter alia*, introducing a new offence of illegal working.²⁸ This new provision complemented existing legislation that enabled the government to attach restrictions to a person's leave to enter,²⁹ and penalised the employment of a person beyond the permissions attached to their leave to enter or remain.³⁰ To construct the economic risk by engaging in prohibited work, irregular migrants are rhetorically embedded by government as the causative factor that sits behind potential harms for those with working rights.

Prior to the 2016 Act being introduced to parliament, the Conservative Party's 2015 election manifesto contained a promise to 'crack down further on illegal working.'³¹ The manifesto also made an explicit assertion that irregular migrants would engage in work at wage rates lower than the minimum wage, therefore exposing those on low wages to a harm of competitive wage lowering. These claims were repeated in the government's *Tackling Exploitation in the Labour Market* consultation paper published in October 2015. This consultation paper established a risk of lower wages and living conditions for resident workers if irregular migrants engaged in work.³² With the risk and potential harm made-up, the Home Secretary was then able to argue in the Second Reading speech for the 2016 Act that irregular migrants could 'depress or hold back pay and conditions for the local sector, and undercut reputable

²⁷ Marie Segrave, 'Theorizing Sites and Strategies of Differential Inclusion: Unlawful Migrant Workers in Australia' (2019) 23 *Theoretical Criminology* 194, 196.

²⁸ Immigration Act 2016 (UK) s 34.

²⁹ Immigration Act 1971 (UK) s 3(1)(c)(ii).

³⁰ Immigration, Asylum and Nationality Act 2006 (UK) s 15(1).

³¹ Conservative Party, 'Strong Leadership, a Clear Economic Plan, a Brighter, More Secure Future' (2015) Election manifesto 31.

³² Department for Business, Innovation and Skills and Home Office, 'Tackling Exploitation in the Labour Market' (2015) Consultation Paper 19.

businesses.’³³ In this passage the Home Secretary connects the risk to the harmful threat thereby establishing the premise for the regulatory action.

The above approach of the UK government to the making-up of irregular migrants as an economic risk can be compared with the Australian government’s illegal working framework. The public debate commenced with views being published in discussion papers and civil service led studies. The *Review of Illegal Workers in Australia* establishes the risk of jobs being taken and unfair competition between businesses through lower wage payments if irregular migrants were given work rights.³⁴ It also claimed that an ‘increase the likelihood of tax and social security fraud,’³⁵ would occur if an irregular migrant worked. The Review goes on to set-out that:

Migration policy is also designed to maximise the entry of skilled migrants who are going to contribute to Australia’s economic performance. The entry of illegal workers, employed primarily in unskilled jobs is not likely to improve Australia’s economic performance.³⁶

As such, the Australian government is distinguished in its approach to that used by the UK when suggesting that irregular migrants pose a general risk to the wider economy and not just to the individual worker or business.

Formalising the Australian government perception that irregular migrants are an economic risk took place over two pieces of legislation.³⁷ While the Employer Sanction Acts 2007 and 2013 (Cth) were ostensibly targeting employers of irregular migrants, they in effect construct irregular migrants as a risk object within the labour market. The government argued in parliamentary debate that:

³³ HC Deb 13 Oct 2015 vol 600, col 197.

³⁴ Department of Immigration and Multicultural Affairs, ‘Review of Illegal Workers in Australia: Improving Migration Compliance in the Workplace’ (Australian Government 1999) 20.

³⁵ *ibid* 26.

³⁶ *ibid* 28.

³⁷ Migration Amendment (Employer Sanctions) Act 2007 (Cth); Migration Amendment (Reform of Employer Sanctions) Act 2013 (Cth).

illegal work causes a number of problems for the Australian community. First, it takes job opportunities away from Australian citizens and lawful migrants. Second, the cost of detecting illegal workers is an unwelcome burden on the taxpayer.³⁸

Despite a change in government party, the 2013 Act reflected these risk concerns that 'deal with the problem of noncitizens working without permission in Australia.'³⁹ The risks are framed in a broad sense rather than targeted at individuals with work rights in that they: undermine Australia's migration program; places businesses at competitive disadvantage and; reduces taxation revenue and employment opportunities for Australia and non-citizens with permission to work.⁴⁰

These developments in illegal working law and policy since 2001 rely on a logic that brings into the present day, the future actions of an irregular migrant. That is, they rely on an assumption that irregular migrants will engage in work and that that work will be to the economic detriment of a resident labourer. On this assumed future, irregular migrants are labelled as economically harmful and changes the nature of the work that they may do to unlawful.⁴¹ As a further consequence, demands are made for the creation of new paths to displacement of the risk and workforce regulatory management.⁴² Authors Sassen and Segrave had argued that these management frameworks were exercises in boundary drawing that aimed to filter irregular migrants in society.⁴³ To an extent they are, however it is argued here that illegal working frameworks form part of a wider irregular migration strategy. When the traditional pre-emptive methods of risk mitigation such as borders fail, illegal working forms an internal societal risk filtering that either contains, confines, or dissuades risky

³⁸ Commonwealth, *Parliamentary Debates*, Senate, 29 March 2006, 2 (Nick Minchin, Minister for Finance and Administration).

³⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 September 2012, 11175 (Chris Bowen, Minister for Immigration and Citizenship).

⁴⁰ *Ibid.*

⁴¹ Ian Hacking, 'The Looping Effects of Human Kinds' in Dan Sperber, David Premack and Ann James Premack (eds), *Causal Cognition: A Multidisciplinary Debate* (Oxford University Press 1995).

⁴² Hilgartner (n 18) 48; Wilkinson (n 20).

⁴³ Sassen (n 35); Segrave (n 38).

migrants.⁴⁴ In so doing, it maintains the government's hierarchical preference for order within labour markets by expelling a potentially disruptive presence.

4.1.2 Making-up access to social welfare risk

There is an identifiable perceived risk that asylum seekers will have unwarranted access to the social welfare regimes of Australia and the UK. This perceived risk constitutes the second element to the overall economic risk narrative. In response to the risk of access to social welfare, governments in both jurisdictions have enacted various restrictions or exclusions from access, or even established hypothecated regimes for asylum seekers. The following sets-out earlier discussions on the social welfare-asylum relationship and how the risk of access to social welfare has been made-up in Australia and the UK.

Social welfare has been defined in a narrow sense by Dickey as the government provision or expenditure on services that are consumed by people who for whatever reason, are unable to access them alone.⁴⁵ While others such as Sales have noted that the wider welfare-state includes policies such as progressive taxation and work-related social insurance schemes.⁴⁶ This thesis confines itself to examining the services identified by Dickey.

Providing social welfare services to citizens has been a central concern of the Australian and British governments following the Second World War. However social welfare has always been offered on a selective basis that generally excludes those who are located outside the boundaries of the nation-state.⁴⁷ Even though nationality or citizenship of the state is not the sole boundary that defines a right to receive social

⁴⁴ Christopher Coker, *Globalisation and Insecurity in the Twenty-First Century: NATO and the Management of Risk* (Routledge 2014) 64.

⁴⁵ Brian Dickey, *No Charity There: A Short History of Social Welfare in Australia* (2nd edn, Routledge 1987) xi–xii.

⁴⁶ Rosemary Sales, 'The Deserving and the Undeserving? Refugees, Asylum Seekers and Welfare in Britain' (2002) 22 *Critical Social Policy* 456, 458.

⁴⁷ Alan Wolfe and Jytte Klausen, 'Identity Politics and the Welfare State' (1997) 14 *Social Philosophy and Policy* 231.

welfare, in the context of asylum though, it perhaps serves as the most immediate basis.⁴⁸ As will be shown, such questions have facilitated the making-up of asylum seekers as a risk to social welfare when contrasted with those deemed to poses acceptable nationality and citizenship

The complex nexus between welfare-work-asylum has produced something of a policy and risk trap for asylum seekers. In the Australian framework context, working rights for asylum seekers in Australia may attach to their visa allowing for work (but not welfare) while protection claims are processed.⁴⁹ In the UK context however, as a general rule asylum seekers cannot work, except if they have been waiting for 12 months for a decision on their protection application and after they have made an application to work. But even then, work may only be allowed in occupations on the occupation shortage list and in social care.⁵⁰ Bloch observed that such frameworks that simultaneously create asylum seekers and exclude them from access to the labour market pushes asylum seekers towards greater reliance on social welfare and/or illegal work.⁵¹ The trap consequences not only add to perceptions of asylum seekers as undeserving, criminal or of questionable character, it justifies a perception of asylum seekers as threats to government provided social welfare by increasing demands on limited resources.⁵²

A further defining characteristic of the asylum seeker and social welfare relationship and usefully employed in the context of this research, is the role of exclusion and division. Hayes had observed that the link between eligibility for public funds and immigration were 'as old as immigration control itself.'⁵³ That suggests

⁴⁸ Andrew Geddes and Michael Bommers, 'Introduction: Immigration and the Welfare State' in Michael Bommers and Andrew Geddes (eds), *Immigration and welfare: Challenging the borders of the welfare state* (Routledge 2000) 3.

⁴⁹ Kaldor Centre for International Refugee Law (n 5).

⁵⁰ Gower, McKinney and Meade (n 5) 6.

⁵¹ Alice Bloch, 'Making It Work: Refugee Employment in the UK' (Institute for Public Policy Research 2004) 2 19.

⁵² Kim Robinson, 'Voices from the Front Line: Social Work with Refugees and Asylum Seekers in Australia and the UK' (2014) 44 *The British Journal of Social Work* 1602, 1604.

⁵³ Debra Hayes, 'Outsiders within: The Role of Welfare in the Internal Control of Immigration' in Janet Batsleer and Beth Humphries (eds), *Welfare, Exclusion and Political Agency* (Routledge 2000) 54.

immigration control and social welfare were consciously built as parallel systems to divide and exclude people into risky and non-risky access to material resources.⁵⁴ Clarke would also suggest that social welfare may be used to exclude and divide based on perceived shared or common values.⁵⁵ Like Douglas's concept of shared worldviews of risk, the social welfare system can be used to create boundaries that define who belongs and excludes those with contrary values or worldviews as a perceived risk.

As social welfare regimes have matured and asylum seeking as a policy-political issue has developed, asylum seekers have according to governments in Australia and the UK, become a perceptible risk to these regimes. By making-up asylum seekers as economically risky,⁵⁶ they have become associated with expenditure that is unwarranted by those either entitled as identified by Geddes and Bommers, or for those that may hold contrary worldviews and values.⁵⁷ Prior to their labelling as risky within social welfare, creating new hypothecated social welfare frameworks that exclude or limit asylum seeker access to services according to prevailing notions of entitlement, would not have been possible.⁵⁸

In the British context, some literature has suggested that asylum and migration policies and social welfare exclusion are a mutual attempt to exclude outsiders as undesirable and undeserving costly impositions on society.⁵⁹ There is historical precedent for such an argument with Cohen tracing the systematic exclusion of particularly Jewish forced migrants from welfare regimes in the early 20th century.⁶⁰ Sales also notes the difficult intersections between race, gender and the structures of social institutions that asylum seekers face today as they attempt to access social

⁵⁴ *ibid* 53.

⁵⁵ John Clarke, *Changing Welfare, Changing States: New Directions in Social Policy* (Sage 2004) 40.

⁵⁶ Hacking (n 19) 99.

⁵⁷ Geddes and Bommers (n 59).

⁵⁸ Wilkinson (n 20) 25.

⁵⁹ Debra Hayes, 'From Aliens to Asylum Seekers: A History of Immigration Controls and Welfare in Britain' in Steve Cohen, Beth Humphries and Ed Mynott (eds), *From immigration controls to welfare controls* (Routledge 2002) 44.

⁶⁰ Steve Cohen, 'Anti-Semitism, Immigration Controls and the Welfare State' (1985) 5 *Critical Social Policy* 73.

entitlements.⁶¹ But the author equally suggests that there is a neo-liberal drive away from collective responsibilities towards individualism and emphasis on work as the primary driver of social inclusion. Consequently, new boundaries have been drawn to exclude those from inclusion because of migration law prohibitions on engaging in socially inclusive activities of work and welfare.⁶²

The practices of exclusion and individualisation have featured in the UK's more recent social welfare reforms that target asylum seekers. The Immigration and Asylum Act 1999 (UK) removed access to family and disability benefits as well as access to social housing and community care.⁶³ This Act also created the National Asylum Support Service which in-part introduced spending vouchers and dispersed asylum seekers across the UK to relieve pressures on London and South-East England council housing.⁶⁴ It was at this time Geddes notes the rise in "scrounger" and "bogus" asylum seeker narratives regarding access to social welfare.⁶⁵

Removing and restricting access to social welfare even for those "persons from abroad" holding a regular migration status has according to Patterson, fitted into an overall pattern of scapegoating perceived non-deserving groups.⁶⁶ But what may distinguish the treatment basis between regular and asylum seeker cohorts, is that the removal or reduction was done for explicit deterrence effects and denial tied to a disbelief of their presence as actually economic migrants.⁶⁷ What labels Geddes had identified in public parlance has, in official discourse, become "failed asylum seeker" and used as justification to further the social welfare exclusion and individualization of asylum seekers.

⁶¹ Sales (n 57) 459–61.

⁶² *ibid* 461.

⁶³ Immigration and Asylum Act 1999 (UK) s 115.

⁶⁴ *ibid* 95(12) Sch 8.

⁶⁵ Andrew Geddes, 'Denying Access: Asylum Seekers and Welfare Benefits in the UK' in Michael Bommes and Andrew Geddes (eds), *Immigration and welfare: Challenging the borders of the welfare state* (Routledge 2000) 137.

⁶⁶ Terry Patterson, 'From Safety Net to Exclusion: Ending Social Security in the UK for "Persons from Abroad"' in Steve Cohen, Beth Humphries and Ed Mynott (eds), *From Immigration Controls to Welfare Controls* (Routledge 2002) 159–70.

⁶⁷ *ibid* 175.

The Immigration Act 2016 (UK) legislated to deny ‘illegal migrants access to services’⁶⁸ which included housing, subsistence payments and carer leaver support,⁶⁹ once they were determined to be a “failed asylum seeker”. In a public consultation that preceded the Act, this new type of person and their perceived risk were brought into being by declaring that:

the system of support ... is now being used in large measure to support those whose asylum claim has failed and who have established no lawful basis to remain in the UK.

This is wrong in principle and sends entirely the wrong message to those migrants who do not require our protection but who may seek to come to or remain in the UK in an attempt to benefit from the support arrangements we have put in place for those who need our protection. It also undermines public confidence in our asylum system.⁷⁰

From these passages the naming of asylum seekers whose claim for protection had been denied as “failed asylum seekers” and as a new kind of social problem that ought to be regulated can be observed. By invoking “no lawful basis” it invites comparison with the suspect or criminal construction that Chouhy and Madero-Hernandez identified as discussed in Section 3.1 of this thesis.⁷¹ But here it is not possible physical harm that is referred to, rather it adds the potential for economic harm to their suspect character.

The potential harm or risk is made-out in the “attempt to benefit” reference which formalises the “bogus” and “scrounger” narratives cited by Geddes earlier.⁷² It is also made-out in the “public confidence” which perceived unwarranted welfare spending would have on the administration of the wider asylum system. Once labelled as such and brought to political attention: ‘it is now *generally recognised* that the

⁶⁸ ‘Explanatory Notes to the Immigration Act 2016 (UK)’ 5.

⁶⁹ Immigration Act 2016 (UK) s 66 Sch 11.

⁷⁰ Home Office, ‘Reforming Support for Failed Asylum Seekers and Other Illegal Migrants’ (UK Government 2015) paras 6–7.

⁷¹ Cecilia Chouhy and Arelys Madero-Hernandez, “‘Murderers, Rapists, and Bad Hombres’: Deconstructing the Immigration-Crime Myths’ (2019) 14 *Victims & Offenders* 1010.

⁷² Geddes (n 76).

taxpayer should not have to support illegal migrants,⁷³ it opened-up this new legislative path 'to reduce costs to the public purse'⁷⁴ by way of lower social welfare spending on those that "abuse the system" and "flout the rules".⁷⁵ Such language as "failed asylum seeker" and "bogus" among others, also points to the reflexive dilemma that has been progressively built within asylum seeking frameworks. In making the risk and pointing to its presence and developing a mitigation, governments are simultaneously pointing to a loss-of-control and admitting that migration control is failing (this point returned to and developed further in Chapter 6).

In the Australian context, asylum seekers have not always been perceived as economically risky propositions when it comes to social welfare. In the immediate post Second World War period, they were facilitated into housing and provided with manual labour and construction jobs on government infrastructure programs.⁷⁶ However as the economic downturn and diversification of the migrant population away from predominantly British/Irish-English speaking Europeans in the 1970's took hold, the government considered it too difficult to continue to provide these services.⁷⁷

Of note at this same time was the dismantling of the White Australia Policy that favoured white European migrants. It has been suggested that this broader intake of migrants and restrictions on access to social welfare was no coincidence. Jupp argued that not providing appropriately diverse services was justified by economic rationalist theories dominant in government thinking at the time, which favoured cash-based payment systems over government provided services.⁷⁸ This neo-liberal thinking that individuals could best decide their own welfare needs is an identifiable convergence with that occurring in the same context at this time in the UK.

⁷³ Home Office, 'Reforming Support for Failed Asylum Seekers and Other Illegal Migrants - Response to Consultation' (UK Government 2015) para 2.3.10 emphasis added.

⁷⁴ *ibid* 1.5.

⁷⁵ HC Deb 13 Oct 2015 vol 600, col 195.

⁷⁶ Jean Martin, *Refugee Settlers: A Study of Displaced Persons in Australia* (ANU Press 1965) 12.

⁷⁷ Jean Martin, *The Migrant Presence: Australian Responses 1947-1977* (Allen & Unwin 1978).

⁷⁸ James Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (2nd edn, Cambridge University Press 2007) 137.

In 1992 the Australian government commenced the exclusion of asylum seekers from existing social welfare by creating the Asylum Seeker Assistance Scheme. A hypothecated welfare scheme, it in-part implemented individualisation thinking by delivering a mixture of cash payments and services directly and via third parties such as non-government organisations to irregular migrants.⁷⁹ Latterly relaunched as the Status Resolution Support Scheme (SRSS) it consolidated various existing programmes and placed asylum seekers into one of six bands which define the level of support provided (see Appendix Five for Banding definition).⁸⁰ It is a policy creation without legislative provision making it much simpler to change according to government wishes. It also means that the government has not had to publicly, or in parliament, fully account for these changes.

From 2017 to 2021 there has been an overall reduction in funding by \$68 million to the SRSS that has led to a decrease in welfare and support services provided to asylum seekers.⁸¹ Government documents state in the initial budget measure, that the reforms were a “streamlining” of existing services.⁸² Later however, officials revealed the logical intent of the reforms: to individualise social welfare responsibilities and; resolve migration status. The officials said, ‘each individual is assessed on a case-by-case basis’,⁸³ to ‘focus on people’s capacity for self-agency (rather than being reliant on SRSS income support) and status resolution through granting of a visa or departure from Australia.’⁸⁴ Officials added that ‘any exceptional

⁷⁹ Luke Buckmaster and Jonathan Guppy, ‘Australian Government Assistance to Refugees: Fact versus Fiction’ (Parliament of Australia, Parliamentary Library 2014) 6.

⁸⁰ Department of Home Affairs, ‘Status Support Resolution Services (SRSS) Programme: Operational Procedures Manual (Version 7)’ (Australian Government 2018).

⁸¹ In 2017-18: \$139.8m; 2018-19: \$93.4m; 2019-20: \$39.5m; 2020-21: \$19.6m. Chris Woods, ‘Budget 2020 Slashes Refugee Placements, Reactivates Christmas Island, and Guts Offshore Processing from 2021-22’ (*The Mandarin*, 8 October 2020) <<https://www.themandarin.com.au/141788-budget-2020-slashes-refugee-placements-reactivates-christmas-island-and-guts-offshore-processing-from-2021-22/>> accessed 7 April 2021.

⁸² Department of Finance, ‘Streamlining Services for Refugees’ (Australian Government) Budget Measures 2018-19-Part 2: Expense Measures 160.

⁸³ Department of Home Affairs, ‘Question on Notice No. 21: Portfolio Question Number: BE18/180’ para 11.

⁸⁴ Department of Home Affairs, ‘Question on Notice No. 99: Portfolio Question Number: AE18/104’ para 3.

circumstances which may hinder an individual's self-agency and autonomy to engage in their status resolution process,⁸⁵ would be considered.

Even though the language used by officials frames the changes as a form of empowerment for asylum seekers to resolve their migration status, the changes do form part of the making-up process. The rather bureaucratic process of allocating people into Bands (with an attached definition) not only brings a new type of asylum seeker into existence, it also simultaneously creates their risk profile and opens-up a new route of risk regulation. Hilgartner has argued that risk could be emplaced and displaced from their current environment as part of their labelling and construction.⁸⁶ Asylum seekers became emplaced risks within existing social welfare regimes through their labelling as a new type of harmful person and their link to a perceived harm of unwarranted expenditure that could not be controlled within the existing regimes. Their displacement came about via the new form of control that was the exclusion from existing forms of social welfare and into the newly created, asylum seeker specific, social welfare provisions.

4.1.3 Conclusion

The recent developments in the areas of illegal work for irregular migrants and access to social welfare by asylum seekers reveals how risk has been used to define these issues and the governmental policy and legislative responses. These processes which have been articulated in the above sections, show how via administrative and bureaucratic processes, irregular migrants, asylum seekers and their perceived risks have been made-up to demonstrate their potentially hazardous nature to domestic economies generally and the existing lawful resident specifically. The purpose of this making-up has been to open-up new avenues of regulation that would not have been able to exist otherwise.

⁸⁵ Department of Home Affairs, 'Question on Notice No. 21: Portfolio Question Number: BE18/180' (n 94) para 9.

⁸⁶ Hilgartner (n 18) 48.

The analysis enables us to go further and contributes a new understanding of how this economic risk making-up takes place. From the evidence contained in the policy documents and speech acts by political leaders, irregular migrants and asylum seekers were created as a new type of risk, one that could be harmful via the taking away of a job or the drawing-down of financial or other resources that would otherwise have been available to a resident member of the community. As these risks were being publicly established and named, it open-up new avenues of regulatory intervention which did not, nor could not have existed prior to their naming.

The performative impact that their naming as an economic risk created a new sense of moral urgency to-do “something” otherwise worker wages or legitimate businesses would be undercut, or welfare be unavailable to an existing resident. While some authors have suggested this is simply a type of boundary drawing,⁸⁷ it is argued here that the naming of irregular migrants and asylum seekers as economic risk was for the purpose of opening-up new paths to regulation. The labelling allowed the creation of new penalties or enforcements in the form of employment prohibitions and right-to-work checks. In regard to welfare, entirely new administrative regimes such as the SRSS have been created in order to displace the perceived risks from existing welfare systems.

The analysis contained within this section suggests two matters relevant to broader risk theory. First, there remains a preference by government to attempt to achieve or maintain order in the face of the perceptible disorder that irregular migration and asylum seeking represents. Cultural risk theorists have argued that hierarchies, which it is argued here government is one, maintain a preference for the adherence to rules and norms.⁸⁸ Anything that would challenge that status-quo would be perceived as risky. This research argues that the work and social welfare regulations introduced to emplace or displace the perceived risk of irregular migrants or asylum

⁸⁷ Sassen (n 35); Segrave (n 38).

⁸⁸ Michael Thompson, Richard Ellis and Aaron Wildavsky, *Cultural Theory* (Routledge 2018).

seekers engaging in economic activities, are an attempt to restore and preserve order within the labour market and social welfare programmes.

Second, Beck had argued that moving from controllable risks to uncontrollable uncertainty was a marker of risk in modern society.⁸⁹ Yet what the above evidence suggests is that a march towards risk uncontrollability is not inevitable and is being actively resisted by government. This would call into question Beck's conclusion that we are now in a risk society however, as a consequence of pursuing control, an inadvertent overall loss-of-control may have been initiated as rhetoric paints a picture of migration being out of government control and mitigation policies producing new sites of uncontrol. Most especially as irregular migrants and asylum seekers exercise their agency and respond to their labelling as risk.⁹⁰ These issues are returned to in Chapter Six. Having examined how irregular migrants and asylum seekers have been "made-up" as risks within labour markets and social welfare regimes, this chapter turns to an analysis of what is behind these processes and perceptions.

4.2 Influences affecting economic risk perceptions

So far, this chapter has analysed what the perceived economic risks posed by irregular migrants and asylum seekers are said to consist of, and how governments in the case study jurisdictions have gone about making-up these risks. This chapter now turns to an examination of what may be influencing these governmental perceptions of irregular migrants and asylum seekers as potentially hazardous to the economic position of their societies. By identifying the influential factors behind the construction and experience of irregular migrants and asylum seekers as an economically risky proposition, a better understanding of the issues that concerns society and the values of society are exposed. This section will in-part address the second sub-question of these thematic chapters: why have governments constructed irregular migrants and asylum seekers as economic risk?

⁸⁹ Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009) 17.

⁹⁰ Hacking (n 52).

For most people risk perceptions are derived from their intuitive judgements.⁹¹ These judgements are informed by external influences and inputs. The inputs may include news media, including social media, that accommodate varied discourses between officials and non-officials alike as well as the disagreements between experts.⁹² Authors have added that risk perception will also be influenced by the quality of the information that is available when the risk is both apparent and consequential for the subject of the risk.⁹³

It had been argued by Beck that risk perception and experience will differ according to the individual.⁹⁴ Something Douglas had framed as being derived from the individual's cultural worldview.⁹⁵ Accordingly, risk perception will depend upon the multiple ways a person interprets the effect of a hazard on them and their relationship with social institutions that inform them about it.⁹⁶ It is argued here that extant community values and perceived threats to them, should also be considered as an input when investigating influences on the risk perceptions that governments and their supporting bureaucracies will adopt which in-turn partly drive policy decisions.

Attempting to determine the role that the variety of factors influencing risk perception will allow for a better understanding of how an individual or institution will act when facing uncertainty or risky situations. This is a pertinent consideration in the context of irregular migration and asylum seeking because the policy and legislative

⁹¹ Paul Slovic, 'Perception of Risk' in Paul Slovic (ed), *The Perception of Risk* (Earthscan Publications 2000) 220.

⁹² Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press 1982).

⁹³ H el ene Joffe, 'Risk: From Perception to Social Representation' (2003) 42 *British Journal of Social Psychology* 55; Karen Bickerstaff, Peter Simmons and Nick Pidgeon, 'Public Perceptions of Risk, Science and Governance: Main Findings of a Qualitative Study of Six Risk Cases' (Centre for Environmental Risk 2006) Technical Report 06-03.

⁹⁴ Beck (n 100).

⁹⁵ Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (ARK Paperbacks 1984).

⁹⁶ Iain Wilkinson, 'Social Theories of Risk Perception: At Once Indispensable and Insufficient' (2001) 49 *Current Sociology* 1.

acts taken by government are sourced from decision-making influenced by risk perceptions.

4.2.1 The value and uncertainty of work

The Australian and British governments have pursued making irregular migrants into an economic risk based on the influential place that the concept of work and employment has within their societies. Work as both a social institution and socially valued activity has therefore been subject of a range of protective measures, including the legislation discussed in the previous section. Governments as hierarchical organisations that seek to enforce adherence to norms and values will mitigate risks that could be perceived as hazardous to that adherence. But work and employment markets have themselves been subject to radical change in modern society, becoming more uncertain typified by precarious employment. Consequently, irregular migrants have been the subject of measures designed to remove some of the uncertainty that may imperil the value of work and employment.

The societal value given to engaging in the activity of work has been afforded particular prominence within capitalist societies and cultures.⁹⁷ That value according to Giorgi and Marsh may be derived from a “Protestant work ethic” which stresses work as a worthy contribution to society and the individual.⁹⁸ Further research by Schwartz in the Australian and British contexts appears to confirm that such a value does exist within these societies.⁹⁹ As an activity that has been given value, academics have argued that it can therefore be placed “at-risk” by activities that threaten it in some way.¹⁰⁰

⁹⁷ Mike Noon, Paul Blyton and Kevin Morrell, *The Realities of Work: Experiencing Work and Employment in Contemporary Society* (4th edn, Palgrave Macmillan 2013) 75.

⁹⁸ Giorgi and Marsh (n 4) 514.

⁹⁹ Schwartz (n 4) 39.

¹⁰⁰ Hilgartner (n 18); Åsa Boholm and Hervé Corvellec, ‘A Relational Theory of Risk’ (2011) 14 *Journal of Risk Research* 175, 177.

For theorists in the risk society tradition, labour markets today are places of uncertainty and insecurity making them hazardous places for individuals to occupy.¹⁰¹ This is because the post-war working paradigm characterised by full-employment, collective agreements, welfare, and environmental exploitation is at an end. Replaced by precarious employment, individual agreements, and self-reliance, environmental, and gender-role crises.¹⁰² But in-line with other criticisms of Beck for being too cataclysmic, Nolan and Slater do suggest that these transformations are 'piecemeal, uneven and contradictory' rather than wholesale.¹⁰³

Interviewees for this research were clear that political leaders have been acting in defence of work as a social value. As a narrative, it took the form of statements that local people 'should be doing the jobs undocumented workers are doing.'¹⁰⁴ The government was according to an Australian lawyer 'appealing to people's sense of security as a group, as a nation, by saying "these people are coming-in to take your jobs" it's a classic example.'¹⁰⁵ Through this narrative political leaders can leverage general community concern about their precarious place within the employment market by pointing towards the value breach performed by irregular migrants when they engage in work contrary to their migration permissions.¹⁰⁶ Or as one interviewee put it: 'because they are taking your jobs then I think that becomes something people start getting-up in arms about, it's an easy way to win election votes.'¹⁰⁷

Public statements by government members are suggestive of the influence that work as a value has in economic risk perceptions. An Australian minister debating employment restrictions claimed that irregular migration 'takes job opportunities away

¹⁰¹ John Allen and Nick Henry, 'Ulrich Beck's Risk Society at Work: Labour and Employment in the Contract Service Industries' (1997) 22 *Transactions of the Institute of British Geographers* 180, 75.

¹⁰² Ulrich Beck, *The Brave New World of Work* (Patrick Camiller tr, Polity 2000) 18.

¹⁰³ Peter Nolan and Gary Slater, 'The Labour Market: History, Structure and Prospects' in Paul Edwards (ed), *Industrial Relations: Theory and Practice* (2nd edn, John Wiley & Sons 2003) 61.

¹⁰⁴ Interview with UK-NG-01.

¹⁰⁵ Interview with AU-LA-02.

¹⁰⁶ Interviews with AU-LA-01, UK-NG-01.

¹⁰⁷ Interview with AU-LA-03.

from Australian citizens and lawful migrants.’¹⁰⁸ Similarly, David Cameron claimed that ‘a lot of people coming to Europe are coming in search of a better life, they are economic migrants, and they want to enter Britain illegally.’¹⁰⁹ Cameron also asked employers to ‘train Brits instead’¹¹⁰ indicating a desire to ensure a “Brit” received the benefit of work before a perceived outsider. The interviewees’ observations support the association made between risk and value as stated in the definition of risk provided in Chapter Two. By invoking work protections in this public way, it is indicative that work is valued in society, if it were not considered so, there would be no risk perceived, and no point to invoking it.

The value of work and employment as an influential factor in risk perceptions regarding irregular migrants is evident in Australian and British bureaucratic thinking. The Home Office set-out the general value of work in consultations regarding the then forthcoming restrictions on access to the labour market in the Immigration Act 2014 (UK). This document states that there would be a harmful impact on the value of work performed by those people with working rights in the UK by illegal working: ‘Illegal working also has an adverse impact on the employment of people who are legitimately in the UK.’¹¹¹ Similarly, the Impact Assessment for the legislation argued that new interventions were needed to reduce ‘the harm they [irregular migrants] inflict.’¹¹² By using phrases such as “adverse impact” and “harm” reveals both the value and its influence. As suggested above, if it was not valued there would be no risk perceived.

The Australian bureaucrats framed the value in a more positive fashion in contrast to the British negative framing. In the Hicks Review of illegal working

¹⁰⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 29 November 2006, 135 (Andrew Robb).

¹⁰⁹ Brendan Carlin, ‘PM: Migrants Can’t Break into Britain: Cameron’s Defiant Vow Sparks New Fury over Calling Refugees a “Swarm”’ *Mail on Sunday* (London (UK), 16 August 2015) 18.

¹¹⁰ David Cameron, ‘PM Speech on Immigration’ (London, 21 May 2015) <<https://www.gov.uk/government/speeches/pm-speech-on-immigration>> accessed 10 September 2019.

¹¹¹ Home Office, ‘Strengthening and Simplifying the Civil Penalty Scheme to Prevent Illegal Working’ (UK Government 2013) para 3.

¹¹² Home Office, ‘Strengthening and Simplifying Civil Penalties to Prevent Illegal Migrant Working’ (UK Government 2014) Impact Assessment HO0105 4.

legislation, it concluded that access to the Australian labour market was a “privilege” that if not protected would “compromise” the market for those with lawful entitlement.¹¹³ The Explanatory Notes which preceded the Employer Sanctions Acts that in-part enacted the recommendations of the Hicks Review, also reflected these value statements of labour market access being an “entitlement”.¹¹⁴ These phrases like their British counterparts are indicative of work holding a privileged position within Australian society that ought to be protected.

The interview and documentary evidence points towards the opportunity to engage in work and employment as an influential factor in the perception of economic risk. The interviewees also stated that uncertainty in work derived from the modernisation of society contributes to the economic risk perception. In both case study jurisdictions, they said that illegal labour and working was taking place as a consequential by-product of flexible and deregulated labour markets.¹¹⁵ Others interviewed argued more directly that large corporate interests and business sectors with close links to government resulted in “light-touch enforcement” of illegal working legislation thereby allowing illegal work to occur.¹¹⁶

Those interviewed who had operational experience raised the government’s perceived inability to manage the uncontrolled flow of irregular migrants into the labour pool as influential on risk perceptions. One former Home Office employee stated that despite having carried out enforcement raids on workplaces, ‘next week they would be replaced by another group of people.’¹¹⁷ An Australian lawyer acknowledged that the government simply lacked the resources necessary to effectively police those with at least some form of work rights within the country.¹¹⁸

¹¹³ Department of Immigration and Multicultural Affairs (n 45) 18.

¹¹⁴ Explanatory notes to Migration Amendment (Reform of Employer Sanctions) Act 2013 (Cth) 1.

¹¹⁵ Interviews with AU-CS-01, UK-CS-02, UK-NG-01.

¹¹⁶ Interviews with AU-CS-01, UK-NG-01, UK-NG-02.

¹¹⁷ Interview with UK-CS-01.

¹¹⁸ Interview with AU-LA-03.

From these statements by the interviewees, it might be said that there is a growing awareness that risks generated from within modern society (labour market deregulation and globalised capital) may well be uncontrollable. In Chapter Three, uncontrollability and disorganisation issues were discussed in the context of the consequences of security measures. In this economic context, the same migration control policies designed to mitigate the new uncontrollable risks in the employment market, point to a simultaneous loss-of-control as observed by the former Home Office employee. As a self-sustaining dynamic, it feeds back as an influential factor affecting risk perceptions.

4.2.2 Protecting social welfare

The overwhelming desire to protect social welfare resources from perceived unwarranted access by asylum seekers has driven much of the exclusion and reduction in government services provided to them. Much like the value of work, it has been suggested that there is a similar value of social welfare within Australian and British communities that influences this protective instinct and risk perception. However, protecting social welfare may also be influenced by the intersection of uncertainty that risk in modern society has introduced with asylum seeking as a manifestation of that uncertainty.

The value of social welfare in society generally, and to Australian and British societies specifically, has been subject to academic consideration and research. The value, according to Freeman, is in the development of the economic security that social welfare benefits provide and in developing a sense of communal trust and belonging.¹¹⁹ According to Miller, developing trust and belonging will be aided by a shared national identity but 'in states lacking a common national identity ... trust may exist within groups, but not across them.'¹²⁰ If so, immediately presents a barrier to accessing welfare for an outside group such as asylum seekers. National identity may

¹¹⁹ Gary P Freeman, 'Migration and the Political Economy of the Welfare State' (1986) 485 *The ANNALS of the American Academy of Political and Social Science* 51.

¹²⁰ David Miller, *On Nationality* (Oxford University Press 1995) 92.

also be especially important for those policies that redistribute resources to the poor, as it requires the better-off to ‘identify with the beneficiaries of the redistribution – an identification fostered by a sense of common national identity.’¹²¹

Examining social attitude surveys in Australia and the UK does suggest that each society places a positive value on their social welfare arrangements. The British Social Attitudes survey has tracked public responses to various propositions on the levels of public expenditure in health, education, and social benefits since 1983. While there are fluctuations over time, support for keeping expenditure at the same or at increased levels remained in the vast majority.¹²² A similar view was observed when reviewing data obtained in surveys conducted in Australia.¹²³ Somewhat paradoxically however, there is also in both countries a strong negative attitude held towards recipients of welfare.¹²⁴ If these negative attitudes already exist with Australian and British society towards those within the “common national identity” it may suggest why they would also be expressed towards outsiders such as asylum seekers. They would instantly be considered outside the assumed national identity and not be considered trustworthy enough to invest social welfare in.

There is however emergent literature that adopts a risk perspective on the role and function of social welfare in modern society.¹²⁵ The central claim has been of a shift from socialised systems of risk sharing and community responsibility towards individual responsibility and individual risk acceptance or management. This thinking reflects Beck’s thesis that modernity expressed in radically altered class and family social forms, exposes the individual as the author of their own “biography” which introduces new risk and uncertainty for them (see discussion in Section 2.2.1).¹²⁶ A

¹²¹ David Miller, ‘Multiculturalism and the Welfare State: Theoretical Reflections’ in Keith Banting and Will Kymlicka (eds), *Multiculturalism and the Welfare State Recognition and Redistribution in Contemporary Democracies* (Oxford University Press 2006) 328.

¹²² ‘British Social Attitudes: The 33rd Report’ (NatCen Social Research 2016) 33 23–44.

¹²³ Ann Evans, ‘Australian Survey of Social Attitudes, 2011’ (ANU 2013).

¹²⁴ Timothy P Schofield and Peter Butterworth, ‘Patterns of Welfare Attitudes in the Australian Population’ (2015) 10 PLoS ONE 1, 11.

¹²⁵ See for summary Hazel Kemshall, *Risk, Social Policy and Welfare* (Open University Press 2002) 3.

¹²⁶ Elisabeth Beck-Gernsheim and Ulrich Beck, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (Sage 2002) 24.

consequence of the shift towards individualism, when unemployment, sickness, or poverty strikes, the blame for this is allocated at the individual level for making poor choices.¹²⁷ This may explain the negative attitudes held towards welfare recipients found in the surveys reported above and asylum seekers for pursuing economic betterment outside their home country.

In an interview for this research, a British lawyer who assisted people with their migration status, reported their perception of the weight that individualisation in social welfare was having in the community as:

a sense of heaviness ... when we look at housing when we look at something just some of the core services offered particularly by local authorities there is this idea of it being at breaking point.¹²⁸

They went on to say that the government was “chiming into” these feelings in the community and leveraging it as part justification for identifying asylum seekers as a risk to social welfare resources. But as an interviewee from a labour organisation recalled, residents of a regional English community rejected publicity attempts from the media to highlight the issue, in-case it looked badly upon them and endanger their own benefits.¹²⁹

Other interviewees working in public policy also reported the “chiming” that the British lawyer observed in relation to government activity regarding social welfare protection and asylum seekers. It was suggested by a former senior Home Office official that there is:

¹²⁷ Peter Taylor-Gooby, ‘Does Risk Society Erode Welfare State Solidarity’ (2011) 39 Policy & Politics 147, 149–50.

¹²⁸ Interview with UK-LA-01.

¹²⁹ Interview with UK-NG-01.

an overarching policy imperative to be seen to be tough on immigration and to crackdown on people who were receiving benefits that they weren't entitled to receiving healthcare sector et cetera.¹³⁰

The same civil servant also thought that the imperative was forced on government when:

in terms of public perception there became a point where asylum seekers particularly became associated with claiming benefits and getting benefits and housing and medical help et cetera that perhaps were not available to the indigenous population and that caused resentment.¹³¹

Another senior civil servant currently at the Home Office described the sense of protectionism in the public that government was perceiving following engagement with a member of the public:

the "Eastern Europeans coming over here and taking the piss" so that hardening of position isn't just a white British working-class thing, it's people living in certain parts of the country have been exposed to the impacts of immigration subjectively.¹³²

A local councillor from London also interviewed for this research, with responsibilities for the physical provision of housing and other services to asylum seekers concurred with this perspective. They also attributed to the changes to welfare provided via the Immigration Acts and the overall hostile environment policy to UK Government acting on generalised public hostility towards the provision of benefits to those perceived as outsiders and who have 'not yet contributed anything.'¹³³

If there is a sense of "heaviness", "hardening" or "resentment" within the community regarding their welfare because of individualization and modernity induced economic uncertainties, it could explain why the British government may want to intervene and protect the economic security blanket from perceived outsiders.

¹³⁰ Interview with UK-CS-01.

¹³¹ Interview with UK-CS-01.

¹³² Interview with UK-CS-02.

¹³³ Interview with UK-CS-03.

Individualization of risk responsibility and management also serves as a useful tool in which to blame asylum seekers for making perceived poor choices in attempting to travel to and live in the UK. In contrast, public concerns about spending on social welfare for asylum seekers was not raised as a concern in interviews. Although an Australian lawyer interviewed in this research did say that changes to Australia's SRSS acted as an impetus for helping asylum seekers find employment faster.¹³⁴ This could be because of the differentiated welfare responsibilities across levels of government. State governments are responsible for visibly consumable services such as healthcare and housing to the community while the federal government is responsible for cash payments and providing healthcare services and housing to asylum seekers. So, in effect there's no "competition" for welfare between the two populations thereby reducing political potency.

From an analysis of the rhetoric governments have used on this subject, risks to social welfare are framed by both financial and values perspectives. But as typical for much of the public-political debate regarding irregular migration and asylum, conflation and confusion between terminology appears in these passages. However again, as irregular migrants (often referred to as "illegal") do not have access to social welfare regimes, references in these passages were directed towards asylum seekers including those who had their claim for protection refused. During debate on removing access to the NHS, then Home Secretary Theresa May invokes a value of "fairness" in providing a service to those not perceived as having contributed, in much the same way that the local councillor interviewed here observed, stating:

not just about making the UK a more hostile place for illegal migrants; it is also about fairness. Those who play by the rules and work hard do not want to see ... our valuable public services, paid for by the taxpayer, used and abused by illegal migrants.¹³⁵

The opposition reflected the language of "fairness" being a paramount concern: 'the system has to be fair to all. There are considerable concerns that the system is not

¹³⁴ Interview with AU-NG-01.

¹³⁵ HC Deb 22 October 2013, vol 569, col 163.

fair.¹³⁶ The parliamentary committee investigating the proposed reforms heard from NHS witnesses that supported the changes to deter “tourist” access that would deny services to ordinarily resident patients.¹³⁷

The financial risk framing comes from the construction of asylum seekers as welfare recipients repeated by government in media settings. Sometimes referred to as being ‘freeloaders’,¹³⁸ or being there to ‘milk the welfare system’,¹³⁹ turns asylum seekers into identifiable risks that threaten the welfare regimes from within. The former Australian Immigration Minister Peter Dutton even claimed that some asylum seekers were in the country with a single intent to defraud the welfare system,¹⁴⁰ or to engage in ‘forum shopping for the best taxpayer funded lifestyle.’¹⁴¹

Using metaphor in two separate cases to describe the UK as a ‘modern day El-Dorado’,¹⁴² and the ‘land of milk and honey’,¹⁴³ there appears, with the reference to land (even fictional geography), to be an attempt to convey an imagery of asylum seekers as foreign bodies, out-of-place not only within administrative bureaucracy but also within the UK as a geographic entity. Moreover, using “El-Dorado” and “milk and honey” draws linkages with something of value (gold and food), much like the value of social welfare which is at-risk of being accessed by an outsider.

Authors that attributed social welfare exclusion to outsider nationality and community rationalities,¹⁴⁴ may have overlooked the wider impact of risk derived from altered social structures. The consequential uncertainties fuelled by these alterations, described as “heaviness”, “hardening” and “resentment” by interviewees highlights

¹³⁶ HC Deb 22 October 2013, vol 569, col 169.

¹³⁷ Immigration Bill Deb 29 October 2013, col 13.

¹³⁸ Sharri Markson, ‘A Medicon Emergency’ *The Daily Telegraph* (Sydney, 28 August 2017) 8.

¹³⁹ Simon Walters, ‘The £1m Benefits Cheats’ *Mail on Sunday* (London (UK), 18 August 2013) 1.

¹⁴⁰ Sheradyn Holderhead, ‘\$5m “Broke” Refugees Rort’ *Sunday Telegraph* (Sydney, 16 December 2018) 15.

¹⁴¹ Peta Credlin, ‘Sort Sheep from Goats’ *Sunday Telegraph* (Sydney, 4 November 2018) 95.

¹⁴² Ian Drury and James Slack, ‘Ministers’ Migrant: Accusations of “spouting Hot Air” as Arrests of Foreigners Working in UK Illegally Halves’ *Daily Mail* (London, 11 August 2015) 10.

¹⁴³ Michael Savage, ‘Landlords Face Jail over Illegal Migrants’ *The Times* (London (UK), 3 August 2015) 9.

¹⁴⁴ Freeman (n 130); Miller (n 131); Miller (n 132).

the effect that the retreat of the welfare-state and rise of individualization as described by Beck and others has had.¹⁴⁵ Awareness in the community of this retreat may be expressed by the community in terms of what is left of belonging, or an articulation of a desire to protect what social welfare value remains from further uncertainties or risks that irregular migrants in various ways manifest.

4.2.3 Conclusion

In the discussion on defining risk set out in Section 2.1 of this thesis, the following extract from Ewald was presented:

Risk presents itself as the modern approach to an event and the way in which, in our societies, we reflect upon issues that concern us. Risk is the single point upon which contemporary societies question themselves, analyse themselves, seek their values and, perhaps, recognise their limits.¹⁴⁶

It is argued here that in labelling irregular migrants and asylum seekers as perceived economic risks, governments are reflecting Australian and British societies' collective concern regarding the state of work and social welfare today, rather than a concern about irregular migrants or asylum seeker alone. In doing so, it reveals that social values including those ascribed to work and social welfare, should be considered when investigating why risk perceptions will develop in the way that they do.

It was also stated earlier in this thesis that risk knowledge is in part socially constructed and not entirely objectively measurable. The implication according to Jasanoff being risk knowledge and the process of risk identification and estimation 'can never be value free.'¹⁴⁷ As the preceding discussion has demonstrated, using the properties of social values when investigating what will influence the constitution of a perceived risk is an effective resource. Having established how and why perceived

¹⁴⁵ Beck-Gernsheim and Beck (n 137).

¹⁴⁶ François Ewald, 'Risk in Contemporary Society' (1999) 6 Connecticut Insurance Law Journal 365, 366.

¹⁴⁷ Judith A Bradbury, 'The Policy Implications of Differing Concepts of Risk' (1989) 14 Science, Technology, & Human Values 380, 381.

economic risks have been constructed, this chapter will now turn to consider the consequential effects of this perceived risk.

Conclusion

The exclusion of irregular migrants from the labour markets in Australia and the UK and asylum seekers from their various social welfare provisions has been a process of seemingly ad-hoc responses to political demands of the day. The application of a risk lens to some of these legislative and administrative changes that have occurred during the period of analysis for this thesis suggests that there is a connective tissue that runs through much of these amendments. Risk has taken on multiple configurations within this area, from being the instigator of change through to the determiner of outcomes.

Evaluating the position of irregular migrants and asylum seekers as they are perceived by government from an economic risk perspective has provided new insight into the rationale that supports current legal and policy frameworks. Combined with the security and social perspectives examined in this thesis as factors in the identification, regulation and, management of irregular migrants and asylum seekers as risk objects, this analysis brings a deeper understanding to government actions by placing them within broader changes happening to economic relations within society.

Government in both Australia and the UK have progressively come to treat certain people as economically problematic. In contrast to Beck's contemporary view of risk, it is apparent that government has been acting in the present in an anticipation of some future employment and social welfare hazards for their population since 2001. Nonetheless, in applying the adapted risk construction thesis of Hacking as set out in Chapter Two, we can observe how irregular migrants and asylum seekers are transformed from a person and into risk objects that need management.¹⁴⁸ Once the risk had been "made-up", it shows how a government with its hierarchical worldviews

¹⁴⁸ Hacking (n 19).

of risk have characterised irregular migrants and asylum seekers as risk objects¹⁴⁹ labour markets and welfare regimes as “out-of-place”.¹⁵⁰ Demonstrating the benefit of taking a more integrated approach to sociological risk analysis as called for by Taylor-Gooby and Zinn,¹⁵¹ using culturally based risk perspectives has demonstrated how holders of such a worldview will justify the exercise of its authority to preserve existing social norms and ordering.

It is not enough however for governments to merely construct irregular migrants or asylum seekers as risky objects within labour markets and social welfare regimes. There had to have been a connection made between their presence within these environments and a putative harm so that their risk management could be justified. Some authors have used their generation of quantitative impacts of irregular migrants in employment markets or asylum seekers in social welfare regimes to argue no harm can be attributed and therefore no justification exist.¹⁵²

However, by adopting a sociological approach to the risk analysis we can see that the contestability of knowledge claims has limited the influence of such experts which in turn has aided government in connecting irregular migrants and asylum seekers with a putative economic harm. Trust in experts and knowledge claims is now a significant issue for society, as such this conclusion would concur with Jasanoff’s call to interpret such data within social context cognisant of various possible risk perceptions,¹⁵³ that way we can avoid the sentiments expressed by an interview for this research worth repeating here: it’s no longer reinforcing what people are experiencing, it no longer rings true some of the things being said.¹⁵⁴ The following chapter will present an analysis of how the construction of irregular migrants and

¹⁴⁹ Hilgartner (n 18).

¹⁵⁰ Douglas (n 106).

¹⁵¹ Taylor-Gooby and Zinn (n 3) 405.

¹⁵² Bharat R Hazari and Pasquale M Sgro, ‘The Simple Analytics of Optimal Growth with Illegal Migrants’ (2003) 28 *Journal of Economic Dynamics and Control* 141; Gordon Howard Hanson, ‘The Economic Logic of Illegal Immigration’ (Council on Foreign Relations 2007) Council Special Reports No 26.

¹⁵³ Sheila Jasanoff, ‘Bridging the Two Cultures of Risk Analysis’ (1993) 13 *Risk Analysis* 123.

¹⁵⁴ Interview with AU-LA-01.

asylum seekers as risk objects has been done for the purposes of identifying them as a potential social risk.

Chapter Five – Social risks, irregular migration and asylum seeking

Introduction

Having examined the perceived security and economic risks that governments hold towards irregular migrants and asylum seekers, this final thematic chapter turns to look at how irregular migrants and asylum seekers are perceived to be a risk to Australian and British societies. The risk appears to centre around a view that irregular migrants and asylum seekers will in some deleterious way, change the cultural, ethical, or other such norm structures of Australian and British society. The aim of this chapter is to identify and analyse the construction, presence, and effect of social risk perceptions within the relevant legislative and policy frameworks applicable to irregular migration and asylum seeking.

Consistent with the two previous themes of risk, the governments of Australia and the UK have taken various legislative and policy steps to exclude irregular migrants and asylum seekers from participating in their societies. The sociological risk-based analysis contained in this chapter will add new thought to existing literature regarding government reaction to and management of perceived risks,¹ and suggests that taking a risk perspective can add new insights to the academic debate on the politics of migrant influence in national societies and cultures.²

Continuing the argument throughout these thematic chapters is the proposition that applicable frameworks are being problematised by the influence risk that has been brought to bear on them. In a more expansive filtering of “risky” and “non-risky” people, governments have added new social dimensions to the notion of

¹ Paul Slovic, Baruch Fischhoff and Sarah Lichtenstein, ‘Why Study Risk Perception?’ (1982) 2 Risk Analysis 83.

² Steven Vertovec, ‘The Cultural Politics of Nation and Migration’ (2011) 40 Annual Review of Anthropology 241.

border control. In its attempt to assert control via migration and asylum policies and protect their society from growing uncertainty, government has paradoxically achieved less control and irregular migration and asylum seeking journeys riskier. The consequences of these reflexive acts have been to create government as a new source of risk and degrade the rights position of irregular migrants and asylum seekers in new ways.

The first section examines the concepts of society and culture and how they have been debated within the context of irregular migration and asylum seeking. It also considers the initial associations made by government between irregular migrants, asylum seekers and social risks in early policy and legislative frameworks. By applying the construction of risk approach developed in Chapter Two, the section analyses how irregular migrants and asylum seekers have been “made-up” as risks to society. Once labelled as risk, new paths of regulation and mitigation have opened for government to pursue.

Following the examination of how irregular migrants and asylum seekers are made-up as social risk, the chapter then proceeds to discuss why irregular migrants and asylum seekers are perceived to constitute a potential future hazard to Australian and British societies. By applying the integrated approach to risk as suggested by authors,³ and developed in Chapter Two, there develops an argument that social insecurity caused by the pursuit of modernisation policies, has led to government attempts to secure society from further potential destabilising effects of irregular migration and asylum seeking.

³ Peter Taylor-Gooby and Jens O Zinn, ‘Current Directions in Risk Research: New Developments in Psychology and Sociology’ (2006) 26 *Risk Analysis* 397; Deborah Lupton (ed), *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge University Press 1999).

5.1 Irregular migrants and asylum seekers as a social risk

In this thematic area of risk, the effort on behalf of government in each case study jurisdiction has differed slightly to the previous two risk themes. That is, the social risk associated with irregular migration and asylum seeking has been made-up in support or in the context of, either security or economic risks. This section will examine how governments have gone about the construction of irregular migrants and asylum seekers as social invaders and as a risk to extant social norms and values. In addressing these two perceived types of social risk, this section will in-part address the first sub-question of the thematic chapters by engaging in an analysis of how governments have developed social risk perceptions of irregular migrants and asylum seekers in historical-social context.⁴

A perception that irregular migrants and asylum seekers pose a risk to some social identity aspects of Australian and British society has been expressed by political leaders and associated reporting.⁵ These risk perceptions have been expressed as: the right of Australians to live in a “cohesive society”, characterised by shared values, the English language and a “Christian way of life”⁶ or that British people must ‘retain their culture and identity.’⁷ Despite starting in far-right political circles, researchers noted that the framing and language later influenced and were adopted by mainstream politics,⁸ and mainstream media reporting on irregular migration and asylum.⁹

⁴ Paul Chynoweth, ‘Legal Research’ in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing 2008).

⁵ Mike Berry, Inaki Garcia-Blaco and Kerry Moore, ‘Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries’ (Cardiff School of Journalism, Media and Cultural Studies 2015) 39.

⁶ One Nation, 2014, Policies: immigration cited in Jackie Hogan and Kristin Haltinner, ‘Floods, Invaders, and Parasites: Immigration Threat Narratives and Right-Wing Populism in the USA, UK and Australia’ (2015) 36 *Journal of Intercultural Studies* 520, 531.

⁷ British National Party, ‘Rebuilding British Democracy’ (2005) Election manifesto 14.

⁸ Hogan and Haltinner (n 6) 535.

⁹ Glenda Cooper, Lindsey Blumell and Mel Bunce, ‘Beyond the “Refugee Crisis”’: How the UK News Media Represent Asylum Seekers across National Boundaries’ (2021) 83 *International Communication Gazette* 195, 210.

The risk definition provided in this thesis that ‘risk is the single point upon which contemporary societies question themselves, analyse themselves, seek their values and, perhaps, recognise their limits,’¹⁰ is neatly demonstrated within the above political statements. In perceiving “cultural identity”, “religious heritage”, and “shared values” as somehow “at-risk” of undesirable change, values are revealed and forces a confrontation with the limits of what is and is not acceptable risk. This is despite no measure of change being provided, nor a suggestion made as to why change would be a bad thing. How these aspects of Australian and British society are alleged to be “at-risk” by their governments is explored further in this chapter.

A constituent element of society that guides the structure of internal social relationships is its unique culture and associated practices. Although academics have been keen to express their difficulties in producing an agreed definition of culture,¹¹ others have simply suggested that is ‘the sum of all learned behaviours in a society.’¹² Aspects of culture may include, but are not limited to, religion, identity, ethnicity, and nationality,¹³ some of which were identified in the above statements. But as learned behaviour, culture can be structured through images, national narratives, and symbols each reinforced through public discourse.¹⁴ Giddens has also emphasised the prominence of tradition within these learned processes as it guides future behaviours based on collective memories of the past.¹⁵

Drawing on the above, this thesis will proceed on the understanding that society and the social is a reference to the social relationships and institutions of a community, their cultural aspects and practices that are structured around various images, narratives, and symbols. It is these components of society that are understood

¹⁰ François Ewald, ‘Risk in Contemporary Society’ (1999) 6 Connecticut Insurance Law Journal 365, 366.

¹¹ Helen Spencer-Oatey, ‘What Is Culture? A Compilation of Quotations.’ (University of Warwick 2012) 1 <<http://www.warwick.ac.uk/globalpadintercultural>>.

¹² Cookie W Stephan and Walter Stephan, *Intergroup Relations* (Routledge 2018) 117.

¹³ Vertovec (n 2) 242.

¹⁴ *ibid.*

¹⁵ Anthony Giddens, ‘Living in a Post-Traditional Society’ in Ulrich Beck, Anthony Giddens and Scott Lash (eds), *Reflexive Modernization: Politics, tradition and aesthetics in the modern social order* (Polity Press 1994) 64.

here to be perceived by government as at-risk from unacceptable forms of change or influence from irregular migrants and asylum seekers.

The processes that have been employed to make-up irregular migrants and asylum seekers as various kinds of social risks to Australia and the UK are analysed further in the following sub-sections. Using the concepts developed in Section 2.4.1 of this thesis, it will argue that the type of dynamic nominalism employed has constructed irregular migrants and asylum seekers as potential social invaders and threats to extant social norms.¹⁶ Once made-up as these types of social risk, irregular migrants and asylum seekers and their physical and cultural presence within both jurisdictions are labelled as risky thereby creating political urgency that demands a moral, if not a legislative response.¹⁷

5.1.1 Making-up social invaders risk

Irregular migrants and asylum seekers not only cross legal borders, but have been viewed as crossing social borders into Australian and British societies. In doing so, they are implied to be unacceptably changing the society and culture of resident communities through their presence and life habits. To permit measures that will prevent the social invasion and strengthen extant social practices, governments have sought to make-up the risk of social invasion through policy and rhetorical practices that connect with the unacceptable change.

But making-up “imaginaries”¹⁸ of Australian or British society as at-risk, has been a more difficult task in contrast to the security and economic risks. This may be due to an inability to link the risk to a measurable harm (i.e., how does one measure detrimental social change). Consequently, the risk of social invasion is often made and deployed as a corollary or used in support of the security and economic themes discussed earlier. Nonetheless, it is evident in the dynamic nominalism taking place,

¹⁶ Ian Hacking, ‘Making Up People’ (2006) 28 *London Review of Books* 23.

¹⁷ Iain Wilkinson, *Risk, Vulnerability and Everyday Life* (Routledge 2010).

¹⁸ Interview with UK-CS-04.

that an irregular migrant or asylum seeker as a social invader has come into being.¹⁹ The risk has been constructed and applied equally to irregular migrant and asylum seeker alike. This is due to irregular migrants and asylum seekers equally being non-citizens or residents and both not being viewed by government as entering Australian or British society through the perceived “correct” channels.

There has been significant academic consideration to the way that “out-groups” have been portrayed as invaders of resident populations and societies.²⁰ Authors such as Solomos and Shah have argued that race plays a fundamental role in the identification of migrants, including asylum seekers, as being wrongly situated in British society particularly.²¹ Others have shown how British media developed narratives of Gypsy and Traveller people as a “place invader” used ‘to describe representations of individuals or groups whom people see as inherently threatening and anxiety arousing, precisely because they enter the “wrong” place.’²² People and not just places can be associated with invasion as McKay et al,²³ and Parker²⁴ demonstrated in relation to irregular migrants and asylum seekers within Australian and British print media intentionally creating similar anxiety and moral panic.²⁵ The concept of invader has been recognised as a globalised phenomenon used as a method of decent, especially by populist ring-wing political organisation, in rejecting multicultural and liberal policies.²⁶

A leading element to the construction of social invasion risk has been the narratives of internal social safety and harmony that is maintained by borders which

¹⁹ Ian Hacking, *Historical Ontology* (Harvard University Press 2002) 106.

²⁰ See: Cooper, Blumell and Bunce (n 9) 197–202.

²¹ John Solomos, *Race and Racism in Contemporary Britain* (Macmillan 1989) 51–52; Prakash Shah, *Refugees, Race and the Legal Concept of Asylum in Britain* (Cavendish Publishing 2000) 75.

²² Peter Kabachnik, ‘Place Invaders: Constructing the Nomadic Threat in England’ (2010) 100 *Geographical Review* 90.

²³ Fiona H McKay, Samantha L Thomas and R Warwick Blood, ‘Any One of These Boat People Could Be a Terrorist for All We Know!’ *Media Representations and Public Perceptions of “Boat People” Arrivals in Australia* (2011) 12 *Journalism* 607.

²⁴ Samuel Parker, ‘“Unwanted Invaders”: The Representation of Refugees and Asylum Seekers in the UK and Australian Print Media’ (2015) 23 *eSharp* 1.

²⁵ Stanley Cohen, *Folk Devils and Moral Panics* (3rd edn, Routledge 2002).

²⁶ Hogan and Haltinner (n 6) 536.

keep-out global insecurities. In the *Secure Borders, Safe Haven* policy, the UK is presented as a safe place and society for citizens and residents, but only if its borders are made secure from unwanted incursions.²⁷ The policy introduces civics lessons for children and a citizenship test so that 'our sense of belonging and identity'²⁸ is secure. The policies of lessons and tests are, in-effect, a set of risk filtering practices that Douglas suggests sift for acceptable forms of physical and social boundary crossing. If the tests are successfully passed and rituals performed, a safe border crossing into the UK and its society can be performed.²⁹

The social invasion risk by border-crossing in unacceptable ways, was distinguished in the policy from earlier social border-crossing with the suggestion that 'in the 21st century, the challenges [to border security] are greater than ever before.'³⁰ The performative impact of identifying social invasion as qualitatively different today, thanks to globalisation particularly, opened-up a path to new forms of bureaucratic response and management. This included establishing the UK Border Agency (UKBA) because 'the future threat of illegal immigration is high,'³¹ and public perception that borders remained strong 'have a part to play in providing reassurance.'³²

There is identifiable titular and thematic continuity in the UKBA's *Protecting our Border, Protecting the Public* policy with the earlier *Secure Border, Safe Haven* policy published some six years earlier.³³ In order to protect the safe haven (British society) from the 'untold harm'³⁴ of irregular migration and asylum seeking, not only were more secure borders required, but new forms of societal protection were too. Naming society as at-risk this time opened-up internal border controls as a possibility in contrast to the UKBA's outward border focus. Civil servants claimed they would:

²⁷ Home Office, 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain' (2002) Cm 5387.

²⁸ *ibid* Foreword.

²⁹ Mary Douglas, *Risk Acceptability According to the Social Sciences* (Routledge & Kegan Paul 1986).

³⁰ Cabinet Office, 'Security in a Global Hub: Establishing the UK's New Border Arrangements' (UK Government 2007) 3.

³¹ *ibid* 21.

³² *ibid* 28.

³³ UK Border Agency, 'Protecting Our Border, Protecting the Public' (Home Office 2010).

³⁴ *ibid* 4 (Phil Woolas MP, Minister of State for Borders and Immigration).

By working together to protect our border and protect the public, *we will make the UK a hostile environment* for criminals and a safer place in which to live.³⁵

The UKBA referencing a “hostile environment” may be a semantic coincidence to that which came to fruition in the late 2010’s. However, the *Protecting our Border, Protecting the Public* policy did propose restricting access to the NHS, driving licenses, and bank accounts, many of which were enacted in the Immigration Acts 2014 and 2016 (UK). These proposals were intended to limit the possibilities of economic integration into British society by irregular migrants but as a corollary, they established new types of risk filters in addition to traditional border controls. By removing the potentiality of economic integration, the controls were intended to limit irregular migrant presence within society mitigating the risk of social border crossing into UK society.

In 2007 the Australian government explicitly stated that people with a regular migration status will ‘influence our cultural character, helping forge new attitudes and traditions.’³⁶ The positive sentiment among the resident community towards new arrivals could however it was argued, only be maintained because firm border policies stopped the arrival of irregular migrants and asylum seekers.³⁷ Controlling borders to protect or enhance perceived internal social cohesion was a theme returned to in 2013 when it was argued that a carefully managed migration programme (as opposed to an irregular/uncontrolled one) would ‘enhance Australia’s social fabric.’³⁸

The importance of creating a valued object in risk making process is demonstrated in former Immigration Minister Scott Morrison’s discussion on the creation of a new Australian Border Force (ABF). Morrison creates an imaginary of the country’s borders as a “national asset” because they hold:

³⁵ *ibid* 6 (emphasis added).

³⁶ Liberal-National Coalition, ‘Australia: Strong, Prosperous, Secure’ (2007) Election manifesto 32.

³⁷ *ibid*.

³⁸ Liberal-National Coalition, ‘Our Plan: Real Solutions for All Australians’ (2013) Election manifesto 42.

economic, social and strategic value for our nation. Our borders define a space within which, as sovereign nation states, we can apply the rule of law, operate our democracy, conduct our commerce, foster free markets, establish property rights, create the space for civil society, enable expression of culture and provide for the freedom and liberties of all of our citizens.³⁹

In emphasising the role of borders in creating a safe space for Australian society to operate (and despite the imaginary and narrative conveniently ignoring the violent invading settler/colonial displacement histories and the ongoing legacy that has for Aboriginal and Torres Strait Islander people),⁴⁰ Morrison is creating society as a valued object which as authors have noted, is something that can therefore be exposed to harm.⁴¹ Perhaps as an admission of the difficulties in quantifying exactly how society could be at-risk by an unauthorised border crossing, it is emplaced with other more easily quantified risk themes of economy and security.

Mobilising the new risk created by borders defining and nurturing the valued safe space of Australian society, Morrison announced that the new ABF would be established from an assembly of existing government agencies. As an agency that could not have existed prior to the labelling of irregular migrants and asylum seekers as various forms of risk, the ABF also recognised ‘the border risk profile has become increasingly complex and our role in protecting the community from harm is now more important than ever.’⁴² Like their British counterparts, it points recognition of a qualitative difference in the border’s relationship with and its role for society today.

In fieldwork for this thesis, interviewees referred to these narrative images of “safe space” and “invasion” as particularly useful for making-up the risk that irregular migrants and asylum seekers pose. A Home Office official suggested the government

³⁹ Scott Morrison, ‘A New Force Protecting Australia’s Borders’ (Address to the Lowy Institute for International Policy, Sydney, 9 May 2014).

⁴⁰ University of Newcastle, ‘Colonial Frontier Massacres in Australia, 1788-1930’ (16 March 2022) <<https://c21ch.newcastle.edu.au/colonialmassacres/>> accessed 2 May 2022.

⁴¹ Eugene A Rosa, Ortwin Renn and Aaron M McCright, *The Risk Society Revisited* (Temple University Press 2014) 163.

⁴² Australian Border Force, ‘ABF 2020’ (Australian Government 2016) 15.

had recently “played-on” ‘historical narratives of threat and invasion’ and ‘the UK as an island being invaded by people,’⁴³ to frame current responses particularly as it related to the increase in small boat arrivals and the New Plan for Immigration (NPI). Boat arrivals featured heavily in the Australian context described by a lawyer as: ‘I think the picture that’s portrayed of irregular migrants are boat people ready to invade.’⁴⁴

Social invasion by way of the sea had been used as part of the narrative constructing the European migrant crisis of 2015. The then UK Prime Minister David Cameron was recorded in a speech as saying:

This is very testing, I accept that, because you have got *a swarm of people* coming across the Mediterranean, seeking a better life, wanting to come to Britain because Britain has got jobs, it’s got a growing economy, it’s an incredible place to live.⁴⁵

Indicative of the shared mentality and construction process, at the same time, former Australian Prime Minister Tony Abbott encouraged the UK to ‘prevent a tide of humanity’⁴⁶ arriving in the country by adopting the measures that prevented “the tide” of irregular migrants and asylum seekers from arriving in Australia (see Appendix 4 which provides the government’s pictorial representation of exactly how the invasion would take place). Cameron’s comments were criticised for their xenophobic tone,⁴⁷ but they, and Abbott’s intervention, also reveal the “presence of the future” that has developed as part of the risk logic reorientating the irregular migration and asylum seeking frameworks of both Australia and the UK.⁴⁸

Much of the language used to make-up the threat of social invasion, for example, is future orientated: “we *will* make the UK a hostile environment”; “we *can*

⁴³ Interview with UK-CS-04.

⁴⁴ Interview with AU-NG-01.

⁴⁵ David Maddox, ‘PM Accused of Xenophobia for “swarm” of Migrants Warning’ *The Scotsman* (Edinburgh, United Kingdom, 31 July 2015) 6 (Emphasis added).

⁴⁶ Tony Abbott, ‘Slam Shut Your Borders or Pay a Terrible Price’ *Daily Mail* (London, United Kingdom, 29 October 2015) 16.

⁴⁷ Maddox (n 45).

⁴⁸ Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992) 34.

apply the rule of law”; “a swarm of people *coming*”. The bringing about of these ‘non-existent yet possible events,’⁴⁹ which threaten society and defines risk thinking and management, has stimulated the simultaneous emergence of institutions and frameworks that are designed to protect society.⁵⁰ By developing these invasion risks in support of others (such as security and economic) into the risk calculation,⁵¹ along with greater expectations of government risk management,⁵² it has forced harder control measures to maintain social structures. A predictable response suggests sociocultural theorists of hierarchical institutions to accord with their worldviews.⁵³

The making-up of irregular migrants and asylum seekers as a social invasion risk to Australia and the UK goes beyond the mere constructions of deviancy on behalf of the migrants previously argued by authors.⁵⁴ The construction relies on the creation of society as a valued object that could be harmed by a “bad” of modernity.⁵⁵ But not only is society a valued object, it is a manifestation of established norms and orders that governments, as a hierarchical organisation would seek to protect from perceived harms according to their worldviews. By rhetorically painting irregular migrants and asylum seekers to be invaders and harmful to the imagined ordered society, new paths are cleared to innovations in bureaucracies and mitigation.⁵⁶ Even though as the political leaders indicate by using future tense, it is a ‘non-existent yet possible event.’⁵⁷ Using the presence of that possible future today, to further aid making-up of irregular migrants and asylum seekers as a risk to society, is demonstrative of reorientation of migration frameworks around the logic of risk.

⁴⁹ Michael Power, ‘The Apparatus of Fraud Risk’ (2013) 38 *Accounting, Organizations and Society* 525, 530.

⁵⁰ Wilkinson (n 17) 19.

⁵¹ Beck, *Risk Society: Towards a New Modernity* (n 48) 33.

⁵² Cabinet Office, ‘Risk: Improving Government’s Capability to Handle Risk and Uncertainty’ (UK Government 2002) 13.

⁵³ Aaron Wildavsky and Karl Dake, ‘Theories of Risk Perception: Who Fears What and Why?’ (1990) 119 *Daedalus* 41, 44; Karl Dake, ‘Orienting Dispositions in the Perception of Risk: An Analysis of Contemporary Worldviews and Cultural Biases’ (1991) 22 *Journal of Cross-Cultural Psychology* 61, 66.

⁵⁴ Cooper, Blumell and Bunce (n 9); Kabachnik (n 22); McKay, Thomas and Blood (n 23); Parker (n 24).

⁵⁵ Beck, *Risk Society: Towards a New Modernity* (n 48) 3.

⁵⁶ Stephen Hilgartner, ‘The Social Construction of Risk Objects: Or, How to Pry Open Networks of Risk’ in Ben Clarke and James Short, *Organizations, uncertainties, and risk* (Westview 1992).

⁵⁷ Power (n 49) 530.

5.1.2 Making-up norms and values risk

Concurrent to invasion perceptions, irregular migrants and asylum seekers are said by government to pose a risk to society's extant value and norm arrangements. That is, an irregular migrant or asylum seeker is perceived to hold values that are incongruent with the predominant values of the Australian and British social majorities or, engage in norm practices that are at-odds with the way norms are practiced currently within each jurisdiction. It is argued here that governments have made-up a risk to norms and values by engaging in processes that identifies irregular migrants and asylum seekers as risk objects to be blamed for internal social conflict or asylum maladministration.

Much of the current literature on asylum seekers and norm or value issues tends to focus on their construction as "deviant" from the resident community. Authors have particularly focused on how media construct narratives of deviance. Pickering's review of print media in Australia identifies that the "problem" of asylum seeking is shaped by a presentation of their deviance from health, security, and racial norms which undermine predominant structures.⁵⁸ While Martin considers that asylum seeker deviance is built from a new moral panic of today because of their potential disruption to value systems and ways of life.⁵⁹ But the purpose behind the moral panic is said by the author to be a deflective mechanism used to avoid reflective engagement with the real issues present in society.⁶⁰

Other authors have variously argued that the performative act of geography and border-crossing has made irregular migrants and asylum seekers morally questionable. As discussed in previous chapters, willingness to engage in "illegal" border-crossing or work has made associations with other forms of criminality more

⁵⁸ Sharon Pickering, 'Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia' (2001) 14 *Journal of Refugee Studies* 169, 183.

⁵⁹ Greg Martin, 'Stop the Boats! Moral Panic in Australia over Asylum Seekers' (2015) 29 *Continuum* 304, 309.

⁶⁰ *ibid* 310.

plausible.⁶¹ But Devetak adds an ethical dimension to the acts. The author argues that the original border-crossing offender who is also an asylum seeker is doubly condemned for “queue-jumping” and taking a protection place that should rightfully go to a person calmly waiting in an offshore refugee camp.⁶² In either event Kabachnik has shown, these transitory acts will by their very nature, pose a challenge to the established orders of sedentary societies.⁶³ It is also suggested here that in accordance with the risk perceptions of the dominant hierarchy cultural structure of government and its supporting bureaucracy,⁶⁴ the transitory acts are viewed as outside established protocols and norms and therefore a risk behaviour. As before, the existing literature has not dealt with how governments build their perceptions of these risk which ultimately affect the regulatory frameworks that determine social and legal outcomes for irregular migrants and asylum seekers.

For asylum seekers particularly, each case study government has in various ways found it useful to make-up asylum seekers as “abusers” of the alleged “fairness” norms that asylum frameworks are said to rest upon. By framing the entirely subjective concept of fairness as “at-risk”, it has also assisted governments with enforcing their hierarchical perceptions of order and compliance. Once made-up and labelled as abusers, it has opened-up new avenues of blame and risk transference towards asylum seekers for regulatory inefficiencies while easing the curtailment of administrative processes and appeal mechanisms.

Various aspects of “fairness” as it pertains to asylum seekers and the administration of asylum frameworks permeated discussions with interviewees for this research. Some lawyers considered that a properly functioning framework would ‘make sure they [asylum seekers] are treated fairly,’⁶⁵ which if present would mean

⁶¹ Cecilia Chouhy and Arelys Madero-Hernandez, “Murderers, Rapists, and Bad Hombres”: Deconstructing the Immigration-Crime Myths’ (2019) 14 Victims & Offenders 1010.

⁶² Richard Devetak, ‘In Fear of Refugees: The Politics of Border Protection in Australia’ (2004) 8 The International Journal of Human Rights 101, 106.

⁶³ Kabachnik (n 22) 101.

⁶⁴ Wildavsky and Dake (n 53).

⁶⁵ Interview with AU-LA-02.

‘the idea of an orderly and, not taking advantage, not jumping the gun’⁶⁶ process for considering application for protection.

Civil servants though expressed the difficulties that implementing such a notion encountered in practice. A current senior Home Office official believed that ‘we want to be British and fair’⁶⁷ but that there is a ‘hardening if you like over the historic notion of British fairness and offering haven’⁶⁸ particularly in “post-industrial constituencies”. A suggestive reference to the effect of economic individualization, discussed further in section 6.4, on residents and citizens influencing perceptions regarding asylum seekers. In the reflections of a former senior Home Office official, the government resorted to other means of fairness protection once an awareness that border control had become an ineffectual:

so there was a recognition that well, maybe we can’t actually stop them coming in and out, we don’t seem to be able to do that, but the important thing, and I think ministers and officials were agreed on this, the important thing is to ensure fairness.

I could see that there were aspects of this migration, just on sort of sheer fairness issues, just wasn’t fair, and in some cases, it wasn’t safe that people were able to operate freely in our society and so something had to be done.⁶⁹

How fairness was protected as a value from the perceived risk of asylum seeking came “to be done” through blocking “clearly unfounded” appeals,⁷⁰ limiting the powers of review tribunals and curtailing judicial review rights on protection claims.⁷¹ Blame was also used as a tool to link asylum seekers as harmful objects that threatened both citizen and “genuine refugees” alike when further curtailment of appeal rights was made to stop ‘abuse of the system’:⁷²

⁶⁶ Interview with AU-LA-03.

⁶⁷ Interview with UK-CS-02.

⁶⁸ Interview with UK-CS-02.

⁶⁹ Interview with UK-CS-01.

⁷⁰ Nationality, Immigration and Asylum Act 2002 (UK) s 94(2).

⁷¹ *ibid* 101.

⁷² HC Deb 15 March 2004, vol 659, col 49.

Let me remind [honourable] Members of the delays and abuse that we are seeking to remedy. It is important that the system for asylum and immigration appeals is fair... in the interests both of genuine refugees and of the British taxpayer.⁷³

Despite these changes made well over a decade ago, asylum seekers as a risk to a perceived fairness ingrained within applicable frameworks remains a heuristic of government thinking. The most recent NPI is permeated by a stated desire to ensure fairness for both asylum seeker and British citizen. The Home Secretary Priti Patel describes the NPI as based on ‘a simple principle: fairness’ because ‘the British people are fair and generous when it comes to helping those in need.’⁷⁴ But it is not a limitless proposition being tempered by “firm” decision making,⁷⁵ and “faster” appeal mechanisms.⁷⁶

The use of blame in the making of asylum seekers as risk by government has been extended to include irregular migrants. This was done when norm and value breaking is linked to social cohesion harms. In the context of regular migration, such an argument was most vividly demonstrated by the infamous “Rivers of Blood” speech by Enoch Powell in 1968.⁷⁷ More recently irregular migrants and asylum seekers have been blamed for risking social cohesion by their presence in society. The Australian Liberal-National Coalition argued that without measures to prevent irregular migration and asylum seeking, ‘Australia remaining a stable, prosperous and peaceful community’,⁷⁸ would be at-risk. In the UK, irregular migrants were blamed in the debate for the Immigration Act 2014 (UK):

We know that most migrants are here lawfully and benefit our country, but some are not: they enter the country illegally, overstay their permission to be here, work illegally, undercutting the resident labour market, contribute to overcrowded housing, claim benefits *and damage social cohesion*.⁷⁹

⁷³ HC Deb 12 July 2004, vol 423, col 1162.

⁷⁴ Home Office, ‘New Plan for Immigration: Policy Statement’ (UK Government 2021) CM 412 3.

⁷⁵ *ibid* 4.

⁷⁶ *ibid* 27.

⁷⁷ Robert Pearce, ‘BAD BLOOD Powell, Heath and the Tory Party’ (2008) 58 *History Today* 33.

⁷⁸ Liberal-National Coalition, ‘Australia: Strong, Prosperous, Secure’ (n 36) 32.

⁷⁹ HL Deb 10 February 2014, vol 752, col 415 (emphasis added).

To prevent the alleged damage to social cohesion taking place, the Act carried new measures intended to address the issue by barring irregular migrants from social participation or integrating with society. Irregular migrants were in effect barred from renting private accommodation, it was made an offence to lease property to a person with an irregular migration status and,⁸⁰ required the reporting of suspected sham marriages.⁸¹ However, those outside the government identified a potential for such measures to become a source of risk by returning to ‘no Blacks, no Irish’⁸² policies which inflamed social tensions.

The two concepts of “fairness” and “social cohesion” were tied during debate on the Immigration Act 2016 (UK). While this piece of legislation focused heavily denying or restricting irregular migrants access to the labour market and asylum seekers from welfare services (see Chapter Four), the measures were constitutive parts of the hostile environment policy pursued by the government at the time. The Home Secretary was explicit in the government’s view that it was irregular migrants and asylum seekers breaking norms were to blame for risking social cohesion:

*I will tell the [Honourable] Lady what impacts on social cohesion. It is when our constituents see people here in this country illegally and able to continue to be in this country illegally. It is fair that we deal with those who abuse our system and who do the wrong thing. It is fair not only to people who have been born and brought up in the United Kingdom, but to those who have legitimately migrated to the UK, have played by the rules and have done the right thing.*⁸³

The concepts of fairness and social cohesion are not readily amenable to any form of objective measure. Rather they are ideals intimately bound to the social contexts in which they are being expressed meaning something to everyone but not necessarily the same thing to everyone. As a heuristic, threats to fairness which undermine social

⁸⁰ Immigration Act 2014 (UK) ss 21–22.

⁸¹ *ibid* s 50.

⁸² HC Deb 22 October 2013, vol 569, col 193.

⁸³ HC Deb 13 October 2015, vol 600, col 196 (emphasis added).

cohesion is usefully deployed when connecting the irregular migrant or asylum seeker as a risk with a potential harm.

As Douglas and sociocultural risk theorists point out, hierarchical institutions expect adherence to established norms and order,⁸⁴ any object that threatens or questions stability could expect to be identified as risky. By using blame as a primary tool for risk allocation towards irregular migrants and asylum seekers, like Martin's suggestion regarding panics,⁸⁵ it avoids reflective engagement with real issues of maladministration legal paths to migration and of the asylum and protection system. As the official quoted earlier reveals, implementing policy in an era afflicted by the reorganisation of social relationships in a post-industrial society cannot be divorced from each other.⁸⁶ But discussions on the effects of modernity on society can be avoided when as risk objects, irregular migrants and asylum seekers have been designated as the harmful object that will challenge the values of "fairness" that are said to underpin the migration and asylum systems.

5.1.3 Conclusion

The making of irregular migrants and asylum seekers into social risks has chiefly been carried-out through a dynamic nominalism that names and classifies them as objects that will harm social function and extant predominant values and norms.⁸⁷ Much of the public policy material presented here demonstrates how through rather bureaucratic activities, irregular migrant and asylum seeker social risks came into the domain of political debate and activity. Chiefly deploying blame in the associated rhetoric, government ministers set out to make connections between the perceived risk and putative harms in administrative deficiencies and social discord.

⁸⁴ Wildavsky and Dake (n 53).

⁸⁵ Martin (n 59).

⁸⁶ Interview with UK-CS-02.

⁸⁷ Hacking, 'Making Up People' (n 16).

It is further argued here that the purpose of this making-up irregular migrants and asylum seekers as social risks was to aid initiating new forms of institutional structures and legal frameworks that were built with the intention of asserting established orders.⁸⁸ Previous research had argued that the construction was for moralising purposes or panic creation,⁸⁹ however adopting the worldview of a hierarchical institution like government, reveals the cause of this construction. Douglas had conceptualised that 'dirt offends against order. Eliminating it is not a negative movement, but a positive effort to organise the environment.'⁹⁰ By making irregular migrants and asylum seekers into social risks and displacing them from judicial oversight and appeal mechanisms removes multiple threats to government's authority and preferred ordered worldviews.⁹¹

Perhaps at a much broader level, examining how governments have made-up the perceived social risks of irregular migration and asylum seeking has revealed the presence of Beck's reflexive modernization.⁹² The realisation that risks are being produced as latent side-effects of globalisation and modern societies, forces administrators to constantly consider and manage human and political induced risks. While O'Brien suggested what reflexive actions a government could take in such an era,⁹³ the Home Office official interviewed here revealed that hostile environment policies were pursued as new risk management methods when the realisation that borders couldn't be controlled occurred. The issue of reflexivity and its impact on migration frameworks is developed further in the next chapter.

A paradox has developed from the pursuit of greater control measures like the hostile environment and from the language Cameron and Abbott used to paint

⁸⁸ Wilkinson (n 17) 19.

⁸⁹ Kabachnik (n 22); McKay, Thomas and Blood (n 23); Parker (n 24).

⁹⁰ Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (ARK Paperbacks 1984) 2.

⁹¹ Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (n 90).

⁹² Ulrich Beck, 'The Reinvention of Politics: Towards a Theory of Reflexive Modernization' in Ulrich Beck, Anthony Giddens and Scott Lash (eds), *Reflexive Modernization: Politics, tradition and aesthetics in the modern social order* (Polity Press 1994).

⁹³ Peter O'Brien, 'Migration and Its Risks' [1996] *The International Migration Review* 1067.

invasion as a real but future event. When the diabolical outcomes of the hostile environment are combined with language that suggests there is disorder beyond and within Australian and British borders, it reinforces the perspective that irregular migration and asylum seeking is risky to society and that there is an overall loss-of-control. Particularly as irregular migrants and asylum seekers adapt and respond to the new control measures as part of the looping effect described by Hacking,⁹⁴ that governments then must respond to again.

5.2 Influences affecting social risk perception

Having examined how government in Australia and the UK construct social risks of irregular migration and asylum seeking, this chapter now turns to a discussion of why these risk perceptions develop and what has influenced these developments. It is argued here that demands for control in a globalised society that is perceived as increasingly uncontrolled, and the reflexive dimensions of previous migration control measures, are the influential factors behind current social risk perceptions. By identifying these influential factors, this section will in-part address the second sub-question of these thematic chapters: why have governments constructed irregular migrants and asylum seekers as a social risk?

From research conducted by Slovic, it has been demonstrated that risk judgements are influenced by multiple facets ranging from voluntariness of risk, familiarity with the risk, and risk avoidability.⁹⁵ Others have added that a person's risk perception will be influenced by their surroundings and environment, thought processes, and actions of those around them.⁹⁶ While government is naturally constituted by people possessing risk perceptions as stated above, risk perceived by

⁹⁴ Ian Hacking, 'The Looping Effects of Human Kinds' in Dan Sperber, David Premack and Ann James Premack (eds), *Causal Cognition: A Multidisciplinary Debate* (Oxford University Press 1995) 366.

⁹⁵ Paul Slovic, 'Perception of Risk' in Paul Slovic (ed), *The Perception of Risk* (Earthscan Publications 2000) 220.

⁹⁶ Lennart Sjöberg, Bjørg-Elin Moen and Torbjørn Rundmo, 'Explaining Risk Perception. An Evaluation of the Psychometric Paradigm in Risk Perception Research' (Norwegian University of Science and Technology 2004) 85 7.

government as an institution, will be determined by personal, organisational and political influences as discussed in section 2.5. Therefore, the following considers the impact of wider existing social risk perceptions within institutions as a component of government risk perceptions.⁹⁷

5.2.1 Securing society in globalised insecurity

There have been over time narratives and histories built around perceived physical vulnerabilities of Australian and British societies derived from their island-nation and distant geographies. These perceptions of vulnerability have been amplified as an awareness grows that increased, complex, and eased mobilities have denigrated the ability of traditional borders to act as risk filters that protect the safe and static social container.⁹⁸ As borders become less able to distinguish between mobilities, unwanted mobilities become a form of modern risk, which according to Beck, are ubiquitous because of their characteristic disregard for traditional nation-state borders and their regulatory roles.⁹⁹ Accordingly, the risk challenges hierarchical demands for order and certainty which marks-out irregular migration and asylum seeking for selection as a social risk.

As largely island nations, both case study jurisdictions have long national traditions or imaginaries of themselves under physical or cultural threat.¹⁰⁰ Their geography has created a physical space that is more readily definable and places natural borders between themselves and perceived hostile neighbours. That geographic reality has ensured Australian and British societies have not become accustomed, physically or socially, to people moving easily from one place to another as they have on nearby continental landmasses.¹⁰¹ Law has added that the naturally

⁹⁷ Harvey M Sapolsky, 'The Politics of Risk' (1990) 119 *Daedalus* 83.

⁹⁸ Peter Adey, *Mobility* (2nd edn, Routledge 2017) 10.

⁹⁹ Beck, *Risk Society: Towards a New Modernity* (n 48) 23.

¹⁰⁰ Nikos Papastergiadis, 'The Invasion Complex in Australian Political Culture' (2004) 78 *Thesis Eleven* 8; Oliver Daddow, 'Margaret Thatcher, Tony Blair and the Eurosceptic Tradition in Britain.' (2013) 15 *British Journal of Politics & International Relations* 210, 212–13.

¹⁰¹ J Olaf Kleist, *Political Memories and Migration: Belonging, Society, and Australia Day* (Palgrave Macmillan 2017).

“given” ‘boundaries both express and define the inside and outside of the island nation as a cohesive social unit.’¹⁰² It is argued here that these histories have influenced the making-up of irregular migrants and asylum seekers as social invader as discussed in section 5.1.1.

From the Australian perspective, academics have sought to contextualise how these island nation realities have influenced the perception that irregular migrants and asylum seekers are a manifestation of invasion fears. Perera argues that the nature of the Westphalian nation-state tradition of inward-looking predispositions are intensified by the island-nation geography.¹⁰³ The “insular-state” according to the author is amplified once again by the country’s geographic location in the Asia-Pacific hemisphere that they describe as ‘Gulliver among the Lilliputians.’¹⁰⁴ It is further suggested by Perera that extant anxieties about invasion at colonial times were exacerbated in the Second World War when Japan invaded territory in geographic proximity.¹⁰⁵ Applying these mentalities to irregular boat arrivals specifically, has left policy frameworks devoid of logic as they imprison ‘asylum seekers who arrive by boat but not those who seek asylum at airports after arriving by plane.’¹⁰⁶

In the British context, Hughes and Wood have identified similar invasion social complexes present within the social discourses of recent history. Though these anxieties were directed at Europeans – Germans and Russians – the authors remark how little explanation of the rationality behind an invasion was required by the writers who ‘simply assumed that such things formed part of the mental furniture of readers.’¹⁰⁷ More recently, the surge in small boats crossing the Channel from France and arriving in the UK has similarly created a “profoundly charged symbol” of outsiders

¹⁰² Alex Law, ‘Of Navies and Navels: Britain as A Mental Island.’ (2005) 87 *Geografiska Annaler Series B: Human Geography* 267.

¹⁰³ Suvendrini Perera, *Australia and the Insular Imagination: Beaches, Borders, Boats, and Bodies* (Palgrave Macmillan 2009) 39.

¹⁰⁴ *ibid* 13.

¹⁰⁵ *ibid* 106.

¹⁰⁶ *ibid* 97.

¹⁰⁷ Michael Hughes and Harry Wood, ‘Crimson Nightmares: Tales of Invasion and Fears of Revolution in Early Twentieth-Century Britain’ (2014) 28 *Contemporary British History* 294, 310.

entering the country.¹⁰⁸ Perhaps most remarkably, the outsider crossing an oceanic boundary that triggers considerable media attention and public policy responses, has possibly compelled comparable government initiatives in Australia and the UK to “offshore” people to the Pacific or Africa respectively.

Several of the interviewees for this research contemplated how the island nation status of each country, and narratives of invasion played multiple roles in influencing government perceptions of irregular migrants and asylum seekers as potential invaders. A former parliamentarian believed that the narrative of the island nation was ‘woven into the national identity quite a lot,’¹⁰⁹ which helped the government “set the scene” for action. An Australian lawyer concurred that ‘the picture that’s portrayed of irregular migrants are boat people ready to invade.’¹¹⁰ Reflecting a shared influence on this matter a British civil servant at the Home Office similarly noted that ‘the government has really played on ... all these historical narratives of threat and invasion.’¹¹¹

Bureaucratic advice to government ministers may have an influential role in reinforcing or perpetuating the perception of irregular migrants and asylum seekers as social invaders. In its incoming government advice to the Australian immigration minister (Peter Dutton) after the 2019 general election, the Department for Home Affairs (DHA) established Australia as an island safe space:

The world is facing the highest level of forcibly displaced people ever, generating continued border risks as people seek to travel both legally and illegally to destinations where they can live in peace and safety, like Australia.¹¹²

¹⁰⁸ Emma Jacobs, “‘Colonising the Future’: Migrant Crossings on the English Channel and the Discourse of Risk’ (2020) 4 *Brief Encounters* 37, 38.

¹⁰⁹ Interview with AU-LA-03.

¹¹⁰ Interview with AU-NG-01.

¹¹¹ Interview with UK-CS-04.

¹¹² Department of Home Affairs, ‘Incoming Government Brief’ (Australian Government 2019) 205.

Pointing to how the social risk is couched within security narratives, the department then advised the minister that the “peace and security” means ‘Australia enjoys high levels of social cohesion.’¹¹³ It could only be maintained though if DHA were adequately resourced to possess ‘the systems, processes and capabilities required to achieve effective facilitation, counter threats and mitigate risk’¹¹⁴ within a changing global environment.

A British interviewee reported colleague mentalities of ‘we also think of ourselves as being a bit separate, we’re an island,’¹¹⁵ that would influence their ministerial advice, which another said was difficult to “push-back” on, even when challenged with quantitative evidence.¹¹⁶ As Jasanoff has demonstrated, seemingly objective risk knowledge remains contingent upon, or interpreted through, contextual factors such as individual and organisation experience as well as national political culture.¹¹⁷ As such seemingly impartial bureaucratic advice on risks from irregular migration or asylum seeking must be seen through the lens of bureaucrats drawn from communities that have pre-existing perceptions of island invasion.

The manifestation of the island and safe space influences is perhaps most evident in the government military-led responses to the perceived realities of asylum seekers as invaders. The Australian government’s response to the Tampa incident was to send specialist military personnel to seize control of the ship and stop it entering the country.¹¹⁸ The military’s role was given a permanent footing in Operation Sovereign Borders which is led by ‘a military-led response to combat people smuggling and to protect our border.’¹¹⁹ In the UK context, a militarised response has also been deployed in response to the increase in small boats being used by people to cross the

¹¹³ *ibid* 193.

¹¹⁴ *ibid*.

¹¹⁵ Interview with UK-CS-02.

¹¹⁶ Interview with UK-CS-04.

¹¹⁷ Sheila Jasanoff, ‘Bridging the Two Cultures of Risk Analysis’ (1993) 13 *Risk Analysis* 123, 127.

¹¹⁸ Mary Crock, ‘In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows’ (2003) 12 *Pacific Rim Law and Policy Journal* 49, 54.

¹¹⁹ Liberal-National Coalition, ‘The Coalition’s Operation Sovereign Borders Policy’ (2013) Election manifesto 9.

channel.¹²⁰ Since 2020, air and sea assets from the defence forces were deployed as a deterrent, and a former military officer appointed to the position of “Clandestine Channel Threat Commander”.¹²¹

While the island-nation status of Australia and the UK influences the risk perspective, it also influences demands for control from government implementing risk management strategies. A former Australian parliamentarian framed the expectation in this way:

I think that the island nation thing is quite significant here. The idea that that because we are an island or though it's the same in the UK isn't it, that somehow or other, well *we do, and should be able to control those who enter much more perhaps rigorously than otherwise.*¹²²

Being “able to control those who enter” has been a theme of special relevance to recent British political discourse. Not only did concepts of “control” feature heavily in the Brexit debate,¹²³ but it also forms the rationale for the Nationality and Borders Act 2022 (UK) that the Home Secretary says enacts this principle by declaring that:

The British people have repeatedly voted *to take back control of our borders* ... the British people finally have a government who are listening to them, because our priorities are the people's priorities.¹²⁴

As quoted earlier, the Home Office official who argued the presence of mentalities that regard Britain being ‘a bit separate, we’re an island,’¹²⁵ went on to say that it fed island control narratives that were not entirely to do with total exclusion. Rather the official

¹²⁰ BBC, ‘Migrant Crossings: Use of Navy Ships to Stop Boats “Dangerous”’ (*BBC News*, 10 August 2020) <<https://www.bbc.com/news/uk-england-53719575>> accessed 5 February 2021.

¹²¹ Home Office, ‘Home Secretary Appoints Small Boat Commander’ (*GOV.UK*, 9 August 2020) <<https://www.gov.uk/government/news/home-secretary-appoints-small-boat-commander>> accessed 5 January 2021.

¹²² Interview with AU-LA-03 (emphasis added).

¹²³ Matthew Goodwin and Caitlin Milazzo, ‘Taking Back Control? Investigating the Role of Immigration in the 2016 Vote for Brexit.’ (2017) 19 *British Journal of Politics & International Relations* 450.

¹²⁴ HC Deb 19 July 2021, vol 699, col 705 (emphasis added).

¹²⁵ Interview with UK-CS-02.

suggested that it was about attempting to balance a ‘cultural link or historical link’¹²⁶ with the former Empire and Commonwealth against regulating the transit of people across the border in a globalised environment.

It is unsurprising then that border security in an uncertain global environment as a necessary precursor for internal social stability is an identifiable influential theme within the UK’s NPI. The NPI sets-out that ‘to properly control our borders we must address the challenge of illegal immigration,’¹²⁷ otherwise a range of detrimental social issues from crime to deteriorating levels of public trust in the asylum system and judiciary would materialise.¹²⁸ Though the NPI situates perceived “proper” border control challenge as ‘part of a larger global issue. This is not a challenge unique to the UK.’¹²⁹

It is in the Australian DHA’s advice to ministers that the influence of border control and global uncertainties as a risk to society can be seen. The advice establishes that DHA is responsible for achieving ‘social cohesion, the protection of our sovereignty [and], the integrity of our border.’¹³⁰ It is positioned against the notion that ‘Australia prospers significantly from being open, engaged and connected to the rest of the world’ but that there are ‘vulnerabilities that come with global interconnectedness.’¹³¹ Under the title of “Threat and risk environment” some of the factors of modernity which are said to contribute to the vulnerabilities include: ‘large scale growth in the movement of people across borders’, ‘the mass mobility of growing middle classes in emerging economies’ and ‘cheaper and more accessible air travel.’¹³² All of the new vulnerabilities will require new systems, processes and capabilities that ‘achieve effective facilitation, counter threats and mitigate risk must be as dynamic.’¹³³

¹²⁶ Interview with UK-CS-02.

¹²⁷ Home Office, ‘New Plan for Immigration: Policy Statement’ (n 74) 2.

¹²⁸ *ibid* 3.

¹²⁹ *ibid* 5.

¹³⁰ Department of Home Affairs (n 112) 7.

¹³¹ *ibid* 8.

¹³² *ibid* 193.

¹³³ *ibid*.

The perspectives and mentalities that island-state geography develop within Australian and British societies that others have written on,¹³⁴ did resonate with those that were interviewed for this research. Adopting a risk approach revealed that these extant cultural-based risk perceptions of borders and invasion,¹³⁵ are now being reconceived by government and their bureaucracies as they become reflexively aware of policies they have pursued to modernise and globalise their societies. As such, the “control” narratives that Goodwin and Milazzo identified in recent political debates,¹³⁶ ought to be reinterpreted as part of the reflexive rationality within current migration and asylum frameworks. The loss-of-control induced by the “vulnerabilities” of “global interconnectedness” are being addressed by government and their bureaucracies as new control policies, themselves generating new risks most especially for irregular migrants and asylum seekers who exercise their agency to adapt to the new control measures.¹³⁷ This theme of reflexivity within migration frameworks is returned to in the following chapter.

5.2.2 Incongruent norms and values

In addition to invasion fears, there is an identifiable perception that irregular migrants and asylum seekers, pose a risk to the extant predominant norms and values of Australian and British societies. That is, in some way their presence will change norms and values or that they will practice their own in a manner deemed unacceptable to wider society. Because of the reflexivity that results from expansionist migration and globalisation policies discussed above,¹³⁸ “Us” and “Other” distinctions become difficult to maintain,¹³⁹ leaving irregular migrants and asylum seekers as the identifiable risky “out-of-place” object that must be managed to protect order.¹⁴⁰

¹³⁴ Papastergiadis (n 100); Daddow (n 100); Kleist (n 101); Law (n 102).

¹³⁵ Perera (n 103); Hughes and Wood (n 107).

¹³⁶ Goodwin and Milazzo (n 123).

¹³⁷ Hacking, ‘The Looping Effects of Human Kinds’ (n 94).

¹³⁸ Beck, ‘The Reinvention of Politics: Towards a Theory of Reflexive Modernization’ (n 92).

¹³⁹ Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009) 37.

¹⁴⁰ Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (n 90) 35.

Whether irregular migrants or asylum seekers might be perceived as a risk to the existing norms and values of a society, may be influenced by the normative position that they are given within that society. Academia has focused on the normative placement of asylum seekers within society,¹⁴¹ which can publicly manifest in positions ranging from total social exclusion,¹⁴² to social inclusion.¹⁴³ These positions in-turn provide competing narratives in public policy advocacy. Gibney describes societies as valuing their “special” obligations (owed towards family/community) over their “general” obligations (owed towards humanity) when it comes to the normative placement of asylum seekers.¹⁴⁴ The author however attempts a middle-path in arguing for a “humanitarian principle” that requires the prioritisation of the welfare of the vulnerable if the costs (political, financial and security) of doing so are comparatively low.¹⁴⁵ Each normative approach could be thought of in terms of risk perception. Both “special” and “humanitarian” obligations may be perceived as possessing a smaller norm and value incongruence with the resident population and therefore lower risk because of their family/community connections or lower cost differentials. Whereas higher differentials may be perceived with those under a “general” obligation.

Governments have, as discussed in section 5.1.2, engaged in making-up irregular migrants and asylum seekers as expressing various kinds of risk to accepted norms and values that justify several kinds of risk management.¹⁴⁶ There has been some literature that examines why ideas regarding sovereignty and the place it holds in national political frameworks might influence perceptions regarding irregular migrants and asylum seekers. Dauvergne has argued that higher degrees of deviancy

¹⁴¹ Imogen Tyler, “‘Welcome to Britain’: The Cultural Politics of Asylum” (2006) 9 *European Journal of Cultural Studies* 185; Winnifred R Louis and others, ‘Why Do Citizens Want to Keep Refugees out? Threats, Fairness and Hostile Norms in the Treatment of Asylum Seekers’ (2007) 37 *European Journal of Social Psychology* 53; Alexander Betts, ‘The Normative Terrain of the Global Refugee Regime’ (2015) 29 *Ethics & International Affairs* 363.

¹⁴² Migration Watch UK, ‘Illegal Immigration’ (2019) MW 434.

¹⁴³ Amnesty International, ‘Families Belong Together’ (2019)

<<https://www.amnesty.org.uk/issues/refugees-migrants-and-asylum>> accessed 6 March 2021.

¹⁴⁴ Matthew Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004) 10.

¹⁴⁵ *ibid* 231.

¹⁴⁶ Pickering (n 58); Martin (n 59); Devetak (n 62).

may be attributed by those who see the exercise control over all forms of migration as an expression of the “last bastion of sovereignty”.¹⁴⁷ Alternatively, those that hold more liberal or egalitarian views of sovereignty, will argue for the greater economic equality said to be gained through free movement across borders.¹⁴⁸ How then a society perceives issues of sovereignty may well influence a positive or negative risk association with irregular migration and asylum seeking.

In interviews for this research, the ascription of negative risk to the perceived values and behaviour of irregular migrants and asylum seekers by the government was identified in the rhetoric that justified recent policy decisions. A former parliamentarian said that the government rhetoric was ‘casting aspersions on their [irregular migrants and asylum seekers’] character, I guess they’re sort of seen as somewhat perhaps more undesirable.’¹⁴⁹ The same interviewee suggested that procedures are now installed to ensure “undesirable” incongruence with existing perceived Australian norms and values is filtered for:

this sense of who we are prepared to have enter our community as full members, makes me kind of think about citizenship testing and values testing which we’re very much focusing on now this idea that we want people to be like us, if they’re going to be part of our community, perhaps there’s this idea that we don’t really know, the very idea of being irregular is not just irregular in their arrival but irregular in the sense that would not have chance to check them out thoroughly to know whether they’re going to meet the standards required for entry.¹⁵⁰

The tests referred to form part of the regular migration programmes and must be carried-out prior to grants of permanent residency and citizenship in Australia and the UK.¹⁵¹ However, their existence reveals the public policy concern about perceived risks

¹⁴⁷ Catherine Dauvergne, ‘Sovereignty, Migration and the Rule of Law in Global Times’ (2004) 67 *The Modern Law Review* 588, 544; Catherine Dauvergne, ‘Irregular migration and asylum seeking, State Sovereignty and the Rule of Law’, *Research Handbook on International Law and Migration* (Edward Elgar Publishing 2014).

¹⁴⁸ Myron Weiner, ‘Ethics, National Sovereignty and the Control of Immigration’ (1996) 30 *The International Migration Review* 171, 182.

¹⁴⁹ Interview with AU-LA-03.

¹⁵⁰ Interview with AU-LA-03.

¹⁵¹ Department of Home Affairs, ‘Citizenship Interview and Test’ (2 September 2021)

<<https://immi.homeaffairs.gov.au/citizenship/test-and-interview#>> accessed 7 May 2022; Home Office,

of migrant norm and value incongruence. Irregular migrants and asylum seekers by the nature of their legal status fall outside these types of testing regimes and could therefore only be considered risky outsiders. Their values and norms are unable to be checked for consistency and they are unable to complete the formalities or rites of passage into Australian and British society.

The Australian government has long viewed those that arrive by boat as a particularly risky cohort of irregular migrant or asylum seeker. A lawyer that works with irregular migrants and asylum seekers observed that their mode of arrival is used to demonstrate value difference with the Australian community: ‘I suppose it’s very foreign to most Australians, that idea of just hoping on a boat and trying your luck in the sea.’¹⁵² Examining the events that surrounded the *MV Tampa* typifies how the perceived “very foreign” behaviour associated with irregular migrants and asylum seekers arriving by boat may be acted upon.

Judicially, the government intervening to prevent their entry was considered part of a government’s duty to protect society from such risks. In denying a writ for habeas corpus that would prevent the Tampa asylum seekers from being sent to Nauru, the Federal Court of Australia held that:

The power to determine who may come into Australia is so central to its sovereignty that it is not to be supposed that the Government of the nation would lack under the power conferred upon it directly by the Constitution, the ability to *prevent people not part of the Australian community, from entering*.¹⁵³

The reference to “sovereignty” and membership of the “Australian community” in the judgment recalls the criteria for entry to Australia established in the original WAP case law.¹⁵⁴ The case law articulated proximity to ‘language, bringing-up, education,

‘Official Life in the UK Learning Zone’ (2022) <<https://www.officiallifeintheuk.co.uk/shop>> accessed 7 May 2022.

¹⁵² Interview with AU-NG-01.

¹⁵³ *Ruddock v Vadarlis* [2001] FCA 1329 (Federal Court of Australia) [193] (emphasis added).

¹⁵⁴ *Ah Yin v Christie* 1907 4 CLR 1428 (High Court of Australia); *Potter v Minahan* 1908 7 CLR 277 (High Court of Australia); *Donohoe v Wong Sau* 1925 36 CLR 404 (High Court of Australia).

sentiment, marriage'¹⁵⁵ as indicative measures that would have to be demonstrated by a migrant prior to their admission to the Australian community. Being unable to test these measures to ensure that irregular migrants and asylum seekers are “like us” and engaging in the “very foreign” behaviour of boat-crossing, perceptively exposes irregular migrants and asylum seekers to claims of social risk by government.

The relevance of social risks as norm and value incongruence, came a few weeks after the Tampa events in an election speech by then Prime Minister John Howard who stated: ‘we will decide who comes to this country and the circumstances in which they come.’¹⁵⁶ The government also wrongly claimed via misleading photographs that asylum seekers had thrown their children into the sea to force their rescue by the Navy.¹⁵⁷ According to Trioli, the effect of ‘the slur - the appalling accusation that people would be prepared to kill their own children to get into Australia - has never really gone away.’¹⁵⁸ Not only had the Tampa asylum seekers been rejected from the Australian community and blamed for their risky attempted entry method, they had been rejected on the perception of an extreme incongruence of a child-parent relationship with that practiced in Australia.

In contrast to the Australian context, the prevalence of incongruence with norms and values risk perceptions was not heavily featured in discussions with British interview participants. A current Home Office official suggested that risk narratives of “cultural invasion” from the government ‘would make sense’¹⁵⁹ but reflected that their own cultural and ethnic background may have made them less sensitive to noticing such arguments. Other officials quoted earlier returned to perceived breaches of British notions of “fairness” being at-risk if irregular migration and asylum seeking was

¹⁵⁵ *Donohoe v Wong Sau* (n 154) para 408 per Isaac J.

¹⁵⁶ John Howard, ‘Transcript of the Prime Minister the Hon John Howard MP Address at the Federal Liberal Party Campaign Launch’ <<https://electionspeeches.moadoph.gov.au/speeches/2001-john-howard>>.

¹⁵⁷ Senate Select Committee on a Certain Maritime Incident, ‘A Certain Maritime Incident’ (Australian Parliament 2002).

¹⁵⁸ Virginia Trioli, ‘Reith Rewrites History to Hide the Shame of Children Overboard Lie’ (*The Sydney Morning Herald*, 1 September 2012) <<https://www.smh.com.au/politics/federal/reith-rewrites-history-to-hide-the-shame-of-children-overboard-lie-20120831-255u3.html>> accessed 6 August 2021.

¹⁵⁹ Interview with UK-CS-04.

allowed to continue. One official suggested ‘that there were aspects of this migration just on sort of sheer fairness issues, just wasn’t fair.’¹⁶⁰ While another believed that ‘the historic notion of British fairness and offering haven’¹⁶¹ were being hardened because of irregular migration and asylum seeking.

A British lawyer believed the “hardening” of fairness perceptions was influenced by wider social issues. They described a perception of local authority provided services ‘being at a breaking point’ and therefore the ‘system can’t take anymore, and we need to bleed the system.’¹⁶² Second, they linked government policy towards irregular with wider community dissatisfaction of the criminal justice system:

if you look at sexual offences against children or white-collar crime, these are all areas where people have been pushing for a long time in terms of, this isn't really working the sentence is so low, people do really heinous crimes and coming up next year this is a problem, but rather than address these really expensive issues it is much easier to focus on irregular migrants.¹⁶³

This perspective would tend to support extending Martin’s conclusion about the creation of moral panics to avoid reflective engagement with other social issues.¹⁶⁴ To harden frameworks and thus avoid reflective engagement, the risk was mobilised and ascribed to irregular migrants and asylum seekers. Much like the Australian government’s shifting of risk and blame onto the Tampa asylum seekers for throwing their children overboard and Home Office officials describing Channel crossing ‘from a safety point of view, it's very, very risky’¹⁶⁵ which is ‘putting lives at risk.’¹⁶⁶

The interviews and material produced different perspectives on the issue of norm and value difference influencing social risk perceptions of government towards

¹⁶⁰ Interview with UK-CS-01.

¹⁶¹ Interview with UK-CS-02.

¹⁶² Interview with UK-LA-01.

¹⁶³ Interview with UK-LA-01.

¹⁶⁴ Martin (n 59) 310.

¹⁶⁵ ‘Five “migrants” Picked up off Northern France’ *BBC News* (24 November 2018) <<https://www.bbc.com/news/uk-england-kent-46328818>> accessed 7 August 2021.

¹⁶⁶ ‘Channel Crossings: Hundreds More Migrants Reach UK after Record Day’ *BBC News* (5 August 2021) <<https://www.bbc.com/news/uk-england-kent-58100694>> accessed 7 August 2021.

irregular migrants and asylum seekers. In the Australian context perceived differences are used in political contexts and administratively supported via formalised testing. The case law permits the notion that to implement sovereignty means differentiating on norm and value grounds most explicitly supporting Dauvergne's argument that perspectives of sovereignty impact the construction of irregular migrants and asylum seekers.¹⁶⁷ While less apparent in the British context, the allusions to unquantifiable concepts of fairness and similar value testing regimes that regulate entry into the British community, could substantiate a view that perceived norm and value differences influence government's social risk perceptions.

The issue of fairness being at-risk, also raises the possibility that reflexive modernization and individualization are influencing government perceptions towards irregular migrants and asylum seekers.¹⁶⁸ In the wake of globalisation and public policy austerity breaking down traditional forms of cohesion in favour of individualism, we could see society being sensitive towards "fair" distribution of resources. While Martin suggests reflective avoidance,¹⁶⁹ it is argued here that the hardening is an act of reflective preservation as described by O'Brien.¹⁷⁰ Further, as existing social norms break down, irregular migrants and asylum seekers are forced into an act on individualization by taking-on objectively risky journeys as they seek to write their own biographies.

These government interventions and policies also support a view of Gibney's obligation differentiation as essentially risk perception.¹⁷¹ Those migrants (in all forms) deemed to have lower norm and value differential and lower risk (via testing), are granted access to resident communities in preference over those with untested and possibly more risky differentials. Even though norm and value testing in regular

¹⁶⁷ Dauvergne, 'Sovereignty, Migration and the Rule of Law in Global Times' (n 142); Dauvergne, 'Irregular migration and asylum seeking, State Sovereignty and the Rule of Law' (n 142).

¹⁶⁸ Beck, 'The Reinvention of Politics: Towards a Theory of Reflexive Modernization' (n 92).

¹⁶⁹ Martin (n 59).

¹⁷⁰ O'Brien (n 93).

¹⁷¹ Gibney (n 144).

migration programmes reflexively involves an “ending the other,”¹⁷² irregular migrants and asylum seekers are more easily identified as risky out-of-place objects that have failed to enter society through the risk filtering processes of visas, airports, and values testing.¹⁷³

5.2.3 Conclusion

The above analysis has pointed to governmental perceptions of irregular migrants and asylum seekers as a social risk being informed by the social insecurities induced by modernisation and the predisposition of hierarchies to identify disorder as inherently risky. As Australia and the UK pursued policies that exposed their societies to greater uncertainties, it forced policy-makers to consider the reflexive effects on migration or asylum policies. Most evident in the policy documents that use globalisation to draw-in previously distant events, in both time and space, as compelling reasons to enact migration measures today which are justified through the language of “control”.

The usefulness of integrating Douglas’s sociocultural risk perspectives with Beck’s risk society is also demonstrated in this analysis. Understanding that governments as hierarchies will perceive behaviour that challenges established norms or values as risk that ought to be controlled for, explains the continual pursuit of migration control.¹⁷⁴ This is in spite of the self-sustaining dynamic of control and loss-of-control that this creates within applicable policies, as irregular migrants and asylum seekers exercise their agency in responding to newly imposed control measures. Accounting for the role culture plays in irregular migrant risk identification and management also challenges the risk society view that risk awareness will force a unification in effort and purpose to confront new dangers. It instead explains the continued pursuit state-based control of irregular migration and asylum seeking rather

¹⁷² Beck, *World at Risk* (n 139) 37.

¹⁷³ Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (n 90) 35.

¹⁷⁴ Wildavsky and Dake (n 53).

than Beck's prediction of risk awareness creating a culture of responsibility that transcends borders.¹⁷⁵

Conclusion

This final thematic chapter of the thesis has provided an analysis of how various government perceived social risks poses by irregular migrants and asylum seekers to Australian and British society have on applicable frameworks. While there have been historical risk perceptions towards those characterised as not "community members", the discontinuity between then and now is revealed how the social risk posed by irregular migrants and asylum seekers is made-up in-part to support more quantifiable economic and security risks.¹⁷⁶

By appreciating the role of hierarchical risk perceptions that identify disorder as inherently dangerous, the risk perception that irregular migrants and asylum seekers could be dangerous to society comes into view. The paradox of making-up irregular migrants and asylum seekers in this way, leading to a greater sense of a loss-of-control and migrants exercising agency in attempting to avoid subsequent control measures continues to breed new risk.

The findings also extend the conclusions made by previous authors on the outcome of the making-up process.¹⁷⁷ In the social risk setting, the aim of the process has been a moralising one, with the objective to displace risk onto the irregular migrant or asylum seeker via blame and moral irresponsibility. These "sins" according to Douglas are particularly egregious to hierarchical organisations that so strongly value adherence to norms.¹⁷⁸ As governments they have been able to use that moralised perception to enact regulations intended to control couched in the language of "fairness" and "social cohesion". These conclusions also add to existing literature

¹⁷⁵ Beck, *World at Risk* (n 139) 57.

¹⁷⁶ Hacking, 'Making Up People' (n 16).

¹⁷⁷ Kabachnik (n 22); McKay, Thomas and Blood (n 23); Parker (n 24).

¹⁷⁸ Mary Douglas, *Risk and Blame: Essays in Cultural Theory* (Routledge 1992).

regarding migrant experience of risk,¹⁷⁹ by arguing that potential host-state social policy mitigation measures may be forcing irregular migrants and asylum seekers into blame worthy acts when attempting to negotiate government-imposed risk filters.

¹⁷⁹ O'Brien (n 93); John Tulloch and Deborah Lupton, *Risk and Everyday Life* (Sage 2003); Allan M Williams and Vladimir Baláž, 'Migration, Risk, and Uncertainty: Theoretical Perspectives' (2012) 18 *Population, Space and Place* 167.

Chapter Six – Consequences of risk in irregular migration and asylum seeking frameworks

Introduction

This penultimate chapter presents an analysis and discussion of the consequences from government perceived risks within the irregular migration and asylum policy and legal frameworks of Australia and the UK. Generally, these consequences manifest in a paradox where policies intended to provide risk mitigation have instead generated new risks and instigated a loss-of-control and unaccountability that erodes the rights position for irregular migrants, asylum seekers along with the international standing of Australia and the UK. However, the range of risk mitigation policies that each jurisdiction has developed, points towards an ongoing and invigorated state that seeks to address modern risks and not a cosmopolitan coming-together that Beck had suggested.

The first section discusses the prevalence of pre-emptory and precautionary policies within migration and asylum frameworks as they relate to attempts to control harms that may, or may not, emanate from irregular migration or asylum seeking. This discussion leads to a broader analysis of the presence and effect of reflexivity within these frameworks. Reflexivity is forcing governments to confront risks produced from the policy choices of modernity with more risk mitigation policies. However, this has created an internal dilemma within these frameworks as control measures, perhaps inadvertently, created an overall loss-of-control.

It has also become apparent in government policy responses to irregular migration and asylum seeking, that there are active attempts to renegotiate the distribution of risk responsibilities. Sometimes with agreement of other parties, and at other times through vacating the field, a theme of organized irresponsibility regarding risk now permeates irregular migration and asylum frameworks in both Australia and

the UK. This subject is explored in the third section. The examination of risk consequences then turns to an analysis of individualization and how irregular migrants, asylum seekers, and the wider community seek to manage and negotiate risks that have been imposed upon them by government. It demonstrates that the state has actively sought to transfer risk responsibility away from itself and towards others and limiting the ability of others to manage risk through criminalisation. An area of the crimmigration thesis that has not been examined.

The final section of this chapter presents the alternative risk perception narrative of irregular migration and asylum seeking to that generated by government in both case study jurisdictions. It is argued here that the generation of competing risk knowledge claims by sub-political organisations exposes the systematic violation of irregular migrants' rights. Despite the risk knowledge competition, it has not yet forced the joining together in a "global cosmopolitan moment" that address risk consequences which Beck had imagined.¹ But the sub-political has taken a lead role in exposing the organized irresponsibility manifested in the "hostile environment" and unlawful detention of citizens and residents which are considered here.

6.1 Precautionary and pre-emptory risk mitigation policies

The use and presence of pre-emption and precaution stems from a switch to a risk management ethos within the migration and asylum frameworks of Australia and the UK. Government of both jurisdictions have been forced to act on their risk perceptions of irregular migrants or asylum seekers even if they lack the necessary information to effectively do so. Although current literature centres on the operation of a "precautionary principle" alone,² in the context of irregular migration or asylum, it is suggested here that pre-emption acts to complement precaution as irregular migrants

¹ Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009) 94.

² Ahmet Coskun Acik, Paul Trott and Emre Cinar, 'Risk Governance Approach to Migration: A Viable Alternative to Precautionary Management' (2022) 25 *Journal of Risk Research* 468.

and asylum seekers exercise their agency anticipating and responding to precautionary measures.

The precautionary principle itself stems from international environmental law. The principle suggests that if there is a strong concern that something may have consequences that are environmentally harmful, acting now without evidence is better than acting too late when the appropriate evidence is available.³ As an act of government, Sunstein describes precaution as regulators taking steps ‘to protect against potential harms, even if causal chains are unclear and even if we do not know that those harms will come to fruition.’⁴ Using precaution can defer the evidentiary difficulties and risks that may arise from new developments, but as this thesis argues, it relocates or generates risk in other culturally acceptable times and places.⁵

It was suggested by Beck that the pressures of decision-making in the absence of knowledge generated by modern developments can be alleviated by precaution. It averts political dangers for governments who must today provide complete risk-free guarantees, which are made easier to give when the political costs of omission are far greater than of overreaction.⁶ That therefore allows for the worst possible outcomes from the risk event to be considered justifiable and in-turn legitimises implementing the most extreme forms of precautionary measures.⁷ The UK government appears to acknowledge this obligation as described by Beck on government to take the steps necessary to protect its citizenry. It notes that ‘handling risk has become increasingly central to the business of government’⁸ and that ‘over time the public has come to expect fewer external risks’⁹ demanding government be “guarantors” of their security.

³ Philippe Sands and others, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018) 229.

⁴ Cass Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press 2005) 4.

⁵ *ibid* 5.

⁶ Beck, *World at Risk* (n 1) 54.

⁷ *ibid* 119.

⁸ Cabinet Office, ‘Risk: Improving Government’s Capability to Handle Risk and Uncertainty’ (UK Government 2002) 4.

⁹ *ibid*.

Across both case study jurisdictions, the use of immigration detention is a leading indicator of a precautionary risk mitigation policy. It was noted in Section 1.4.5 of this thesis, that authors have variously viewed detention as an exercise of sovereignty,¹⁰ racial exclusion,¹¹ or for health and quarantine purposes.¹² Instead it is argued here that detention is a precautionary risk policy. Detention can mitigate the perceived risk of a person engaging in work, social integration or even criminal activities prior to their removal or migration status resolved to the satisfaction of the detaining state. The decision though to implement a policy of precautionary detention of irregular migrants and asylum seekers is not done on an objective evaluation of evidence, but as Wilsher notes reflecting Beck's position on the political aspect to precaution, as 'a *political assessment* about the respective costs and benefits of releasing such detainees.'¹³

The use of detention today serves to protect against risks perceived as qualitatively different from previous eras. Generated and multiplied by technological and sociological advances, detention regimes of the past were not deemed suitable to meet the people manifesting these new risk forms. Governments have deemed the possibility of any risk event occurring from an irregular migrant or asylum seeker, such as a terror attack, no matter how low the likelihood, as unacceptable due to the potentially catastrophic impact it could have.¹⁴ Accordingly, governments are forced to 'feign control over the uncontrollable',¹⁵ and invent new mitigation measures, such as expansive detention capacity, compulsory or indefinite detention, and even offshoring detention to meet community demands for effective risk management.

¹⁰ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press 2012); Eve Lester, *Making Migration Law: The Foreigner, Sovereignty, and the Case of Australia* (Cambridge University Press 2018).

¹¹ Don McMaster, *Asylum Seekers: Australia's Response to Refugees* (Melbourne University Press 2001); James Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (2nd edn, Cambridge University Press 2007).

¹² Alison Bashford and Carolyn Strange, 'Asylum-Seekers and National Histories of Detention' (2002) 48 *Australian Journal of Politics & History* 509.

¹³ Wilsher (n 10) 208 original emphasis.

¹⁴ Filip Gelev, "'Risk Society' and the Precautionary Approach in Recent Australian, Canadian and UK Judicial Decision Making' (York University 2009) Research Paper 5/2009 6.

¹⁵ Ulrich Beck, 'The Terrorist Threat: World Risk Society Revisited' (2002) 19 *Theory, Culture & Society* 39, 43.

In the Australian context, the cost and benefit calculation has arrived at a policy of compulsory indefinite detention of irregular migrants and asylum seekers as a suitable precautionary policy against all perceived thematic risks. An irregular migrant or asylum seeker in Australia whether they have arrived without a visa or have had their visa revoked must be detained. The policy also applies to those that cannot be deported because of non-refoulement obligations and are prohibited from being issued any other visa form.¹⁶ In a report by the Commonwealth and Immigration Ombudsman, it was found that indefinite detention had meant that a person who had their visa cancelled because of criminal conviction, and were thus an irregular migrant, may spend more time in immigration detention than in prison for their original sentence.¹⁷ Because of this policy, for all irregular migrants and asylum seekers in Australia, the indefinite detention precaution creates a legal liminality, described as “legal limbo”,¹⁸ where responsibility for resolving ongoing detention is avoided by government.

This policy stands in contrast to that used in the UK where this type of precautionary detention is limited for reasons of identity checks, pre-removal, or where it is “conducive to the public good”.¹⁹ Although there is no statutory limit on periods of detention in the UK,²⁰ the practice of precautionary immigration detention is tempered to the above by reasons of case law. The *Hardial Singh* judgment limited detention to reasons of statutory purpose and for only as long as necessary to achieve that purpose.²¹ But also, the detention must only be necessary in all the circumstances

¹⁶ Migration Act 1958 (Cth) ss 501E, 501F.

¹⁷ John McMillan, ‘Administration of S501 of the Migration Act 1958 as It Applies to Long-Term Residents’ (Commonwealth and Immigration Ombudsman 2006) 01–2006 10.

¹⁸ Samuel Duckett White, ‘God-like Powers: The Character Test and Unfettered Ministerial Discretion’ (2020) 41 *Adelaide Law Review* 1, 22.

¹⁹ Stephanie Silverman, Melanie Griffiths and William Walsh, ‘Immigration Detention in the UK’ (The Migration Observatory 2021) 2.

²⁰ Gina Clayton and Georgine Firth, *Immigration and Asylum Law* (8th edn, Oxford University Press 2018) 523.

²¹ *R v Governor of Durham Prison ex parte Hardial Singh* 1984 1 WLR 704 (High Court of England and Wales).

of the individual case considered together,²² therefore restricting blanket detention as in the Australian context. Finally, and again in contrast to the Australian position, there are time limits on how long a person may be in detention: ‘where there is no prospect of removing the deportee within a reasonable time, then detention becomes arbitrary and consequently unlawful under Article 5 and the deportee must be released immediately.’²³ Despite these restrictions however, advocates for detainees note that rather than detention being used sparingly, the Home Office employs ‘administrative detention for prolonged periods.’²⁴

The two approaches to the detention of irregular migrants and asylum seekers might well be viewed as strong and weak versions of precaution.²⁵ In Australia’s strong version of precaution, the burden of proof appears to rest with the entire irregular migrant or asylum seeker cohort that the possibility of a harmful event being carried-out is zero, an impossible standard to meet. In this scenario Sunstein had suggested that ‘if we take costly steps to address all risks, however improbable they are, we will quickly impoverish ourselves.’²⁶ But when the most significant costs are external to the decision-maker, it makes the “political assessment” of detention as described by Wilsher, more palatable.²⁷ Judicial oversight and regional law however, have forced the UK government into a weak version of precaution. One that balances the burden of proof to the government proposing detention to reduce the risk possibility against demands for evidence of actual harm.

Precaution has also become evident in the deference paid to evidentiary difficulties encountered in the association between asylum and security following the September 11 terror attacks. The Anti-terrorism, Crime and Security Act 2001 (UK) Act

²² *The Queen on the Application of I v Secretary of State for the Home Department* 2002 EWCA Civ 88 (Court of Appeal (England and Wales)) Dyson LJ.

²³ *R (Mahfoud) v Secretary of State for the Home Department* 2010 EWHC 2057 Admin (High Court of England and Wales) [6] Hickinbottom J.

²⁴ Bail for Immigration Detainees, ‘About Immigration Detention’ (*About Immigration Detention*) <https://www.biduk.org/pages/About_Immigration_Detention> accessed 14 February 2022.

²⁵ Sunstein (n 4) 18.

²⁶ *ibid* 25.

²⁷ Wilsher (n 10).

gave the Home Secretary powers to manage a person certified as a “suspected international terrorist” – meaning a person whose presence in the UK the Home Secretary reasonably believed is a risk to the country’s national security and is suspected of being a terrorist.²⁸ As Fenwick notes the “reasonable belief” standard is below that required by criminal law’s “beyond reasonable doubt”. Being a lower evidential bar to clear had important justice implications because of the consequences for the “suspected international terrorist’s” subsequent physical management.²⁹ Once certified by the Home Secretary the person could be deported or removed or;³⁰ in effect detained indefinitely.³¹

Exclusion as an act of precaution has also been used to exclude asylum seekers from a grant of protection when an absence of knowledge about the applicant is claimed by the decision-maker. In 2005 the government promised to introduce ‘much tougher rules to deny asylum’³² to those accused of serious crime and terrorism. The Immigration, Asylum and Nationality Act 2006 (UK) (IAN Act) legislated an interpretation of Article 1(F)(c) of the Refugee Convention,³³ to make clear that acts of committing, preparing, or instigating terrorism or of encouraging others to do so would result in their exclusion from asylum.³⁴ Even though the Article has been available to use by government since the Convention came into force, defining “terrorism” in UK domestic law has been a somewhat tortuous process.³⁵ By legislating a definition Walker notes that s 54 of the IAN Act ‘seeks to ensure such claims to asylum can be more readily denied.’³⁶ The IAN Act also removed protection from non-

²⁸ Anti-terrorism, Crime and Security Act 2001 (UK) s 21.

²⁹ Helen Fenwick, ‘The Anti-Terrorism, Crime and Security Act 2001: A Proportionate Response to 11 September?’ (2002) 65 *The Modern Law Review* 724, 757.

³⁰ Anti-terrorism, Crime and Security Act 2001 (UK) s 22.

³¹ *ibid* 23.

³² Home Office, ‘Controlling Our Borders: Making Migration Work for Britain’ (2005) Cm 6472 18.

³³ Convention relating to the Status of Refugees.

³⁴ Immigration, Asylum and Nationality Act 2006 (UK) s 54.

³⁵ Sarah Singer, ‘Terrorism and Article 1F(c) of the Refugee Convention Exclusion from Refugee Status in the United Kingdom’ (2014) 12 *Journal of International Criminal Justice* 1075.

³⁶ Clive Walker, ‘The Treatment of Foreign Terror Suspects’ (2007) 70 *Modern Law Review* 427, 437.

refoulment if there were “reasonable grounds” for regarding an applicant for protection as a danger to national security.³⁷

During the committee stage for the IAN Bill, the responsible minister was questioned on the necessity of these clauses presuming that there had been instances of terrorists being granted asylum. The minister admitted however:

I say quite candidly that that question is difficult to answer, simply because *we do not know the answer*. I must stress that the new clause has not only been introduced as a result of 7 July, although those events obviously brought things into stark focus. We start from the premise that there will potentially be instances of people being granted asylum who perhaps should not have been granted it, but we are talking about a small number.³⁸

Realising that the government “do not know” or that there were unknowns was turned into a justification for deviating from or lowering previously accepted principles of humanitarian and refugee law. The Home Secretary alluded to deviating from the principles because of the unknowns stating that ‘those who drew up the European convention [for Human Rights] and the refugee convention could not have dreamt of the act that took place on 11 September.’³⁹ By lowering the standards of proof the measures take on a precautionary nature by allowing for the easier mitigation of the perceived risks posed by asylum seekers.

An Australian interviewee working on irregular migrant and asylum seeker status resolution, reflected upon the effect that precaution has on the administrative implementation of evidentiary standards for their clients. For a person to be granted a visa, the minister must be satisfied that they have passed the “Character Test”.⁴⁰ The minister who is empowered to grant or cancel a visa need only “reasonably suspect” that a person does not pass the Character Test to cancel or refuse the grant of a visa to

³⁷ Immigration, Asylum and Nationality Act 2006 (UK) s 55 implementing Art 33(2) of the 1951 Refugee Convention.

³⁸ Immigration, Asylum and Nationality Bill Deb 27 October 2005, col 285 (emphasis added).

³⁹ HC Deb, 19 November 2001, vol 375, col 29.

⁴⁰ Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth) ss 8–25 inserting s 501 into the Migration Act 1958 (Cth).

a non-citizen.⁴¹ The interviewee had observed in their work that now a “no risk” standard applied to irregular migrant and asylum seeker Character Test assessments:

I think that seems to permeate a little bit in the government thinking that all of this is risk, and we don't want any risk. No politician wants to be the one to let it happen. What is the acceptable level of risk in the community? Do we break-up this family or not? But there's a risk.⁴²

The Ministerial Directions direct decision-maker civil servants on how to interpret and apply the Character Test and formalises many of the government’s risk perceptions regarding non-citizens including irregular migrants. Decision-makers are to have regard to:

- the Australian community’s tolerance for any risk of future harm;⁴³
- the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal activity or other serious conduct;⁴⁴
- the likelihood of the non-citizen engaging in further criminal or other serious conduct and;⁴⁵
- the Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is an unacceptable risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to cancel the visa held by such a person.⁴⁶

⁴¹ Migration Act 1958 (Cth) The person will fail the character test for numerous reasons including: s 501 (6)(a) having a substantial criminal record; (b) is suspected of being in a gang, (ba) or suspected to be involved in people trafficking; (d) there is a risk that they would be involved in criminal conduct, harass a person, or represent a danger to the Australian community.

⁴² Interview with AU-NG-01

⁴³ Hon David Coleman MP, ‘Direction No. 79 - Migration Act 1958 - Direction under Section 499 Visa Refusal and Cancellation under S501 and Revocation of a Mandatory Cancellation of a Visa under S501CA’ para 9.1.2(1).

⁴⁴ *ibid* 9.1.2(2)(a).

⁴⁵ *ibid* 9.1.2(2)(b).

⁴⁶ *ibid* 9.3.

The Australian Human Rights Commission expressed concern that the application of the future conduct test may operate substantially wider than the non-refoulement provisions Art 33(2) of the Refugee Convention.⁴⁷ While the Ministerial Directions do advise decision-makers that such international obligations do not preclude the cancellation or non-grant of a visa,⁴⁸ in such a circumstance a temporary visa that restricts the asylum seeker to immigration detention can be issued.⁴⁹

We can again observe the effect of unknowing or a lack of knowledge informing the precautionary logic of modern migration law. The Character Test requires decision-makers to perform an assessment of a person's future potential risk of causing harm to individuals or the wider Australian community. Such an assessment raises important implications for the proper conduct of administrative law. A minister should have regard to relevant considerations and disregard irrelevant ones.⁵⁰ In this circumstance such a minister is expected to see into the future and consider potential future behaviour as factual and materially relevant to the applicant in the present. It is hard to see how this made-up future could reasonably satisfy the appropriate administrative standards.

This section commenced with a claim that precaution is now complemented by pre-emptory measures that serve as risk management. Coker has identified pre-emptive action as a tool to manage insecurity, when the perceived dangers of not acting are higher than if not.⁵¹ These would be policies that enable governments to take positive steps and act first in response to a perceived risk generated through

⁴⁷ '2 When Can a Visa Be Refused or Cancelled under Section 501? | Australian Human Rights Commission' <<https://humanrights.gov.au/our-work/2-when-can-visa-be-refused-or-cancelled-under-section-501>> accessed 8 June 2021.

⁴⁸ Coleman MP (n 43) para 10.1(4).

⁴⁹ *ibid* 10.1(5).

⁵⁰ *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40 (High Court of Australia): as an application of the general principle that an administrative decision-maker is required to make his decision on the basis of material available to him at the time the decision is made. But that principle is itself a reflection of the fact that there may be found in the subject-matter, scope and purpose of nearly every statute conferring power to make an administrative decision an implication that the decision is to be made on the basis of the most current material available to the decision-maker [para 20] (Mason J).

⁵¹ Christopher Coker, *Globalisation and Insecurity in the Twenty-First Century: NATO and the Management of Risk* (Routledge 2014) 62.

irregular migrants' or asylum seekers' behaviours or acts of agency. These steps feature most prominently in border externalisation activities from airport and risk liaison officers to visa requirements and carrier liability laws. Perhaps most strikingly is Australia's territorial excision and "turn-back" policies, the latter now being mooted as part of the UK's response to Channel crossings.

In the immediate aftermath of the *Tampa* affair the government retreated the country's border by excising remote islands from its migration zone.⁵² This action amounted to a pre-emption to asylum seekers reaching Australia's migration zone and lodging a claim for protection. It also created legal grey-zones of control, territory that is simultaneously inside and outside Australia's jurisdiction. The ability to lodge a claim for protection was further pre-empted with the implementation of Operation Relex, and Relex II, policies known as "turn-back". Boats carrying irregular migrants or asylum seekers would be interdicted at-sea and forced by naval and law enforcement officers to return to the point-of-departure in their vessel or replacement vessel if unseaworthy.⁵³

Criticism of the excision points to a breach of international law,⁵⁴ or reinvention of racialised policies under the guise of sovereignty and border protection.⁵⁵ Academics similarly questioned the validity under international law of turn-backs. The practice of "enhanced screening" at-sea of protection claims may not satisfied the required standards of an assessment and Australia's obligations regarding refoulement of asylum seekers from Indonesia who had been forced-back have been criticised heavily.⁵⁶ Although since abandoned,⁵⁷ it had been reported that the UK government

⁵² Migration Amendment (Excision from Migration Zone) Act 2001 (Cth).

⁵³ Liberal-National Coalition, 'The Coalition's Operation Sovereign Borders Policy' (2013) Election manifesto 15.

⁵⁴ Ernst Willheim, 'MV Tampa: The Australian Response' (2003) 15 *International Journal of Refugee Law* 159.

⁵⁵ Richard Wazana, 'Fear and Loathing Down Under: Australian Refugee Policy and the National Imagination' (2004) 22 *Refuge: Canada's Journal on Refugees* 83.

⁵⁶ Andreas Schloenhardt and Colin Craig, "'Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 *International Journal of Refugee Law* 536, 567.

⁵⁷ Boris Johnson, 'PM Speech on Action to Tackle Illegal Migration' (*GOV.UK*, 14 April 2022) <<https://www.gov.uk/government/speeches/pm-speech-on-action-to-tackle-illegal-migration-14-april-2022>> accessed 2 June 2022.

was planning to adopt a similar pre-emption turn-back policy for people crossing the Channel from France.⁵⁸

Using precaution and pre-emption as methods for managing the unknown risks in irregular migration policy has led to some measures previously considered extraordinary being enacted. By introducing precautions such as detention, character testing, territorial excision, and lowering evidentiary burdens for asylum seeker exclusion, governments have engaged in steps to protect against perceived harms, even if chains of causation remain unclear as Sunstein suggests.⁵⁹ But as Hacking noted in the looping effects that labelling has in making-up,⁶⁰ people interact and respond to their naming which it is suggested here has led to pre-emptory measures introduced to ensure risks continue to be displaced. What both precaution and pre-emption demonstrate is the reflexive dilemma now embedded within irregular migration and asylum seeker control, a self-sustaining dynamic in which new control measures respond to the loss-of-control started by a previous one. The issue of reflexivity is addressed in the next section.

6.2 Reflexivity in irregular migration and asylum seeker frameworks

It has been suggested by Beck that the rationality of society is transforming towards a “reflexive” one indicating a society moving into late modernity (see Section 2.2.1).⁶¹ It is a type of politics that is no longer about the pursuit of ends, but rather governments forcibly having to construct new means that manage risks produced from the pursuit of policies that brought about modernity.⁶² Reflexivity then breeds a sense of loss-of-

⁵⁸ Faye Brown, ‘Migrant Boats May Be Redirected Back to France as New Tactic Sanctioned’ (*Metro*, 9 September 2021) <<https://metro.co.uk/2021/09/09/priti-patel-sanctions-sending-migrant-boats-back-to-france-15229899/>> accessed 2 June 2022.

⁵⁹ Sunstein (n 4).

⁶⁰ Ian Hacking, ‘Making Up People’ (2006) 28 *London Review of Books* 23.

⁶¹ See Ulrich Beck, ‘The Reinvention of Politics: Towards a Theory of Reflexive Modernization’ in Ulrich Beck, Anthony Giddens and Scott Lash (eds), *Reflexive Modernization: Politics, tradition and aesthetics in the modern social order* (Polity Press 1994) 1.

⁶² Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992) 13.

control, as risks and mitigation enter a never-ending cycle.⁶³ As the outcomes of today's choices are unable to be controlled by our current means, our choices become risks and reflective as we decide not between safe and unsafe, but between risk options.⁶⁴

These elements of reflexivity are imposing themselves on and within migration and asylum policies. Governments are forced to confront the consequences of previous policy decisions that produce irregular migration and asylum seekers and their associated risks by making choices about what new precautionary and pre-emptory policies to implement. The new measures themselves will go on to create new risks that again will need future control. The control choices made will reflect values of government and wider society as they align, or not, with human rights principles and international agreements.⁶⁵ Robson for example, observed a reflexive choice revealing government values when asylum seekers, with their perceived high degrees of security risk, are selected for resourcing and attention from the panoply of national security risks both inside and outside the Australian community.⁶⁶

The reflexive nature of UK irregular migration frameworks was observed by civil servants interviewed for this research. A former senior Home Office official with significant operational experience considered their own realisation of this reflexivity as set out in the passage below:

that was a big moment for us in migration policy because we realised that through tightening-up procedures, tightening-up visa procedures and you know, increasing the prices, that traffickers and other exploitative people had realised that there was big money to be made from bringing people into the UK clandestinely and we kind of always knew that it was happening, but it was happening in small pockets. So occasionally individuals would be found in

⁶³ Ulrich Beck, *World Risk Society* (Polity Press 1999) 139.

⁶⁴ Mikkel Vedby Rasmussen, 'Reflexive Security: NATO and International Risk Society' (2001) 30 *Millennium* 285, 294.

⁶⁵ Jens Vedsted-Hansen, 'Responding to the Arrival of Asylum Seekers: Control and Protection in Asylum Procedures' (UNHCR 1999) Working Paper 6 28.

⁶⁶ Kellie Robson, 'The State of Personal Liberty in Australia After M47: A Risk Theory Analysis of Security Rights' (2013) 39 *Monash University Law Review* 506, 536.

the boot of a car et cetera, but it became clear that this was kind of quite big business and that groups were being organised, criminal groups were exploiting people to come to the UK.⁶⁷

In this passage from the civil servant, the reflexive dilemma challenging irregular migration policy today and its logic of control is revealed. The official's reference to one of the recent security measures, "tightening-up visa procedures" that sits alongside others like passports, juxtaposed controls, Risk and Liaison Officers, and carrier sanctions, is indicative of the shift towards a risk management approach that filters for the risky migrant or asylum seeker in an ever-tightening concentration.

These risk filters sift people according to their potential future state and their perceived dangers, rather than making a decision based on the individual's present state.⁶⁸ Using the filtering tools, reinforces the construction of certain people as potential irregular migrants or asylum seekers that pose a risk to either Australia or the UK. The dilemma within applicable frameworks created by these risk filters is that barriers to entry, force migrants into irregularity by compelling a choice to lie on visa applications, engage in forgery or attempt a clandestine entry.⁶⁹ As the official quoted earlier indicates 'it became clear that this was kind of quite big business,'⁷⁰ meaning an increase in security had created more criminality, the very thing meant to be reduced. The reflexive response has been to criminalise knowingly entering the UK without leave to do so.⁷¹ The scenario produces further ambiguity by creating legal grey-zones that places particularly asylum seekers, into a liminal position, somewhere between legal and illegality. That is, international and domestic law enshrine rights to asylum and other forms of protection or remedy, but they can hardly be accessed without breaking a law or otherwise incurring some form of penalty for trying to arrive or exist and exercise rights.

⁶⁷ Interview with UK-CS-01.

⁶⁸ Coker (n 51) 62.

⁶⁹ Clayton and Firth (n 20) 383–84.

⁷⁰ Interview with UK-CS-01.

⁷¹ Nationality and Borders Act 2022 (UK) s 40(2).

Described the official as a “big moment for us in migration policy”, ambiguity because of liminality, which criminal groups can exploit, is a new risk concern shared across the civil service such as the National Crime Agency.⁷² The Home Secretary Priti Patel also linked recent increases in small boat arrivals into the UK from France with increases in physical security measures in France.⁷³ An inverse factual matrix in the Australian context, of effective maritime security measures diverting higher numbers of irregular migrants and asylum seekers to arrive at Australian airports, has recently been demonstrated to be occurring.⁷⁴ The same organised crime enablers of exploitation were found to be operating like those in the UK.⁷⁵

Seen through the prism of securitization and crimmigration theory, these policy measures align with the ever-increasing preventative steps government take to address perceived security issues. However, analysing their outcomes indicates from their reflexive nature that they in-fact breed a loss-of-control, as irregular migrants and asylum seekers revert to using criminal organisation and other illegal activities to aid their clandestine movements. This it is suggested demonstrates a self-sustaining dynamic of control and response within migration policy, or what Beck referred to as the “risk trap”.⁷⁶ Clearly the evidence provided by the civil service demonstrates an awareness of the reflexive dilemma and rationality in applicable frameworks which is now orientated around perceived futures driving present actions.

⁷² National Crime Agency, ‘National Strategic Assessment of Serious and Organised Crime’ (UK Government 2020) 26.

⁷³ HC Deb 7 January 2019, vol 652, col 87.

⁷⁴ Helen Davidson, ‘Australia on Track for Record Number of Asylum Seekers Arriving by Plane, Labor Says’ *The Guardian* (8 October 2019) <<https://www.theguardian.com/australia-news/2019/oct/08/australia-on-track-for-record-number-of-asylum-seekers-arriving-by-plane>> accessed 26 February 2020.

⁷⁵ Joint Standing Committee on Migration, ‘Report of the Inquiry into Efficacy of Current Regulation of Australian Migration and Education Agents’ (Australian Parliament 2019) 103.

⁷⁶ Beck, *World Risk Society* (n 63) 141.

6.3 Organized irresponsibility in irregular migration and asylum seeking frameworks

It became evident through examining the effects of reflexivity, that the continuous pursuit of protection from risks generated by modern policy decisions, has developed irregular migration and asylum seeking frameworks into a system of organized irresponsibility. From an outcomes and institutional perspective, the irresponsibility at-work has deferred risk responsibility to more culturally acceptable times and places while avoiding responsibility for the harms caused pursuing risk mitigation. In the following, the consequences from deportation policies, and those that have withdrawn access to welfare in mitigation of the security and economic risks discussed in the above chapters, are analysed to demonstrate the state of organized irresponsibility now running through applicable frameworks in Australia and the UK.

It has been argued by Giddens that as society moves into a world dominated by manufactured risks, there is an increased correlated discussion about risk responsibility.⁷⁷ The law and legal institutions according to Veitch were in various ways built to define risk roles and responsibilities and establish the appropriate corrective actions when a person fails their risk responsibilities.⁷⁸ However for Beck, the indeterminable nature of modern risk means risk responsibilities are equally impossible to determine or allocate, especially when risk knowledge is contested (i.e., how can responsibilities be created when the very nature and consequences of modern risk are contested).⁷⁹ If the risk is identifiable, Matten suggests that actors will bargain negatively to maximise the absence of risk as an undesired commodity.⁸⁰ Further, pre-modern forms of remedy for damages done no longer adequately correct for the harm of modern risk leaving society in a state of organized irresponsibility.⁸¹ It

⁷⁷ Anthony Giddens, 'Risk and Responsibility' (1999) 62 *Modern Law Review* 1, 6.

⁷⁸ Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (Routledge-Cavendish 2007) 74.

⁷⁹ Beck, *World Risk Society* (n 63) 54.

⁸⁰ Dirk Matten, 'The Impact of the Risk Society Thesis on Environmental Politics and Management in a Globalizing Economy – Principles, Proficiency, Perspectives' (2004) 7 *Journal of Risk Research* 377, 381.

⁸¹ Beck, *World Risk Society* (n 63) 55.

may mean that law and its associated institutions, far from bringing order and certainty to society, which hierarchies demand, may be participating in the production and normalisation of risk.⁸²

Both case study jurisdictions use deportation as a policy tool within their irregular migration and asylum frameworks to remove perceived risks from their territories.⁸³ However, significant failures in the implementation of the policy and the consequent effects on irregular migrants, asylum seekers, and the lawfully resident community has featured heavily in public debate. Gibney has observed a “deportation turn” in the UK as the government attempted to alleviate social concerns about asylum seekers and criminality.⁸⁴ These concerns had developed after the discovery of 400,000 unresolved asylum claims,⁸⁵ and the failure to deport over 1,000 foreign nationals at the end of their term of imprisonment.⁸⁶ The Home Secretary John Reid said in response to the consequent public scandal that ‘in the wake of the problems of mass migration that we have been facing our system is not fit for purpose.’⁸⁷

The UK Home Office officials interviewed for this research raised this issue of deportation and administrative failures when discussing government practices of risk management and mitigation. One official working in the operational area at the time, described the failure to deport as the ‘complete collapse of the administrative centre.’⁸⁸ The same official went on to explain how the “complete collapse” had intentionally created unknowns within asylum operational frameworks:

⁸² Scott Veitch, Emiliios Christodoulidis and Lindsay Farmer, *Jurisprudence: Themes and Concepts* (2nd edn, Routledge 2012) 275.

⁸³ Migration Act 1958 (Cth) s 198; Immigration, Asylum and Nationality Act 2006 (UK) s 72.

⁸⁴ Matthew Gibney, ‘Asylum and the Expansion of Deportation in the United Kingdom’ (2008) 43 *Government and Opposition* 146.

⁸⁵ ‘Asylum Backlog Cleared “by 2011”’ *BBC News Online* (19 July 2006)

<http://news.bbc.co.uk/1/hi/uk_politics/5193018.stm> accessed 13 August 2018.

⁸⁶ ‘How the Deportation Story Emerged’ *BBC News Online* (9 October 2006)

<http://news.bbc.co.uk/1/hi/uk_politics/4945922.stm> accessed 13 August 2018.

⁸⁷ Home Affairs Committee, *Immigration Control* (HC 2005-06, 775-III) Ev 155.

⁸⁸ Interview with UK-CS-05.

This state of official ignorance was blown out the water by the asylum crisis because you could not deny the existence of asylum seekers and could not evade questions about how many had been refused and then removed. The Home Office was forced to defend verifiable facts – such as those claiming and those refused and removed.⁸⁹

The official's description of "official ignorance" created by the government proved to be a contributory element to another later disorganised deportation regime known as the "hostile environment". Deporting "high-harm individuals" considered to be irregular migrants were the target but many innocent people were deported as well. A second Home Office official connected the collapse in risk knowledge as a contributory factor in the erroneous deportations carried out by the hostile environment:

it was the case that there were a number of people in the UK who were able to get here and were here illegally. We didn't know exactly how many, but what we did know is that we didn't have enough ... we couldn't arrest our way out of the situation. We couldn't go around picking these people up and detaining them and removing them, we just didn't have the capacity. So, the hostile environment was designed to make life a bit more difficult for those individuals.⁹⁰

From this statement by the official, we can observe how the government's absence of risk knowledge regarding certain high-harm individuals, contributed to the creation of government as a risk manufacturer via the hostile environment. These hostile environment policies, which as discussed in Chapter Five were intended to deny irregular migrants' access to work and asylum seekers' access to social welfare, were deployed against lawfully resident people who could not correct the government's knowledge absence. As such, it turned the government and the risk mitigation into risk producers for certain people, their families and wider community via the social dislocation and trauma, and for future UK governments via significant reputational and financial damage. As the official went onto say, deportation was 'applied as a blanket policy it, the risk is that it was applied to people it shouldn't have been or it's applied

⁸⁹ Interview with UK-CS-05.

⁹⁰ Interview with UK-CS-01.

to people where it has massive consequences on them.’⁹¹ Only some of which are beginning to be understood but for which responsibility is still proving elusive.⁹²

The consequence of organized irresponsibility that results from the deportation policies and practices of Australia as risk mitigation is particularly notable. In its most compelling form, perceived risks from asylum seekers are displaced to a more culturally acceptable place via the use of Offshore Processing Centres (OPCs) in Papua New Guinea and Nauru. The Australian government deports to these OPCs certain asylum seekers to process their protection claims. Even if their claim for protection is upheld, the now refugee remains in an OPC until a third country agrees to resettle them.⁹³ Resettlement in Australia is prohibited. Although the UK government’s current practices do not reach the same levels as those used by Australia, the UK government has recently concluded an agreement with Rwanda to relocate a number of asylum seekers there for protection claim processing and resettlement.⁹⁴

Like the hostile environment, by implementing a policy of deportation to PNG and Nauru, the Australian government has been turned into a risk generator for asylum seekers and future Australian governments. Risks generated as a consequence of this policy include significant potential and actual harmful mental and physical injuries to those who have been deported.⁹⁵ Future financial risk liabilities were also generated by deporting asylum seekers to PNG and Nauru. Not only did the policy cost approximately \$1 billion per year,⁹⁶ a class-action lawsuit against the Australian

⁹¹ Interview with UK-CS-01.

⁹² See: Wendy Williams, ‘Windrush Lessons Learned Review’ (2020) HC 93.

⁹³ Tania Penovic and Azadeh Dastyari, ‘Boatloads of Incongruity: The Evolution of Australia’s Offshore Processing Regime’ (2007) 13 *Australian Journal of Human Rights* 33.

⁹⁴ UK Government, ‘Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement’ (*GOV.UK*, 13 April 2022)

<<https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-rwanda>> accessed 3 June 2022.

⁹⁵ Sarah Mares, ‘Fifteen Years of Detaining Children Who Seek Asylum in Australia – Evidence and Consequences’ (2016) 24 *Australasian Psychiatry* 11; Medecins Sans Frontieres, ‘Indefinite Despair: The Tragic Mental Health Consequences of Offshore Processing on Nauru’ (2018).

⁹⁶ Madeline Gleeson and Natasha Yacoub, ‘Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia’ (Kaldor Centre for International Refugee Law 2021) Policy Brief 11 9.

government for a series of torts against those sent to PNG was settled for \$70 million.⁹⁷ Australia's international reputation as a responsible international citizen was also placed at-risk once these harms became well-publicised. In 2014 Human Rights Watch noted that:

Australia has a strong record protecting civil and political rights, but has damaged its record and its potential to be a regional human rights leader by persistently undercutting refugee protections.⁹⁸

Latterly, a United Nations Special Rapporteur reported that Australia's practices had in relation to two specific detainees sent to PNG 'violated their right to be free from torture or cruel, inhuman or degrading treatment,'⁹⁹ furthering the reputational damage.

A lack of institutional responsibility for risk management has also occurred at an individual level when governments seek to displace the risk to another space through deportation. In the *Belmarsh* case,¹⁰⁰ the legality of legislation was challenged that authorised the indefinite detention and deportation of nine suspected terrorists without trial, based on non-disclosed evidence that the detainees were national security threats.¹⁰¹ Several of the appellants objected to their continued detention despite the government being unable to deport them because of non-refoulement obligations.¹⁰²

In the lead judgment of Bingham LJ, references were made to the inherent unaccountability and essentially risk generative practices the government would

⁹⁷ *Kamasee v Commonwealth of Australia & Ors* 2017 VSC 537.

⁹⁸ Human Rights Watch, 'World Report 2014 - Events of 2013' (Human Rights Watch 2014) Annual Report 24 292.

⁹⁹ Juan Méndez, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Addendum - Observations on Communications Transmitted to Governments and Replies Received' (Human Rights Council - UN General Assembly 2015) A/HRC/28/68/Add.1 9.

¹⁰⁰ *A & Ors v Secretary of State for the Home Department* 2004 UKHL 56 (House of Lords).

¹⁰¹ Anti-Terrorism, Crime and Security Act 2001 (UK) s 23.

¹⁰² For a full examination of the case see: Sangeeta Shah, 'The UK's Anti-Terror Legislation and the House of Lords: The First Skirmish United Nations and Regional Human Rights Systems: Recent Developments' (2005) 5 Human Rights Law Review 403.

engage in if it deported the suspected international terrorists. In discussing the proportionality of the indefinite detention, his Lordship queried how a person deemed such a threat to national security could be allowed to leave the country while their co-accused would be subject to indefinite detention:

allowing a suspected international terrorist to leave our shores and depart to another country, perhaps a country as close as France, there to pursue his criminal designs, is hard to reconcile with a belief in his capacity to inflict serious injury to the people and interests of this country.¹⁰³

Although Bingham LJ's judgment noted the government's argument that 'deportation has the advantage moreover of disrupting the activities of the suspected terrorist',¹⁰⁴ his Lordship affirmed that using deportation to solve a security problem 'had the inevitable result of failing adequately to address that problem.'¹⁰⁵ What the House of Lords had essentially identified in the government's legislative measures, was the simultaneous risk liability for mitigating terror-security issues and unaccountability activities in attempting to deport and displace the perceived risks to a perceptively more acceptable place.

Deportation policies and practices were not the only place in which organized irresponsibility was observed during this research. The progressive absence of government from providing social welfare services to asylum seekers and the withdrawal of adequate funding to agencies that assist with status resolution has left responsibility vacuums. O'Brien explains the rationale for this in a risk society rests on a collective questioning of the wisdom for the state assuming responsibility and financial risk for an unknown number of people.¹⁰⁶ Far from bringing more risk stability in governance arrangements however, the moves have created new risks for society-at-large.

¹⁰³ *A & Ors v. Secretary of State for the Home Department* (n 100) para 33.

¹⁰⁴ *ibid* 43.

¹⁰⁵ *ibid* 43.

¹⁰⁶ Peter O'Brien, 'Migration and Its Risks' [1996] *The International Migration Review* 1067, 1074.

The UK's National Health Service (NHS) which provides free health care to all British residents and migrants holding a valid visa, is a social institution of modernity that 'is governed by a social model that applies the principles of equity and shared risk.'¹⁰⁷ The government proposed in 2013 however to withdraw the provision of free health care for irregular migrants and make them liable for full payment.¹⁰⁸ There were objections raised to the government's proposal in the public consultation. Significantly, it was said that there would be wider risks consequence to public health generated (i.e., the health of lawful residents could be negatively impacted) if early interventions on communicable diseases were in-effect prohibited.¹⁰⁹ The government persisted with the changes in the Immigration Act 2014 (UK) which established the "ordinarily resident" test for access to health care, thereby effectively banning irregular migrants from accessing the NHS.¹¹⁰

The Australia government has tended to follow the same ever restricting approach towards the provision of social welfare services witnessed in the UK. Though not totally excluding asylum seekers from social welfare, the changes made to the Status Resolution Support Scheme (SRSS) did in effect abandon some. The provision of services to asylum seekers via the SRSS, is done through a policy and not primary legislation. That means, in a subtle procedure of responsibility avoidance, it avoids parliamentary debate and is less open to scrutiny.¹¹¹ The only legislative measures

¹⁰⁷ Home Office, 'Controlling Immigration – Regulating Migrant Access to Health Services in the UK' (UK Government 2013) 15.

¹⁰⁸ *ibid* 5. The proposal did not include asylum seekers, refugees, and victims of trafficking.

¹⁰⁹ Department of Health, 'Sustaining Services, Ensuring Fairness: Government Response to the Consultation on Migrant Access and Financial Contribution to NHS Provision in England' (UK Government 2013) 23, 43–44.

¹¹⁰ The Immigration Act 2014 (UK) enacted the government's proposal to withdraw free health care for irregular migrants. Section 39 sets out that people who require leave to enter or remain but do not have it, are not treated as ordinarily resident in the UK. That change to the "ordinarily resident" test enables the government to charge an irregular migrant (who is by implication of their migration status, not "ordinarily resident" in the UK) for the cost of health care services provided to them.

¹¹¹ St Vincent de Paul Society National Council, 'The Destitution of Asylum Seekers in Australia: Cuts to Status Resolution Support Service Payments' <https://www.vinnies.org.au/icms_docs/306550_SRSS_briefing.pdf> accessed 28 March 2020.

taken to support this programme is in secondary legislation.¹¹² This regulation in effect restricted the minister and government to providing welfare services to only those asylum seekers that were seeking to resolve or regularise their migration status, to the exclusion of those who may not be engaging with the government at all.

In the absence of public statements clarifying government intent regarding changes to the SRSS, a Freedom of Information (FoI) request was made to produce documents related to the SRSS and the incoming government brief given to ministers following an election.¹¹³ From the materials released in the FoI, the rationales for limiting and excluding asylum seekers from mainstream social welfare was to ‘effectively and efficiently: manage risk to the individual, the community and the integrity of the migration program.’¹¹⁴ To do so ‘services should focus on resolving status—grant of a visa or departure from Australia.’¹¹⁵

The drive to limit access to social welfare to only those that were seeking to resolve their migration status was contextualised by an Australian lawyer within:

the global economic crisis that happened a while ago and the reaction to that, to sort of look inward and to try and protect your own as opposed to being more embracing. I guess it’s look after your own first really seems to be the current way of thinking.¹¹⁶

By placing the SRSS changes within the recent global economic uncertainties suggests that the retreat of government to “look after your own” would be a risk management tool. Its design is meant to restore order and limit the uncertainties that modern

¹¹² Financial Framework (Supplementary Powers) Regulations 1997 (Cth) Schedule 1AB Item 187. To provide needs-based support and assistance to eligible asylum seekers and other non-citizens (both in immigration detention and living in the Australian community): (a) as they seek to resolve their immigration status; and (b) as, once their immigration status has been resolved (whether by the grant of a substantive visa or otherwise), they transition to mainstream services in the Australian community or make preparations to depart Australia.

¹¹³ Department of Home Affairs, ‘Freedom of Information (FOI) Request - Access Decision - FA 18/05/00113’ (8 June 2018).

¹¹⁴ Department of Home Affairs, ‘Status Support Resolution Services (SRSS) Programme: Operational Procedures Manual (Version 7)’ (Australian Government 2018) 10.

¹¹⁵ Department of Home Affairs, ‘Incoming Government Brief’ (Australian Government 2019) 79.

¹¹⁶ Interview with AU-LA-02.

society experiences from economic globalisation as a truly modern form of risk. But in an attempting to exert control, by limiting welfare to status resolution services only, the SRSS represents an overall loss-of-control and becomes a risk in itself as previous mitigations retreat. In a joint report by asylum support charities that the SRSS lack of mental health services it provided would inhibit access to work reducing wage earning potential.¹¹⁷ When combined with the SRSS's lower income support 'significantly compounds the risk of poverty for this group'¹¹⁸ and chances of experiencing homelessness.

In contrast to these positive acts that governments have taken to consciously absent itself from risk responsibility, interviewees pointed towards the negative, or non-acts of government as contributing to organized irresponsibility. The area of illegal working regulation and enforcement where the reflexivity of new regulations that seek to establish control, generate new irregular migrant risks as a consequence of compliance failures or active evasion, was an area of responsibility concern for officials. A former senior Home Office official recalled that in relation to trying to enforce labour regulations:

if they went to a restaurant that was employing illegal workers, we could detain them and remove them the next week they would be replaced by another group.¹¹⁹

Government inability to enforce illegal working regulations was echoed by an Australian lawyer who agreed that the government couldn't monitor every visa holder's working activity because it lacked the capacity to do so.¹²⁰ A proposition that an Australian civil servant agreed with stating that: 'they haven't got the staff to throw them all out, they really haven't.'¹²¹

¹¹⁷ John van Kooy and Tony Ward, 'An Unnecessary Penalty: Economic Impacts of Changes to the Status Resolution Support Services (SRSS)' (Australian Council of Social Services & Others 2018) 9.

¹¹⁸ *ibid* 8.

¹¹⁹ Interview with UK-CS-01.

¹²⁰ Interview with AU-LA-03.

¹²¹ Interview with AU-CS-01.

The ability of the UK government to adequately police illegal working was questioned in the lead-up to the Immigration Act 2016 (UK) which introduced new offences of illegal working and employing an illegal worker.¹²² Professor Metcalf, Chair of the Migration Advisory Committee was also sceptical that the government would 'have the public finances for sufficient enforcement,'¹²³ which in effect was borne out in the statement of the Home Office official cited above.

The Independent Chief Inspector of Borders and Immigration made several findings in an investigation into enforcement following the 2016 Act that support the interviewee's statements. In a finding that recalls the 'complete collapse of the administrative centre,'¹²⁴ statement from the Home Office official regarding foreign national offenders, the Inspector found that existing data on illegal working had to be discounted for inaccuracy meaning 'there is no reliable estimate for the number of people working illegally in the UK.'¹²⁵ The Inspector found that remedies for illegal working made available in the 2016 Act were administratively cumbersome and therefore not pursued by officials 'as they were perennially under strength'.¹²⁶

Failure, intentionally or otherwise, to prosecute and adequately police illegal working regulations further contributes to the irresponsibility and risk generative nature of irregular migration frameworks today. It has been reported by legal practitioners that as a consequence "phoenix operations" have increased where businesses would re-emerge after an enforcement activity and continue to employ the same undocumented or trafficked worker.¹²⁷ While the increased fines had become so overwhelmingly burdensome that they were simply not paid forcing the business to close creating a risk of unemployment for the lawfully employed.¹²⁸

¹²² Immigration Act 2016 (UK) ss 34–35.

¹²³ Immigration Bill Deb 20 October 2015, col 18.

¹²⁴ Interview with UK-CS-05.

¹²⁵ David Bolt, 'An Inspection of How the Home Office Tackles Illegal Working' (Independent Chief Inspector of Borders and Immigration 2015) 6.

¹²⁶ *ibid* 7.

¹²⁷ John Vassiliou, 'Illegal Working Fines Aren't Working' (*Free Movement*, 24 January 2020) <<https://freemovement.org.uk/illegal-working-fines-arent-working/>> accessed 20 April 2021.

¹²⁸ *ibid*.

In carrying-out this research, the seemingly disparate consequences of risk came to be understood as the active attempts of government to renegotiate its current and future risk responsibilities. The organized irresponsibility that now runs through the administration of deportation and detention policies as risk mitigation, has demonstrated their potential to turn the state into a risk generative actor. Rather than attempting to properly mitigate risk, the policies have been used to redistribute risk away from Australia and the UK. Typified by the *Belmarsh* case and Australia's OPCs, they bring into reality Beck's contention that risk would be 'deported across frontiers – into low-security countries, low-wage countries, low-law countries and low-ethics countries.'¹²⁹

In attempting to use deportation to preserve government commitments to provide security and maintaining, an illusion of control is formed that, according to Douglas, satisfies hierarchical worldviews of order and compliance.¹³⁰ Yet by stepping away from providing health care or adequately policing working regulations, the perception of a loss-of-control is paradoxically reinforced. The above findings also demonstrate Veitch's argument that risk has legitimised harmful state practices and turned states into risk generators,¹³¹ for irregular migrants and asylum seekers certainly and potentially the resident society. In further failing to remedy the risk, the consequent system of organized irresponsibility pushes the risks back out into the world setting-up a risk boomerang effect for future generations.

6.4 Individualizing risk within irregular migration and asylum seeking frameworks

It was observed in carrying-out this research that there has been a progressive transference of risk responsibility away from the state and particularly towards the

¹²⁹ Beck, *World at Risk* (n 1) 141.

¹³⁰ Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press 1982).

¹³¹ Veitch (n 78).

irregular migrant and members of the resident community. This aspect to the risk management ethos that defines irregular migration frameworks today, sees the transfer of risk responsibilities away from the collective capabilities of government and its institutions towards the individual for them to negotiate and manage. While asylum seekers are affected by risk individualization, the evidence discussed in this section points towards a disproportionate impact of government measures being directed towards irregular migrants.

For Beck-Gernsheim and Beck,¹³² and Giddens,¹³³ this “individualization” of risk is a key developmental characteristic of social life today and of how risk is experienced in modern society. These authors claim that the old certainties of family, education, and employment in pre-industrial life have passed, and everyone must now reflexively “negotiate” their engagement with these parts of life. As discussed in Section 6.2, just as government must consider the risk consequences of current actions, so too must people at an individual level. Essentially, this has forced each person to write their own “biography” rather than rely on pre-determined destinies.¹³⁴

The connection between individualization, biography writing, and migration has in current literature been viewed through the prism of “lifestyle migration”. According to O’Reilly and Benson this concept revolves around questions of current lifestyle and spatial mobility for the relative affluent few who move, sometimes temporarily, to new places that are meaningful because they offer a better quality of life.¹³⁵ Such people who practise “lifestyle migration” were labelled “global nomads” by D’Andrea who suggests they ‘evade conventional codes defined by modern regimes of the nation-state,’¹³⁶ by subverting and traversing traditional personal and political boundaries

¹³² Elisabeth Beck-Gernsheim and Ulrich Beck, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (Sage 2002).

¹³³ Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Polity Press 1991).

¹³⁴ Beck-Gernsheim and Beck (n 132) 25.

¹³⁵ Karen O’Reilly and Michaela Benson, ‘Lifestyle Migration: Escaping to the Good Life’ in Michaela Benson and Karen O’Reilly (eds), *Lifestyle Migration: Expectations, Aspirations and Experiences* (Routledge 2016) 2.

¹³⁶ Anthony D’Andrea, *Global Nomads: Techno and New Age as Transnational Countercultures in Ibiza and Goa* (Routledge 2007) 9.

within neo-liberal economic realities. In practice it may manifest in a form as simple as a student choosing to migrate after study in contravention of tradition,¹³⁷ in whatever form however, for migrants, risk is not a broad theory but is individually negotiated, experienced, and mitigated.¹³⁸

In the sense described above, individualization of risk is the personal calculation of security, economic, and social uncertainties someone faces and acting today to mitigate potential future personal catastrophes. But as de Haas et al observe in migration terms, these calculations are limited except for the comparatively select few who have “options” and can negotiate strong national borders.¹³⁹ When confronted with such limited migration options, but a perceived necessity to migrate so that personal risk can be managed and write their biography, El-Enany suggests that moving be viewed as an act of resistance to established orders instead of an irregular migration.¹⁴⁰

It is within the context risk individualization and a modern social and economic order defined by insecurities, that irregular migrants experience and negotiate risk to write their biographies. An ethnographic study carried out by Ahmad among London’s smuggled Pakistani workers demonstrates how they negotiate individualized risk and write their biographies as ‘the good son, the good brother or good father,’¹⁴¹ within their precarious work environment. But Ahmad notes the ‘economic outcomes are embedded in legal and political processes,’¹⁴² which it is argued here, are processes that have sought to intervene in and to stabilise security, economic, and social insecurities for the “wanted” resident and migrant workforce to the exclusion of the “others”.

¹³⁷ Maarja Saar, ‘To Return or Not to Return? The Importance of Identity Negotiations for Return Migration’ (2018) 24 *Social Identities* 120.

¹³⁸ John Tulloch and Deborah Lupton, *Risk and Everyday Life* (Sage 2003).

¹³⁹ Hein de Haas, Stephen Castles and Mark J Miller, *The Age of Migration: International Population Movements in the Modern World* (6th edn, The Guilford Press 2020).

¹⁴⁰ Nadine El-Enany, *(B)Ordering Britain: Law, Race and Empire* (Manchester University Press 2020).

¹⁴¹ Ali Nabil Ahmad, ‘Dead Men Working: Time and Space in London’s (‘illegal’) Migrant Economy’ (2008) 22 *Work, Employment and Society* 301, 315.

¹⁴² *ibid* 314.

Chapter Four of this thesis discussed how the perceived economic risks posed by irregular migrants have been mitigated by the withdrawal of access to health care as well as restrictions on access to the labour market. A consequence of these restrictions has been the individualization of risks for irregular migrants as they are now reflexively forced to manage or negotiate the new risks these restrictions imposed by the state generate. Irregular migrants have become individual responsible for sourcing their health care and personally liable for engaging in work to support themselves in the absence of welfare support.

Access to work and the progressive changes to employment law in-particular have exposed the individualization aspects of criminal risk responsibility within the broader crimmigration logic that irregular migrants must now negotiate. An Australian lawyer reflected that 'if a student was found to have been working 21 hours in one particular week, they aren't going to be cancelled are they.'¹⁴³ Faced with difficulties in enforcement, legislative changes have with new offences, transferred responsibility for the protection of the labour market away from the government and society (as a collective entity) and onto irregular migrants and employers as individuals.

The Immigration Act 2016 (UK) made illegal working and employing an illegal worker a criminal offence.¹⁴⁴ The government rationale for the laws turned the lawful working into potential victim by an irregular migrant's ability 'depress or hold back pay and conditions for the local sector, and undercut reputable businesses.'¹⁴⁵ These two new criminal offences are demonstrative of the subtle shifts in the existing legislative frameworks as they pertained to irregular migrants and work. After examining the enabling bill, witnesses to the parliament's Public Bill Committee were sceptical that individualizing criminal responsibility would discourage illegal working. Instead, irregular migrants might be fearful of coming forward to report abuse, or exploitative

¹⁴³ Interview AU-LA-03.

¹⁴⁴ Immigration Act 2016 (UK) ss 34 & 35.

¹⁴⁵ HC Deb 13 Oct 2015 vol 600, col 197.

employers handed another tool of coercion.¹⁴⁶ A witness from the Migrants' Rights Network, articulating Menjívar's "legal liminality",¹⁴⁷ also observed that the individualization of criminal responsibility would fail to account for people that shift from irregular migrant to victim of crime, or those who acquire an irregular migration status because of their sponsoring employer's administrative failures.¹⁴⁸ It was argued that only government-led supervision and enforcement would properly regulate the labour market.¹⁴⁹

In the Australian context, the Employer Sanctions Acts 2007 and 2013 (Cth),¹⁵⁰ are reflective of the influence that modernized risk has within legal frameworks today. Like their British counterparts, these laws marked a shift in regulatory approach away from large scale blanket bans and government administered permit systems towards more targeted interventions that regulate relationships between people. The primary purpose of the 2007 Act was to make employers criminally liable (with up to five years imprisonment) for hiring migrants without permission to work.¹⁵¹ After only a short time in effect, a review of the 2007 Act was conducted because of its apparent failure to adequately address the perceived problem of illegal working. Indeed, the Howells Report concluded that:

there have been no contested prosecutions that have resulted in a finding of guilt and a decision of the Court on any aspect of the meaning and application of the employer sanctions offences under sections 245AA to AK.¹⁵²

These findings were significant, as although the risk had been transferred from government to employer/irregular migrant, it points to the failure of legislation to

¹⁴⁶ Immigration Bill Deb 20 October 2015, col 24.

¹⁴⁷ Cecilia Menjívar, 'Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States' (2006) 111 *American Journal of Sociology* 999.

¹⁴⁸ Immigration Bill Deb 20 October 2015, cols 106-07.

¹⁴⁹ Immigration Bill Deb 20 October 2015, col 28.

¹⁵⁰ Migration Amendment (Employer Sanctions) Act 2007 (Cth); Migration Amendment (Reform of Employer Sanctions) Act 2013 (Cth).

¹⁵¹ Migration Amendment (Employer Sanctions) Act 2007 (Cth) s Sch 1 inserting s 245AB-AC into the Migration Act 1958.

¹⁵² Stephen Howells, 'The Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007' (Department of Immigration and Citizenship 2011) 68.

address the perceived problem at-hand. Unlike the bi-partisan support that was given to the 2007 Act, the Opposition declined to support the new reforms in the 2013 Act. The Opposition led with effective risk-management and the reallocation of risk responsibility as their reason for refusing support:

The government have taken an unrealistic approach to managing risk within our immigration program and have failed to implement systems to help businesses manage that risk effectively. Because the government could not be bothered, they are going to contract this out and put the burden on business.¹⁵³

Denying support to the government for these amendments should be seen within the broader political debate at the time which heavily centred on the surge in irregular migrants arriving by boat. What it does suggest however, is a cognisance of the reallocation of risk responsibilities or risk transference through “contracting-out” responsibility for risk management onto the employer and irregular migrant as individuals.

It is not just within the economic risks that individualization has affected risk allocation. Mitigating the perceived risks of irregular migration has now been redistributed as a wider social responsibility for members of the resident community. In addition to right-to-work document checks that are performed by employers, it is incumbent upon a prospective landlord to check migration documents prior to concluding a rental agreement. Failure to do so may result in an offence being committed by the landlord.¹⁵⁴ Marriage celebrants must investigate migration documents, make judgements as to whether a proposed marriage is a “sham marriage”, and make referrals of suspect marriages to the Secretary of State for investigation.¹⁵⁵

¹⁵³ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 November 2012, 12973 (Scott Morrison).

¹⁵⁴ Immigration Act 2016 (UK) s 39.

¹⁵⁵ Immigration Act 2014 (UK) s 52.

Perhaps the most pernicious effect of the transfer of risk responsibility onto members of the resident community is its chilling effect on those seeking to help irregular migrants that one interviewee described as “soft level enforcement”. They recalled that:

we obviously know about the requirement for landlords to see status documents and that kind of thing and different organisations, but I would say this soft level enforcement of MPs being at surgeries and asking people about their immigration status I found it really troubling.¹⁵⁶

So pervasive is the fear of potentially carrying out a criminal act of helping or assisting an irregular migrant engage with the community that they live in, members of parliament are concerned with being held personally liable. Even though there is no legislative prohibition such assistance or liability for the member of parliament.

It is generally agreed that all irregular migrants are vulnerable to exploitation.¹⁵⁷ The International Organization for Migration highlights that those engaged in domestic or sex work, food services and construction sectors will face particular vulnerabilities owing to the likelihood that they are also experiencing modern slave like conditions.¹⁵⁸ According to a former Home Office official ‘the hostile environment which was designed to just nudge people into thinking that the UK is not, is not an easy place to be here illegally.’¹⁵⁹ However the series of risk filters that the policy put in-place on physical, economic, and social entry into UK society in reality “nudged” the transfer and individualization of risk onto the irregular migrant. Research carried out by Hodkinson et al with irregular migrants in England, provides evidence of how irregular migrants experienced and negotiated the individualization.¹⁶⁰ This included being forced into precarious under-paid and dangerous work when welfare

¹⁵⁶ Interview with UK-LA-01.

¹⁵⁷ Fiona David, Katharine Bryant and Jacqueline Larsen, ‘Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour’ (International Organization for Migration 2019) 10.

¹⁵⁸ *ibid* 38.

¹⁵⁹ Interview with UK-CS-01.

¹⁶⁰ Stuart Hodkinson and others, ‘Fighting or Fuelling Forced Labour? The Modern Slavery Act 2015, Irregular Migrants and the Vulnerabilising Role of the UK’s Hostile Environment’ (2021) 41 *Critical Social Policy* 68.

was withdrawn, or being forced to work by a person whose identity they borrowed so that they could have access to bank accounts and National Insurance Numbers to provide to employers.¹⁶¹

Irregular migrants are also forced to accept risk if they choose to proceed in giving evidence against a people trafficker. Women that had been trafficked into Australia and subjected to sexual exploitation needed to be willing to provide evidence in exchange for temporary visa grants.¹⁶² However, low rates of prosecution and success at trial has meant that temporary visas are withdrawn, and permanent protection visas not granted.¹⁶³ Consequently, a woman in such a circumstance is forced to take-on the individual risk of an uncertain legal stay during and after a potential prosecution versus remaining in their present circumstance.

To conceptualise migrant biography writing occurring within a framework of “lifestyle migration” as put by authors tends to be limited in focus.¹⁶⁴ Those who enjoy considerable privileges not only in their social and economic choices, but also in their migration options like D’Andrea’s “global nomads”, experience a positive relationship with the process of individualization of risk as it has developed today.¹⁶⁵ What authors reported ethnographically,¹⁶⁶ and shown here from the statements of interviewees and in the policy and legislative terms, is perhaps the other side of the individualization coin. When your migration and economic options are limited because of government’s organisational preferences for particular socio-economic characteristics, an irregular migrant’s attempt at biography writing in an era of forced individualization will be criminalised by the state or exposed to greater risk of exploitation by criminals and others.

¹⁶¹ *ibid* 77–81.

¹⁶² Catherine Flynn, Margaret Alston and Robyn Mason, ‘Trafficking in Women for Sexual Exploitation: Building Australian Knowledge’ (2014) 57 *International Social Work* 27.

¹⁶³ *ibid* 31.

¹⁶⁴ Tulloch and Lupton (n 138); O’Reilly and Benson (n 135).

¹⁶⁵ e

¹⁶⁶ Ahmad (n 141); Hodgkinson and others (n 160); Flynn, Alston and Mason (n 162).

The evidence as discussed above also speaks to some important aspects of the individualization thesis as put forward by Beck-Gernsheim and Beck¹⁶⁷ and Giddens.¹⁶⁸ The authors' ambivalence towards individualised risk experience is shown here to be experienced in a highly differential fashion. Not only can risk be forced upon irregular migrants, in contrast to that experienced and leveraged by highly-mobile migrants, but their management of it can be criminalised. Further, although irregular migrants might be attempting to write their own biographies in searching for better prospects abroad, it is not necessarily in the absence of familial and social structures as Ahmad shows.¹⁶⁹ So while such relationships may change form, they are not abandoned.

6.5 Competing risk knowledge and sub-political groups

The focus throughout this thesis has been on how governments identify and respond to the risks they perceive irregular migrants and asylum seekers pose. What became clear through this research is the contestable nature of the risk knowledge produced regarding irregular migration and asylum both from within and outside the parliamentary political system. The section in effect presents a discussion of how alternative risk perspective narratives have been generated particularly regarding two recent events concerning asylum. It forms an important point of analysis because of its opposition and demonstrates the highly political nature of risk. Alternative risk knowledge to that produced by government has primarily been used by actors to rally opposition to the dominant government risk narratives and address the perceived negative reflexive effects within current asylum frameworks. The concepts of sub-politics and alternative worldviews have been used by risk theorists to conceptualise the use of, and challenge to, dominant risk knowledge.

The evolution of sub-politics according to Beck, is a progressive form of politics that sees citizens act and organise themselves to confront issues of concern.¹⁷⁰ Just as

¹⁶⁷ Beck-Gernsheim and Beck (n 132).

¹⁶⁸ Giddens, *Modernity and Self-Identity* (n 133).

¹⁶⁹ Ahmad (n 141) 315.

¹⁷⁰ Beck, *World Risk Society* (n 63) 40.

risks are said to cut-across traditional lines of social structure such as class, gender, race etc., so too do sub-political groups engaged in 'shaping of society from below.'¹⁷¹ The increased power and presence of global groups such as Greenpeace and Amnesty International reveals the inability of national governments to adequately address transnational risk concerns. In a similar vein to Beck, Giddens argues for a "life politics" that is, the 'emancipation from the fixities of tradition and from conditions of hierarchical domination'¹⁷² organised by small groups that conduct activities addressing future ethical concerns.

For sociocultural risk theorists, debates regarding risk knowledge are about the perceptions of risk that people gravitate towards which fulfil their preferred way of life.¹⁷³ The selected way-of-life and its worldview has its own risk portfolio that disregards the perception of some dangers but amplifies others.¹⁷⁴ Each will similarly admonish or promote behaviour that reinforces activities that sustain its worldview of risk. Douglas has argued that it is moral concerns as perspectives on risk will, in the first instance, guide the perception and response to it.¹⁷⁵ Disputes about risk according to Douglas and Wildavsky are essentially part of 'an ongoing debate about the ideal society.'¹⁷⁶

Examining the opposition that has arisen because of a government's current approach to the perceived social risks of irregular migration or asylum, can be framed as an expression of worldviews that produce different risk identification and knowledges to that of government. Seen in this way, the opposing initiatives attempt to find their own solutions to the reflexive effects of modern migration frameworks and arrive at risk management approaches that differ from government and

¹⁷¹ *ibid* 39.

¹⁷² Anthony Giddens, 'The Emergence of Life Politics' in Sean P Hier (ed), *Contemporary Sociological Thought: Themes and Theories* (Canadian Scholars' Press 2005) 349.

¹⁷³ Karl Dake, 'Orienting Dispositions in the Perception of Risk: An Analysis of Contemporary Worldviews and Cultural Biases' (1991) 22 *Journal of Cross-Cultural Psychology* 61.

¹⁷⁴ Douglas and Wildavsky (n 130) 8.

¹⁷⁵ Mary Douglas, *Risk Acceptability According to the Social Sciences* (Routledge & Kegan Paul 1986) 60.

¹⁷⁶ Douglas and Wildavsky (n 130) 36.

bureaucracy. Their approaches occasionally remodel and subvert existing frameworks but often lose out to the inherent structural dominance of government as a hierarchy.

Popular protest has been a historical feature of public debate when competing worldviews on the perceived risks associated with asylum seeking collide. Pellew has discussed these protests in relation to the arrival of Jewish refugees in the East End of London at the turn of the 20th century.¹⁷⁷ Similar dissent was noted by Grewcock in relation to the arrival of Chinese labourers in colonial Australia.¹⁷⁸ What distinguishes today's dissent from the historical protest is in its confrontation of the reflexive effects that are embedded within current frameworks. That is, they oppose the perceived negative or harmful consequences for asylum seekers that are generated as new types of risk from control policies.

As mentioned in the introduction to this section, alternative worldviews of risk have generated differing asylum seekers management policies in two recent events: via the "Dubs amendment" in the UK, and the "Medevac Bill" in Australia. Each proposed legislative change to existing frameworks were initiated from outside government and with apparent positive public support. In rejecting the governmental asserted risk perceptions and their often repeated "zero-tolerance" rhetoric,¹⁷⁹ they put forward their own competing risk perceptions and claims to risk knowledge associated with asylum seekers.

In 2016 an amendment to the Immigration Act 2016 (UK) was tabled in parliament by Lord Dubs, a backbench peer of the House of Lords. The amendment allowed for the transfer of certain unaccompanied child asylum seekers from the EU to the UK and to allow the child to make a claim for asylum if the child wished. In speaking to the amendment Dubs referenced the 'support from the wider public over

¹⁷⁷ Jill Pellew, 'The Home Office and the Aliens Act, 1905' (1989) 32 *The Historical Journal* 369.

¹⁷⁸ Michael Grewcock, *Border Crimes: Australia's War on Illicit Migrants* (Institute of Criminology Press 2009) 83.

¹⁷⁹ Desmond R Manderson, 'From Zero Tolerance to Harm Reduction: "The Asylum Problem Problem"' (2013) 32 *Refugee Survey Quarterly* 1, 8–16.

the need to do something for unaccompanied child refugees'¹⁸⁰ because 'these children are in a vulnerable state.'¹⁸¹ Here Dubs invokes the influence of the sub-political or alternative risk knowledge to contest the predominate government risk perceptions towards asylum seekers.¹⁸²

The amendment passed the parliament,¹⁸³ despite being opposed by the government which rejected the amendment to:

*avoid any policy that places children at additional risk or encourages them to place their lives in the hands of people traffickers and criminal gangs ... we need to be careful that we do not inadvertently create a situation in which families see an advantage in sending children ahead, alone and in the hands of traffickers, putting their lives at risk by making them attempt treacherous sea crossings to Europe.*¹⁸⁴

These rationales for rejecting the amendment employ much of the moralising risk discourse discussed in the previous chapter. Risk is mobilised to inscribe blame and irresponsibility onto the asylum seeker child and family for their dangerous journey and reckless behaviour that puts themselves and others into danger. Invoking an image of families placing children into the hands of smugglers attempts to draw graphic social norm distinction between the asylum seeker family and the British family. But removed from the discussion is state responsibility for the deterrence conditions responsible for making such journeys the only avenue possible to reach the UK and make a claim for protection.

The Australian Parliament also passed legislation that was not part of existing government policy which enabled asylum seekers' access to Australian society. The legislation allowed for the temporary transfer of asylum seekers from OPCs in Nauru

¹⁸⁰ HL Deb 21 March 2016 vol 769, col 2091.

¹⁸¹ HL Deb 21 March 2016 vol 769, col 2092.

¹⁸² See for e.g., 'Our Story' (*Safe Passage*) <<https://www.safeassage.org.uk/our-story>> accessed 10 January 2022; 'The Dubs Amendment: What's the Situation?' (*Support Refugees*, 9 March 2017) <<https://www.supportrefugees.org.uk/dubs-amendment-situation/>> accessed 10 January 2022.

¹⁸³ Immigration Act 2016 (UK) s 67.

¹⁸⁴ HC Deb 25 April 2016, vol 608, col 1197 (emphasis added).

and Papua New Guinea to Australia for medical treatment.¹⁸⁵ The “Medevac Bill” enjoyed significant levels of public support particularly from otherwise disparate activist and sub-political groups that coalesced around the issue.¹⁸⁶ The measure stood in contrast to the risk knowledge expressed by bureaucratic experts who argued that it would encourage more asylum seekers by making existing “successful” policies perceptively weaker.¹⁸⁷

In neither case did the governments object so strongly to the imposition of the alternative measures that they resigned. This was the case even though, thanks to the clandestine nature of government asylum seeker enforcement activities, government would objectively hold asymmetrical and superior risk knowledge to that of sub-political or opposition groups.¹⁸⁸ However, as suggested throughout this thesis, the definition and construction of risk means that there is no one set version of risk, therefore enabling outside groups to redefine what is “risky”.

In interviews conducted for this research, there were suggestions that explained how this redefining took place. An Australian lawyer thought that ‘they were shamed into doing it really. I think they finally had permission to be compassionate,’¹⁸⁹ again recognising the moralising aspects to risk identification. Another attributed the ability to change the framework to increased gender diversity in parliament:

at the time two or three other females actually, were supportive of this legislation tipped the balance [and] who thought that wasn’t fair and that individuals should be out of being brought to Australia for medical treatment.¹⁹⁰

¹⁸⁵ Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 (Cth) Sch 6.

¹⁸⁶ Anna Talbot and George Newhouse, ‘Strategic Litigation, Offshore Detention and the Medevac Bill’ [2019] Court of Conscience 85, 89.

¹⁸⁷ Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, Canberra, 18 February 2019, 123 (Mike Pezzello, Secretary Department of Home Affairs).

¹⁸⁸ Ben Wadham, ‘Operation Sovereign Borders: Dignified Silence or Diminishing Democracy?’ (*The Conversation*, 8 January 2014) <<http://theconversation.com/operation-sovereign-borders-dignified-silence-or-diminishing-democracy-21294>> accessed 22 January 2019.

¹⁸⁹ Interview with AU-LA-02.

¹⁹⁰ Interview with AU-LA-03.

Other research in the context of the Dubs amendment appears to confirm the role of moral concerns in risk identification and management. McLaughlin suggested the outside campaigns were successful in shifting risk perceptions by appealing to Britain's cultural-moral responsibility to protect innocent children. The campaign also appealed to the public's shared memory of the *Kindertransport* scheme during the Second World War.¹⁹¹ A Home Office official in their interview noted the social-ethical tensions involved between today's frameworks and the histories of permissive migration during the Second World War and for forced Jewish migrants suggesting 'we're quite conflicted.'¹⁹²

By placing these events within a sociocultural risk perspective, we can observe the effect of coalitions that form around certain worldviews and their risk perspectives. On one level as the interviewees alluded to, referencing ethical dimensions to policy considerations reveals an egalitarian worldview of risk that contrasts with the government's hierarchical one. They were also able to generate new risk knowledge that made-up a new risk object, this time as child asylum seekers and sick detainees in medical need, that society could manage internally. Implicitly, the non-government groups were addressing the negative reflexive consequences of current migration policies, i.e., those that keep people from claiming asylum or the health effects of indefinite detention. The difference between these two worldviews were used to admonish the other, and as Douglas and Wildavsky argue, risk debates reveal wider discussions about the ideal society.¹⁹³

Despite the generation of alternative risk knowledges about certain asylum seekers as posing a lower social risk to Australian and British societies, the reforms did not last very long. In alignment with the hierarchical risk preferences of government that value order and seek to maintain existing risk preferences, these measures were

¹⁹¹ Carly McLaughlin, "'They Don't Look like Children': Child Asylum-Seekers, the Dubs Amendment and the Politics of Childhood' (2018) 44 *Journal of Ethnic and Migration Studies* 1757, 1759–62.

¹⁹² Interview with UK-CS-02.

¹⁹³ Douglas and Wildavsky (n 130).

subsequently overturned.¹⁹⁴ These examples of initiatives in which groups attempt to find solutions to the reflexive effects of current frameworks are rarely tolerated for long as existing structures reassert their dominance. Beck had argued that as risk proliferated, so too would sub-political groups restructuring the political system that had become unable to manage risk today.¹⁹⁵ While asylum seekers advocacy groups also seem to proliferate, they have not forced a “global cosmopolitan moment” on the issue.¹⁹⁶ Instead, the reassertion of state dominance in the face of very apparent reflexivity within asylum frameworks would seem to indicate a prematurity to Beck’s argument.

Conclusion

This chapter has sought to present the findings from the analysis of the consequences that have flown from the themes of government risk perceptions of irregular migrants and asylum seekers, and into the applicable policies and laws that govern them. Overall, the picture is one of risk aversion and denial of responsibility which is reflective of theorist’s position that modern risk is challenging in fundamental ways the capabilities and structures of the nation-state and its institutions.¹⁹⁷ Particularly as modern risk takes on forms that are not immediately present in time or place. However, the consequences recounted above, also contradict the proposition that state inability to deal with modern risk will force a coming together and sharing of risk responsibilities in a cosmopolitan fashion.¹⁹⁸

The indeterminate nature of modern risks that irregular migrants or asylum seekers are thought by government to pose has led to extensive use of precaution and pre-emption as mitigation tools within relevant frameworks. By extending this

¹⁹⁴ Migration Amendment (Repairing Medical Transfers) Act 2019 (Cth); Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (UK) s 3.

¹⁹⁵ Beck, *World at Risk* (n 1) 93.

¹⁹⁶ Beck, *World Risk Society* (n 63) 40.

¹⁹⁷ Beck, *World at Risk* (n 1) 62.

¹⁹⁸ Beck, *World Risk Society* (n 63) 19–47.

approach from environmental law here,¹⁹⁹ has usefully explained how such moves are particularly justifiable even when chains between causation and harm are unclear or unevidenced.²⁰⁰ Using precaution and pre-emption against irregular migrants and asylum seekers thus becomes justifiable when knowledge of them is less than perfect, and the political costs of overreacting in providing security guarantees is less politically costly than omitting to do something and a risk event occurring.²⁰¹

But the pursuit of precaution and pre-emption leads to the second significant finding of this research relating to the reflexive form that irregular migration frameworks are taking today. As the elimination of risk from irregular migration and asylum is pursued, new risks are generated from these new risk-filtering policy choices. As Hacking explained, people will interact and use their agency to respond to their labels and categorisation which will force new policy responses.²⁰² Not only has this paradoxically created a sense of an overall loss-of-control within the frameworks and publicly, but it may also have put the frameworks into a self-sustaining “risk trap” of control and response.²⁰³

Perhaps the most troubling finding are the consequences that flow from the state of organized irresponsibility. This state took on two forms identified in this research. When both governments sought to negotiate the ejection perceived risky and “high-harm” irregular migrants from their jurisdictions into other places without adequate or any mitigations in-place.²⁰⁴ Second the withdrawal of social welfare and employment enforcement services, have created a vacuum of risk responsibility from which new risks may emerge for migrant, asylum seeker, and community alike. Combined, these two aspects of organized irresponsibility have turned the state into a risk generator and legitimiser of harm.²⁰⁵ Through unlawful incarceration and

¹⁹⁹ Sands and others (n 3).

²⁰⁰ Sunstein (n 4).

²⁰¹ Beck, *World at Risk* (n 1) 54.

²⁰² Hacking (n 60).

²⁰³ Beck, *World Risk Society* (n 63) 141.

²⁰⁴ Matten (n 80).

²⁰⁵ Veitch (n 78).

deportations irregular migrant, asylum seeker, and resident are made susceptible to potential harm or by displacing objective risks into places with less mitigation capabilities establishes a future potential boomerang scenario.

The individualization of risk responsibility that governments have imposed upon irregular migrants has been a particular feature of the crimmigration process established here. It is argued that the inability of the state to adequately police its own laws that mitigate the risk of social and economic integration, has been in-part responsible for the transference of risk to irregular migrants and the wider community. The traditional “crimmigration” thesis has observed the various ways that migrating has been subjected to the application of criminal law. These findings add to the discussion regarding crimmigration by pointing to the reflexive loss-of-control that these policies entail. Chiefly that control via criminalisation policies and legislation, overlooks the agency migrants exert when attempting to navigate insecurities and the modern social structures that they must engage with while attempting to write their own biographies. Conceivably then, crimmigration is not about attempting to secure Australian and British society from a risky object, but an outcome of the continuous reproduction of control and loss-of-control. Separately this research adds to extant literature that has focused on how migrants with high degrees of mobility negotiate their experience with risk,²⁰⁶ by adding a new perspective on how government can enforce a risk bargain on those it deems to be a potential hazard.²⁰⁷

The rise and prominence of sub-political groups that seek to address the perceived deficiencies or risks generated by modern asylum seeker frameworks presents the political dimension to risk and asylum seeking. It is argued here that sub-political and other outside groups have played an important role in generating alternative forms of risk knowledge regarding asylum seekers. These alternatives to the predominant risk narratives generated by government have allowed for momentary cosmopolitanism within the asylum policy field. Though this research does

²⁰⁶ Tulloch and Lupton (n 138); D’Andrea (n 136); O’Reilly and Benson (n 135).

²⁰⁷ Matten (n 80).

find, and in contrast to Beck's thesis,²⁰⁸ that the power of the state to reassert control remains strong in what Dauvergne described as the "last bastion of sovereignty".²⁰⁹

The sub-political exposure of the hostile environment helped reveal the extent of the organized irresponsibility taking place within the administration of asylum policy. It is argued here from an analysis of the data gathered that the affect has been a reorientation of legal frameworks away from its pre-modern foundation of organising responsibility and correcting failures. Thanks to the modern character of asylum seeking, these pre-modern legal frameworks are no longer fit for purpose and have now become a source of risk to resident and asylum seekers alike. This thesis will now move on in the next chapter that concludes this thesis.

²⁰⁸ Beck, *World at Risk* (n 1) 94.

²⁰⁹ Catherine Dauvergne, 'Sovereignty, Migration and the Rule of Law in Global Times' (2004) 67 *The Modern Law Review* 588.

Chapter Seven – Conclusions

Introduction

This thesis has sought to build an understanding of risk perceptions that the Australian and British governments hold towards irregular migrants and asylum seekers. It has provided an analysis of these perceptions and the significant consequences they have over applicable legal and policy frameworks, the irregular migrant, asylum seeker and, wider community alike. A novel theoretical framework using a complementary risk society and sociocultural risk approach was applied as a lens to the analysis thereby developing and contributing new knowledge to the field of irregular migration and asylum studies. Using the arguments developed from this analysis, this final chapter presents some concluding comments and observations.

7.1 Risk as an approach to irregular migration and asylum seeking

To approach the analysis of irregular migration and asylum frameworks in the case study jurisdictions, two leading disciplines within sociological risk theory were applied in a new complementary fashion. In doing so, it answered the call of authors for research that joins some of the many diverse theoretical perspectives on risk,¹ and adds a new subject matter to the extant body of literature examining various social phenomena through a risk lens. The benefit of adopting a complementary approach to risk from the social constructive traditions proved valuable to the analysis of data collected in several ways.

This research identified how government worldviews of risk, irregular migration and asylum seeking begin to crystallise through the Cabinet processes.² Civil servants

¹ Peter Taylor-Gooby and Jens O Zinn, 'Current Directions in Risk Research: New Developments in Psychology and Sociology' (2006) 26 *Risk Analysis* 397, 405; Deborah Lupton, *Risk* (Routledge 1999) 21.

² Cabinet Office, 'The Cabinet Manual' (UK Government 2011); Department of the Prime Minister and Cabinet, 'Cabinet Handbook' (Australian Government 2020) 14th edition.

use this forum to develop and document risk potentials so that ministers can make policy decisions with “eyes wide-open”.³ While Cabinet is the ultimate decision-making body of what constitutes risk in both jurisdictions, differing approaches to the more substantive development of risk knowledge were taken by the Australian and British bureaucracies. The Australian centralised processes contrast with the devolved risk knowledge and administration practices followed by the UK bureaucracy. Consequently, UK civil servants are encouraged to think of risk beyond metrics or reports and “scan the horizon” for the qualities and nature of risk in society today.⁴

It was also evident in the research that the risk mentalities of those civil servants are an important factor to consider in the development of risk within irregular migration and asylum frameworks. Even the alleged objective expert assessment and judgement of risk will in some way be shaped and conditioned by the artificialities of their workplace environment. A former civil servant suggested that being too close to Canberra would affect risk perspectives,⁵ while a lawyer noted that greater gender diversity had altered risk perceptions held towards irregular migrants and asylum seekers.⁶ But perhaps most compelling was the opinion that “group-think” on risk developed within government departments when civil servants were drawn from a common practice and experience backgrounds.⁷

It is this latter view that may go some way to explaining how irregular migrants and asylum seekers come to be constructed as a risky “Other” for government. For civil servants particularly, practicing their “civil service mentality”⁸ of adherence to norms, protocols and procedures of recording and document keeping in their day-to-day work, reproduces and meets the demands of a hierarchical social order. As suggested

³ Interview with AU-CS-03.

⁴ Cabinet Office, ‘Management of Risk in Government: Framework’ (UK Government 2017).

⁵ Interview with AU-CS-03.

⁶ Interview with AU-LA-03.

⁷ Interview with UK-CS-04.

⁸ Interview with UK-CS-01.

by Douglas and sociocultural risk theory,⁹ failing to meet these demands are triggers for this type of social order that would mark others out as a risky “Other”. For irregular migrants and asylum seekers unfortunately, the very nature of their acts of agency to cross physical, economic, or social borders outside official processes is immediately perceived as an especially dangerous risk to those operating within a social order of government hierarchy.

For irregular migrants and asylum seekers, failing to adhere to proper practice and procedure that government hierarchy demands, meant that they were forced to accept responsibility for negative and harmful outcomes while being blamed for their treatment at the hands of the Australian and British governments. There were several interesting conclusions and nuances to draw from the analysis of this blame for risk process in this thesis. In Chapter 5, it was discussed how asylum seekers were in particular, blamed for alleged inefficiencies within the protection claim processes.¹⁰ The blame was legitimised on the premise of failing to follow “proper” asylum processes which in-turn absolved government of responsibility for lengthy processing times and detention. Though irregular migrants and asylum seekers were jointly blamed for potential lack of social cohesion which was perceived as a risk generated by their collective failure for again failing to follow proper migration or asylum processes.¹¹ Following proper processes would have acted as risk filters, and in Douglas’s sociocultural terms,¹² purified the otherwise risky “Other” for their acceptance into Australian and British societies. It was also revealed that irregular migrant and asylum seeker perceived lack of coherence with predominate social values and norms were exposed by their undertaking of dangerous journeys. By putting themselves and worse, their children along with their potential rescuers, at-risk of

⁹ Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press 1982); Aaron Wildavsky and Karl Dake, ‘Theories of Risk Perception: Who Fears What and Why?’ (1990) 119 *Daedalus* 41.

¹⁰ HC Deb 12 July 2004, vol 423, col 1162.

¹¹ HL Deb 10 February 2014, vol 752, col 415

¹² Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (ARK Paperbacks 1984).

harm, permitted governmental blame that justified their subsequent treatment during protection claim processes.¹³

Earlier literature had considered such perceived failing behaviours from several perspectives including as acts of anti-colonial resistance or,¹⁴ as economic acts of economic emancipation.¹⁵ Taking a government-centred perspective on the practice however reveals these behaviours to be a source of anxiety for the hierarchical social structure that conceives of the behaviour as “out-of-place”, thus prompting enforcement that reasserts their “moral universe”. Whether security, economic, or social borders were crossed, Australian and British governments identify the act as a risk to its hierarchical moral universe which open-up paths to moralising and politicisation of the boundary crossing. Douglas had suggested that when ‘disasters that befoul the air and soil and poison the water are generally turned to political account: someone already unpopular is going to be blamed for it.’¹⁶ So it is the case here, for perceived transgressions against what is considered right, the burden of responsibility for negative or harmful outcomes shifts onto irregular migrants and asylum seekers.

Using a sociocultural based approach to risk assisted with developing the proposition that the hierarchical structures of Australian and British governments and their bureaucracies informs their worldviews of what constitutes risk. In-turn, these worldviews have guided how they conceive of and respond to irregular migration and asylum seeking as a phenomenon that threatens the hierarchy’s norms and values. The sociocultural approach of Douglas and others¹⁷ has been limited in previous literature

¹³ Virginia Trioli, ‘Reith Rewrites History to Hide the Shame of Children Overboard Lie’ (*The Sydney Morning Herald*, 1 September 2012) <<https://www.smh.com.au/politics/federal/reith-rewrites-history-to-hide-the-shame-of-children-overboard-lie-20120831-255u3.html>> accessed 6 August 2021. HC Deb 25 April 2016, vol 608, col 1197.

¹⁴ Nadine El-Enany, (*B)Ordering Britain: Law, Race and Empire* (Manchester University Press 2020).

¹⁵ Bridget Anderson, ‘Migration, Immigration Controls and the Fashioning of Precarious Workers’ (2010) 24 *Work, Employment and Society* 300.

¹⁶ Mary Douglas, *Risk and Blame: Essays in Cultural Theory* (Routledge 1992) 5.

¹⁷ Mary Douglas, *Risk Acceptability According to the Social Sciences* (Routledge & Kegan Paul 1986); Douglas and Wildavsky (n 9); Wildavsky and Dake (n 9).

to investigating the presence of social structures within bureaucracies.¹⁸ This research went further by investigating how hierarchy worldviews of risk actually develop and manifest via bureaucratic and government practices. As a result, it is suggested that attempting to understand or predict future irregular migration or asylum regulations without cognisance of the influence that government social structures and their worldview of risk have over their development, would be inadequate.

Engaging in various types of border crossings that contravene government norms and values was not the sole contributor to the development of perceptions that regard irregular migrants and asylum seekers as risky Others. It became clear from the documents and interviews conducted during this research that irregular migration and asylum seeking are now viewed as possessing the characteristics of modern risk typologies. The UK's Cabinet Office has taken a strong interest in the modernist conceptualisation of risk that derives from human development, the effects of which are unknown in time, place, and severity.¹⁹ Such perspectives stand in-contrast to the Australian government that has opted to approach the definition and management of risk in more quantitative terms. Despite the difference in approach, analysis of irregular migration and asylum policy from both jurisdictions revealed the thinking that sees irregular migration and asylum as a consequence of other policies that pursue modernity.

From the analysis carried out in Chapter 3, it was suggested that each jurisdiction has characterised irregular migration and asylum seeking in the terms of a modern risk, as set out by the UK Cabinet Office.²⁰ The respective bureaucracies of both case-study jurisdictions did that by emplacing irregular migrants especially with other modern forms hazard such as climate change, organised crime, and terrorism that travel globally through complex interdependences (themselves creations of

¹⁸ Craig Matheson, 'Four Organisational Cultures in the Australian Public Service: Assessing the Validity and Plausibility of Mary Douglas' Cultural Theory' (2018) 77 *Australian Journal of Public Administration* 644.

¹⁹ Cabinet Office, 'Risk: Improving Government's Capability to Handle Risk and Uncertainty' (UK Government 2002).

²⁰ *ibid.*

policies pursuing modernity) and often from obscure or difficult to define points-of-origin.²¹ Interestingly, political parties were more focused on the emergence of asylum seekers from these same circumstances that bureaucracies suggested would produce irregular migrants. According to political parties, asylum seekers were ‘interwoven security and development challenges’²² which could lead to opportunities to spread harms via people smuggling.²³

The interview evidence repeated this framing when irregular migrants’ or asylum seekers’ unknown source, journey, and timing of arrival were all said to be factors that contributed to government risk perceptions.²⁴ This resonated particularly with the finding in Chapter 6 regarding reflexive awareness being generated within civil services and with ministers. That is, civil servants and ministers have become aware of is the reflexive risks created by the pursuit of greater migration and asylum control policies. A civil servant described the situation as a ‘big moment’ when they realised visa restrictions increased people smuggling.²⁵ The UK Home Secretary has come to a similar view recently attributing increased small boat arrivals to greater security infrastructure installed in France,²⁶ and Australia’s effective maritime patrols has similarly redirected irregular migration through airports.²⁷ This suggests that there is now a self-sustaining dynamic within applicable frameworks – a “risk trap”²⁸ – where control generates a perceived loss-of-control.

It had been theorised by Beck and others that the pursuit of modernisation has compelled the breakdown of social forms of risk management, forcing individuals to

²¹ Ministry of Defence, ‘Global Strategic Trends - 2007-2036’ (UK Government 2006) 3rd; Department of Defence, ‘2020 Defence Strategic Update’ (Australian Government 2020).

²² Labour Party, ‘For the Many Not the Few’ (2017) Election manifesto 116.

²³ Liberal-National Coalition, ‘Our Future Action Plan - Protecting Our Borders’ (2001) Election manifesto.

²⁴ Interviews with UK-CS-04, AU-LA-03.

²⁵ Interview with UK-CS-01.

²⁶ HC Deb 7 January 2019, vol 652, col 87.

²⁷ Helen Davidson, ‘Australia on Track for Record Number of Asylum Seekers Arriving by Plane, Labor Says’ *The Guardian* (8 October 2019) <<https://www.theguardian.com/australia-news/2019/oct/08/australia-on-track-for-record-number-of-asylum-seekers-arriving-by-plane>> accessed 26 February 2020.

²⁸ Ulrich Beck, *World Risk Society* (Polity Press 1999) 141.

negotiate and manage risk at an individual level.²⁹ Earlier literature has investigated how migrants may engage and negotiate their risk exposure and management as an individual.³⁰ What this research identified was the active and conscious effort of government to bring about individualized risk for irregular migrants, asylum seekers and the wider community alike.

The findings discussed in Chapter 4 reveal the nuanced ways that government has forced this risk responsibility onto irregular migrants and asylum seekers respectively. For irregular migrants the individualization of risk responsibility where restrictions and illegality regarding work, could force them into precarious or vulnerable situations risking exploitation from employers leveraging their situation.³¹ For asylum seekers, the progressive restriction or exclusion from social welfare regimes forced them to become self-sufficient in their own care which could paradoxically require engaging in work contrary to the government restrictions.³² While in Chapter 5 a further dimension to risk individualisation was revealed. Government has progressively been shifting responsibility for a range of migration enforcement onto the resident population. These responsibilities include landlords, employers, and even marriage celebrants being required to act as migration enforcement and a type of risk filter ensuring that only certain people have access to Australian and British societies.³³

²⁹ Elisabeth Beck-Gernsheim and Ulrich Beck, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (Sage 2002).

³⁰ Anthony D'Andrea, *Global Nomads: Techno and New Age as Transnational Countercultures in Ibiza and Goa* (Routledge 2007); Ali Nobil Ahmad, 'The Labour Market Consequences of Human Smuggling: "Illegal" Employment in London's Migrant Economy' (2008) 34 *Journal of Ethnic & Migration Studies* 853.

³¹ Catherine Flynn, Margaret Alston and Robyn Mason, 'Trafficking in Women for Sexual Exploitation: Building Australian Knowledge' (2014) 57 *International Social Work* 27, 31.

³² Immigration Act 2016 (UK).

³³ Migration Amendment (Employer Sanctions) Act 2007 (Cth); Immigration Act 2014 (UK) s 52; Immigration Act 2016 (UK) s 39.

This thesis brought into the analysis the modernist approach to risk of Beck,³⁴ and contemporaries such as Giddens,³⁵ to understand better the qualities of modern risk that irregular migrants or asylum seekers may manifest when challenging established security, economic, and social borders. In doing so this thesis contributes to current debates within the sociology of risk by adding irregular migration and asylum seeking to the range of social issues considered to be a product of modernity.³⁶ It was evident that each case study jurisdiction engages with the conceptualisation of irregular migration and asylum as a modern form of risk that can have unknown origins and may occur at any time or place. However, it cannot be said from the evidence that either government is a passive by-stander in risk modernisation helpless to intervene, as Beck had argued.³⁷

An important finding relating to the pro-active management and mitigation of risk was discussed in Chapter 6. By using risk theory as an approach to the analysis of government responses to irregular migration and asylum seeking, brought into picture their responses as innovative forms of risk mitigation and management. Specifically, it was argued that policies such as relocating border enforcement and interdiction through to the construction of offshore detention centres for processing protection claims from asylum seekers are in-fact risk strategies. The intention is to distribute the perceived risks from both cohorts into other times and places, away from Australia and the UK. This is done even though they may create new risk for government, irregular migrant, asylum seeker or resident community member. To predict how future governments will respond to irregular migration or asylum seeking via innovative risk management strategies may well depend on how they understand and interpret the nature and qualities of the risks they are creating today.

³⁴ Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992); Beck, *World Risk Society* (n 28); Ulrich Beck, *World at Risk* (Ciaran Cronin tr, Polity Press 2009).

³⁵ Anthony Giddens, *The Consequences of Modernity* (Polity 1990).

³⁶ Judith A Bradbury, 'The Policy Implications of Differing Concepts of Risk' (1989) 14 *Science, Technology, & Human Values* 380; Nick Fox, 'Postmodern Reflections on "Risk", "hazards" and Life Choices' in Deborah Lupton (ed), *Risk and sociocultural theory: new directions and perspectives* (Cambridge University Press 1999).

³⁷ Beck, *Risk Society: Towards a New Modernity* (n 34) 47–48.

Using an integrated risk lens the analysis government perceptions towards irregular migration and asylum seeking proved to be a useful methodological approach. It allowed for the investigation of how government as an institution developed an acceptable level of risk that lays the basis for frameworks that are applied to irregular migrants or asylum seekers. By integrating the modernist risk theory of Beck into the analysis, this research was able to elucidate what makes-up the risks irregular migrants and asylum seekers are said to manifest, and that government finds objectionable. It was observed during this research that other theoretical approaches to risk such as psychometric and governmentality may reveal additional insights into how people think about risks of irregular migration and asylum seeking or how risk is used as a tool to govern with. Investigating the risk perspectives of other non-government actors and stakeholders in the development of applicable frameworks would also be a useful research agenda to pursue.

7.2 Constituting irregular migration and asylum seeking risk

The sub-questions to the thematic chapters of this thesis asked how and why the security, economic, and social risks of irregular migration and asylum seeking were developed by the Australian and British governments. By doing so new knowledge was put-forward to address academic criticism of risk theories as set-out in Chapter One, that centre on the lack of empirical investigation to substantiate their explanatory claims.³⁸ To engage in the analysis, this thesis developed Hacking's dynamic nominalism approach to making-up people to suggest that risks in society today could equally be considered as made-up.³⁹

For the security and economic risk themes this meant making-up irregular migrants and asylum seekers as risk objects by emplacing them with other well-

³⁸ Åsa Boholm, 'Risk Perception and Social Anthropology: Critique of Cultural Theory' (1996) 61 *Ethnos* 64; Iain Wilkinson, 'Social Theories of Risk Perception: At Once Indispensable and Insufficient' (2001) 49 *Current Sociology* 1.

³⁹ Ian Hacking, *The Social Construction of What?* (Harvard University Press 1999); Ian Hacking, *Historical Ontology* (Harvard University Press 2002); Ian Hacking, 'Making Up People' (2006) 28 *London Review of Books* 23.

established harm types that have caused objective detriment. For the bureaucracies involved, the making-up of security risks typically involved aligning irregular migration and asylum seeking with other extant risks with whom they could be said to share characteristics. In Chapter 3 the policy papers that were analysed expressed their thinking that irregular migrants and asylum seekers took on many of the forms that modern risks possess. That is, they were global in nature, could no longer be managed by the state alone, and for which insurance against was increasingly difficult to achieve and implement.⁴⁰ At a political level the task was explicit. It involved rhetorical links between irregular migrants, asylum seekers and terrorists or criminals,⁴¹ or especially by declaring asylum to be a ‘pipeline for terrorists to come-in.’⁴²

A similar path was followed in the making of economic risks from irregular migration and asylum seeking but differentiation between each cohort’s perceived economic risk were found. The civil service in each jurisdiction led with discussion and policy papers to emplace irregular migrants with objective harms of lower wages and working conditions for those with employment rights,⁴³ while at a macro-level irregular migrants could ‘increase the likelihood of tax and social security fraud.’⁴⁴ But with regard to asylum seekers specifically, a new category of asylum seeker was made-up and labelled “failed asylum seekers”, who were brought into being as a new risk to the social welfare system. As welfare has become more difficult to access for all community members, asylum seekers have been removed from welfare systems ‘to reduce costs to the public purse.’⁴⁵ It is argued that reasons interviewees gave for the construction of irregular migrants and asylum seekers as an economic risk, collectively point to this being a reflexive outcome from other modern policies. Whether that

⁴⁰ Ministry of Defence (n 21); Department of Defence, ‘Australia’s National Security: A Defence Update 2005’ (Australian Government 2005); National Crime Agency, ‘National Strategic Assessment of Serious and Organised Crime’ (UK Government 2020).

⁴¹ HC Deb 19 September 2001, vol 375, cols 29-30.

⁴² 3AK, ‘Transcript of the Hon Peter Reith MP’ (13 September 2001).

⁴³ Department for Business, Innovation and Skills and Home Office, ‘Tackling Exploitation in the Labour Market’ (2015) Consultation Paper; Department of Immigration and Multicultural Affairs, ‘Review of Illegal Workers in Australia: Improving Migration Compliance in the Workplace’ (Australian Government 1999).

⁴⁴ Department of Immigration and Multicultural Affairs (n 43) 26.

⁴⁵ Home Office, ‘Reforming Support for Failed Asylum Seekers and Other Illegal Migrants - Response to Consultation’ (UK Government 2015) para 1.5.

reflexivity is a result of insecurity people now experience as a by-product of flexible and deregulated labour markets making irregular migrants perceptively risky labour competition.⁴⁶ Or the heaviness, hardness, and resentment people feel attributed to broader rationalisation of social welfare justifying removing asylum seekers as potential welfare recipients.⁴⁷ Irregular migrants and asylum seekers were painted as a new layer of uncertainty in an increasingly uncertain economic landscape.

In a subtle distinction, the social risks of irregular migration and asylum presented in Chapter 5, were made in association with, or support of, the earlier two risk themes. This suggests that the rhetorical difficulties in creating verifiable measures of social harm meant creating links with the more easily imagined security and economic harms. Nonetheless, governments created imaginaries of Australia and the UK as “safe spaces” for lawful residents protected by their borders.⁴⁸ Within these safe spaces, security would be assured, and valuable pursuits of economic and social progress could be achieved.⁴⁹ The link to a potential future harm was created by political leaders as they engaged in making those residing outside the safe space into “swarms”⁵⁰ and “waves”⁵¹ that could be blamed for disruption to the valued social cohesion.⁵² The reasons for this risk perception were, much like the risk itself, integrated with the other security and economic concerns. Some interviewees pointed to historical notions of island-nation security threats,⁵³ while others suggested that the hardening in relation to security and economic concerns had translated into greater resistance to social change.⁵⁴

⁴⁶ Interviews with AU-CS-01, UK-CS-02, UK-NG-01.

⁴⁷ Interviews with UK-LA-01, UK-CS-02, UK-CS-03.

⁴⁸ Home Office, ‘Secure Borders, Safe Haven: Integration with Diversity in Modern Britain’ (2002) Cm 5387; Liberal-National Coalition, ‘Our Plan: Real Solutions for All Australians’ (2013) Election manifesto 32.

⁴⁹ Scott Morrison, ‘A New Force Protecting Australia’s Borders’ (Address to the Lowy Institute for International Policy, Sydney, 9 May 2014).

⁵⁰ David Maddox, ‘PM Accused of Xenophobia for “swarm” of Migrants Warning’ *The Scotsman* (Edinburgh, United Kingdom, 31 July 2015) 6.

⁵¹ Tony Abbott, ‘Slam Shut Your Borders or Pay a Terrible Price’ *Daily Mail* (London, United Kingdom, 29 October 2015).

⁵² HC Deb 13 October 2015, vol 600, col 196.

⁵³ Interviews with AU-LA-03, UK-CS-02.

⁵⁴ Interview with UK-LA-01.

In a distinction that was specifically relevant to asylum seekers, the analysis found that governments used blame, as envisioned by Douglas and sociocultural theorists,⁵⁵ as a tool to make them up as a risk to the protection claim system. In both case study jurisdictions, asylum seekers were presented as fraudulent and unworthy of protection and said by government to be risks to “genuine” asylum seekers and at-fault for the inefficient running of their asylum regimes. The consequence for asylum seekers of this strategy of blame has been the increasing difficulties in navigating these systems and justifications in prolonged periods of liminality, that is, continuing uncertainty regarding their status.

For each of the three risk themes identified in this research, the intent of making irregular migrants or asylum seekers into risky and harmful objects had a performative dimension.⁵⁶ That is, the naming and classifying irregular migrants and asylum seekers as a type of risk was not done as a mere administrative task that brought the risk into being. Rather, by creating a risk that imagines a future harm, and bringing it into the present, ‘non-existent yet possible events’⁵⁷ that involve irregular migrants or asylum seekers are made available for regulation. Conceived of in this way, this thesis proposes a new way of conceptualising the corresponding mitigations. By understanding how the risk is made, and what the risk is constituted of, we may be better able to predict the likely frameworks that act as mitigation to the risk.

7.3 Risk within irregular migration and asylum seeker frameworks

The final sub-question within this research asks what the effect of risk has been on applicable frameworks of Australia and the UK and the legal position of irregular migrants and asylum seekers. This question sought to develop new knowledge and understandings of the particular situations that irregular migrants, asylum seekers, and

⁵⁵ Douglas, *Risk and Blame* (n 16); Douglas and Wildavsky (n 9).

⁵⁶ Hacking, *Historical Ontology* (n 39) 99.

⁵⁷ Michael Power, ‘The Apparatus of Fraud Risk’ (2013) 38 *Accounting, Organizations and Society* 525, 530.

resident communities have been exposed to as mitigation policies have progressively been integrated into applicable frameworks designed to manage borders by risk filtering those deemed as potentially hazardous.

As discussed in Chapter 6, it is apparent that for government and its supporting bureaucracies, taking precautionary and pre-emptory mitigating steps to ensure that perceived risks from irregular migration or asylum do not eventuate, is an objective of government and key characteristic of good government. As mitigating risk became central to policy and legal frameworks, this thesis identified immigration detention,⁵⁸ codifying exclusion,⁵⁹ and character testing,⁶⁰ among the new types of risk precaution and pre-emptory mitigating measures. It was argued that these measures to protect against potential harms despite unclear causal chains of harm, were only possible because the harms that these measures may cause were externalised to government and located in other more acceptable times and places or with other people.

Despite these precautionary and pre-emptory measures, the inherent nature of irregular migration and asylum seeking means that uncertainties remain about who, when, and where an irregular migration or asylum risk event may occur. Therefore, a concerted effort exists to update and reinforce mitigation techniques and their supporting legislative and policy frameworks. This suggests that there is an ongoing commitment to governmental and bureaucratic risk management in the face of the uncertain nature of irregular migration and asylum seeking. However, government and their bureaucracies' commitment to manage irregular migration or asylum seeking as a risk, which is at the limits of their current knowledge and capabilities, may suggest an attempt *'to feign control over the uncontrollable.'*⁶¹ But this thesis argues for a more nuanced position.

⁵⁸ Migration Act 1958 (Cth).

⁵⁹ Immigration, Asylum and Nationality Act 2006 (UK) 200.

⁶⁰ Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth).

⁶¹ Ulrich Beck, 'The Terrorist Threat: World Risk Society Revisited' (2002) 19 *Theory, Culture & Society* 39, 41 original emphasis.

On the one-hand and in contradiction to Beck's theory, this research has shown that in attempting to manage irregular migration and asylum seeking, government and their bureaucracies have put concerted effort into controlling the risk by assessing and managing it despite the present limits on knowledge and capabilities. In fact, the evidence has shown that the perception of irregular migration and asylum seeking as a risk of modernity, possessing many characteristics of uncertainty in occurrence or even of effect,⁶² has not prohibited its attempted management. Further, it is argued here that the various uncertainties of the qualities to irregular migration and asylum today, have prompted greater demands for more creative and innovative methods to manage the perceived risks.

These control or mitigation activities have centred on the idea that once irregular migration or asylum seeking is defined and understood as a risk, it can be transformed into an issue that can be confidently regulated and controlled by government. While the techniques and strategies employed to manage irregular migration and asylum have followed a precautionary and pre-emptory strategy since 2001, the bureaucracies' attempt to assess risk through procedure and conflation with extant risk demonstrates attempts to generate appropriate risk knowledge that will inform and justify new mitigations. Indeed, as shown in the literature analysis and throughout this thesis, the constructive nature of irregular migration and asylum risk means that it has been modified and deployed to achieve various policy goals.

Yet on the other hand, it was also shown throughout this thesis, the attempt to "feign control" over irregular migration and asylum risk has in-fact led to an overall perceived and actual loss-of-control. Once conceived of as a modern risk along with all its properties, mitigation measures have secured the present concern, while generating new risk to be addressed in other places, and in the near and distant future. Relocating irregular migrant and asylum risk to other places and times is a trend that could well be observed in approaches of governments beyond the two case studies here.

⁶² Cass Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press 2005).

Policies pursued by Australia and the UK that attempt to relocate risk to other places include visa restrictions, juxtaposed controls, carrier sanctions, and locating immigration officials beyond the territorial jurisdiction. But as civil servants interviewed in this research explained, these policies that were put in place to mitigate existing risk perceptions, themselves generated new risks when irregular migrants and asylum seekers came to negotiate their journeys in response to them.⁶³ It is argued here that the continuous looping of control and loss-of-control reinforces a narrative that beyond the borders of Australia and the UK, lies a dangerous place from which new irregular migration and asylum seekers emerges with uncertain harms for each jurisdiction.

These decisions to relocate irregular migrant or asylum risk will reinforce the reflexivity that this thesis argues is endemic within current frameworks of Australia and the UK. This finding adds a new perspective to the securitization and crimmigration approaches,⁶⁴ that have been predominant in explaining the ever-increasing criminalisation of government policy particularly towards irregular migrants and asylum seekers making risky attempts to enter the jurisdiction. It was argued that especially the linking of crime and terror risks with irregular migration and asylum has increased the perceived risk and uncertainty of irregular migration and asylum requiring new control measures. It has now become evident that securitization is not so much about a potentially hazardous irregular migrant or asylum seeker, but the consequence of control policies replicating themselves. Centrally then, this replicating dynamic is a “risk-trap” of continuous pursuit of managing risks generated by earlier control policies.⁶⁵ We should expect to see the cycle continue until de-escalation attempts are made by the respective authorities.

⁶³ Interview with UK-CS-01.

⁶⁴ Juliet Stumpf, ‘Crimmigration: Encountering the Leviathan’ in Sharon Pickering and Julie Ham (eds), *The Routledge Handbook on Crime and International Migration* (Routledge 2015); Jef Huysmans, ‘The European Union and the Securitization of Migration’ (2000) 38 *JCMS: Journal of Common Market Studies* 751.

⁶⁵ Beck, *World Risk Society* (n 28) 141.

The most concerning observation made while carrying-out the analysis of Australian and British frameworks, was the scale of organized irresponsibility found throughout and discussed in Chapter 6. The (mal)administration of deportation proved a case study in how irresponsibility permeates frameworks now as risk mitigations policies are integrated. Despite a “deportation turn” within irregular migration policy (a risk mitigating measure),⁶⁶ civil servants noted that “official ignorance” lead to the “complete collapse” of the UK’s deportation regime and applied as a blanket policy to those it should not have been.⁶⁷ Further, Australia’s deportation of asylum seekers to the Pacific and the UK’s attempt to deport suspected terrorist migrants, simply failed to address the perceived problems,⁶⁸ merely relocating it to another place. Both practices however exposed the temporal effects of risk. While appearing to resolve the current apparent risk posed by either irregular migrants or asylum seekers, the practice of deporting people and offshoring asylum seekers, produced new risks that rebounded on governments today.

This finding of irresponsibility can conceptually draw-together many of the disparate harms, both physical and legal, current practices and procedures cause all cohorts of irregular migrants and asylum seekers but particularly those that have been subjected to periods of detention or deported from Australia and the UK. Including sociocultural risk perspectives expands upon the original risk society thesis by suggesting that, to maintain hierarchical risk preferences that preserve order, the state will turn itself into a risk generator. Instead of providing effective risk responsibility mechanisms and standing-in as risk guarantor, the state is progressively absenting itself from responsibility and often shifting obligations onto irregular migrants, asylum seekers, and resident community members individually. Organized irresponsibility should raise concerns for resident communities about their governments becoming more dangerous to them in more areas of policy. However, it also raises questions about the ongoing sustainability or future viability of international and regional

⁶⁶ Matthew Gibney, ‘Asylum and the Expansion of Deportation in the United Kingdom’ (2008) 43 *Government and Opposition* 146.

⁶⁷ Interviews with UK-CS-01, UK-CS-05.

⁶⁸ *A & Ors v Secretary of State for the Home Department* 2004 UKHL 56 (House of Lords) [43].

protection and resettlement agreements, primarily as states withdraw from agreements in effect if not formally, which acted as assignors of risk responsibilities in the wider asylum field.

Finally, the findings regarding the competition for risk knowledge depart most significantly from Beck's thesis of cosmopolitanism.⁶⁹ The current frameworks in place for Australia and the UK, particularly for asylum seekers, is under significant pressure to assert control. Yet as discussed in section 6.5, there remains advocacy from outside executive government for the continued influence of liberal and human rights-based considerations in applicable laws and policies. Sub-political groups were identified in this research to have exerted perceptible influence on extant risk perceptions towards asylum seekers. The Medevac Bill and the Dubs Amendment were tangible outcomes from groups outside of government who were able to alternative risk knowledge regarding asylum seeking. These groups had their success according to interviewees by drawing on their alternative life experience of their proponents such as gender, or life history as a member of the Kindertransport.⁷⁰

The presence of such debates regarding risk knowledge relating to asylum seeking is evidence of how perceived risks associated with the phenomena is constantly debated and contested. Most especially by the executive that constantly sought to emphasis the panoply of potential hazards of asylum seeking and who ultimately won the debate. The resolution in favour of the government and wider continued dominance of hierarchical approaches to asylum demonstrates a prematurity to Beck's argument that modern risks will only be addressed by communal global action.

Irregular migration and asylum seeking continues to be framed in the vocabulary of risk and neither side of the liberal or restrictive sides of the debate have provided sustainable mechanisms to resolve the perceived risk issues. Instead, each

⁶⁹ Beck, *World Risk Society* (n 28) 40.

⁷⁰ Interviews with AU-LA-02, AU-LA-03.

has only proposed temporary procedures to manage the movement of irregular migrants and asylum seekers. That is where the political significance of irregular migration, asylum and risk originates. Earlier in this thesis the modern causes and enablers of irregular migration and asylum seeking were articulated. If these continue, irregular migrants and asylum seekers will continue to arrive in Australia and the UK, but no risk-free solution has likewise appeared.

Going forward, irregular migration and asylum control frameworks that intend to prevent arrivals and remove those already present, will likely operate alongside the variety of regular migration and formal asylum programmes. All of which serve the central aim of exerting control over all forms of migration movements. But what remains common is a reorientation of framework logics to one of control and certainty achieved through the management of risk. However, what has become equally evident is the disproportionate and undesirable harm caused first to irregular migrants and asylum seekers but also to government and wider resident communities.

Appendix One: Interviewee List and Biographies

| Reference | Biography |
|-----------|--|
| AU-CS-01 | This parliamentary civil servant has worked for a Commonwealth elected official for over five years. Part of this person's work responsibilities involve engagement with the Department of Home Affairs to resolve constituent migration status issues and engagement with the irregular migrant community on service provisions. |
| AU-CS-02 | This parliamentary civil servant was a ministerial staffer for a minister for immigration within the period of analysis for this thesis. The staffer was involved in policy development and legislative negotiations for up to five years. |
| AU-CS-03 | A former civil servant with over 20 years' experience in a variety of government departments across the Commonwealth. They are now an academic and conduct ad-hoc consultations and advisory services for government. |
| AU-LA-01 | A former parliamentarian of approximately five years and is now practicing as a private lawyer that manages a case load that includes people with an irregular migration status. |
| AU-LA-02 | A qualified and currently practicing solicitor of more than 15 years in the field of immigration law. Working in a private practice, their caseload includes people who are currently onshore with an irregular migration status. |
| AU-LA-03 | A former parliamentarian of approximately five years and legally qualified. They also previously held a position in an administrative tribunal. |
| AU-NG-01 | A currently practicing solicitor for nearly 20 years. They now work at a charity specialising in the case work and lobbying for people with an irregular migration status. They have been in that role for more than five years and have also spent periods abroad working for international charities focusing on displaced people. |
| AU-NG-02 | A journalist that covers stories relevant to irregular migration and associated government policies. They write have written for major metropolitan news outlets but now focuses on independent publications and their own social media material. |
| UK-CS-01 | A former senior civil servant in the Home Office with nearly 30 years of experience in migration policy and enforcement. Their career includes time spent in Private Offices of ministers and as an advisor. |
| UK-CS-02 | A current senior civil servant in the Home Office with more than 15 years' experience in predominately operational roles but more recently in policy positions. Their work within the Home Office has focused on the interactions between public safety, crime, and migration. |

| | |
|----------|--|
| UK-CS-03 | A local government elected official in a council of north London for more than 10 years. In addition to their constituency work for people with an irregular migration status, they are responsible as a council member for managing the provision of services to irregular migrants as part of council obligations to central government. |
| UK-CS-04 | A current civil servant in the Home Office with less than five years' experience. Their career to-date has focused on irregular migrant policy development. |
| UK-CS-05 | A current senior civil servant in the Home Office with more than 25 years' experience in a range of positions but primarily in irregular migrant policy and a focus on asylum and status resolution case work. |
| UK-LA-01 | A currently practicing barrister who recently joined the Bar. Prior to starting their legal career, they worked as a parliamentary aid for approximately five years and had a significant case load of constituency work related to Windrush matters. |
| UK-NG-01 | A policy officer within a UK trade union, their work includes industrial relations matters that affect undocumented or irregular migrants. |

Appendix Two: Research Ethics Review

This form should be completed for every new research project, or a project for which the methodology has changed and requires a new assessment.

PRIOR to undertaking your Research:-

1. It is the researcher's responsibility to follow the School's [Code of Good Practice](#) on ethical standards, and any relevant academic or professional guidelines in the conduct of their study. Please ensure that you have read the University's [Policy](#) and [Guidance](#) available on our website.
2. It is the researcher's responsibility to ensure that ethical approval has been sought **at least ONE-TO-TWO months BEFORE** undertaking research and travelling;
3. If your Research involves participants who are being interviewed, please ensure that the [Participant Information Sheet](#) & [Participation Consent Form](#) are fully completed and sent **along with your self-assessment** to the Research Services.

| | | | | |
|--|---|--|---|---------|
| Name of Researcher: | | | | |
| | Status (<i>mark with an 'X' as appropriate</i>) | Masters student | | Fellows |
| | | MPhil/PhD student | x | Staff |
| | Email | dean.thompson@postgrad.sas.ac.uk | | |
| | Institute/Unit | Institute of Commonwealth Studies | | |
| Student details if applicable | | | | |
| | Degree programme: | MPhil/PhD | | |
| | Supervisor's name: | David Cantor (Sarah Singer) | | |
| | Supervisor's email: | david.cantor@london.ac.uk | | |
| Title of the proposal and brief abstract: | | | | |
| <p>The manifestation in law and practice of risks posed by irregular migration as perceived by Australian and British governments from 2001 to 2019</p> <p>This research will consider how the Australian and United Kingdom governments perceive risks posed by irregular migration and how these perceptions are implemented in law and put into practice. The research will have two distinct components. The first will be a desk-based documentary exercise. The focus will be on collecting and analysing legislation, official records and other paper-based records. The second phase will be fieldwork conducted in Australia and the UK. The fieldwork will compose of interviews and document gathering. Interviews will be conducted with bureaucrats to gather an understanding of how migration law and policy is developed to reflect government perceptions of risk. The purpose of this exercise is to evaluate how risk perceptions may flow from government perceptions through to on-the-ground practice. Similarly, the research will look at how those who practice migration law understand the effects risk perceptions may have. It is hoped that with these understandings in place, recommendations could be made to reform risk in irregular migration thereby improving practices and outcomes for those using migration systems.</p> | | | | |

| |
|---|
| Date of research/interviews and/or travel being undertaken: November 2018 (UK) and February 2019 (Australia) |
| Funding: Is it the research externally funded? No. If so by whom? |
| Collaboration: Is the research project collaborative with external Institutions? If so, please list the names of the collaborators here: No. |

In the case of a collaborative project, the form should only focus on the part of the research that is undertaken in the School premises and led by School members.

Research Services, School of Advanced Study, University of London

ALL RELEVANT DOCUMENTS ARE TO BE SENT TO:

research.ethics@sas.ac.uk

| PART I – Research Ethics Initial CHECKLIST | | | | |
|---|---|------------|-----------|--------------------|
| <i>The Checklist is designed to identify the nature of any ethical issues raised by the Research. Please ensure you have read the School Guidance before continuing</i> | | | | |
| | <i>Please mark an X in the appropriate right-hand column/box</i> | Yes | No | Not certain |
| Consent | | | | |
| i | Does the research involve living human subjects specifically recruited or selected for this research project | x | | |
| ii | Does the study involve participants who are potentially or in any way vulnerable or who may have any difficulty giving meaningful consent to their participation or the use of their information? | | x | |
| iii | Are participants to be enlisted in the study without their knowledge and consent? (e.g. via covert observation of people in public places) | | x | |
| iv | Will the study require the co-operation of a gatekeeper for initial access to the groups or individuals to be recruited? | | x | |
| v | Will the participants be involved in a physical (the participants are physically in the same room as the researcher) and virtual capacity (the participants are interacting online)? | x Both | | |
| vi | Will the study involve animals | | x | |
| Research Design / Methodology | | | | |
| i | Does the research methodology involve the use of deception? (i.e.: participants could be deliberately misled as to the true nature or purpose of the research in which they are taking part or the true identity and role of the researcher is not provided. – see guidance page 2 for details) | | x | |
| ii | Are there any significant concerns regarding the design of the research project? For example: <ul style="list-style-type: none"> • Where the research intrudes into the private sphere or delves into some deeply personal experience; • Where the study is concerned with deviance or social control; • Where the study impinges on the vested interests of powerful persons or the exercise of coercion or domination; or • Where the research deals with matters sacred to those being studied, who may find the research offensive and disrespectful? | x | | |

PART I – Research Ethics Initial CHECKLIST

The Checklist is designed to identify the nature of any ethical issues raised by the Research. Please ensure you have read the School Guidance before continuing

| <i>Please mark an X in the appropriate right-hand column/box</i> | | Yes | No | Not certain |
|--|---|-----|----|-------------|
| iii | If the proposed research relates to the provision of social or human services is it feasible and/or appropriate that service users or service user representatives should be in some way involved in or consulted upon the development of the project? | x | | |
| iv | Will the research take place outside the UK ? (i.e.: will the researcher need to travel outside the UK , or if virtual , will the research take into account all participants across the world – please delete as appropriate) (if Yes to travelling outside the UK, please ensure that you respond to Part 3 x) | x | | |
| v | Will the research take place in the School's laboratories? | | x | |
| Financial Incentives | | | | |
| i | Will financial inducements (other than reasonable expenses and compensation for time) be offered to participants? (e.g. either compensation for travel or payment for contributing to research) | | x | |
| Research Subjects | | | | |
| i | Could the study induce unacceptable psychological stress or anxiety or cause harm or negative consequences beyond the risks encountered in normal life? | | x | |
| ii | Will the study involve prolonged or repetitive testing? | | x | |
| iii | Will the study involve discussion of sensitive topics ? For example (but not limited to): sexual activity, illegal behaviour, experience of violence or abuse, drug use, security sensitive subjects.). If your response relates to security-sensitive subjects , please answer the questions in the attached appendix | x | | |
| iv | Are drugs, placebos or other substances to be administered to the study participants or will the study involve invasive, intrusive or potentially harmful procedures of any kind? | | x | |
| Confidentiality | | | | |
| i | Will research involve the sharing of data or confidential information beyond the initial consent given? | | x | |
| ii | Will the research involve respondents through the internet, e.g. social media, or other visual/vocal methods (where participants are identifiable) | | x | |
| iii | Will the research involve administrative or secure data that requires permission from the appropriate authorities before use? | | | x |
| Data Management | | | | |
| The Data Protection Act 1998 will apply to any data-processing activities entailed by this research. (i.e.: How do you collect the data, where will the data be held, how can you guarantee its security, will you be retaining it?) (Please review p3 of guidance document) | | | | |
| i | Is there any cause for uncertainty as to whether the research will fully comply with the requirements of the Act? | | x | |
| ii | Will research involve the sharing of data beyond the project end date? | | x | |

PART I – Research Ethics Initial CHECKLIST

The Checklist is designed to identify the nature of any ethical issues raised by the Research. Please ensure you have read the School Guidance before continuing

| <i>Please mark an X in the appropriate right-hand column/box</i> | | Yes | No | Not certain |
|--|---|-----|----|-------------|
| Dissemination | | | | |
| i | Are there any particular groups who are likely to be harmed by dissemination of the results of this project? | | | x |
| Risk Management | | | | |
| i | After reviewing your research methodology, can there be any risks to your physical or psychological wellbeing or to the participants' during the research period? | | x | |
| ii | Can you confirm that you are aware of the University Travel Insurance policy for SAS researchers? | | x | |

PART II: Self certification and/or next steps

A If, after careful consideration, you have answered **No** to all the questions, you do not need to complete the questionnaire in Part III. You should select **A** in the **Self-Certification Section** below, sign as appropriate and submit the form to the Research Services. Occasional audits of such forms may be undertaken by the School.

B If you have answered **Yes** or **Not certain** to any of the questions in Part I, you will need to consider fully how you plan to deal with the ethical issues raised by your Research. **Please answer the relevant questions in Part III.** If having done so you are wholly assured that adequate safeguards in relation to the issues raised can and will be put in place, you may select **B** in the Self-certification Section below, sign as appropriate and submit the form to the Research Services. Occasional audits of such forms may be undertaken by the School.

C if you have answered **YES** or **Not certain** to the majority of questions in Part I, your research will need to be subject to a full review. To support the Committee's review, applicants are asked to fill in Part III and select C.

- Students should undertake the process in consultation with their supervisors, whose counter-signature is required. Electronic signature is acceptable.
- Approval of assessments are only undertaken if and when all relevant documents including Information Sheet & Consent Form duly filled in have been sent to Research Services.
- If you are unable to self-certify please do complete the questionnaire to the best of your abilities and the research services will support you in your task.

SELF-CERTIFICATION

Select A, B or C (DELETE as appropriate):

I have read and understood the School Research Ethics Policy and the questions contained in the Checklist above and confirm:

B that adequate safeguards in relation to such issues can and will be put in place.

PhD Student:

Summary of any ethical issues identified and safeguards to be taken (expand box as necessary):

Does the research involve living human subjects **specifically recruited or selected** for this research project? This research project will involve interviewing bureaucrats and legal specialists in the migration field. There is no intention of having contact with migrants themselves or other people that could be considered vulnerable such as asylum seekers. Regarding the use of information provided by bureaucrats and legal specialists, the interviewees will be fully informed as to the purpose for gathering the information and its intended usage. It is anticipated that the data collected will be used anonymously when presented in the thesis. Should there be a concern raised about a potential risk to reputation even with the information presented in anonymised form, the issue will be discussed with School staff and safeguarding measures used. These measures may include not using the information gathered at all, if it is determined there is potential risk to a participants' reputation even though consent has been given.

Will the participants be involved in a **physical** (the participants are physically in the same room as the researcher) and/or **virtual capacity** (the participants are interacting online)? It is anticipated that interviews will take place in person and remotely via telecommunication methods.

Will the research take place **outside the UK**? Yes, research will be conducted in Australia, mostly likely in Melbourne, Canberra and Sydney. Canberra is the headquarters location of the Department of Home Affairs, the government department responsible for border and migration policy in Australia. It is anticipated that the bureaucrats responsible for the issues that I will be interviewing, and the documents to be examined will be located here. With respect to legal professionals, they are mostly located in Sydney and Melbourne. Travelling to meet with them in their office locations would be likely.

Will the research involve administrative or secure data that requires permission from the appropriate authorities before use? It is possible that I may be given administrative data by the government departments that administer the migration systems. If so, steps will need to be taken to ensure that the information is kept secure and not further disclosed. Information security for soft copy material will be via password protected cloud storage provided by the School of Advanced Study. Hard copy material will be kept secure in a passcode enabled safe that I own. Only I have the passcode and the safe is not shared with another party.

I, **as a SAS student**, hereby confirm that I have undertaken training and/or have had significant experience in research ethics in the course of my career and/or have sought and obtained expert advice in connection with the ethical aspects of the proposed research.

| | | | |
|-----------------------|---------------|-------|------------|
| Researcher signature: | Dean Thompson | Date: | 06.07.2018 |
|-----------------------|---------------|-------|------------|

I, **as supervisor**, hereby confirm that the student has been advised in relation to any ethical issues raised by his research; these have to the best of the supervisor's understanding been adequately addressed in the research design; and the student has been made aware of her/his responsibilities for the ethical conduct of his research.

Supervisors to add any comments here.

| | | | |
|----------------------|--------------|------|------------|
| Supervisor signature | David Cantor | Date | 06.07.2018 |
|----------------------|--------------|------|------------|

Part III - QUESTIONNAIRE

The questionnaire enables you to explain how the ethical issues relating to your research will be addressed. If you are intending to submit your proposal to the Research Ethics Committee it needs to be completed in full.

Research aims

The aim of this project is to understand how perceived risks of irregular migration have been translated into migration law and policy and if these risks affect the way the law operates and those who work in this area of law and policy.

In addition to the desk-based research on legislation and policy that I will carry out, I propose to conduct fieldwork. I propose to interview two categories of people who can be broadly labelled as experts that operate in the migration law and policy sphere. Namely, legal professionals (practitioner and academic) and bureaucrats. The legal professionals I propose to approach for interview have recently been or are actively representing clients who arrived in Australia and the UK by irregular means or whose migration status is currently classified under legislation as irregular.

Like England and Wales, Australia's legal professional practice is split between solicitors and barristers. However, there are also migration agents in Australia who can act for clients in migration related matters. So, I propose to include professionals from all segments of the legal community in my research so that different views can be captured. It will also be important to capture the perspectives of those who operate in different types of practices. Some operate from social justice practices within national firms based in the major cities, while others operate from community legal centres. Given the different capacities and constraints on these individuals a flexible approach to the information gathering process will be employed. Using face-to-face interviews, I hope to gather practitioners' opinions on how risk in irregular migration affects the migration system with potential case studies gathered to substantiate or better illustrate their views.

I also hope to place the detailed examples gathered from the practitioners into the wider context of risk perception in migration law and policy. To do this I intend to approach and build contacts within academic / advocacy centres such as the Kaldor Centre for International Refugee Law based in Sydney.

As part of my fieldwork I intend to gather information on the operationalisation of risk in policy. To achieve this, I propose to approach the lead agencies with responsibility for migration in Australia and the UK, the Department of Home Affairs and the Home Office. By conducting research at the departments by way of interview and document examination, I hope to gather information that sheds light on how governments implement their perceptions of irregular migration risk and how bureaucrats understand and carry out their responsibilities in operationalising this policy and legislation.

The aim of this research is to better understand an element of migration law and policy that may now be having a negative impact upon policy outcomes and on the outcomes for those subject to migration systems in Australia and the UK. In addition to the desk-based research, carrying out the planned fieldwork will benefit my thesis because it will include analysis that draws on operational and practical experience of risk in irregular migration law and policy. Desktop research and analysis alone would limit the quality of the final thesis. Further, having this information will enable better comparison and contrast in policy approaches and outcomes.

Informed consent

| | |
|----|---|
| i | <p>Will potential participants be asked to give informed consent in writing and will they be asked to confirm that they have received and read the information about the study? If not, why not?</p> <p>Yes, participants will be asked to complete a consent form. An example form is attached. For participants that are concerned about being identified, anonymity will be offered. Such a participant will be referred to in the thesis generically.</p> |
| ii | <p>How has the study been discussed or are there plans to discuss the study with those likely to be involved, including potential participants or those who may represent their views?</p> |

| | |
|--|---|
| | Initial contact with participants will be made via email that informs them of the study and of its aims and objectives. A request for interview participation will be made in writing via email and if tentatively agreed to then a copy of the consent form will be supplied along with confirmation of the interview date. Further, I will ask for the consent form to be returned prior to the interview going ahead and discuss any concerns beforehand. |
| iii | Has information (written and oral) about the study been prepared in an appropriate form and language for potential participants? At what point in the study will this information be offered? (project description is mandatory) |
| | Yes, an abstract has been prepared and will be provided to the prospective participant along with the consent form prior to confirming the interview details. The form and abstract are in English only which should not be an issue as the working language of both Australia and the UK is English. |
| iv | How will potential participants be informed of whether there will be adverse consequences of a decision not to participate? Or of a decision to withdraw during the course of the study? How long will the participants have to decide whether to take part in the study? |
| | It is unlikely that there will be adverse consequences for a participant if they decide not to participate or not participate at a later stage. The participants will be informed in writing prior to and verbally at the commencement of the interview that they may withdraw at any time. A transcript of the interview will be provided for their verification. A draft of the written work as it relates to their input will also be provided to them when it is prepared. The participant could make a request to withdraw at any of these contact points. My contact details will be provided to the participant that they can use to inform me that they have decided to withdraw from the research. If a participant decides to withdraw, I will confirm their request in writing and inform them as to how their contribution has been dealt with. |
| v | What provision has been made to respond to queries and problems raised by participants during the course of the study? |
| | Problems will be addressed in consultation with my supervisor as and when they arise. |
| Research design and methodology | |
| i | Recruitment of Participants: How many participants will be recruited? |
| | It is estimated that between five and ten interviews in each jurisdiction will be conducted. |
| ii | Will there be any inclusion or exclusion criteria that will be applied? |
| | Participants will be limited to those with current or recent legal and operational experience of migration law and policy in the UK and Australia. |
| iii | Where relevant, how does the research methodology justify the use of deception? |
| | NA |
| iv | If the proposed research involves the deception of persons in vulnerable groups, can the information sought be obtained by other means? |
| | NA |
| v | How will data be collected and analysed during the project? |
| | Note and voice recordings will be made during the interview. Example documents/forms and policy manuals maybe provided to me from interviewees during the fieldwork research. Following the interview, a transcript will be created for accuracy and future reference. It is currently planned to conduct the transcript and document analysis as a desk-top activity. Analysis programmes such as Nvivo may be used if considered necessary and possible but the software is not yet available to SAS students so unlikely to be used. |
| vi | How have the ethical and legal dimensions of the process of collecting, analysing and storing the data been addressed? |

| | |
|------|--|
| | <p>The ethical and legal dimensions of this research were initially discussed with my project supervisor. We considered these issues at the commencement of this project and later while completing this form. For instances where an ethical or legal issue may arise it will be first discussed with a supervisor and if possible, remedial actions taken which may include discussing with the research participant what the appropriate actions may be. Secure data storage will be provided by the School of Advanced Study's password protected cloud storage. Where immediate upload is not available, data will be stored on a password protected USB stick. Physical data such as notes taken during interviews, will be stored in a locked cabinet.</p> |
| vii | <p>What concerns have been taken into account with regard to the preparation and design of the research project? If agencies, communities or individuals are to be directly affected by the research (e.g. participants, service users, vulnerable communities or relations), what means have you devised to ensure that any harm or distress is minimized and/or that the research is sensitive to the particular needs and perspectives of those so affected?</p> <p>This research project does relate to irregular migration though the focus is on the legal and administrative/policy aspects of the issue. There is no direct contact with a person that has an irregular migration status being planned. There may be an indirect effect on migrants because of this research if recommendations are made that affect a change in legislation or public policy regarding an irregular migrant cohort. Towards the latter parts of the research project when conclusions are starting to be drawn the affects of any recommendations will continue to be monitored. In consultation with supervisors any potentially negative impacts upon the relevant cohorts will be assessed. If an assessment is made that a negative impact could be implied from the research a mitigation plan may be developed that may include actions such as consultations with representative groups or reverting to interviewees to discuss the draft conclusions. The Research Ethics Committee will also be consulted should the conclusions present a potential adverse implication for a particular group or individual.</p> |
| viii | <p>What considerations have you taken should the research be judged handling as security-sensitive material?¹</p> <p>It is unlikely that I will need to handle or use security sensitive material. However, if the material is judged to be security sensitive two approaches will be adopted. Electronic information will be secured in an encrypted password protected database provided by the School of Advanced Study and with the sharing settings on 'only me'. If security sensitive data is provided in hardcopy, it will be stored in a PIN enabled safe that is kept securely in my residence and only accessible by me. The Research Ethics Committee will be consulted if circumstances regarding this issue change.</p> |
| ix | <p>Have you been able to devise a timetable of research?</p> <p>Yes, a research project timetable has been prepared and is routinely updated in consultation with my supervisors. A copy of the latest version is attached. The fieldwork components are currently estimated to take one month to complete in each jurisdiction. Exact dates of interviews have not yet been determined as potential participants have not yet been approached. That will occur once ethics approval has been granted.</p> |
| x | <p>Where will the research take place?</p> <p>Australia and the UK</p> |
| xi | <p>If outside the UK: a) are you a UK resident, i.e. based in the UK? Yes. d) Can you confirm here that the area of travel is not against FCO's advice? Yes.</p> <p>Australia – February 2019; including Canberra, Sydney and Melbourne</p> |
| xii | <p>Has a similar study (or systematic review) been done recently? If a similar study or review exists, please explain why a repeat study is necessary</p> <p>No similar study has been recently performed.</p> |

¹ See attached appendix for additional questions if you responded positively to this question

| Ethical questions arising from the provision of incentives | |
|---|---|
| i | Are any incentives being offered to participants? If so, why? & how? |
| | No financial or non-pecuniary incentives will be offered to prospective participants. Written acknowledgement of a participant may be made in the thesis covering material if appropriate and approved by the participant. Prospective interview participants will be asked to participate on a voluntary basis. |
| Research participants | |
| i | Who do you identify as the participants in the project? |
| | Policy professionals (bureaucrats) and legal professionals (solicitors, barristers, migration agents and academics) |
| ii | Are other people who are not participants likely to be directly impacted by the project? |
| | No. However as discussed above there may be an indirect impact upon an irregular migrant cohort as a result of recommendations that are made, or conclusions drawn. |
| iii | What are the specific risks to research participants or third parties? |
| | Reputational and professional risks may be incurred by bureaucrats or legal professionals if sensitive information or data is released and attributable to a research participant. As a third party, a person with an irregular migration status may be affected by a recommendation or conclusion made by this research. This risk may be in the form of a change to an irregular migrant's legal position. The potential mitigation measures as described above will be employed if it is assessed that there could be a negative impact on a irregular migrant cohort. |
| iiii | If the research involves pain, stress, physical or emotional risk, please detail the steps taken to minimize such effects. |
| | This research does not involve any of the above risks. |
| Confidentiality | |
| i | What arrangements have been made to preserve confidentiality for the participants or those potentially affected, and compliance with data protection law? |
| | Information that is gathered will be placed under a code identifier. The key identifier will be kept separately from the collected information. Data will be held via password protected storage and kept for as long as necessary to finalise the research and destroyed once the thesis has been published and no further work to be carried out as an extension from the research. |
| Dissemination | |
| i | Will the results of the study be offered to those participants or other affected parties who wish to receive them? If so, what steps have been taken to minimize any discomfort or misinterpretation that may result at the dissemination stage? |
| | The results of the research will be provided to participants as part of the drafting and verification process. It is also anticipated to provide participants, who so choose, with a copy of the draft thesis chapter that contains their input. The thesis will also be made publicly available and participants will be advised in advance of its release. It is unlikely that identification will be made in the written work rather anonymised identifiers will be used in the thesis which should assist in minimising any discomfort. |
| Risk to Researchers | |
| i | Are there any risks to researchers? If so, please provide details and plans as to how the risks will be mitigated. |
| | No. |

| REFER TO RESEARCH ETHICS COMMITTEE | | |
|--|---|---|
| Approval is required by the Research Ethics Committee on one or more of the following grounds (please mark with an 'X' in the appropriate place in the right-hand column): | | |
| a. | Significant ethical issues are raised by the research, including research characterised by one or more of the following features: | |
| | (i) Research involving deception of participants, or which is conducted without their full and informed consent at the time the study is carried out or when the data is gathered, or which involves the use of confidential information. | |
| | (ii) Research involving more than minimal risk of harm to participants , such as: <ul style="list-style-type: none"> o research involving vulnerable groups o research involving personally intrusive or ethically sensitive topics o research involving groups where permission of a gatekeeper is normally required for initial access to members o research which would induce unacceptable psychological stress, anxiety or humiliation or cause more than minimal pain o research which covers security-sensitive subject and material (<i>please respond to questions in Appendix overleaf</i>) | x |
| b. | The researcher wants to seek the advice of the Research Ethics Committee | |
| c. | External obligations (for instance, funder requirements, data access requirements) require it | |
| d. | Research undertaken by a student or member of staff who has not received appropriate training or has insufficient experience in research ethics and has been unable to access appropriate advice or support. | |
| e. | Research that is undertaken , on behalf of the student/research, not by the student/researcher himself/herself , but by a third party not associated with the School | |

| APPROVAL REFERENCE NUMBER |
|---|
| (to be filled in by the Research Services Office once self-assessment results, and approval from Research Committee if needed. have been confirmed) |
| |

Appendix

| Additional questions related to security-sensitive material² | |
|--|----------|
| Does your research fit into any of the following security-sensitive categories? If so, indicate which: | |
| a. commissioned by the armed forces: | Yes / No |
| b. commissioned under an EU security call: | Yes/ No |
| c. involve the acquisition of security clearances: | Yes/ No |
| d. concerns terrorist or extreme groups: | Yes/ No |
| <i>The Terrorism Act (2006) outlaws the dissemination of records, statements and other documents that can be interpreted as promoting or endorsing terrorist acts.</i> | |

| | |
|--|---------|
| <i>If your answer to question 1d is yes, please continue to answer the questions below:</i> | |
| | |
| 1. Does your research involve the storage on a computer of any such records, statements or other documents? | Yes/ No |
| 2. Might your research involve the electronic transmission (e.g. as an email attachment) of such records or statements? | Yes/ No |
| | |
| 3. If you answered 'Yes' to questions 1 or 2, you are required to store the relevant records or statements electronically on a secure university file store. The same applies to paper documents with the same sort of content. These should be scanned and uploaded. Access to this file store will be protected by a password unique to you. Please confirm that you understand and agree to be responsible for the storage of all documents relevant to questions 1 and 2 as indicated above: | |
| I agree/I do not agree | |
| | |
| 3a. Please confirm that you understand and agree not to transmit electronically to any third party documents in the document store: | |
| I agree/I do not agree | |
| 4. Will your research involve visits to websites that might be associated with extreme, or terrorist, organisations? | Yes/ No |
| | |
| 5. If you answer 'Yes' to question 4, you are advised that such sites may be subject to surveillance by the police without prior consent. Accessing those sites from university IP addresses might lead to police enquiries. Please acknowledge that you understand this risk as noted above | |
| I agree/I do not agree | |
| | |
| 6. By submitting to the School Research Ethics process, you accept that members of the School and the University of London may need to have access to a list of titles of documents (but not the contents of documents) in your document store. Please acknowledge that you understand and agree | |
| I agree/I do not agree | |
| | |
| Signature of researcher | |
| Date | |

Version: February 2018

Appendix Three: Risk Potential Assessment Tool

PROTECTED Sensitive: Cabinet (When Complete)

RISK ASSESSMENT POTENTIAL TOOL - AUTHORISATION AND GENERAL PROPOSAL INFORMATION – (January 2015 version)

| | |
|--|--|
| Portfolio | <input type="text"/> |
| Department/PGPA Entity Name | <input type="text"/> |
| Proposal Title | <input type="text"/> |
| Estimated Delivery Date | <input type="text"/> |
| Estimated Total Proposal Cost (\$m) | <input type="text"/> |
| Brief proposal description <input type="text"/> | |
| Date prepared (dd/mm/yyyy) | <input type="text"/> |
| Brief Description of authority to bring proposal forward and expected date to go forward <input type="text"/> | |
| If it is a project subject to ICT or Capital Works Two Pass provisions - what and when is the next pass? | <input type="text"/> |
| Name of Responsible Minister | <input type="text"/> |
| Approved by SRO | Name: <input type="text"/> Date: <input type="text"/> |

1

PROTECTED Sensitive: Cabinet (When Complete)

PROTECTED Sensitive: Cabinet (When Complete)

Contact Details

Senior Responsible Official (SRO) - (Band 2 or 3)

| | |
|------------------------------|----------------------|
| Name | <input type="text"/> |
| APS Classification/Job Title | <input type="text"/> |
| Telephone number | <input type="text"/> |
| Mobile number | <input type="text"/> |
| E-mail address | <input type="text"/> |

Proposal Manager/Director

| | |
|------------------------------|----------------------|
| Name | <input type="text"/> |
| APS Classification/Job Title | <input type="text"/> |
| Telephone number | <input type="text"/> |
| Mobile number | <input type="text"/> |
| E-mail address | <input type="text"/> |

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Risk Potential Assessment Tool

The RPAT assists entities to determine and communicate the potential risk of a proposal to ministers before seeking Cabinet's agreement. The risk rating of a proposal can also inform whether additional assurance processes should be applied. Risk Ratings are a consolidation of the individual question ratings.

Overall Risk (including mitigation) Ratings can be VERY HIGH, HIGH, MEDIUM or LOW.

This template will give ministers confidence that their entities are considering risk and mitigation strategies at the earliest possible stage of policy development.

The questions in the RPAT are short and deliberately objective. This assists entities to determine the potential level of risk, both for the Consequence (Section A – 7 Questions) to government and for the Implementation Complexity (Section B – 14 Questions).

The tool extracts a Summary Table of Risk, and the Top Five Risks from the 21 questions. Entities need to identify potential mitigations and choose a "residual risk" for the Top Five Risks to assist Finance in determining an Overall Risk (including mitigation) rating for the RPAT.

The Guidance for each question can assist entities in completing the questions.

What to do when the RPAT is completed

1. If the Level of Risk (before mitigation) is Medium or higher, a copy of the completed RPAT (including the first two pages of the template) must be provided to:

(The relevant) Finance Budget Agency Advice Unit

Department of Finance (Finance)

2. After receiving the completed RPAT, Finance will advise the entity whether or not an assurance review is recommended for the proposal.

3. The entity must include the Overall Risk (including mitigation) rating in the Implementation and Delivery section of the NPP.

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Section A – Strategic Context

| Risk Area | Rating | | | | |
|--------------------------------|--|---------------------------|---|----------------------------|---|
| A1. Government priority | Very Low Low Government profile. | Low | Med Moderate Government interest. | High | Very High Very High Government interest/priority. |
| Guidance | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| A2. Financial Impact | Very Low Exposure of public funds, less than \$50m. | Low | Med Exposure of public funds \$250-\$500m. | High | Very High Exposure of public funds, greater than \$1b. |
| Guidance | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| A3. Citizens | Very Low Low impact on small number of citizens. | Low | Med Medium impact on moderate number of citizens. | High | Very High Large impact on large number of citizens. |
| Guidance | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| A4. Market | Very Low Minimal impact on private sector. | Low | Med Moderate negative or positive impact on private sector. | High | Very High Significant negative or positive impact on private sector. |
| Guidance | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| A5. Stakeholders | Very Low Straightforward stakeholder arrangement or no opposition of stakeholders expected. | Low | Med Multiple stakeholders or some stakeholder opposition expected. | High | Very High Complex stakeholder arrangements or significant stakeholder opposition expected. |
| Guidance | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |

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| | | | | | |
|-----------------------|--|---------------------------|---|----------------------------|---|
| Justification | <input type="text"/> | | | | |
| A6. Legal Risk | Very Low | Low | Med | High | Very High |
| Guidance | AGS legal risk ratings (where relevant) are Low, and contracting risk is Very Low. | | AGS legal risk ratings (where relevant) are Medium, or contracting may involve indemnities, warranties or guarantees. | | AGS legal risk ratings (where relevant) are High, stakeholders are litigious, or contracting creates significant risks to the Commonwealth. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |
| A7. All Other | Very Low | Low | Med | High | Very High |
| Guidance | Very Low other risk. | | Medium other risk. | | Proposal specific risk to be highlighted for Cabinet. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |

PROTECTED Sensitive: Cabinet (When Complete)

Section B – Implementation Complexity

| Risk Area | Rating | | | | |
|---|--|---------------------------|---|----------------------------|--|
| B1. Other Jurisdictions/ Entities/Business Areas <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | No other jurisdictions, entities or other business units involved. | | Some involvement across other jurisdictions, entities or business areas. | | Complex involvement across jurisdictions, entities or business units. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <div style="border: 1px solid black; height: 20px;"></div> | | | | |
| B2. Financial Benefits <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | Less than \$50m. | | \$250m - \$500m. | | Greater than \$1b. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <div style="border: 1px solid black; height: 20px;"></div> | | | | |
| B3. Organisational/Cultural Change <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | Limited impact on operations or staff. | | Some organisational restructuring, retraining or transfer of staff/outourcing. | | Very significant impact on operations or staff. Rectifying high profile operational failure. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <div style="border: 1px solid black; height: 20px;"></div> | | | | |
| B4. Innovation <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | Involves no new technology, development, methods, production or tools. | | Involves new techniques but with a stable application or known techniques but with new application. | | Use of new or untried technology, development, methods, production or tools with high degree of complexity or uncertainty. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <div style="border: 1px solid black; height: 20px;"></div> | | | | |

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| | | | | | |
|--|---|---------------------------|---|----------------------------|---|
| B5. Information and Communications Technology <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | No IT component. | | Infrastructure required/packaged software/data migration/some links to other internal/external systems. | | Significant infrastructure requirements/ complex data migration/ extensive and/or complex links to internal/external systems. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| B6. Procurement <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | No procurement. | | Delivery of complex products/services. | | Significant customised element. Multi stage procurement process. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| B7. Construction <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | No construction requirements. | | New construction using non-standard construction. | | Unique Commonwealth construction or other construction with extensive customised elements. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| B8. Contractual/Service Delivery Arrangements <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | No contract/delivery arrangements required. | | Multiple suppliers but with single prime contractor. Separate Service Delivery entity | | Complex commercial arrangements. Multiple suppliers without prime contractor or multiple Service Delivery partners. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |
| B9. Governance <div style="border: 1px solid black; padding: 2px; width: fit-content;">Guidance</div> | Very Low | Low | Med | High | Very High |
| | Straight forward and stable governance structure. | | Some governance issues identified and actions developed to correct them. | | Complex governance structures likely to change during life |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | | | | | |

7

PROTECTED Sensitive: Cabinet (When Complete)

PROTECTED Sensitive: Cabinet (When Complete)

| | | | | | of project/ programme. |
|--|---|---------------------------|--|----------------------------|--|
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |
| B10. Management/Team Experience | Very Low | Low | Med | High | Very High |
| Guidance | Fully resourced and skilled team and management. No recruitment requirement or specialist training. | | Key skills/experience in place but recruitment or training required for staff. | | Key skills/ experience lacking or not available. Significant new resources or training required. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |
| B11. Timing Constraints | Very Low | Low | Med | High | Very High |
| Guidance | No challenge in meeting timetables. | | Compressed or extended timeframe for delivery. | | Schedules very difficult, no contingency allowed. Uncontrolled changes to deadlines likely. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |
| B12. Dependencies | Very Low | Low | Med | High | Very High |
| Guidance | No dependence on success of other projects/programmes. | | Some dependence on successful delivery of other projects/ programmes. | | Fully dependant on successful delivery of other projects/ programmes. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |
| B13. Clarity of Policy | Very Low | Low | Med | High | Very High |
| Guidance | There is clarity of policy and high level of policy development assurance. | | Developing clarity of policy and some level of policy development assurance. | | Lack of clarity of policy and low level of policy development assurance. |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |
| B14. Entity Capability | Very Low | Low | Med | High | Very High |
| Guidance | Entity has extensive experience with previous comparable outputs. | | Entity experience with comparable projects but with new complexities for | | No previous experience with this kind of proposal. |

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| | | | | | |
|---------------|---|---------------------------|------------------------------|----------------------------|---------------------------------|
| | | | delivery. | | |
| | <input checked="" type="radio"/> Very Low | <input type="radio"/> Low | <input type="radio"/> Medium | <input type="radio"/> High | <input type="radio"/> Very High |
| Justification | <input type="text"/> | | | | |

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Add Top Risks Clear Top Risks

| Risk | Justification | Mitigation | Residual Risk |
|------|---------------|------------|---------------|
| | | | |
| | | | |
| | | | |
| | | | |
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Risk Summary

| | |
|--|--|
| | |
| Strategic Context | |
| Implementation Complexity | |
| Legal Risk | |
| Level of Risk (before mitigation) | |
| Overall Risk (including mitigation) | |

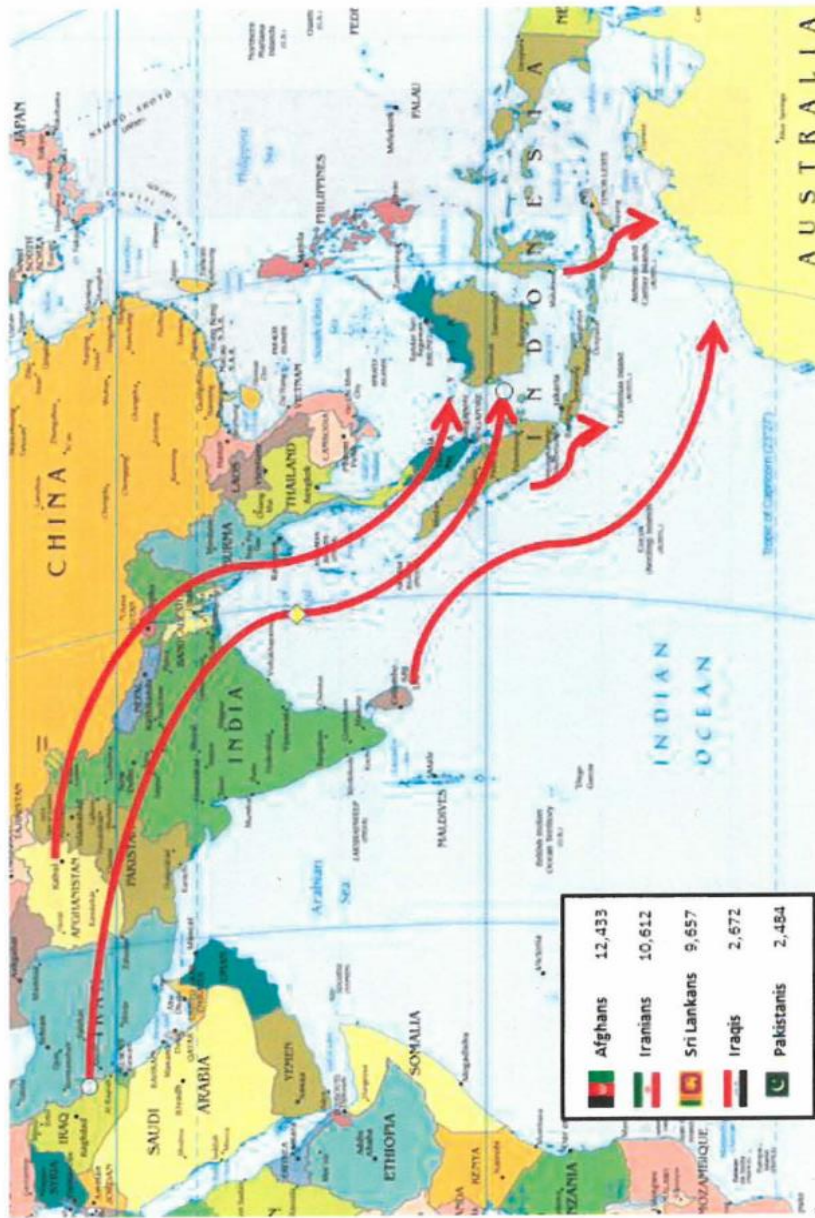
1. If the Level of Risk (before mitigation) is Medium or above, the completed RPAT must be provided to Finance.
2. Please include the Overall Risk (including mitigation) rating in the Implementation and Delivery section of the NPP. Finance may advise a different Overall Risk rating, as well as whether or not an assurance review is recommended.
3. Please click the "Update Overall Risk" button below, after inserting Mitigation and reviewing the Residual Risk in the Top Risks table.

Update Overall Risk

Appendix Four: Operation Sovereign Borders Irregular Migration Map

17

Attachment A – Labor’s record: 48,300 illegal boat arrivals since 2007



The Coalition’s Operation Sovereign Borders Policy



Source: Liberal-National Operation Sovereign Borders policy.¹

¹ Liberal-National Coalition, ‘The Coalition’s Operation Sovereign Borders Policy’ (n 8) 17.

Appendix Five: Status Resolution Support Services Banding

| Band | Description |
|--------|--|
| Band 1 | Support for unaccompanied minors in places of detention |
| Band 2 | Support for unaccompanied minors in Residence Determination arrangements (“community detention”) |
| Band 3 | Support for adults and families in Residence Determination arrangements (“community detention”) |
| Band 4 | Transitional support for people leaving immigration detention facilities following the grant of a visa |
| Band 5 | Support for any vulnerable migrant with an unresolved immigration status (including people seeking asylum) who are living in the Australian community on a valid visa (formerly known as “Community Assistance Support”). Recipients of Band 5 usually have more complex needs and require intensive casework support. |
| Band 6 | Support for people seeking asylum living in the Australian community on a valid visa (formerly known as “Asylum Seeker Assistance Scheme”) |

| Type | Band 1 | Band 2 | Band 3 | Band 4 | Band 5 | Band 6 |
|--|--------|--------|--------|--------|--------|--------|
| Orientation Support | Red | Green | Green | Green | Red | Red |
| Health Services | Green | Green | Green | Red | Red | Red |
| Medicare | Red | Red | Red | Green | Green | Green |
| Torture & Trauma | Red | Red | Red | Green | Green | Green |
| Career Support | Green | Green | Green | Red | Red | Red |
| Income Support | Red | Green | Green | Green | Green | Green |
| Case Worker | Red | Green | Green | Green | Green | Green |
| Independent Observer Services | Red | Green | Green | Red | Red | Red |
| Departure Support Services | Red | Green | Green | Green | Green | Green |
| Form Filling Assistance | Red | Green | Green | Green | Green | Green |
| Meaningful Engagement | Red | Green | Green | Green | Green | Green |
| Financial Hardship Assistance | Red | Green | Green | Green | Green | Green |
| Provided Accommodation | Green | Green | Green | Green | Red | Red |
| Education Support – School Aged Children | Red | Green | Green | Green | Green | Green |
| Job Active Referral | Red | Red | Red | Green | Green | Green |

Source: Department of Home Affairs.¹

¹ Department of Home Affairs, ‘Status Support Resolution Services (SRSS) Programme: Operational Procedures Manual (Version 7)’ (n 794) 18.

Bibliography

Case Law – Australia

Ah Yin v Christie 1907 4 CLR 1428 (High Court of Australia)

Braun v Minister for Immigration 1991 33 FCR 152 (Federal Court of Australia)

Donohoe v Wong Sau 1925 36 CLR 404 (High Court of Australia)

Kamasae v Commonwealth of Australia & Ors 2017 VSC 537 (Supreme Court of Victoria)

Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] HCA 40 (High Court of Australia)

Minister for Immigration, Local Government and Ethnic Affairs v Montero 1991 31 FCR 50 (Federal Court of Australia)

Plaintiff M70/2011 v Minister for Immigration and Citizenship [2001] HCA 32 (High Court of Australia)

Potter v Minahan 1908 7 CLR 277 (High Court of Australia)

Ruddock v Vadarlis [2001] FCA 1329 (Federal Court of Australia)

Case Law – United Kingdom

A & Ors v Secretary of State for the Home Department 2004 UKHL 56 (House of Lords)

R (Mahfoud) v Secretary of State for the Home Department 2010 EWHC 2057 Admin (High Court of England and Wales)

R v Governor of Durham Prison ex parte Hardial Singh 1984 1 WLR 704 (High Court of England and Wales)

The Queen on the Application of I v Secretary of State for the Home Department 2002 EWCA Civ 88 (Court of Appeal (England and Wales))

Legislation – Australia

Financial Framework (Supplementary Powers) Regulations 1997 (Cth)

Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 (Cth)

Immigration Restriction Act 1901 (Cth)

Migration Act 1958 (Cth)

Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 (Cth)

Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth)

Migration Amendment (Employer Sanctions) Act 2007 (Cth)

Migration Amendment (Excision from Migration Zone) Act 2001 (Cth)

Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001 (Cth)

Migration Amendment (Reform of Employer Sanctions) Act 2013 (Cth)

Migration Amendment (Repairing Medical Transfers) Act 2019 (Cth)

Public Governance, Performance and Accountability Act 2013 (Cth)

Legislation – United Kingdom

Alien Restriction Act 1914 (UK)

Aliens Act 1905 (UK)

Anti-Terrorism, Crime and Security Act 2001 (UK)

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (UK)

Immigration Act 1971 (UK)

Immigration Act 2014 (UK)

Immigration Act 2016 (UK)

Immigration and Asylum Act 1999 (UK)

Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (UK)

Immigration, Asylum and Nationality Act 2006 (UK)

Nationality and Borders Act 2022 (UK)

Nationality, Immigration and Asylum Act 2002 (UK)

International Treaties

Convention Relating to the Status of Refugees 1951 (United Nations, Treaty Series, vol 189, p 137)

Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons 1989 (89/13/Rev1)

'Joint Action Plan by the UK and France on Combating Illegal Migration Involving Small Boats in the English Channel (UK-France) (Adopted 24 January 2019, Entered into Force

24 January 2019) <<https://www.gov.uk/government/publications/uk-france-joint-action-plan-on-illegal-migration-across-the-channel>>

'Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, Relating to the Transfer to and Assessment of Persons in Papua New Guinea, and Related Issues (5-6 August 2013)'

'Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia, Relating to the Settlement of Refugees in Cambodia (26 September 2014)'

'Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues (3 August 2013)'

'Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic Concerning the Reinforcement of the Cooperation for the Coordinated Management of Their Shared Border (UK-France) (Adopted 18 January 2018, Entered into Force 1 February 2018) Treaty Series 001/2018: CM 9568'

UK Government, 'Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement' (*GOV.UK*, 13 April 2022) <<https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r>> accessed 3 June 2022

UK Government and French Government, 'Joint Action Plan by the UK and France on Combating Illegal Migration Involving Small Boats in the English Channel' (24 January 2019) <<https://www.gov.uk/government/publications/uk-france-joint-action-plan-on-illegal-migration-across-the-channel>> accessed 4 December 2019

Secondary Sources

'2 When Can a Visa Be Refused or Cancelled under Section 501? | Australian Human Rights Commission' <<https://humanrights.gov.au/our-work/2-when-can-visa-be-refused-or-cancelled-under-section-501>> accessed 8 June 2021

3AK, 'Transcript of the Hon Peter Reith MP' (13 September 2001)

Abbott T, 'Slam Shut Your Borders or Pay a Terrible Price' *Daily Mail* (London, United Kingdom, 29 October 2015)

Acik AC, Trott P and Cinar E, 'Risk Governance Approach to Migration: A Viable Alternative to Precautionary Management' (2022) 25 *Journal of Risk Research* 468

Adams J, *Risk* (UCL Press 1995)

- , 'Risk and Culture' in Adam Burgess, Alberto Alemanno and Jens Zinn (eds), *Routledge Handbook of Risk Studies* (Routledge 2016)
- Adamson F, 'Crossing Borders: International Migration and National Security' (2006) 31 *International Security* 165
- Adey P, *Mobility* (2nd edn, Routledge 2017)
- af Wåhlberg A and Sjöberg L, 'Risk Perception and the Media' (2000) 3 *Journal of Risk Research* 31
- Ahmad AN, 'Dead Men Working: Time and Space in London's ('illegal') Migrant Economy' (2008) 22 *Work, Employment and Society* 301
- , 'The Labour Market Consequences of Human Smuggling: "Illegal" Employment in London's Migrant Economy' (2008) 34 *Journal of Ethnic & Migration Studies* 853
- Aiyar S and others, 'The Refugee Surge in Europe: Economic Challenges' (International Monetary Fund 2016) SDN/16/02 <<https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2016/12/31/The-Refugee-Surge-in-Europe-Economic-Challenges-43609>> accessed 27 October 2020
- Aliverti A, 'Enlisting the Public in the Policing of Immigration' (2014) 55 *The British Journal of Criminology* 215
- Allen J and Henry N, 'Ulrich Beck's Risk Society at Work: Labour and Employment in the Contract Service Industries' (1997) 22 *Transactions of the Institute of British Geographers* 180
- Amnesty International, 'Families Belong Together' (2019) <<https://www.amnesty.org.uk/issues/refugees-migrants-and-asylum>> accessed 6 March 2021
- Amoore L, *The Politics of Possibility: Risk and Security Beyond Probability* (Duke University Press 2013)
- Amoore L and De Goede M, 'Governance, Risk and Dataveillance in the War on Terror' (2005) 43 *Crime, Law and Social Change* 149
- Anderson B, "'Illegal Immigration": Victim or Villain?' (University of Oxford 2008) Working Paper 64
- , 'Migration, Immigration Controls and the Fashioning of Precarious Workers' (2010) 24 *Work, Employment and Society* 300
- , *Us and Them?: The Dangerous Politics of Immigration Control* (Oxford University Press 2013)

- Anderson B and Blinder S, 'Who Counts as a Migrant? Definitions and Their Consequences' (Migration Observatory 2019) Briefing
- Anderson B, Gibney M and Paoletti E, 'Citizenship, Deportation and the Boundaries of Belonging' (2011) 15 *Citizenship Studies* 547
- Ang I, 'From White Australia to Fortress Australia: The Anxious Nation in the New Century' in Laksiri Jayasuriya, David Robert Walker and Jan Gothard (eds), *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003)
- Astrada M, 'Fear & Loathing in the Present Political Context: The Incubus of Securitized Immigration' (2018) 32 *Georgetown Immigration Law Journal* 169
- 'Asylum Backlog Cleared "by 2011"' *BBC News Online* (19 July 2006)
<http://news.bbc.co.uk/1/hi/uk_politics/5193018.stm> accessed 13 August 2018
- Australian Border Force, 'ABF 2020' (Australian Government 2016)
- Australian Government Department of Immigration and Border Protection, 'Asylum Trends - Australia: 2012-13 Annual Publication' (2013)
<<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-2012-13.pdf>> accessed 4 April 2018
- Bail for Immigration Detainees, 'About Immigration Detention' (*About Immigration Detention*) <https://www.biduk.org/pages/About_Immigration_Detention> accessed 14 February 2022
- Balzacq T, 'A Theory of Securitization: Origins, Core Assumptions, and Variants' in Thierry Balzacq (ed), *Securitization Theory: How Security Problems Emerge and Dissolve* (Routledge 2011)
- Balzacq T, Léonard S and Ruzicka J, "'Securitization" Revisited: Theory and Cases' (2016) 30 *International Relations* 494
- Bardsley DK and Hugo GJ, 'Migration and Climate Change: Examining Thresholds of Change to Guide Effective Adaptation Decision-Making' (2010) 32 *Population and Environment* 238
- Barth F, 'Introduction' in Fredrik Barth (ed), *Ethnic groups and boundaries: the social organization of culture difference* (Waveland Press 1998)
- Bashford A and McAdam J, 'The Right to Asylum: Britain's 1905 Aliens Act and the Evolution of Refugee Law' (2014) 32 *Law and History Review* 309
- Bashford A and Strange C, 'Asylum-Seekers and National Histories of Detention' (2002) 48 *Australian Journal of Politics & History* 509

BBC, 'Migrant Crossings: Use of Navy Ships to Stop Boats "Dangerous"' (*BBC News*, 10 August 2020) <<https://www.bbc.com/news/uk-england-53719575>> accessed 5 February 2021

Beazley K, 'Strengthening Australia's National Security' <<https://www.alp.org.au//media/1001/kbmsnsec061001.html>> accessed 23 April 2019

—, 'Combating People Smugglers and Strengthening Australia's Border Protection'

Beck U, *Risk Society: Towards a New Modernity* (Mark Ritter tr, Sage 1992)

—, 'The Reinvention of Politics: Towards a Theory of Reflexive Modernization' in Ulrich Beck, Anthony Giddens and Scott Lash (eds), *Reflexive Modernization: Politics, tradition and aesthetics in the modern social order* (Polity Press 1994)

—, *Ecological Politics in an Age of Risk* (Amos Weisz tr, Polity Press 1995)

—, *World Risk Society* (Polity Press 1999)

—, 'Foreword' in Stuart Allan, Barbara Adam and Cynthia Carter (eds), Kathleen Cross (tr), *Environmental risks and the media* (Routledge 2000)

—, *The Brave New World of Work* (Patrick Camiller tr, Polity 2000)

—, *What Is Globalization?* (Patrick Camiller tr, Polity Press 2000)

—, 'The Terrorist Threat: World Risk Society Revisited' (2002) 19 *Theory, Culture & Society* 39

—, 'Living in the World Risk Society' (2006) 35 *Economy and Society* 329

—, *World at Risk* (Ciaran Cronin tr, Polity Press 2009)

—, 'Foreword: Risk Society as a Political Category' in Eugene A Rosa, Ortwin Renn and Aaron M McCright (eds), *The Risk Society Revisited* (Temple University Press 2014)

Beck U, Bonss W and Lau C, 'The Theory of Reflexive Modernization: Problematic, Hypotheses and Research Programme' (2003) 20 *Theory, Culture & Society* 1

Beck U and Holzer B, 'Organizations in World Risk Society' in Christine M Pearson, Christophe Roux-Dufort and Judith A Clair (eds), *International Handbook of Organizational Crisis Management* (SAGE Publications 2007)

Beck-Gernsheim E and Beck U, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (Sage 2002)

Bem K and others, 'A Price Too High: The Cost of Australia's Approach to Asylum Seekers' (A Just Australia and Oxfam Australia 2007)

Berger R, 'Now I See It, Now I Don't: Researcher's Position and Reflexivity in Qualitative Research' (2013) 15 *Qualitative Research* 219

Bernard HR, *Social Research Methods: Qualitative and Quantitative Approaches* (2nd ed., Sage 2013)

Bernstein H, 'Transatlantic Trends: Immigration' (The German Marshall Fund of the United States 2011)

Berry M, Garcia-Blaco I and Moore K, 'Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries' (Cardiff School of Journalism, Media and Cultural Studies 2015)

Betts A, 'The International Relations of the "New" Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR' (2004) 22 *Refuge* 58

—, 'The Normative Terrain of the Global Refugee Regime' (2015) 29 *Ethics & International Affairs* 363

Bhatia M, 'Turning Asylum Seekers into "Dangerous Criminals": Experiences of the Criminal Justice System of Those Seeking Sanctuary' (2015) 4 *International Journal for Crime, Justice and Social Democracy* 97

—, 'Crimmigration, Imprisonment and Racist Violence: Narratives of People Seeking Asylum in Great Britain' (2020) 56 *Journal of Sociology* 36

Bickerstaff K, Simmons P and Pidgeon N, 'Public Perceptions of Risk, Science and Governance: Main Findings of a Qualitative Study of Six Risk Cases' (Centre for Environmental Risk 2006) Technical Report 06-03

Bigo D, 'Migration and Security' in Virginie Guiraudon and Christian Joppke (eds), *Controlling a New Migration World* (Routledge 2001)

—, 'Frontier Controls in the European Union: Who Is in Control?' in Didier Bigo and Elspeth Guild (eds), *Controlling Frontiers: Free Movement Into and Within Europe* (Ashgate Publishing, Ltd 2005)

Blair T, 'Compensation Culture' (Institute of Public Policy Research, 26 May 2005) <<https://www.theguardian.com/politics/2005/may/26/speeches.media>>

—, 'Transcript from the Chilcott Inquiry' <<http://www.iraqinquiry.org.uk/transcripts/oralevidence-bydate/110121.aspx>>

Bloch A, 'Making It Work: Refugee Employment in the UK' (Institute for Public Policy Research 2004) 2

Blumer H, 'Social Problems as Collective Behavior' (1971) 18 *Social Problems* 298

- Boholm Å, 'Risk Perception and Social Anthropology: Critique of Cultural Theory' (1996) 61 *Ethnos* 64
- , 'The Cultural Nature of Risk: Can There Be an Anthropology of Uncertainty?' (2003) 68 *Ethnos: Journal of Anthropology* 159
- Boholm Å and Corvellec H, 'A Relational Theory of Risk' (2011) 14 *Journal of Risk Research* 175
- Bolt D, 'An Inspection of How the Home Office Tackles Illegal Working' (Independent Chief Inspector of Borders and Immigration 2015)
- , 'An Inspection of the Intelligence Functions of Border Force and Immigration Enforcement: November 2015-May 2016' (Independent Chief Inspector of Borders and Immigration 2016)
- Boon-Kuo L, "'Race", Crimmigration and the Deportation of Aboriginal Non-Citizens' in Peter Billings (ed), *Crimmigration in Australia* (Springer 2019)
- Boswell C, 'Migration Control in Europe After 9/11: Explaining the Absence of Securitization*' (2007) 45 *JCMS: Journal of Common Market Studies* 589
- Bosworth M, 'Deportation, Detention and Foreign-National Prisoners in England and Wales' (2011) 15 *Citizenship Studies* 583
- Bosworth M, Franko K and Pickering S, 'Punishment, Globalization and Migration Control: "Get Them the Hell out of Here"' (2017) 20 *Punishment & Society* 34
- Bosworth M and Turnbull S, 'Immigration, Detention, and the Expansion of Penal Power in the United Kingdom' in K Reiter and A Koenig (eds), *Extreme Punishment* (Palgrave Macmillan 2015)
- Boudia S and Jas N, 'Introduction: Risk and "Risk Society" in Historical Perspective.' (2007) 23 *History & Technology* 317
- Bowling B and Westenra S, "'A Really Hostile Environment": Adiaphorization, Global Policing and the Crimmigration Control System' (2018) 24 *Theoretical Criminology* 163
- Bradbury JA, 'The Policy Implications of Differing Concepts of Risk' (1989) 14 *Science, Technology, & Human Values* 380
- Brawley S, 'Legacies, the White Australia Policy and Foreign Relations since 1973' in Laksiri Jayasuriya, David Robert Walker and Jan Gothard (eds), *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003)
- Breyer S, *Breaking the Vicious Circle: Toward Effective Risk Regulation* (Harvard University Press 1993)
- British National Party, 'Rebuilding British Democracy' (2005) Election manifesto

- 'British Social Attitudes: The 33rd Report' (NatCen Social Research 2016) 33
- Brown F, 'Migrant Boats May Be Redirected Back to France as New Tactic Sanctioned' (*Metro*, 9 September 2021) <<https://metro.co.uk/2021/09/09/priti-patel-sanctions-sending-migrant-boats-back-to-france-15229899/>> accessed 2 June 2022
- Brown P, 'Social Theories of Risk' in Anthony Elliott (ed), *Routledge Handbook of Social and Cultural Theory* (1st edn, Routledge 2014)
- Bryman A, *Social Research Methods* (5th edn, Oxford University Press 2016)
- Buckmaster L and Guppy J, 'Australian Government Assistance to Refugees: Fact versus Fiction' (Parliament of Australia, Parliamentary Library 2014)
- Bulkeley H, 'Governing Climate Change: The Politics of Risk Society?' (2001) 26 *Transactions of the Institute of British Geographers* 430
- Burchardt T, 'Selective Inclusion: Asylum Seekers and Other Marginalised Groups' in John Hills and Kitty Stewart (eds), *A more equal society? New Labour, poverty, inequality and exclusion* (Policy Press 2005)
- Burgess A, 'The Making of the Risk-Centred Society and the Limits of Social Risk Research' (2006) 8 *Health, Risk & Society* 329
- Buzan B, Wæver O and Wilde J de, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998)
- Cabinet Office, 'Risk: Improving Government's Capability to Handle Risk and Uncertainty' (UK Government 2002)
- , 'Security in a Global Hub: Establishing the UK's New Border Arrangements' (UK Government 2007)
- , 'The Cabinet Manual' (UK Government 2011)
- , 'Management of Risk in Government: Framework' (UK Government 2017)
- , 'National Security Capability Review' (UK Government 2018)
- Cairney P, 'Standing on the Shoulders of Giants: How Do We Combine the Insights of Multiple Theories in Public Policy Studies?' (2013) 41 *Policy Studies Journal* 1
- , *Understanding Public Policy: Theories and Issues* (2nd edn, Red Globe Press 2020)
- Cameron D, 'PM Speech on Immigration' (London, 21 May 2015) <<https://www.gov.uk/government/speeches/pm-speech-on-immigration>> accessed 10 September 2019

- Carlin B, 'PM: Migrants Can't Break into Britain: Cameron's Defiant Vow Sparks New Fury over Calling Refugees a "Swarm"' *Mail on Sunday* (London (UK), 16 August 2015) 18
- Carling J and Hernández-Carretero M, 'Protecting Europe and Protecting Migrants? Strategies for Managing Unauthorised Migration from Africa' (2011) 13 *The British Journal of Politics and International Relations* 42
- Castel R, 'From Dangerousness to Risk' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault effect: studies in governmentality* (University of Chicago Press 1991)
- Castles S, 'Environmental Change and Forced Migration: Making Sense of the Debate' (United Nations High Commission for Refugees 2002) Working Paper 70
- , 'Understanding the Relationship between Methodology and Method' in Carlos Vargas-Silva (ed), *Handbook of research methods in migration* (Edward Elgar Publishing 2012)
- Caviedes A, 'The Influence of the Media upon Immigration Politics in the UK' (2011)
- Ceyhan A and Tsoukala A, 'The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies' (2002) 27 *Alternatives: Global, Local, Political* 21
- 'Channel Crossings: Hundreds More Migrants Reach UK after Record Day' *BBC News* (5 August 2021) <<https://www.bbc.com/news/uk-england-kent-58100694>> accessed 7 August 2021
- 'Channel Deaths: More Boats Arrive after 27 People Drown' *BBC News* (25 November 2021) <<https://www.bbc.com/news/uk-59412329>> accessed 4 December 2021
- Charmaz K and Bryant A, 'Constructing Grounded Theory Analyses' in David Silverman (ed), *Qualitative Research* (4th edn, Sage 2016)
- Chouhy C and Madero-Hernandez A, "'Murderers, Rapists, and Bad Hombres": Deconstructing the Immigration-Crime Myths' (2019) 14 *Victims & Offenders* 1010
- Chynoweth P, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing 2008)
- Clarke J, *Changing Welfare, Changing States: New Directions in Social Policy* (Sage 2004)
- Clarke J and Cochrane A, 'The Social Construction of Social Problems' in Esther Saraga (ed), *Embodying the Social: Constructions of Difference* (Routledge 1998)
- Clarke L, *Mission Improbable: Using Fantasy Documents to Tame Disaster* (University of Chicago Press 1999)

- Clarke L and Short JF, 'Social Organization and Risk: Some Current Controversies' (1993) 19 *Annual Review of Sociology* 375
- Clayton G and Firth G, *Immigration and Asylum Law* (8th edn, Oxford University Press 2018)
- Cohen S, *Folk Devils and Moral Panics* (1st edn, MacGibbon and Kee 1972)
- Cohen S, 'Anti-Semitism, Immigration Controls and the Welfare State' (1985) 5 *Critical Social Policy* 73
- Cohen S, *Folk Devils and Moral Panics* (3rd edn, Routledge 2002)
- Coker C, *Globalisation and Insecurity in the Twenty-First Century: NATO and the Management of Risk* (Routledge 2014)
- Coleman MP HonD, 'Direction No. 79 - Migration Act 1958 - Direction under Section 499 Visa Refusal and Cancellation under S501 and Revocation of a Mandatory Cancellation of a Visa under S501CA'
- Conservative Party, 'Invitation to Join the Government of Britain' (2010)
- , 'Strong Leadership, a Clear Economic Plan, a Brighter, More Secure Future' (2015) Election manifesto
- Consterdine E and Hampshire J, 'Immigration Policy under New Labour: Exploring a Critical Juncture' (2014) 9 *British Politics* 275
- Cooper G, Blumell L and Bunce M, 'Beyond the "Refugee Crisis": How the UK News Media Represent Asylum Seekers across National Boundaries' (2021) 83 *International Communication Gazette* 195
- Cottle S, 'Ulrich Beck, 'Risk Society' and the Media: A Catastrophic View?' (1998) 13 *European Journal of Communication* 5
- Credlin P, 'Sort Sheep from Goats' *Sunday Telegraph* (Sydney, 4 November 2018) 95
- Creswell JW, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th ed., Sage 2014)
- Crock M, 'In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows' (2003) 12 *Pacific Rim Law and Policy Journal* 49
- Curran D, 'Environmental Justice Meets Risk-Class: The Relational Distribution of Environmental Bads' (2018) 50 *Antipode* 298
- Curthoys A, 'Liberalism and Exclusionism: A Prehistory of the White Australia Policy' in Laksiri Jayasuriya, David Robert Walker and Jan Gothard (eds), *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003)

- Daddow O, 'Margaret Thatcher, Tony Blair and the Eurosceptic Tradition in Britain.' (2013) 15 *British Journal of Politics & International Relations* 210
- Dake K, 'Orienting Dispositions in the Perception of Risk: An Analysis of Contemporary Worldviews and Cultural Biases' (1991) 22 *Journal of Cross-Cultural Psychology* 61
- , 'Myths of Nature: Culture and the Social Construction of Risk' (1992) 48 *Journal of Social Issues* 21
- D'Andrea A, *Global Nomads: Techno and New Age as Transnational Countercultures in Ibiza and Goa* (Routledge 2007)
- Dauvergne C, 'Sovereignty, Migration and the Rule of Law in Global Times' (2004) 67 *The Modern Law Review* 588
- , *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press 2008)
- , 'Irregular Migration, State Sovereignty and the Rule of Law', *Research Handbook on International Law and Migration* (Edward Elgar Publishing 2014)
- David F, Bryant K and Larsen J, 'Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour' (International Organization for Migration 2019)
- Davidson H, 'Australia on Track for Record Number of Asylum Seekers Arriving by Plane, Labor Says' *The Guardian* (8 October 2019)
<<https://www.theguardian.com/australia-news/2019/oct/08/australia-on-track-for-record-number-of-asylum-seekers-arriving-by-plane>> accessed 26 February 2020
- Davies T and others, 'Channel Crossings: Offshoring Asylum and the Afterlife of Empire in the Dover Strait' (2021) 44 *Ethnic and Racial Studies* 2307
- de Azevedo CV, 'ISIS Resurgence in Al Hawl Camp and Human Smuggling Enterprises in Syria' (2020) 14 *Perspectives on Terrorism* 43
- De Castella K, McGarty C and Musgrove L, 'Fear Appeals in Political Rhetoric about Terrorism: An Analysis of Speeches by Australian Prime Minister Howard' (2009) 30 *Political Psychology* 1
- De Genova N, 'Migrant "Illegality" and Deportability in Everyday Life' (2002) 31 *Annual Review of Anthropology* 419
- De Giorgi A, 'Immigration Control, Post-Fordism, and Less Eligibility: A Materialist Critique of the Criminalization of Immigration across Europe' (2010) 12 *Punishment & Society* 147
- de Noronha L, 'Deportation, Racism and Multi-Status Britain: Immigration Control and the Production of Race in the Present' (2019) 42 *Ethnic and Racial Studies* 2413

Dean M, 'Risk, Calculable and Incalculable' in Deborah Lupton (ed), *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge University Press 1999)

—, *Governmentality: Power and Rule in Modern Society* (2nd edn, Sage 2010)

Denney D, *Risk and Society* (Sage 2005)

Department for Business, Innovation and Skills and Home Office, 'Tackling Exploitation in the Labour Market' (2015) Consultation Paper

Department for International Development, 'Statistics on International Development - Final UK Aid Spend 2018' (UK Government 2019)

Department of Defence, 'Australia's National Security: A Defence Update 2003' (Australian Government 2003)

—, 'Australia's National Security: A Defence Update 2005' (Australian Government 2005)

—, '2020 Defence Strategic Update' (Australian Government 2020)

Department of Finance, 'Commonwealth Risk Management Policy' (Australian Government 2014)

—, 'Risk Potential Assessment Tool' (Australian Government 2016) Resource Management Guide No. 107

—, 'Streamlining Services for Refugees' (Australian Government) Budget Measures 2018-19-Part 2: Expense Measures

Department of Foreign Affairs and Trade, 'Australia's Official Development Assistance Statistical Summary, 2019-20' (Australian Government 2021)

Department of Health, 'Sustaining Services, Ensuring Fairness: Government Response to the Consultation on Migrant Access and Financial Contribution to NHS Provision in England' (UK Government 2013)

Department of Home Affairs, 'Code of Behaviour for Subclass 050 Bridging (General) Visa Holders - Supporting Information' <<https://immi.homeaffairs.gov.au/form-listing/forms/1444i.pdf>> accessed 4 May 2020

—, 'Annual Report 2017-18' (Australian Government 2018) Annual Report

—, 'Question on Notice No. 21: Portfolio Question Number: BE18/180'

—, 'Question on Notice No. 99: Portfolio Question Number: AE18/104'

—, 'Status Support Resolution Services (SRSS) Programme: Operational Procedures Manual (Version 7)' (Australian Government 2018)

- , 'Freedom of Information (FOI) Request - Access Decision - FA 18/05/00113' (8 June 2018)
- , 'Annual Report 2018-19' (2019) Annual Report
- , 'Corporate Plan 2019-20' (Australian Government 2019)
- , 'Submission to the Inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019 [Provisions]' (Australian Government 2019) Submission 55
- , 'Incoming Government Brief' (Australian Government 2019)
- , 'Onshore Humanitarian Program 2018–19'
<<https://www.homeaffairs.gov.au/research-and-stats/files/ohp-june-19.pdf>> accessed 21 December 2019
- , 'Citizenship Interview and Test' (2 September 2021)
<<https://immi.homeaffairs.gov.au/citizenship/test-and-interview#>> accessed 7 May 2022
- , 'Humanitarian Program Statistics' (*Visa statistics*)
<<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>> accessed 17 November 2019
- Department of Immigration and Multicultural Affairs, 'Review of Illegal Workers in Australia: Improving Migration Compliance in the Workplace' (Australian Government 1999)
- Department of the Prime Minister and Cabinet, 'Cabinet Handbook' (Australian Government 2020) 14th edition
- Devetak R, 'In Fear of Refugees: The Politics of Border Protection in Australia' (2004) 8 *The International Journal of Human Rights* 101
- Dickey B, *No Charity There: A Short History of Social Welfare in Australia* (2nd edn, Routledge 1987)
- Dickson N, 'What Is the Third Way?' (*BBC News*, 27 September 1999)
<<http://news.bbc.co.uk/1/hi/458626.stm>> accessed 21 July 2020
- Dobinson I and Johns F, 'Legal Research as Qualitative Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007)
- Douglas M, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (ARK Paperbacks 1984)
- , *Risk Acceptability According to the Social Sciences* (Routledge & Kegan Paul 1986)
- , 'Risk as a Forensic Resource' (1990) 119 *Daedalus* 1

- , *Risk and Blame: Essays in Cultural Theory* (Routledge 1992)
- , *Natural Symbols: Explorations in Cosmology* (Routledge 2004)
- Douglas M and Wildavsky A, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press 1982)
- Dreher A, Fuchs A and Langlotz S, 'The Effects of Foreign Aid on Refugee Flows' (2019) 112 *European Economic Review* 127
- Drury I and Slack J, 'Ministers' Migrant: Accusations of "spouting Hot Air" as Arrests of Foreigners Working in UK Illegally Halves' *Daily Mail* (London, 11 August 2015) 10
- Duckett White S, 'God-like Powers: The Character Test and Unfettered Ministerial Discretion' (2020) 41 *Adelaide Law Review* 1
- Duffy B and Frere-Smith T, 'Perception and Reality' (Social Research Institute 2014)
- Duffy B and Rowden L, 'You Are What You Read? How Newspaper Readership Is Related to Views' (MORI Social Research Institute 2005)
- Dumont J-C and Pain N, 'How Will the Refugee Surge Affect the European Economy?' (Organization for Economic Cooperation and Development 2015) No 8
- Dunn KM, Klocker N and Salabay T, 'Contemporary Racism and Islamophobia in Australia: Racializing Religion' (2007) 7 *Ethnicities* 564
- Düvell F, 'Irregular Migration: A Global, Historical and Economic Perspective' in Franck Düvell (ed), *Illegal Immigration in Europe: Beyond control?* (Palgrave Macmillan 2006)
- , 'Paths into Irregularity: The Legal and Political Construction of Irregular Migration' (2011) 13 *European Journal of Migration and Law* 275
- El-Enany N, *(B)Ordering Britain: Law, Race and Empire* (Manchester University Press 2020)
- Elliott A, 'Beck's Sociology of Risk: A Critical Assessment' (2002) 36 *Sociology* 293
- 'Employers: Illegal Working Penalties' (GOV.UK)
<<https://www.gov.uk/government/collections/employers-illegal-working-penalties>>
accessed 21 March 2020
- Erel U, Murji K and Nahaboo Z, 'Understanding the Contemporary Race–Migration Nexus' (2016) 39 *Ethnic and Racial Studies* 1339
- Ericson R and Doyle A, 'Catastrophe Risk, Insurance and Terrorism' (2004) 33 *Economy and Society* 135

'Essex Lorry Deaths: Men Jailed for Killing 39 Migrants in Trailer' *BBC News* (22 January 2021) <<https://www.bbc.com/news/uk-england-essex-55765213>> accessed 1 October 2021

Eurostat, 'Countries of Origin of (Non-EU) Asylum Seekers in the EU-28 Member States' (*Asylum statistics*, 15 March 2017) <[http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Countries_of_origin_of_\(non-EU\)_asylum_seekers_in_the_EU-28_Member_States,_2015_and_2016_\(thousands_of_first_time_applicants\)_YB17.png&oldid=330749#filelinks](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Countries_of_origin_of_(non-EU)_asylum_seekers_in_the_EU-28_Member_States,_2015_and_2016_(thousands_of_first_time_applicants)_YB17.png&oldid=330749#filelinks)> accessed 3 April 2018

—, 'Number of Asylum Applicants' (*Asylum statistics*, 20 March 2018) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Source_data_for_tables_and_figures_.28MS_Excel.29> accessed 3 April 2018

Evans A, 'Australian Survey of Social Attitudes, 2011' (ANU 2013)

Evans Cameron H, 'Risk Theory and "Subjective Fear": The Role of Risk Perception, Assessment, and Management in Refugee Status Determinations' (2008) 20 *International Journal of Refugee Law* 567

Ewald F, 'Insurance and Risk' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault effect: studies in governmentality* (University of Chicago Press 1991)

—, 'Norms, Discipline and the Law' in Robert Post (ed), *Law and the order of culture* (University of California Press 1991)

—, 'Risk in Contemporary Society' (1999) 6 *Connecticut Insurance Law Journal* 365

'Explanatory Notes to the Immigration Act 2016 (UK)'

Failla M, 'Outsourcing Obligations to Developing Nations: Australia's Refugee Resettlement Agreement with Cambodia' (2016) 42 *Monash University Law Review* 637

Fairclough N and Wodak R, 'Critical Discourse Analysis' in Teun A van Dijk (ed), *Discourse as Social Interaction* (Sage 1997)

Feldenkirchen M, 'Refugee Crisis Leads to New Focus of German Foreign Policy' *Der Spiegel* (11 November 2015) <<https://www.spiegel.de/international/germany/refugee-crisis-leads-to-new-focus-of-german-foreign-policy-a-1062116.html>> accessed 25 July 2021

Fenwick H, 'The Anti-Terrorism, Crime and Security Act 2001: A Proportionate Response to 11 September?' (2002) 65 *The Modern Law Review* 724

Fink A, *Conducting Research Literature Reviews: From the Internet to Paper* (4th edn, Sage 2014)

- Finnane M, 'Controlling the "Alien" in Mid-Twentieth Century Australia: The Origins and Fate of a Policing Role' (2009) 19 *Policing and Society* 442
- FitzGerald DS, 'Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence' (2020) 46 *Journal of Ethnic and Migration Studies* 4
- 'Five "migrants" Picked up off Northern France' *BBC News* (24 November 2018) <<https://www.bbc.com/news/uk-england-kent-46328818>> accessed 7 August 2021
- Flynn C, Alston M and Mason R, 'Trafficking in Women for Sexual Exploitation: Building Australian Knowledge' (2014) 57 *International Social Work* 27
- Fox N, 'Postmodern Reflections on "Risk", "hazards" and Life Choices' in Deborah Lupton (ed), *Risk and sociocultural theory: new directions and perspectives* (Cambridge University Press 1999)
- Frank M and Reinisch J, 'Refugees and the Nation-State in Europe, 1919–59' (2014) 49 *Journal of Contemporary History* 477
- Freeman GP, 'Migration and the Political Economy of the Welfare State' (1986) 485 *The ANNALS of the American Academy of Political and Social Science* 51
- Freeman WJ, 'The Physiology of Perception' (1991) 264 *Scientific American* 78
- Freudenburg WR and Pastor SK, 'Public Responses to Technological Risks: Toward a Sociological Perspective' (1992) 33 *The Sociological Quarterly* 389
- Gabrielatos C and Baker P, 'Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996-2005' (2008) 36 *Journal of English Linguistics* 5
- Gammeltoft-Hansen T, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies' (2014) 27 *Journal of Refugee Studies* 574
- Gammeltoft-Hansen T and Tan N, 'The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy' (2017) 5 *Journal on Migration and Human Security* 28
- García Hernández CC, 'Creating Crimmigration' [2013] *Brigham Young University Law Review* 1457
- Geddes A, 'Denying Access: Asylum Seekers and Welfare Benefits in the UK' in Michael Bommes and Andrew Geddes (eds), *Immigration and welfare: Challenging the borders of the welfare state* (Routledge 2000)
- Geddes A and Bommes M, 'Introduction: Immigration and the Welfare State' in Michael Bommes and Andrew Geddes (eds), *Immigration and welfare: Challenging the borders of the welfare state* (Routledge 2000)

Gelev F, “‘Risk Society’ and the Precautionary Approach in Recent Australian, Canadian and UK Judicial Decision Making’ (York University 2009) Research Paper 5/2009

Gephart RP, Van Maanen J and Oberlechner T, ‘Organizations and Risk in Late Modernity’ (2009) 30 *Organization Studies* 141

Gibney M, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004)

—, ‘Asylum and the Expansion of Deportation in the United Kingdom’ (2008) 43 *Government and Opposition* 146

—, ‘Deportation’ in Peter Cane and Joanne Conaghan (eds), *The New Oxford Companion to Law* (Oxford University Press 2008)

Giddens A, *The Consequences of Modernity* (Polity 1990)

—, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Polity Press 1991)

—, ‘Living in a Post-Traditional Society’ in Ulrich Beck, Anthony Giddens and Scott Lash (eds), *Reflexive Modernization: Politics, tradition and aesthetics in the modern social order* (Polity Press 1994)

—, ‘Risk Society: The Context of British Politics’ in Jane Franklin (ed), *The Politics of Risk Society* (Policy Press 1998)

—, *The Third Way: The Renewal of Social Democracy* (Polity Press 1998)

—, ‘Risk and Responsibility’ (1999) 62 *Modern Law Review* 1

—, ‘The Emergence of Life Politics’ in Sean P Hier (ed), *Contemporary Sociological Thought: Themes and Theories* (Canadian Scholars’ Press 2005)

—, ‘Fate, Risk and Security’ in James F Cosgrave (ed), *The Sociology of Risk and Gambling Reader* (Routledge 2006)

Giddens A and Griffiths S, *Sociology* (5th edn, Polity 2006)

Giorgi L and Marsh C, ‘The Protestant Work Ethic as a Cultural Phenomenon’ (1990) 20 *European Journal of Social Psychology* 499

Gleeson M and Yacoub N, ‘Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia’ (Kaldor Centre for International Refugee Law 2021) Policy Brief 11

Goodman S, Sirriyeh A and McMahon S, ‘The Evolving (Re)Categorisations of Refugees throughout the “Refugee/Migrant Crisis”.’ (2017) 27 *Journal of Community & Applied Social Psychology* 105

- Goodman S and Speer SA, 'Category Use in the Construction of Asylum Seekers' (2007) 4 *Critical Discourse Studies* 165
- Goodwin M and Milazzo C, 'Taking Back Control? Investigating the Role of Immigration in the 2016 Vote for Brexit.' (2017) 19 *British Journal of Politics & International Relations* 450
- Goodwin-Gill GS, 'International Law and the Detention of Refugees and Asylum Seekers' (1986) 20 *International Migration Review* 193
- Gower M, McKinney C and Meade L, 'Asylum Seekers: The Permission to Work Policy' (House of Commons Library 2022)
- Graham DJ, 'Why Governments Need Guidelines for Risk Assessment and Risk Management' in OECD (ed), *Risk and Regulatory Policy Improving the Governance of Risk* (OECD Publishing 2010)
- Gray H and Franck AK, 'Refugees as/at Risk: The Gendered and Racialized Underpinnings of Securitization in British Media Narratives' (2019) 50 *Security Dialogue* 275
- Green J, 'Risk and the Construction of Social Identity: Children's Talk about Accidents' (1997) 19 *Sociology of Health & Illness* 457
- Grewcock M, *Border Crimes: Australia's War on Illicit Migrants* (Institute of Criminology Press 2009)
- , 'Australian Border Policing: Regional "Solutions" and Neocolonialism' (2014) 55 *Race & Class* 71
- Groves J, 'PM Vows: We'll Seize Wages of Illegal Migrants: Workers Will Be Kicked out Appeal Abuses to Be Stopped "No Excuse" for Employers' *Daily Mail* (London, 21 May 2015) 7
- Guibernau M, *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Polity Press 1996)
- Guild E, 'A Typology of Different Types of Centres for Third Country Nationals in Europe' (European Parliament 2006)
- Haas H de, Castles S and Miller MJ, *The Age of Migration: International Population Movements in the Modern World* (6th edn, The Guilford Press 2020)
- Hacking I, *The Taming of Chance* (Cambridge University Press 1990)
- , 'The Looping Effects of Human Kinds' in Dan Sperber, David Premack and Ann James Premack (eds), *Causal Cognition: A Multidisciplinary Debate* (Oxford University Press 1995)

- , *The Social Construction of What?* (Harvard University Press 1999)
- , *Historical Ontology* (Harvard University Press 2002)
- , 'Making Up People' (2006) 28 *London Review of Books* 23
- Hansen R, *Citizenship and Immigration in Postwar Britain* (Oxford University Press 2000)
- Hanson GH, 'The Economic Logic of Illegal Immigration' (Council on Foreign Relations 2007) Council Special Reports No 26
- Hart C, *Critical Discourse Analysis and Cognitive Science: New Perspectives on Immigration Discourse* (Palgrave Macmillan 2010)
- Hassan L, 'Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States' (2000) 13 *Journal of Refugee Studies* 184
- Hayes D, 'Outsiders within: The Role of Welfare in the Internal Control of Immigration' in Janet Batsleer and Beth Humphries (eds), *Welfare, Exclusion and Political Agency* (Routledge 2000)
- , 'From Aliens to Asylum Seekers: A History of Immigration Controls and Welfare in Britain' in Steve Cohen, Beth Humphries and Ed Mynott (eds), *From immigration controls to welfare controls* (Routledge 2002)
- Hazari BR and Sgro PM, 'The Simple Analytics of Optimal Growth with Illegal Migrants' (2003) 28 *Journal of Economic Dynamics and Control* 141
- Hendry J, 'Cultural Theory and Contemporary Management Organization' (1999) 52 *Human Relations* 557
- Hilgartner S, 'The Social Construction of Risk Objects: Or, How to Pry Open Networks of Risk' in Ben Clarke and James Short, *Organizations, uncertainties, and risk* (Westview 1992)
- HM Government, 'National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom' (2015) Cm 9161
- HM Treasury, 'The Orange Book: Management of Risk - Principles and Concepts' (UK Government 2020)
- Hodkinson S and others, 'Fighting or Fuelling Forced Labour? The Modern Slavery Act 2015, Irregular Migrants and the Vulnerabilising Role of the UK's Hostile Environment' (2021) 41 *Critical Social Policy* 68
- Hoffman S, 'Fear, Insecurity and Risk: Refugee Journeys from Iraq to Australia' (PhD Thesis, Murdoch University 2010)

Hogan J and Haltinner K, 'Floods, Invaders, and Parasites: Immigration Threat Narratives and Right-Wing Populism in the USA, UK and Australia' (2015) 36 *Journal of Intercultural Studies* 520

Holderhead S, '\$5m "Broke" Refugees Rort' *Sunday Telegraph* (Sydney, 16 December 2018) 15

Holstein JA and Gubrium JF, *The Active Interview* (Sage 1995)

Holt R, 'Risk Management: The Talking Cure' (2004) 11 *Organization* 251

Home Office, 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain' (2002) Cm 5387

—, 'Controlling Our Borders: Making Migration Work for Britain' (2005) Cm 6472

—, 'Controlling Immigration – Regulating Migrant Access to Health Services in the UK' (UK Government 2013)

—, 'Strengthening and Simplifying the Civil Penalty Scheme to Prevent Illegal Working' (UK Government 2013)

—, 'Strengthening and Simplifying Civil Penalties to Prevent Illegal Migrant Working' (UK Government 2014) Impact Assessment HO0105

—, 'Reforming Support for Failed Asylum Seekers and Other Illegal Migrants' (UK Government 2015)

—, 'Reforming Support for Failed Asylum Seekers and Other Illegal Migrants - Response to Consultation' (UK Government 2015)

—, 'Home Secretary Appoints Small Boat Commander' (*GOV.UK*, 9 August 2020) <<https://www.gov.uk/government/news/home-secretary-appoints-small-boat-commander>> accessed 5 January 2021

—, 'New Plan for Immigration: Policy Statement' (UK Government 2021) CM 412

—, 'Official Life in the UK Learning Zone' (2022) <<https://www.officiallifeintheuk.co.uk/shop>> accessed 7 May 2022

Houston A, Aristotle P and L'Estrange M, 'Report of the Expert Panel on Asylum Seekers' (Australian Government 2012)

'How Many People Do We Grant Asylum or Protection To?' (*GOV.UK*, 24 May 2019) <<https://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2019/how-many-people-do-we-grant-asylum-or-protection-to>> accessed 17 November 2019

'How the Deportation Story Emerged' *BBC News Online* (9 October 2006) <http://news.bbc.co.uk/1/hi/uk_politics/4945922.stm> accessed 13 August 2018

- Howard J, 'Transcript of the Prime Minister the Hon John Howard MP Address at the Federal Liberal Party Campaign Launch'
<<https://electionspeeches.moadoph.gov.au/speeches/2001-john-howard>>
- Howells S, 'The Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007' (Department of Immigration and Citizenship 2011)
- Howlett M, 'Looking at the "Field" through a Zoom Lens: Methodological Reflections on Conducting Online Research during a Global Pandemic' (2021) [Online First] *Qualitative Research* 1
- Howlett M, Leong C and Sahu S, 'Managing Internal Policy Risk: Australia, the UK and the US Compared' (2022) 5 *Policy Design and Practice* 152
- Hughes M and Wood H, 'Crimson Nightmares: Tales of Invasion and Fears of Revolution in Early Twentieth-Century Britain' (2014) 28 *Contemporary British History* 294
- Hulme M, 'Cosmopolitan Climates' (2010) 27 *Theory, Culture & Society* 267
- Human Rights Watch, 'World Report 2014 - Events of 2013' (Human Rights Watch 2014) *Annual Report* 24
- Hunt FJ, 'Research as a Social Process' (1978) 13 *The Australian Journal of Social Issues* 327
- Hutter B and Power M, 'Organizational Encounters with Risk: An Introduction' in Bridget Hutter and Michael Power (eds), *Organizational Encounters with Risk* (Cambridge University Press 2005)
- Huysmans J, 'The European Union and the Securitization of Migration' (2000) 38 *JCMS: Journal of Common Market Studies* 751
- , *The Politics of Insecurity: Fear, Migration and Asylum in the EU* (Routledge 2006)
- Huysmans J and Buonfino A, 'Politics of Exception and Unease: Immigration, Asylum and Terrorism in Parliamentary Debates in the UK' (2008) 56 *Political Studies* 766
- Immigration Enforcement Secretariat, 'Freedom of Information Request – 46475' (8 January 2018)
- Ingram H, Schneider AL and deLeon P, 'Social Construction and Policy Design' in Paul A Sabatier (ed), *Theories of policy design* (2nd edn, Westview Press 2007)
- 'International Migration Law - Glossary on Migration' (International Organization for Migration 2019) 34
- Jacobs E, '"Colonising the Future": Migrant Crossings on the English Channel and the Discourse of Risk' (2020) 4 *Brief Encounters* 37

- Jarvis DSL, 'Theorising Risk and Uncertainty in International Relations: The Contributions of Frank Knight' (2011) 25 *International Relations* 296
- Jasanoff S, 'Bridging the Two Cultures of Risk Analysis' (1993) 13 *Risk Analysis* 123
- , *The Fifth Branch: Science Advisers as Policymakers* (Harvard University Press 1994)
- , 'The Political Science of Risk Perception' (1998) 59 *Risk Perception Versus Risk Analysis* 91
- Jayasuriya L, Walker DR and Gothard J, *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003)
- Jennings W, 'At No Serious Risk? Border Control and Asylum Policy in Britain, 1994-2004' (Centre for Analysis of Risk and Regulation, London School of Economics and Political Science 2007) Discussion Paper No. 39
- Joffe H, 'Risk: From Perception to Social Representation' (2003) 42 *British Journal of Social Psychology* 55
- Johnson B, 'PM Speech on Action to Tackle Illegal Migration' (*GOV.UK*, 14 April 2022) <<https://www.gov.uk/government/speeches/pm-speech-on-action-to-tackle-illegal-migration-14-april-2022>> accessed 2 June 2022
- Joint Standing Committee on Migration, 'Report of the Inquiry into Efficacy of Current Regulation of Australian Migration and Education Agents' (Australian Parliament 2019)
- Jones G, 'White Australia, National Identity and Population Change' in Laksiri Jayasuriya, David Robert Walker and Jan Gothard (eds), *Legacies of White Australia: Race, Culture, and Nation* (UWA Press 2003)
- Joppke C, 'Asylum and State Sovereignty: A Comparison of the United States, Germany, and Great Britain' in Joppke (ed), *Challenge to the Nation-State: immigration in Western Europe and the United States* (Oxford University Press 1998)
- Jupp J, *From White Australia to Woomera: The Story of Australian Immigration* (2nd edn, Cambridge University Press 2007)
- Kabachnik P, 'Place Invaders: Constructing the Nomadic Threat in England' (2010) 100 *Geographical Review* 90
- Kahan DM, 'Cultural Cognition as a Conception of the Cultural Theory of Risk' in Sabine Roeser and others (eds), *Handbook of Risk Theory Epistemology, Decision Theory, Ethics, and Social Implications of Risk* (Springer 2012)
- Kaldor Centre for International Refugee Law, 'Australia-Cambodia Agreement for Refugees in Nauru' (1 October 2019)

<<https://www.kaldorcentre.unsw.edu.au/publication/cambodia-and-refugee-protection>> accessed 17 February 2021

—, 'Bridging Visas' (23 November 2020)

<<https://www.kaldorcentre.unsw.edu.au/publication/bridging-visas>> accessed 5 February 2022

Kampmark B, 'Securitization, Refugees, and Australia's Turn Back the Boats Policy, 2013–2015' (2017) 31 *Antipodes* 61

Kanstroom D, *Deportation Nation: Outsiders in American History* (Harvard University Press 2007)

Keely CB, 'How Nation-States Create and Respond to Refugee Flows' (1996) 30 *The International Migration Review* 1046

Kemshall H, *Risk, Social Policy and Welfare* (Open University Press 2002)

Kent J, Norman KP and Tennis KH, 'Changing Motivations or Capabilities? Migration Deterrence in the Global Context' [2019] *International Studies Review* 1

Khosravi S, 'Sweden: Detention and Deportation of Asylum Seekers' (2009) 50 *Race & Class* 38

Kitschelt H and McGrann A, *The Radical Right in Western Europe: A Comparative Analysis* (University of Michigan Press 1997)

Kitzinger J, 'Researching Risk and the Media' (1999) 1 *Health, Risk & Society* 55

Kleist JO, *Political Memories and Migration: Belonging, Society, and Australia Day* (Palgrave Macmillan 2017)

Knight FH, *Risk, Uncertainty and Profit* (Forgotten Books 2015)

Knox V, 'Factors Influencing Decision Making by People Fleeing Central America' [2017] *Forced Migration Review* 18

—, 'Gang Violence, GBV and Hate Crime in Central America: State Response versus State Responsibility' [2019] *Forced Migration Review* 79

Koser K and McAuliffe M, 'Establishing an Evidence-Base for Future Policy Development on Irregular Migration to Australia' (Department of Immigration and Citizenship 2013) *Irregular Migration Research Program Occasional Paper Series* 01/2013

Koutroulis G, 'Public Health Metaphors in Australian Policy on Asylum Seekers' (2009) 33 *Australian and New Zealand Journal of Public Health* 47

- Koven S, 'The Social Question and the Jewish Question in Late Victorian London' in Ilja van den Broek, Christianne Smit and Dirk Jan Wolfram (eds), *Imagination and commitment: representations of the social question* (Peeters 2010)
- Labour Party, 'Britain Forward Not Back' (2005) Election manifesto
- , 'For the Many Not the Few' (2017) Election manifesto
- Lamont S, 'Nationality and Borders Bill Second Reading – House of Commons' (The Law Society 2021) Parliamentary Briefing
- Lash S and Wynne B, 'Introduction' in Mark Ritter (tr), Ulrich Beck, *Risk Society: Towards a New Modernity* (Sage 1992)
- Laughlin RC, 'Environmental Disturbances and Organizational Transitions and Transformations: Some Alternative Models' (1991) 12 *Organization Studies* 209
- Law A, 'Of Navies and Navels: Britain as A Mental Island.' (2005) 87 *Geografiska Annaler Series B: Human Geography* 267
- Legomsky SH, 'The Detention of Aliens: Theories, Rules, and Discretion Symposium: Immigration Reform' (1998) 30 *University of Miami Inter-American Law Review* 531
- Lester E, *Making Migration Law: The Foreigner, Sovereignty, and the Case of Australia* (Cambridge University Press 2018)
- Lewis J, 'Perceptions of Risk in Intimate Relationships: The Implications for Social Provision' (2006) 35 *Journal of Social Policy* 39
- Liberal-National Coalition, 'Our Future Action Plan - Protecting Our Borders' (2001) Election manifesto
- , 'Australia: Strong, Prosperous, Secure' (2007) Election manifesto
- , 'Our Plan: Real Solutions for All Australians' (2013) Election manifesto
- , 'The Coalition's Operation Sovereign Borders Policy' (2013) Election manifesto
- Lidskog R and Sundqvist G, 'Sociology of Risk' in Sabine Roeser and others (eds), *Handbook of Risk Theory Epistemology, Decision Theory, Ethics, and Social Implications of Risk* (Springer 2012)
- Loughnan C and Dehm S, 'Scores of Medevac Refugees Have Been Released from Detention. Their Freedom, Though, Remains Tenuous' (*The Conversation*) <<http://theconversation.com/scores-of-medevac-refugees-have-been-released-from-detention-their-freedom-though-remains-tenuous-156952>> accessed 8 June 2021
- Louis WR and others, 'Why Do Citizens Want to Keep Refugees out? Threats, Fairness and Hostile Norms in the Treatment of Asylum Seekers' (2007) 37 *European Journal of Social Psychology* 53

- Luhmann N, *Risk: A Sociological Theory* (Rhodes Barrett tr, Transaction Publishers 2002)
- Lupton D, 'Risk as Moral Danger: The Social and Political Functions of Risk Discourse in Public Health' (1993) 23 *International Journal of Health Services* 425
- , *Risk* (Routledge 1999)
- (ed), *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge University Press 1999)
- , 'Sociology and Risk' in Gabe Mythen and Sandra Walklate (eds), *Beyond the risk society: critical reflections on risk and human security* (Open University Press 2006)
- Lupton D and Tulloch J, "'Life Would Be Pretty Dull without Risk": Voluntary Risk-Taking and Its Pleasures' (2002) 4 *Health, Risk & Society* 113
- Lynn N and Lea S, "'A Phantom Menace and the New Apartheid": The Social Construction of Asylum-Seekers in the United Kingdom' (2003) 14 *Discourse & Society* 425
- Macfarlane A, 'To Contrast and Compare' in Vinay Kumar Srivastava (ed), *Methodology and fieldwork* (Oxford University Press 2004)
- MacKenzie D, 'Knowledge Production in Financial Markets' (2012) 41 *Economy and Society* 335
- Maddox D, 'PM Accused of Xenophobia for "swarm" of Migrants Warning' *The Scotsman* (Edinburgh, United Kingdom, 31 July 2015) 6
- Maguire S and Hardy C, 'Organizing Processes and the Construction of Risk: A Discursive Approach' (2013) 56 *Academy of Management Journal* 231
- Malloch M and Stanley E, 'The Detention of Asylum Seekers in the UK: Representing Risk, Managing the Dangerous' (2005) 7 *Punishment & Society* 53
- Mamadouh V, 'Grid-Group Cultural Theory: An Introduction' (1999) 47 *GeoJournal* 395
- 'Managing Migratory Flows in Calais: Joint Ministerial Declaration on UK/French Co-Operation (UK-France) (Adopted 20 August 2015, Entered into Force 20 August 2015)'
- 'Managing Migratory Flows in Calais: Joint Ministerial Declaration on UK/French Co-Operation (UK-France) (Adopted 20 September 2014, Entered into Force 20 September 2014)'
- Manderson DR, 'From Zero Tolerance to Harm Reduction: "The Asylum Problem Problem"' (2013) 32 *Refugee Survey Quarterly* 1
- Mares S, 'Fifteen Years of Detaining Children Who Seek Asylum in Australia – Evidence and Consequences' (2016) 24 *Australasian Psychiatry* 11

- Marfleet P, *Refugees in a Global Era* (Palgrave Macmillan 2006)
- Markson S, 'A Medicon Emergency' *The Daily Telegraph* (Sydney, 28 August 2017) 8
- Marr D and Wilkinson M, *Dark Victory* (Allen & Unwin 2003)
- Martin G, 'Stop the Boats! Moral Panic in Australia over Asylum Seekers' (2015) 29 *Continuum* 304
- Martin J, *Refugee Settlers: A Study of Displaced Persons in Australia* (ANU Press 1965)
- , *The Migrant Presence: Australian Responses 1947-1977* (Allen & Unwin 1978)
- Matheson C, 'Four Organisational Cultures in the Australian Public Service: Assessing the Validity and Plausibility of Mary Douglas' Cultural Theory' (2018) 77 *Australian Journal of Public Administration* 644
- Matten D, 'The Impact of the Risk Society Thesis on Environmental Politics and Management in a Globalizing Economy – Principles, Proficiency, Perspectives' (2004) 7 *Journal of Risk Research* 377
- McKay FH, Thomas SL and Blood RW, 'Any One of These Boat People Could Be a Terrorist for All We Know!' Media Representations and Public Perceptions of "Boat People" Arrivals in Australia' (2011) 12 *Journalism* 607
- McLaughlin C, "'They Don't Look like Children": Child Asylum-Seekers, the Dubs Amendment and the Politics of Childhood' (2018) 44 *Journal of Ethnic and Migration Studies* 1757
- McMaster D, *Asylum Seekers: Australia's Response to Refugees* (Melbourne University Press 2001)
- McMillan J, 'Administration of S501 of the Migration Act 1958 as It Applies to Long-Term Residents' (Commonwealth and Immigration Ombudsman 2006) 01–2006
- Medecins Sans Frontieres, 'Indefinite Despair: The Tragic Mental Health Consequences of Offshore Processing on Nauru' (2018)
- Megarrity L, "'White Queensland": The Queensland Government's Ideological Position on the Use of Pacific Island Labourers in the Sugar Sector 1880–1901' (2006) 52 *Australian Journal of Politics & History* 1
- Méndez J, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Addendum - Observations on Communications Transmitted to Governments and Replies Received' (Human Rights Council - UN General Assembly 2015) A/HRC/28/68/Add.1
- Menjívar C, 'Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States' (2006) 111 *American Journal of Sociology* 999

—, 'Immigration Law Beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 *Annual Review of Law and Social Science* 353

Menjívar C, Gómez Cervantes A and Alvord D, 'The Expansion of "Crimmigration," Mass Detention, and Deportation' (2018) 12 *Sociology Compass* 1

Meyrick J, 'What Is Good Qualitative Research?: A First Step towards a Comprehensive Approach to Judging Rigour/Quality' (2006) 11 *Journal of Health Psychology* 799

Michaud K, Carlisle J and Smith E, 'The Relationship between Cultural Values and Political Ideology, and the Role of Political Knowledge' (2009) 30 *Political Psychology* 27

Migration Watch UK, 'Illegal Immigration' (2019) MW 434

Miller D, *On Nationality* (Oxford University Press 1995)

—, 'Multiculturalism and the Welfare State: Theoretical Reflections' in Keith Banting and Will Kymlicka (eds), *Multiculturalism and the Welfare State Recognition and Redistribution in Contemporary Democracies* (Oxford University Press 2006)

Miller KD, 'Organizational Risk after Modernism' (2009) 30 *Organization Studies* 157

Ministry of Defence, 'Global Strategic Trends - 2007-2036' (UK Government 2006) 3rd

—, 'Global Strategic Trends - Out to 2040' (UK Government 2010) 4th

Mohun AP, 'Constructing the History of Risk. Foundations, Tools, and Reasons Why' (2016) 41 *Historical Social Research* 30

Monteath P, 'The Kisch Visit Revisited' (1992) 16 *Journal of Australian Studies* 69

Moran M, Rein M and Goodin RE, *The Oxford Handbook of Public Policy* (Oxford University Press 2006)

Morehouse C and Blomfield M, 'Irregular Migration in Europe' (Migration Policy Institute 2001)

Morrison S, 'A New Force Protecting Australia's Borders' (Address to the Lowy Institute for International Policy, Sydney, 9 May 2014)

Mynott E, 'Nationalism, Racism and Immigration Control: From Anti-Racism to Anti-Capitalism' in Steve Cohen, Beth Humphries and Ed Mynott (eds), *From Immigration Controls to Welfare Controls* (Routledge 2002)

Mythen G, *Ulrich Beck: A Critical Introduction to the Risk Society* (Pluto Press 2004)

—, 'From "Goods" to "Bads"? Revisiting the Political Economy of Risk' (2005) 10 *Sociological Research Online* 191

- , 'Sociology and the Art of Risk' (2008) 2 *Sociology Compass* 299
- Mythen G and Walklate S, 'CRIMINOLOGY AND TERRORISM: Which Thesis? Risk Society or Governmentality?' (2006) 46 *The British Journal of Criminology* 379
- , 'Terrorism, Risk and International Security: The Perils of Asking "What If?"' (2008) 39 *Security Dialogue* 221
- National Crime Agency, 'National Strategic Assessment of Serious and Organised Crime' (UK Government 2020)
- Nokes C, 'Human Trafficking and Immigration: France' (*UK Parliament*, 6 February 2019) <<https://questions-statements.parliament.uk/written-questions/detail/2019-02-06/217556>> accessed 2 June 2021
- Nolan P and Slater G, 'The Labour Market: History, Structure and Prospects' in Paul Edwards (ed), *Industrial Relations: Theory and Practice* (2nd edn, John Wiley & Sons 2003)
- Noon M, Blyton P and Morrell K, *The Realities of Work: Experiencing Work and Employment in Contemporary Society* (4th edn, Palgrave Macmillan 2013)
- Nowrasteh A, 'Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975–2017' (Cato Institute 2019) 866
- 'Number of Migrants Crossing Channel to UK Tops 1,000 in New Daily Record' *BBC News* (12 November 2021) <<https://www.bbc.com/news/uk-59257107>> accessed 4 December 2021
- O'Brien P, 'Migration and Its Risks' [1996] *The International Migration Review* 1067
- Ochs E and Capps L, 'Narrating the Self' (1996) 25 *Annual Review of Anthropology* 19
- O'Doherty K and Augoustinos M, 'Protecting the Nation: Nationalist Rhetoric on Asylum Seekers and the Tampa.' (2008) 18 *Journal of Community & Applied Social Psychology* 576
- Oltedal S and others, 'Explaining Risk Perception. An Evaluation of Cultural Theory' (Norwegian University of Science and Technology 2004) 85
- O'Malley P, *Risk, Uncertainty, and Government* (GlassHouse Press 2004)
- O'Reilly K and Benson M, 'Lifestyle Migration: Escaping to the Good Life' in Michaela Benson and Karen O'Reilly (eds), *Lifestyle Migration: Expectations, Aspirations and Experiences* (Routledge 2016)
- Ostrander D, 'One- and Two- Dimensional Models of the Distribution of Beliefs' in Mary Douglas (ed), *Essays in the Sociology of Perception* (Routledge 2003)

Otway H and Thomas K, 'Reflections on Risk Perception and Policy' (1982) 2 Risk Analysis 69

'Our Story' (*Safe Passage*) <<https://www.safepassage.org.uk/our-story>> accessed 10 January 2022

Palfreeman A, *The Administration of the White Australia Policy* (Melbourne University Press 1967)

Papastergiadis N, 'The Invasion Complex in Australian Political Culture' (2004) 78 Thesis Eleven 8

Parker S, "'Unwanted Invaders": The Representation of Refugees and Asylum Seekers in the UK and Australian Print Media' (2015) 23 eSharp 1

Paternoster R and Bachman R, 'Perceptual Deterrence Theory' in Francis T Cullen and Pamela Wilcox (eds), *The Oxford Handbook of Criminological Theory* (Oxford University Press 2012)

Patterson T, 'From Safety Net to Exclusion: Ending Social Security in the UK for "Persons from Abroad"' in Steve Cohen, Beth Humphries and Ed Mynott (eds), *From Immigration Controls to Welfare Controls* (Routledge 2002)

Pearce R, 'BAD BLOOD Powell, Heath and the Tory Party' (2008) 58 History Today 33

Pedersen A, Fozdar F and Kenny MA, 'Battling Boatloads of Prejudice: An Interdisciplinary Approach to Activism with Asylum Seekers and Refugees in Australia' in Diane Bretherton and Nikola Balvin (eds), *Peace Psychology in Australia* (Springer US 2012)

Pellew J, 'The Home Office and the Aliens Act, 1905' (1989) 32 The Historical Journal 369

Penovic T and Dastyari A, 'Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime' (2007) 13 Australian Journal of Human Rights 33

Perera S, *Australia and the Insular Imagination: Beaches, Borders, Boats, and Bodies* (Palgrave Macmillan 2009)

Phillips J, 'The "Pacific Solution" Revisited: A Statistical Guide to the Asylum Seeker Caseloads on Nauru and Manus Island' (Parliament of Australia, Parliamentary Library 2012) Background Note

—, 'Asylum Seekers and Refugees: What Are the Facts?' (Parliament of Australia, Parliamentary Library 2015) Research Paper

—, 'Boat Arrivals and Boat "Turnbacks" in Australia since 1976: A Quick Guide to the Statistics' (Parliament of Australia, Parliamentary Library 2017)

- Philo G, Briant E and Donald P, *Bad News for Refugees* (Pluto Press 2013)
- Pickering S, 'Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia' (2001) 14 *Journal of Refugee Studies* 169
- Pickering S and Lambert C, 'Deterrence: Australia's Refugee Policy' (2002) 14 *Current Issues in Criminal Justice* 65
- Pickering S and Weber L, 'Policing Transversal Borders' in Katja Franko Aas and Mary Bosworth (eds), *The borders of punishment migration, citizenship, and social exclusion* (Oxford University Press 2013)
- Piguet E, 'Climate Change and Forced Migration' (United Nations High Commission for Refugees 2008) Working Paper 153
- Piper H and Simons H, 'Ethical Responsibility in Social Science' in Bridget Somekh and Cathy Lewin (eds), *Research methods in the social sciences* (Sage 2005)
- Pisarevskaya A and others, 'Mapping Migration Studies: An Empirical Analysis of the Coming of Age of a Research Field' (2020) 8 *Migration Studies* 455
- Platt J, 'Is the Criminalisation of Migration Racist?' (*LSE Human Rights*, 28 January 2021) <<https://blogs.lse.ac.uk/humanrights/2021/01/28/is-the-criminalisation-of-migration-racist/>> accessed 25 April 2021
- Plough A and Krinsky S, 'The Emergence of Risk Communication Studies: Social and Political Context' (1987) 12 *Science, Technology, & Human Values* 4
- Poortinga YH, 'Presidential Address: Towards a Conceptualization of Culture for Psychology' in Sabur-o Iwawaki, Yoshihisa Kashima and Kwok Leung (eds), *Innovations in cross-cultural psychology* (Swets & Zeitlinger Inc 1992)
- Power M, *The Risk Management of Everything: Rethinking the Politics of Uncertainty* (Demos 2004)
- , *Organized Uncertainty: Designing a World of Risk Management* (Oxford University Press 2007)
- , 'The Apparatus of Fraud Risk' (2013) 38 *Accounting, Organizations and Society* 525
- , 'Reputational Risk as a Logic of Organizing in Late Modernity' (2009) 30 *Organization Studies* 301
- Radaelli C and de Francesco F, 'Regulatory Impact Assessment' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010)

- Rasmussen MV, 'Reflexive Security: NATO and International Risk Society' (2001) 30 Millennium 285
- Rayner S, 'Cultural Theory and Risk Analysis' in Sheldon Krimsky and Dominic Golding (eds), *Social Theories of Risk* (Praeger 1992)
- Renn O, *Risk Governance: Coping with Uncertainty in a Complex World* (Earthscan 2008)
- 'Risk, n.' <<http://0-www.oed.com/view/Entry/166306>> accessed 1 December 2017
- 'Risk, v.' <<http://0-www.oed.com/view/Entry/166307>> accessed 1 December 2017
- Robinson K, 'Voices from the Front Line: Social Work with Refugees and Asylum Seekers in Australia and the UK' (2014) 44 The British Journal of Social Work 1602
- Robson K, 'The State of Personal Liberty in Australia After M47: A Risk Theory Analysis of Security Rights' (2013) 39 Monash University Law Review 506
- Rodríguez MLM, *Texture in the Work of Ian Hacking* (Springer Nature 2021)
- Rosa EA, Renn O and McCright AM, *The Risk Society Revisited* (Temple University Press 2014)
- Rothstein H, 'Neglected Risk Regulation: The Institutional Attenuation Phenomenon' (2003) 5 Health, Risk & Society 85
- , 'The Institutional Origins of Risk: A New Agenda for Risk Research' (2006) 8 Health, Risk & Society 215
- Rothstein H, Huber M and Gaskell G, 'A Theory of Risk Colonization: The Spiralling Regulatory Logics of Societal and Institutional Risk' (2006) 35 Economy and Society 91
- Rudd K, 'The First National Security Statement to the Australian Parliament' (Canberra, 4 December 2008)
- Ruhs M and Anderson B, 'Semi-Compliance and Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK' (2010) 16 Population, Space and Place 195
- Rutnam SP, 'Response to Home Affairs Select Committee: Migrant Boat Arrivals in the Channel' (5 March 2019)
- Saar M, 'To Return or Not to Return? The Importance of Identity Negotiations for Return Migration' (2018) 24 Social Identities 120
- Sabatier PA, 'The Need for Better Theories' in Paul A Sabatier (ed), *Theories of the Policy Process* (2nd edn, Westview Press 2007)

- Sabbagh D, 'May Vows to Use Overseas Aid to Curb Illegal Migration and Organised Crime' *The Guardian* (28 August 2018)
 <<https://www.theguardian.com/politics/2018/aug/28/may-vows-to-use-overseas-aid-to-curb-illegal-migration-and-organised>> accessed 28 August 2018
- Sales R, 'The Deserving and the Undeserving? Refugees, Asylum Seekers and Welfare in Britain' (2002) 22 *Critical Social Policy* 456
- Sands P and others, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018)
- Sapolsky HM, 'The Politics of Risk' (1990) 119 *Daedalus* 83
- Sarantakos S, *Social Research* (4th edn, Red Globe 2013)
- Sassen S, *Losing Control?: Sovereignty in the Age of Globalization* (Columbia University Press 2015)
- Savage M, 'Landlords Face Jail over Illegal Migrants' *The Times* (London (UK), 3 August 2015) 9
- Says IB, 'Austria Seeks EU Aid Suspension for Countries Rejecting "failed" Refugees' (www.euractiv.com, 5 February 2016)
 <<https://www.euractiv.com/section/development-policy/news/austria-seeks-eu-aid-suspension-for-countries-rejecting-failed-refugees/>> accessed 25 July 2021
- Schloenhardt A and Craig C, "'Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 *International Journal of Refugee Law* 536
- Schloenhardt A and Philipson E, "'No to People Smuggling": A Review of Australia's Anti-Migrant Smuggling Awareness Campaigns' (University of Queensland 2013) Research Paper
- Schmid AP, 'Links Between Terrorism and Migration: An Exploration' (International Centre for Counter-Terrorism 2016)
- Schneider F and Enste DH, *The Shadow Economy: An International Survey* (2nd edn, Cambridge University Press 2013)
- Schofield TP and Butterworth P, 'Patterns of Welfare Attitudes in the Australian Population' (2015) 10 *PLoS ONE* 1
- Schuster L, 'A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe' (2005) 39 *Social Policy & Administration* 606
- Schwartz S, 'A Theory of Cultural Values and Some Implications for Work' (1999) 48 *Applied Psychology: An International Review* 23

- Sciarra D, 'The Role of the Qualitative Researcher' in Mary Kopala and Lisa A Suzuki (eds), *Using qualitative methods in psychology* (Sage 1999)
- Scott A, 'Risk Society or Angst Society: Two Views of Risk, Consciousness and Community' in Barbara Adam, Ulrich Beck and Joost Van Loon (eds), *The Risk Society and Beyond: Critical Issues for Social Theory* (Sage 2000)
- Segrave M, 'Theorizing Sites and Strategies of Differential Inclusion: Unlawful Migrant Workers in Australia' (2019) 23 *Theoretical Criminology* 194
- Seidman-Zager J, 'The Securitization of Asylum: Protecting UK Residents' (Refugee Studies Centre 2010) Working Paper 57
- Senate Select Committee on a Certain Maritime Incident, 'A Certain Maritime Incident' (Australian Parliament 2002)
- Shah P, *Refugees, Race and the Legal Concept of Asylum in Britain* (Cavendish Publishing 2000)
- Shah S, 'The UK's Anti-Terror Legislation and the House of Lords: The First Skirmish United Nations and Regional Human Rights Systems: Recent Developments' (2005) 5 *Human Rights Law Review* 403
- Siapera E, 'Asylum Politics, The Internet, And The Public Sphere: The Case of UK Refugee Support Groups Online' (2004) 11 *Javnost - The Public* 79
- Silverman S, Griffiths M and Walsh W, 'Immigration Detention in the UK' (The Migration Observatory 2021)
- Silverman SJ, "'Regrettable but Necessary?'" A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition' (2012) 40 *Politics & Policy* 1131
- Silverman SJ and Massa E, 'Why Immigration Detention Is Unique' (2012) 18 *Population, Space and Place* 677
- Silverman SJ and Nethery A, 'Understanding Immigration Detention and Its Human Impact' in Amy Nethery and Stephanie J Silverman (eds), *Immigration Detention: The migration of a policy and its human impact* (Routledge 2015)
- Singer S, 'Terrorism and Article 1F(c) of the Refugee Convention Exclusion from Refugee Status in the United Kingdom' (2014) 12 *Journal of International Criminal Justice* 1075
- Sivanandan A, *A Different Hunger: Writings on Black Resistance* (Pluto Press 1982)
- Sjoberg G and others, 'The Case Study Approach in Social Research' in Joe R Feagin, Anthony M Orum and Gideon Sjoberg (eds), *A case for the case study* (University of North Carolina Press 1991)

- Sjöberg L, 'Policy Implications of Risk Perception Research: A Case of the Emperor's New Clothes?' (2002) 4 Risk Management 11
- Sjöberg L, Moen B-E and Rundmo T, 'Explaining Risk Perception. An Evaluation of the Psychometric Paradigm in Risk Perception Research' (Norwegian University of Science and Technology 2004) 85
- Slovic P, 'Perception of Risk' in Paul Slovic (ed), *The Perception of Risk* (Earthscan Publications 2000)
- Slovic P, Fischhoff B and Lichtenstein S, 'Why Study Risk Perception?' (1982) 2 Risk Analysis 83
- Social Care Institute for Excellence, 'Good Practice in Social Care for Refugees and Asylum Seekers' (May 2015) <<https://www.scie.org.uk/publications/guides/guide37-Good-practice-in-social-care-with-refugees-and-asylum-seekers/about.asp>> accessed 29 October 2021
- Solomos J, *Race and Racism in Contemporary Britain* (Macmillan 1989)
- , *Race and Racism in Britain* (3rd edn, Macmillan Press 2003)
- Sørensen MP and Christiansen A, *Ulrich Beck: An Introduction to the Theory of Second Modernity and the Risk Society* (1st ed., Routledge 2013)
- Spencer-Oatey H, 'What Is Culture? A Compilation of Quotations.' (University of Warwick 2012) <<http://www.warwick.ac.uk/globalpadintercultural>>
- Squire V (ed), *The Contested Politics of Mobility: Borderzones and Irregularity* (Routledge 2011)
- St Vincent de Paul Society National Council, 'The Destitution of Asylum Seekers in Australia: Cuts to Status Resolution Support Service Payments' <https://www.vinnies.org.au/icms_docs/306550_SRSS_briefing.pdf> accessed 28 March 2020
- Stallings RA, 'Media Discourse and the Social Construction of Risk Special Section: Moral Problems in Reproduction' (1990) 37 Social Problems 80
- Stark S and Torrance H, 'Case Study' in Bridget Somekh and Cathy Lewin (eds), *Research methods in the social sciences* (Sage 2005)
- Statham P and Geddes A, 'Elites and the "Organised Public": Who Drives British Immigration Politics and in Which Direction?' (2006) 29 West European Politics 248
- Stephan CW and Stephan W, *Intergroup Relations* (Routledge 2018)
- Stevens D, *UK Asylum Law and Policy: Historical and Contemporary Perspectives* (Sweet & Maxwell 2004)

- Stratton J, *Race Daze: Australia in Identity Crisis* (Pluto Press 1998)
- Stumpf J, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power' (2006) 56 *American University Law Review* 367
- , 'Social Control and Justice: Crimmigration in the Age of Fear' in Maria João Guia, Maartje Amalia Hermina van der Woude and Joanne van der Leun (eds), *Social control and justice: crimmigration in the age of fear* (Eleven International Publishing 2013)
- , 'Crimmigration: Encountering the Leviathan' in Sharon Pickering and Julie Ham (eds), *The Routledge Handbook on Crime and International Migration* (Routledge 2015)
- Sturge G, 'Asylum Statistics' (House of Commons Library 2021) Briefing Paper SN01403
- , 'Asylum Statistics' (House of Commons Library 2021) SN01403
- Suhnan A, Pedersen A and Hartley L, 'Re-Examining Prejudice against Asylum Seekers in Australia: The Role of People Smugglers, the Perception of Threat, and Acceptance of False Beliefs' (2012) 24 *The Australian Community Psychologist* 79
- Sullivan-Taylor B and Wilson DC, 'Managing the Threat of Terrorism in British Travel and Leisure Organizations' (2009) 30 *Organization Studies* 251
- Sunstein C, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press 2005)
- Sunstein CR, *Risk and Reason: Safety, Law, and the Environment* (Cambridge University Press 2002)
- Talbot A and Newhouse G, 'Strategic Litigation, Offshore Detention and the Medevac Bill' [2019] *Court of Conscience* 85
- Tansey J, 'Risk as Politics, Culture as Power' (2004) 7 *Journal of Risk Research* 17
- Tansey J and O'riordan T, 'Cultural Theory and Risk: A Review' (1999) 1 *Health, Risk & Society* 71
- Tavan G, *The Long, Slow Death of White Australia* (Scribe Publications 2005)
- Taylor A, 'Is It Time to Ditch the Word "Migrant"?' *Washington Post* (24 August 2015) <<https://www.washingtonpost.com/news/worldviews/wp/2015/08/24/is-it-time-to-ditch-the-word-migrant/>> accessed 6 March 2022
- Taylor-Gooby P, 'Does Risk Society Erode Welfare State Solidarity' (2011) 39 *Policy & Politics* 147
- Taylor-Gooby P and Zinn JO, 'The Current Significance of Risk' in Peter Taylor-Gooby and Jens O Zinn (eds), *Risk in social science* (Oxford University Press 2006)

- Taylor-Gooby P and Zinn JO, 'Current Directions in Risk Research: New Developments in Psychology and Sociology' (2006) 26 *Risk Analysis* 397
- 'The Dubs Amendment: What's the Situation?' (*Support Refugees*, 9 March 2017) <<https://www.supportrefugees.org.uk/dubs-amendment-situation/>> accessed 10 January 2022
- Thompson M, Ellis R and Wildavsky A, *Cultural Theory* (Routledge 2018)
- Thomson JE, 'State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research' (1995) 39 *International Studies Quarterly* 213
- Torpey J, 'Coming and Going: On the State Monopolization of the Legitimate "Means of Movement"' (1998) 16 *Sociological Theory* 239
- Trioli V, 'Reith Rewrites History to Hide the Shame of Children Overboard Lie' (*The Sydney Morning Herald*, 1 September 2012) <<https://www.smh.com.au/politics/federal/reith-rewrites-history-to-hide-the-shame-of-children-overboard-lie-20120831-255u3.html>> accessed 6 August 2021
- Tsoukala A, 'Democracy in the Light of Security: British and French Political Discourses on Domestic Counter-Terrorism Policies' (2006) 54 *Political Studies* 607
- Tsoukas H, 'David and Goliath in the Risk Society: Making Sense of the Conflict between Shell and Greenpeace in the North Sea' (1999) 6 *Organization* 499
- Tulloch J, 'Representing Risk and Security: Visual Imaging From Kosovo to Iraq', *Learning about Risk* (2005)
- Tulloch J and Lupton D, *Risk and Everyday Life* (Sage 2003)
- Tyler I, "'Welcome to Britain": The Cultural Politics of Asylum' (2006) 9 *European Journal of Cultural Studies* 185
- UK Border Agency, 'Protecting Our Border, Protecting the Public' (Home Office 2010)
- UK Government, 'Risk Potential Assessment Form' (*GOV.UK*, 5 November 2021) <<https://www.gov.uk/government/publications/risk-potential-assessment-form>> accessed 25 March 2022
- UN High Commissioner for Refugees, 'The 10-Point Plan in Action, 2016 - Glossary', *The 10-Point Plan in Action, 2016 Update* (UNHCR 2016)
- , 'Global Trends: Forced Displacement in 2019' (United Nations 2020)
- United Nations High Commissioner for, 'UNHCR Statement on Australia-Cambodia Agreement on Refugee Relocation' (*UNHCR*, 26 September 2014) <<https://www.unhcr.org/news/press/2014/9/542526db9/unhcr-statement-australia-cambodia-agreement-refugee-relocation.html>> accessed 3 June 2021

United Nations High Commissioner for Refugees, 'Global Trends Forced Displacement in 2018' (United Nations 2019)

University of Newcastle, 'Colonial Frontier Massacres in Australia, 1788-1930' (16 March 2022) <<https://c21ch.newcastle.edu.au/colonialmassacres/>> accessed 2 May 2022

Urry J, *Climate Change and Society* (Polity Press 2011)

Valentine K, "'People Smuggling" or Refugee Hysteria.' (2000) February/March Arena Magazine 5

van Dijk TA, 'Critical Discourse Analysis' in Deborah Schiffrin, Deborah Tannen and Heidi E Hamilton (eds), *The Handbook of Discourse Analysis* (Blackwell Publishing 2001)

van Kooy J and Ward T, 'An Unnecessary Penalty: Economic Impacts of Changes to the Status Resolution Support Services (SRSS)' (Australian Council of Social Services & Others 2018)

van Liempt I and Bilger V, 'Ethical Challenges in Research with Vulnerable Migrants' in Carlos Vargas-Silva (ed), *Handbook of research methods in migration* (Edward Elgar Publishing 2012)

Vassiliou J, 'Illegal Working Fines Aren't Working' (*Free Movement*, 24 January 2020) <<https://freemovement.org.uk/illegal-working-fines-arent-working/>> accessed 20 April 2021

Vedsted-Hansen J, 'Responding to the Arrival of Asylum Seekers: Control and Protection in Asylum Procedures' (UNHCR 1999) Working Paper 6

Veitch S, *Law and Irresponsibility: On the Legitimation of Human Suffering* (Routledge-Cavendish 2007)

Veitch S, Christodoulidis E and Farmer L, *Jurisprudence: Themes and Concepts* (2nd edn, Routledge 2012)

Vertovec S, 'The Cultural Politics of Nation and Migration' (2011) 40 Annual Review of Anthropology 241

Vollmer B, 'Irregular Migration in the UK: Definitions, Pathways and Scale' (Migration Observatory 2011)

Vollmer BA, 'The Continuing Shame of Europe: Discourses on Migration Policy in Germany and the UK' (2017) 5 Migration Studies 49

Wadham B, 'Operation Sovereign Borders: Dignified Silence or Diminishing Democracy?' (*The Conversation*, 8 January 2014) <<http://theconversation.com/operation-sovereign-borders-dignified-silence-or-diminishing-democracy-21294>> accessed 22 January 2019

- Wæver O, 'Securitization and Desecuritization', *On Security* (Columbia University Press 1995)
- Walker C, 'The Treatment of Foreign Terror Suspects' (2007) 70 *Modern Law Review* 427
- Walsh PW, 'Deportation and Voluntary Departure from the UK' (Migration Observatory 2020) 8
- Walters S, 'The £1m Benefits Cheats' *Mail on Sunday* (London (UK), 18 August 2013) 1
- Warner K and others, 'Climate Change, Environmental Degradation and Migration' (2010) 55 *Natural Hazards* 689
- Watson SD, 'Manufacturing Threats: Asylum Seekers as Threats or Refugees' (2007) 3 *Journal of International Law and International Relations* 95
- Wazana R, 'Fear and Loathing Down Under: Australian Refugee Policy and the National Imagination' (2004) 22 *Refuge: Canada's Journal on Refugees* 83
- Weber L and Bowling B, 'Policing Migration: A Framework for Investigating the Regulation of Global Mobility' (2004) 14 *Policing and Society* 195
- Wehrey F and Boukhars A (eds), *Perilous Desert: Insecurity in the Sahara* (Brookings Institution Press 2013)
- Weiner M, 'Ethics, National Sovereignty and the Control of Immigration' (1996) 30 *The International Migration Review* 171
- Wharton F, 'Risk Management: Basic Concepts and General Principles', *Risk: Analysis, Assessment and Management* (Wiley 1992)
- Wildavsky A and Dake K, 'Theories of Risk Perception: Who Fears What and Why?' (1990) 119 *Daedalus* 41
- Wilkinson I, 'Social Theories of Risk Perception: At Once Indispensable and Insufficient' (2001) 49 *Current Sociology* 1
- , *Risk, Vulnerability and Everyday Life* (Routledge 2010)
- Willard M, *History of the White Australia Policy to 1920* (Melbourne University Press 1923)
- Willheim E, 'MV Tampa: The Australian Response' (2003) 15 *International Journal of Refugee Law* 159
- William A, Blinder S and McNeil R, 'Media Reporting of Migrants and Migration', *World Migration Report 2018* (International Organization for Migration 2018)

- Williams AM and Baláž V, 'Low-Cost Carriers, Economies of Flows and Regional Externalities' (2009) 43 *Regional Studies* 677
- Williams AM and Baláž V, 'Migration, Risk, and Uncertainty: Theoretical Perspectives' (2012) 18 *Population, Space and Place* 167
- Williams W, 'Windrush Lessons Learned Review' (2020) HC 93
- Wilsher D, *Immigration Detention: Law, History, Politics* (Cambridge University Press 2012)
- Wimmer A and Glick Schiller N, 'Methodological Nationalism and beyond: Nation–State Building, Migration and the Social Sciences' (2002) 2 *Global Networks* 301
- Wolfe A and Klausen J, 'Identity Politics and the Welfare State' (1997) 14 *Social Philosophy and Policy* 231
- Woods C, 'Budget 2020 Slashes Refugee Placements, Reactivates Christmas Island, and Guts Offshore Processing from 2021-22' (*The Mandarin*, 8 October 2020) <<https://www.themandarin.com.au/141788-budget-2020-slashes-refugee-placements-reactivates-christmas-island-and-guts-offshore-processing-from-2021-22/>> accessed 7 April 2021
- Wray H, 'The Aliens Act 1905 and the Immigration Dilemma' (2006) 33 *Journal of Law and Society* 302
- Wright S, 'Terrorists and Biological Weapons: Forging the Linkage in the Clinton Administration' (2006) 25 *Politics and the Life Sciences* 56
- Wynhausen E, 'Foreign Farm Workers Caught in Trap' *The Australian* (Canberra, ACT, 1 September 2008)
- Wynne B, 'Misunderstood Misunderstanding: Social Identities and Public Uptake of Science' (1992) 1 *Public Understanding of Science* 281
- Yarwood A and Knowling M, *Race Relations in Australia: A History* (Methuen Australia 1982)
- Yeo C, 'Book Review: (B)Ordering Britain by Nadine El-Enany' (*Free Movement*, 18 February 2020) <<https://www.freemovement.org.uk/book-review-bordering-britain-by-nadine-el-enany/>> accessed 1 November 2021
- Younes N and Reips U-D, 'Guideline for Improving the Reliability of Google Ngram Studies: Evidence from Religious Terms' (2019) 14 *PLoS ONE* 1
- Zetter R, 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization' (2007) 20 *Journal of Refugee Studies* 172

—, 'Are Refugees an Economic Burden or Benefit?' (2012) 41 *Forced Migration Review* 50

Zinn JO, 'Introduction: The Contribution of Sociology to the Discourse on Risk and Uncertainty' in Jens O Zinn (ed), *Social theories of risk and uncertainty: an introduction* (Blackwell Publishing 2008)